



# Study to support the evaluation of the EBCG Regulation and review of the Standing Corps

Final Report - Annexes

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## Annex 1 Glossary<sup>1</sup>

**Air border surveillance** - The surveillance of any flight of a manned or unmanned aircraft and its passengers or cargo to or from the territory of the Member States.<sup>2</sup>

**Cross-border crime** - Any serious crime with a cross-border dimension that is committed or attempted at, along or in the proximity of the external borders.<sup>3</sup>

**Border area** - An area that extends no more than 30 kilometres from the border. The local administrative districts that are to be considered as the border area shall be specified by the States concerned in their bilateral Agreements. If part of any such district lies between 30 and 50 kilometres from the border line, it shall nevertheless be considered as part of the border area.<sup>4</sup>

**Border control** - The activity carried out at a border, in accordance with and for the purposes of Regulation (EU) 2016/399, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance.<sup>5</sup>

**Border checks** - The checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it.<sup>6</sup>

**Border crossing point** - Any crossing point authorised by the competent authorities for the crossing of external borders.<sup>7</sup>

**Border guard** - Any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with Regulation (EU) 2016/399 and national law, border control tasks.<sup>8</sup>

**Border surveillance** - The surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border check.<sup>9</sup>

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<sup>1</sup> The terms listed in the glossary are defined based on existing EU legislative instruments. When specific definitions are not explicitly provided in EU legislative instruments (such as for European Border and Coast Guard standing corps), the definitions are formulated through adaptation or summaries of relevant provisions from EU legislative (and non-legislative) instruments.

<sup>2</sup> Article 2, Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>3</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>4</sup> Article 3(2), Regulation (EC) 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external borders of the Member States and amending the provisions of the Schengen Convention.

<sup>5</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>6</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>7</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>8</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>9</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

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**European integrated border management**<sup>10</sup> - European integrated border management consists of the following components:

- border control, including measures to facilitate legitimate border crossings and, where appropriate: measures related to the prevention and detection of cross-border crime at the external borders, in particular migrant smuggling, trafficking in human beings, and terrorism; and mechanisms and procedures for the identification of vulnerable persons and unaccompanied minors, and for the identification of persons who are in need of international protection or wish to apply for such protection, the provision of information to such persons, and the referral of such person
- search and rescue operations for persons in distress at sea launched and carried out in accordance with Regulation (EU) No 656/2014 and with international law, taking place in situations which may arise during border surveillance operations at sea;
- analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders;
- information exchange and cooperation between Member States in the areas covered by this Regulation, as well as information exchange and cooperation between Member States and the European Border and Coast Guard Agency, including the support coordinated by the European Border and Coast Guard Agency;
- inter-agency cooperation among the national authorities in each Member State which are responsible for border control or for other tasks carried out at the border, as well as between authorities responsible for return in each Member State, including the regular exchange of information through existing information exchange tools, including, where appropriate, cooperation with national bodies in charge of protecting fundamental rights;
- cooperation among the relevant Union institutions, bodies, offices and agencies in the areas covered by this Regulation, including through regular exchange of information;
- cooperation with third countries in the areas covered by this Regulation, focusing in particular on neighbouring third countries and on those third countries which have been identified through risk analysis as being countries of origin or transit for illegal immigration;
- technical and operational measures within the Schengen area which are related to border control and designed to address illegal immigration and to counter cross-border crime better;
- return of third-country nationals who are the subject of return decisions issued by a Member State;
- use of state-of-the-art technology including large-scale information systems;
- quality control mechanism, in particular the Schengen evaluation mechanism, the vulnerability assessment and possible national mechanisms, to ensure the implementation of Union law in the area of border management;
- solidarity mechanisms, in particular Union funding instruments.

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<sup>10</sup> Article 3, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

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- fundamental rights, education and training, as well as research and innovation shall be overarching components in the implementation of European integrated border management.

**EUROSUR** - The framework for information exchange and cooperation between the Member States and the European Border and Coast Guard Agency.<sup>11</sup>

**External borders** - The Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders.<sup>12</sup>

**European Border and Coast Guard** - It is composed of the national authorities of Member States responsible for border management, including coast guards (to the extent that they carry out border control tasks), the national authorities responsible for return and the European Border and Coast Guard Agency.<sup>13</sup>

**European Border and Coast Guard Agency** - The Agency (commonly referred to as Frontex) governed by Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (hereinafter: EBCG Regulation).<sup>14</sup>

**European Border and Coast Guard standing corps** - The standing corps is composed of border guards, return escorts, return specialists and other relevant staff in accordance with the four categories set out in Article 54(1) of the EBCG Regulation, acting as members of the teams having executive powers, where applicable, and the statutory staff responsible for the functioning of the European Travel Information and Authorisation System (ETIAS) Central Unit that are not deployable as members of the teams.<sup>15</sup>

**Hotspot area** - An area created at the request of the host Member State in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders.<sup>16</sup>

**Internal borders** - The common land borders, including river and lake borders, of the Member States; the airports of the Member States for internal flights; sea, river, and lake ports of the Member States for regular internal ferry connections.<sup>17</sup>

**Irregular entry** - The entry of a third-country national into a Schengen Member State who does not fulfil the entry conditions as set out in Article 6 of the 'Schengen Borders Code' (Regulation (EU) 2016/399<sup>18</sup>, previously Regulation 2006/562) and has not been authorised to enter during the border control (in view of the application of the derogations set out in Article 6(5) of the Schengen Borders Code).

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<sup>11</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>12</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>13</sup> Article 4, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>14</sup> Recital (3), Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>15</sup> Adapted from Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>16</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>17</sup> Article 2, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

<sup>18</sup> Article 6, Regulation (EU) 2016/399 ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>



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**Member State (MS)** - In the context of this study, the term 'Member State' includes both European Union (EU) Member States<sup>19</sup> and the States participating in the relevant development of the Schengen acquis in the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, that is Norway, Iceland, Liechtenstein, and Switzerland.

**Reaction capability** - The ability to perform actions aimed at countering illegal cross-border activities at, along or in the proximity of the external borders, including the means and timelines to react adequately.<sup>20</sup>

**Risk analysis** - The task carried out by European Border and Coast Guard consisting in collecting and analysing information regarding the situation, trends and possible threats at the external borders and in the field of return.<sup>21</sup>

**Return** - means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

- his or her country of origin, or;
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or;
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.<sup>22</sup>

**Schengen Area** or '**Area without internal borders**' - refers to the area made of the territories of the Schengen States fully applying the Schengen acquis,<sup>23</sup> where controls at internal borders have been lifted (and therefore excluding Bulgaria, Cyprus and Romania). At time of writing, this encompasses most EU countries: Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden. The Schengen area also includes the members of the European Economic Area (Iceland, Liechtenstein and Norway) as well as Switzerland.

Bulgaria, Cyprus and Romania apply the Schengen *acquis* to a large extent, but the decision to lift controls at internal borders has not yet been taken for these countries. Ireland has opted out of those provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985 relating to borders but participates in the ensemble of the provisions of the Schengen *acquis* concerning the establishment and operation of the Schengen information system.

**Schengen Associated Countries (SAC)** - Non-EU States which are part of the Schengen Area but not of the European Union, namely Iceland, Liechtenstein, Norway

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<sup>19</sup> List of Member States of the European Union, available at: [https://european-union.europa.eu/principles-countries-history/country-profiles\\_en](https://european-union.europa.eu/principles-countries-history/country-profiles_en)

<sup>20</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>21</sup> Article 29, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>22</sup> Article 2, Directive (EU) 2008/115/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>

<sup>23</sup> Annex to the Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C(2019) 7131 final), available at: [Practical handbook for border guards\\_en.pdf \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32019R1896)

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and Switzerland.<sup>24</sup> They are bound by the EBCG Regulation as this Regulation constitutes a development of the provisions of the Schengen acquis.<sup>25</sup>

**Schengen Borders Code** - Regulation (EU) 2016/399<sup>26</sup> on a Union Code on the rules governing the movement of persons across borders. Regulation (EU) 2016/399 has been amended several times since its entry into force.<sup>27</sup>

**Situational awareness** - The ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and to be better able to reduce the loss of lives of migrants at, along or in the proximity of the external borders.<sup>28</sup>

**Situational picture** - An aggregation of geo-referenced near-real-time data and information received from different authorities, sensors, platforms and other sources which is transmitted across secured communication and information channels and can be processed and selectively displayed and shared with other relevant authorities in order to achieve situational awareness and support the reaction capability at, along or in the proximity of the external borders and the pre-frontier area.<sup>29</sup>

**Statutory staff** - The staff employed by the European Border and Coast Guard Agency in accordance with the Staff Regulations of Officials of the European Union (the 'Staff Regulations') and the Conditions of Employment of Other Servants of the Union (the 'Conditions of Employment') laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (34).<sup>30</sup>

**Third-country national** - Any person who is not a Union citizen within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union (TFEU) and who is not covered by point 5 of Article 2 of Regulation (EU) 2016/399.<sup>31</sup>

**Vulnerability assessment** - The assessment carried out by the European Border and Coast Guard Agency on the availability of the Member States' technical equipment,

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<sup>24</sup> Adapted from European Commission, Migration and Home Affairs, Policies, available at: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area_en)

<sup>25</sup> Recital (121), (122) and (123), Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>26</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders ('Schengen Borders Code'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>.

<sup>27</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders; available at: [EUR-Lex - 32017R0458 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0458); Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders; available at: [EUR-Lex - 32017R0458 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0458); Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System; available at: [EUR-Lex - 32017R2225 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2225); Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA; available at: [EUR-Lex - 32019R0817 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0817)

<sup>28</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>29</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>30</sup> Article 2, Regulation (EU) 2019/1896 ('European Border and Coast Guard Regulation'), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>31</sup> Article 2, Regulation (EU) 2016/399 (Schengen Borders Code), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

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systems, capabilities, resources, infrastructure, and adequately skilled and trained staff necessary for border control.<sup>32</sup>

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<sup>32</sup> Article 32, Regulation (EU) 2019/1896 (European Border and Coast Guard Regulation), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

## Annex 2 Evaluation Framework

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
Relevance	<b>EQ1. Relevance of scope and objectives: To what extent did the scope and objectives of the EBCG Regulation remain relevant to current and emerging needs and challenges over the implementation period?</b>			
	<p><b>EQ1.1.</b> To what extent are the <b>scope and objectives of EBCG Regulation</b> aligned with <u>current</u> needs and challenges in external border management and in implementing the EU return policy?</p> <p><b>EQ1.2.</b> To what extent are the <b>scope and objectives of EBCG Regulation</b> adept to addresses <u>emerging</u> and potential <u>future</u> challenges and threats at the external borders and in the field of return?</p> <p><b>EQ1.3.</b> Are there any <b>gaps</b>, in terms of remaining needs or challenges, which should be addressed/remain unaddressed by the EBCG Regulation?</p>			
	<ul style="list-style-type: none"> <li>The changes introduced by EBCG Regulation [were / were not/partially] suitable to address other problems and challenges identified.</li> <li>The scope of the EBCG Regulation [are/are not/partially] relevant to the current needs over the implementation period.</li> <li>The objectives of the Agency (see page 3 of ToR) are relevant to the current needs over the implementation period.</li> <li>The objective related to protection of external borders [is/is not/partially] relevant to the current needs over the implementation period.</li> <li>The objective of implementation of European integrated border management [is/is not/partially]</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping and typology of current needs and challenges by stakeholder type and by policy area.</li> <li>Mapping and typology of emerging needs and potential future challenges by stakeholder type and by policy area.</li> <li>Degree of alignment between the objectives of the EBCG Regulation and the problems and challenges identified.</li> <li>Suitability of the EBCG Regulation to support the objectives of European integrated border management.</li> <li>Degree to which the current problems identified had been reported / reflected in evaluations and studies prior to and after 2019.</li> <li>Degree of importance of the identified gaps, in terms of their potential impact on the objectives of the EBCG Regulation</li> <li>Suitability of the EBCG Regulation to cover any identified, unaddressed problems.</li> </ul> <p><b>Opinion-based indicators:</b></p>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.3</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>relevant to the current needs over the implementation period.</li> <li>The objective related to return policy [is/is not/partially] relevant to the current needs over the implementation period.</li> <li>The objective related to migration management [is/is not/partially] relevant to the current needs over the implementation period.</li> <li>The objective related to internal security [is/is not/partially] relevant to the current needs over the implementation period.</li> <li>The objectives [could / could not] be better addressed by adopting other regulatory / non-regulatory measures.</li> <li>The challenges, needs and priorities [have / have not] evolved since 2019.</li> <li>The EBCG Regulation addresses current and emerging as well as potential future needs and developments which are relevant for the different stakeholder types identified.</li> <li>Some of the problems identified were not captured by the EBCG Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Perceptions/views from stakeholders and experts considering that the changes introduced by EBCG Regulation [were / were not/partially] suitable to address other problems and challenges identified.</li> <li>Stakeholders' and experts' views on the suitability of EBCG Regulation to address emerging and potential future needs and challenges.</li> <li>Stakeholder and expert perception on whether there was room for further alignment between the objectives and scope of the EBCG Regulation and the current and emerging needs and challenges.</li> </ul> <p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of current or emerging needs or problems that are not addressed by the current Regulation.</li> <li>Number of activities (e.g., operations, trainings, publications etc.) covering EBCG Regulation objectives.</li> <li>Annual allocation of resources to thematic areas identified as objectives in the EBCG Regulation.</li> <li>Budget utilisation – Actual money spending on areas identified as priorities, as well as spending rate, i.e., percentage of actual money spending compared to resources allocated.</li> <li>Frontex Risk Analysis Network (FRAN) Indicators: <ol style="list-style-type: none"> <li>Detections of illegal border-crossing between Border Crossing Points (BCPs);</li> <li>Detections of illegal border-crossing at BCPs;</li> <li>Detections of suspected facilitators;</li> <li>Detections of illegal stay;</li> <li>Refusals of entry;</li> <li>Asylum applications;</li> <li>Detections of false documents;</li> </ol> </li> </ul>		

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>The EBCG Regulation [is / is not] a suitable tool to address the new challenges or elements identified.</li> </ul>	8) Return decisions for illegally staying third-country nationals; 9) Returns of illegally staying third-country nationals.		
<p><b>EQ2. To what extent have the EBCG and in particular Frontex activities (as per Art. 10 of the EBCG Regulation) been relevant in addressing the needs/challenges presented at the EU external borders? Are they still relevant in view of current needs and challenges and have the needs and challenges evolved over time?</b></p> <p><b>EQ2.1.</b> To what extent have the EBCG and in particular Frontex activities (as per Art. 10 of the EBCG Regulation) been relevant in addressing the needs/challenges presented at the EU external borders and in the field of return?</p> <p><b>EQ2.2.</b> Are the activities of EBCG and in particular Frontex (as per Art. 10 of the EBCG Regulation) still relevant in view of current needs and challenges?</p> <p><b>EQ2.3.</b> To what extent and how have the needs and challenges evolved over time?</p>			
<ul style="list-style-type: none"> <li>The EBCG and in particular Frontex activities (as per Art. 10 of the EBCG Regulation) [have been/ have not been / have partially been] relevant in addressing the needs of different stakeholders at the EU external borders.</li> <li>The EBCG and in particular Frontex activities (as per Art. 10 of the EBCG Regulation) [have been/ have not been / have partially been] relevant in addressing the challenges presented at the EU external borders.</li> <li>The EBCG and in particular Frontex activities (as per Art. 10 of the EBCG Regulation) are aligned with the scope and objectives of the EBCG Regulation.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping of number and type of activity implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, number of people rescued, number of smugglers identified, quantity of drugs seized, etc.).</li> <li>Mapping of number and type of outputs/practical results of activities implemented.</li> <li>Number of staff / stakeholders implementing activities.</li> <li>Duration / time scope of activities.</li> <li>Budget utilisation – Actual money spending on activities as per article 10 EBCG Regulation, as well as spending rate, i.e., percentage of actual money spending compared to resources allocated.</li> <li>FRAN Indicators.</li> <li>EDF-RAN (European Union Document-Fraud Risk Analysis Network).</li> <li>Return Data Collection indicators.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.3</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>The activities of EBCG and in particular Frontex (as per Art. 10 of the EBCG Regulation) [are/are not /are partially] relevant in view of current needs and challenges.</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping and typology of current needs and challenges by stakeholder type and by policy area.</li> <li>Mapping and typology of emerging needs and potential future challenges by stakeholder type and by policy area.</li> <li>Degree to which needs and challenges have evolved over time.</li> <li>Degree of alignment between the Frontex activities with the needs of different stakeholders.</li> <li>Degree of alignment between the Frontex activities with the challenges presented at the EU external borders.</li> <li>Degree of alignment between objectives of the EBCG Regulation and the problems and challenges identified.</li> <li>Level of achievement of the specific objectives foreseen by the Strategic Framework and reflected in the Single Programming Document's Strategic Action Areas: 1) Reduced Vulnerability of the External Borders based on Comprehensive Situational Awareness; 2) Safe, Secure and Well-Functioning EU External Borders; 3) Sustained European Border and Coast Guard Capabilities 4) Implement and support European Integrated Border Management to ensure safe and well managed EU external borders 5) Reinforce the external dimension aimed at multiplying Frontex operational impact through cooperation 6) Develop Upgraded Management System Aimed at Ensuring Accountability, Regularity and Legality of All Frontex Activities.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Perceptions from stakeholders and experts considering that Frontex activities have been relevant in addressing the needs of different stakeholders at the EU external borders.</li> <li>Stakeholders' and experts' views on the degree to which Frontex activities are adapted to emerging needs and challenges.</li> </ul>		

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Stakeholders' and experts' views on the degree to which Frontex activities are aligned with the scope and objectives of the EBCG Regulation.</li> <li>Stakeholders' perceived quality of the activities delivered.</li> </ul>		
<b>EQ.3. How did Member States make use of Frontex in the protection of EU external borders and migration management through:</b>			
<b>EQ3.1.</b> Joint Operations and rapid border interventions <b>EQ3.2.</b> Joint Return Operations <b>EQ3.3.</b> Risk Analysis			
<ul style="list-style-type: none"> <li>Degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint operation</li> <li>and rapid border interventions (as opposed to other operations at national/international level)</li> <li>Degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint return operation and rapid border interventions (as opposed to other operations at national/international level)</li> <li>Extent to which the operations were relevant to the objectives of protection of EU external borders and migration management</li> <li>Degree to which Member States have made use of Frontex in carrying out risk analysis (as</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Results in the context of Joint Operations carried out annually (number of person days or asset days by type of border; apprehensions, seizures, etc.).</li> <li>Type of technical and/or operational assistance provided by Frontex by coordinating and organising joint operations.</li> <li>Number and type of other (alternative) operations organised at national/international level.</li> <li>Type of technical equipment deployed in joint operations.</li> <li>Number of Rapid border interventions carried out annually.</li> <li>Number and type of Return Operations (breakdown by Joint and National) carried out annually, and indicators linked to related results (e.g. number of persons escorted; number of flights, etc).</li> <li>Number and type of Risk Analysis and related products carried out annually.</li> <li>Number of Standing Corps deployed (by types of border crossings, functions, EU/third countries).</li> </ul> <p><b>Qualitative indicators:</b></p>	<ul style="list-style-type: none"> <li>Desk research, including Joint Operation Final Evaluation Reports, Risk Analysis Annual reports and the biannual Strategic Risk Analysis</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>4.1.4 (EQ3.1)</li> <li>4.1.5 (EQ3.2)</li> <li>4.1.6 (EQ3.3)</li> </ul>



EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>opposed to other operations at national/international level)</li> </ul>	<ul style="list-style-type: none"> <li>Level of achievement of focus areas of the Single Programming Document's Strategic Action Areas (e.g., Provide effect-oriented and flexible operational response; Position Frontex as an important player in the area of combatting cross-border crime; Support migration management by ensuring effective returns).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint operation.</li> <li>Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in the protection of EU external borders by organising return operation.</li> <li>Stakeholders' and experts' views on the degree to which Member States have made use of other (alternative) operations at national/international level.</li> <li>Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in carrying out risk analysis (as opposed to other operations at national/international level).</li> </ul>		
<p><b>EQ.4. How is the upgrade of the communication network (Article 14) up to CONFIDENTIAL UE/EU CONFIDENTIAL relevant for the functioning of the EBCG and its operational needs, including the exchange of information in EUROSUR?</b></p>			
<ul style="list-style-type: none"> <li>The upgrade of the communication network (Article 14) up to CONFIDENTIAL UE/EU CONFIDENTIAL is [is not] relevant for the functioning of the EBCG and its operational needs, including the exchange of information in EUROSUR.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of resources involved in the operationalisation of the upgraded communication network.</li> <li>Budget utilisation and budget allocated to the upgraded communication network, in comparison to previous communication network's budget.</li> <li>Number of people trained for the use of the new communication network systems.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>4.1.6</li> </ul>

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
		<ul style="list-style-type: none"> <li>Metrics on the use of the network (e.g. number of confidential documents / information units shared; number of Member States exchanging information via the network).</li> <li>Amount of EU classified information on CONFIDENTIAL UE/EU CONFIDENTIAL level that would be exchanged.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Level of success of operations in relation to the role of the upgraded communication networks.</li> <li>Extent of reduced vulnerability of external borders, and well-functioning of the EU external border management, as a consequence of the upgraded communication network.</li> <li>Level of achievement of objectives under Focus Area 1.2 “Create an EBCG environment and community of intelligence-led operational activities”, of the Single Programming Document’s Strategic Objective 1 “Reduced vulnerability of the external borders”.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts’ views on the relevance for EBCG operations of the novelties introduced in the communication network.</li> <li>Stakeholders’ opinions on the resilience and security of IT systems.</li> <li>Stakeholders’ view on the level of guaranteed confidentiality of information shared.</li> <li>Stakeholders’ view on the scope of the communication network (a multipurpose network, not limited to EUROSUR only).</li> </ul>	<ul style="list-style-type: none"> <li>Legal analysis</li> </ul>	
<b>Effective</b>	<p><b>EQ5. How and to what extent did Frontex meet its core objectives and priorities as set out in the EBCG Regulation? How has the EBCG as a whole and in particular the Agency progressed and achieved results with respect to each specific component of the European integrated border management?</b></p> <p><b>EQ 5.1</b> How and to what extent did Frontex support Member States in protecting and managing EU external borders through operational activities?</p> <p><b>EQ 5.2</b> How and to what extent did Frontex support Member States through all phases of return procedures?</p>			

