

'Joint Operation RABIT 2010' – FRONTEX Assistance to Greece's Border with Turkey: Revealing the Deficiencies of Europe's Dublin Asylum System

Sergio Carrera and Elspeth Guild

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Abstract

This paper examines the first deployment of the Rapid Border Intervention Teams (RABITs) to Greece's external land border with Turkey on 2 November 2010. It argues that the sending of the RABITs to Greece reveals some of the core challenges inherent in Europe's external border and asylum policies. Most importantly, it signals the limits of the principle of solidarity and fair-sharing of responsibility and the failure of the EU Dublin System. The paper argues that the sending of RABITs fails to show a long-standing (solidarity-based) answer by the EU to the situation of unrest taking place in Greece on two grounds: First, the deployment is merely of an emergency, temporary and (in)security (police)-driven nature; and second, the strengthening of the common EU external land border between Greece and Turkey may further increase the tensions by enlarging the distance between the external border control practices and Europe's commitment to the rights and freedoms of asylum-seekers and refugees.

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‘Joint Operation RABIT 2010’ – FRONTEX Assistance to Greece’s Border with Turkey: Revealing the Deficiencies of Europe’s Dublin Asylum System

Sergio Carrera and Elspeth Guild*

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Introduction

On 24 October 2010, the Greek Government sent an urgent call to Brussels for assistance in the control of its external land border with Turkey due to an “exceptional mass inflow of irregular immigrants”. The day after the request by Greece, Ilkka Laitinen, Executive Director of Frontex (the European Agency for the management of operational cooperation at the EU external borders in Warsaw), announced his intention to support to Greece by increasing “the control and surveillance levels at Greece’s external border with Turkey” and “strengthening the external EU border”.¹ The case has led to the first deployment of the Rapid Border Intervention Teams (RABITs) since their formation in 2007.

The RABITs consist of a team of specially trained experts (border guards) from EU member states who can be deployed under the coordination of Frontex on a temporary basis as a means of rapid operational assistance on border control and surveillance. The activation of the RABIT mechanism relies on a request by a member state facing a situation of ‘urgent and exceptional pressure’ in light of the number of arrivals at points of the external borders of third country nationals trying to enter the EU’s territory without proper documentation. The ‘emergency situation’ constitutes therefore the connecting factor for their operability. Their primary tasks are to strengthen external border security and prevent undocumented immigration. What has been already denominated as the ‘Joint Operation RABIT 2010’ has led to the deployment of 175 border control specialists to the Greek region of Orestiada and neighbouring areas (in total 12.5 km) on 2 November 2010 for a preliminary period of two months.

The request from Greece was also followed by a statement by Cecilia Malmström, Commissioner in charge of Home Affairs:

“The situation at the Greek land border with Turkey is increasingly worrying. The flows of people crossing the border irregularly have reached *alarming proportions* and *Greece is manifestly not able to face this situation alone*. I am very concerned about the *humanitarian situation*. I trust that *proper assistance* will be given to all persons crossing the border and that the request for *international protection* will be considered, in full compliance with EU and international standards” (emphasis added).²

* Sergio Carrera is Head of Section and Research Fellow at CEPS and Visiting Lecturer at the University of Kent (Brussels). Elspeth Guild is Jean Monnet Professor of European Migration Law at the Radboud University of Nijmegen, partner at the London law firm Kingsley Napley and Senior Research Fellow at CEPS.

¹ “Frontex deploys Rapid Border Intervention Teams to Greece”, Frontex News Release, 25 October 2010 (www.frontex.europa.eu).

² Statement by Cecilia Malmström, European Commissioner in charge of Home Affairs on the request of the Greek government to get assistance via Rapid Border Intervention Teams at the land border between Greece and Turkey, MEMO/10/516, Brussels, 24 October 2010.

On 5 November 2010, Malmström, together with Laitinen and the French Minister of Immigration Éric Besson visited the Greek-Turkish land border to meet the RABITs. The Commissioner remarked: “We have shown European solidarity...we’ve been working with Greece in recent years and are now also working together to find long-term solutions to enhance Greece’s asylum capacity”.³ The first test of the RABITs needs to be first examined within the current Greek national context which has been the subject in recent years of serious concern on the part of international and European actors alluding to the failure of its asylum system, which remains in a critical relationship with basic EU asylum law standards and fundamental rights as envisaged in the 1951 Geneva Convention on the status of refugees. Greece continues to be amongst the EU member states with the lowest recognition rate of refugees in the entire EU (which is very close to ‘zero’), which is striking in light of the high volume of entries by nationals from countries identified as major sources of refugees by the UN Refugee Agency (UNHCR), such as Afghanistan, Iran, Somalia and Palestine. The backlog of asylum applications in the country only continues to increase as time passes. Evidence has shown the lack of adequate reception conditions for asylum seekers and refugees and the conduct of ‘border control practices’ whose compatibility with the principle of *non-refoulement* (according to which no state can expel a refugee to the frontiers of territories where his/her life or freedom would be threatened) remain at stake. While the Greek government has promised to carry out a new asylum law reform aiming at correcting these deficiencies,⁴ the latter has been subject to several delays and the prospects for effective change remain far from imminent.

Greece’s location positions the country at the gates of the Schengen territory and the common EU external territorial border. Geography further increases its degree of ‘responsibility’ in the scope of the EU’s asylum policy and the so-called ‘Dublin System’, according to which the first state through which an asylum-seeker has first entered the common EU territory is the one responsible for examining the refugee’s claim. The absence of a functional asylum procedure with sufficient safeguards to ensure the respect of the right to seek asylum (now incorporated into the EU Charter of Fundamental Rights) has provoked several EU Member States (such as for instance Belgium, Sweden, the Netherlands and the UK) to stop ‘sending back’ asylum seekers to Greece. The European Commission has also informally opened infringement proceedings against the country and there are two preliminary rulings before the Court of Justice in Luxembourg concerning Greece’s stance, as well as a pending case before the European Court of Human Rights in Strasbourg. All these factors need to be taken into consideration at times of contextualizing the first deployment of the RABITs as they represent an important test for the entire EU’s external border and asylum policy.

