Watching the Watchers: The Case for Frontex Reform

By “Coach Vance” Trefethen

***Resolved: The European Union should substantially reform its immigration policy.***

Frontex is an EU agency that supplements the border enforcement agencies of the individual EU member countries. It also operates a coast guard patrol that searches for illegal migrants in the Mediterranean Sea. It has been greatly expanded and better funded in recent years in response to the migration crisis 5 years ago, but with that expansion there has not been an expansion in oversight and accountability. In fact, Frontex routinely violates human rights, European law, and international treaties governing the treatment of migrants (legal or illegal). While it may seem, to some at least, inappropriate to worry about the rights of illegal migrants, there are some basic standards of human rights that must apply. Some (not all) of them are fleeing for their lives from natural disaster, war, oppression, famine, etc. Mixed in with those could be some just looking for better jobs. Others are trying to reunite with family members who immigrated to Europe earlier. All of these groups show up at various borders or seashores, and often Frontex is called in to handle the mess and the chaos. (Whether you agree with such laws or not…) Treaties signed and ratified by EU members, as well as EU law, require border agencies to give hearings and adjudicate the situation of each migrant to determine if they are valid, deserving refugees who merit consideration for immigration. They should be sorted out one by one. Rounding up all of them and deporting all of them (or worse, abusing them and then deporting them) without a hearing is a violation of human rights, but Frontex does it anyway. And when someone has a complaint about Frontex behavior, the only one they can turn to for filing a complaint is Frontex itself. [“Internal investigations” of law enforcement are always problematic: Imagine you and your family are driving a long and get stopped for speeding. The driver tells the officer: “Don’t worry officer, our family will conduct an internal investigation and if there’s any problem with our speed, we‘ll resolve it internally.” If that sounds silly…why do we allow law enforcement to do it?] Frontex needs better training, oversight, transparency, and outside independent monitoring to ensure it complies with human rights. Those who enforce the law need to start complying with it.

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Watching the Watchers: Reform Frontex

Frontex is a European Union agency that is supposed to help enforce immigration laws and policies. But a law enforcement agency that breaks the law is hardly worthy of the name. Please join us in affirming that: The European Union should substantially reform its immigration policy.

OBSERVATION 1. DEFINITIONS

Substantial

Merriam Webster Online Dictionary copyright 2020. <https://www.merriam-webster.com/dictionary/substantially>

considerable in quantity **:**significantly great

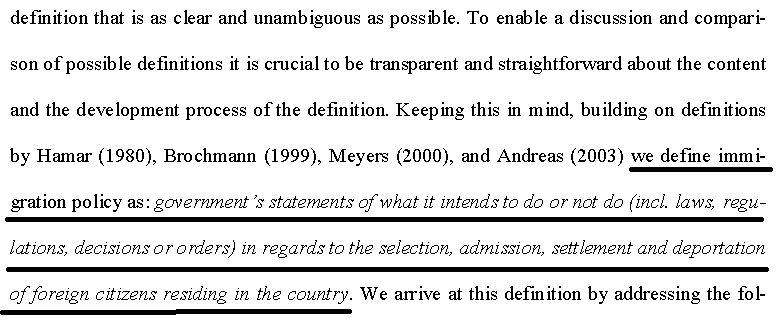
Reform

Merriam Webster Online Dictionary copyright 2020 <https://www.merriam-webster.com/dictionary/reform>

to put or change into an improved form or condition

Immigration policy

Prof. Marc Helbling, Liv Bjerre, Friederike Römer and Malisa Zobel 2014 (Helbling - professor in political sociology at the Department of Political Science at the University of Bamberg. Bjerre – PhD student, WZD Berlin Social Science Center. Romer - doctoral researcher at the Berlin Social Science Center. Zobel - research assistant at Berlin Social Science Center) April 2014 Conceptualizing and Measuring Immigration Policies. A Comparative Perspective <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423075>



Frontex

Official Journal of the European Union 2016. (official government document) REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1624>

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, commonly referred to as Frontex, was established by Council Regulation (EC) No 2007/2004.

OBSERVATION 2. INHERENCY, the structure of the Status Quo. One simple FACT: Frontex expansion.

Big increase in Frontex size and authority since 2016, including extra-territorial missions and powers

Prof. Florin Coman-Kund 2020 (Assistant Professor in European Union Law at the Erasmus School of Law, Erasmus University Rotterdam) 6 Feb 2020 “The Territorial Expansion of Frontex Operations to Third Countries: On the Recently Concluded Status Agreements in the Western Balkans and Beyond…” <https://verfassungsblog.de/the-territorial-expansion-of-frontex-operations-to-third-countries-on-the-recently-concluded-status-agreements-in-the-western-balkans-and-beyond/>

Since its inception, Frontex has been at the forefront of the Union’s policy in the field of external border management. In the wake of the 2015 ‘migratory crisis’, Frontex underwent a swift and unprecedented upgrade of its powers, resources, and capacities. The [2016](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.251.01.0001.01.ENG&toc=OJ:L:2016:251:TOC) and [2019](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1573722151667&uri=CELEX:32019R1896) mandate revisions arguably mark a [‘quantum leap’ gradually transforming Frontex into a more integrated and hierarchical administrative body](https://link.springer.com/article/10.1007/s12027-016-0447-y). One of the most spectacular developments introduced by the recent reforms concerns the territorial extension of the agency’s operations. Henceforth, Frontex is mandated to carry out operational activities, including executive powers, in third countries.

OBSERVATION 3. The HARMS

HARM 1. Problematic Extra-territorial Operations

Frontex operations in outside countries need fundamental human rights reform

Dr. Constantin Hruschka 2020 (PhD; Senior Research Fellow at the Max Planck Institute of Social Law and Social Policy in Munich) 7 Feb 2020 Frontex and the Duty to Respect and Protect Human Rights <https://verfassungsblog.de/frontex-and-the-duty-to-respect-and-protect-human-rights/>

From a human rights protection perspective, the cooperation with third countries must be accompanied by a monitoring component as well as a mechanism safeguarding the access to remedies. In a similar vein, it is recommended that impact assessments on fundamental rights should be mandatory for each of these measures as well as for return operations and physical border controls. Yet, formalizing these cooperation schemes requires some profound changes to the way Frontex operates with regard to the independence of monitors, the access to operational data, and the transparency of the operations in general.