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p><b>EQ 5.3</b> How and to what extent did Frontex reduce vulnerabilities at external borders through improved situational awareness (including extent to which risk analysis contributed to the improvement of situational awareness)?</p> <p><b>EQ 5.4</b> How and to what extent did Frontex support Member States through capacity building activities?</p> <p><b>EQ 5.5</b> How and to what extent did Frontex implement horizontal activities (education &amp; training; research &amp; innovation; fundamental rights) through intra-Agency and inter-Agencies cooperation?</p> <p><b>EQ 5.6</b> How and to what extent did Frontex promote and respect fundamental rights through all Agencies' activities?</p>			
<ul style="list-style-type: none"> <li>Frontex [met/did not meet/partially met] its core objectives and priorities as set out in the EBCG Regulation.</li> <li>Frontex achieved tangible results and outputs that can be directly linked to its core objectives and priorities.</li> <li>Frontex supported [did not/partially] Member States in protecting and managing the EU external borders through operational activities and integrated planning, in particular, Joint Operations, Joint Return Operations and Risk Analysis.</li> <li>Frontex supported [did not/partially] capacity building activities through training, research and development and human and technical resources.</li> <li>Frontex supported [did not/partially] Member States in the area of return through all phases of return procedures (return decisions, voluntary returns, post-arrival and re-integration) and</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping of number and type of activities implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, etc).</li> <li>Outputs and specific results achieved from activities (e.g., number of people rescued, number of smugglers identified, quantity of drugs seized, etc.).</li> <li>Mapping of number and type of outputs/practical results of activities implemented per activities set out in the Annual Work Programmes.</li> <li>Progress towards strategic and horizontal objectives as set out in multi-annual programming documents.</li> <li>Progress towards achievement of Key Performance Indicators (KPI) as set out in multi-annual Programming document.</li> <li>Budget utilised for each activity.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Level of achievement of Frontex's objectives and priorities.</li> <li>Degree to which the results achieved can be attributed to specific Frontex activities.</li> <li>Level of Frontex's contribution to specific components of the European integrated border management, including inter alia: border control, including measures to facilitate legitimate border crossings and detection of cross-border crime;</li> </ul>	<ul style="list-style-type: none"> <li>Desk research (e.g., Single Programming Documents, Consolidated Annual Activity Reports, Commission opinions to Frontex Single Programming, ECA Special Report on Frontex, etc.)</li> <li>Stakeholder semi-structured interviews</li> <li>Targeted surveys</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>EQ5.1: Section 4.1.4</li> <li>EQ5.2: Section 4.1.5</li> <li>EQ5.3: Section 4.1.6</li> <li>EQ5.4: Section 4.1.7</li> <li>EQ5.5: Section 4.1.8</li> <li>E.Q.5.6, Section 4.1.9, Annex 5</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p>strengthen cooperation with third countries, in line with the EU's comprehensive external engagement.</p> <ul style="list-style-type: none"> <li>• Frontex supported [did not/partially] improved situational awareness.</li> <li>• Frontex [successfully/unsuccessfully] implemented horizontal activities through inter-agencies and intra-Agency cooperation and integration.</li> <li>• Frontex [successfully/unsuccessfully] promoted and respected fundamental rights through all the Agency's activities.</li> <li>• Frontex, together with the Member States, [successfully/unsuccessfully] ensured the effective implementation of European integrated border management.</li> <li>• EBCG as a whole and in particular the Agency has [has not/partially] progressed and achieved results with respect to each specific component of the European integrated border management (as spelled out in Art. 3 of the ECBG Regulation).</li> </ul>	<p>search and rescue operations for persons in distress at sea;</p> <p>risk and threat analysis;</p> <p>information exchange and cooperation between Member States;</p> <p>cooperation with third countries in particular on neighbouring third countries and countries of origin or transit for illegal immigration;</p> <p>technical and operational measures related to border control;</p> <p>return of third-country nationals;</p> <p>use of state-of-the-art technology including large-scale information systems.</p> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>• Stakeholders' and experts' views on the degree to which Frontex [successfully] met the objectives and priorities set out the EBCG Regulation.</li> <li>• Stakeholders' and experts' views on the degree to which Frontex [successfully] contributed to each specific component of the European integrated border management.</li> </ul>		

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p><b>EQ6. How effective has the implementation of the EBCG Regulation by the Member States and by Frontex been? What factors contributed to a successful delivery and what obstacles were encountered?</b></p> <p><b>EQ6.1</b> How effective has been the implementation of operational activities?  <b>EQ6.2</b> How effective has been the implementation of capacity building activities?  <b>EQ6.3</b> How effective has been the implementation of horizontal activities?  <b>EQ6.4</b> How effective has been the observance and promotion of and fundamental rights?</p>			
<ul style="list-style-type: none"> <li>The implementation of the EBCG Regulation by the Member States and by Frontex has been [not been/partially been] effective.</li> <li>The implementation of the EBCG operational activities by the Member States and by Frontex been [not been/partially been] effective.</li> <li>The implementation of the EBCG capacity building activities by the Member States and by Frontex been [not been/partially been] effective.</li> <li>The implementation of the EBCG horizontal activities by the Member States and by Frontex been [not been/partially been] effective.</li> <li>The observance and promotion of fundamental rights in the context of EBCG by the Member States and by Frontex been [not been/partially been] effective.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping of number and type of activities implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, etc).</li> <li>Outputs and specific results achieved from activities (e.g., number of people rescued, number of smugglers identified, quantity of drugs seized, etc.).</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Level of achievement of the Single Programming Document's Strategic and Horizontal Objectives (e.g., Reduced Vulnerability of the External Borders; Safe, Secure and Well-Functioning EU External Borders; Develop an upgraded Management System aimed at ensuring Accountability, Regularity and Legality of all Frontex activities, etc.).</li> <li>Level of implementation of operational activities by Frontex under the EBCG Regulation.</li> <li>Level of implementation of capacity-building activities by Frontex under the EBCG Regulation.</li> <li>Level of implementation of horizontal activities by Frontex under the EBCG Regulation.</li> <li>Level of observance and promotion of fundamental rights by Frontex under the EBCG Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research (e.g. Single Programming Documents, Consolidated Annual Activity Reports, Commission opinions to Frontex Single Programming, ECA Special Report on Frontex, relevant action plans from the EIBM and Joint Operation Final Evaluation Reports etc.)</li> <li>Stakeholder semi-structured interviews</li> <li>Targeted surveys</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>EQ6.1: Section 4.1.4</li> <li>EQ6.2: Section 4.1.7</li> <li>EQ6.3: Section 4.1.9 + 4.1.8</li> <li>EQ6.4, Section 4.1.9, Annex 5</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>There are certain identifiable factors that contributed to a successful delivery and implementation of the EBCG Regulation by the Member States and by Frontex.</li> <li>There are certain identifiable obstacles encountered in the delivery and implementation of the EBCG Regulation by the Member States and by Frontex.</li> </ul>	<ul style="list-style-type: none"> <li>Level of cooperation at strategic and operational level amongst Member States and with the assistance of Frontex.</li> <li>Extent to which shared responsibility of the implementation of the EBCG Regulation was effective/ successful.</li> <li>Identification of success factors encountered by (i) Member States and (ii) Frontex in the implementation of the EBCG Regulation.</li> <li>Identification of obstacles encountered by Frontex in the implementation of the EBCG Regulation.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' opinion on the extent of the effectiveness of Frontex and Member States' activities in implementing the EBCG Regulation.</li> <li>Stakeholders and experts' opinion on main challenges and main strength in the implementation of the EBCG Regulation.</li> </ul>		
<b>EQ7. What external factors have affected progress towards the objectives and how are they linked to the EBCG Regulation?</b>			
<ul style="list-style-type: none"> <li>There are certain identifiable factors that boosted/hindered the progress towards the achievement of the objectives, including:  Overall budget management and rules at EU level may have impacted planning and resource allocation;  Third country cooperation factors may have impacted JOs, returns, or other cooperation activities;  Overall migration situation or events (eg. COVID, crisis at</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Nature of the external factors identified (crisis at the external borders; fundamental rights complaints).</li> <li>Mapping of Frontex initiatives to respond to external factors (e.g., Flexibility index: extent to which Frontex is able to adapt and deploy).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Proportion of stakeholders considering that the effectiveness of achieving the objectives was positively/negatively impacted by internal/external factors.</li> <li>Opinions on what factors may have boosted/hindered the effectiveness of achieving the objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.10 + Annex 7</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p>Belorussian border, war in Ukraine) may have shifted resources to new priorities;</p> <p>Member State (in)actions may have limited or delayed the effective implementation or achievement of objectives by the Agency. (e.g. implementation of EUROSUR, or vulnerability assessment).</p> <ul style="list-style-type: none"> <li>The achievement of objectives was positively/negatively impacted by certain identifiable internal/external factors.</li> </ul>			
<p><b>EQ8. How has Frontex contributed to better coordination and cooperation between the relevant stakeholders in particular in and between Member States in the context of European Integrated Border Management?</b></p> <p><b>EQ8.1</b> How did Frontex contribute to establishing and developing mechanisms for operational cooperation to implement the concept of European Integrated Border Management (EIBM), including establishing the Multiannual Strategic Policy Cycle; translating Commission strategic steering into the Technical and Operational EIBM strategy, and facilitating and fostering the implementation of the Technical and Operational strategy for EIBM across the EBCG)?</p>			
<ul style="list-style-type: none"> <li>Frontex has [not /partially] contributed to better coordination between the relevant stakeholders in particular in and between Member States in the context of Integrated Border Management.</li> <li>Frontex has [not /partially] contributed to better cooperation between the relevant stakeholders in particular in and between Member States in the context of EIBM.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of working arrangements concluded with stakeholders.</li> <li>Share of stakeholders involved in Frontex activities in the context of EIBM.</li> <li>Estimate of risk analyses or analytical products produced and shared with stakeholders, particularly Member States.</li> <li>Metrics linked to EUROSUR use that demonstrate coordinated approach.</li> </ul> <p><b>Qualitative indicators:</b></p>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research, including the thematic evaluation of the European integrated border management (EIBM) strategies and the 2019 technical and operational</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.2.2</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Extent to which Single Programming Document's Horizontal Objective 1, Focus Area 4.1 has been achieved, i.e., "Establish and develop mechanisms for operational cooperation to implement the concept of the EIBM".</li> <li>Typology and extent of support provided to stakeholders.</li> <li>Level of cooperation at strategic and operational level amongst Member States and with the assistance of Frontex.</li> <li>Extent and quality of information exchange between Frontex and Member States.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' and experts' views on the degree to which Frontex [successfully] contributed to each specific component of the EIBM.</li> <li>Stakeholders' opinion on the effectiveness of Frontex initiatives in coordinating initiatives in the context of EIBM.</li> <li>Stakeholders' level of satisfaction about Frontex role in EIBM activities.</li> </ul>	<p>strategy for EIBM (TO EIBM)</p> <ul style="list-style-type: none"> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	
<p><b>EQ9. Are Frontex operational activities based on an up-to-date and comprehensive risk analysis?</b></p> <p><b>EQ 9.1</b> To what extent did Frontex produce reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance, to inform its operational activities?</p> <p><b>EQ 9.2</b> To what extent did Frontex produce risk analysis (pre-warning and forecasting) within all four tiers of EIBM to inform its operational activities?</p>			
<ul style="list-style-type: none"> <li>Frontex operational activities based on an up-to-date risk analysis.</li> <li>Frontex operational activities based on a comprehensive risk analysis, integrating data from multiple sources, including Member States data, EUROSUR, vulnerability assessments, liaison</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of risk analyses and related products conducted and linked to specific operational activities.</li> <li>Number of (mega-)trends identified.</li> <li>Number of risk analysis centres and networks set up.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Typology of (mega-)trends identified.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research, including Frontex' Operational Plans, Risk analysis reports</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.6</li> </ul>



EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>officers, third countries (e.g. AFIC), open sources, partner EU agencies.</li> <li>Frontex risk analyses provide data which fulfils the operational needs.</li> </ul>	<ul style="list-style-type: none"> <li>Extent to which FRAN Indicators are achieved through Frontex activities (e.g., detention of illegal-border crossing, returns, detections of false documents, etc.).</li> <li>Extent of achievement of Single Programming Document Focus Areas objectives (e.g., 1.1, 1.2., 1.3.).</li> <li>Extent of development of risk analysis capabilities.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' and experts' views on the suitability of Frontex's risk analysis to serve operational activities.</li> <li>Stakeholders and experts' opinions on the level of activities' compliance with risk analysis conclusions.</li> </ul>	<ul style="list-style-type: none"> <li>Thematic case studies</li> <li>Field visits</li> </ul>	
<b>EQ10. How and to what extent has Frontex delivered relevant assistance to Member States in the training of national border/coast guards, including the establishment of common training standards?</b>			
<ul style="list-style-type: none"> <li>Frontex [successfully / unsuccessfully] delivered relevant assistance to Member States in the training of national border/coast guards, including the establishment of common training standards.</li> <li>Frontex Common Core Curriculum was successfully integrated into national training programmes, contributing to harmonisation of border and coast guarding education, improved competence and interoperability.</li> <li>Frontex Common Core Curriculum [has/ has not] proven to be effective in practice.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number and types of trainings delivered (with relevant metrics such as number of training hours).</li> <li>Number of border/coast guards trained.</li> <li>Number of training guidelines/standards produced and delivered.</li> <li>Budget allocation and utilisation for training activities.</li> <li>Share of stakeholders agreeing on sufficient time being dedicated to trainings.</li> <li>Relevant indicators from feedback forms from trainees.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Evidence of Member States' needs assessment carried out.</li> </ul>	<ul style="list-style-type: none"> <li>Relevant documents, including Common Core Curricula, European Joint Master, interviews and questionnaires with Frontex (including with Standing Corps categories 2 and 3)</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.7.1</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Extent of achievement of Single Programming Document's Strategic Objectives (e.g., SO. 3 – Sustained European Border and Coast Guard Capabilities).</li> <li>Extent to which objectives and structure of trainings are in line with the objectives of the EBCG Regulation and the needs identified through risk analysis.</li> <li>Extent of cooperation with stakeholders in the designing of training activities.</li> <li>Satisfaction score (CSAT) of the internal and external stakeholders.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Trainees' level of satisfaction.</li> <li>Trainers' level of satisfaction.</li> <li>Stakeholders' opinion and feedback on trainings.</li> </ul>	<ul style="list-style-type: none"> <li>Thematic case studies</li> <li>Field visits</li> </ul>	
<b>EQ11. How has Frontex supported Member States by deploying its technical equipment in the Member States?</b>			
<ul style="list-style-type: none"> <li>Frontex has [successfully / unsuccessfully] supported Member States by deploying its technical equipment in the Member States.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Agency's share of the pool for technical equipment.</li> <li>Types and number of equipment procured between 2019 – 2022.</li> <li>Extent of technical equipment deployed to provide assistance, per category/typology of equipment (e.g., IT equipment, logistic equipment, military equipment, etc.).</li> <li>Asset days reported in JOs / Rapid Border Interventions.</li> <li>Budget allocated and utilised to develop technical equipment.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent to which technical equipment matches defined operational needs.</li> <li>Extent to which technical equipment and resources are made available.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Information from OperaEvo and Annual Bilateral Negotiations</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.7.1.3</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Level of achievement of strategic objectives (e.g., SO.2 – Focus Area 2.1: Provide effect-oriented and flexible operational response).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on the suitability of technical equipment to respond to operational needs.</li> <li>Stakeholders' level of satisfaction about the cooperation with Frontex on sharing technical equipment.</li> <li>Stakeholders' experience with the deployment of technical equipment with focus on timing, efficiency, responsiveness, etc.</li> </ul>		
<p><b>EQ12. How has Frontex cooperated with authorities in third countries? How has Frontex facilitated cooperation between Member States and authorities in third countries? To what extent has this cooperation been framed within a broader framework of the EU's external action?</b></p>			
<ul style="list-style-type: none"> <li>Frontex has [successfully / unsuccessfully] cooperated with authorities in third countries.</li> <li>Frontex has [successfully / unsuccessfully] facilitated cooperation between Member States and authorities in third countries.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of working arrangements and agreements concluded with authorities in TCs.</li> <li>Share of cooperation activities with TCs, including countering irregular migration, countering cross-border crimes, rescuing people etc.</li> <li>Number of liaison officers in third countries.</li> <li>Number of trainings of TCs' national border guards.</li> <li>Number of operations conducted in/in cooperation with TCs.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent and typology of operational and technical assistance to authorities in TCs.</li> <li>Extent of achievement of Single Programming Document's Horizontal Objectives 2 "Reinforce the external dimension aimed at multiplying Frontex operational impact through cooperation with [...] third countries".</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research, including International cooperation Strategy 2021-2023, reporting on international cooperation and operational activities to the Management Board</li> <li>Targeted surveys</li> <li>Semi-structured interviews, including with relevant CSDP</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.8</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Extent to which TCs' border management capacities have been supported.</li> <li>Extent and quality of information sharing between Frontex, Member States and TCs, including in the EUROSUR framework.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinions on the extent to which Frontex coordinate operational cooperation between Member States and TCs.</li> <li>Stakeholders and experts' opinions on the quality of the support, expertise, equipment etc. provided by Frontex to TCs.</li> <li>Stakeholders and experts' opinions on the effectiveness of cooperation with TCs for achieving Frontex's operations objectives.</li> </ul>	<ul style="list-style-type: none"> <li>missions and operations and respective EU Delegations, as well as EEAS (CPCC, ISP, SecDefPol)</li> <li>Thematic case studies</li> </ul>	
<p><b>EQ13. How has Frontex cooperated with the EU agencies, CSDP Missions and Operations and international organisations, in particular on the coast guard functions with EFCA and EMSA and with relevant national/international organisations?</b></p> <p><b>EQ13.1</b> How does the agency cooperate with international organisations and does the EBCG Regulation allow the Agency to cooperate with all international organisations that are relevant for carrying out its tasks efficiently?</p> <p><b>EQ13.2</b> How has the Agency cooperated with EU agencies?</p> <p><b>EQ13.3</b> How has the Agency cooperated with CSDP Missions and Operations? Is the existing framework of cooperation sufficient? How could it be improved?</p>			
<ul style="list-style-type: none"> <li>Frontex has [successfully / unsuccessfully] cooperated with the EU agencies, CSDP Missions and Operations and international organisations, in particular on the coast guard functions with EFCA and EMSA and with relevant national/international organisations.</li> <li>The EBCG Regulation allows [does not allow] the Agency to cooperate with all international</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of working arrangements and agreements concluded.</li> <li>Number of inter-agency studies, reports, collaborations.</li> <li>Number of activities performed in cooperation with CSDP Missions and Operations.</li> <li>Number of guidelines concluded with EMSA and EFCA.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Typology of support provided to EU Institutions and EU Delegations, CSDP Missions and Operations, international organisations.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews, including with Maritime Analysis and Operations Centre – Narcotics (MAOC – N), NATO MARCOM, European Coast Guard Functions</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.8</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
organisations that are relevant for carrying out its tasks efficiently.	<ul style="list-style-type: none"> <li>Level of achievement of Strategic Objective 2 Focus Area 2.3 “reinforcing the cooperation between Frontex, EMSA and EFCA for the development of European cooperation on Coast Guard Functions”.</li> <li>Alignment with guidelines and objectives agreed with EMSA and EFCA.</li> <li>Frontex’s level of cooperation in cost guard functions with EU agencies and international organisations.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders’ opinions on the quality and effectiveness of the coordinate approach between Frontex and EU institutions, agencies, delegations, CSDP Mission and Operations, and international organisations.</li> </ul>	<p>Forum (ECGFF), CSDP missions and operations and EEAS (CPCC, ISP, SecDefPol)</p> <ul style="list-style-type: none"> <li>Thematic case studies</li> </ul>	
<p><b>EQ14. How has Frontex promoted and respected fundamental rights through all the Agency’s activities?</b></p> <p><b>EQ14.1.</b> In which ways has Frontex created the conditions for ensuring and promoting the respect of Fundamental Rights in its activities?</p> <p><b>EQ14.2.</b> How has the Serious Incident Reports (SIRs) mechanism been implemented to provide an effective procedure to report and investigate potential fundamental rights violations?</p> <p><b>EQ14.3.</b> How has the Complaints Mechanism provided an effective and accessible tool for reporting, investigating, and remedying perceived breaches of fundamental rights?</p> <p><b>EQ14.4.</b> How effective is the fundamental rights framework established by the EBCG Regulation in ensuring the protection of fundamental rights in the course of executing the Agency’s mandate, including by empowering FR Monitors to conduct thorough and impartial monitoring activities?</p> <p><b>EQ14.5</b> How effectively has Frontex monitored return operations organised and coordinated by the Agency? (Article 50(5) of EBCG?)</p>			
<ul style="list-style-type: none"> <li>Frontex has [successfully/ unsuccessfully] promoted and respected fundamental rights through all the Agency’s activities.</li> <li>Frontex has created [not created] the conditions for ensuring and promoting the respect of Fundamental Rights in its activities in specific ways.</li> <li>The Serious Incident Reports (SIRs) mechanism has been</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Serious Incident Reports (SIRs) submitted by deployed staff and follow-ups (investigation in cooperation with involved Member State, actions to address identified shortcomings, redress, etc).</li> <li>Number of and complaints received by the Agency and follow-up actions taken.</li> <li>Estimates of the use of the Complaints Mechanism and follow-ups (actions taken to address identified shortcomings, redress, compensation, etc).</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research, including Fundamental Rights Officer reports, Action Plan for the implementation of fundamental rights related recommendations</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.9, Annex 5</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p>implemented [successfully/ unsuccessfully] to provide an effective procedure to report and investigate potential fundamental rights violations.</p> <ul style="list-style-type: none"> <li>The Complaints Mechanism has [has not] provided an effective and accessible tool for reporting, investigating, and remedying perceived breaches of fundamental rights.</li> <li>The fundamental rights framework established by the EBCG Regulation was effective [not effective] in ensuring the protection of fundamental rights in the course of executing the Agency's mandate.</li> <li>The expanded role of the oversight and monitoring provided by the Fundamental Right Officer contributes to higher level of compliance with human rights standards.</li> </ul>	<ul style="list-style-type: none"> <li>Number of legal complaints against Frontex.</li> <li>Number of trainings delivered on fundamental rights operations.</li> <li>Staff involved in developing a fundamental rights strategy and in fundamental rights related activities.</li> <li>Budget allocation and utilisation for fundamental rights related activities.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Level of compliance of Frontex's operations and activities with fundamental rights legislation (E.g., EU Charter of Fundamental Rights; Fundamental rights norms in EU JHA acquis, etc.).</li> <li>Level of compliance with FRA and external evaluators recommendations.</li> <li>Quality and effectiveness of fundamental rights' training contents.</li> <li>Extent of possibility to scrutinise compliance with fundamental rights in Frontex activities.</li> <li>Level of achievement of Single Programming Document's Horizontal objective 3 "Develop an upgraded Management System aimed at ensuring Accountability, Regularity and Legality of all Frontex activities".</li> <li>Extent to which objectives foreseen in the Fundamental Rights Strategy are met.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' views on the extent of effectiveness of the operations' fundamental rights monitoring.</li> <li>Stakeholders' opinion on the effectiveness of the Fundamental Rights Strategy and its level and quality of implementation.</li> </ul>	<p>(i.e. FSWG, WG FRaLO), Consultative Forum reports</p> <ul style="list-style-type: none"> <li>Targeted surveys, including with Consultative Forum</li> <li>Semi-structured interviews, including Fundamental Rights Agency</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	
<p><b>EQ15. How has Frontex supported Member States in the area of return through all phases of return procedures (return decisions, voluntary returns, post-arrival and re-integration)?</b></p>			