This Policy Brief examines the Frontex Operation RABIT 2010. It argues that the sending of the RABITs to the Greek-Turkish land border reveals some of the core challenges inherent in the intersection of Europe’s external border and asylum policies. It most importantly signals the limits of the principle of solidarity and fair sharing of responsibility in an enlarged EU and the failure of the EU Dublin System. It also challenges the assumption that all EU member states duly comply with adequate asylum procedures and human rights obligations as enshrined in EU and internal instruments, in particular those pertaining to the obligation to ensure access to protection and human dignity by asylum-seekers and refugees. After outlining the nature of the rapid teams’ mechanism and the scope of their first operation, we examine the situation in Greece as regards “the urgent and exceptional pressure of illegal immigrants” which has

³ “Papoutsis, Besson, Malmström and Laitinen visit RABIT operational area”, Frontex News Release, 5 November 2010 (www.frontex.europa.eu).

⁴ Press Release by the Greek Ministry of Citizen Protection, “Greece sends its National Action Plan for Migration Management to the European Commission”, Athens, 25 August 2010 (http://www.ydt.gr/index.php?option=ozo_content&lang=EN&perform=view&id=3246&Itemid=443).

constituted the activating factor substantiating the first deployment of the RABITs. Section 3 provides an overview of the failing asylum policy in the country and the difficulties that it poses to the foundations and well-functioning of EU external borders and asylum law. Section 4 concludes by testing the EU's response in light of the principles of proportionality, effectiveness and fundamental rights. We argue that the sending of RABITs fails to show a long-standing inability of the EU to mobilise a (solidarity-based) answer by the EU to the situation of unrest taking place in Greece on two main grounds: first, the deployment is merely of an emergency, temporary and (in)security (police)-driven nature; and second, the strengthening of the common EU external land border between Greece and Turkey may further increase the tensions by enlarging the distance between the external border control practices and Europe's commitment to the rights and freedoms of asylum-seekers and refugees.

1. The Frontex Operation RABIT 2010

The creation of the Rapid Border Intervention Teams dates back to July 2007 with the adoption by Council of Regulation 863/2007, which amended the previous Regulation 2007/2004 establishing Frontex by outlining the tasks and powers of guest border guards in a requesting EU member state.⁵ The mechanism aimed at increasing the capacity and coordination-related competences of Frontex to provide operational assistance – in particular personnel and technical resources – to a member state “facing a situation of urgent and exceptional pressure” as regards undocumented immigration.⁶ It also intended to contribute in increasing ‘solidarity and mutual assistance’ between member states in the management of the common EU external border.⁷ After receiving the request by a Member State, which is required to include a description of the situation, the aims and the envisaged needs for the deployment, Regulation 863/2007 leaves the final say of the decision for the deployment of the teams to the Frontex Executive Director. The latter is required to take a decision no later than five working days after the receipt of the request, at which time the teams shall be deployed. In addition to this information provided by the country concerned, the positive decision for deployment by Frontex will need to be based on the findings of its “risk analyses” of the situation as well as “other relevant data made available by the Member State concerned”.⁸ During the short time-lapse of five days, Frontex is entitled to examine the situation at the external borders of the requesting member state and has the possibility of sending experts from the Agency for these same purposes.

Frontex decides on the profiles and number of border guards that will be made available in a so-called ‘Rapid Pool’ which is fed by the Member States’ contributions via national expert pools with border guards matching the required profiles. Frontex Executive Director and the requesting Member State need to agree on an Operational Plan delineating the conditions for the deployment of the teams and its final composition. After the mechanism has been activated, Member States have the obligation to make border guards available for the deployment “unless they are faced with an exceptional situation substantially affecting the discharge of national tasks”.⁹ The RABITs are not intended to provide long-term assistance, but are of a temporary

⁵ Regulation No. 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation No. 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, 11 July 2007, OJ L199/30, 31.7.2007.

⁶ Article 1 of the Regulation.

⁷ Recital 6 of the Preamble of the Regulation.

⁸ Article 8d (Procedure for deciding on the deployment of the teams) of the Regulation EC/2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 26 October 2004, OJ L 349/1, 25.11.2004.

⁹ *Ibid.*, Article 4.3.

nature. During the deployment the border authorities coming from other EU Member States are under the instructions by the host member state as specified in an operational plan, which provides the details of the deployment such as the modus operandi, the objectives of the deployment and its duration, the description of the tasks and instructions, and the composition of the teams and equipment.¹⁰

The powers of the RABITs include all tasks for border control and surveillance. As a general rule, their activities always need to take place “in the presence of border guards of the host Member State”.¹¹ While wearing their own uniform, they will also need to wear a blue armband with the insignia of the EU and the Frontex agency. They are also entitled to carry out “service weapons, ammunition and equipment as authorised according to the home Member state’s national law”. In the performance of their tasks the teams will be allowed to use force (including weapons and ammunition) in the presence of national border guards and national law and to consult national and EU databases considered to be necessary for border control and surveillance. The members of the teams remain ‘national’ border guards of their home member state and remain subject to disciplinary measures there should any problem arise in the conduction of their tasks in the host member state.

Returning to the case study, after receiving the request from the Greek Minister of Citizen Protection Christos Papoutsis on the 24th of October, Frontex Executive Director Ilkka Laitinen stated:

*The situation in Greece is very serious...I have decided that Frontex will provide assistance to the Greek border authorities by deploying adequate number and composition of Rapid Border Intervention Teams. Once deployed they will be operating under the command and control of the Greek authorities. A team of Frontex staff is on its way to the Greek/Turkish land border to assess the situation in view of Minister Papoutsis’ request. We will decide how many officers and what kind of technical means will be needed to effectively assist the Greek authorities in strengthening this external EU border and act swiftly to provide the assistance that this Member State has requested.*¹² (emphasis added)

The next day after this declaration, a press release published by Frontex announced that Laitinen had already signed the decision to send the RABIT to Greece and declared that “Frontex stands ready to assist Greece by activating the RABIT mechanism in this urgent and exceptional situation in order to augment Greece’s national efforts to deal with this problem”.¹³ The press release also indicated that staff from the pilot Frontex Operational Office (FOO) in Piraeus, which was inaugurated on 1 October 2010 and constitutes the first regional office of the Agency outside its headquarters in Warsaw, had also arrived at the Greek-Turkish border to conduct another assessment of the situation.¹⁴ The FOO’s origins date back to an invitation by the Council in 2008 to Frontex for improving its coordinative efforts in the management of the

¹⁰ Article 8e of Regulation EC/2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 26 October 2004, OJ L 349/1, 25.11.2004.