HARM 2. Illegal refoulement

**“Refoulement” – R-E-F-O-U-L-E-M-E-N-T -- doesn’t mean becoming an idiot again. It’s a term of art in the literature that means sending someone back into a dangerous situation that they’re trying to escape from, especially when we don’t even give them a hearing to find out the facts of their situation.**

Refoulement is illegal, but Frontex does it anyway and puts people in danger

Anne Pertsch and Jonas Puschmann 2020. (Pertsch – lawyer at Equal Rights Beyond Borders. Puschmann – Research Fellow at Max Planck Institute for Comparative Public Law and International law and PHD candidate at the Free University of Berlin) 25 Mar 2020 “First Order, then Humanity” <https://verfassungsblog.de/first-order-then-humanity/>

Europe’s response to the situation at the Greek external border [does not follow its own rules](https://verfassungsblog.de/die-herrschaft-des-rechts-an-der-eu-aussengrenze/). It abandons European values and foundational principles. The decision to launch a Frontex activity seems to follow a current trend to perceive human rights as subordinate to the unfettered sovereign rights of States. On March 2, the Greek Government enacted an [Emergency Legislative Act](https://docs.google.com/document/d/1yA782Vi56KnIhs2yVehXgkMYQeCieaPq5coWNHqh6xs/mobilebasic), based on Art. 44 (1) Greek Constitution. It suspended, for the period of one month, the right to apply for asylum of anyone who had entered the country irregularly. At this time, border controls and police had already returned numerous unregistered asylum seekers to their country of origin or transit (i.e. Turkey) and NGOs have [reported](https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border) push-backs and the use of excessive violence. Nevertheless, the European Commission has [announced](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380) to provide financial and enhanced operational support by the European Border an Coast Guard Agency (Frontex). On March 12, [Frontex](https://frontex.europa.eu/media-centre/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-J7k21h) deployed 100 border guards at the Greek land border as part of a rapid border intervention, in addition to the 500 officers already deployed in Greece. Now that Frontex is involved, the responsibility to return to legality does not only lie with Greece – but with the entire EU. As Greece’s suspension is due to expire, and as it remains unclear whether the government will prolong the Emergency Act, the EU and its member States, in whatever kind of support they provide, need to reconcile order and humanity.   
Setting the Scene: Why the Legality of Greece’s Actions Matters for Frontex  
In all its operations, Frontex is obliged to respect fundamental rights and international refugee law including the EU asylum and border acquis. This follows from Art. 51 [Charter of Fundamental Rights of the European Union (ChFR)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT), and is explicitly laid down in, inter alia, Art. 1, 36 (2), 80 (1) [Frontex Regulation](https://eur-lex.europa.eu/eli/reg/2019/1896/oj), which particularly mention the [Geneva Convention of 1951](http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf) and the principle of non-refoulement. This includes a positive obligation to not assist in and to prevent violations conducted by others. Art. 46 (4) stipulates that the executive director shall suspend or terminate any activity if there are ‘violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or likely to persist’. Even more, Art. 46 (5) Frontex Regulation stipulates not to launch an activity, if ‘there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature.’

In the present case, the executive director should have made sure from the beginning that the [activity of Frontex](https://frontex.europa.eu/media-centre/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-J7k21h) would give no serious reason to expect violations of fundamental rights or international protection obligations related to. The activity concerned was the deployment of a rapid border intervention team according to Art. 36 Frontex Regulation. They are generally meant to assist Greece in implementing its obligations with regard to external border control under the instructions of Greece (Art. 43 (1) Frontex Regulation). Meanwhile the Greek authorities – supported by the Government – violently pushed-back or returned people trying to cross the border to seek asylum without an individual examination. Additionally, the Greek Government had already suspended the right to apply for asylum for a month. Both actions seriously violate fundamental rights and the latter has additionally been [criticised by the EU](https://www.theguardian.com/world/2020/mar/12/greece-warned-by-eu-it-must-uphold-the-right-to-asylum) and recently by the [UN Special Rapporteur on the human rights of migrants](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E). The decision to launch an intervention therefore [lacks a legal basis](https://www.euronews.com/2020/03/10/frontex-border-operation-in-greece-lacks-legal-basis-after-greece-suspends-asylum-law).  
Effective Protection Requires Fair and Accessible Procedures  
The push-backs and returns of people without an individual examination violate international and European law – whether at the land border or in Greek waters. The principle of non-refoulement prohibits States from returning refugees to a place where their lives will be in danger (Artt. 33 Geneva Convention, 3 [European Convention on Human Rights (ECHR)](https://www.echr.coe.int/Documents/Convention_ENG.pdf), 4 ChFR and other EU secondary and international law sources).

HARM 3. Secrecy and Lack of Oversight

Increase in power without increased accountability leads to repression and human rights violations

Samuel Hartwig 2020 (doctoral researcher at the Max-Planck-Institute for Foreign and International Criminal Law in Freiburg) 4 Feb 2020 “Prevention and Repression?” <https://verfassungsblog.de/quo-vadis-frontex-crossing-the-fine-line-between-prevention-and-repression/>

The influence and powers of the agency have increased enormously over the last few years, which is not surprising given the fact that border related issues are mainly seen through the prism of security, a hot-button issue for which more money and personnel always seem to be available. Unfortunately, this increase in power has not been accompanied by a proportional increase in oversight. Many of the activities of the agency remain shrouded in secrecy as cases with the [European Ombudsman](https://www.ombudsman.europa.eu/en/decision/en/86680) and the [EU judicature](http://curia.europa.eu/juris/document/document.jsf?text=&docid=221083&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4299475) show, making it very difficult to assess compliance with the relevant rules. Likewise, the European Parliament has only constrained means of control, mainly regarding the budget of the agency. This [limited accountability](https://www.ejiltalk.org/salami-slicing-human-rights-accountability-how-the-european-border-and-coast-guard-agency-may-inherit-frontex-genetic-defect/) of Frontex is exacerbated by the move in a more repressive direction, which is liable to give rise to issues of fundamental and human rights violations.

OBSERVATION 4. We offer the following PLAN implemented by European Union member governments, the European Parliament, the Council of the European Union and any other necessary agencies

1. Extra-territorial operations of Frontex must provide full disclosure of documents to non-EU citizens and advise all suspects of their rights during encounters with officers.   
2. A Joint Parliamentary Scrutiny Group (JPSG), modeled after the Europol JPSG, is created to oversee Frontex compliance with human rights. Parliamentarians from affected countries in extra-territorial operations are invited to join.  
3. An EU fundamental rights complaint procedure, independent of Frontex, where allegations of human rights abuse can be adjudicated, victims compensated and perpetrators sanctioned. Process will be open to non-EU citizens affected by Frontex official actions.  
4. Mandatory training for all Frontex personnel on human rights law and refoulement law specifically. All Frontex operations not in compliance are terminated.