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p><b>EQ15.1.</b> How has the Agency supported Member States specifically in the area of post-arrival and post-return activities including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries?</p> <p><b>EQ15.2.</b> Which role has the Agency in building synergies and connecting Union-funded networks and programmes in the field of return in third countries?</p> <p><b>EQ15.3.</b> How has Frontex supported Member States in terms of coordinating return operations led by Member States?</p> <p><b>EQ15.4.</b> How has Frontex provided support to Member States in terms of organising Frontex-led operations?</p>			
<ul style="list-style-type: none"> <li>• Frontex has [successfully/ unsuccessfully] supported Member States in the area of return through all phases of return procedures (pre-return, returns, post-arrival and re-integration).</li> <li>• Frontex has [successfully/ unsuccessfully] supported Member States specifically in the area of post-arrival and post-return activities including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries.</li> <li>• The Agency has a specific role in building synergies and connecting Union-funded networks and programmes in the field of return in third countries.</li> <li>• Frontex has [successfully/ unsuccessfully] supported Member States in terms of coordinating return operations led by Member States.</li> <li>• Frontex has [successfully/ unsuccessfully] provided support</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>• Number of returns supported by Frontex (forced returns and voluntary returns and departures).</li> <li>• Number of personnel deployed on return procedures.</li> <li>• Budget allocation and utilisation for return procedures.</li> <li>• Number of pre - return procedures (e.g., identification missions) carried out, including in coordination with Member States and TCs.</li> <li>• Number of Frontex-led operations.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>• Extent to which FRAN indicators are met.</li> <li>• Extent of achievement of Single Programming Documents' Strategic Objectives such as "Safe, Secure and Well-Functioning EU External Borders", and Focus Areas such as "Support migration management by ensuring effective returns".</li> <li>• Degree to which Frontex has provided assistance to Member States' experiencing challenges with their return systems.</li> <li>• Level and quality of organisation and coordination of return operations</li> <li>• Extent to which the non-binding reference model for reference IT systems for return case management provide effective support to Member States' border guards.</li> <li>• Technical, including IT, equipment provided by Frontex.</li> <li>• Level of assistance provided in voluntary returns.</li> </ul>	<ul style="list-style-type: none"> <li>• Baseline analysis</li> <li>• Desk research</li> <li>• Targeted surveys</li> <li>• Thematic case studies</li> <li>• Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Section 4.1.5</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
to Member States in terms of organising Frontex-led operations.	<ul style="list-style-type: none"> <li>Support provided by Frontex to Member States in the areas of return through all phases of return process (as per Art. 48 of EBCG Regulation) in compliance with fundamental rights.</li> <li>Support provided by Frontex to Member States in strengthening cooperation with third countries, in line with the EU's comprehensive external engagement.</li> <li>Support provided by Frontex to Member States in post-arrival and post-return activities, including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries.</li> <li>Support provided by Frontex to Member States in organising and coordinating return operations led by Member States and Frontex-led operations.</li> <li>Analysis of organisation and coordination of return operations, including Joint Return Operations carried out.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' opinion on the role of Frontex in implementing returns operations.</li> <li>Stakeholders' view on the effectiveness and quality of Frontex's support to Member States and TCs on returns.</li> </ul>		
<p><b>EQ16. How has the exchange of information in the framework of EUROSUR improved situational awareness and reaction at the external borders of EU Member States? This concerns the cooperation between Member States as well as with third countries.</b></p> <p><b>EQ16.1</b> How has the Agency's and Member States' implementation of the EUROSUR framework been effective in terms of information exchange in order to improve the situational awareness and increase the reaction capabilities among the relevant stakeholders, including in the detection, prevention and combating of irregular immigration and cross-border crime as well as in contributing to the protection and saving the lives of migrants?</p> <p><b>EQ16.2</b> How did the Agency manage to integrate EUROSUR with the rest of the operational activities? Are there any duplications between EUROSUR and other operational information channels?</p>			
<ul style="list-style-type: none"> <li>The exchange of information in the framework of EUROSUR</li> </ul>	<p><b>Quantitative indicators:</b></p>	<ul style="list-style-type: none"> <li>Baseline analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.6</li> </ul>



EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<p>improved [did not improve] situational awareness and reaction at the external borders of EU Member States.</p> <ul style="list-style-type: none"> <li>The Agency's implementation of the EUROSUR framework has been [not been] effective in terms of information exchange in order to improve the situational awareness and increase the reaction capabilities among the relevant stakeholders, including in the detection, prevention and combating of irregular immigration and cross-border crime as well as in contributing to the protection and saving the lives of migrants.</li> <li>The Agency manage to integrate EUROSUR [successfully/unsuccessfully] with the rest of the operational activities.</li> <li>There are [are not] any duplications between EUROSUR and other operational information channels.</li> </ul>	<ul style="list-style-type: none"> <li>Number of EUROSUR activities conducted in support of MS/TCs.</li> <li>Number of events entered into EUROSUR (by MS and Frontex).</li> <li>Number of analytical reports shared in EUROSUR (by MS and Frontex).</li> <li>Other relevant quantitative indicators from EUROSUR to be provided by Frontex.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Level of cooperation between Frontex and MS/TCs through EUROSUR.</li> <li>Extent to which information is exchanged through EUROSUR.</li> <li>Level of achievement of Single Programming Document's Strategic Objectives, such as "Reduced Vulnerability of the External Borders based on Comprehensive Situational Awareness".</li> <li>Extent to which the development of operational technical capacities and IT systems such as EUROSUR has been sustained.</li> <li>Extent to which TCs' information exchange capabilities have been strengthened.</li> <li>Extent to which reporting is adapted to and compliant with EU legal framework, including fundamental rights.</li> <li>Quality of cross-border crime-related EUROSUR data collected and reported.</li> <li>Level of complementarity and/or inter-changeability between EUROSUR and other information exchange channels.</li> <li>Mapping of operational standards created to support EUROSUR.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' and experts' opinion on the level of operationalisation of EUROSUR's information exchange network and its compliance with EU law standards, including fundamental rights and data protection.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research, including EUROSUR evaluation report of 2022</li> <li>Targeted surveys</li> <li>Semi-structured interviews, including with EU SatCen, EMSA, EFCA, EASA, Frontex staff</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
Efficiency	<b>EQ17. Costs and benefits: What are the costs and benefits generated by EBCG (not only financial, but also operational) in each Member State, in Frontex and overall?</b>			
	<p><b>EQ17.1</b> Are there significant differences in cost and benefits in the Member States, and if so, what is causing them?</p> <p><b>EQ17.2</b> Have there been administrative costs or savings for citizens and business?</p>	<ul style="list-style-type: none"> <li>• There are certain costs generated by EBCG in each Member State, in Frontex and overall.</li> <li>• There are certain benefits generated by EBCG in each Member State, in Frontex and overall.</li> <li>• There are [are not] significant differences in cost and benefits in the Member States.</li> <li>• Certain factors contribute to potential significant differences in cost and benefits in the Member States.</li> <li>• There have been [not been] administrative costs or savings for citizens and business.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>• Direct costs (to Member States and Frontex) generated by the EBCG, including financial and operational costs (e.g., budget allocated and utilised for increasing/improving IT, military, coordination and logistic equipment).</li> <li>• Number of human resources employed on EBCG activities – specific attention to Vacancy rate and Turn-over rate.</li> <li>• Estimate on the time required for adopting/implementing major changes.</li> <li>• Number of external services used.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>• Typology of costs identified and stakeholders targeted (e.g., administrative costs, one-off costs, recurrent costs).</li> <li>• Scale and quality of benefits generated both in Member States and TCs (e.g., trainings delivered, operations concluded, exchange of information conducted, working arrangements concluded, etc.).</li> <li>• Perception of the efficiency of resource allocation in view of factors such as the priorities defined and the need for trained staff.</li> <li>• Efficiency in using available facilities, equipment, etc.</li> <li>• Evidence of activities not being implemented due to a lack of human or financial resources.</li> <li>• Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation.</li> </ul> <p><b>Opinion-based indicators:</b></p>	<ul style="list-style-type: none"> <li>• Baseline analysis</li> <li>• Desk research, including Frontex final evaluation report for each joint operation from the Agency and from Frontex evaluation report on Flexible Operational Activities in Return for the relevant years</li> <li>• Targeted surveys</li> <li>• Semi-structured interviews,</li> <li>• Thematic case studies</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Stakeholders' opinion on whether the benefits are greater than the costs incurred.</li> </ul>		
<b>EQ18. What factors have influenced the efficiency of the implementation of the EBCG Regulation? How and to what extent? (e.g. governance and set-up, clear division of competences between Member States and Frontex, policy framework, legal base, etc)</b>			
<ul style="list-style-type: none"> <li>Certain factors influenced the efficiency of the implementation of the EBCG Regulation.</li> <li>EU budgetary rules and the multiannual financial framework impacted (or not) the efficiency of the implementation of the EBCG Regulation.</li> <li>Member State / third country budgetary rules have / not impacted the efficiency of implementation of the EBCG Regulation.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Estimate on the time required for adopting/implementing major changes.</li> <li>Number of tools (e.g., IT equipment, infrastructure etc.) which required major changes.</li> <li>Number of trainings delivered and people trained.</li> <li>Budget allocated and utilised for adapting to novelties introduced with the EBCG Regulation.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent to which major changes needed to be introduced to comply with EBCG Regulation.</li> <li>Extent to which human resources have been capable to efficiently adapt to novelties.</li> <li>Cost categories where inefficiencies can be identified.</li> <li>Additional costs incurred due to the inefficiencies identified.</li> <li>Evidence of activities not being implemented due to a lack of human or financial resources.</li> <li>Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' views on factor hindering/boosting the efficiency of the EBCG Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.2 (policy framework) + 4.1.1 (legal base) + 4.1.3 (governance)</li> <li>Annex 7</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Proportion of stakeholders who consider that internal and external factors have facilitated/hindered the efficiency of the Regulation.</li> </ul>		
<b>EQ19. Are there any inefficiencies of the implementation of the EBCG Regulation? What is the simplification and cost reduction potential of the Regulation?</b>			
<ul style="list-style-type: none"> <li>Certain inefficiencies of the implementation of the EBCG Regulation have been identified.</li> <li>There is certain simplification and cost reduction potential of the Regulation.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Cost categories where inefficiencies can be identified.</li> <li>Number of Frontex activities where inefficiencies can be identified.</li> <li>Number of cost categories which can be simplified.</li> <li>Additional costs incurred due to the inefficiencies identified.</li> <li>Percentage of inefficiency costs on the total cost of the activities.</li> <li>Number and type of administrative inefficiencies identified.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Degree of alignment between budget allocated and expenditure.</li> <li>Evidence of activities not being implemented due to a lack of resources.</li> <li>Existence of administrative processes and obligations that are significantly burdensome.</li> <li>Alternative or additional measures to increase results.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on whether inefficiency in Frontex's activities (administrative and operational) can be identified.</li> <li>Stakeholders' opinion on the scope of further simplification and burden reduction.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research, including Budget implementation reports covering the period 2019-2023</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.10 and 4.1.11</li> <li>Annex 7.2.3</li> </ul>
<b>EQ20. Do the resources that have been allocated to Frontex correspond to the tasks assigned to the Agency by the EBCG Regulation?</b>			

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>The resources that have been allocated to Frontex correspond [do not correspond] to the tasks assigned to the Agency by the EBCG Regulation.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Allocation of budget per activity and actual budget utilised per activity.</li> <li>Cost categories where inefficiencies can be identified.</li> <li>Number of Frontex activities where inefficiencies can be identified.</li> <li>Percentage of inefficiency costs on the total cost of the activities.</li> <li>Budget allocated to hiring new resources.</li> <li>Turnover rate, vacancy rate</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Degree of alignment between budget allocated and expenditure.</li> <li>Evidence of activities not being implemented due to a lack of resources (human and financial).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to carry out tasks assigned.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research, including Budget implementation reports covering the period 2019-2023</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.10</li> <li>Annex 7.1.1</li> </ul>
<p><b>EQ21. How has Frontex used its human and financial resources to achieve the objectives set out in its work programmes during the 2019-2023 period? Is the distribution of resources adequate for meeting these objectives?</b></p>			
<ul style="list-style-type: none"> <li>Frontex has [successfully/ unsuccessfully] used its human and financial resources to achieve the objectives set out in its work programmes during the 2019-2023 period? Is the distribution of resources adequate for meeting these objectives.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of human resources employed on EBCG activities – specific attention to Vacancy rate and Turn-over rate.</li> <li>Allocation of budget per activity and actual budget utilised per activity.</li> <li>Cost categories where inefficiencies can be identified.</li> <li>Number of Frontex activities where inefficiencies can be identified.</li> <li>Percentage of inefficiency costs on the total cost of the activities.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.10</li> <li>Annex 7.1.1</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Budget allocated and utilised for adapting to novelties introduced with the EBCG Regulation.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Degree of alignment between budget allocated and expenditure.</li> <li>Evidence of activities not being implemented due to a lack of resources (human and financial).</li> <li>Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation.</li> <li>Extent to which major changes needed to be introduced to comply with EBCG Regulation.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to achieve the work programmes' objectives.</li> <li>Stakeholders' opinion on whether the resources allocated to Frontex have been allocated effectively within the Agency.</li> </ul>		
<b>EQ22. How and to what extent has the governance and organisational structure of the Agency enabled Frontex to perform its tasks, having regard to its size, composition and organisation?</b>			
<ul style="list-style-type: none"> <li>The governance and organisational structure of the Agency has enabled [has not enabled] Frontex to perform its tasks, having regard to its size, composition and organisation.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of human resources covering governance and organisational positions.</li> <li>Turnover rate.</li> <li>Budget allocated and actual expenditure for governance and organisational activities.</li> <li>Number of human resources employed on EBCG activities.</li> <li>Allocation of budget per activity and actual budget utilised per activity.</li> </ul> <p><b>Qualitative indicators:</b></p>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.3 + 4.1.10</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Degree of alignment between governance costs and tasks performed.</li> <li>Degree of alignment between budget allocated and expenditure for all activities.</li> <li>Extent to which governance costs are proportionate to size, composition and organisation of Frontex.</li> <li>Existence of administrative processes and obligations that are significantly burdensome.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on whether the organisation structure enabled Frontex to carry out tasks assigned.</li> </ul>		
<p><b>EQ23. How have the Agency's procedures and working practices been conducive to performing its tasks?</b></p> <p><b>EQ23.1</b> How have the Agency's internal coordination mechanisms (including Director briefings) helped facilitate cooperation at horizontal level?</p> <p><b>EQ23.2</b> Have the Agency's human resources been deployed effectively?</p> <p><b>EQ23.3</b> How have the Agency's strategies, action plans, operating procedures and guidelines supported the performance of its tasks?</p>			
<ul style="list-style-type: none"> <li>The Agency's procedures and working practices have [have not] been conducive to performing its tasks.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of human resources employed on EBCG activities.</li> <li>Allocation of budget per activity and actual budget utilised per activity.</li> <li>Budget allocated and utilised for developing working practices and procedures.</li> <li>Number of new working practices (e.g., codes of conduct, working guidelines, etc.) produced.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent to which human resources have been capable to efficiently adapt to the Agency's procedures and working practices.</li> <li>Degree of alignment between governance costs and tasks performed.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.3 and section 4.1.10</li> </ul>

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
		<ul style="list-style-type: none"> <li>Existence of administrative processes and obligations that are significantly burdensome.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to carry out tasks assigned.</li> <li>Stakeholders' opinion on whether new working procedures are aligned with the Agency's objectives.</li> <li>Stakeholders' opinion on whether new working procedures are aligned with the EBCG Regulation's objectives and tasks foreseen.</li> <li>Stakeholders' opinion on whether new working procedures have facilitated working performances.</li> </ul>		
	<b>EQ24. To what extent are Frontex data collection for the risk analysis and vulnerability assessments coherent?</b>			
Coherence	<ul style="list-style-type: none"> <li>Frontex data collection for the risk analysis and vulnerability assessments are [are not] coherent.</li> <li>The information collected via the vulnerability assessment process is accurate, up-to-date, and comprehensive allowing for the preparation of an effective risk analysis, serving operational and strategic needs.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Categorisation of data gaps in vulnerability assessments by Member State, type, thematic area covered etc.</li> <li>Existence and nature of overlaps between the different types of data collected.</li> <li>Existence and nature of exploited / unexploited synergies between data collected.</li> <li>Existence and frequency of use of internal data-sharing exchange mechanisms and processes.</li> <li>Existence and frequency of use of mechanisms and processes to involve Frontex's staff members responsible for the different activities in the design and planning process of data collection.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' views on coherence of data collected.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>4.1.6</li> </ul>



EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Stakeholders' perceptions of obstacles and areas for improvement.</li> </ul>		
<b>EQ25. To what extent have the objectives and activities of the EBCG been coherent with other relevant EU policies and objectives? (e.g., migration and asylum, EU visa policy, EU's Common Foreign and Security Policy, Common Security and Defence Policy (CSDP), etc)</b>			
<ul style="list-style-type: none"> <li>The objectives and activities of the EBCG have been [have not been] coherent with other relevant EU policies and objectives.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of references to EBCG's activities in EU policy reports.</li> <li>Number and typology of cooperation and coordination mechanisms established in order to ensure coherence and complementarity of activities at EU level and to avoid overlaps.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Degree of coherence of EBCG's activities with the objectives and activities of other EU institutions, bodies and agencies, as well as relevant policies.</li> <li>Extent to which Frontex participates in boards / working groups or other cooperation mechanisms with other EU Agencies (Europol, Eurojust, eu-LISA, FRA, etc).</li> <li>Existence and nature of the synergies between EBCG's activities and other EU institutions, bodies and agencies.</li> <li>Existence of unexploited synergies between EBCG's activities and other EU institutions, bodies and agencies.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' perceptions of the level of coordination of activities and processes across EU Institutions, bodies and agencies to avoid overlaps and promote synergies (including the work of the Commission (DG INTPA/NEAR) in third countries in the context of EU development/ neighbourhood cooperation in the areas of border management/ return/ integration).</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.2</li> </ul>
<b>EQ26. To what extent have Frontex activities been coherent with the activities of other stakeholders in European Integrated Border Management? (e.g., EU institutions, EU JHA agencies, etc)</b>			

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<b>EQ26.1</b> To what extent have the objectives and activities of the EBCG been coherent with the objectives and activities of other EU institutions, bodies and agencies?			
<ul style="list-style-type: none"> <li>Frontex activities have [have not] been coherent with the activities of other stakeholders in Integrated Border Management.</li> <li>Frontex activities have been coherent with activities of Member States.</li> <li>Frontex activities have been coherent with those of other relevant EU institutions and agencies.</li> <li>Frontex activities have been coherent with those of partner third countries.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of references to Frontex activities in stakeholders' reports.</li> <li>Number and typology of cooperation and coordination mechanisms established with stakeholders.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number and quality of agreements with relevant stakeholders, facilitating coherence of activities.</li> <li>Degree of coherence of Frontex activities in EIBM with the objectives of other stakeholders.</li> <li>Existence and nature of synergies between Frontex activities in EIBM and other stakeholders' activities.</li> <li>Existence of unexploited synergies between Frontex activities in EIBM and other stakeholders' activities.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' perceptions of the level of activities' coordination between Frontex and other stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.8</li> </ul>
<b>EQ27.</b> To what extent are the various pieces of EU legislation regulating the operations of the EBCG coherent with one another? To what extent do they comply with EU law on personal data, other fundamental rights, Regulation 656/2014 and the Common Approach on Decentralised Agencies?			
<ul style="list-style-type: none"> <li>The various pieces of EU legislation regulating the operations of the EBCG have [have not been] coherent with one another.</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Categorisation of EU legislation contents related to EBCG's operations by type, thematic area covered etc.</li> <li>Existence and nature of overlaps between the different EU legislation contents related to EBCG's operations.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.1 and</li> <li>Annex 4</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>The various pieces of EU legislation comply [do not comply] with EU law on personal data protection, other fundamental rights, Regulation 656/2014 and the Common Approach on Decentralised Agencies.</li> </ul>	<ul style="list-style-type: none"> <li>Existence and nature of exploited / unexploited synergies between EU legislation contents related to EBCG's operations.</li> <li>Existence and nature of synergies between EU legislation regulating EBCG'S operations and EU fundamental rights legislative framework.</li> <li>Existence and nature of synergies between EU legislation regulating EBCG'S operations and EU data protection legislative framework.</li> <li>Existence and nature of synergies between EU legislation regulating EBCG'S operations and Regulation 656/2014.</li> <li>Existence and nature of synergies between EU legislation regulating EBCG'S operations and the Common Approach on Decentralised Agencies.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' views on the existence of synergies / unexploited synergies between EU legislation on EBCG's operations.</li> <li>Stakeholders and experts' views on the existence of coherence between EU legislation on EBCG's operations and EU legislation on fundamental rights, data protection, Common Approach on Decentralised Agencies, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	
<b>EQ28. How are Frontex's internal procedures, including planning, monitoring and reporting ensuring that its activities are internally coherent? How have the Management Board's activities contributed to ensure this internal coherence?</b>			
<ul style="list-style-type: none"> <li>Frontex's internal procedures, including planning, monitoring and reporting are [are not] internally coherent.</li> <li>Frontex has [has not] made specific efforts to ensure that its internal procedures are coherent.</li> <li>The Management Board's activities have [have not]</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Frontex internal procedures which refer to other internal procedures documents.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Categorisation of Frontex's internal procedures by type, thematic area covered and subject delivering the procedure / supervising its application.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.1.3</li> </ul>

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	contributed to ensure this internal coherence.	<ul style="list-style-type: none"> <li>Existence and nature of exploited / unexploited synergies between the different procedures.</li> <li>Existence and frequency of use of internal information and knowledge-sharing exchange mechanisms and processes.</li> <li>Existence and frequency of use of mechanisms and processes to involve Frontex's staff members responsible for the different activities, including the Management Board, in the design and planning process.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on existence of synergies and coherence among Frontex's internal procedures.</li> <li>Stakeholders' view on the role of the Management Board in contributing to internal coherence.</li> </ul>	<ul style="list-style-type: none"> <li>Legal analysis</li> </ul>	
EU Added Value	<b>EQ29. How has the new mandate of Frontex introduced by the EBCG Regulation contributed to achieving the objectives of the EBCG as a whole? (for example, Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system)</b>			
	<ul style="list-style-type: none"> <li>The new mandate of Frontex introduced by the EBCG Regulation [successfully/ unsuccessfully] contributed to achieving the objectives of the EBCG as a whole.</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Categorisation of novelties introduced with the EBCG Regulation.</li> <li>Mapping of activities carried out to comply with novelties introduced with the EBCG Regulation.</li> <li>Mapping of synergies between the novelties introduced, the activities carried out and the objectives of the EBCG.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders and experts' opinion on the existence of synergies between the novelties introduced, the activities carried out and the objectives of the EBCG.</li> <li>Stakeholders and experts' opinion on the role of the new Frontex's mandate for achieving the EBCG's objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.2.1</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<b>EQ30. How has the new mandate of the Agency contributed to supporting Member States in implementing effective border management? (for example, Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system)</b>			
<ul style="list-style-type: none"> <li>The new mandate of the Agency [successfully/ unsuccessfully] contributed to supporting Member States in implementing effective border management.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of operations conducted in Member States in cooperation with / coordinated by Frontex.</li> <li>Number of protocols, procedures etc. shared with Member States.</li> <li>Number of trainings conducted with Member States' border guards.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent to which Frontex is building interoperability among Member States through successful introduction of common practices/standards.</li> <li>Extent to which Frontex is used as information hub disseminating information.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' perceptions on the role of Frontex at the national level.</li> <li>Stakeholders' perceptions on the role of EBCG operations in support to Member State operations.</li> <li>Stakeholders' perceptions on the usefulness of EBCG' outputs to inform Member States activities and operations.</li> </ul>	<ul style="list-style-type: none"> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.2.1</li> </ul>
<b>EQ31. Could the objectives of the EBCG Regulation have been achieved sufficiently by the Member States acting alone?</b>			