¹¹ Article 6.3.

¹² “Frontex deploys Rapid Border Intervention Teams to Greece”, Frontex News Releases, 25 October 2010 (www.frontex.europa.eu).

¹³ “Frontex executive Director signs decision to deploy RABITs”, Frontex News Releases, 26 October 2010 (www.frontex.europa.eu).

¹⁴ “Frontex Operational Office opens in Piraeus”, Frontex News Releases, 1 October 2010 (www.frontex.europa.eu).

external borders,¹⁵ in particular “*in regions affected by increased migratory pressure*”.¹⁶ The decision to set up the first specialised branch in the form of a pilot in Piraeus was taken in February 2010 and it was finally set up in August 2010 at the HQ of the Hellenic Coast Guard.

Five days later, the Frontex Operation RABIT 2010 in the Greek-Turkish border was launched. The actual deployment of experts and means was planned for 2 November 2010, and the operation is expected to run for a period of at least two months. The geographical area that will be covered corresponds with the Greek-Turkish land border in the region of Orestiada and neighbouring areas. In explaining the visit of Commissioner Malmström to the operational region last 5 November, Laitinen remarked:

The aims of this operation are clearly defined and achievable...Firstly, to bring the situation under control – ensuring that all times that irregular migrants are properly identified and treated in line with our commitment to fundamental rights and human dignity. Secondly, we intend to have an impact on migratory flows in the area, and thirdly, to assist the Greek authorities in border management.¹⁷

The operation consists of 175 ‘border control-experts’ from the 26 member states and Schengen-associated countries. They include “experts in false documents, clandestine entry, first and second-line border checks and stolen vehicles as well as dog handlers and specialist interviewers, debriefers and interpreters”.¹⁸ The assets made available from member states’ commitments to Frontex’s Centralised Record of Available Technical Equipment (CRATE),¹⁹ include:

- 1 Helicopter (Romania)
- 1 Bus (Romania)
- 5 Minibuses (1 Romania, 2 Austria, 1 Bulgaria, 1 Hungary)
- 19 Patrol cars (4WD) (7 Romania, 3 Austria, 2 Slovakia, 7 Germany)
- 9 Thermo Vision Vans (2 Austria, 2 Bulgaria, 4 Germany, 1 Hungary)
- 3 Schengen buses (1 Austria, 2 Hungary)
- 3 office units from Denmark.

The Frontex Operation RABIT 2010 has been presented at EU official level as evidence of effective ‘European solidarity’. There are several issues, however, which in our view challenge the effectiveness of the RABITs in light of the principle of solidarity and fair sharing of

¹⁵ Council Conclusions on the Management of the External Borders of the Member States of the European Union of 5 June 2008. See also European Pact on Immigration and Asylum adopted on 15 and 16 October 2008.

¹⁶ FRONTEX General Report 2009, p. 9. Deloitte (2009), Study on the Feasibility of establishing Specialized Branches of FRONTEX, Final Report (www.frontex.europa.eu).

¹⁷ “Papoutsis, Besson, Malmström and Laitinen visit RABIT operational area”, Frontex News Releases, 5 November 2010 (www.frontex.europa.eu).

¹⁸ “Frontex to deploy 175 specialist border personnel to Greece”, Frontex News Releases, 29.10.2010, (www.frontex.europa.eu).

¹⁹ By 1 January 2008, CRATE contained 18 aircraft, 20 helicopters and 91 vessels, and in 2009 the number of member states contributed increased from 8 to 13. Commission Impact Assessment accompanying the Proposal for a Regulation amending Council Regulation 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 (FRONTEX), SEC(2010) 149, 24.2.2010, page 12.

responsibility as enshrined in Article 80 of the Treaty on the Functioning of the European Union²⁰ in the domain of external border controls.

First, the RABITs have been conceived to intervene *only* in a situation of particular emergency in one particular member state. This has meant that since their origins in 2007, the mechanism has not been used even once until the current Greek-Turkish land border case. During the last three years many observers have alluded to the lack of their real added value.

Second, the RABIT mechanism can only be deployed on a temporary basis due to its intrinsic link with situations of ‘mass inflow’ of undocumented immigrants. They are therefore far from providing a long-standing and permanent response by the Union to the responsibilities held by those EU member states facing more difficulties in the management of the EU’s external borders in accordance with the Schengen Borders Code and EU asylum law. The European Commission has tried to address the temporary nature of the rapid teams in its latest proposal amending Frontex Regulation COM(2010) 61 of February 2010, which is currently being negotiated in the Council.²¹ The initiative has put forward the idea of setting up Frontex Joint Support Teams (FJST), which would constitute a pool of national border guards on semi-permanent detachment from EU member states to Frontex headquarters and which would hold the status of national experts.²²

Third, the rapid teams are composed by a widely heterogeneous and dispersed team of 175 national (border guards) experts from all EU member states and associated (Schengen) countries. The Rapid Pool is formed by an enormously diverse set of national authorities in charge of border controls in the EU. In a majority of EU member states, the law enforcement authorities in charge of border controls and surveillance are actually the police. Some EU member states operate a specialised agency (border guard) dealing specifically with border controls outside the police corps.²³ The diversified picture of authorities responsible for border-control activities in the EU which take part in the RABITs is likely to reveal the uncertainties and disaggregation surrounding the application of EU external borders law depending on the kind of service at stake in each national arena. The main concern is not only that it is still unclear in some member states which authorities are in charge of border controls (in between border guards and policemen, or even military in the case of Malta or pseudo-military in the case of the *Guardia Civil* in Spain). It also poses questions at times of ensuring a clear division and rationalisation of border guarding tasks (and competences) in compliance with the Schengen Borders Code and their accountability in light of the latter.