5. Funding from cutting EU farm subsidies.  
6. Timeline: Plan takes effect 30 days after an affirmative ballot.   
7. Enforcement through the EU member governments. Human rights violators and their employers are subject to lawsuits for damages , termination of employment, and criminal prosecution.  
8. All Affirmative speeches may clarify

OBSERVATION 5. ADVANTAGES

ADVANTAGE 1. Transparency

Releasing documents and advising suspects of their rights enhances accountability

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

The cornerstone for enhanced accountability is adequate transparency. Access to relevant information is essential for lodging a legal complaint in case of potential misconduct by Frontex officers. Yet, Frontex has only a limited duty to make its documents available to the public. Applications to access documents are handled under Regulation (EC) 1049/2001. Although the scope of information to be made available by the agency has been extended, the regulation applies only to EU citizens and residents. With Frontex operations now expanded to third countries, directly affected non-EU residents should have equal rights to access these documents. A relevant paragraph should now be added to either the latest Frontex regulation, or to the status agreements negotiated with third countries. This paragraph could also include a reference to the necessity of informing people about their rights during encounters with Frontex officers.

ADVANTAGE 2. Parliamentary oversight

Parliamentary oversight guarantees effective democratic accountability

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

Within the current legislative framework, provisions to ensure parliamentary oversight remain fairly vague. The latest Frontex regulation merely states that interparliamentary cooperation between the European Parliament and its national counterparts to scrutinise Frontex “may” take place under Article 9, Protocol 1 of the TEU. These same legal parameters were applied to establish a Joint Parliamentary Scrutiny Group (JPSG) monitoring the work of Europol. To guarantee effective democratic accountability, a similar group should be established to oversee Frontex operations taking into account a previous evaluation of the Europol JSPG. The Frontex-JPSG should have an explicit mandate to scrutinise the agency’s impact on the fundamental rights and freedoms of each individual affected by Frontex activities. The JPSG should receive all relevant information in relation to Frontex operations and have the right to comment on operational plans in order to ensure sufficient fundamental rights safeguards are included. The Frontex-JPSG should be composed of parliamentarians from the member states and the European Parliament, possibly also the European Ombuds man. To account for Frontex role in the external realm of EU migration policy, the group should also invite parliamentarians from countries with which Frontex has signed a status agreement.

ADVANTAGE 3. Remedy for complaints

An independent adjudication process for human rights complaints, outside of Frontex, is the remedy

[Dr Melanie Fink](https://www.universiteitleiden.nl/en/staffmembers/melanie-fink#tab-1) 2020 (Postdoctoral Researcher, Europa Institute, Leiden University) 30 Apr 2020 “Frontex: Human Rights Responsibility and Access to Justice” <http://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>

Still, the complaints mechanism does not qualify as an effective remedy within the meaning of Article 47 [Charter of Fundamental Rights of the European Union](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT) because it is non-judicial and internal to Frontex. Eventually, much more decisive action is needed. Creating a new mechanism—an EU fundamental rights complaints procedure for instance—would be ideal, but there are also ample possibilities to adapt current mechanisms. This could entail further modifying the Frontex fundamental rights complaints mechanism to place decision-making with a body independent from the agency’s management and allow appeals to the Court under the action for annulment ([Article 263 TFEU](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E263:EN:HTML)), similar, for instance, to the possibility of challenging decisions of the European Chemicals Agency under [Article 94 REACH Regulation](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:02006R1907-20190702).

ADVANTAGE 4. Non-Refoulement

Frontex needs better training and monitoring to achieve compliance with non-refoulement law

European Union Agency for Fundamental Rights 2013 (Vienna-based agency of the European Union; provides independent, evidence-based advice to EU and national decision makers) (no month given in the original publication) Fundamental rights at Europe’s southern sea borders <https://www.refworld.org/pdfid/51811d8d4.pdf>

Furthermore, Frontex must put in place an effective mechanism to monitor respect for fundamental rights in all its activities. There is an express duty that Frontex activities respect the principle of non-refoulement (Article 2 (1) b) and also address the special needs of vulnerable persons, including children, victims of trafficking, persons in need of medical assistance and persons in need of international protection. At a more operational level, fundamental rights must be incorporated in training activities which Frontex develops or coordinates. Operational plans need to contain detailed provisions on how to report incidents. In case of serious violations of fundamental rights, Frontex can take a decision on a possible suspension or termination of an operation.

2A Evidence: Frontex

AFF PHILOSOPHY / OPENING QUOTES

More power, less accountability, no regard for human rights

Frontexit 2016 (grouping of associations, researchers and individuals from civil society of the North and South of the Mediterranean on the initiative of the Migreurop, coordinated by Migreurop and EuroMed Rights ) A reinforced Frontex agency EU turns a deaf ear to NGO’s warnings / 22 September 2016 <https://www.frontexit.org/en/news/item/829-a-reinforced-frontex-agency-eu-turns-a-deaf-ear-to-ngo-s-warnings-22-september-2016>

More powerful than ever and enjoying complete impunity, the EU border management agency has a new name with a reinforced mandate. The European Union has indeed opted for an increase in the means allocated to deportation, control and external cooperation activities, with no regard for the rights of migrants and refugees.

BACKGROUND / DEFINITIONS

Refoulement

Merriam Webster online Dictionary 2020. <https://www.merriam-webster.com/dictionary/refoulement>

the act of forcing a refugee or asylum seeker to return to a country or territory where he or she is likely to face persecution

Background and definition of Frontex

Oliver Harry Gerson 2018. (lawyer and research associate at the University of Passau where he specialises in German, European and international criminal law ) 3 Feb 2018 “Coast guard or paramilitary force?” <https://www.dandc.eu/en/article/european-border-and-coast-guard-agency-frontex-controversial#:~:text=The%20%E2%80%9Cold%E2%80%9D%20Frontex%20often%20came,to%20breach%20international%20refugee%20law.&text=Second%2C%20it%20ignores%20the%20agency's,EU%20law%20and%20international%20standards>.

Today, global trouble spots are close to the “safe haven” of Europe. Migratory pressures have grown with masses of people arriving from war zones and disaster areas. The irregular immigrants take tortuous routes, either through Mediterranean countries or across the EU’s continental borders. These routes cannot be effectively policed, so an agency was created in 2005 for the management of operational cooperation at the external borders of the EU. It is called Frontex and is most controversial. Frontex was not originally intended to operate as a border police force; it was established as an “Agency of the European Union”, a body governed by European public law. Its primary task is to coordinate the operations of EU member states’ security agencies on the EU’s external borders. Frontex operates “on water, on land and in the air”. It forms task forces and organises large-scale joint operations. It also helps member states return irregular immigrants.