EVALUATION FRAMEWORK				
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>The objectives of the EBCG Regulation could have [could not have] been achieved sufficiently by the Member States acting alone.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of operations conducted by Member States without the cooperation/coordination from EBCG.</li> <li>Number of working procedures, trainings, protocols developed by the Member States alone.</li> <li>Number of information sharing platforms created and managed by the Member States alone.</li> <li>Number of completed/partially completed/not completed activities.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Mapping of best practices developed by and shared among Member States.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' perceptions on the role of EBCG at the national level.</li> <li>Stakeholder perceptions on the impact of the limitation of activities by the EBCG on the achievement of its objectives.</li> <li>Stakeholder perceptions on the role of Member States on the achievement of the EBCG Regulation's objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Counterfactual analysis</li> <li>Baseline analysis</li> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Legal analysis</li> </ul>	<ul style="list-style-type: none"> <li>Section 4.2</li> </ul>
<b>REVIEW OF STANDING CORPS</b>				
Review of Standing	<b>RQ1. How has the deployment of the Standing Corps been relevant in supporting Member States in the protection of EU external borders, migration management and returns?</b>			
	<ul style="list-style-type: none"> <li>The deployment of the Standing Corps has been relevant in supporting Member States in the protection of EU external borders, migration management and returns.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Standing Corps recruited and trained.</li> <li>Number of Standing Corps who completed the training.</li> <li>Number of operations where the Standing Corps have been deployed.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>FRAN Indicators (e.g., Returns procedures, Detections of false documents etc.).</li> <li>Number of activities where the Standing Corps are involved (returns, rescuing, smugglers identification, etc.).</li> <li>financial support and other resources and assets mobilised to support the training and deployment of the Standing Corps.</li> <li>Number of Standing Corps deployed in third countries.</li> <li>Number of Standing Corps already trained vis-à-vis number of Standing Corps expected to be trained to date.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Activities conducted by the Standing Corps in operations.</li> <li>Role of the Standing Corps in carrying out activities related to the FRAN Indicators (e.g., assistance in return related activities, Detection of illegal stays etc.).</li> <li>Mapping of the role of the Standing Corps in carrying out border management, migration management and return activities.</li> <li>Extent to which the Single Programming Document's Strategic Objective 3 "Sustained European Border and Coast Guard Capabilities" has been achieved.</li> <li>Presence of structures and procedures to ensure that the members of the teams (Standing Corps) can be held civilly and criminally liable), particularly in the context of their deployment in third countries.</li> <li>Extent to which the Standing Corps have been effective in ensuring the Member States an equally adequate support in the areas of (a) protection of EU external borders, (b) migration management and (c) returns (identifying the areas still needing improvement)?</li> </ul> <p><b>Opinion-based indicators:</b></p>	<ul style="list-style-type: none"> <li>Field visits</li> </ul>	

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Stakeholders' view on the role of the Standing Corps in the activities conducted in cooperation with Member States.</li> <li>Stakeholders' opinion on the role the Standing Corps have in improving Member States' operations to protect borders and manage migration.</li> <li>Standing Corps' level of satisfaction with the training received.</li> <li>Competent authorities' level of satisfaction with the operations of the Standing Corps.</li> </ul>		
<b>RQ2. The EBCG Regulation requires the deployment of all Standing Corps members (with few exceptions) in the field, excluding them from contributing to the activities conducted in the Headquarters. Is this limiting the capacity of the Agency to implement its full mandate?</b>			
<ul style="list-style-type: none"> <li>The deployment of all Standing Corps members in the field is [is not] limiting the capacity of the Agency to implement its full mandate.</li> </ul>	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Activities conducted by the Standing Corps in operations.</li> <li>Activities conducted by the Agency in the Headquarters (e.g., administrative activities) (including in light of MB Decisions 41/2022 and 42/2022).</li> <li>Typology of expertise needed for conducting activities in the Headquarters.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on the impact of the Standing Corps not contributing to Headquarters activities to the Agency's capacity to implement its mandate.</li> <li>Stakeholders' opinion on the added value of involving the Standing Corps in the activities in the Headquarters.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>
<b>RQ3. How has the reserve for rapid reaction as part of the Standing Corps been relevant in supporting Member States, in light of the increased number of categories 1, 2 and 3 staff?</b>			
<ul style="list-style-type: none"> <li>The reserve for rapid reaction as part of the Standing Corps has been [has not been] relevant in</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent of practical deployment of the reserve for rapid reaction of the Standing Corps (Category 4).</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of</li> </ul>



EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
supporting Member States, in light of the increased number of categories 1, 2 and 3 staff.	<ul style="list-style-type: none"> <li>Trends in the share (%) of SCs Cat. 4 within the SC.</li> <li>Frequency in which the rapid reacting mechanism involving SCs Cat. 4 have been deployed.</li> <li>Number of SCs Cat. 4 effectively trained vs Number of SCs Cat. 4 forecasted to be trained by date.</li> <li>Budget allocated to the recruitment, training, deployment of SCs Cat. 4.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Areas of deployment/activity types in which the Member States most deployed the SCs Cat. 4.</li> <li>Areas of operation in which the SCs Cat. 4 are most effectively trained and areas needing further training.</li> <li>Factors hindering / confirming / favouring the role of SCs Cat. 4 in ensuring Member States adequate support in case of rapid reaction.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Share (%) of stakeholders considering SCs Cat. 4 as relevant in supporting Member States for rapid reaction operations.</li> <li>Extent to which stakeholders consider the actual level of preparation of SCs Cat 4 adequate for rapid reaction.</li> <li>Share of stakeholders confirming that the number of SCs Cat. 4 is adequate to the current needs of the Agency in terms of its rapid reactions' capacity.</li> <li>Extent to which stakeholders agree on the numerical adequacy and effective preparation of the current SCs Cat. 4 contingent in light of current and emerging trends of crisis scenarios / border management requiring the mobilisation of rapid reaction mechanisms.</li> <li>Share of stakeholders outlining that the budget allocated to SCs Cat. 4 is inadequate.</li> </ul>	<ul style="list-style-type: none"> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	the Standing Corps)

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<b>RQ4. Which are the national authorities of Member States and Schengen Associated Countries which provide contributions to the Standing Corps (categories 2 and 3)?</b>			
<ul style="list-style-type: none"> <li>Certain [to be specified] national authorities of Member States and Schengen Associated Countries which provide contributions to the Standing Corps.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of National authorities providing contributions to the Standing Corps (categories 2 and 3).</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Nature of contributions provided.</li> <li>National Authorities providing contributions to the Standing Corps, per typology of National Authority and of contribution provided.</li> <li>Extent to which the contributions to the SCs Cat 3 provided by MSs / SAC is provided by the same national authority types (e.g., Ministry of Interior).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Share (%) of stakeholders agreeing that the national authorities of MSs / SAC providing contributions to SC Cat 3 ensure an adequate coverage of the skills required by the Agency mandate's objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>
<b>RQ5. How has the number of Standing Corps members, the composition (e.g. Standing Corps categories) and geographical distribution of the Standing Corps meet the operational needs of the Agency?</b>			
<ul style="list-style-type: none"> <li>The number of Standing Corps members, the composition (e.g., Standing Corps categories) and geographical distribution of the Standing Corps has met [has not met] the operational needs of the Agency.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of standing corps members per category per Agency's planned number.</li> <li>Number of standing corps members per geographical distribution per operational needs of the Agency.</li> <li>Number of activities which involve the Standing Corps, per category of Standing Corp and geographical distribution.</li> <li>Number of operations which involve the Standing Corps, per category of Standing Corp and geographical distribution.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Operational needs of the Agency.</li> <li>Activities which respond to the operational needs of the Agency that involve the Standing Corps.</li> <li>Evidence of operational needs of the Agency not being fully/partially covered for lack of resources, including Standing Corps.</li> <li>Extent to which the Single Programming Document’s Strategic Objective 3 “Sustained European Border and Coast Guard Capabilities” has been achieved.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders’ view on the role of the Standing Corps in achieving the operational needs of the Agency.</li> <li>Stakeholders’ view on factors hindering / contributing to enhance the effectiveness of the deployment of SCs in achieving the operational needs of the Agency.</li> </ul>		
<b>RQ6. How has the Agency been effective in the recruitment and training of the Standing Corps category 1? Does the recruitment ensure professionalism and geographical balance?</b>			
<ul style="list-style-type: none"> <li>The Agency has [has not] been effective in the recruitment and training of the Standing Corps category 1.</li> <li>The recruitment ensures [does not ensure] professionalism and geographical balance.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Standing Corps category 1 recruited, per area of expertise and state of origin (Vacancy rate, Turnover rate).</li> <li>Number of Standing Corps positions vacant.</li> <li>Number of Standing Corps category 1 recruited and allocated to specific activities.</li> <li>Number of Standing Corps category 1 recruited and not allocated to specific activities.</li> <li>Number of Standing Corps category 1 trained.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
	<ul style="list-style-type: none"> <li>Number of trainings delivered to Standing Corps category 1.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Specificities of the recruitment process.</li> <li>Timing of the recruitment process.</li> <li>Standing Corps' level of satisfaction with the recruitment process.</li> <li>Contents of the trainings.</li> <li>Standing Corps' level of satisfaction with the trainings.</li> </ul>		
<b>RQ7.How has the Agency been effective in the deployments of the Standing Corps category 1?</b>			
<ul style="list-style-type: none"> <li>The Agency has been [not been] effective in the deployments of the Standing Corps category 1.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Standing Corps category 1 deployed.</li> <li>Number of operations conducted with the presence of Standing Corps category 1.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Typology of operations where the Standing Corps category 1 have been deployed.</li> <li>Timing for the deployment of the Standing Corps category 1 in operations.</li> <li>Operations that would require the deployment of Standing Corps category 1.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>MS views on the effectiveness of deployment.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>
<b>RQ8.How has the Agency been effective in the deployment of the Standing Corps categories 2 and 3?</b>			

EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<ul style="list-style-type: none"> <li>The Agency has been [not been] effective in the deployments of the Standing Corps categories 2 and 3.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Number of Standing Corps categories 2 and 3 deployed.</li> <li>Number of operations conducted with the presence of Standing Corps categories 2 and 3.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Typology of operations where the Standing Corps categories 2 and 3 have been deployed.</li> <li>Timing for the deployment of the Standing Corps categories 2 and 3 in operations.</li> <li>Operations that would require the deployment of Standing Corps categories 2 and 3.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>MS views on the effectiveness of deployment.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>
<b>RQ9. To what extent is the size of individual Member States' contributions to the Standing Corps adequate to meet the objectives of the EBCG and proportionate to these?</b>			
<ul style="list-style-type: none"> <li>The size of individual Member States' contributions to the Standing Corps is adequate [not adequate] to meet the objectives of the EBCG and proportionate to these.</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Size of Member States' contributions to the Standing Corps.</li> <li>(Estimate) Ratio between Standing Corps and activities to be conducted.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Extent to which Standing Corps' activities are required for achieving EBCG objectives.</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Experts' opinion on the adequacy of the Member States' contribution to meet the EBCG objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>

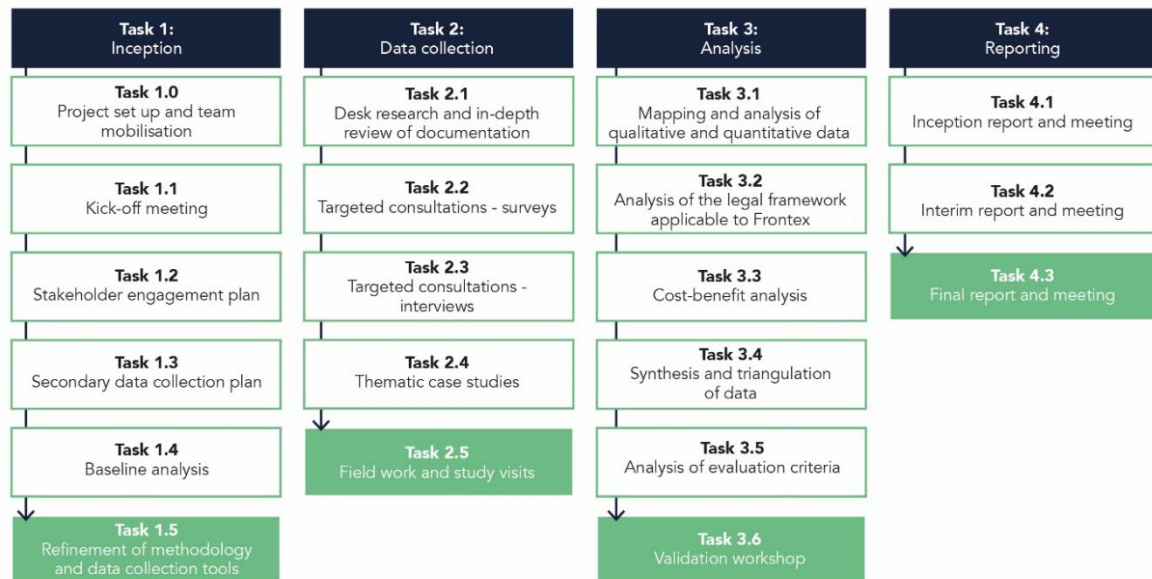
EVALUATION FRAMEWORK			
Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods	Answers to EQs
<b>RQ10. How are the Member States' capabilities coherent with the size of the Members States' contributions to the Standing Corps? Have the contributions impacted capabilities available for other needs (e.g. CSDP missions and operations)?</b>			
<ul style="list-style-type: none"> <li>The Member States' capabilities are [are no] coherent with the size of the Members States' contributions to the Standing Corps? Have the contributions impacted capabilities available for other needs (e.g. CSDP missions and operations).</li> </ul>	<p><b>Quantitative indicators:</b></p> <ul style="list-style-type: none"> <li>Size of Member States' contributions to the Standing Corps.</li> <li>Size of Member States' capabilities.</li> <li>Ration between capabilities and contributions.</li> </ul> <p><b>Qualitative indicators:</b></p> <ul style="list-style-type: none"> <li>Typology of operations where Member States' capabilities are involved (e.g., Standing Corps, CSDP missions, etc.).</li> </ul> <p><b>Opinion-based indicators:</b></p> <ul style="list-style-type: none"> <li>Stakeholders' opinion on the impact of Member States' contributions to the Standing Corps to capabilities available for other needs.</li> </ul>	<ul style="list-style-type: none"> <li>Desk research</li> <li>Targeted surveys</li> <li>Semi-structured interviews</li> <li>Thematic case studies</li> <li>Field visits</li> </ul>	<ul style="list-style-type: none"> <li>Section 6.2 (Review of the Standing Corps)</li> </ul>

## Annex 3 Methodology

The study was guided by an evaluation framework setting out the guidelines and principles for the analysis (see Annex 2). This allowed the team to evaluate the EBCG Regulation against the evaluation criteria (effectiveness, relevance, coherence, efficiency, and EU added value).

This study was guided by a methodological approach, which was divided into four tasks (see Figure below), in line with the original Terms of Reference (ToR): 1) Inception; 2) Data collection; 3) Analysis; and 4) Reporting.

Figure 1. Overview of the methodological approach



Source: ICF elaboration

### A3.1 Task 1: Inception

The inception task started with the **project set up and team mobilisation** to establish project processes and protocols. This included setting-up communication with the external panel experts, who advised the study team across key tasks of the study. The expert panel was composed of experts in 1) fundamental rights and data privacy; 2) migration and security; 3) border management expertise; and 4) EUROSUR.

A **kick-off meeting** was held with DG HOME at its premises on 14 December 2022. The meeting ensured a common understanding of the objectives of the study and led to the revision of the original intervention logic, refinement of the evaluation framework, and redesign of some of the initial data collection and analysis tools.

**Seven scoping interviews** were carried out with the European Commission, including with the Commission's MB representative, as well as key stakeholders within Frontex. Frontex designated the MB as a key point of contact for the study team to help facilitate exchange of information and to ensure effective data collection throughout the study.

The study team then refined its **stakeholder engagement plan**, reprioritising certain stakeholders and agreeing the right data collection tools to engage different groups of stakeholders. It also conducted a preliminary assessment of available sources and prepared a **secondary data collection plan**, including reviewing secondary sources and developing a list of internal Frontex documents and data required to answer some of the evaluation questions.

The preparatory work helped in the development of a **baseline analysis** (a narrative overview of the situation prior to the adoption of the EBCG Regulation) and **refinement of the methodology and data collection tools**.

The inception task was finalised with the submission and acceptance of the **Inception Report** by the Commission. The report was presented to the Interservice Group (ISG) by the study team and was revised on the basis of the Group’s feedback before formal approval. The study team was also asked to present the study to the EBCG Working Group in order to engage with Member States early in the study and ask for their support with data collection.

Table 1. Limitations and mitigation steps during inception

Limitations faced	Mitigation steps
Inception phase coincided with Christmas holiday, risking delays	<ul style="list-style-type: none"> <li>• Quick mobilisation of the team at inception and kick-off meeting with DG HOME to conduct as much preparatory work before holidays as possible (including scoping interviews in December)</li> <li>• Several scoping interviews scheduled during revisions of Inception Report in January</li> <li>• Support from DG HOME to ensure feedback from the ISG in early January, which helped to close inception stage relatively quickly</li> </ul>

## A3.2 Task 2: Data collection

The data collection task started with **desk research and in-depth review of documentation**. With the study divided along the main thematic areas of Frontex’s mandate (e.g., returns, operations, fundamental rights, capacity-building, cooperation, Standing Corps, situational awareness), the team was able to identify relevant documents for analysis within each thematic area. This included a review of legal documents, policy, and strategic documents, Frontex programming and internal business documents, Frontex outputs and publications, financial documents, etc.

The study team used desk research to map available data sources and evidence against the evaluation questions and to identify key data gaps. In interviews with Frontex divisions and units, the study team explored the availability of additional data to address these gaps, leading to a number of additional requests for information from Frontex. This process continued throughout the study. Identification of information gaps subsequently informed stakeholder consultation and the need to request additional statistics and data from other stakeholders.

The next step in the data collection was the launch of **three surveys**. The surveys collected factual information about the implementation of specific activities and results of the EBCG, as well as opinions and views on the five evaluation criteria and key evaluation questions. These surveys targeted three stakeholder groups:

- Member State authorities;
- Standing Corps staff;
- Fundamental Rights Monitors (FRMs).

The surveys were developed in consultation with DG HOME (and the ISG) to ensure that the questions were fine-tuned to the needs of the study and captured all relevant elements. The external panel of experts also provided feedback.



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The Member State authorities survey was disseminated as a Word document, divided into thematic sections. National authorities were asked to consult all relevant internal departments and authorities (e.g., ministries of the interior, border management and return authorities) to ensure that they could provide comprehensive answers to the different elements of the evaluation. This process allowed for internal consultation at national level and for each Member State (and SAC) to present a consolidated national response.

Following the launch of the surveys, the study planned to conduct up to **130 interviews** with key stakeholder groups, including:

- Frontex staff;
- Member State authorities;
- EU-level stakeholders (including the Commission, European Parliament, EU agencies);
- Civil society and international organisations;
- Third countries.

The interview questionnaires were refined with the support of DG HOME (and the ISG) to ensure that the questions met the needs of the study and captured all relevant elements. The external panel of experts also provided feedback. The interview questionnaires were further fine-tuned in line with emerging evidence (including after the submission of the Interim Report, to address outstanding data gaps).

The study team carried out 149 interviews, more than originally foreseen. The interviews mostly took place online through MS Teams (with the exception of the field visits and final study visit to Frontex headquarters). The high number of interviews reflected different requests by Member States, with some asking for separate interviews on different thematic areas with different responsible authorities, while others preferred longer joint interviews. Where possible, the study team accommodated these requests to make the process smoother for national authorities and to allow for engagement with all key stakeholders. The team also took the opportunity to conduct additional interviews during some of the field visits and the visit to Frontex headquarters.

To support an in-depth assessment, the team was divided along thematic areas, allowing different team members (with the support of relevant external experts) to conduct six **thematic case studies** focused on deployment, capacity-building, return, EUROSUR, fundamental rights, and governance. Building on the data collection activities, the study team analysed Frontex activities along these thematic areas, identifying possible challenges, and their possible links to the EBCG Regulation and/or its implementation. The results of the case studies fed into the corresponding evaluation questions.

The data collection task concluded with five **field visits** to Frontex operations (Bulgaria, Finland, Greece, Italy, Romania), as well as a sixth final visit to Frontex headquarters in Warsaw. Over two-three days, the study team met with central-level national authorities and visited land border crossing points or coordination centres of maritime operations to conduct on-site interviews with national and Frontex staff. Findings from the field visits helped to inform the review of the Standing Corps, as well as Frontex operations overall (and their relevance and added value to Member States). Several of the external panel experts with previous border management expertise took part in the field visits.

The final two-day visit to Frontex headquarters was the closing step in the data collection. As the study team conducted extensive online interviews with Frontex units and divisions prior to the on-site visit, the visit allowed the team to focus its discussions on emerging findings and addressing final data gaps.

Table 2. Limitations and mitigation steps during data collection

Limitations faced	Mitigation steps
Initially low response rate to survey from Member States/SACs	<ul style="list-style-type: none"> <li>Repeated reminders sent, including by DG HOME, to Member States/SACs</li> <li>Extension of deadline for survey submissions in agreement with DG HOME – leading to extension of the study to ensure sufficient data was collected (27 Member States/SACs responded)</li> </ul>
Delays in organising field visits due to slow response rates from national authorities and Easter holidays	<ul style="list-style-type: none"> <li>Extension of study to finalise all field visits</li> </ul>
Delays in submission of key data from Frontex (including its own analysis of the EBCG Regulation)	<ul style="list-style-type: none"> <li>Repeated reminders sent, including by DG HOME, to follow-up on missing data</li> <li>Support from Frontex Executive Management Bureau helped to follow-up with key divisions/units internally</li> <li>Field visit to Frontex headquarters scheduled for end of the data collection to allow the study team to address any remaining data gaps while on site</li> </ul>

### A3.3 Task 3: Analysis

The analytical task comprised several steps. Firstly, the **data collected** during the desk research and stakeholder consultation tasks was **systematically mapped** against the evaluation (sub-)questions, judgement criteria and indicators in the evaluation framework. This allowed the study team to reflect on the quality of the data collected and identify any potential gaps that needed to be filled to provide robust answers to the evaluation questions. That information was then filled in by targeted search in the collected documentation or by reaching out to interview respondents with requests for follow-up information (especially Frontex). The evidence gathered was analysed by:

- **Qualitative analysis of information and stakeholder feedback:** the qualitative evidence emerging from desk research, surveys and in-depth interviews was analysed according to the section of the evaluation framework for which the finding is relevant;
- **Quantitative analysis of the survey results, data and statistics:** the descriptive statistical analysis of each survey question was mapped against the corresponding practical guide and tool and evaluation criteria.

**Analysis of the legal framework applicable to Frontex** also formed part of the study. It included analysis of primary EU acquis, other regulations establishing agencies, bodies, networks and interoperability of IT systems, and EU acquis in the area of border management and return.

The analysis focused on the extent to which the competences, tasks and responsibilities for Frontex foreseen in the EBCG Regulation reflect the provisions in the wider legal framework. The analysis helped to determine the Agency's compliance with Union law, including the EU Charter on Fundamental Rights, and whether the rules provide for an effective legal framework, including on fundamental rights. The legal analysis was supported by the panel of external experts, who helped the study team to identify relevant legislation for analysis and reviewed the analysis before submission to the Commission.

A **cost-benefit analysis (CBA)** helped to respond to evaluation questions under the efficiency criterion. The CBA was carried out by the study team's specialist, with strong understanding of the Better Regulation Guidelines (see Annex 7).

Subsequently, the study team **synthetised and triangulated all data collected**. This included evidence gathered from different stakeholders (e.g., consistency of views and opinions expressed by different types of stakeholders) and methodological triangulation of evidence (e.g., desk research, in-depth interviews, field visits), and, where possible, different types (factual evidence vs opinion-based).

These triangulation methods reduced systematic bias and distortion during data analysis, improving the credibility of the findings. The triangulation of data set the stage for **analysis of evaluation criteria**. The study team worked to provide answers to all of the evaluation questions in the evaluation framework in the draft Final Report. All drafters started by structuring their responses along the evaluation questions, although the questions were grouped thematically (and not by evaluation criterion). Some evaluation questions were merged to avoid duplication and better synthetise the text. Initially, the draft Final Report included an overview of the evaluation questions addressed in each section. These guiding evaluation questions were removed before the final submission of the report for readability. The evaluation framework (Annex 2) includes an overview of the sections of the report that answer each evaluation question.

