

## Frontex: the unruly guardian

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## Summary

The European Border and Coast Guard Agency (**Frontex**) began operating in 2005 with just 50 staff, a budget of 6 million euros, and technical and risk analysis functions. Fifteen years later, this organization - at the heart of the European Integrated Border Management (IBM) - has become a **460 million euro political and policing machinery** with more than 1,200 staff members. It is engaged in recruiting, deploying, and equipping (including with weapons) **10,000 border guards**. Its narrative, its close ties with the migration control industry, and a political mandate that puts the defence of borders above all other considerations, have made Frontex the **symbol of the new European migration policy**.

But this symbol seems to have acquired a life of its own, acting without transparency or control, taking over executive functions of Member States, and transforming the securitization of migration into a self-fulfilled prophecy.

This report by the porCausa Foundation looks into the evolution of Frontex since its creation and identifies its main operational, political and narrative aspects. It is based on previous valuable work by key researchers, journalists and human rights monitors inside and outside the EU. These are the main conclusions:

### **An agency undergoing budgetary and political expansion.**

The EU Justice and Home Affairs (JHA) area is built through agencies such as Europol, Eurojust, FRA, EASO -future European Asylum Agency- or EU-LISA. Among them, Frontex stands out for its rising power. In just 15 years, the Agency budget has been multiplied by 77 and its staff by 24. An expansive trend that will continue in the coming years. For the first time, migration and border management have a specific heading in the EU budget, representing 2.1% of the resources of the Multiannual Financial Framework (MFF) 2021-2027, with additional resources being allocated to Frontex.

The 2019 Frontex Regulation reinforced the Agency's mandate increasing its operational autonomy vis-à-vis Member States. Frontex now hires and deploys its own staff; leads the European return machinery; or formalizes its deployment in third countries through its liaison officers network and technical and operational support programmes. In January 2021, Frontex bestowed upon itself the right to carry and use weapons, a move that intensifies the Agency's

militarization and has been widely questioned for its implications for the safety of migrants and the EU reputation at the borders.

**Frontex management is characterized by opacity, weak control systems and harassment of those who criticize it.**

The constant rising in resources and capacities has not been accompanied by a parallel increase in transparency, responsibility and control mechanisms. The existing ones were either dysfunctional or ignored.

Frontex has evolved from a more passive role as supporter or facilitator to assume executive functions from Member States. Its presence in countries of origin and transit for migration - acting as an advanced border – lacks transparency, adequate democratic controls, or guarantees for migrants and returnees. According to one observer, the risk that Frontex is executing a kind of parallel foreign policy agenda is real.

Frontex uses the security exception to deny access to information to researchers, journalists and citizens. When these insist, the consequences can be costly. Corporate European Observatory members Luisa Izuzquiza and Arne Semsrott succeeded for the first time in bringing Frontex to the Court of Justice of the European Union for breach of transparency. The judgment dismissed their petition and the activists were condemned to cover the exorbitant Frontex legal expenses.

Both the proposal of the New Pact on Migration and Asylum (2020), as well as the recent EU Strategy on voluntary return and reintegration gave Frontex more responsibilities and capacities. But not everyone seems to agree. In a shattering report published on 7 June 2021, the European Court of Auditors claimed that Frontex's performance had not been sufficiently effective and doubted its ability to effectively carry out the new operational role assigned to it. The European Parliament had already postponed twice in March and April 2021 to grant the discharge of the 2019 Frontex budget.

**A reinforced mandate where control and monitoring sidestep human rights.**

Frontex's obligations include strict respect for human rights and compliance with international protection protocols. However, these obligations do not go far enough. Except for the coordination of joint operations and rapid border interventions, humanitarian emergencies, and

maritime rescue, human rights are marginal to the day-to-day activities and mandate of the European border agency.

The examples are countless. There is a progressive inhibition of the Agency in search and rescue operations, which are progressively replaced by unmanned aerial observation missions using drones. In addition to allegations of collusion with the Greek authorities in violent rejections in the Aegean Sea, Frontex faces accusations for systematically communicating to the Libyan coast guard the location of migrant and refugee boats in the Mediterranean, in violation of international law. The Frontex Executive Director and his head of cabinet are being investigated by the European Anti-Fraud Office (OLAF) about these matters.

Partly, the problem resides in the insufficiency and ineffectiveness of the Agency's control and supervision mechanisms. Partly, there is an alarming long-established opacity, a non-reporting culture, not informing about the incidents in a systematic manner, which means the Agency does not transmit a truthful picture of what is happening in the field. The warnings of both the Consultative Forum and the Fundamental Rights Office were taken lightly, barely understood as a necessary price a European organization working in this area would have to pay.

### **Hand in hand with the Industry of Migration Control and its lobbies**

Frontex is a coveted client for those economic interests which are shaping the industry of migration control. In all its activities, this Agency is linked to or conditioned by new technologies and the development of products and services adapted to the changing border environment. In the technological field, Frontex manages costly innovation and research projects, advises the European Commission on border security matters and contributes to the effective implementation of the macro research programmes Horizon 2020 and its successor Horizon Europe. Its vulnerability studies identify the shortcomings and operational needs of the Union and its Member States in terms of surveillance, analysis, biometrics, cybersecurity and availability or exchange of information. The industry provides input and seizes business opportunities in all the tasks and capabilities that Frontex develops.

Return and readmission operations constitute a good example of this ambiguous relationship. Although decisions on expulsions are Member States' competence, since its inception, Frontex has provided support to national authorities in return operations. In what one expert called a "deportation machine", Frontex is a "return travel agency" which makes things cheaper for the Member States. Between 2009 and 2019, the European agency returned 60,135 people in

1,437 operations. Consecutive commercial partners follow one another: since November 2019, the temporary business association (UTE) formed by Air Europa, Aeronova, and Swiftair was awarded these flights in Spain. In January 2021, the Spanish Government awarded a new contract to the joint venture of Evelop Airlines and Air Nostrum.

The logic repeats itself in the so-called Joint Operations (only in Spain, more than 20 million euros in 2018), for the purchase of material and recruitment, for border vulnerability studies, or for intelligence and big-data management resulting from surveillance and biometric sources.

In the absence of effective transparency and accountability mechanisms, Frontex has become an undeniable feast for the lobbies of the migration control industry. These lobbies engage in fear-mongering and fuel the rhetoric about the border threat, while selling products and services which are increasingly punitive, lethal, and disrespectful to human rights. This proximity with the industry has been fostered by the current Executive Director, Fabrice Leggeri. 70% of Frontex's meetings in 2018 and 2019 were with unregistered representatives of the military, security, and biometric industries. Only as reaction to European Parliament pressure, Frontex Executive Director finally decided to establish an in-house transparency register to report all contacts and meetings on matters related to procurement and tenders for services, equipment, or projects and studies.

### **Frontex has reached Spain**

For Frontex, Spain is a neuralgic control point of the EU Southern border, the only terrestrial and maritime border with Africa. For Spain, Frontex is an institutional and operational support, as well as a valuable source of human, material and financial resources. However, lately, mutual relations have become increasingly strained as the Agency has acquired greater capabilities, a more intrusive mandate and a higher level of ambition.

Since 2006, Frontex has deployed three operations together with the National Police and the Spanish Guardia Civil: Hera, Indalo, and Minerva. Spain was not willing to host hotspots in its territory, contrary to Italy (Lampedusa) and Greece (Lesbos) in response to the 2015 crisis. But, due to the *reception crisis* in the Canary Islands at the end of 2020, Frontex and Spain relaunched operation Hera in November. This new campaign included the deployment of seven Frontex agents in the Canaries, which were increased to 28 to support the Spanish National Police.

In January 2021, disagreements between Spain and Frontex became more obvious as a result of the former's reluctance to cede control of migration operations to the European Agency.

If used as an effective border management mechanism, subject to the rule of law and human rights and transparency obligations, Frontex could be a valuable instrument in a twofold way: first as a support service provided to Member States, as a mechanism for European integration and as a facilitator for relations between countries; and second as a guarantor of the fundamental rights of those who migrate. Regrettably, Frontex's political drift, together with its determination to act opaquely and outside the democratic control of the EU institutions, has turned this Agency into a very different creature. One that threatens to continue acting according to its own rules.

## Introduction

The **European Border and Coast Guard Agency** (EBCGA), better known as **Frontex**, is today the decentralized EU agency with the largest staff and budget in the Union. It is, also, a **symbol of border protection and immigration control policies**. Amidst the take-off of the first armed and uniformed corps of the European Union (EU), Frontex is going through a period of crisis marked by questioning, from outside and from the EU itself, about its organization, functioning, leadership, and institutional control.

This crisis **jeopardizes the first trial of federalization in the field of Justice and Home Affairs in the history of European integration**, right when the European Commission was putting the Agency at the heart of a supposedly efficient management system<sup>1</sup>. But this growth in resources and capacities was not accompanied by the necessary increase in evaluation, transparency, accountability, and control mechanisms. And those that did exist did not work.