History of Frontex and summary of its work

Amnesty International 2014 (international human rights advocacy NGO) “THE HUMAN COST OF FORTRESS EUROPE” (no month given in the original publication) <https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa/bericht-the-human-cost-of-fortress-Europe>

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, became operational in 2005. It enjoys a level of funding far in excess of that allocated to the EU Agency set up to support member states’ asylum-related programmes. For example, the Frontex budget for 2014 is €89.2 million; whereas the European Asylum Support Office (EASO) budget for 2014 is €15.6 million. Frontex’ main task is to co-ordinate joint operations between member states on the external sea, land and air borders of the EU. Frontex also co-ordinates joint returns from member states to countries of origin, carries out risk analyses to inform its operational decisions as well as those of member states, and develops and organizes training for border and coastguards within and outside the EU. Frontex risk analyses and its assessments concerning the needs of individual member states at EU’s external borders will now also influence the allocation of the Internal Security Fund in member states. In addition to its work with member states, Frontex also enters into working arrangements with non-EU countries on issues such as information-sharing, risk assessment, research and development, and training. Frontex operates in some non-EU countries as part of EU missions on border management, for example in Moldova and Ukraine.

Frontex is a key player in EU “immigration policies”

Ska Keller, Ulrike Lunacek, Barbara Lochbihler, Hélène Flautre 2010 (members of the European Parliament) “FRONTEX AGENCY: WHICH GUARANTEES FOR HUMAN RIGHTS?“ (no month given in the original publication) <https://www.migreurop.org/IMG/pdf/Frontex-PE-Mig-ENG.pdf>

In February 2010, FRONTEX reported that it possessed 26 helicopters, 22 light aircraft and 113 vessels. According to the Agency, the CRATE database (Centralised Record of Available Technical Equipment) lists 476 items of technical equipment used to combat ‘illegal’ immigration, including mobile radars, thermal cameras, CO2 detectors, heartbeat detectors and a passive millimetric wave imager (PMMW). This equipment, which is based in various EU countries, is made available to Member States upon request. In view of the means employed, the operations carried out by FRONTEX at the EU’s external borders are tantamount to a military deterrent force. For example, Operation Poseidon, in which 21 Member States took part in 2009, mobilised 23 vessels (performing over 11,000 patrolling hours), six aircraft and four helicopters (802 patrolling hours). By carrying out this type of operation, FRONTEX has become a key player in the deployment of European asylum and immigration policies at the EU’s external borders.

Frontex implements EU policies on migration and border management

Prof. Florin Coman-Kund 2020 (Assistant Professor in European Union Law at the Erasmus School of Law, Erasmus University Rotterdam) 6 Feb 2020 “The Territorial Expansion of Frontex Operations to Third Countries: On the Recently Concluded Status Agreements in the Western Balkans and Beyond…” <https://verfassungsblog.de/the-territorial-expansion-of-frontex-operations-to-third-countries-on-the-recently-concluded-status-agreements-in-the-western-balkans-and-beyond/>

In general, Frontex’s external relations activities revolve around [two interlinked axes](https://www.routledge.com/European-Union-Agencies-as-Global-Actors-A-Legal-Study-of-the-European/Coman-Kund/p/book/9781138293045), namely: (1) supporting cooperation between Member States and third countries; (2) implementing EU policies in the field of migration and border management. This job description also applies to the agency’s geographically broadened operational remit.

INHERENCY

A/T “Status Quo reforms are happening”

Current reform process is a step in the right direction, but not enough

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

The measures foreseen under the most recent Frontex regulation are a step in the right direction, most notably with regard to the Fundamental Rights Officer’s competences. Yet, they hardly match the agency’s new portfolio of competences, in particular when it comes to holding Frontex officers accountable while operating in third countries. One should therefore build on the progress made under the latest regulation by fully exploiting its potential and by establishing new accountability structures. The proposals made in this brief can serve as starting points to develop such a reinforced accountability mechanism that matches the agency’s growing responsibilities.

Some reforms are occurring – but not enough to match the growth of the agency. Stronger measures are still needed

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

Introducing these measures represents a profound improvement on the rather limited accountability mechanisms previously in place. However, they do not match the agency’s substantial increase in additional competences and operational capacity. The Commission’s identification of the Western Balkans as the first non-EU area in which Frontex operates illustrates its ambition to deploy Frontex along major migratory transit routes. In practice, this means that Frontex officers will increasingly be confronted with vulnerable groups and deployed to areas with volatile fundamental rights situations. Stronger accountability measures, particularly with an eye to the agency’s future operations outside the EU, are thus required.

Lots of talk about “rights” and reform, but it’s still an unsolved issue for Frontex

Dr. Constantin Hruschka 2020 (PhD; Senior Research Fellow at the Max Planck Institute of Social Law and Social Policy in Munich) 7 Feb 2020 Frontex and the Duty to Respect and Protect Human Rights <https://verfassungsblog.de/frontex-and-the-duty-to-respect-and-protect-human-rights/>

More substantially, the 2011 overhaul introduced the obligation of Frontex to develop a [Fundamental Rights Strategy](http://www.statewatch.org/observatories_files/frontex_observatory/2011-03-31-frontex-fundamental-rights-strategy.pdf) and a [Code of Conduct](https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf) as well as to install a Fundamental Rights Officer and a respective [Consultative Forum](https://frontex.europa.eu/fundamental-rights/consultative-forum/general/). Moreover, the 2011 mandate revision foresaw a possibility to cooperate with the Fundamental Rights Agency (FRA) and ordered that the first evaluation report on the new Regulation includes ‘a specific analysis on the way the Charter of Fundamental Rights was complied with in the application of this Regulation.’ Following the trend, in the [2016 Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1624) the term ‘fundamental rights’ is used over 100 times and in the [Regulation (EU) 2019/1896](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&rid=1) the term features over 230 times. This development shows increased attention for the protection of fundamental rights but also hints to the fact that this protection remains an unsolved issue within the work of Frontex.