A **validation workshop** was foreseen, to discuss emerging findings and conclusions between the study team and DG HOME. Instead of a formal workshop, a meeting was organised on 22 June to allow for such a discussion and the finetuning of the conclusions and recommendations between DG HOME and key members of the study team. This was preceded by an ISG consultation of the draft Final Report on 19 June 2023, which allowed for a wider discussion on comments provided to the draft Final Report.

**Table 3. Limitations and mitigation steps taken during analysis**

Limitations faced	Mitigation steps taken
Tight timeline of the study and delays in data collection (e.g., delayed responses from Member States to the survey, delays in agreeing dates for field visits to Member States) left less time for analysis	<ul style="list-style-type: none"> <li>• Extension of the study by one month, following agreement with DG HOME, to allow for sufficient time to finalise data collection and analysis</li> </ul>
Wide scope of the study (including large scope of Frontex mandate, wide external legal framework, etc).	<ul style="list-style-type: none"> <li>• Close consultation with DG HOME throughout the study to identify key priority areas to ensure analysis is focused</li> </ul>
On-going implementation of the Regulation, limiting full analysis	<ul style="list-style-type: none"> <li>• Acknowledging limitations of analysis across the reporting areas that are still being implemented</li> </ul>
Difficulties in quantifying most of the financial and human resources received by Member States to do a full analysis of cost and benefits generated by the EBCG Regulation (further explained in Annex 7)	<ul style="list-style-type: none"> <li>• Agreement with DG HOME to focus on costs incurred by Frontex and use of relevant EU funds by Member States</li> <li>• Using qualitative evidence collected to identify costs and benefits for Member States</li> </ul>
Diverging opinions of key stakeholders (Frontex, Commission and Member States)	<ul style="list-style-type: none"> <li>• Triangulation of evidence</li> <li>• Balancing out different opinions in consultation with the expert panel to ensure findings are not skewed</li> </ul>
Complexity and technical nature of some of the evidence collected	<ul style="list-style-type: none"> <li>• Involvement of external panel of experts with knowledge of border management, migration and security, EU legal frameworks and fundamental rights to guide the analysis of more complex topics</li> <li>• Internal quality assurance (QA) by QA managers with relevant thematic and methodological expertise</li> </ul>

## A3.4 Task 4: Reporting

The study team submitted three reports to the Commission, in line with the Terms of Reference, to present the progress of the project as well as final findings. The reports were reviewed by the external panel of experts assembled to support the study team, as well as by the project director and quality assurance managers before submission. Furthermore, each report underwent review by the Interservice group before finalisation. The draft Final Report will also undergo a final editing and proofreading by an English native speaker before final submission to DG HOME, to ensure coherence of the language used.

The three deliverables are:

- Inception report;
- Interim report;
- draft Final Report.

Table 4. Limitations faced during reporting

Limitations faced	Mitigation steps taken
Tight timeline of the study and delays in data collection left less time for reporting	<ul style="list-style-type: none"> <li>• Extension of the study by one month, following agreement with DG HOME, to allow for sufficient time to draft reports</li> <li>• DG HOME closely working with the ISG to ensure timely provision of feedback to the study team</li> <li>• Agreement with DG HOME to implement final comments to the revised Interim report directly in the draft Final Report to avoid double burden on the study team</li> </ul>
Wide scope of the study and limitations set on length of the Final Report	<ul style="list-style-type: none"> <li>• Close consultation with DG HOME throughout the study to identify key priority areas to ensure the main report remains focused on key issues</li> <li>• Use of Annexes to provide more detailed analysis where deemed relevant</li> </ul>
Complexity and technical nature of some of the evidence collected	<ul style="list-style-type: none"> <li>• Internal quality assurance (QA) by QA managers with relevant thematic and methodological expertise across all aspects of the study</li> </ul>

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## Annex 4 Legal coherence<sup>33</sup>

### A4.1 Legal coherence

The coherence assessment focuses on the internal and external coherence of the EBCG Regulation. The **internal coherence** assessment examines the extent to which the EBCG Regulation provisions are sufficiently clear and coherent with one another. It then examines **external coherence**, namely the extent to which the EBCG Regulation is in line with other EU-level instruments, including data protection requirements, Regulation 656/2014, Regulation 2008/115/EC, etc.

#### A4.1.1 Internal coherence

**While the EBCG Regulation’s provisions are generally coherent with one another, there is room for improvement for certain areas**, as indicated below.

The **objectives of the EBCG Regulation** are mentioned in the preamble<sup>34</sup> and in Article 1. They are defined broadly, with no dedicated chapter or provision, nor does the Regulation clearly outline the links between the general objectives and the Agency’s activities.<sup>35</sup>

That lack of clarity is also evident in the **objectives of the Standing Corps**.<sup>36</sup> The EBCG Regulation focuses on the composition and tasks of the Standing Corps, rather than clearly defining the objectives to be achieved.<sup>37</sup>

While Article 4 of the EBCG Regulation defines the **EBCG** as a body comprising the relevant Member States’ authorities responsible for border management and Frontex, the provisions are not applied consistently: for example, the **governance structure** concerns only Frontex and foresees governance mechanisms for the Agency but not for the EBCG as a whole (see section 4.1.3 of the Report). Section 1 (*Protection of fundamental rights*) sets out the general provisions addressed to the EBCG as a whole, while Section 2 (*Processing of personal data by the EBCG*) only sets out specific provisions and rules for the Agency. There are issues with the **clarity of certain provisions** regulating elements that are crucial to Frontex’s functioning and accountability.

Firstly, although the EBCG Regulation reiterates that Frontex implements the EIBM as a shared responsibility of the Agency and the national authorities (Article 7), it is difficult to establish the **responsibility of each actor** (including for potential wrongdoing), especially given the involvement of multiple actors at national level.<sup>38</sup> Frontex cooperates with different national authorities (e.g. on border control and information exchange for risk analysis), but these authorities are not all represented on the MB (such as authorities in charge of returns) and different regulatory frameworks might apply to the various areas of cooperation.

For **joint operations**, various local authorities may be present in areas where Frontex operations take place (ranging from national police and border guard authorities, military

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<sup>33</sup> This section provides additional analysis in response to evaluation question 27.

<sup>34</sup> Recital 120 EBCG Regulation.

<sup>35</sup> Interviews with Frontex (2).

<sup>36</sup> Articles 5 and 54 EBCG Regulation.

<sup>37</sup> Interviews with Frontex.

<sup>38</sup> Gkliati, M. (2022). ‘The next phase of the European Border and Coast Guard: responsibility for returns and push-backs in Hungary and Greece’. European Papers; Fink, M. (2020). ‘Frontex: Human rights responsibility and access to justice’. Available at: <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>

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or coast guard, local authorities, private entities, other EU agencies, and third countries' institutions), spanning different jurisdictions and obligations, depending on their legal nature and the legal order to which they are subject. Article 84 of the EBCG Regulation attributes liability for damages under Frontex operations to the host State, but creates a situation where different authorities may avoid responsibility for wrongdoing. One example relates to the Agency's support operations to Greek authorities in Greece's Eastern Aegean Sea and Evros regions (Greek-Turkish border), where several concerns were raised on Frontex's involvement in potential individual and collective expulsions of migrants. Although the personnel of the Agency has not been found of violating fundamental rights, there are concerns on the possible indirect involvement of the Agency, as stressed by some stakeholders (see section 4.1.9 of the main Report).

Frontex operational staff is under the tactical command and control of the host State, yet both Frontex staff and national operational staff are still responsible under EU law and international law, including the EU and international level fundamental rights framework. This difficulty in determining responsibility is compounded by its reliance on operational plans (which contain the most detailed description of the specific authority and decision-making powers), handbooks of operational plans and their annexes, which are generally not made public (as indicated under the analysis of the EBCG Regulation and Regulation (EC) 1049/2001).

Hence, although mechanisms for accountability are set by the EBCG Regulation (e.g. monitoring activities of the FRO<sup>39</sup>; complaints mechanism<sup>40</sup>), there is **uncertainty about accountability where both Frontex and national border management actors are involved in operations**.<sup>41</sup> This has a considerable impact on the Agency's perceived ability to respect and comply with fundamental rights, and open questions concerning the responsibility of national authorities.

The analysis also found some **inconsistencies** within the EBCG Regulation.

Article 2(28) of the EBCG Regulation defines '**return intervention**' as a Frontex activity providing Member States with enhanced technical and operational assistance 'consisting of the deployment of return teams and the organisation of return operations'. However, Article 53(1) (Return Interventions) partly contradicts the definition provided in Article 2(28), as it provides that '[...] such intervention may consist in the deployment of return teams to the host Member State'. The 'may' clause is confusing, and the definition provided in Article 2(28) does not cover the whole range of activities and services that the Agency can deliver to support Member States.<sup>42</sup>

On the **use of force**, the EBCG Regulation contains significant **inconsistencies** with legislative text, including between its **Article 82** and **Annex V** to the EBCG Regulation. The **internal discrepancies** relate to the definition of force, personal scope of the use of

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<sup>39</sup> Articles 109 and 110 EBCG Regulation.

<sup>40</sup> Article 111 EBCG Regulation.

<sup>41</sup> Fink, M. (2020). 'Frontex: Human rights responsibility and access to justice'. Available at: <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>; Border Violence Monitoring Network (2022). 'Submission to the EU Commission on the evaluation of the implementation of Regulation 2019/1896 on the European Border and Coast Guard Agency (Frontex)'; Karamanidou, L. and Kasperek, B. (2020). 'Fundamental rights, accountability and transparency in European governance of migration: the case of the European Border and Coast Guard Agency'. Working Papers; European Parliament (2022). 'European Parliament Scrutiny of Frontex'. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf); Karamanidou and Kasperek highlight that the terms used throughout the text of the EBCG Regulation to describe Frontex tasks – such as 'coordination', 'cooperation', 'facilitation', and 'support' – are not defined in the EBCG Regulation; interviews with Frontex and civil society organisations/members of the CF (2/5).

<sup>42</sup> Frontex (2023.) 'Evaluation of the EBCG Regulation'. Internal document.



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force provisions, purposes for which force can be used, and abusive or arbitrary use of force.

In defining **‘force’**, the EBCG Regulation does not clarify what is meant by ‘the use of any instruments’ when resorting to force. Annex V provides general principles governing the ‘use of force and weapons’ and general practical rules on the ‘use of force, weapons, ammunition and equipment’ during operations and related activities. However, it is unclear whether the principles of using force, control, and authorisation are applicable to all means of force.

Use of force and the circumstance in which it is allowed depend also on the national law of the host Member States and are further defined in the respective operational plans.

There are discrepancies between the staff addressed by **Article 82** and **Annex V** of the EBCG Regulation. The Annex contains rules on the use of force and weapons applicable to statutory staff of the Standing Corps deployed as members of the teams, whereas Article 82 provides details on the use of force and weapons for all members of the teams and thus also applies to other categories of operational staff.

The EBCG Regulation adopts different formulations on the purposes for which force could be used, which might jeopardise strict implementation of the rules and allow wider use of force. It also establishes an absolute prohibition on **abusive or arbitrary use of force or coercive measures** but does not define ‘arbitrary and abusive use of force’.

The analysis identified several **gaps** in the EBCG Regulation that affect its internal coherence and the ability of the Agency to achieve its objectives, as indicated below.

Article 68(1) of the EBCG Regulation mandates that Frontex engage in **cooperation with various Union institutions, bodies, offices, agencies, and international organisations**. It provides a list of the specific institutions with which Frontex cooperates, including the EEAS, Europol, EASO, FRA, Eurojust, the UN and its relevant offices. However, the **exhaustive list of international organisations provided in Article 68(1)** has limited the Agency’s possibilities in the external dimension, particularly in the case of international organisations with which Frontex has concluded working arrangements with (e.g. ICMPD, DCAF) or NATO (in joint operations in the Aegean and the Mediterranean).<sup>43</sup>

**Additionally, the definitions of ‘host Member State’ and ‘participating Member State’ do not fit the needs of return activities**, as each Member State involved in ‘returning returnees’ can be considered a host Member State, potentially creating confusion. For instance, this interpretation implies that there are multiple host Member States in a single joint return operation (each Member State returning returnees), which makes it difficult to establish clear separation of tasks and responsibilities in the operational plans. Indeed, in return operations, there is the possibility of a situation in which return operations take place in a ‘transit’ Member State.<sup>44</sup>

Finally, the concept of **pilot project** is not defined in the EBCG Regulation, nor distinguished from ‘normal’ projects. The lack of detailed rules complicates the implementation of such projects, since there is no indication on the potential objectives of these projects (beyond those related to research and innovation), nor whether these might include the deployment of Standing Corps.<sup>45</sup>

On fundamental rights, the EBCG Regulation provides for a number of **safeguards, procedures and mechanisms** to ensure and monitor the Agency’s compliance with fundamental rights. However, some unclarity remains in the fundamental rights framework set out by the EBCG Regulation affecting the overall coherence (see section 4.1.9 of the

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<sup>43</sup> Interview with Frontex.

<sup>44</sup> Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document.

<sup>45</sup> Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document

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main report and Annex 5). Findings for three main areas are outlined below and are further discussed in Annex 4 and Annex 5).

First, Article 109 of the EBCG Regulation provides that one of the **tasks of the FRO** is to monitor ‘the Agency’s compliance with fundamental rights, including by conducting investigations into any of its activities’, although these activities are not detailed in the text.<sup>46</sup> Although the wording ‘any activities’ allows for a very wide scope of FRO action, increased clarity would better guarantee FRO involvement and provide a more specific basis for action (see section 4.1.9 of the main report and Annex 5). The same Article (para 4) provides that ‘the management board shall ensure that **action is taken with regard to recommendations of the fundamental rights officer**’, without clarifying what that action might be. To this end, In 2022, the MB adopted in 2022 the rules for the Executive Director and the MB to ensure that action is taken with regard to recommendations of the FRO (and of the Consultative Forum (CF)) (see section 4.1.9 of the main report ).<sup>47</sup>

Second, the EBCG Regulation does not regulate the functioning of the **serious incident reports (SIRs) mechanism**. SIRs are mentioned only in Article 46, as the Executive Director takes them into account when triggering Article 46(4) and (5). Article 46 leaves considerable discretion to the Executive Director, with some relevant indications found in the operational plans.<sup>48</sup> Frontex adopted recently the Standard Operating Procedure (SOP) to establish the roles and responsibilities within the Agency to support the decision-making process of the Executive Director.<sup>49</sup> The SOP also clarifies the applicable criteria and key sources of information to be considered in the Executive Director’s decisions (see section 4.1.9 of the main report). Although several aspects in Frontex’s work are not regulated at the Regulation level, it would be worth defining the SIRs mechanism in the EBCG Regulation to limit potential discretion by the Executive Director (in case of the adoption of the SOP) and exclude political consideration by member of the Management Board (MB) for adoption of Management Board Decisions.

Third, on the **complaints mechanism** the analysis found that the EBCG Regulation (Article 111(2)) leaves a gap for the cases in which the alleged perpetrators of

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<sup>46</sup> Article 109 EBCG Regulation.

<sup>47</sup> Frontex (2022). ‘Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.’ Available at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Bdocument-category%5D%5B0%5D=297&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=MDcwYjVmNDY2YjJINWE0Yjc0OWEyZmY1NTJIMDJmMGFNVFk0T0E9PTkzMzI4NjE4NGYyOTA0ZjM3YjAxMwVjNzQyNmY1YmZjODkxNjA2MDg1ODI2NTYxMTA3&form-fields%5Bmodule-post-id%5D=YTFmYmE1MGU0YzgzYzZhNWE1ZDY4ZDBINjQ0OWVjODdNemt3TVE9PTYzNDAYMDAYMTc1NGUwMjYyOTVhYTE4MTViYmFkNTQyMzE3N2ZiMTBjMjkzNTg4MjAw&form-fields%5Bpaged%5D=1>

<sup>48</sup> In January 2022, the European Ombudsman suggested that Frontex publish comprehensive summaries of its operational plans, which define the parameters of its operations, and the analysis on which the Executive Director decides to suspend, terminate or not launch an activity due to fundamental rights concerns; European Ombudsman (2021). ‘Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities’. Available at: <https://www.ombudsman.europa.eu/en/decision/en/151369>

<sup>49</sup> Frontex (2022). ‘Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities’. Available at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D=Frontex%20Executive%20Director%20Decision%20No%20R-ED-2022-12%20on%20Standard%20Operating%20Procedure%20&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=NDI3N2NjMzc0NjAwNjQwYTI3MTc0Zjg1MmZlYjZhOTBNVFk0T0E9PTQzMtC3OTU2ODc4ZGJlZTM2Y2NlZTMxOGY1YjhhNTMzYmI4ZWYyMTNjNTc0ODMwMTUx&form-fields%5Bmodule-post-id%5D=MWYzMWVhNWVmNDhlZjllwMzQ0MmFhNmFmOGM4YzBjNjNTVnemt3TVE9PTc2MTlZnJlZjQ3Njc3MGNmYmY1OTIhNmQxMzk3NGZkZnZlY2RmZTJhZDBkMzkxODI4Mzg5>



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fundamental rights violations are individuals involved in Frontex's activities but not part of Frontex's or Member State's staff and employed by the Agency via external contractors (such as cultural mediators). Again, on complaints, there is a lack of clarity on Article 111(5) of the EBCG Regulation in the part that indicates that: "[...] The Agency shall provide for an appropriate procedure in cases where a complaint is declared inadmissible or unfounded". The EBCG Regulation does not provide further details on such a procedure, which the Agency did not set up so far, nor was this addressed by the Management Board Decision 19/2022.

#### A4.1.2 External coherence

This sub-section assesses the level of **external coherence between the EBCG Regulation and other EU-level legislative and non-legislative instruments**.

Importantly, the legal basis of the EBCG Regulation, namely Article 77(2)(b) and (d) and Article 79(2)(c) of the TFUE, pertains to border checks, asylum, and immigration policies (Title V, Chapter 2 TFUE) and not police cooperation (Chapter 5 TFUE). Therefore, the Agency was not intended to have a law enforcement mandate.

Nevertheless, Frontex staff (particularly, the Standing Corps) cooperates with and supports national authorities having law enforcement powers, the latter being subject to ad hoc national frameworks regulating their working conditions, use of force, use of vehicles, and of firearms. While a number of tasks carried out by Frontex are law enforcement in nature, (requiring special law enforcement training, such as on the use of firearms), some Member States only allow law enforcement personnel to carry out such tasks (such as access to certain databases).

Hence, the situation generates uncertainty as to how to use Standing Corps on the ground. Indeed, both Frontex and Member States authorities underlined that the application of different legal regimes posed challenges at operational level.

Overall, the EBCG Regulation is coherent with other EU-level legislative instruments, though there is room for improvement, as indicated below. The analysis is presented per legislative instrument.

##### **Regulation No 656/2014 (Sea Borders Regulation)**

Regulation No 656/2014 (Sea Borders Regulation)<sup>50</sup> applies to all Frontex-coordinated maritime border surveillance operations and includes a set of SAR and disembarkation obligations for Member States' law enforcement vessels. EU Member States are obliged to render assistance to any vessel or person in distress at sea, regardless of the nationality or status of such a person or the circumstances in which they are found, in accordance with international law and the respect for fundamental rights.

Recital 21 of the EBCG Regulation refers to the Sea Borders Regulation, and that 'sea operations should be carried out in a way that, in all instances, ensures the safety of the persons intercepted or rescued, the safety of the units that take part in the sea operation in question and the safety of third parties.' Article 10(i) states that **Frontex provides technical and operational assistance to Member States and third countries in accordance with Regulation 656/2014 and international law, in support of SAR operations** for persons in distress at sea, which may arise during border surveillance operations at sea.

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<sup>50</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

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Article 4 of Regulation 656/2014 ensures the protection of fundamental rights and the principle of non-refoulement during sea operations. It provides that when considering the possibility of disembarkation in a third country in the context of planning a sea operation, the host Member State, in coordination with participating Member States and the Agency, **must assess the general situation in that third country**. That assessment will be part of the operational plan and must be updated as necessary.

**Frontex's latest annual report on the implementation of Regulation (EU) 656/2014 indicated that it had complied with the requirements of the Regulation 656/2014.**<sup>51</sup>

Where disembarkation in third countries was envisaged, Frontex required the host Member States to provide a general assessment of the third countries concerned. However, its annual reports on the implementation of Regulation 656/2014 consistently argue that disembarkation in a non-EU country is never envisaged in the operational plans, with few exceptions.<sup>52</sup> In the latest report, the FRO raised other areas of concern, such as the need to enhance the quality and comprehensiveness of the assessment, as well as an update on the general situation in a third country and the lack of clarity or absence of clear methods for the assessment of personal circumstances of intercepted/rescued persons to be disembarked, forced to enter, conducted or handed over to the authorities of a third country.<sup>53</sup>

Frontex does not have the mandate to launch or conduct SAR operations independently or without the coordination of a national Maritime Rescue Coordination Centre (MRCC) or a Joint Rescue Coordination Centre (JRCC). However, Frontex has the mandate to provide technical and operational assistance to Member States and third countries in support of SAR operations for persons in distress at sea. The obligation stems from both Regulation 656/2014 and international law. Indeed, SAR is a specific objective of the operational plan of every Frontex joint maritime operations. For this reason, vessels deployed by Frontex to an operational area are also always ready to provide national authorities with support in SAR.

Hence, although the Regulation 656/2014 and the EBCG Regulation are generally coherent, the former does not capture the expanded mandate Frontex has been given in the area of SAR by Regulation EU/2016/1624, and now regulated by the EBCG Regulation. Additionally, there remain questions about whether Regulation 656/2014 applies to sea operations at the external borders of the Member States only, or also covers sea joint operations with a third country.

**Overall, the complex rules on SAR operations in the EU have an impact on Frontex's limited accountability (including vis-a-vis international law, notably, the UNCLOS and SAR Convention), particularly when a decision *not* to initiate a SAR operation is taken.** Hence, it remains difficult to distinguish accountability in situations where both Frontex and national border management actors are involved (see internal coherence).<sup>54</sup>

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<sup>51</sup> Frontex (2020). 'Annual Report on the practical implementation of Regulation 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex'. Available at: <https://data.consilium.europa.eu/doc/document/ST-6294-2020-INIT/en/pdf>

<sup>52</sup> Frontex (2020). 'Annual Report on the practical implementation of Regulation 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex'. Available at: <https://data.consilium.europa.eu/doc/document/ST-6294-2020-INIT/en/pdf>; Statewatch (2021). 'To SAR or not to SAR, part 1: Why is Frontex expected to save lives at sea?' Available at: [https://www.statewatch.org/analyses/2021/to-sar-or-not-to-sar-part-1-why-is-frontex-expected-to-save-lives-at-sea/#\\_ftn9](https://www.statewatch.org/analyses/2021/to-sar-or-not-to-sar-part-1-why-is-frontex-expected-to-save-lives-at-sea/#_ftn9)

<sup>53</sup> Article 5, Regulation 656/2014.

<sup>54</sup> Frontex (2023) How Search and Rescue works. Available at: [How Search and Rescue works \(europa.eu\)](https://www.frontex.europa.eu/How-Search-and-Rescue-works) ; European Parliament (2021). 'Search and rescue in the Mediterranean'. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS\\_BRI\(2021\)659442\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS_BRI(2021)659442_EN.pdf)

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## Common Approach on Decentralised Agencies

### **The EBCG Regulation is coherent with the Common Approach on Decentralised Agencies.**<sup>55</sup>

Recital 106 of the EBCG Regulation provides that Frontex should be governed and operated taking into account the principles of the Common Approach on Decentralised Agencies. However, while the EBCG Regulation introduces the possibility to establishing Antenna Offices (Article 60), the Common Approach does not foresee and prescribe such offices, except for 'headquarters'.