Another fundamental question is whether **Frontex is prepared for the growth and responsibilities that come with its enhanced mandate**. According to the European Court of Auditors<sup>2</sup>, the Agency is not only unprepared to effectively execute its current mandate (2019) but has not yet adjusted to the requirements of the previous one (2016).

Since 2015, the date of the reception crisis and the appointment of Fabrice Leggeri as Executive Director, **Frontex has grown and operated under the protection of a political environment deeply hostile to migration, strengthening the most repressive and security-oriented aspects of its mandate**. Throughout its journey, **Frontex has participated in, and reinforced, a network of economic, political, and ideological interests** that we at porCausa foundation call the **Industry of the Migration Control (IMC)**. This analysis is part of the work that began in 2017<sup>3</sup> and continued in 2020<sup>4</sup>, in two reports carried by the porCausa Foundation.

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<sup>1</sup> [New Pact on Migration and Asylum](#) (23 of September, 2020)

<sup>2</sup> The [press release from the 6<sup>th</sup> of June](#): “Frontex’s support for EU’s external borders management not sufficiently effective” can be found on the Court’s website.

<sup>3</sup> PorCausa foundation, 2017: [The Spanish winners of European Union border policies](#).

<sup>4</sup> PorCausa foundation, 2020: [Who are the paymasters? Who takes the money?](#)

# 1. What is Frontex

**Frontex began its operations in 2005<sup>5</sup>**, with barely 50 employees, a budget of 6 million euros, and technical and risk analysis functions. Its purpose was to support the Member States of the European Union (MS) and Schengen associated states<sup>6</sup> in the management, harmonization, and control of external borders, including cross-border threats and crimes. **Fifteen years later<sup>7</sup>**, Frontex is at the epicenter of **Integrated European Border Management (IBM)<sup>8</sup>**. With a budget of 460 million euros and more than 1,200 employees, the Agency is embarked on recruiting, deploying, and equipping (including weapons) 10,000 border guards.

The expansion of the **European agencies within the Justice and Home Affairs Area** (Europol<sup>9</sup>, Eurojust<sup>10</sup>, Frontex<sup>11</sup>, FRA<sup>12</sup>, EASO<sup>13</sup> -future European Asylum Agency-, and eu-Lisa<sup>14</sup>) is linked not only to their greater flexibility but also to their adaptability to new technologies and emerging problems in a dynamic and changing area such as the border.

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<sup>5</sup> Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

<sup>6</sup> Currently, the Schengen area without internal border controls is home to more than 420 million people in 26 European states. The Schengen area consists of all EU countries except Bulgaria, Romania, Croatia, Cyprus and Ireland. It also includes four non-EU countries: Iceland, Norway, Switzerland and Liechtenstein.

<sup>7</sup> [Frontex at a glance](#)

<sup>8</sup> **European Integrated Border Management (IBM)** aims to manage the crossing of external borders efficiently and to address migration challenges and potential future threats at these borders. Its main components are: border control; prevention and detection of cross-border crime; referral of persons needing or wishing to seek international protection; search and rescue operations for persons in distress at sea; risk analysis for internal security and the security of the EU's external borders; cooperation with third countries, focusing on neighboring countries and those that have been identified as countries of origin and/or transit of irregular migration; return of third-country nationals subject to return decisions.

<sup>9</sup> European Union's law enforcement agency ([Europol](#))

<sup>10</sup> European Union Agency for Criminal Justice Cooperation ([Eurojust](#))

<sup>11</sup> European Border and Coast Guard Agency ([Frontex](#))

<sup>12</sup> European Union Agency for Fundamental Rights ([FRA](#))

<sup>13</sup> European Asylum Support Office ([EASO](#))

<sup>14</sup> European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice [eu-LISA](#)

**Until 2014**, Frontex only supported those MS that requested it in border management, risk analysis, training of national guards, technical and operational assistance, or support in Joint Return Operations (JRO)<sup>15</sup>.

**The Juncker Commission<sup>16</sup> (2014-2019)** was the major driving force behind Frontex and the political and legal acquis that emerged in response to the reception crisis. The mandate expanded in the **new 2016 Regulation<sup>17</sup>**, and it empowered the Agency to facilitate integrated border management alongside the MS. The security-oriented narrative framework that characterized those years<sup>18</sup> progressively shaped the core ideas that persist today: border securitization/armoring, outsourcing of migration control to the migratory origin, transit, and return countries. Frontex became the keystone that relieved and balanced border tensions. It deployed its networks in the countries of transit and origin of migrants and carried out returns.

Only two years after the entry into force of the new Regulation, a **new reform was hastily adopted in 2019<sup>19</sup>**, strengthening the Agency's mandate and increasing its operational autonomy against that of MS. The European Council claimed during the 2018 negotiations an urgent need to justify its adoption without assessment of the needs and impact on MS. The rush obeyed the anti-immigration political majority within the European Council (11 of the 27 MS were then governed by anti-immigration parties alone or in coalition with xenophobic parties). Through this **new mandate**, Frontex goes on to hire and deploy its own staff, leads the European return machine, formalizes its expansion in third countries through liaison officers, manages EUROSUR (real-time operational monitoring system of the EU external border), or manages systems and databases such as the European Travel Information and Authorization System (ETIAS). The 2019 regulation also propels the European outsourcing agenda by giving new capabilities to Frontex to cooperate and provide operational and technical support to third countries.

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<sup>15</sup> The Guardian, José Bautista and Ana Rojas, 2021: [Frontex turning “blinde ye” to human rights violations, says former deputy](#)

<sup>16</sup> European Commission, 2018: [presentation sheet for the European Border and Coast Guard](#)

<sup>17</sup> [REGULATION \(EU\) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016](#)

<sup>18</sup> PorCausa Foundation, 2019: [antimigration franchise](#)

<sup>19</sup> [REGULATION \(EU\) 2019/1896 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 November 2019](#)

The **Vond der Leyen Commission** and Home Affairs Commissioner **Ilva Johanson** continue on the path of securitization despite the **2020 New Migration and Asylum Pact's**<sup>20</sup> timid efforts to change the rhetoric of migration armoring. Although the Pact does not alter its mandate, it confirms Frontex's leadership in the areas of return and partnerships with third countries. But according to Odysseus Network<sup>21</sup>, there is a mismatch between the strategic orientations of the Pact and the legal instruments available to Frontex and EASO (future European Asylum Agency) agencies to carry them out. These mismatches are now coming to light, particularly in the area of returns or the use of weapons, as will be discussed below. Although the hotspots<sup>22</sup> approach adopted by Italy and Greece is a precedent in mixed or more integrated MS/EU administration, the road is expected to be a long and tortuous one from a legal point of view.

In June 2021, a [new European strategy](#) to make Schengen *a stronger and more resilient space* was published, proposing a set of measures placing Frontex as the guarantor of border protection through its permanent corps, the interoperability of information systems as of 2023, and a clear commitment to digitalization in border control. Presented at a time when the functioning of the Agency is being questioned, its wording supports Frontex and seems to settle the controversy with the appointment of the new fundamental rights officer.

### **European return agency<sup>23</sup>?**

The recent **European Strategy on Voluntary Return and Reintegration**, presented by the European Commission in April 2021<sup>24</sup>, **rewards Frontex** with enhanced capabilities. These include heading and managing the European Return and Reintegration Network (ERINN) and taking on the new position of Deputy Executive Director for Return, **adding to its previous capacities in forced return matters assisted voluntary return and reintegration**. According

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<sup>20</sup> Política Exterior, 2020: [Europa se coloca en el lado equivocado de la historia](#)

<sup>21</sup> Odysseus Network for Legal Studies on Immigration and Asylum in Europe, [blog 2021 on New EU Pact](#)

<sup>22</sup> The hotspot approach is based on inter-institutional collaboration through national experts coordinated by the Justice and Home Affairs agencies (Frontex, EASO, Europol and Eurojust) together with national administrations, in a sort of integrated European administration. Spain did not wish to be part of it. (see [Commission file](#))

<sup>23</sup> Euobserver, 2021: [EU commission calls Frontex its new 'Return Agency](#)

<sup>24</sup> [New EU Strategy on voluntary return and reintegration](#)

to Catherine Woollard, Director of ECRE<sup>25</sup>, by further strengthening Frontex especially in third countries where its operations are already opaque, there is "the risk of Frontex running a kind of parallel foreign policy". If 75% of the costs related to MS voluntary return programs are financed by European funds, how this new reinforcement will affect the financial allocation also needs to be monitored. Frontex, again, will be a centerpiece of the system, as it will now be able to support MS at all stages of the voluntary return and reintegration process, including pre-return counseling, post-arrival support, and monitoring the effectiveness of reintegration assistance in third countries.