New complaint mechanism doesn’t work

Apostolis Fotiadis 2016 (journalist) 18 Nov 2016 “E.U. Border Agency Still Unaccountable on Refugees’ Rights” <https://www.newsdeeply.com/refugees/community/2016/11/18/e-u-border-agency-still-unaccountable-on-refugees-rights> (brackets added)

The new complaint mechanism has not been as ambitious as the rest of the agency’s scope. Complaints can be submitted by an individual or their legal representative. They will be reviewed for admissibility by a “fundamental rights officer” employed by the EBCG, and admissible complaints are sent to the executive director of the EBCG [European Border & Coast Guard] regarding Frontex staff, or to an E.U. member state when their forces are the subject of complaint. A group of 13 MEPs [Members of European Parliament] questioned the independence of this mechanism, noting that it is subject to the control of EBCG officials “for whose decisions there is no guarantee of impartiality and transparency,” in a [written query](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2016-001236+0+DOC+XML+V0//EN) to the European Commission in February. The European migration and home affairs commissioner, Dimitris Avramopoulos, took [five months](http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-001236&language=EN) to respond, by which time negotiations over Frontex reform had already concluded. “The complaint mechanism is a very important step,” [German member of the EU Parliament, Ska] Keller says. “But like all the other safeguards in the Frontex mandate, it doesn’t compare at all to the enlarged tasks and powers of Frontex.” Keller believes the complaint mechanism will not substantially alter the agency’s response to allegations of wrongdoing. “Frontex has a habit of evading responsibility by throwing it to member states. Member states have the habit of throwing it to the commission. In the end, no one wants to be responsible.”

Expanded power / scope of Frontex

Since 2016, Frontex has been given power to operate on the territory of countries outside the EU

Prof. Florin Coman-Kund 2020 (Assistant Professor in European Union Law at the Erasmus School of Law, Erasmus University Rotterdam) 6 Feb 2020 “The Territorial Expansion of Frontex Operations to Third Countries: On the Recently Concluded Status Agreements in the Western Balkans and Beyond…” <https://verfassungsblog.de/the-territorial-expansion-of-frontex-operations-to-third-countries-on-the-recently-concluded-status-agreements-in-the-western-balkans-and-beyond/>

The gradual expansion of Frontex’s operations to the territory of third countries  
Before 2016, Frontex could deploy liaison officers, launch technical assistance projects or, within the framework of working arrangements with competent authorities, carry out exchanges of information in third countries. But the agency was not allowed to conduct operational actions on the territory of third countries by deploying border guard teams in the context of joint operations. [Regulation 2016/1624](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1624&from=DE)fundamentally changed this. Through its Article 54(3), it enabled Frontex to conduct operations on the territory of neighbouring third countries. This in the context of coordinating operational cooperation between these countries and Member States requiring increased technical and operational assistance. What is more, the agency was enabled to send teams to third countries provided the following conditions were met: (1) an operational plan drafted jointly by the agency and the neighbouring country for each action; and (2) receiving the agreement of the bordering EU Member States(s); (3) according to Article 54(4), a status agreement based on Article 218 TFEU between the EU (not Frontex) and the concerned third country.

Extra-territorial Frontex agreements and missions will expand in the future

Prof. Florin Coman-Kund 2020 (Assistant Professor in European Union Law at the Erasmus School of Law, Erasmus University Rotterdam) 6 Feb 2020 “The Territorial Expansion of Frontex Operations to Third Countries: On the Recently Concluded Status Agreements in the Western Balkans and Beyond…” <https://verfassungsblog.de/the-territorial-expansion-of-frontex-operations-to-third-countries-on-the-recently-concluded-status-agreements-in-the-western-balkans-and-beyond/>

Frontex status agreements have a short and rather inconclusive past, but they definitely have a future. The agreements with Western Balkan countries inaugurate a new stage of the EIBM through the territorial extension of Frontex-coordinated operations to third country territories. However, this revolutionary development comes with fundamental questions and challenges as already illustrated by the current practice. Regulation 2019/1896 extends the scope of status agreements and brings fine-tunings that already require amendments to the existing Commission’s model agreement and status agreements. It arguably contributes to bringing the legal framework of the extraterritorial activities of Frontex closer to EU law and fundamental rights standards. In any case, the most recent Frontex mandate revision will likely lead to more status agreements being concluded with third countries.

Missing safeguards and accountability/oversight

Frontex is getting big increases in funding but better oversight is needed to make sure it’s used properly

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf> (brackets added; “EUR” is a symbol for euros, like $ means dollars. One euro = $1.11 in US currency as of 30 May 2020)

Along with a strengthened mandate and more personnel, Frontex is set to benefit from a substantial increase in available funding. Under the current proposal for the forthcoming Multiannual Financial Framework (MFF), Frontex will receive EUR 11.3 billion [euros] over the period from 2021 to 2027. The funds for strengthening Frontex will together make up more than 35% of the overall funding under the Migration and Border Management heading in the next MFF. In comparison, Frontex was equipped with a financial envelop of EUR 1.6 billion [euros] between 2014 and 2020 or equivalent to only around 11% of the overall funding for the asylum and migration portfolio under the current MFF. Given the substantial increase in available funding for the agency, better democratic oversight and greater transparency is required to ensure that these monies are not merely used for swiftly recruiting officers to the standing corps but for developing high professional standards guaranteeing the protection of fundamental rights.

No data privacy safeguards on extra-territorial Frontex operations

Prof. Florin Coman-Kund 2020 (Assistant Professor in European Union Law at the Erasmus School of Law, Erasmus University Rotterdam) 6 Feb 2020 “The Territorial Expansion of Frontex Operations to Third Countries: On the Recently Concluded Status Agreements in the Western Balkans and Beyond…” <https://verfassungsblog.de/the-territorial-expansion-of-frontex-operations-to-third-countries-on-the-recently-concluded-status-agreements-in-the-western-balkans-and-beyond/>

Given the wide-ranging powers and tasks that the team members may perform in third countries, it is not surprising that all Frontex status agreements include provisions regarding fundamental rights and data processing. Indeed, all agreements impose on each party to make available a complaint mechanism for alleged breaches of fundamental rights during operations. Yet, no additional safeguards are included regarding minimum access conditions, information duties, impartiality, or redress. In all agreements the scope of data processing is broadly defined as whenever necessary for the implementation of the status agreement.

Frontex is given responsibilities, but difficult to hold them accountable

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

In addition to longer- and short-term deployments from the member states, the standing corps will therefore – for the first time – include operational staff directly employed by Frontex (Graph 1). To this end, Frontex has already started its first campaign to recruit 700 officers. These border guards will be equipped with similar executive powers as national officers, including the right to perform identity checks, authorise or refuse entry and carry service weapons. Their main task remains assisting national border guards. Yet, unlike national secondees, who remain accountable to their member state, they wear their own uniform and exclusively report to Frontex. Given that Frontex’ mandate has thus far been limited to “coordinate” and “cooperate” with member states, the earlier lack of executive powers rendered it difficult to hold the agency accountable. Yet, the wide-ranging competences handed to the new statutory staff reporting directly to Frontex require a re-assessment of the agency’s judicial liability.