**Frontex's structure and governance is generally in line with the principles set out in the Common Approach**, such as the appointment of the Frontex's Executive Director, the procedures in place to regularly inform the European Parliament about the Agency's activities, and procedures for dismissal. However, the Common Approach provides that the management boards of decentralised agencies should include 'where appropriate', a member designated by the Parliament, which is not provided in Article 101 of the EBCG Regulation.<sup>56</sup> Nevertheless, Article 104(7) provides that the MB may invite an expert of the European Parliament to attend the meetings. Frontex's accountability to the European Parliament is discussed in section 4.1.3 of the main report.

Other requirements set out in the Common Approach are in line with the EBCG Regulation, on accountability, controls, and transparency requirements. For instance, as suggested by the Common Approach, the EBCG Regulation requires the Agency to adopt a multiannual programming and annual work programmes (Article 102), references to internal and external audits (Article 100(2) (u)), as well as on the OLAF's role and investigations to combat fraud and other illegal activities (Article 117). In addition, the Common Approach requires agencies whose mandate foresees cooperation with third countries and/or international organisations to have a clear strategy for those activities. Frontex adopted its International Cooperation Strategy, which details the overarching goal of its external cooperation.<sup>57</sup>

Finally, the Common Approach on Decentralised Agencies advises having Agencies' staff policy plans (SPP) in place. These should provide a full picture of staff needs, including comprehensive and detailed information on the numbers of all types of external staff, including interim staff and service providers, and information on promotions, as well as gender and geographical balance. Although Frontex's latest SPP dates back to 2015<sup>58</sup> (prior to the entry into force of Regulation 2019/1896), the annual implementation report provides detailed information on numbers of staff that each Member State and SAC has committed to the Standing Corps, the development of the Agency's human and technical capabilities, and the number of items of technical equipment that each Member State and SAC and the Agency from the TEP.<sup>59</sup>

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<sup>55</sup> Council of the EU (2012). 'Joint Statement of the European Parliament, the Council of the EU and the European Commission on Decentralised Agencies and Common Approach on Decentralised Agencies. The Joint Statement and the Common Approach on Decentralised Agencies has legally non-binding character'. Available at: <https://data.consilium.europa.eu/doc/document/ST-11450-2012-INIT/EN/pdf>

<sup>56</sup> Article 101 EBCG Regulation describes the composition of the MB, which comprises one representative of each Member State, and two representatives of the Commission (see: ECRE (2021). 'Holding Frontex to account'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>57</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023'. Available at: <https://prd.frontex.europa.eu/document/frontex-international-cooperation-strategy-2021-2023/>

<sup>58</sup> Frontex (2015). 'Management Board Decision No. 21/2015 adopting the Multiannual Staff Policy Plan 2016-2018'. Available at: [https://prd.frontex.europa.eu/wp-content/uploads/mb\\_decision\\_21\\_2015\\_on\\_adopting\\_mspp\\_2016\\_2018.pdf](https://prd.frontex.europa.eu/wp-content/uploads/mb_decision_21_2015_on_adopting_mspp_2016_2018.pdf)

<sup>59</sup> Frontex (2022). 'Annual Implementation Report 2021'; based on the obligation stemming from Article 65 EBCG Regulation.

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## **Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive)**

The Return Directive establishes a common set of rules for the return of non-EU nationals who do not or who no longer fulfil the conditions for entry, stay or residence within the territory of a Member State, and the related procedural safeguards. Beyond Recitals 79 and 80, the EBCG Regulation refers to the Return Directive in several instances,<sup>60</sup> and its Article 7 clearly states that Member States retain sole responsibility for issuing return decisions and for adopting the measures pertaining to the detention of returnees in accordance with Directive 2008/115, while the Agency provides technical and operational assistance in return operations.

The EBCG Regulation and the **Return Directive** (2008/115/EC) are coherent to one another. However, the term ‘assisted voluntary return’ was introduced in the EBCG Regulation without being defined and has no direct correlation with the definitions provided in the Return Directive (which only defines ‘return’ and ‘voluntary departure’).<sup>61</sup>

In line with the New Pact on Migration and Asylum, the Council adopted a negotiating mandate for the reform of the Return Directive, and work is ongoing in the European Parliament to adopt its negotiating mandate.<sup>62</sup> The analysis highlighted the need to adopt such reform and align the EBCG Regulation with the new legislative instrument.

## **Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders.**

Council Decision 2004/573/EC sets out the procedures when two or more Member States cooperate to return third-country nationals who are the subjects of individual removal orders.<sup>63</sup> **Council Decision 2004/573 does not apply to Frontex.**

Nevertheless, the Agency has the power – at its own initiative and with the agreement of the Member State concerned – to coordinate or organise return operations (Article 50(1) EBCG Regulation). However, Article 50 does not clearly set out a specific framework for return operations organised by Frontex, nor refer to the potential coordination between Frontex’s operations and those carried out within the framework of Council Decision 2004/573/EC. The absence of clear legal provisions risks a difference between Frontex-organised return operations and those organised by Member States based on Council Decision 2004/563/EC.<sup>64</sup>

## **EU Staff Regulations and conditions of employment<sup>65</sup>**

There are challenges in applying the EU Staff Regulations to the EBCG Regulation and the Standing Corps, as they are not best suited to an operational, uniformed, and armed service with executive powers – put simply, the rules set out in the EU Staff Regulations

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<sup>60</sup> For example, Article 48(2)(c) and (d), Article 50(5), Article 51(1), Article 81(3), and Article 82(1).

<sup>61</sup> Interviews with DG HOME (1/4) and Frontex; Frontex (2020). ‘State of Play of the implementation of the EBCG Regulation in view of the current challenges’. Available at: <https://data.consilium.europa.eu/doc/document/ST-7607-2020-INIT/en/pdf>; it mentions that ‘further elaboration (of these terms) is needed’ (p.16); Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document.

<sup>62</sup> European Commission (2023). ‘Factsheet on the State of Play: New Pact on Migration and Asylum’. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/fs\\_23\\_1850](https://ec.europa.eu/commission/presscorner/detail/en/fs_23_1850)

<sup>63</sup> Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004D0573>

<sup>64</sup> Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document.

<sup>65</sup> Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. EUR-Lex - 01962R0031-20230101 - EN - EUR-Lex (europa.eu)

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do not match the needs of the Standing Corps.<sup>66</sup> Indeed, a number of tasks carry out by Frontex are by their nature law enforcement tasks, requiring special law enforcement training, use of firearms, and other powers, which some Member States assign only to law enforcement personnel (such as the use of special regime vehicles, inspection of personal document, or access to certain databases). Within the Standing Corps (Categories 2,3, and 4), these tasks are implemented by law enforcement officers.

Firstly, aspects related to shift work and stand-by patterns, ranks, recognition of hardships, specific deployment rules outside of mission guide, disciplinary proceedings, rights, and entitlements are not suitable for the Standing Corps.<sup>67</sup> For instance, Standing Corps Officers (SCOs) may work shifts under the operational command of a Team Leader from a certain Member State, who will work according to their national rules. The hours of work may not correspond to Frontex hours of work, which derive from EU Staff Regulations. This generates issues for Frontex if falling short of support for its partners in the Member States, or officers in the field operating under national rules that are in breach of the EU Staff Regulations.

Article 54(2) of the EBCG Regulation contradicts the EU Staff Regulations, as does Article 95(2) in relation to statutory staff of the Agency (Category 1).

Article 54(2) of the EBCG Regulation provides that the Agency must deploy members of the Standing Corps in relevant operational activities in the Member States or in third countries, and that the number will depend on the operational need. It does not consider the established procedures for selecting and appointing staff as required by the EU Staff Regulations, but primarily selects based on operational needs.

Article 95(2) of the EBCG Regulation provides that the place of employment of the Agency's staff is, in principle, the Member State where the Agency's seat is located (i.e. Poland). However, Article 54(2) provides that the Agency deploys members of the Standing Corps to Member States or third countries, and their place of employment is stated in the individual contract with staff members. Given frequent redeployments of the SCOs, it is not feasible to amend their contracts establishing the place of employment as the deployment location. This generates operational challenges to the Agency, specifically on the need to easily deploy SCOs to its headquarters when operational activities are carried out there.<sup>68</sup> In such cases the same principles apply as to deployments elsewhere, meaning that the headquarters itself is a location where operational activities are carried out. In referring solely to deployments to Member States and third countries, Article 54(2) of the EBCG Regulation imposes constraints on Frontex.

The status of Standing Corps Category 2 does not fall within any existing category of staff known within the EU. The uncertainty of their status implies, for instance, that annual leave entitlements vary across Member States.<sup>69</sup>

In training centres, medical exemptions can be granted more flexibly than under national rules (e.g. when there are temporary injuries, the person may attend theory classes only). However, the EU Staff Regulations sick leave policy is less flexible and does not allow 'partial' leave, for example.<sup>70</sup>

Similarly, the establishment of a new supervisory mechanism on the use of force, as well as rules of a disciplinary nature for Category 1 statutory staff was challenging in practical

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<sup>66</sup> Interviews with DG HOME (2/4) and Frontex.

<sup>67</sup> Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

<sup>68</sup> Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

<sup>69</sup> Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

<sup>70</sup> Interview with Frontex.



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and legal terms, as they do not fully integrate with the Commission rules on administrative inquiries and disciplinary measures provided in Annex IX to the Staff Regulations.<sup>71</sup>

Although the EU Staff Regulations provide that contract staff shall be selected on the broadest possible geographical basis from among nationals of Member States,<sup>72</sup> this has proved difficult for the Agency.<sup>73</sup>

The application of the EU Staff Regulations shows its limitations in case of **complaints** for violations by individuals involved in Frontex's activities who are contracted externally by the Agency. In these cases, the EBCG Regulation risks leaving a gap for those who are not part of Frontex's staff and who are not covered by the EU Staff Regulations, limiting the scope of the complaints mechanism<sup>74</sup>.

### **Use of force and international standards**

Inconsistencies were identified in the use of force between the EBCG Regulation and **international standards** (external coherence).

For the core principles on the use of force, the EBCG Regulation refers to the principles of necessity, proportionality and precaution, without explicitly mentioning the principle of legality, which is expressly stated in the European Convention on Human Rights (ECHR).

There are some discrepancies between the EBCG Regulation's provisions on the use of force and **international standards**. In particular, there are uncertainties about the definition of 'law enforcement officer' (as established by UN instruments) and whether the members of the Standing Crops fall under the category of law enforcement officers or public servants.

### **Schengen evaluation and monitoring mechanism**

In 2022, the Council adopted **Regulation (EU) 2022/922 to reform the Schengen evaluation and monitoring mechanism (Schengen Evaluation Regulation)**, which aims to ensure the functioning of the Schengen area by monitoring whether Schengen-area countries apply the Schengen *acquis* effectively.<sup>75</sup> The Schengen Evaluation Regulation links to the EBCG Regulation through the **risk analysis** (Article 29 EBCG Regulation) and **vulnerability assessment** (Article 32 EBCG Regulation) carried out by Frontex.

According to Article 29 of the EBCG Regulation, Frontex prepares risk analyses to monitor migratory flows towards the Union and within the Union in terms of migratory trends, volume and routes, and other trends or possible challenges at the external borders and in returns. These are submitted to the European Parliament, to the Council and to the European Commission. Frontex's risk analyses are used for the Schengen evaluation programming, as indicated in Article 8 of the Schengen Evaluation Regulation.

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<sup>71</sup> Frontex (2020). 'State of Play of the Implementation of the EBCG Regulation in view of current challenges'. Available at: <https://data.consilium.europa.eu/doc/document/ST-7607-2020-INIT/en/pdf>; interview with Frontex.

<sup>72</sup> Article 82(1) Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20230101>

<sup>73</sup> See Recital 111 EBCG Regulation, which provides that 'The Agency is expected to face challenging circumstances in the coming years as regards fulfilling exceptional needs for recruiting and retaining qualified staff from the broadest possible geographical basis.'

<sup>74</sup> Article 111 EBCG Regulation.

<sup>75</sup> Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013, OJ L 160, 15.6.2022, pp. 1-27. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0922>

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Article 32 of the EBCG Regulation aims to guarantee synergies between the vulnerability assessment of Frontex and the Schengen Evaluation Regulation. These complementary instruments constitute components of EIBM and seek to guarantee Union quality control on the proper functioning of the Schengen area and to ensure constant preparedness at both Union and national levels to respond to any challenges at the external borders.

During the reform of the Schengen Evaluation Regulation, the Commission acknowledged the risk of duplication and limited cooperation between these instruments.<sup>76</sup> The two instruments were not fully coherent with each other. Therefore, the reformed 2022 Schengen Evaluation Regulation aims, among others, to strengthen cooperation and synergies with Frontex and avoid duplication with other EU mechanisms, notably the Frontex vulnerability assessment, so as to develop more targeted risk analyses to design better Schengen evaluations.<sup>77</sup>

Furthermore, the vulnerability assessment and risk analysis do not include fundamental rights considerations, while the reform of the Schengen Evaluation Regulation strengthened the evaluation of the respect for fundamental rights under the Schengen *acquis*.

### **Schengen Borders Code**

Regulation (EU) 2016/399 (Schengen Borders Code)<sup>78</sup> establishes rules governing border control of persons at the EU's external borders (checks at the border crossing points, entry conditions for third country nationals, border surveillance, etc.) and sets the rules applicable to temporary reintroduction of border controls at internal borders in the Schengen area.

Article 5 of the EBCG Regulation establishes that Frontex facilitates and effectively applies Union measures on the management of the external borders, in particular the Schengen Borders Code and Union measures on return.

For the implementation of the Schengen Borders Code, the Agency contributes to the development of common minimum standards for external border surveillance (Recital 18 EBCG Regulation) While the Agency does not play the role in the development of additional measures governing surveillance (as this role is conferred upon to the Commission in line with Article 13(5) of the Schengen Borders Code), the Agency has the role to play in ensuring that the Member States deliver on their duties related to ensuring that the border guards are properly trained professionals (Article 16 Schengen Borders Code).

Article 42 of the EBCG Regulation refers to situations at the external borders requiring urgent action and putting the risk for the functioning of the Schengen area. In line with Article 21 of the Schengen Borders Code the Commission may recommend initiating the deployment of European border guard teams. If the Member State concerned does not comply with the Council decision and does not cooperate with the Agency, the Commission may trigger the procedure provided for in Article 29 of Regulation (EU) 2016/399.

The Schengen Borders Code was adopted for the first time in 2006 and replaced in 2016 (Regulation 2016/399). That is why it refers to the European Agency for the Management

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<sup>76</sup> European Commission (2013). 'Impact Assessment Accompanying the document Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing Regulation (EU) No 1053/2013'. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021SC0119>

<sup>77</sup> Articles 8 and 10 Council Regulation (EU) 2022/922.

<sup>78</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, pp. 1-52. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

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of Operational Cooperation at the External Borders of the Member States established by Council Regulation (EC) No 2007/2004. The latter was repealed by the 2016 Frontex Regulation (2016/1624).

In 2021, the European Commission presented a proposal to amend the Schengen Borders Code. It complements the existing rules on controls at the external borders (among others, on border surveillance) and contributes to the effective implementation of EIBM by Frontex. The proposal reflects the competences of Frontex in supporting Member States to protect external borders in the situation of instrumentalisation of migrants and refers to the expertise of Frontex in assessment of the threats related to the unauthorised movements as a ground of the reintroduction of internal border controls. In the proposal, the Commission indicated that 'no major impact on EU bodies and agencies is expected although the instrumentalisation of irregular migration could lead to the bigger involvement of the European Borders and Coast Guard Agency, within the limits of the EBCG Regulation (EU) 2019/1896 in order to assist the Member States in addressing this challenge'.<sup>79</sup>

The analysis did not find inconsistencies between the two texts, nor were these reported by stakeholders during the consultation.

### **Regulation (EC) 1049/2001 on public access to documents**

The EBCG Regulation (Article 114) indicates that the Agency is subject to **Regulation (EC) 1049/2001** when handling applications for access to documents.<sup>80</sup> The internal framework is set by **Management Board Decision 25/2016**, which lays down the practical arrangements for the application of Regulation 1049/2001 to documents held by the Agency.<sup>81</sup> This Decision was not updated and still refers to the 2016 Frontex Regulation.

On the responsible entity, the internal rules establish that the Transparency Office of Frontex is in charge of processing applications for public access to documents and for coordinating the internal network of case handlers.<sup>82</sup> Documents can be accessed via Public Access to Documents (PAD) applications. Access is assured to EU citizens and residents, limiting the possibility for third-country nationals (often impacted by Frontex's activities) to case-by-case decisions.<sup>83</sup> In a related complaint, the European Ombudsman confirmed **that 'there was no maladministration by Frontex in how it handles requests for access from non-EU citizens not residing in the EU, in that it deals with such requests on a case-by-case basis'**.<sup>84</sup>

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<sup>79</sup> European Commission (2016). 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders'. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0891>

<sup>80</sup> Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, pp. 43-48.

<sup>81</sup> Frontex (2016). 'Management Board Decision 25/2016 of 21 September 2016 adopting practical arrangements regarding public access to the documents held by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the "Agency")'. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2016/MB\\_Decision\\_25\\_2016\\_on\\_adopting\\_practical\\_arrangements\\_regarding\\_PAD.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2016/MB_Decision_25_2016_on_adopting_practical_arrangements_regarding_PAD.pdf)

<sup>82</sup> Article 14 Management Board Decision 25/2016.

<sup>83</sup> Article 3 Management Board Decision 25/2016.

<sup>84</sup> European Ombudsman (2019). Decision in case 2273/2019/MIG on the European Border and Coast Guard Agency's (Frontex) public register of documents. Available at: <https://www.ombudsman.europa.eu/en/decision/en/137721>



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The Management Board Decision introduces a timeline for processing requests to access documents.<sup>85</sup> One civil society organisation found it problematic that the deadline of 15 working days starts from Frontex's registration of the application, noting that Frontex's delays in registering requests risks extending the procedure.<sup>86</sup>

The EBCG Regulation provides that the Agency should make public relevant information, excluding information that would jeopardise the attainment of operational objectives.<sup>87</sup>

Partial access or refusal of access to sensitive documents are based on the exceptions listed in Article 4 of Regulation (EC) 1049/2001. If access to the requested document cannot be refused on the basis of these exceptions, the document is to be declassified by the Agency.<sup>88</sup>

EU rules on public access to documents require Frontex to maintain a register of publicly accessible documents and to report on public access to documents.<sup>89</sup> The European Ombudsman recommended that Frontex regularly update its register of documents, taking into account the principles of good administrative practice.<sup>90</sup>

**Frontex has to publish the number of sensitive documents it holds that are not included in its register of documents**, the number of applications handled during the previous year, the number of cases in which it refused to grant access to documents, and the reasons for such refusals.<sup>91</sup> The European Ombudsman found that the Agency did not comply with this obligation on a regular basis.<sup>92</sup>

The decisions on applications include the possibility of actions before the CJEU or complaints to the European Ombudsman.<sup>93</sup>

The European Ombudsman received a number of complaints about limitations to access to Frontex's documents. The Agency has often refused to release documents on the grounds of public security.<sup>94</sup> In a number of cases, the Ombudsman found no maladministration as 'the public security exemption relied upon by Frontex is absolute, in the sense that it cannot be overcome by an overriding public interest.'<sup>95</sup>

In an own-initiative inquiry, the European Ombudsman addressed the subject of **operational information**. Article 114 of the EBCG Regulation provides that the Agency should make public relevant information, but without jeopardising the attainment of operational objectives. The EBCG Regulation also indicates that Frontex should publish comprehensive information on past and current joint operations, but this did not happen

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<sup>85</sup> The application is acknowledged and processed by Frontex within 15 working days of its registration. In exceptional cases, this time limit may be extended by 15 working days. Frontex provides a justification in cases where access to a document is refused in full or partially. Applicants can apply for a reconsideration through a confirmatory application within 15 working days of Frontex's reply.

<sup>86</sup> Interview with civil society organisation/non-member of the CF (1/4).

<sup>87</sup> Article 114 EBCG Regulation.

<sup>88</sup> Article 7 Management Board Decision 25/2016.

<sup>89</sup> Articles 11 and 17 Regulation 1049/2001.

<sup>90</sup> European Ombudsman (2019). 'Decision in case 2273/2019/MIG on the European Border and Coast Guard Agency's (Frontex) public register of documents'. Available at: <https://www.ombudsman.europa.eu/en/decision/en/137721>

<sup>91</sup> Article 17 Management Board Decision 25/2016.

<sup>92</sup> European Ombudsman (2019). 'Decision in case 2273/2019/MIG on the European Border and Coast Guard Agency's (Frontex) public register of documents'. Available at: <https://www.ombudsman.europa.eu/en/decision/en/137721>

<sup>93</sup> Article 114 EBCG Regulation.

<sup>94</sup> Interview with the European Ombudsman.

<sup>95</sup> European Ombudsman (2017). 'Decision in case 1328/2017/EIS on the refusal by Frontex to grant access to a document concerning the vessels used in the Poseidon and Triton border control operations'. Available at: <https://www.ombudsman.europa.eu/en/decision/en/86680>

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as found by the Ombudsman, according to which ‘information that is relevant to the assessment of compliance with fundamental rights should be excluded from such summaries only if its publication would be detrimental to the tasks of Frontex, and in particular the objective of a given operation’.<sup>96</sup> During the consultation, one civil society organisation recommended that Frontex publish those summaries, as they provide important information on the responsibilities for different categories of participants in operations.<sup>97</sup>

On the Agency’s scrutiny, one MEP reported that, considering the limitations for the Parliament to access confidential information of Frontex, enhanced access to documents should be considered, at least for the members of the FSWG.<sup>98</sup>

Overall, the EBCG Regulation and the internal framework set by **Management Board Decision 25/2016** are in line with Regulation (EC) 1049/2001. The analysis did not find inconsistencies between the legal texts, although the European Ombudsman reported that the Agency did not follow up some of the requirements, somewhat limiting transparency and access to documents.

### **EU information systems and Frontex’s role**

To ensure good functioning of the Schengen area and to help inspections at the external borders, the EU developed a number of information systems and common frameworks for the exchange of information. Three large-scale IT systems are in place to manage the external borders, the Schengen Information System (SIS),<sup>99</sup> Eurodac,<sup>100</sup> and the Visa Information System (VIS),<sup>101</sup> while three other systems are under development – the

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<sup>96</sup> European Ombudsman (2021). ‘Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities’. Available at: <https://www.ombudsman.europa.eu/en/decision/en/151369>

<sup>97</sup> Interview with civil society organisation/non-member of the CF (1/4).

<sup>98</sup> Interview with MEP (1/4).

<sup>99</sup> Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, pp. 1-13; Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, pp. 14-55; Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, 7.12.2018, pp. 56-106.

<sup>100</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L 180, 29.6.2013, pp. 1-30.

<sup>101</sup> Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System, OJ L 248, 13.7.2021, pp. 11-87.