Although most MS manage their own forced return operations, Frontex was already in charge of coordinating the **joint operations** in the area of **forced return**. Frontex has monitors, escorts, and return specialists who are deployed in return operations or interventions coordinated by the agency to carry out specific tasks (acquiring travel documents from third countries, facilitating consular cooperation, or assisting in funding MS in escorting or supervising forced return operations).

## 2. Evolution of Frontex's human and financial resources

- The **establishment of a permanent body** on an unprecedented scale (recruitment, personnel management, training, development of new formal procedures, strategic planning, and procurement) has meant a **real paradigm shift for Frontex**.

- While the Agency's staff in charge of activities at headquarters (Warsaw) will be more or less stable (between 2021-2024, with about 1,000 employees), **the main challenge lies in the permanent European Border and Coast Guard corps** and to a lesser extent in the ETIAS Central Unit. The new staff assigned to these purposes will increase from 1,505 posts in 2022 to 2,004 in 2024 and a further 10,000 in 2027<sup>26</sup>. **Some of this new personnel will**

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<sup>25</sup> The European Council on Refugees and Exiles (ECRE) is a pan-European alliance of 107 NGOs in 40 countries that protect and promote the rights of refugees, asylum seekers and displaced persons. [Catherine Woollard on the new European Strategy](#).

<sup>26</sup> [Frontex's management board decisión 5/2021](#)

**have executive powers** (including the right to carry and use service weapons) and will wear a uniform<sup>27</sup>.

- In the wake of the scandals arising from the so-called Frontex Files<sup>28</sup>, which have resulted in the **questioning of the internal control and accountability systems of a Frontex** in full mutation, the question is **whether Frontex is up to the challenge**. According to the European Court of Auditors, not only is it not up to it, but it has not even taken on the Mandate it was given in 2016<sup>29</sup>.

### How is Frontex Financed?<sup>30</sup>

In general terms and as an EU agency, **Frontex's operational and running costs** are financed by EU budgets (through the European Commission's budget -Section III-) and by contributions from the Schengen associated countries.

For the first time, **migration and border management** has a specific heading in the EU budgets, representing **2.1% of the resources of the Multiannual Financial Framework (MFF) 2021-2027**. The new heading (**Heading 4**) of the MFF allocates additional resources to the reinforcement of Frontex, to finance its gradual increase in operational staff to the 10,000 border guards planned for 2027. **This reinforcement could be an opportunity for the agency but it is also a major financial management and internal control challenge**, which,

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<sup>27</sup> [The recruitment of the permanent guard is behind schedule](#) according to the deadlines set out in Regulation 2019/1896. In 2021, the Agency should have started the deployment of the permanent corps teams, including those of category 1 (with executive powers). According to the Governing Board Decision of April 3, 2020, 700 cat. 1 members were to be ready for deployment as of January 1, 2021. But it did not happen. The Governing Board expressed concern that the Agency had actually recruited only 419 officers in 2020, of whom only 255 had completed basic training for deployment in 2021.

<sup>28</sup> [Frontex Files](#) (joint media and activists' research: Vera Deleja-Hotko, Ann Esswein, Luisa Izuzquiza, Bartholomäus von Laffert, Daniela Sala and Phevos Simeonidis (Disinfaux Collective) for ZDF Magazin Royale)

<sup>29</sup> [Special report 08/2021 from the European Court of Auditors](#)

<sup>30</sup> Table of own elaboration. Sources: [Statista](#), [Europe1](#) and [Frontex's website](#). Programming of human and financial resources for decentralized agencies 2014-2020 ([COM\(2013\) 519](#))

according to the latest report of the European Court of Auditors, Frontex does not seem able to take on.

### Progresión presupuestaria de Frontex

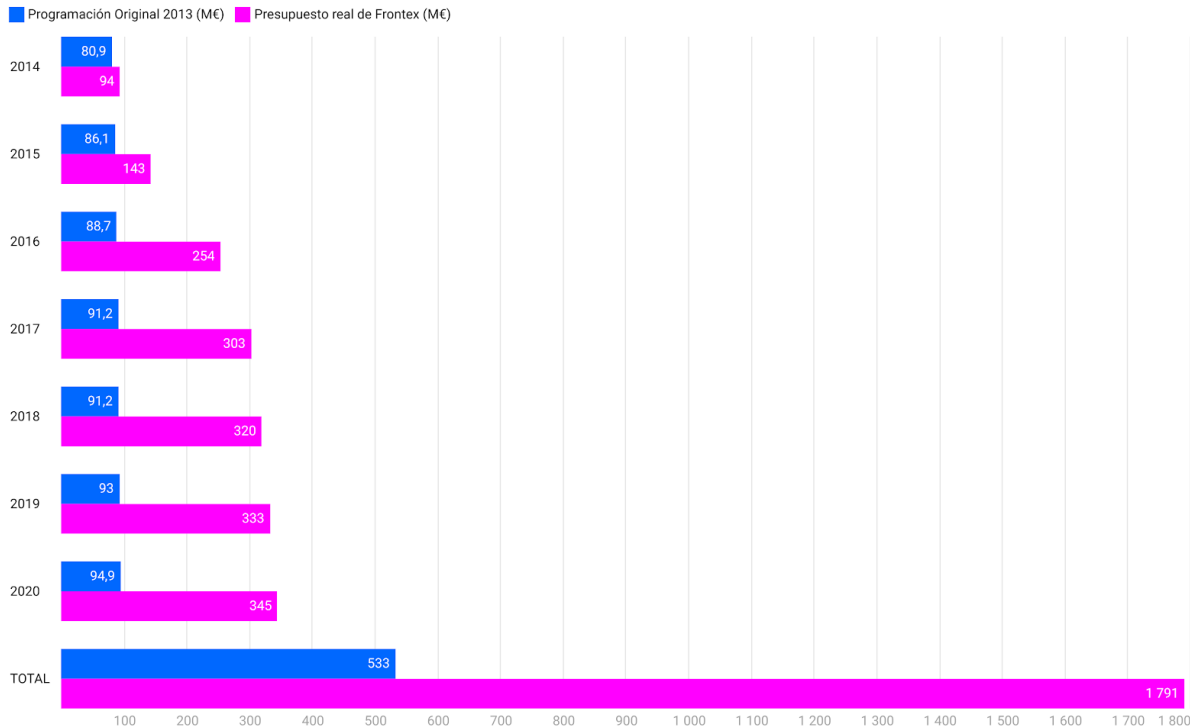


Gráfico: Fundación por Causa · Creado con Datawrapper

This table shows how the forecasts (2013) of the Budgetary Programming Document (in million euros) for the period 2019-2021 were staggeringly exceeded by the actual financial allocations of Frontex since 2016, and especially in the years 2017 and 2018 when Fortress Europe had its biggest supporters in the European Council<sup>31</sup>.

In a **shattering report published on the 7<sup>th</sup> of June 2021, the European Auditor (ECA)**<sup>32</sup> states that Frontex’s performance **1)** has not been sufficiently effective in assisting MS and Schengen partners in the management of EU’s external borders; **2)** that its support in the fight against illegal immigration and cross-border crime is insufficient; **3)** that it has not fulfilled the mandate entrusted to it in 2016 and that it doubts its ability to effectively perform the new operational role assigned to it. **The reasons for this failure would include**, among others, the

<sup>31</sup> PorCausa Foundation, 2019: [Franquicia antimigración](#)

<sup>32</sup> [Special report 08/2021 from the European Court of Auditors](#)

lack of necessary measures to adapt its organization to the mandate it received in 2016; poor human resource planning; difficulties arising from the lack of needs and impact assessment in MS; the absence of any evaluation of activities since 2015; the lack of analysis of its performance and real impact of its activities, the absence of robust evaluations of its activities. According to the ECA, Frontex only "presents costs based on estimates which may reveal considerable differences".

The **European Parliament (EP)**, budgetary control authority, is responsible for the approval and closure of Frontex's accounts. As a pressure measure for its lack of transparency, **the chamber has blocked in March and April 2021<sup>33</sup> the closure of the 2019 accounts**, until the Agency clarifies other outstanding issues with the EP (such as the non-compliance with the mandatory recruitment process for 40 fundamental rights observers). Frontex's final budget for 2019 was over €330 million, an increase of 14.36% compared to 2018. Among the **) arguments for not approving the closure of accounts**, the EP states:

- **The financial reinforcement should also be directed towards control mechanisms and the supervision of fundamental rights' respect** in all its activities as "eyes and ears" on the field.
- It calls for **prudence in the execution of its budget**, pointing to costly annual events that amounted to almost half a million euros in 2019.
- It warns about the delays in the discussions with the Commission on major internal restructuring of the Agency in line with the new mandate.
- It warns about a **lack of gender balance at all levels** (there are 48 men and 8 women on the Board of Directors alone), as well as about disturbing reports of harassment and disrespectful treatment of personnel.
- It expresses its concern about the **lack of transparency as a responsible party in the procurement of EU agencies**, evaluating inter-institutional tenders in terms of needs and financial resources, and **urges the Agency to review its contracting strategy**.