Need better process for enforcing human rights standards and remedying violations by Frontex

Dr. Constantin Hruschka 2020 (PhD; Senior Research Fellow at the Max Planck Institute of Social Law and Social Policy in Munich) 7 Feb 2020 Frontex and the Duty to Respect and Protect Human Rights <https://verfassungsblog.de/frontex-and-the-duty-to-respect-and-protect-human-rights/>

But even if the need for human rights protection is being widely accepted, including by the Frontex Regulation itself, an apparent implementation gap persists, and, what is more, legal remedies often lack effectiveness and efficiency. The [complaint mechanism](https://frontex.europa.eu/fundamental-rights/complaint-mechanism/) (now Article 111 of the [2019 Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&rid=1)) is institutionally weak and seldom used as it does not constitute an independent and effective legal remedy. What is more, the unsettled question of competency and effective control makes it difficult to assess [against whom and in which forum to seek redress in the context of operations conducted by Frontex and Member States](https://verfassungsblog.de/refugee-camps-at-eu-external-borders-the-question-of-the-unions-responsibility-and-the-potential-of-eu-public-liability-law/). The attribution and redress issue might become even more complicated if Frontex cooperates more extensively and out of its own competency with [third countries](https://frontex.europa.eu/partners/non-eu-countries/). In order to avoid confusion and ineffectiveness of legal remedies, it would be necessary to establish a clear legal remedy scheme for all types of operations in which Frontex is involved.

HARMS / SIGNIFICANCE

Refoulement

A/T “Migrants are coming illegally” – Doesn’t matter, Refoulement law still applies

Anne Pertsch and Jonas Puschmann 2020. (Pertsch – lawyer at Equal Rights Beyond Borders. Puschmann – Research Fellow at Max Planck Institute for Comparative Public Law and International law and PHD candidate at the Free University of Berlin) 25 Mar 2020 “First Order, then Humanity” <https://verfassungsblog.de/first-order-then-humanity/>

States cannot circumvent their international obligations by fortifying and abandoning their borders for the sole purpose of preventing access to procedures. For the application of the non-refoulement principle, it is irrelevant whether legal pathways are provided at the border as even ‘illegal’ entry is protected and often the only option. Nevertheless, States need to provide such legal entries.

A/T “Migrants aren’t entitled to entry” – They’re entitled to a hearing, so refoulement without a hearing is still wrong.

Anne Pertsch and Jonas Puschmann 2020. (Pertsch – lawyer at Equal Rights Beyond Borders. Puschmann – Research Fellow at Max Planck Institute for Comparative Public Law and International law and PHD candidate at the Free University of Berlin) 25 Mar 2020 “First Order, then Humanity” <https://verfassungsblog.de/first-order-then-humanity/>

The aforementioned principle of non-refoulement and the prohibition of collective expulsion oblige the States to conduct individual examinations. The possibility that someone seeking asylum may not be entirely materially protected (‘[mixed migration flow](https://www.unhcr.org/protection/migration/49e479c911/37-discussion-note-mixed-migration-flows-regional-conference-refugee-protection.html)’), does not preclude this duty as only individual examinations can ensure the effective assessment of who is in need of protection.

It’s illegal to not give migrants a fair hearing before refoulement or to suspend asylum applications

Anne Pertsch and Jonas Puschmann 2020. (Pertsch – lawyer at Equal Rights Beyond Borders. Puschmann – Research Fellow at Max Planck Institute for Comparative Public Law and International law and PHD candidate at the Free University of Berlin) 25 Mar 2020 “First Order, then Humanity” <https://verfassungsblog.de/first-order-then-humanity/> (brackets added)

Contrary to what has been invoked by Greece, there are no legal grounds for suspending the submission of asylum applications. International law does not provide for a suspension of the non-derogatory principle of non-refoulement, which foresees procedurally the right to apply for protection. Especially for the Geneva Convention, the UNHCR [United Nations High Commissioner for Refugees] explicitly stated that there are [no legal bases for suspending](https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html) the requirement of individual examinations.

Human Rights / Accountability

Human rights violations by Frontex highlight the need for a better accountability mechanism

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

Why do we need an accountability mechanism for Frontex? In two successive regulations, the Commission significantly strengthened Frontex personnel, budget and mandate. On 6 October 2016, Frontex formally became the European Border and Coast Guard (EBCG) Agency and, on 8 November 2019, it was given permission to start recruiting a standing corps of 10,000 border guards to operate at its direct disposal. In line with the EU’s Integrated Border Management (IBM) Strategy, these measures bolster the agency’s operational capacity and competences to operate in third countries. Given Frontex‘ growing presence beyond EU borders, recent accusations against the agency, put forward by a group of investigative journalists from the Returns Network and CORRECTIV, blaming Frontex for fundamental rights breaches, underline the need for stronger accountability and better democratic oversight of the agency.

Examples of abuse

Frontex abuse against Afghan migrants, and no power to conduct investigations about it

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

These shortcomings are particularly relevant in the light of recent allegations against Frontex. In August 2019, research from the Returns Network cited so-called Serious Incident Reports (SIR), according to which Hungarian police officers stand accused of having used excessive force against a group of Afghan migrants. A protocol from Frontex’ Consultative Forum on Fundamental Rights further suggests that the agency was aware of illegal pushbacks taking place at the border between Greece and Turkey. Moreover, Frontex staff stand accused of having violated its own rules on forced returns by having unaccompanied minors returned and making excessive use of body cuffs. The agency has responded to these allegations by noting that it can suspend officers deployed to Frontex missions but has no power to conduct investigations within the member states.

Illegal refoulement of Syrian refugees back to Turkey when Frontex was supposed to be moving them to Greece

Apostolis Fotiadis 2016 (journalist) 18 Nov 2016 “E.U. Border Agency Still Unaccountable on Refugees’ Rights” <https://www.newsdeeply.com/refugees/community/2016/11/18/e-u-border-agency-still-unaccountable-on-refugees-rights>

The Syrians had wanted to seek international protection in Greece, and carried documents indicating their intention to initiate asylum procedures. They were never given deportation orders or offered an opportunity to mount a legal challenge to their deportation. Their return to Turkey has become a point of acute controversy between the Greek government and the United Nations refugee agency, UNHCR. Amnesty International has denounced the incident as refoulement, the illegal return of refugees to a country where they could face persecution. In recent months Greece has been under severe pressure from its E.U. partners to expedite returns under the deal reached with Turkey in March. Frontex, with a mandate to enhance external border controls throughout Europe, has helped facilitate returns under the agreement.

Illegal Frontex refoulement in Greece violated human rights.