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EES,<sup>102</sup> ETIAS,<sup>103</sup> and ECRIS.<sup>104</sup> EUROSUR provides a framework for information exchange and cooperation between Member States and Frontex to improve situational awareness and increase reaction capability at the external borders.<sup>105</sup>

And finally, the implementation of the Interoperability Regulations has the objective to ensure better use of the information already present in the individual EU Information systems.<sup>106</sup>

eu-LISA is tasked with developing and managing the central components of the six information systems (SIS, Eurodac, VIS, EES, ETIAS and ECRIS-TCN) and their Interoperability, while EUROSUR is managed by Frontex and Member States. In view of the key role of the ETIAS Central Unit (established within Frontex) in the development and implementation of ETIAS, the ETIAS Regulation is analysed in detail at the end of this section, while EUROSUR is analysed under the data protection framework (see section 4.1.1 of the Report).

The EBCG Regulation does not explicitly mention information systems, instead referring generally to them. Access of Frontex's team members to the information systems is defined in the legal base of each information system and is limited to the particular tasks of the Agency in light of that system.

The Agency's role appears limited when it comes to the use of EU information systems. Frontex is a data processor for VIS, Eurodac, EES, ECRIS-TCN (whereas for ETIAS, Frontex is the data controller in relation to processing by the ETIAS Central Unit), as its staff can only utilise such systems on behalf of Member States, potentially creating concerns about the allocation of responsibility between Frontex users and national authorities in case of misuse and whether the allocation of responsibility reflects what actually happens in practice.

During the consultation, it was reported that at the Member State level, some of these systems are provided in the national language of the Member State, adding a practical obstacle for Standing Corps to access. It was also indicated that in one Member State only (Iceland), all relevant systems are provided entirely in English.<sup>107</sup> Frontex is developing its own access to SIS, and, in the case of ETIAS, the ETIAS Central Unit

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<sup>102</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, pp. 20-82.

<sup>103</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, pp. 1-71.

<sup>104</sup> Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726, OJ L 135, 22.5.2019, pp. 1-26.

<sup>105</sup> Article 10(1)(ab) EBCG Regulation states that Frontex establishes, develops and operates information systems that enable swift and reliable exchanges of information on emerging risks in the management of the external borders, illegal immigration and return.

<sup>106</sup> Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA; Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22.5.2019, pp. 85-135.

<sup>107</sup> Interviews with Frontex.

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(ECU) will have its own case management system, so these are not provided in national language.

In line with the provisions of the Regulations governing the information systems, the Agency have access to the statistics generated by large information systems (to which it has access rights), which can be used as a source for situational awareness purposes.<sup>108</sup>

## **SIS**

SIS is an information-sharing system for security and border management, which contains alerts on people or objects. The SIS legislation gives Frontex's teams the right to access and search data in SIS within their mandate insofar it is necessary for the performance of their task and as required by the operational plan for a specific operation.<sup>109</sup> Frontex's team members can access the SIS and search data through a technical interface that allows direct connection to Central SIS. Frontex is tasked with setting up that interface and implementing ongoing access for Frontex's operational teams. The Agency must log every access and search in SIS.

SIS can also be accessed when Frontex's teams are given access to national databases for the purpose of the border checks, because the search in national databases and SIS is integrated.

The SIS legislation indicates that the EU DPR applies to the processing of personal data and that the EDPS can monitor and review the activities of the teams in the exercise of their right to access and search data in SIS.<sup>110</sup> In return operations, the EBCG Regulation refers explicitly to SIS and requires deployed staff to consult the SIS prior to the return of any returnee to check whether the return decision in question has been suspended or postponed.<sup>111</sup>

## **VIS**

The VIS allows the exchange of visa data between competent authorities. It allows Frontex's teams to access and search VIS data (within their mandate) and sets the conditions and procedures for such access. Consultation of VIS data can take place for verification at external border crossing points, for verification within the territory of third-country nationals, and for identification of any person that does not or no longer fulfils the conditions for entry, stay or residence on the territory of the Member States.<sup>112</sup>

Frontex can use VIS data for reporting and statistics as part of risk analyses and vulnerability assessments.<sup>113</sup>

The EBCG Regulation allows Standing Corps deployed as members of the teams to input data to the VIS.<sup>114</sup>

The EDPS is responsible for external supervision of Frontex's use of the VIS.<sup>115</sup>

## **Eurodac**

Regulation (EU) 603/2013 establishes Eurodac, an EU-wide biometric database containing fingerprints of asylum applicants. Each Member State is responsible for taking

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<sup>108</sup> See Article 60 of Regulation (EU) 2018/1861 and Article 74 of Regulation (EU) 2018/1862.

<sup>109</sup> Article 17 Regulation (EU) 2018/1860; Article 36 Regulation (EU) 2018/1861; Article 50 Regulation (EU) 2018/1862.

<sup>110</sup> Articles 36 and 51 Regulation (EU) 2018/1861; Articles 50 and 66 Regulation (EU) 2018/1862.

<sup>111</sup> Article 50 EBCG Regulation.

<sup>112</sup> Articles 45e and 45f Regulation (EU) 2021/1134.

<sup>113</sup> Article 45a Regulation (EU) 2021/1134.

<sup>114</sup> Article 55 EBCG Regulation.

<sup>115</sup> Articles 42 Regulation (EU) 2021/1134.

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the fingerprints of all asylum applicants and those apprehended crossing a border irregularly, over the age of 14 and, within 72 hours, transmitting the data to Eurodac.

Frontex is entrusted with collecting and transmitting personal data to the Eurodac Central System and CIR.

The EBCG Regulation provides that, within the framework of the migration management support teams at hotspot areas, the Agency deploys operational staff and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting (Article 10(1)(m)). Article 55(7)(c) of the EBCG Regulation provides that the statutory staff must be able to register the fingerprints of persons apprehended in connection with the irregular crossing of an external border in Eurodac, in accordance with Chapter III of Regulation 603/2013.

The recast Eurodac Regulation is under negotiation, with the system set to transform 'from a database containing relatively little information (primarily fingerprints) to a multipurpose tool for assisting with effecting returns, resettlements, combating irregular migration, administering asylum and supporting law enforcement'.<sup>116</sup> An overall assessment is not yet possible, although the relevant EU agencies – including Frontex – will need to comply fully with Eurodac rules and safeguards on the processing of personal data in full compliance with fundamental rights. However, there is no proper reflection of the Agency's role in the Eurodac Regulation.

Moreover, the proposal for the Screening Regulation explicitly provides for a possibility for the Member States to be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency (and the European Union Agency for Asylum) within the limits of their mandates. The screening proposal is still under negotiations. Once adopted, it will provide uniform rules for the identity, security, and health checks at the external borders, on third country nationals who do not fulfil entry conditions.<sup>117</sup>

## **EES**

Regulation (EU) 2017/2226 introduced a centralised EES for non-EU nationals crossing EU external borders for a short stay. According to EES rules, Frontex's duly authorised staff can consult the data in the EES (Article 63(1)) to carry out risk analyses and vulnerability assessments. An annual report containing statistics based on EES data is transmitted to Frontex.<sup>118</sup>

## **ECRIS-TCN**

ECRIS is a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons. Frontex does not have access to ECRIS-TCN explicitly from the EBCG Regulation, although data in ECRIS-TCN (as well in other relevant information systems) may be used by the ETIAS Central Unit established within Frontex to support the ETIAS objective.<sup>119</sup>

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<sup>116</sup> Vavoula, N. (2023). 'Focus on Eurodac: disentangled from the 'package approach' but is it fit to fly?'. ECRE Working Paper April 2023. Available at: <https://ecre.org/wp-content/uploads/2023/04/ECRE-Working-Paper-19-Focus-on-the-Eurodac-Dossier.pdf>

<sup>117</sup> Proposal (COM/2020/612 final) for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A612%3AFIN>

<sup>118</sup> Article 63 Regulation (EU) 2017/2226.

<sup>119</sup> Regulation (EU) 2021/1151 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System, OJ L 249, 14.7.2021, pp. 7-14.



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## ETIAS

The EBCG Regulation makes reference to the **ETIAS**, a large-scale automated IT system established to process applications to grant a travel authorisation to travellers coming from 58 visa-free countries to enter 30 European countries.<sup>120</sup> This system aims to identify any security, irregular migratory and public health risk posed by visa-exempt visitors, and is due to become operational in 2024.

The ETIAS Information System has been developed by eu-LISA, which is also responsible for its technical management.

The EBCG Regulation requires Frontex to fulfil the tasks and obligations entrusted to it under the ETIAS Regulation<sup>121</sup> and to ensure the set-up and operation of the **ETIAS Central Unit** within Frontex.<sup>122</sup> Among its key tasks and obligations, this Unit ensures that data stored in application files and personal data recorded in the ETIAS are correct and up to date and, where necessary, verifies the data in the applications for travel authorisation to remove any ambiguity about the identity of an applicant in cases of a hit obtained during the automated processing of the applicant's data. It also defines, evaluates, tests and reviews specific **risk indicators** of the **ETIAS screening rules**, after consultation with the ETIAS Screening Board, and carries out regular audits of the management of applications and the implementation of ETIAS screening rules, particularly their impact on fundamental rights, privacy and data protection.<sup>123</sup>

References in the EBCG Regulation to the ETIAS Central Unit are limited; rather, the tasks of the ETIAS Central Unit are explained in the ETIAS Regulation.

The examination of an application for a travel authorisation is carried out by **cross-checking the applicant's data** submitted to ETIAS (application file) **against the ETIAS screening rules, ETIAS watchlist and other information systems and databases** (ETIAS Central System, SIS, EES, VIS, Eurodac, ECRIS—TCN, Europol data, and certain Interpol databases).

The ETIAS Regulation defines access rights; and public entities may only have access to personal data in specific and well-defined circumstances.

The ETIAS Central System carries out **automated verification** of any hits against the ETIAS screening rules, ETIAS watchlist and other information systems and databases, while the **manual processing** is done by the ETIAS Central Unit. According to Article 57(1) of the ETIAS Regulation, the Agency is the **data controller** in relation to processing by the ETIAS Central Unit.

The ETIAS Regulation requires that the processing of personal data within ETIAS, by any user, is carried out ensuring the **principle of non-discrimination** and the **respect of human dignity and integrity and fundamental rights**.<sup>124</sup> **A Fundamental Rights**

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<sup>120</sup> List of countries requiring visa-exempt travellers to have an ETIAS travel authorisation. Available at: [https://travel-europe.europa.eu/system/files/2022-11/These%2030%20European%20countries%20require%20ETIAS\\_en.pdf](https://travel-europe.europa.eu/system/files/2022-11/These%2030%20European%20countries%20require%20ETIAS_en.pdf)

<sup>121</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, p. 1.

<sup>122</sup> Articles 10(1) (af) and 67 EBCG Regulation.

<sup>123</sup> European Commission (2018). 'ETIAS - The European Travel Information and Authorisation System'. Available at: [https://home-affairs.ec.europa.eu/system/files\\_en?file=2018-04/20180425\\_etias\\_en.pdf](https://home-affairs.ec.europa.eu/system/files_en?file=2018-04/20180425_etias_en.pdf)

<sup>124</sup> Article 14 Regulation (EU) 2018/1240.

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**Guidance Board**<sup>125</sup> was set up for ETIAS (in line with Article 10 ETIAS Regulation) in November 2022, despite initial delays.<sup>126</sup>

During the consultation, some points were highlighted by stakeholders. Concerns relate to the risk indicators and screening rules for ETIAS, which are considered to pose a **risk of discriminatory profiling** for certain categories.<sup>127</sup> The risk indicators and screening rules could help authorities to identify potential asylum seekers based on data entered in the system, so that they could be flagged to the authorities before travelling and reaching the borders. One international organisation shared the opinion that, at operational level, Frontex is not equipped for the launch of ETIAS (e.g. lack of expertise of staff), and that **a number of questions remain unanswered** about the implications of the interoperability of the relevant EU information systems (e.g. how – and to what extent – data are crosschecked, potential reuse of data, connection between watchlists).<sup>128</sup> The collection of information (to set up the ETIAS system) from underlying databases could also create data quality issues (i.e. in case of low quality information collected for the other EU information systems – for instance low quality fingerprints in VIS – and used for ETIAS decisions)..

The **interoperability of EU information systems** allows linking identities present in different systems to detect multiple identities, with the dual purpose of facilitating identity checks and combating identity fraud. Relevant EU information systems are queried to detect a possible link, to determine the type of link (yellow, or white), to allow for authorities to manually verify the link and determine whether it should be red, green or white and to store the link for future use.<sup>129</sup> Article 69 of Regulation (EU) 2019/817 and Article 65 of Regulation (EU) 2019/818 establish specific rules for the **transitional period of the MID**. During the transitional period, the ETIAS Central Unit is responsible for carrying out the manual verification of MID yellow links, which are created between the EES, VIS, and SIS. Although Eurodac is mentioned in the legal basis, it is deemed out of scope because Eurodac Recast is still not in operation (nor even adopted).

Only during the MID transitional period will the ETIAS Central Unit verifies biometric data and biographical data to check whether the data match (between SIS, VIS and EES records at the start of the transition period, so-called legacy data) is correct and will make a decision on the re-categorisation of the links (turning yellow links<sup>130</sup> white/red/green), i.e.

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<sup>125</sup> Article 10(1) Regulation (EU) 2018/1240: 'An independent ETIAS Fundamental Rights Guidance Board with an advisory and appraisal function is hereby established. Without prejudice to their respective competences and independence, it shall be composed of the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the European Data Protection Supervisor, a representative of the European Data Protection Board established by Regulation (EU) 2016/679 and a representative of the European Union Agency for Fundamental Rights.'

<sup>126</sup> Interview with civil society organisation/member of the CF (1/5).

<sup>127</sup> Interviews with Frontex (1) and civil society organisation/member of the CF (1/5); Verfassungsblog (2022). 'Fundamental rights at the digital border. ETIAS, the right to data protection, and the CJEU's PNR judgment'. Available at: <https://verfassungsblog.de/digital-border/>

<sup>128</sup> Interview with civil society organisation/member of the CF (1/5).

<sup>129</sup> Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, pp. 27-84. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0817>; Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22.5.2019, pp. 85-135. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019R0818>

<sup>130</sup> A yellow link is created between data where the query reports one or several matches and the identity data in the linked files cannot be considered similar.

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on individual cases of data subjects. During the transition period, the use of biometric data by the ETIAS Central Unit might create potential issues about the Agency's processing of biometric data.

The only yellow links the ETIAS Central Unit will not treat are those with 'sensitive' SIS alerts (e.g. European arrest warrants, discrete checks). Links with such records will be managed by the national SIRENE Bureaux. Frontex will communicate with the SIRENE Bureaux via SIRENE mail regarding specific cases, if needed.

Once the ETIAS Central Unit manually verifies and re-categorises all links based on legacy data, it will notify the European Commission, which will decide on the end of the transitional period.

**After the transitional period**, the ETIAS Central Unit will deal with links related to ETIAS applications. ETIAS does not contain biometric data and the role of the ETIAS Central Unit in the MID process will be to verify the validity of the biographical match. The ETIAS Central Unit might also make a recommendation for the re-categorisation of the links (done by the responsible ETIAS National Unit), and deal with erroneous links (e.g. deactivate links). Frontex is the **data controller** in relation to the processing of personal data in MID during the MID transitional period by the ETIAS Central Unit.<sup>131</sup>

The process of verifying ETIAS hits and MID links will be similar to one another. After verification, the ETIAS National Unit responsible will be the one that decides on the hits and links in order to determine whether the travel authorisation is granted.

#### A4.1.3 Data protection framework - (internal and external) coherence

##### **Key provisions of the EBCG Regulation:**

Articles 2, 4, 10, 14, 18, 28, 29, 72, 73, 74, 75, 76, 86, 87, 88, 89, 90, 91, 92

##### **Key documents adopted by Frontex (Management Board and Executive Director):**

Frontex, Management Board Decision No 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex, 2021

Frontex, Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency, 2021

Frontex, Management Board Decision 56/2021 adopting implementing rules on the application of Regulation (EU) 2018/1725 concerning the tasks, duties and powers of the Data Protection Officer as well as rules concerning Designated Controllers in Frontex, 2021

Management Board Decision 09/2023 of 18 March 2023 adopting implementing rules concerning the tasks, duties and powers of the Data Protection Officer, 2023

Articles 86 to 92 of the EBCG Regulation establish the rules on the processing of personal data by the Agency. Frontex processes personal data in accordance with **Regulation (EU) 2018/1725<sup>132</sup> (EU DPR)**, which lays down data protection obligations for the EU institutions, bodies and agencies when processing personal data.

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<sup>131</sup> Article 40 Regulation (EU) 2019/817; Article 40 Regulation (EU) 2019/818.

<sup>132</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, L295, 21.11.2018, pp. 39-98.



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The EBCG Regulation requires the MB to adopt internal rules on the application of the EU DPR.<sup>133</sup> Accordingly, the MB adopted two Decisions in 2021: **Decision 68/2021**, which lays down Frontex’s rules on the general implementation of Regulation 2018/1725, applicable to all processing activities conducted by Frontex outside the scope of Chapter IX of this Regulation;<sup>134</sup> and **Decision 69/2021**, adopting the rules on processing operational personal data by the Agency.<sup>135</sup> The **EDPS** adopted two separate **Opinions on these Decisions**, highlighting several concerns and areas for improvement.<sup>136</sup> Frontex’s DPO then submitted an implementation plan to the EDPS and work is ongoing to redraft the two Decisions, with the DPO submitting several consultations to the EDPS to clarify complex data protection aspects.<sup>137</sup>

There are various **points of unclarity** within the EBCG Regulation in the area of data protection (internal coherence), and with the requirements set by Regulation EU DPR (external coherence), as discussed below in this section. Some of the topics (indicated below) were not sufficiently addressed and clarified by the implementing rules (MB Decisions).

The EBCG Regulation establishes the **framework for the EBCG** (Article 4),<sup>138</sup> but in the area of data processing it only sets the rules for the processing of personal data by the Agency (Articles 86-92).

The analysis found that some provisions of the EBCG Regulation are drafted very broadly, risking a **wide margin of interpretation** from a data protection point of view (e.g. risk analysis, EUROSUR), while being too narrow concerning other activities (e.g. checking of travel documents).

During the consultation, two EU stakeholders stated that, given the very limited capacity of the DPO, the Agency risks not having a clear and complete overview of the data processing activities taking place within it, potentially leaving some areas without proper monitoring.<sup>139</sup>

Although the analysis presents main findings in the area of data protection, it does not provide definitive conclusions or recommendations considering the ongoing work between Frontex and the EDPS to redraft the MB Decisions (68/2021 and 69/2021). Several topics (highlighted below) are currently under discussion between Frontex’s DPO and the EDPS, and will be potentially addressed by the redrafted implementing rules of the MB Decisions. Whereas, for personal data transfers to third countries, the EBCG Regulation refers to the requirements of Chapter V of EU DPR. In this regard, the actual adherence to the relevant rules may be lacking considering that the use of the derogation of ‘important reasons of public interest’ for the transfer of personal data to third countries in the context of return operations should remain a last resort. In this area, further discussion should focus on the possibility for the Agency to adopt implementing rules (i.e., with Frontex negotiating

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<sup>133</sup> Article 86(2) EBCG Regulation.

<sup>134</sup> Frontex (2021). ‘Management Board Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex’.

<sup>135</sup> Frontex (2021). ‘Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency’.

<sup>136</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148’; EDPS (2022). ‘Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0247’.

<sup>137</sup> Interview with Frontex (1).

<sup>138</sup> Article 4 EBCG Regulation: ‘The national authorities of Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, the national authorities responsible for return and the European Border and Coast Guard Agency (‘the Agency’) shall constitute the European Border and Coast Guard’.

<sup>139</sup> Interviews with EDPS and Frontex (1).

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regular or structural data transfer arrangements with third countries rather than making use of derogations).

### *Processing personal data*

According to the **principle of purpose limitation**, the Agency may process personal data only for the purposes indicated in Article 87 of the EBCG Regulation. Personal data providers determine the purpose(s) for which those data are to be processed,<sup>140</sup> and may indicate any restrictions on access or use of such data, in general or specific terms, including their transfer, erasure or destruction.<sup>141</sup> Processing for a different purpose may be carried out only on a case-by-case basis after determining that such processing is compatible with the initial purpose for which the data were collected and if authorised by the providers of the personal data.<sup>142</sup>

In line with Article 86(2) of the EBCG Regulation, the **MB adopted Decision 68/2021**, which provides that Frontex may process special categories of data if strictly necessary to achieve the **purposes** referenced in points (a), (c) and (e) of Article 87(1) of the EBCG Regulation. According to the EDPS, the Agency does not have a legal basis to process special categories of data and should include clear and precise provisions governing the scope and application of such processing, as well as accompanying safeguards.<sup>143</sup>

According to Frontex, Article 87 is not sufficiently clear, as the purposes indicated in Article 87 cross-reference other articles of the Regulation for which the necessity of processing personal data are not clear.<sup>144</sup> For instance, Article 87(1)(d) on the **facilitation of information exchange with law enforcement authorities of the Member States, Europol or Eurojust** makes reference to Article 90, which has an additional purpose (the identification of persons involved in cross-border crime) that is not explicitly mentioned in Article 87, although it could be argued that it falls within the very nature of joint operations.<sup>145</sup> The purpose of joint operations, according to Article 37(1) of the EBCG Regulation, is '[...] to face upcoming challenges, including [...] cross-border crime', and the objectives of the joint operations, according to Article 37(4) maybe involve '[...] the prevention of cross-border crime'.

With regard to the Agency's support to Member States in verifying the authenticity and integrity of travel documents used to cross the external borders, which entails the processing of personal data, it is restricted to joint operations, rapid border interventions, pilot projects and migration management support team deployments (see Article 88). Article 87 does not enable the Agency to process personal data of persons crossing the external borders in a situation where the Member State concerned requests ad hoc support from the Agency.

Article 87(1)(e) of the EBCG Regulation allows the processing of personal data for **risk analysis**, in accordance with Article 29, which in turn is very broad (e.g. it does not establish the types of data subjects nor the categories of personal data to perform such risk analysis). From a data protection point of view, it is unclear how data processing takes place in this context or the extent to which it is permitted.

Frontex highlighted that Article 87(2) does not mention **third countries** among the entities that can provide it with personal data for the purposes foreseen in Article 87(1). The Agency reported that this creates challenges in operations in third countries, as, in

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<sup>140</sup> Article 87(2) EBCG Regulation.

<sup>141</sup> Article 87(3) EBCG Regulation.

<sup>142</sup> Article 87(2) EBCG Regulation.

<sup>143</sup> EDPS (2022). 'Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148'.

<sup>144</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>145</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

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practical terms, the Agency could transmit personal data to the host third country, but not receive it.<sup>146</sup>

Article 88 of the EBCG Regulation sets out specific rules for the **processing of personal data** collected during joint operations, return operations, return interventions, pilot projects, rapid border interventions, and migration management support team deployments.<sup>147</sup> The Agency and host Member State must determine, in a transparent manner, the responsibilities for compliance with data protection obligations. Management Board Decision 69/2021<sup>148</sup> refers to the operational plan for key elements, such as the allocation of data protection roles and responsibilities. However, the EDPS pointed out that operational plans are not publicly available and that the Annex to the Decision only provides for the publication of the summary of their provisions on the Agency's website, limiting transparency and foreseeability.<sup>149</sup> Despite the EBCG Regulation providing for the publication of comprehensive information on past and current joint operations, the European Ombudsman found this has not been the case (see section 4.1.1 of the Report).<sup>150</sup>

**Pilot projects** are not sufficiently elaborated in the EBCG Regulation (referenced only in relation to research and innovation), which may cause a problem in processing personal data for any reason other than research and innovation.<sup>151</sup>

#### *Processing operational personal data*

According to **Article 90 of the EBCG Regulation**, the Agency, in the performance of its **tasks under Article 10(1)(q)**, may **process operational personal data** it has collected while monitoring migratory flows, carrying out risk analyses, or in the course of operations **for the purpose of 'identifying suspects of cross-border crimes'**,<sup>152</sup> in accordance with Chapter IX of Regulation EU DPR. Personal data processed for that purpose relate to natural persons whom the competent authorities of the Member States, Europol, Eurojust, or the Agency have reasonable grounds to suspect are involved in cross-border crime. Frontex may only exchange such personal data with Europol or Eurojust<sup>153</sup> and with the competent law enforcement authorities of the Member States.<sup>154</sup>

This means that for the performance of its tasks the Agency processes personal data under the general part of the EU DPR, whereas it applies Chapter IX of the EU DPR for the processing of operational personal data indicated in Article 90 of the EBCG Regulation.