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<sup>33</sup> European Parliament, 2021. Procedure 2020/2167 on [discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency](#) for the financial year 2019. (See also)

In terms of **budget execution**, according to a report by the European Court of Auditors (ECA)<sup>34</sup> on the future of the EU Agencies, while some are chronically under-resourced, others such as Frontex are unable to absorb their budget in the annual programming cycle. The ECA adds that it. The ECA adds that it "finds no evidence to show how Frontex's additional budget and staffing needs were established". **The ECA estimates that more than 10% of Frontex's budget is earmarked for return operations** (€53.8 million in 2018). From 2016 to 2018, the planned budget was much higher than necessary<sup>35</sup>. For example, the number of actual returns was much lower than the number of return decisions. Comparatively, **Frontex was in 2019 the third-largest EU agency<sup>36</sup> in terms of contributions received**. According to the European auditor, there is a persistent problem since 2014 in the financial management of expenses related to the deployment of technical equipment.

## Frontex's human resources

**Structure:** Frontex is run daily by an **Executive Director** (Fabrice Leggeri, FR) assisted by a deputy executive director and the support of five divisions, a cabinet, and the entire secretariat based in Warsaw. The **Management Board**, composed of national representatives of the 26 Schengen MS and two members of the European Commission, controls the Agency and meets five times a year to exercise political leadership and make decisions and appointments.

In parallel to this structure, and as a **guarantee for the respect of fundamental rights in its operations**, there are **1) a Fundamental Rights Officer (FRO)** who must report directly to the Board of Directors and cooperate with the **2) Advisory Forum**, which assists the CEO and the Board of Directors independently and **3) forty fundamental rights observers** who should have been appointed on December 5, 2020. **None of these guarantee mechanisms is working properly**, as will be discussed below.

Frontex faces **two great personnel challenges in the 2021-2024 period:**

### 1) The European Border and Coast Guard

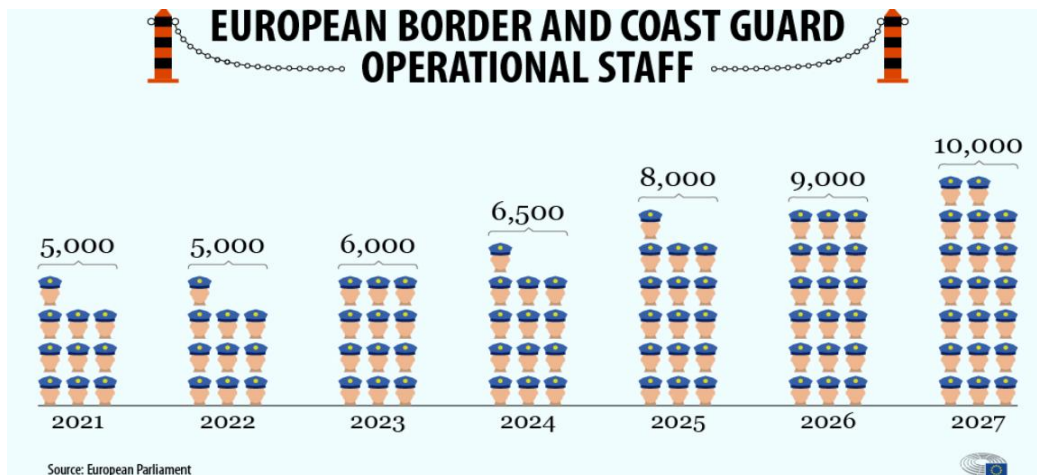
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<sup>34</sup> The ECA is the external and independent auditor of the EU: [Special report on Future of EU agencies](#) - 2020

<sup>35</sup> MS can themselves operate returns unilaterally with financial support from the Asylum, Migration and Integration Fund (AMIF), which is managed by the European Commission's Directorate for Home Affairs (G HOME).

<sup>36</sup> [Annual report from the ECA on EU agencies, 2018](#)

The reference to 10,000 permanent guards is not a rigorous description. It is an increase in operational personnel assigned to the European Border and Coast Guard, but it includes not only border guards, but repatriation flight escorts and return operations specialists. Specifically, **there are four categories: (1) permanent or temporary personnel directly employed by Frontex** (including uniformed, armed staff with executive powers of identification and border entry refusal); **(2) MS personnel permanently deployed** in the different operational areas; **(3) MS personnel in short-term deployment**; and **(4) reserve personnel** for rapid reaction border interventions (which does not involve regular funding apart from the so-called "financial operational reserve").



## 2) ETIAS central unit (European Travel Information and Authorization System)

Operational 24/7 from 2022, its tasks encompass the verification of travel authorization requests through the traveler's identification, including the review of visa waiver applications and risk indicators, or the audit if the system paying special attention to its impact on fundamental rights, privacy, and data protection. Frontex will reportedly dedicate 250 people to this unit, although there will be more staff coming from MS, Europol, or the EU-Lisa Agency, among others.

## 3. Frontex and the Industry of Migration Control (IMC)

In a fortified world that has raised over 63 physical walls in the last 50 years and has

developed an international industry of migration control, **Frontex is a broker and agent, very powerful and coveted by those economic interests.** In all of its responsibilities, Frontex is linked to and conditioned by new technologies and the development of products and services adapted to a shifting environment such as borders. **Its expansion has gone hand in hand with a progressive openness and permeability of the agency that has not been compensated by greater transparency. It is an increasingly militarized industry, based on firearms and biometric surveillance, with the risks to human rights that this approach implies.**

Under its competencies, **Frontex is destined to cooperate with the private sector to respond to new technological and logistical challenges. This collaboration, however, has been done without transparency, without due control, and in a careless manner,** without making proper use of all the mechanisms and levers to which it is legally bound.

In the **technological scope**, Frontex manages costly innovation and investigation projects, [advises the European Commission](#) on what lines to follow in border security, and, in addition, contributes to the effective implementation of relevant parts of the macro-programs Horizon 2020 and its successor Horizon Europe. Furthermore, through its vulnerability studies, it identifies the shortcomings and operational needs of the Union and its MS in terms of surveillance, analysis, biometrics, cybersecurity, and availability or exchange of information. In all the tasks and capabilities Frontex develops, the industry of migration control has input and business opportunities. Here are some examples:

- **Joint Operations (JO):** core and origin of the creation of Frontex. The Agency coordinates the deployment of personnel and technical equipment in external border areas in need of additional assistance. In Maritime Search and Rescue (SAR) operations, Frontex is obliged to provide technical and operational assistance to MS and third countries.
  - Only in Spain in 2018 the budget for JO of this kind was: 1.3 million euros for OG Hera (in the western Mediterranean), 18.2 million euros for OJ Indalo (in the Strait of Gibraltar), and 990,957 euros for OJ Minerva (between the Canary Islands and the coast of Western Africa).

- **Return and readmission operations:** although Frontex is not responsible for decisions on removal (this is the responsibility of the MS), since its inception it has provided support to the MS in their return operations. A distinction can be made:
  - **National Return Operations (NRO):** at the request of the MS, Frontex helps coordinate and finance them.
  - **Joint Return Operations (JRO):** an MS organizes a return flight to a specific country where there are vacancies, requests support from Frontex, and the agency coordinates with other MS to cover these vacancies. Turned into a "[deportation machine](#)", Frontex is a "return travel agency" cheaper than the MS themselves.
  - **Collecting Return Operation (CRO):** Frontex subcontracts flights and escorts to the country of return destination (of migrant origin or transit), allegedly in exchange for providing rights training to staff conducting such operations.
  - **Readmission operations:** Frontex provides key support to the Greek authorities for the transfer of Turkish migrants under the 2016 EU-Turkey Agreement. Through funding, training, coordination, and logistics, Frontex assists Greece, within the hotspot approach, in implementing returns and readmission. These operations are likely to be replicated in other borders and regions following the recent Return Strategy published by the Commission.

When it comes to **forced returns**, Frontex's functions include border identification, authorization, and refusal of entry, document management, and coordination with consular authorities, planning or logistics of commercial flights.

- Between 2009 and 2019, Frontex returned 60,135 people in 1,437 operations according to The World Order. From November 2019 to 2020, the temporary business association formed by Air Europa, Aeronova and Swiftair, was awarded these **repatriation flights in Spain**. In January 2021, the Spanish government awarded a new contract to the joint venture of Evelop Airlines and Air Nostrum.
- According to the Statewatch report "Deportation Union," **the business of deportation is an expensive and complex one, especially if it involves chartering flights and freighting ferries**. Statewatch estimates that the

average cost to the EU of deporting a person through a Frontex-coordinated operation between 2009 and 2018 was almost €3,000.