Others issues include the difficulties that will be encountered at times of ensuring a common working methodology in a multi-curricula and multi-lingual environment in the field. How are they going to ensure that the guarantees envisaged by the Schengen Border Code are fully

²⁰ The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle”.

²¹ European Commission, Proposal for a Regulation 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 (FRONTEX), COM(2010) 61 final, Brussels, 24.2.2010.

²² Refer to Article 3b (Composition and deployment of Frontex Joint Support Teams) and Article 3c (Instructions to the Frontex Joint Support Teams).

²³ This is the case for instance in Finland, Latvia, Lithuania, the Netherlands, Poland and Switzerland. For a full list of national services in charge of external border controls in the scope of the SBC refer to Annex 1 of S. Carrera (2010), *Towards a Common European Border Service?*, CEPS Working Document No. 331, June, Centre for European Policy Studies, CEPS, Brussels.

complied with in all the activities that will take place in the scope of the Operation? Furthermore, as Amnesty International and the European Council of Refugees and Exiles (ECRE) have rightly underlined in a Report assessing the above-mentioned Commission's proposal COM(2010) 61,²⁴ an issue of serious concern is the high degree of ambiguity characterising the responsibilities of the guest border guards from other EU member states, Frontex personnel and the receiving member state's authorities and their respective responsibility (and potential liability in cases of abuses and/or disproportionate behaviour in border control-related activities). The main concern here is that the blurring of tasks and responsibilities "potentially permits member states to engage in border management with impunity".²⁵

Fourth, the national border guards participating in the Frontex Operation RABIT 2010 are said to be mainly experts on 'border controls' which combine among others specialists on false documents, clandestine entry, first and second-line border checks and stolen vehicles. While it is far from clear what precisely an expert on 'clandestine entry' might actually mean, it can be concluded that the RABITs are mainly composed of national law enforcement authorities deemed to be specialists on 'strengthening border control' against undocumented immigration. It is however noticeable that the above-mentioned press release by Frontex has emphasised that "All RABIT officers receive mandatory human rights awareness training as part of their RABIT training by Frontex and in addition, special briefings will be held on the spot". As we will develop in Sections 3 and 4 below, it is uncertain the extent to which police (coercive)-oriented assistance should have been the one prioritised at EU level to deal with the critical situation taking place in Greece concerning the treatment and fundamental rights of asylum seekers and refugees.

2. A 'mass inflow of irregular immigration' in the Greek-Turkish Border

The condition for the RABITs mechanism to be activated is that the requesting member state needs to be facing "a mass influx of third country nationals attempting to enter its territory illegally".²⁶ What does a 'mass influx' of undocumented immigrants actually mean? According to Frontex:

Due to the exceptionally high numbers of migrants crossing the Greek-Turkish land border illegally, Greece now accounts for 90% of all detections of illegal border crossings to the EU. In the first half of 2010 a total of 45,000 illegal border crossings were reported by the Greek authorities for all their border sectors. Greece currently estimates that up to 350 migrants attempt to cross the 12,5-km area near the Greek city of Orestiada every day.²⁷

How do these figures, and especially that of 90% of irregular entries, stand up to closer examination? According to statistics provided by Frontex Risk Analysis Network (*FRAN Quarterly Update*, January-March 2010) published in July 2010, the first quarter of 2010 continued with a trend already noticeable in 2009 concerning a drop in all indicators of irregular immigration into the EU. Around 14,200 detections of irregular external border crossings took

²⁴ Amnesty International and European Council on Refugees and Exiles (ECRE) (2010), Briefing on the Commission Proposal for a 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 (FRONTEX), September 2010, Brussels, pp 11 and 12.

²⁵ Ibid.

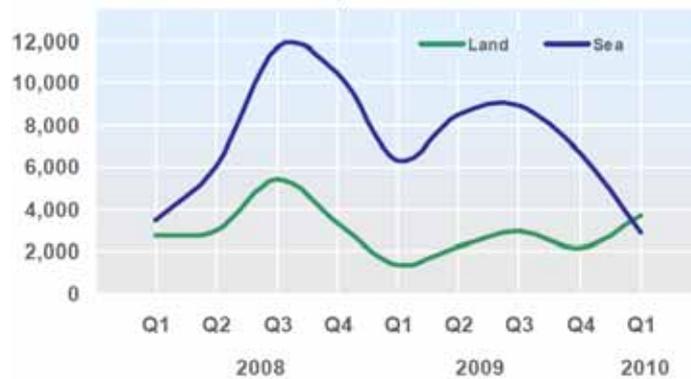
²⁶ Recital 7 of the Regulation No. 863/2007.

²⁷ "Frontex Deploys Rapid Border Intervention Teams to Greece", Frontex News Releases, 25 October 2010 (www.frontex.europa.eu).

place during the first three months of 2010. The total number of refusals of entry remained rather stable during 2009 and the first quarter of 2010 (+/- 26,500).

Along with this decreasing trend, it highlighted (p. 10): “In the first quarter of 2010, detections of illegal border-crossing at the Greek external border with Turkey (land and sea) were among the lowest since the FRAN record started in January 2008. This decreasing trend (land and sea) is reflected in all of the top five nationalities which have reached their lowest levels of detections: Afghanistan, Palestine, Somalia, Iraq, and Pakistan.” Moreover, the report observed that the number of detections of irregular crossings in the so-called ‘Eastern Mediterranean Route’ during the first quarter of 2010 were the lowest since the beginning of 2008. Detections at the Eastern Aegean Sea border with Greece declined over 60% to just under 2,300 detections. The FRAN identified a new pattern consisting of a higher number of detections in the Greek-Turkish land border rather than at sea. On the basis of the figure below, a total number of approximately 3,000 detections at the Greek border with Turkey took place in the first quarter of 2010.