Anne Pertsch and Jonas Puschmann 2020. (Pertsch – lawyer at Equal Rights Beyond Borders. Puschmann – Research Fellow at Max Planck Institute for Comparative Public Law and International law and PHD candidate at the Free University of Berlin) 25 Mar 2020 “First Order, then Humanity” <https://verfassungsblog.de/first-order-then-humanity/>

The activity concerned was the deployment of a rapid border intervention team according to Art. 36 Frontex Regulation. They are generally meant to assist Greece in implementing its obligations with regard to external border control under the instructions of Greece (Art. 43 (1) Frontex Regulation). Meanwhile the Greek authorities – supported by the Government – violently pushed-back or returned people trying to cross the border to seek asylum without an individual examination. Additionally, the Greek Government had already suspended the right to apply for asylum for a month. Both actions seriously violate fundamental rights and the latter has additionally been [criticised by the EU](https://www.theguardian.com/world/2020/mar/12/greece-warned-by-eu-it-must-uphold-the-right-to-asylum) and recently by the [UN Special Rapporteur on the human rights of migrants](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736&LangID=E). The decision to launch an intervention therefore [lacks a legal basis](https://www.euronews.com/2020/03/10/frontex-border-operation-in-greece-lacks-legal-basis-after-greece-suspends-asylum-law).

A/T “Refugee influx has decreased”

Since 2019 the numbers are trending back up again

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation”(“714,2000 applications” was the number in the original, obviously a typo. It’s probably supposed to be 714,200) 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

To complicate issues further, the EU received its highest numbers of asylum applications since 2015; the European Asylum Support Office reported that 714,2000 applications were received in 2019. Future migration crises are inevitable, especially given climate change as an increasingly central driver of forced displacement. Commission President von der Leyen must prioritize the reform of the Dublin Regulation to create a cohesive asylum process in Europe.

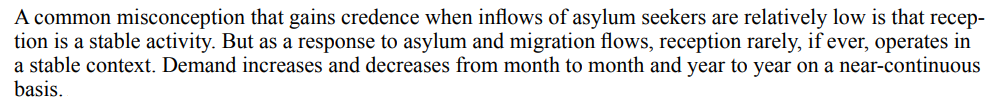
Risk of dying is actually increasing, and Frontex is part of the problem

Marion MacGregor 2019. (journalist) “Frontex: A harder border, sooner” 10 Sept 2019 <https://www.infomigrants.net/en/post/19415/frontex-a-harder-border-sooner>

While the Frontex approach of strengthening border controls has been welcomed by many of Europe's leaders, some say this law-and-order solution does not work. Instead, civil society, human rights groups and other critics say hardening borders simply forces migrants to switch to new and often more dangerous routes. As Frontex itself said earlier this year, there is [no longer a "burning crisis"](http://infomi.gr/14sw.T) of migration in Europe, as the number of migrants and refugees reaching the continent has dropped dramatically. Yet the risks of dying in the attempt to reach Europe, especially in the Mediterranean, have risen for the past four consecutive years. Part of Frontex' mandate is to save lives at sea, but [critics](https://www.ecfr.eu/article/commentary_back_to_frontex_europes_misguided_migration_policy) say its raison d'etre is the protection of borders, not the protection of lives.

Can’t count on low numbers: Migration is not a stable activity, the numbers will always ebb and flow

Michael Kegels 2016 (Operational Director of Fedasil, the Belgian reception agency; responsible for the management of the Belgian reception system; master’s degrees in international politics and public management) Getting the Balance Right: Strengthening Asylum Reception Capacity at National and EU Levels, Feb 2016 <https://www.migrationpolicy.org/research/getting-balance-right-strengthening-asylum-reception-capacity-national-and-eu-levels>



SOLVENCY / ADVOCACY

Funding: EU spends $65 billion/year on farm subsidies. Most of it goes to the connected and powerful few

NEW YORK TIMES 2019. (journalists Selam Gebrekidan, Matt Apuzzo and Benjamin Novak) “The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions” 3 Nov 2019 <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html>

Every year, the 28-country bloc pays out $65 billion in farm subsidies intended to support farmers around the Continent and keep rural communities alive. But across Hungary and much of Central and Eastern Europe, the bulk goes to a connected and powerful few. The prime minister of the Czech Republic collected tens of millions of dollars in subsidies just last year. Subsidies have underwritten Mafia-style land grabs in Slovakia and Bulgaria. Europe’s farm program, a system that was instrumental in forming the European Union, is now being exploited by the same antidemocratic forces that threaten the bloc from within.

Funding: EU spends $65 billion/year on farm subsidies, and it goes to corrupt politicians

NEW YORK TIMES 2019. (journalists Selam Gebrekidan, Matt Apuzzo and Benjamin Novak) “The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions” 3 Nov 2019 <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html>

The European Union spends $65 billion a year subsidizing agriculture. But a chunk of that money emboldens strongmen, enriches politicians and finances corrupt dealing.

The UN recommends clear procedures and better training to solve refoulement problems at Frontex

UN High Commissioner for Refugees (UNHCR) 2010. UNHCR’s observations on the European Commission’s proposal for a Regulation of the European Parliament and the Council 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 (no month given in original publication) <https://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201010/20101014_4_unhcr_en.pdf>

The European Commission seeks to clarify this important principle in its proposed amendments to Frontex Regulation, by adding that that the Agency must act in accordance with international protection obligations and in full respect of fundamental rights. UNHCR welcomes this proposal and confirmation of the commitment to protection obligations. However, the main challenge remains their implementation. Respect for fundamental rights, and in particular obligations as regards international protection and non-refoulement, can only be ensured if operating procedures and plans reflect those obligations in practical, clear guidance to border personnel, including those at land, sea and air borders, as well as sea captains and crews. Border personnel should be given the means, in terms of knowledge and skills, to identify and respond effectively to people seeking asylum, in recognition of the fact that allowing people into Europe for the purpose of seeking protection is part of their responsibilities.

What is the “Europol JPSG”?

European Parliament 2018. “3rd meeting of the The Joint Parliamentary Scrutiny Group (JPSG) on Europol, 24-25 September 2018” <https://www.europarl.europa.eu/relnatparl/en/high-level-conferences/jpsg-on-europol.html>

The Joint Parliamentary Scrutiny Group (JPSG) is a unique form of scrutiny on the functioning of Europol by the European Parliament, together with national Parliaments. On 11 May 2016, Regulation (EU) 2016/794 of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation (Europol) was adopted. The new regulation empowered Europol and enabled a joint parliamentary scrutiny by the European Parliament together with national Parliaments on it. According to Article 51 of the Europol Regulation, the JPSG will play an essential role to "politically monitor Europol's activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons."