- In 2020, barely a month after the publication of the new European Pact on Migration and Asylum, Der Spiegel published the images showing the **involvement of Frontex agents in Greek coastguard rejections in the Aegean**, later expanded by other media.
- According to a joint investigation by Lighthouse-Report, Der Spiegel, Libération, and ARD, **Frontex reportedly played a key role in the interception and illegal return of 6,000 people who attempted to flee Libya since early 2021**
- **Vulnerability Studies** on the capacity of MS to manage their borders: In these reports, Frontex issues binding recommendations on equipment to be acquired, modernized, or eliminated. These include thousands of border patrol vehicles, hundreds of helicopters, aircraft, vessels, surveillance systems, and infrastructure improvements, among others.
- **Frontex as big data manager:** the increase in its surveillance and information analysis capabilities has strengthened Frontex's position as an intelligence manager. By merging and connecting (**interoperability**) powerful information systems, Frontex significantly increases its ability to produce actionable information. Access to these systems will enable the Agency to simultaneously search several information systems, using both biographic and biometric data, as national authorities do.

**Predictive security assessment or risk profiling** is a source of business and research (led by the industry of migratory control) that will put highly sensitive personal information into the hands of Frontex:

- Frontex was forced to cancel at the end of 2019 a tender worth €400,000 for migrant network monitoring services "on irregular migration trends and forecasts" (Privacy International, Statewatch, and Mediapart research). Behind this vagueness, the tracking of diaspora networks in destination countries and civil society actors could be included. Unable to explain the compatibility of such surveillance with its legal mandate and the respect of European data protection legislation, Frontex canceled the tender.

- Another example of predictive policing was the controversial technology consortium [iBorder Ctrl](#) or intelligent portable border control system, that acted as a virtual border guard performing risk assessments and lie detector.
- The [Trespass](#) program imports the idea of "risk-based" security controls and proposes indicators that decide from background information, sensors, and applications, the risk of each traveler. According to German activist Mathias Monroy, this program correlates the information previously provided by travelers, with their social networks and the "dark web", in addition to an observation of the images from cameras at the airport in real-time.

**Frontex**, the European Maritime Safety Agency (**EMSA**), and the European Fisheries Control Agency (**EFCA**) recently signed a **tripartite agreement to strengthen cooperation in their coast guard capabilities**. In practice, this translates into sharing, merging, and analyzing information available in vessel reporting systems and other information systems hosted by or accessible to the Agencies.

- **Recruitment, procurement, equipping, and training of the Permanent corps**

In terms of procurement, Frontex contracts and purchases equipment alone or in co-ownership with MS for joint operations: Aircraft, drones, weapons, vessels, vehicles, armaments, border control and surveillance equipment, or commercial flights for deportations, in addition to recruiting, training, equipping and financing the future permanent corps of 10,000 guards.

- Frontex is betting on replacing its maritime rescue capabilities with aerial surveillance through **heavy-duty drones developed by military technology** (see Statewatch). Frontex issued a two-year €50 million tender (extendable twice more for one year at a time) to fly drones over the airspace of Italy, Greece, and Malta. The contract was won by the partnership between Airbus DS Airborne Solutions (ADAS) and Israel Aerospace Industries (IAI). These drones can stay in the air for 24 hours and transmit information in real-time to the Frontex and Coast Guard command center. IAI itself sees this contract as an open door to civilian markets. These drones would already be deployed in [Malta](#).

- According to the European Parliament, Frontex purchased military surveillance drones in 2019 from Airbus and two weaponry companies for €100 million. The head of Airbus Defence & Space stated that the Agency is its only non-military customer.

#### 4. Frontex and the Industry's lobbies

Since the reception of the refugees' crisis in 2005, coinciding with the appointment of Fabrice Leggeri as the Agency's Executive Director, Frontex has progressed in an anti-migration political environment, strengthening the more repressive and securitarian aspects of its mandate. If Frontex is today the best symbol of Fortress Europe. This is largely due to the **impulse and influence of a skein of economic, political, and ideological interests of the industry of migration control (IMC).**

As Corporate Europe Observatory (CEO) points out, **these corporate interests are not neutral but seek to *de facto* shape the concept/approach of Frontex** in favor of their interests. Meanwhile, an impassive Frontex, with no real mechanisms of transparency or accountability, leaves its doors open to an industry that **hardens border shielding by selling solutions increasingly intrusive, lethal, and disrespectful of human rights.** This is not an innocuous or strictly commercial relationship, but a **true political and ideological rearmament in pursuit of border militarization** and anti-immigration.

The current Executive Director, **Fabrice Leggeri**, has proudly propelled this closeness with the industry. His corporate presentation on the Frontex website reads more like a letter of motivation than a biography. Leggeri brags in a personal capacity about the budget and the increase in staff and functions of the Agency.

#### In its relationship with the industry, Frontex

- **Has participated in and organized events, congresses, conferences, conventions, and workshops alongside the industry.** Even debates or discussions before drafting procurement processes or making decisions on the promotion of new border technologies.

- Has held **meetings with lobbies** from the weapons, surveillance, and biometrics industries. **Some were recorded** in the Commission's Transparency Record **and some were not** (according to CEO, they were largely not recorded).
- The industry's **individual access to Frontex** was as simple as submitting a form and waiting for an appointment to present the service or product. According to the CEO, the success was such that Frontex decided to set up **bi-annual industry group meetings**, without dispensing with the individual meetings.

### Frontex as consultant and contractor

Frontex participates in the **network responsible for public procurement of European Union agencies**, evaluating inter-institutional tenders in terms of needs and financial resources. In terms of research, it **advises and counsels the European Commission (DG HOME)** on research and investment lines and activities in border security: surveillance, analysis, biometrics, artificial intelligence, cybersecurity, information processing, and exchange, etc. It decides on the solutions to be investigated, facilitates their testing, supervises research, identifies national and Agency operational needs, and will even disseminate successful results for market application.

Mark Akkerman (Stop Wapenhandel/TNI) points out that, while the main targets of the lobbies are the SM and the European institutions (European Council, Commission, and Parliament), Frontex is a clear target for the purchase of equipment and services provided by specific companies. Frontex is an intermediary and facilitator of industrial interests:

- December 18th, 2020: Frontex explained on a topical seminar with the industry that "the information presented in the meeting can be the starting point for future procurement of equipment by EU border guard authorities, in the context of the upcoming implementation of the Entry/Exit system" (Corporate Europe Observatory).

### Frontex as an event organizer and role in public relations

**Frontex organizes networking events with the industry, in addition to meeting with technology and security services manufacturers.** Corporate Europe Observatory (CEO)

recently published more than 130 documents through transparency requests between 2017 to 2019 from which they obtained evidence of at least 17 meetings with up to 108 IMC companies convened by Frontex. After analyzing the meeting minutes, **CEO highlights the omission of any mention of the potential impact of these services or products on the human rights, privacy, freedom, or presumption of innocence of migrants.**

**In all these spaces, meetings, and congresses in which Frontex has been organizer or attendee, the companies and their lobbies are present,** as guests, speakers, or even as organizers and/or hosts (especially the European Organization for Security EOS, a powerful lobby of the security industry which, in turn, also represents the research centers related to security).

- In December 2019, Frontex convened the Thematic Industry Days Dialogue for the procurement of guns, ammunition, and holsters for the permanent corps of the European Border and Coast Guard.

**Through its increasingly outsourced agenda,** Frontex is present in third countries (deploying staff beyond the external borders through the **Liaison Officers Network**) and provides **grants** to third countries, especially in Africa and the Balkans, to monitor and control borders. On the basis of **cooperation agreements**, states are offered more favorable trade relations. As the 2020 report of Fundación porCausa explains, migration control has been integrated into and has even conditioned development cooperation with countries of migratory origin and transit. In this context, the military and security industry provides human resources, training, and equipment in areas of latent or open conflict, where legal requirements are little or no guarantee.

**In 2018 and 2019, Frontex held several meetings with representatives of the military, security, and biometrics industries. 70% of those meetings were never recorded.** The European Parliament demanded Frontex:

- 1) The creation of a coherent and efficient record to guarantee the transparency of its interactions with interested third parties (in line with Art. 118 of the Regulations).
- 2) Improving its transparency policy to ensure the systematic publication of information

on meetings with the industry.

3) Refraining from meeting with unregistered companies.

On May 5, 2021, as a result of the pressure directed against him, the Executive Director of the Agency finally established a transparency record of his own, in which all contacts and meetings on matters related to procurement and bidding for services, equipment, or projects and studies should be recorded.

## 5. The inconvenient toll of human rights

Except for the coordination of joint operations and rapid border interventions, humanitarian emergencies and maritime rescue, **human rights are marginal to Frontex's mandate. However, in the fulfillment of its mandate, respect for human rights is required** and a series of internal and external control mechanisms are established.

The 2019 regulation gives **Frontex the executive powers of national border guards**. Tasks such as identity verification, conducting interrogations, stamping travel documents or fingerprinting, among others, can lead to serious violations of rights that are difficult to control. In this way, Frontex's powers are being extended towards a system of shared competences with the Member States, even though the Agency lacks power of decision.