Figure 1. Detections of irregular crossings at the Greek border with Turkey



Source: Frontex *FRAN Quarterly*, first quarter 2010.

The situation was reported to change in the second quarter of 2010. Frontex statistics published in September 2010 referred to the Greek land border as “the hotspot for illegal migration into the EU”. The *FRAN Quarterly*, Update – April – June 2010, stated;

The Greek land border accounted for around 90% of detections of the illegal border-crossing, *half of which were Albanian workers who routinely cross the border back and forth each year to exploit seasonal employment opportunities in Greece.* Nevertheless, the Greek land border was still the hotspot for illegal migration into the EU because the remaining half of the detections of illegal border-crossing (9,500) was of migrants intent on transiting Greece to settle in other member states.²⁸ (emphasis added)

The report identified as one of the major trends in the second quarter of 2010 that

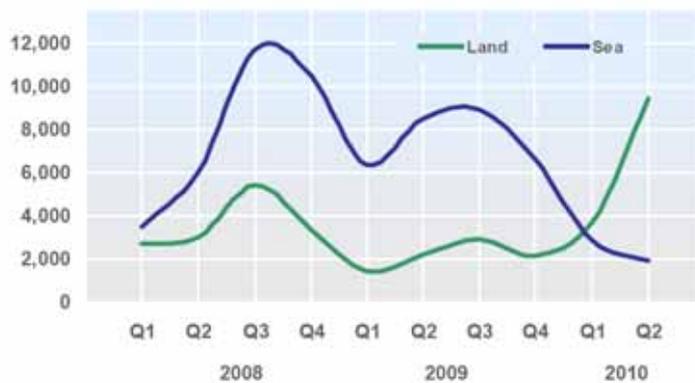
In the Eastern Mediterranean route, there has been a gradual and recently intensified shift from the Greek-Turkish sea border to the land border, *where 90% of detections were made and nationality swapping is widespread:* Asian and Maghreb migrants often claim to be from Somalia and Afghanistan, respectively. *At the Greek-Turkish land border around 60% of detections were made at the Border Control Unit (BCU) Orestiada which is under the biggest pressure.*

²⁸ Frontex, *FRAN Quarterly*, Issue 2, April-June 2010, Warsaw, Poland, September 2010, p. 3.

According to the FRAN report “Around two thirds of apprehended illegal migrants were reported from the BCU Orestiada (Police Directorate Orestiada) where migratory pressure is highest.” The report (p. 11) noted:

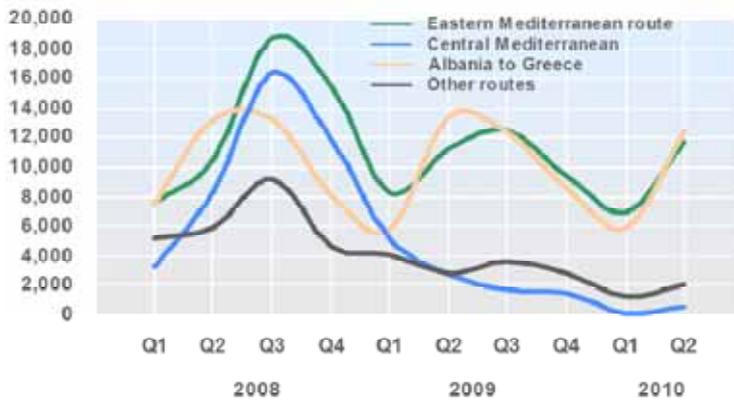
There were a total of 9,500 detections of illegal border-crossing at the Greek external border with Turkey. Although an increase compared to the historical low of the previous quarter, *the total number of detections is still consistent with the seasonal fluctuations illustrated, previously observed at this time of year.* In the second quarter of 2010, detections on this route constituted roughly 90% of the total number of illegal border-crossing between border crossing points and the most significant single entry point to the EU.

Figure 2. Detections of irregular border crossings by Afghans at the Greek land and sea border



Source: Frontex FRAN Quarterly, second quarter 2010.

Figure 3. Number of detections between border crossing points by major migratory group

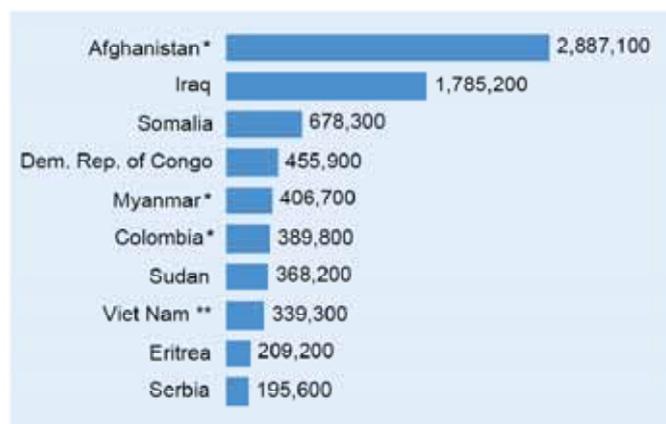


Source: Frontex FRAN Quarterly, second quarter 2010.

The main nationalities attributed to the peak in numbers of irregular crossings at times of determining who these people were. It is striking to see that it was actually Afghans, Palestinians and Somalis who were at the top of the list. Nationals from these countries happen to be amongst those with highest number of asylum seekers and refugees according to data

provided by the UN Refugee Agency UNHCR. As showed in its 2009 Global Trends Report,²⁹ during 2009 one out of four refugees in the world was from Afghanistan (2.9 million), with Iraqis being the second largest group (1.8 million) and Somalis, the third (around 700,000).

Figure 4. Major source countries of refugees, 2009



Source: UNHCR, 2009 Global Trends.