Multiple recommendations for improving human rights compliance at Frontex

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

i. Granting access to relevant information to non-EU residents   
The cornerstone for enhanced accountability is adequate transparency. Access to relevant information is essential for lodging a legal complaint in case of potential misconduct by Frontex officers. Yet, Frontex has only a limited duty to make its documents available to the public. Applications to access documents are handled under Regulation (EC) 1049/2001. Although the scope of information to be made available by the agency has been extended, the regulation applies only to EU citizens and residents. With Frontex operations now expanded to third countries, directly affected non-EU residents should have equal rights to access these documents. A relevant paragraph should now be added to either the latest Frontex regulation, or to the status agreements negotiated with third countries. This paragraph could also include a reference to the necessity of informing people about their rights during encounters with Frontex officers.  
 ii. Strengthening parliamentary oversight Within the current legislative framework, provisions to ensure parliamentary oversight remain fairly vague. The latest Frontex regulation merely states that interparliamentary cooperation between the European Parliament and its national counterparts to scrutinise Frontex “may” take place under Article 9, Protocol 1 of the TEU. These same legal parameters were applied to establish a Joint Parliamentary Scrutiny Group (JPSG) monitoring the work of Europol. To guarantee effective democratic accountability, a similar group should be established to oversee Frontex operations taking into account a previous evaluation of the Europol JSPG. The Frontex-JPSG should have an explicit mandate to scrutinise the agency’s impact on the fundamental rights and freedoms of each individual affected by Frontex activities. The JPSG should receive all relevant information in relation to Frontex operations and have the right to comment on operational plans in order to ensure sufficient fundamental rights safeguards are included. The Frontex-JPSG should be composed of parliamentarians from the member states and the European Parliament, possibly also the European Ombuds man. To account for Frontex role in the external realm of EU migration policy, the group should also invite parliamentarians from countries with which Frontex has signed a status agreement.  
iii. Concluding the EU’s accession to the ECHR  
 The 2019 Regulation has made an important step to hold Frontex directly liable for possible human rights offences committed by its statutory staff. The use of its executive powers thus has to be justified in the light of existing EU law, including the EU’s Fundamental Rights Charter. However, the rights enshrined in the Charter and other EU legislation cannot be invoked by non-EU residents. It is therefore difficult for third country nationals affected by external Frontex operations to hold the agency directly accountable for its fundamental rights obligations under the EU treaties. To establish a common legal framework that applies to citizens of, in this case the Western Balkan countries, and to the agency itself, the EU should conclude its accession to the European Convention on Human Rights (ECHR). The European Court of Justice found that a draft accession agreement from 2013 undermined existing EU law and thus rated it negatively. It should therefore be a priority for the new Commission to revise that draft agreement in order to conclude the EU’s accession process. This would allow it to put Frontex on an equal footing with the member states when it comes to implementing the frequently cited “shared responsibility” for managing the EU’s external borders.   
iv. Establishing common training for Frontex and third country officers   
Despite recent allegations against the agency, Frontex operations provide added value when it comes to managing the EU’s external border. Besides giving technical and operational assistance to local police officers, the agency has helped align national operating principles through standardised training of personnel deployed to Frontex operations, especially with regard to respecting fundamental rights. In face of joint operations between Frontex and police officers from third countries, staff deployed to these missions should undergo common training to ensure high standards in fundamental rights protection and educate staff on the specific cultural and political characteristics of the third country. The current curriculum could be complemented by courses from the EU Fundamental Rights Agency (FRA) or EASO to cater for a broader perspective on the issue of fundamental rights.

Frontex expansion requires stronger fundamental safeguards

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf>

Current efforts to reform Frontex are predominantly designed to reduce the number of irregular arrivals and to facilitate swifter returns. Both objectives represent the lowest common denominator among EU member states and they can also be found in the political priorities of the new Commission. Strengthening Frontex will hence remain at the core of future EU migration policy. This emphasis on enhancing the agency’s operational capacity should be complemented with a reinforced accountability mechanism. Two examples illustrate why. First, the additional competences of the agency – equipping its statutory staff with executive powers, a stronger mandate on returns and being allowed to operate in third countries – require solid democratic oversight and greater transparency. Second, current proposals to establish closed centres for (pre-) assessing asylum claims at the EU’s external border (or even beyond) almost always include plans for Frontex to guard such centres and conduct return operations. The volatile situation in such centres would require the agency to develop substantially stronger fundamental rights safeguards.

DISAD RESPONSES

A/T “Weakening Frontex / more illegal immigration will occur” – Added value of Frontex will only happen if it becomes more accountable

Lucas Rasche 2019 (Policy Fellow at Hertie School, Jacques Delors Centre; MA in Conflict, Security & Development from the Department of War Studies at King’s College London) 6 Dec 2019 “Great power warrants great responsibility” <https://www.hertie-school.org/fileadmin/user_upload/20191206_Policy-Brief_Frontex_Rasche.pdf> (brackets and ellipses in original)

The agency has responded to these allegations by noting that it can suspend officers deployed to Frontex missions but has no power to conduct investigations within the member states. While the Commission promised to investigate the accusations, its role as guardian of the treaties should require it to establish the necessary means to ensure that principles enshrined in the Charter on Fundamental Rights of the EU are fully respected under Frontex auspices. This is particularly the case given the new Commission’s emphasis on linking border management to the promotion (formally protection) of the European way of life – which Commission President von der Leyen described as being constituted of “the values of the respect for human dignity […] the rule of law and respect for human rights”. Retaining the possibility of deploying Frontex officers to assist in the member states’ border management is a valuable asset, especially with regard to harmonising national standards. Yet, the Returns Network investigation highlights a crucial aspect: Frontex’s added value essentially depends on having adequate and reliable measures in place for holding it accountable.

A/T “Weakening Frontex / More illegal immigration will occur” – Frontex admits they can’t stop it even with SQ policies

Nina Perkowski 2015 (PhD student in Politics at the University of Edinburgh, focusing on EU external border controls ) 2 Oct 2015 “More Frontex is not the answer to the refugee crisis” <https://www.opendemocracy.net/en/5050/more-frontex-is-not-answer-to-refugee-crisis/>

When interviewing Frontex staff members in December 2013 as part of my doctoral research, I was told that the agency could not stop or decrease irregular migration. Instead, its goal was the identification of those arriving. Frontex’s inability to stop asylum seekers was explained again in a recent [hearing](http://parliamentlive.tv/Event/Index/1e48fc9c-722d-4cc1-9c85-1e5f772630d9) at the House of Lords. There, Frontex Executive Director Leggeri made clear that Frontex was bound by the [Schengen Borders Code](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14514&from=EN)and the [Charter of Fundamental Rights of the European Union](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT). In practice, this means that individuals who make a claim for international protection ought to be referred on to Member States who are to process their applications.

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