Frontex is also **increasingly present in third countries**, where **most of these activities are neither transparent nor take place in democratic contexts that provide guarantees for migrants or returnees**. Deployment of liaison officers, technical assistance projects, negotiation of working arrangements or informal intelligence partnerships in the field are carried out in opacity. In the Western Balkans, through statutory agreements Frontex monitors, intercepts and controls people and vehicles extramurally by replicating its border patrols, outside public scrutiny. A facilitator and enforcer of forced returns, Frontex will also have a greater role in voluntary returns and in monitoring the readmission of returnees by third countries.

**What is Frontex accused of?**

There is a **progressive inhibition of the agency in search and rescue operations**, which are **progressively replaced by unmanned aerial observation missions** using drones. This practice implies a breach of the minimum humanitarian obligations established by the Law of the Sea.

In addition to allegations of collusion with the Greek authorities in **violent rejections in the Aegean**, Frontex faces accusations of **systematically communicating to the Libyan coast guard** the location of migrant and refugee boats located in the Mediterranean, violating international law by delivering the castaways to a place that is not only unsafe but also criminal, where they suffer confinement, rape, torture and death. The European Anti-Fraud Office (OLAF) investigates the Executive Director of Frontex and his management team for these events.

There is a **worrying culture of opacity, of not reporting incidents** in a systematic way, which prevents the Agency from having a true picture of what is happening in the field. Potential serious incidents of fundamental rights violations (such as behavior problems of individual officers or teams) either do not come to the attention of the FRO or are buried in an opaque and ineffective procedure that ends up unresolved. According to the German media [Salto Politik](#), the categorizations of less serious incidents have been altered, to prevent them from reaching the then FRO, the Spanish Inmaculada Arnaez. The latter reportedly warned Leggeri several times of rights violations but her demands were ignored until her acting replacement by Annegret Kohler, an adviser in the same Leggeri cabinet. The own internal report of the FRALO Working Group, **advises to introduce a new culture of recognition of errors and failures that help to address misconduct and punish it.**

### **Internal tools for the protection of human rights**

**Frontex has mechanisms for the control and supervision** of respect for fundamental rights in its activities and operations. However, these mechanisms are not enough and they do not even work. **Frontex has not only been negligent in its implementation, but internal or external control by the institutions in charge of its supervision has not worked.**

Apart from codes of conduct, training of members of the European Border and Coast Guard (GEFC) and police cooperation with third countries, Frontex's strategy is limited to the introduction of an **internal complaint mechanism** in order to guarantee "the right to good administration" and the "right to effective judicial recourse." In practice, this complaint mechanism suffers from opacity and a lack of impartiality since it leaves the adoption of disciplinary measures in the hands of the Executive Director or, failing that, in the MS. This is related to the secondary role of the **Fundamental Rights Agent** who does not have the capacity to monitor complaints or to take action without the support of the Agency's Board of Directors and the Executive Director. Therefore, this mechanism is a mere administrative route that does not lead to an effective attribution of responsibilities in the violation of rights.

The **Fundamental Rights Agent** (FRO) is an independent position whose operation is an internal addition to the Agency so, although it is in charge of informing and supervising the fulfillment of rights, the reality is that its **operating capacity is very tight**, with no budget or staff under their charge. Their roles are blurred since, after all, it is the MS and the Executive Director who support the complaints and claims mechanism. The FRO only examines the complaint request. To give it greater support, the creation of **40 fundamental rights observers** was introduced who should have been recruited by the end of 2020. As of June 2021, none of these observers have yet been deployed or recruited.

- o **Jonas Grimheden** will take office as Fundamental Rights Agent in June 2021. Grimheden comes from the European Fundamental Rights Agency (FRA) where he coordinates support for human rights systems and relations with all political and civil actors and other international organizations. After months vacant, Grimheden relieves the Spanish **Inmaculada Arnaez**, prematurely relegated from the position by Leggeri himself.

The **Consultative Forum** was created to provide Frontex with independent advice on fundamental rights, but it was not provided with sufficient personal and financial means and its advice has traditionally been ignored. It is a collegiate forum made up of European agencies, international organizations and civil society organizations specialized in fundamental rights. In the Forum there is a dialogue between the Agency (through its Board of Directors or the

Executive Director) and the rest of the members that is very limited to opinions without being able to decide on individual complaints. The Forum has reiterated each year the absence of an effective monitoring system to prevent and address possible violations of fundamental rights in the Agency's activities, in addition to a worrying lack of transparency and responsibility for violations of fundamental rights.

The European Commission proposed the creation by the MS (supported by the European Fundamental Rights Agency-FRA) an **independent mechanism for the supervision of fundamental rights** in order to guarantee the procedure against complaints and claims of violation of fundamental rights in the deployed operations. This mechanism could be activated by Frontex's own internal staff in the event of possible violations of rights and as a complaint resource by migrants who consider that the returns have not followed international protocols or treaties. In addition, relevance would be given to the Human Rights Officer (FRO), who may also report violations. However, this mechanism has not yet been put into operation despite continued recommendations.

Despite the internal mechanisms, the Board of Directors and the Executive Directorate of Frontex did not react to the complaints of violation of fundamental rights until several media ([Der Spiegel](#) or [Report Mainz](#), among others) published images of the collusion of Frontex agents with the Greek authorities in the violent rejections of migrants in the Aegean Sea in 2020. Only then, and in the face of public exposure and reproach from the Commission, **was a working group on fundamental rights and legal operational aspects created** within the Council of Frontex Administration (**FRALO**).

### **Frontex's external control**

- The **European Ombudsman**, as a guarantor of possible malpractice in the European institutions and their agencies, recently launched two investigations on his own initiative. One in November 2020 due to concerns that the complaints mechanism was not working effectively and that the FRO was no longer working in line with its mandate. Another inquiry, started in February 2021, focuses on the transparency and accountability of Frontex's work to identify transparency gaps in all its operations.

- The **European Anti-Fraud Office** (OLAF) has launched an investigation into the Agency for allegations of internal workplace harassment, misconduct and expulsions of migrants.
- The **Court of Justice of the European Union** (CJEU): Following a lawsuit by lawyers from Front-Lex and Legal Center Lesbos (February 2021), the CJEU has opened the first legal research against Frontex. The plaintiffs are calling for the suspension or termination of operations in the Aegean for serious and systematic human rights violations in accordance with Article 46 (4) of the Frontex Regulation.
- Lastly, the **European Parliament**:
  - **As a budgetary authority**, through its Budgetary Commission, in March and April it blocked the closure of Frontex accounts for the [2019](#) financial year as a measure of pressure (look at the [procedure](#)).
  - **As a political control authority**
    - Established the **Frontex Scrutiny Working Group** with an expected duration of four months (February-June 2021) to investigate Frontex's respect for human rights in operations in the Aegean, followed by a mandate to "oversee all aspects of the operation of Frontex". This group is formed within the LIBE Commission (Commission on Civil Liberties, Justice and Home Affairs) with two MEPs from each group. The Spanish members are: Sira Rego (UP), Javier Moreno Sánchez (PSOE) and Jorge Buxadé (VOX).
    - **Parliamentary groups**: call for the resignation of the Frontex leadership and the creation of a new parliamentary control body similar to the one that governs Europol, made up of national and European parliamentarians.

**Accountability mechanisms are insufficient or have been relegated by Frontex management.** Warnings from the Consultative Forum and the Fundamental Rights Office have traditionally been ignored because they were not taken seriously and were seen as the necessary toll that a European agency had to pass through. The images of the rejections at sea exposed the lack of follow-up and investigation of alleged violations of fundamental

rights not only by the agency itself, but by institutional control mechanisms external to the agency. It was thanks to civil society and the media that these facts came to light, and this is not a trivial matter.

As ECRE recalls, **the power of an organization implies responsibility and accountability.** In the case of Frontex, it considers that the **existing mechanisms are underused and do not fulfill their mission.** Although the 2019 Regulation reinforced the democratic, administrative and social responsibility mechanisms, they are not sufficient for the powers and capacities acquired. It is not enough that these rules exist, but they must be followed and done with diligence. On the part of the MS, their internal guarantors (Management Board, Executive Director and Observer of Fundamental Rights), and the European institutions with control responsibilities over the Agency (the European Commission, European Parliament through the LIBE / control Commissions budget and the European Ombudsman).

### **Frontex's personnel training in Fundamental Rights**

The new [strategy for the protection of Fundamental Rights](#), approved in February 2021, follows the roadmap set out in the Agency's 2019 regulations. The implementation of the GEFC had specific training for its agents and 40 observers in charge of ensuring compliance with and respect for fundamental rights in operations but, due to the [delay in their recruitment and subsequent training](#), there is still a gap in safeguarding the fundamental rights of migrants.