Do these figures therefore show a “mass inflow of undocumented immigrants” in the Greek-Turkish land border? Before answering this question, the scope of these numbers needs to be put into a proper context. Until recently, there was no statistical data available at EU level on the actual degree of human mobility taking place across the common European external borders. On the initiative of the Czech Presidency of the EU (first half of 2009), an exercise on data collection on entries and exits took place at the external borders of the member states between 31 August and 6 September 2009. The aim was to gather comparable statistics on entries and exits of different categories of travellers (EU citizens and TCNs) at different types of external borders (air, sea and land) and at all border crossing points at the external borders. The final results of the exercise are summarised in Table 1.

Table 1. Number of Entries through Air, Land and Sea External Borders in Schengen Member States 2009

	Air	Sea	Land	TOTAL 31 August – 6 September 2009	ESTIMATED TOTAL IN 2009
European Citizens	2,648,767	442,910	1,617,498	4,709,175	+/- 250,000,000
Third Country Nationals					
<i>Non Visa</i>	438,700	110,397	585,479	1,134,576	+/- 61,000,000
<i>Visa</i>	372,643	31,039	416,920	820,602	+/- 44,000,000
Total TCNs	811,343	141,436	1,002,399	1,955,178	+/- 105,000,000
TOTAL	3,460,110	584,346	2,619,897	6,664,353	+/- 355,000,000

Source: Council of the EU (2009), Results of the Data Collection Exercise, 13267/09, Brussels, 22 September.

²⁹ United Nations High Commissioner for Refugees (2010), 2009 Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons, Division of Programme of Support and Management, 15 June 2010, Geneva, Switzerland.

A total of around 2 million TCNs entered the common Schengen territory during the reported period of one week. When putting these statistics in a yearly basis, and aware of the reservations at times of making such calculation, it could be estimated that a total number of around 61 million TCNs with no visa and +/- 44 million TCNs with visa entered the EU in 2009. This would amount to a total of approx. 105 million entries by TCNs during 2009.

Moreover, when comparing the figure of a total of 9,500 detections of illegal border-crossing at the Greek external border with Turkey with the volume of human mobility in airports a different picture arises. According to the above-mentioned statistical results of the 2009 data collection exercise on (entry/exist) movements in the EU, France, Germany, Spain and the Netherlands were the main points of entry of TCNs by air external borders.

Table 2. Member states with the highest number of entries through EU air external borders

	Germany	France	The Netherlands	Spain
Third Country Nationals				
<i>Non Visa</i>	106,716	91,773	45,454	29,184
<i>Visa</i>	106,242	64,266	30,906	36,080
TOTAL (31 August – 6 September 2009)	212,958	156,039	76,360	65,264
ESTIMATED TOTAL IN 2009	10,000,000	7,800,000	3,800,000	3,000,000

Source: Council of the EU (2009).

In fact, according to Frontex data, the number of refusals of entry to undocumented immigrants through airports accounted to the majority in comparison to those taking place through land borders. More particularly, there were 140,000 refusals of entry by TCNs reported by member states in 2008.³⁰ This corresponded with around 60,000 refusals in land borders, some 65,000 in air borders and 6,700 in sea borders. During 2009 the number of refusals of entry remained “fairly stable” when compared to 2008, showing a decrease of 7% to 113,000. Very few refusals of entry were reported in sea borders (4%). The majority of them occurred at air (49%) and land borders (47%).

Therefore we can conclude that the situation of ‘crisis’ and ‘mass inflow of entries’ painted by the 90% figure which was originally used by Frontex in order to justify the first deployment of the RABITs needs to be taken with great caution when looking at the role played by seasonal migration of Albanian workers in that percentage. A different picture arises if we compare these figures with the total number of entries by third country nationals into the EU on a yearly basis and the number of refusals of entry at air borders. The criteria of ‘mass inflow of undocumented immigrants’ falls apart when looking at the nationalities of the persons who have been irregularly detected at the land border, which come from countries considered to be amongst the main sources of refugees by UNHCR. That notwithstanding, it is necessary to point out that the few thousands of detection of irregular entries which have been reported in the first quarter of 2010 by Frontex in the Greek-Turkish land border (9,500), need to be assessed in a rather critical national scenario where the Greek asylum and migration system are in a status of perilous failure and dysfunction.

³⁰ FRONTEX General Report 2008.

3. The Greek Situation: A Failing Asylum System and its Implications on the Dublin System

Similarly to other ‘Southern-Mediterranean’ EU member states, Greece is located at the front line of EU’s (land and maritime) external borders controls. During the last years many have been the concerns (and diplomatic lobby) by EU member states’ representatives from countries such as Spain, Italy or Malta. They have alluded to the disproportionate level of responsibility while holding the common EU external border and the need to strengthen ‘European solidarity’ in the Schengen regime. These tensions have only increased along with every new EU enlargement process (2004 and 2007) and the consequent gradual moving of the EU external border. The position of these countries as ‘the gate keepers’ of the common external frontier has not been so far accompanied by any specific EU solidarity mechanism. While numerous have been the calls by certain leaders across Europe for ‘more Brussels’ in order to meet common challenges, a majority of national governments have been sensitive (and too often hesitant) at times of discussing actual measures putting into practice their political narratives on border debates beyond the channelling of EU funding to these countries (e.g. the External Borders Fund). The main reason for such national resilience has been of course that the scope of ‘European solidarity’ too often collides with the boundaries of the principle of national sovereignty and subsidiarity which still continue to greatly inspire EU discussions around these domains.

The lack of an instrument ensuring ‘solidarity’ beyond financial considerations goes along with the inexistence of a monitoring system for the proper implementation of EU border law across the common external (air, land and sea) borders.³¹ The EU counts since 2006 with the Schengen Borders Code which has harmonized the rules applicable to checks and controls on external borders crossings. The Code is central as it not only foresees common procedural guarantees for those immigrants refused entry (the need for the refusal to be based on a substantiated decision stating the grounds and a right of appeal and information). The Code also covers the conduct of national border authorities when carrying out border checks, which will need to comply with human dignity and the principles of proportionality and non-discrimination. The challenges at times of ensuring a harmonious application of the SBC are exacerbated when considering that some of the ‘border crossing points’³² composing the EU external border face more obstacles than others at times of meeting the SBC standards due to factors such as the volume of human mobility that they experience and/or their geographical location. Border conditions and the resource requirements are also extremely variable across the EU, something which makes its very difficult for countries like Greece to hold their responsibility while duly respecting rule of law standards and fundamental rights of undocumented immigrants and asylum seekers.