**The training received by the staff** is based on a **manual** and on the **programs coordinated with other European agencies** of the Security and Home Affairs Area, taking into account the provisions of each MS and the interrelation between these entities for the achievement of the objectives set in the operations.

**Training in rights for Frontex staff is very scarce:** It is limited to instructing in international law and EU law, depending on the activity carried out by each agent in the different operations, and in a preparatory course for all staff. The only common core training for all operations is the treatment of minors and the international protection protocols that protect them. However,

these protocols for the identification and protection of minors have been repeatedly questioned due to the difficulty of the identification process of minors and the violence exerted in the hotspots. In the return processes, the limitations of the training of Frontex agents and of third countries are observed despite the fact that agreements have been signed to provide and receive training.

## 6. Frontex's institutional communication

### Corporate communication

When analyzing Frontex's legal documents, the profound disconnection between its humanitarian references and the migration containment policy it implements is striking. According to a study by The British Journal of Criminology (2015), within Frontex coexist, by the very multinational nature of the EU, different national police cultures that the Agency tries to homogenize through training, guidelines, and supervision. The professional distance between the agent and the humanitarian challenges they may face in the field, make clear the **police and non-humanitarian nature of their tasks**. When Frontex speaks of vulnerability, it is referring to the vulnerability of the border (not of the people crossing it), framing **references to migrants in the realm of risk and threat. Its security language seems to be aimed only at protecting European citizens. Migrants are invisible**, there is hardly any practical consideration or statistics on deaths, disaggregated data, or information that humanizes migrants.

### Social media in Frontex's communication

Frontex manages its social media with different profiles and approaches:

Frontex's profile on the profession-oriented social media **LinkedIn** is mainly dedicated to its staff. It is an example of the disconnect between the Agency, human rights, and the issues Frontex is facing. It is focused on advertising open vacancies, promoting events (many of them with the industry), commemorating national days, or extolling the mission of its personnel. With heroic language, it describes almost warlike situations of soldiers returning from the front,

without a mention of their obligation to safeguard human rights or the mere existence of migrants. Some examples:

- Post from the 1st of June 2020: "Once again, we managed to bring our officers to #Frontex operations in Greece and Albania, and others, back home. (...) To the new officers arriving to participate in our operations, welcome! To those who returned home after their assignments, where they helped keep Europe safe and secure, thank you and get some rest."
- The self-promotion videos of the Permanent Corps are also an example of self-promotion and corporate marketing.

Most common in Frontex's **Twitter** activity (account opened in 2015 and with more than 45,400 followers) is the omnipresent image of its Executive Director, Fabrice Leggeri, the Frontex agenda, and the idea of "protecting Europe". On the other hand, it projects a more integrated image in the policy of the European Commission (DG HOME) and the other agencies of the Justice and Home Affairs area.

Frontex's **Facebook** profile is more varied. In addition to reporting on border operations and the Agency's technological deployment, the focus is on irregular crossings (maps, photos), always from a police approach and language, with little mention of fundamental rights or migrants. Irregular crossings are repeatedly linked to transnational crimes such as trafficking or drug trafficking, in no way humanizing the victims of smuggling networks. Only the "respect for local people" is ever mentioned (post of April 17, 2021, about agent Bettina). The "humanizing" purpose of its Facebook profile (like LinkedIn) only reflects on its own personnel ((Working Women's Day, national holidays, police dog training, etc).

### **Training as a tool for communication**

In addition to training its staff internally, Frontex offers **training in specific skills** (English, information technology, risk analysis, document fraud detection, etc.) **to MS experts, members of national law enforcement agencies, and officials from third countries** (such as [Morocco](#) in its search and rescue of migrants on the high seas) and even external trainees. Frontex even offers a **joint European Master in Strategic Border Management (EJM SBM)**

for mid to senior-level officials of agencies and organizations responsible for border security in the European Union (2021 will be the third promotion).

- In Spain, the University of Salamanca, along with the [UNED](#) in collaboration with the National Police impart de Masters to the alumni previously selected by Frontex.

## 7. Frontex and the lack of transparency

Frontex protects itself under the **security exception** to deny access to information to researchers, journalists, and citizens.

- Corporate European Observatory (CEO) activists and researchers [Luisa Izuzquiza](#) and Arne Semsrott succeeded in putting Frontex in the dock for the first time at the Court of Justice of the European Union (CJEU) for breach of its obligation of transparency. The sentence dismissed the lawsuit and ordered them to pay exorbitant legal costs (23,700 euros), which the CJEU later reduced by half. More than 40 civil society organizations signed a manifesto calling on Frontex to refrain from demanding legal fees from activists in the exercise of their right of access to information. As Helen Darbishire, Executive Director of Access Info Europe points out, "It's not about money (...) It's about intimidating citizens, silencing activists and deterring people from seeking information, which is unacceptable for a European Union agency".
- Frontex spent **94,000 euros on a gala dinner in Warsaw** in 2015 on the occasion of European Border and Coast Guard Day. According to Eurodeputy Özlem Demirel (Die Linke, AL), the total cost of the event would have reached 360,000 euros, increasing in the following years to €580,000 (2018) and €495,000 (2019). Hundreds of lobbyists, businessmen, politicians, and officials meet.



Frontex's answer to the question "how much taxpayers' money Frontex spent on the organization of the 2019 Border Guard Day dinner (hotels, dinner)". Tweet from [EUobserver](#) [journalist Nikolaj Nielsen](#).

**Frontex's rules of transparency and tactics** (such as the dissuasive **delay** of the procedures, or the submission of partially or totally **censored/crossed out documents**, evading transparency) have become the usual attitude.

On May 5, 2021, the **Executive Director decided to establish a transparency record of his own in which all contacts and meetings** (of the Executive Director, Deputy Executive Directors, and Division Heads) on matters related to procurement and bidding for services, equipment, or projects and studies must be recorded. Meetings in place for contracts already awarded, among other items, are excluded from this register.

## **8. Who controls the weapons**

**Frontex's 2019 Regulations meant a functional and legal challenge for the Agency, resulting in various relevant imbalances.** The political impetus embodied in the new Regulation was often too ambiguous and unrealistic. The strengthened mandate in 2019

suffered from a lack of coordination and insufficient legal basis for its implementation. In the rush to move the draft forward, an impact assessment of the new legislation, whose limitations affect essential points of the creation and deployment of the new permanent Corps, was omitted. Specifically, the Regulations:

- Stipulated that statutory personnel **could require the use of force, including the use of weapons during their deployment tasks** ((in accordance with Art 82 and Annex V of the Frontex Regulation) but entrusted its regulation to subsequent decisions.
- Called for the adoption of a **mechanism for the supervision of the use of force (art 55) and disciplinary rules**, which also posed a practical and legal challenge since the permanent corps, as the first uniformed and armed service of the EU, requires different recruitment, employment status, and functions than the rest of the personnel.
- In terms of **privileges and immunities** (Art 96), neither the Permanent Corps appear to have the necessary coverage under the current legal framework (Protocol 7 annexed to the TFEU) to ensure the inviolability of Frontex-owned assets (service vehicles, vessels, aircraft), and it does not apply in any case in third countries.
- Lastly, the **acquisition, registration, storage, and transport of weapons** had no legal basis to launch its tender.

Following inter-agency consultations and external advice, some of these issues have been resolved and others have not. For example:

- In January 2021, a **joint decision of the Management Board and the Executive Director of Frontex approved the authorization to carry and use weapons for statutory personnel**. According to this decision, subsequently amended on March 25, 2021, **personal permits will be issued, for all types of weapons (including lethal)**, after inquiry and coordination with the MS of residence and nationality, completion of the procedure, undergoing the required training, and passing of the medical, psychological and physical fitness tests.

The **March 2021 amendment to this decision adds further safeguards**. For example, before issuing the authorization, the Executive Director shall inform both the MS of nationality and the MS of residence of the personnel. In addition, the prospective

beneficiary will submit an individual application providing an updated criminal record certificate (3 months) which will be an essential requirement for the issuance of the authorization.

- In February 2021, **the tender for the framework contract** for the supply of service weapons (9 x 19 mm compact semi-automatic pistol), ammunition, and accessories worth €5 million was published on the EU procurement portal.

The Frontex Regulation **limits the use of service weapons**, ammunition, and equipment to the **case of legitimate self-defense or self-defense of team members or other persons and during operations and duty hours** (Annex V).

Equipping border agents with weapons takes the **militarization of external borders a step further and creates a more risky scenario for the rights and lives of migrants**. Moreover, the structures of the Agency and the EU itself make it difficult for such violations to be prosecuted, according to Melanie Fink, professor at the University of Leyden, as the design of Frontex allows all actors involved to shift the blame onto others. Frontex relies on this to place human rights responsibility solely on the MS, even though there is no legal basis for this. Against this background, **allowing Frontex to arm its agents poses a risk that will almost exclusively negatively affect migrants** trying to reach Europe, and **risks favoring the dispersion of responsibility for rights violations** in border countries that have already proven to be open to the disproportionate use of force against migrants.

Lastly, and **linking with the interests of the arms industry**, arming a permanent guard of this size generates new dynamics (testing, purchases, ammunition, storage, maintenance contracts, training, etc.) that consolidate the commercialization of border armor for the benefit of lobbies and large companies.

**Is the need to carry or use potentially lethal weapons in the case of Frontex's Permanent corps sufficiently justified?** Does it compensate for the potential increased risk to lives and violation of rights? Is it part of the process of border militarization and the criminalizing narrative of migration? We know that it harms migrants, and we sense whom it benefits, the latter not including migration management and border security.

## 9. Frontex in Spain, following Lampedusa's steps?

Spain is for Frontex a neuralgic point for the control of external borders of the European Union as it is the southern land and maritime border with Africa. Frontex offers Spain institutional and operational support and an invaluable source of personal, material, and financial resources. However, relations have become increasingly strained as Frontex acquires greater capabilities, a more intrusive mandate, and a higher level of ambition.

### Chronology of Frontex in Spain

Since 2006, Frontex has deployed three joint operations in Spain with the National Police and the Guardia Civil: Hera, Indalo, and Minerva.

- **Operation Hera** in the Atlantic (2006-2018) was the first joint operation between the Agency and the Guardia Civil on Spanish territory and Frontex's longest-running joint operation to date. It began in 2006 when the Spanish government turned to Frontex to stop the "cayuco crisis". With a budget of 3.5 million euros, of which 2.8 million were co-financed by Frontex, it was deployed in two stages:
  - **Hera I** (from July 2006) deployed personnel from 9 MS to identify and interview migrants arriving in the Canary archipelago and facilitate their subsequent return - up to 6,076 returnees between June and October.
  - **Hera II** (between August and September 2006) deployed Spanish, Portuguese, Italian, and Finnish ships and aircraft off the coasts of Mauritania, Senegal, and Cape Verde to reinforce surveillance of the area and prevent the departure of migrants in the countries of origin. The success was due to bilateral cooperation agreements between Spain and third countries to contain irregular migration, in a strategy of border externalization that would later be adopted by the European Union itself. Hera was so successful that it was renewed annually until its suspension in 2018.
- **Operation Indalo** deployed in 2007 in the Western Mediterranean, aimed at stopping migration flows from North Africa and sub-Saharan Africa and fighting cross-border criminality. It was the first joint operation on the Spanish Mediterranean coast. In 2019,

the Ministry of Defense signed a protocol for the incorporation of the Armed Forces into the operation, which has been renewed and reinforced annually until today.

- **Operation Minerva** deployed in Spanish ports on the peninsular Mediterranean coast (Algeciras, Tarifa, and Ceuta) to support the annual operation "Paso del Estrecho" between Spain and Morocco, in operation since 1987. The device, led by the National Police and coordinated by the Agency, began in 2006 and involves every year troops from between twelve and fifteen MS, consists of the installation of controls at border points for the detection of irregular entries and subsequent return operations. It was interrupted between 2016 and 2018 and subsequently reactivated.
- Due to the **reception crisis in the Canary Islands at the end of 2020**, Frontex and Spain **relaunched Operation Hera in November**. This new phase included the deployment in the Canary Islands of seven Frontex agents reinforced in December to 28 agents to support the National Police in November 2020.

### Frontex and the Southern Border

**In January 2021, disagreements between Spain and Frontex came to light, as a result of the Spanish State's reluctance to cede control of operations to the Agency.** Frontex, under its reinforced mandate, intended to establish its own bilateral agreements with third countries to patrol their coasts. Faced with the insistence of the National Police and the Civil Guard to coordinate the devices deployed in Spanish territory, Frontex threatened to suspend its activities in the country, but **finally renewed its operations in Spain for another year**, currently including :

- The contingent of 257 officers that Frontex has had deployed in Spain since the beginning of 2021, distributed between the Indalo operation and the operation installed in the Canary Islands.
- The collaboration between Spain and Frontex through the Coordination Points and the Focal Points for the simplification of the coordination and exchange of information and border surveillance experts within the framework of Integrated Border Management.

**Spain chose at the time not to have hotspots on its territory** as Italy or Greece did in response to the 2015 reception crisis. The reason may have been less pressure on the Spanish

borders compared to the Central and Eastern Mediterranean routes, as well as the bad image that the establishment of a hotspot would generate in the Canary Islands, whose main economic engine is tourism. This approach is based on inter-institutional collaboration through national experts coordinated by the Justice and Home Affairs agencies (Frontex, EASO, Europol, and Eurojust) together with the national administrations, in a sort of integrated European administration. But the situation in the Canary Islands is becoming more and more similar to that of Lampedusa or Moria, limbos where there is no real access to the territory. In addition to Frontex, the **European Asylum Support Office (EASO)** is in the Canary Islands developing an [Operational Plan](#) concluded in December 2020 with the Ministry of Inclusion, Social Security, and Migration. This plan will be implemented in 2021 and consists of EASO's support to cover the needs identified in the international protection and reception system. All that remains is for Europol and Eurojust to establish a permanent delegation.

The Ministry of Interior seems reluctant to cede ground and autonomy to Frontex, after years of investment in resources, capabilities, and regional leadership in Africa. The fear of a loss of strategic power on the southern border, especially with Morocco, and therefore in Brussels, could justify national reluctance to greater involvement of Frontex.

## 10. Conclusion: a giant with feet made of clay

Frontex will have a budget of up to 5,6 billion euros over the next six years. It has reinforced operational and executive capacities and, what is more, relevant today, it has the **unanimous support of the Member States** in a strategic and highly politicized area such as migration. But Frontex is a giant with feet of clay as revealed by the European Court of Auditors.

**From a positive point of view**, Frontex's greatest assets would be its integration, its multilateralism, and its flexibility.

- Frontex could be a useful instrument of European integration and solidarity between the Member States. It is indeed the first experiment in the federalization of policies in the field of Justice and Home Affairs, historically a preserve under national sovereignty, with the progressive development of executive capacities and direct financing by the European Union.

- This would allow countries with external borders to divest part of the human and financial resources allocated to border protection to socialize the internal security effort at the European level and redirect these funds to other policies or priority areas. This would compensate to some extent for the unfavorable geopolitical situation of some Member States as 'frontline countries' vis-à-vis 'rearguard countries', reinforcing solidarity and distributing the burden in dealing with border threats.
- Likewise, Frontex, being an EU instrument devoid of historical servitudes and misgivings, would be a more neutral and acceptable interlocutor than the former colonial powers for third countries or would allow a more fluid dialogue when there are countries with border disputes (such as the United Kingdom in the case of Gibraltar or the countries of North Africa, the Sahel or Turkey). On the other hand, since it is an EU Agency, strongly linked to the European Commission, it allows the introduction of an element of conditionality when negotiating or dealing with third countries. In this external facet, the Agency of the Permanent Border and Coast Guard could be gaining ground as the executing arm of the European External Action as a growing complement to the civilian and military missions of the ESDP (Foreign Security and Defense Policy).

It will be interesting in the future to see how Frontex faces the challenge of managing a permanent Guard with executive powers, dispersed and with highly questioned control, supervision, and transparency mechanisms. **Its major challenges will be the demands in terms of respect for fundamental rights, the challenge of making its functions compatible with data protection** in an area as technologized as the border (where biometrics and artificial intelligence cross many red lines), and **making the viability of its mandate credible under the current conditions.**

In the case of **Spain's southern border**, one of the most pressured and uneven borders in the world, Frontex will be deployed in the Canary Islands, and possible in the future in Gibraltar, if the UK and Spain end up signing a framework for the Rock of Gibraltar's future relationship with the EU. As for the Canary Islands, even if it is not formally part of the EU hotspot approach, it is a matter of time before it becomes an integrated border like Greece or Italy. Frontex and the Asylum Agency (EASO) are already on the ground. In any case, the **battle of competencies between the law enforcement agencies of the Member States and the**

**Agency is on.** The rivalry between the National Police, responsible for foreigners, and the Guardia Civil, responsible for border and coastal control, will not facilitate dialogue on the part of Spain, which is also involved in other disputes with the Ministry of the Interior and the Ministry of Migration in the Council of Ministers. Moreover, according to the ECA, the effects of the creation of the permanent corps will have serious repercussions on the human resources of the national corps, since a large part of its personnel will be designated nationals.

Finally, Frontex also has the not inconsiderable value of assuming responsibility and criticism in the Member States in case of "heavy-handedness" against the migrant. This can have two effects. At best, this intermediation removes border management from the eternal electoral battle of xenophobic populism. The latter would be a favor to any democracy, as well as to the criminalization of migrants, as long as Frontex monitors and "controls its troops" and their dangerous and non-transparent relations with the migration control industry. In the worst case, Frontex's human rights protection standards will be matched at the bottom, representing another step backward in the values and principles that should govern the European Union.

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