The shifting of responsibility of border controls towards those EU member states responsible for the EU external (territorial) border needs to be read along the pitfalls emerging consequence of the application of the European Asylum System and the Dublin II Regulation 343/2003.³³ According to the latter the first EU country through which an asylum seeker has first entered the common EU territory is the one responsible for examining the refugee claim. By doing so the Dublin System shifts the responsibility for examining asylum applications to those EU member

³¹ Carrera (2010), op. cit.

³² According to the Commission there is a total of 1,792 border crossing points (including Romania and Bulgaria). Refer to Commission Staff Working Document, “Preparing the next steps in border management in the European Union, Impact Assessment”, SEC(2008) 153, Brussels, 13.2.2008, Table 13, p. 97.

³³ Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one Member State by an third country national

states holding the common external border. The default criterion is therefore that the member state where the applicants submitted her/his application for asylum will be the one responsible for its examination. Responsibility is framed as a 'burden' (take back and take charge) for the member state which permitted the individual to enter and arrive in the EU. The Dublin System works under the premises of the principle of mutual recognition of negative decisions (rejection of asylum applications), even if the recognition of refugee status remains nationally limited and hugely diversified across the EU. It functions on the unfounded presumption that all EU member states part of the common EU asylum system comply with similar levels of protection of asylum seekers.

UNHCR has recently described the situation in Greece as a "humanitarian crisis" and concluded that "the Greek government has utterly failed to meet its most basic responsibilities to protect refugees".³⁴ According to UNHCR the recognition rate of refugees at first instance during 2009 has been only of 0.04 % (11 out of 30.000 applications). All have been treated as undocumented immigrants and therefore expelled to Turkey or other third countries with which the country has a readmission agreement, or detained. UNHCR data shows that the country has a backlog of some 45,000 applications. According to ECRE:

For those who actually manage to apply for asylum in Greece, there's no chance of being recognized as a refugee. Virtually no asylum seekers (0.3%) were granted international protection in Greece in 2009. For instance, while no Iraqi was recognized as a refugee in Greece, 77% of Iraqi asylum seekers were granted international protection in Germany.³⁵

The dysfunctional nature of the Greek asylum system, and the consequent humanitarian crisis, has in fact lead to a whole series of reactions by other international and European actors. As a way of illustration, after a fact-finding mission in October 2010 the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, highlighted the systematic detention of undocumented immigrants and asylum seekers in the country and concluded that "none of the detention facilities for migrants I have visited can be regarded as complying with international minimum standards for humane treatment of detainees".³⁶ The UN Special Rapporteur also pointed out that "asylum seekers also appear to be generally detained until their asylum procedure has been concluded which constitutes a violation of Article 5 ECHR" and highlighted:

Greece suffers from a highly dysfunctional asylum system with protection rates at first instance of almost zero per cent. The first instance procedure is in hands of police

³⁴ UNHCR says asylum situation in Greece is 'a humanitarian crisis', Briefing Note, 21 September 2010 (<http://www.unhcr.org/4c98a0ac9.html>). See also "UNHCR urges EU investment in asylum support for Greece", (<http://www.unhcr.org.uk/resources/monthly-updates/greece.html>).

³⁵ ECRE, "Stop sending asylum seekers to Greece", European Council on Refugees and Exiles (ECRE), Brussels, 29 October 2010.

³⁶ UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, 20 October 2010. <http://www2.ohchr.org/english/issues/torture/rapporteur> It was stated in page 4 that

The Greek system of migration control relies on systematic detention for irregular migrants. Alternatives to detention are hardly considered. Thus, migrants end up in prolonged detention for no other reason than not possessing valid papers. This situation is even experienced as unfair by the responsible police authorities. The systematic detention of migrants leads to an extreme overcrowding of facilities unsuitable for such great numbers of detainees and their long-term detention. In all border guard stations, ... I witnessed that migrants were locked up in completely overcrowded, filthy and humid cells, often without natural light, and with unhygienic and inadequate bathrooms with only cold water and were not or inadequately provided with sanitary products such as soap or toilet paper. In some cases detainees had even no direct access to toilets, or their access was restricted because of cell shifts...

authorities who lack the necessary capacities and expertise in accepting the large number of applications. This has created a backlog of more than 52,000 cases to be examined as of August 2010...the lack of any individual assessment by Greek police, prosecutors or judges whether citizens of the Islamic Republic of Iran, Iraq or the Syrian Arab Republic face a serious risk of being deported by Turkish authorities to their countries of origin, constitutes a violation of the principle of non-refoulement.³⁷

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, has stated: “the gravely dysfunctional asylum procedures in Greece have brought the Dublin system to a genuine collapse and lessons must be drawn from this breakdown” and “a fair and efficient system that would fully guarantee the human rights of asylum seekers in Europe is still wanting. The Dublin Regulation should be revised as soon as possible in order to put an end to this situation”.³⁸ This has come in response to constant demands by civil society organisations. For instance, Amnesty International has raised particular concerns on the poor treatment of asylum-seekers and irregular migrants in the country, with the detention of unaccompanied minors.³⁹ Human Rights Watch has qualified the delay of the Greek government to implemented legislative reforms in these domains as “unacceptable” which “creates an urgent need for the UN High Commissioner for Refugees and the European Commission to intervene”.⁴⁰ A coalition of civil society organizations requested the EU to “stop sending asylum seekers to countries that do not guarantee their protection” such as Greece and demanded “a complete revision of the Dublin Regulation” and a “European suspension mechanism”.⁴¹

Still, it appears that Greece has received more than 10,000 requests by other EU member states for their asylum application to be determined there in light of Dublin system. However, between September and October 2010 four EU member states have stopped to apply the EU Dublin system, in particular, Belgium, UK, Sweden and the Netherlands.⁴² It has also included two association states: Iceland and Norway.

More than 20 NGOs working on the rights of asylum seekers and refugees in Europe have lodged a complaint to the European Commission petitioning the latter to start infringement proceedings against Greece because of allegations against the former for violating the principle of non-refoulement, the right to asylum and human dignity in external sea border practices.⁴³

³⁷ UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, 20 October 2010, p. 6. <http://www2.ohchr.org/english/issues/torture/rapporteur>

³⁸ T. Hammarberg, “The Dublin Regulation undermines Refugee Rights”, Human Rights Comment, 22.9.2010, <http://commissioner.cws.coe.int>

³⁹ Amnesty International, Detention of minors in Greece shows failings of EU’s immigration policy, Amnesty International EU Office, Press Release, 27.7.2010; Refer also to Amnesty International (2010), Greece: Irregular Migrants and Asylum Seekers Routinely Detained in Substandard Conditions, London, UK. <http://www.amnesty.eu/static/documents/2010/Greece0710.pdf>

⁴⁰ Human Rights Watch, Greece: Asylum Reform Delay Unacceptable, 20 September 2010 <http://www.hrw.org/en/news/2010/09/20/greece-asylum-reform-delay-unacceptable>

⁴¹ ECRE, JRS, Amnesty International, CIRE, BCHV-CBAR and VwV, The EU should stop sending asylum seekers to countries that do not guarantee their protection, Joint Press Release, Brussels, 22 October 2010. http://www.ecre.org/resources/Press_releases/1650

⁴² BBC News Europe, “Sweden stops returning migrants to Greece”, 3 November 2010, <http://www.bbc.co.uk/news/world-europe-11682905> As regards Belgium refer also to <http://www.melchiorwathélet.be/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=204&cntnt01returnid=317&hl=fr> FR and on the UK <http://ncadc.wordpress.com/2010/09/20/uk-suspends-returns-of-asylum-seekers-to-greece>

⁴³ Refer also to Pro Asyl, Refugee and Migrant Council, Refugee Advice Centre and Dutch Council of Refugees (2010), Complaint to the European Commission of the European Communities concerning

The European Commission informally opened infringement proceedings against Greece.⁴⁴ Moreover, the increasing intervention of courts at national and European level are also demonstrating the deficits of the European asylum system and the profound tensions that it poses to human rights obligations by EU member states.⁴⁵ A high number of EU member states requests have been frozen by the European Court of Human Rights (ECtHR) Article 39 procedure (a total of 750).⁴⁶ Many more are pending before relevant national tribunals. During 2009-2010 the ECtHR received more than 700 cases from asylum seekers requesting the suspension of the transfer to Greece.

4. Conclusion - Testing the EU's Response

Is sending the RABITS the most adequate and proportionate answer by the EU to the events taking place in Greece? What does it tell us in relation to the principle of solidarity and fair sharing of responsibility in the EU? Notwithstanding an agreement between Frontex and the UNHCR, the latter has received no request from Frontex to participate in Operation RABIT 2010. It would seem that the presence of UNHCR personnel charged with ensuring that those seeking international protection receive a proper procedure was not considered necessary by Frontex for this operation.

The presentation of Frontex Operation RABIT 2010 as 'the solution' to the situation at the external borders of Greece with Turkey illustrates the kind of responses that the EU prioritises in situations such as those taking place in Greece: more security (FRONTEX) and not going at the heart of the issue, which is that of human rights protection of refugees and undocumented migrants. One would also not expect the RABITs to intervene in order to make the situation worse – Frontex's role is to increase 'the control' at the external border and target undocumented immigrants, which has been until present the main dilemma in the situation in Greece – the increase in human mobility has led to coercive practices and police-focused preventive control, treating every person (including asylum seekers) as 'irregular immigrants'. It is to be hoped that Frontex and the RABITS will not exacerbate this process by treating refugees as 'irregulars' and expelling them (in violation of the principle of non-refoulement) when they are in fact people in search of international protection. The guarantees envisaged in the Schengen Borders Code, the EU Asylum Procedures Directive and international refugee and human rights law for those immigrants refused entry into the common EU territory must be fully applied. Each person apprehended crossing the external border in Operation RABIT 2010

failure to comply with Community law, Failing Member State: Greece, Amsterdam, 19 November 2009, retrievable from <http://www.proasyl.de/en/home> For the complete list of documents substantiating the situation in Greece see Pro Asyl website: <http://www.proasyl.de/en/topics/european-politics/the-situation-in-greece>

⁴⁴ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-5426&language=EN> See also European Commission, Joint Statement by Mr Christos Papoutsis, Minister of Citizen Protection of Greece and Cecilia Malmström, European Commissioner in charge of Home Affairs: Greece and the Commission agree to enhance co-operation on reforming Greek asylum system, MEMO/10/450, Brussels, 27 September 2010.

⁴⁵ See UNHCR Information Note on National Practice in the Application of Article 3.2 of the Dublin II Regulation in particular in the context of intended transfers to Greece, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c18e6f92.html>

⁴⁶ Refer for instance to Press release issued by the Registrar GRAND CHAMBER HEARING, *M.S.S. v. Belgium and Greece*, 1 September 2010, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=873098&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> See also the landmark ECtHR ruling *T.I. v. UK*, No. 43844/98, 7 March 2000.

who indicates a claim for international protection must be safeguarded from refoulement, provided with adequate reception conditions and have access to a fair and effective asylum procedure including a right of appeal if necessary. If Operation RABIT 2010 has the effect of short-circuiting these EU obligations and subjecting people to *refoulement sauvage*, the EU will be shamed before the whole of the international community. Moreover, the participating member states will also be potentially liable to legal action before the Human Rights Court in Strasbourg for failure to uphold the European Convention on Human Rights.

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E-mail: info@ceps.eu

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CENTRE FOR
EUROPEAN
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Place du Congrès 1 • B-1000 Brussels
Tel: 32(0)2.229.39.11 • Fax: 32(0)2.219.41.51