As underlined by the EDPS, Article 90 read together with Article 10(1)(q) defines the purpose of this data processing. Accordingly, Frontex can do so in the context of the

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<sup>146</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>147</sup> Article 88 EBCG Regulation.

<sup>148</sup> Frontex (2021). 'Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency'.

<sup>149</sup> EDPS (2022). 'Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0247'.

<sup>150</sup> European Ombudsman (2021). 'Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities'. Available at: <https://www.ombudsman.europa.eu/en/decision/en/151369>

<sup>151</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document. .

<sup>152</sup> In line with its tasks established in Article 10(1)(q) EBCG Regulation.

<sup>153</sup> Article 90(2)(a): '[...] where they are strictly necessary for the performance of their respective mandates and in accordance with Article 68.'

<sup>154</sup> Article 90(2)(b): '[...] where they are strictly necessary for those authorities for the purposes of preventing, detecting, investigating or prosecuting serious cross-border crime.'

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performance of its tasks under Article 10(1)(q) of the EBCG Regulation and for the sole purpose of ‘identifying suspects of cross-border crime’.<sup>155</sup>

Frontex believes that Article 90 is insufficiently clear on the possibility and scope for the Agency to process such operational personal data. It stated that the purpose of processing operational person data for the ‘identification of suspects of cross-border crime’, as indicated in the EBCG Regulation, is too restrictive. According to the Agency, the lack of clarity in Article 90 limits the possibility of successfully engaging in its operational activities, without proper mechanisms to exchange information, secure communication channels and other crucial provisions to ensure national ownership of data, handling codes, data retention and logging obligations when communicating between Europol and Eurojust.<sup>156</sup>

Frontex suggested that Article 90 could be amended to extend the purpose for processing operational personal data and to provide the Agency with a law enforcement mandate.<sup>157</sup>

However, given the division in the EU Treaties between border control and law enforcement and the reference to specific law enforcement bodies, the Agency has only a support role linked to the border-crossing element of the fight against cross-border crime, which is conducted by the appropriate entities..

Frontex has only a support role linked to the fight against cross-border crime, and investigations are conducted by relevant national authorities, and supported at EU level by Europol and Eurojust.

The explicit narrowed possibilities for Frontex to process operation data (as per Articles 90 and 10(1)(q) of the EBCG Regulation) frame its role and scope of responsibilities in this area. The MB adopted **Decision 69/2021** on the rules on processing operational personal data by the Agency.<sup>158</sup> Although the EBCG Regulation is clear on the purpose of operational personal data processing, the MB Decision leads to create some ambiguity, as stressed by the EDPS: ‘some wording in Articles 6, 7, 8 and 9 of the Annex (= Annex to MB decision) lends itself to conclude that collection of operational personal data is a primary task of Frontex, which is not the case [...]’.<sup>159</sup>

According to Frontex, the current framework poses **limitations to the exchange of operational data**, which may impede cooperation on the exchange of personal data with entities not mentioned by the EBCG Regulation or relevant MB decisions, but may nevertheless be important partners, such as OLAF or the European Public Prosecutor Office (EPPO).<sup>160</sup>

#### *Data Protection Officer (DPO)*

In line with Article 43 of the EU DPR, the Agency designated a **DPO**, who provides independent advice on personal data processing and monitors compliance with the relevant data protection rules.<sup>161</sup> All processing operations of personal data are reported to the Frontex DPO and, if the situation requires, to the EDPS. The EBCG Regulation

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<sup>155</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>156</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>157</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>158</sup> Frontex (2021). ‘Management Board, Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency’.

<sup>159</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0247’.

<sup>160</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>161</sup> Frontex (2021). ‘Management Board Decision 56/2021 adopting implementing rules on the application of Regulation (EU) 2018/1725 concerning the tasks, duties and powers of the Data Protection Officer as well as rules concerning Designated Controllers in Frontex’.

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does not refer to the role of the DPO, nor does it clarify reporting lines and appointment procedures. The only exception is the mention of their involvement in the complaints mechanism. The EBCG Regulation refers to the general framework set out by Regulation (EU) 2018/1725 and to rules adopted by the MB.<sup>162</sup> Clarifications were introduced by the Management Board Decisions (56/2021 and later 09/2023, which repealed and replaced 56/2021), which adopted implementing rules on the tasks, duties and powers of the DPO.<sup>163</sup> However, Management Board Decision 69/2021 did not clarify when and how the DPO would be involved in the specific context of Frontex processing of operational personal data.<sup>164</sup>

Despite the Agency's expanding mandate and tasks, it has allocated limited resources and staff to monitoring data protection compliance. Currently, the Data Protection Office comprises the following staff members: DPO, Associate DPO (acting as Deputy DPO), one administrative assistant (post currently vacant), four specialists (one Legal Officer, one IT Officer, two specialists for ETIAS and Interoperability files only). The DPO, as Head of Office, has to conduct managerial tasks, while two (of six) posts are reserved to work with ETIAS and interoperability files exclusively, leaving the remaining posts to support any other data protection file. The limited staff numbers are insufficient to cover the enhanced mandate and increasing activities of the Agency.<sup>165</sup>

In line with the EBCG Regulation, the **FRO** and **DPO** established a **Memorandum of Understanding** (MoU), which foresees cooperation (albeit in very broad terms) on the complaints received by the FRO that have data protection implications. This document is being updated.<sup>166</sup>

#### *Transfer of personal data*

For **personal data transfers to third countries and international organisations**, the Agency may proceed in accordance with **Chapter V of the EU DPR** insofar as such transfer is necessary to the performance of its tasks. Accordingly, the transfers can be done on the basis of an **adequacy decision** adopted by the European Commission, where the Commission decided that the third country 'ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out' (Article 47 EU DPR). Transfers can also be done 'if the controller or processor has provided **appropriate safeguards**, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available' (Article 48 EU DPR). These appropriate safeguards may be provided for by a **legally binding and enforceable instrument (status agreement, in the case of Frontex), without prior authorisation by the EDPS**. If the transfer is based on a **non-legally binding instrument**, such as an administrative arrangement (**working arrangement, in the case of Frontex**), then the transfer must obtain **prior approval from the EDPS**.

The EU DPR allows for **derogations for specific situations** in the absence of an adequacy decision or appropriate safeguards. Here, a transfer/set of transfers of personal data to a third country takes place only on one of the conditions indicated in Article 50 of

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<sup>162</sup> Article 86(2) EBCG Regulation.

<sup>163</sup> Frontex (2021). 'Management Board Decision 56/2021 of 15 October 2021 adopting implementing rules on the application of Regulation (EU) 2018/1725 concerning the tasks, duties and powers of the Data Protection Officer as well as rules concerning Designated Controllers in Frontex'; Frontex (2023). 'Management Board Decision 09/2023 of 18 March 2023 adopting implementing rules concerning the tasks, duties and powers of the Data Protection Officer'.

<sup>164</sup> Frontex (2021). 'Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency'.

<sup>165</sup> Interviews with EDPS and Frontex (1).

<sup>166</sup> Interview with Frontex (1).



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the EU DPR (including when ‘the transfer is necessary for important reasons of public interest’).

In the context of personal data transfer to third countries, the Agency can cooperate with third countries through a number of instruments. To date it has cooperated with third countries on the basis of **status agreements, working arrangements or other types of documents** (e.g. MoU, letter of intent).<sup>167</sup> Five **Status Agreements** are in place between the European Commission and third countries (Albania, Serbia, Montenegro, North Macedonia, and Moldova). The EBCG Regulation establishes that Frontex may conclude **working arrangements** with third countries for the purpose of cooperation to the extent required for the fulfilment of its tasks.<sup>168</sup> Where those working arrangements provide for the transfer of personal data, and where provided for by Regulation (EU) 2018/1725, Frontex is required to request prior authorisation from the EDPS (Article 73(4) of the EBCG Regulation).

The **Commission model working arrangement** was drafted in accordance with Article 76(2) of the EBCG Regulation and adopted in 2021. The EDPS provided comments on the draft model in 2020, indicating that it lacked essential data protection safeguards. Consequently, any working arrangement based on that draft model needs to be supplemented to ensure compliance with EU data protection law. The Commission’s model provisions for the exchange of information in the context of EUROSUR were adopted on 21 January 2022 and have not been shared with the EDPS.<sup>169</sup>

In 2022, Frontex submitted a **request for prior authorisation** to the EDPS for the **Working Arrangement between Frontex and the Directorate for Territorial Surveillance of the Republic of Niger** establishing operational cooperation on the fight against irregular migration and cross-border organised crime. The **EDPS** did not authorise the use of the Working Arrangement under Article 68(5)) of the EBCG Regulation, and considering its Opinion on the model working arrangement it pointed to a number of changes required for the draft Working Arrangement as ensuring adequate safeguards.<sup>170</sup>

The Agency provided support to the European Commission, which is in the process of redrafting the model Working Arrangement, despite not being entitled to include (at its own initiative) the additional safeguards recommended by the EDPS.<sup>171</sup> The Agency did not submit any other requests for prior authorisation to the EDPS for other working arrangements.<sup>172</sup>

Frontex indicated the use of **other types of documents for cooperation** (e.g. MoU, letter of intent), although it is unclear for which transfers these are used, the data protection safeguards they foresee, or whether they meet the relevant obligations.

Data protection considerations arise in the area of **return**, as any return operation organised or coordinated by the Agency requires handling personal data and the transfer of personal data to third countries (e.g. to organise flights). However, the EBCG

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<sup>167</sup> Interview with Frontex (1).

<sup>168</sup> Article 73 EBCG Regulation.

<sup>169</sup> EDPS (2022). ‘Comments on the model working arrangements between the European and Coast Guard Agency and the authorities of third countries’. Available at: [https://edps.europa.eu/sites/default/files/publication/20-07-03\\_edps\\_comments\\_on\\_model\\_working\\_arrangements\\_between\\_ebcg\\_and\\_authorities\\_of\\_third\\_countries\\_en.pdf](https://edps.europa.eu/sites/default/files/publication/20-07-03_edps_comments_on_model_working_arrangements_between_ebcg_and_authorities_of_third_countries_en.pdf)

<sup>170</sup> EDPS (2022). ‘Decision on the request for prior authorisation of the Working Arrangement establishing Operational Cooperation between the European Border and Coast Guard Agency and the Directorate for Territorial Surveillance of the Republic of Niger, Case 2022-0647’. Available at: [https://edps.europa.eu/data-protection/our-work/publications/authorisation-decisions-transfers/2022-08-01-edps-request-prior-authorisation-working-arrangement-operational-cooperation-between-frontex-and-republic-niger\\_en](https://edps.europa.eu/data-protection/our-work/publications/authorisation-decisions-transfers/2022-08-01-edps-request-prior-authorisation-working-arrangement-operational-cooperation-between-frontex-and-republic-niger_en)

<sup>171</sup> Interview with Frontex (1).

<sup>172</sup> Interview with Frontex (1).

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Regulation does not provide separately for the processing of personal data in the context of return activities, despite the increased mandate of the Agency. Such separate provision would clarify the processing of data in these contexts.

Article 86(3) of the EBCG Regulation establishes that the transfer must take place under the conditions laid down in **Chapter V of the EU DPR**.

**Transfer impact assessments** are performed by the Return Division, with the DPO providing **opinions** on whether the transfers to third countries meet the strict conditions of Article 50(1)(d) of the EU DPR. However, one stakeholder indicated that the limited capacity of the Data Protection Office limits the possibility to provide an opinion on all transfer impact assessments submitted for consultation.<sup>173</sup>

Frontex reported that it is not doing the data transfer itself but relying on the Member States to do so, or is using derogations on a case-by-case basis, as foreseen under Article 50 of the EU DPR.<sup>174</sup> However, it is questionable whether the wording of Article 50 of EU DPR extends to cover ongoing data exchange with third countries, as distinct from single transfers, and such practice by Frontex (i.e. using derogations instead of negotiating regular or structural data transfer arrangements with third countries) could amount to an inappropriate use of the derogations.

To date, the Agency has used the derogation of 'important reasons of public interest' for the transfer of personal data in the context of return operations with United Arab Emirates (UAE), Saudi Arabia, Egypt, Albania, Nigeria, Niger, Bangladesh and Ghana, and is shortly to do the same with Uzbekistan, Tajikistan, and Kyrgyzstan (staff data).<sup>175</sup>

The EDPS stressed that the use of the derogation of 'important reasons of public interest' for the transfer of personal data to third countries in the context of return operations should remain a last resort, with Frontex instead to negotiate regular or structural data transfer arrangements with third countries.<sup>176</sup> The Agency acknowledged that these derogations cannot be applied to transfers if they are structural and regular.<sup>177</sup> Nevertheless, the consultation indicated that the Agency is not currently negotiating these administrative arrangements.<sup>178</sup>

The Agency cooperates with **service providers** on return activities (e.g. travel agencies to book flights for returnees and reintegration partners in the context of Joint Reintegration Services) requiring the transfer of returnees' personal data. However, the EBCG Regulation does not specifically foresee the transfer of data to service providers, limiting such activities.<sup>179</sup>

Overall, it could be argued that although the legal framework governing Frontex's use and transfer of personal data is strict, proper implementing rules and actual adherence to the rules is lacking, as evidenced by the multiple circumstances in which data is exchanged with third countries and Frontex's reliance on a public interest clause.

## **EUROSUR**

Article 89 of the EBCG Regulation, on **EUROSUR**, is another important data protection provision. The **lack of clarity** of the EUROSUR provision impacts the understanding of the data flows that take place in this framework. Article 89, which regulates the **processing of personal data in the framework of EUROSUR**, limits the categories of

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<sup>173</sup> Interview with Frontex (1).

<sup>174</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>175</sup> Interview with Frontex (1).

<sup>176</sup> EDPS (2021). 'Opinion on international data transfers by Frontex in the context of return operations'.

<sup>177</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>178</sup> Interview with Frontex (1).

<sup>179</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

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personal data processed to **ship and aircraft identification numbers**, while, afterwards, it allows the processing of **other personal data** when ‘exceptionally required’ and ‘limited to what is necessary to the purposes of EUROSUR in accordance with Article 18’. Here, the EBCG Regulation does not specify the ‘other’ personal data in question, thus not limiting clearly the processing, and not being fully in line with the principle of data minimisation<sup>180</sup>.

According to several representatives of the Frontex Surveillance Centre (responsible for maritime and aerial surveillance executing EUROSUR fusion services, under Article 28(2)(b, c, d) of the EBCG Regulation), the adequate functioning of their services is hindered by these limitations, which prevent them from using public data sources such as commercial registries for vessel or aircraft ownership that would permit the identification of high-risk vessels.<sup>181</sup>

The discussion with stakeholders explored the extent to which Frontex makes use of this exception (Article 89 referring to ‘other personal data’) to process categories of personal data other than vehicle, aircraft and vessel numbers. It was reported that the Agency has not used this exception yet.<sup>182</sup>

The current scope of Article 89 of the EBCG Regulation does not allow the Frontex Situational Centre to fully provide the EUROSUR fusion services foreseen under Article 28(2)(h), i.e. information derived from ‘media monitoring, open source intelligence and analysis of internet activities’. An important part of such analysis could be based on social media monitoring (social media forums or group discussions) to gather information on the movements of migrants towards irregular border crossings or operations of smugglers.<sup>183</sup> As the purpose of these analyses is not criminal investigation, but rather to provide for an improved situational picture, Directive (EU) 2016/680 is not applicable. Nor can GDPR<sup>184</sup> rules be applied, as that would compromise the (open source) ‘intelligence’ purpose (e.g. seeking the consent of social media users).

As noted by the EDPS, Management Board Decision 68/2021 does not contain any specific rules on the processing of personal data in the framework of EUROSUR and lacks key data protection elements (e.g. purpose, controller, safeguards).<sup>185</sup>

The various modalities for Frontex to cooperate with third countries and exchange information, as laid down in the EBCG Regulation, is complex and at times unclear, making reference to various provisions, particularly where it involves the use of EUROSUR.

**The cooperation and exchange of information with third countries in the framework of EUROSUR** is regulated in Articles 74, 75 and 76 of the EBCG Regulation. Article 89

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<sup>180</sup> ‘The principle of “data minimisation” means that a data controller should limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose. They should also retain the data only for as long as is necessary to fulfil that purpose. In other words, data controllers should collect only the personal data they really need, and should keep it only for as long as they need it’ (EDPS (n.d.). ‘Glossary’. Available at: [https://edps.europa.eu/data-protection/data-protection/glossary/d\\_en#:~:text=The%20principle%20of%20E2%80%9Cdata%20minimisation,necessary%20to%20fulfil%20that%20purpose](https://edps.europa.eu/data-protection/data-protection/glossary/d_en#:~:text=The%20principle%20of%20E2%80%9Cdata%20minimisation,necessary%20to%20fulfil%20that%20purpose)).

<sup>181</sup> Interviews with Frontex; the interviews highlighted various risk indicators that could be derived from such registers, including frequent changes of ownership, ownership of multiple vs single vessel, etc.

<sup>182</sup> Interview with Frontex (1).

<sup>183</sup> Interviews with Frontex.

<sup>184</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (‘General Data Protection Regulation’) (Text with EEA relevance), OJ L 119, 4.5.2016, pp. 1-88.

<sup>185</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by the European Border and Coast Guard Agency, Case 2022-0148’.



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makes also reference to exchanges of information with third countries within the framework of EUROSUR, and subjects those transfers to **Chapter V of the EU DPR (transfers of personal data to third countries or international organisations)**. The EBCG Regulation prohibits ‘any exchange of information under Articles 72(2), 73(3) and 74(3) which provides a third country with data that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment, or any other violation of fundamental rights’.

During the consultation, Frontex reported that the EBCG Regulation’s lack of purpose specification, controllership and the proper identification of data categories and/or data subjects within the EUROSUR framework is most apparent in the exchange of information with third countries. Despite having working arrangements or status agreements in place, the Agency is obliged to consider the specific situation of third countries and to examine effective impediments to fundamental rights that could be derived from such transfers (in line with the CJEU Schrems II judgment<sup>186</sup>).<sup>187</sup>

The EDPS highlighted complexity in the modalities of cooperation with third countries, where that cooperation involves the use of EUROSUR.<sup>188</sup>

The EDPS and Frontex reported that the **definition of ‘pre-frontier area’** in Article 2 of the EBCG Regulation, when read with Article 29, might allow a very wide interpretation that would enable the Agency to extend its satellite **surveillance** and application of EUROSUR worldwide, without limitations.<sup>189</sup> This is particularly significant in the context of the Agency’s effort to extend cooperation with third countries, including in sub-Saharan Africa, in which the use of EUROSUR would be included.<sup>190</sup>

According to the FRA, processing in the EUROSUR framework could pose risks to fundamental rights in relation to the processing of photographs and videos of vessels with migrants by maritime surveillance aircrafts, if such data are combined with facial recognition software and analysis, which is not currently the case.<sup>191</sup> Such software works with biometric and alphanumeric databases of suspects, which Frontex neither maintains nor accesses.<sup>192</sup> Ship and aircraft identification numbers are the only elements processed as personal data within the EUROSUR framework (other than the exception outlined in Article 89(3)). The Agency reported that although the surveillance operated under EUROSUR includes the collection of images, there are two limitations/safeguards excluding the processing of other personal data, such as an image of an individual. One technological limitation is that the altitude at which the surveillance aircrafts operate does not allow a clear granular image. Secondly, Article 89(3) specifies that the processing of other personal data is allowed when exceptionally required and limited to what is necessary to the purposes of EUROSUR, which would exclude the identification of individuals. However, the wording of Article 18 (on EUROSUR) makes it difficult to clearly

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<sup>186</sup> CJEU Case C-311/18, 2020. Available at:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12312155>

<sup>187</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>188</sup> Interview with EDPS.

<sup>189</sup> Interviews with EDPS and Frontex (10).

<sup>190</sup> Interview with the EDPS.

<sup>191</sup> FRA (2018). ‘How the EUROSUR Regulation affects fundamental rights’, p. 12. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-eurosur-regulation-fundamental-rights-impact\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-eurosur-regulation-fundamental-rights-impact_en.pdf)

<sup>192</sup> The ETIAS Watchlist could be potentially such a database, but its uses are limited and defined in Preamble 28 of Regulation (EU) 2018/1240.

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define the purpose of EUROSUR and the purpose of the processing of personal data in EUROSUR.<sup>193</sup>

Currently, there is **no record of the data processing operations** that take place within a joint operation or within the framework of EUROSUR.<sup>194</sup>

On the **classification level for the EUROSUR data**, the EBCG Regulation requires upgrading the EUROSUR communication/ICT network to level CONFIDENTIEL UE/EU CONFIDENTIAL. According to Frontex, most of the data in EUROSUR are not classified and the required classification might be overly restrictive and limit the possibility of analysing data in the context of EUROSUR. There are high costs involved in setting up a secure network up to EU CONFIDENTIAL level<sup>195</sup>. This is further discussed in section 4.1.6 of the Report.

#### *Data retention*

On **data retention**, Article 91 of the EBCG Regulation establishes the maximum duration of data storage. Management Board Decision 68/2021 included a provision on storage, anonymisation and deletion. However, the EDPS found that it should have clarified the specific data retention period for processing of personal data in a number of areas, such as in the context of return activities, in the framework of EUROSUR, for the purposes of joint operations, pilot projects, rapid border interventions, migration management support teams and risk analysis, for the purpose of operating the FADO system, and for the purpose of carrying out administrative tasks.<sup>196</sup>

During the consultation, Frontex noted that the EBCG Regulation foresees a short retention period for personal data used for the purpose of returns, which does not allow the Agency to develop a related analytical capacity.<sup>197</sup>

For the processing of operational personal data, Management Board Decision 69/2021 adopted specific internal rules on data retention of operational personal data, in accordance with Article 91(3) of the EBCG Regulation. However, the EDPS suggested that the Agency should have clarified ‘the data retention periods for potential suspects and specify that in any event, as soon as data about a suspect are deleted, the related data to victims and witness shall be automatically deleted’. It also required the Agency to ‘justify the data retention period for each category of data subject in line with the principles of storage limitation and accountability’.<sup>198</sup>

Both Management Board Decisions are currently being revised to align data retention rules with the EDPS’ recommendations.

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<sup>193</sup> Interview with Frontex (1).

<sup>194</sup> Interview with Frontex (1).

<sup>195</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>196</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148’.

<sup>197</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>198</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148’.

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## Annex 5 Fundamental Rights<sup>199</sup>

### Fundamental Rights

The assessment builds on the findings identified through extensive desk research and integrated with the points of view of stakeholders consulted (through interviews and surveys) to evaluate to which extent the Agency promoted and respected fundamental rights in its activities.

The fundamental rights overarching section:

- Assesses how the Agency has complied with the applicable fundamental rights framework;
- Evaluates the effectiveness of the conditions created by the Agency for ensuring and promoting the respect of fundamental rights;
- Analyses the functioning of the Serious Incident Reports (SIR) mechanism and complaints mechanism;
- Assesses the fundamental rights aspects of monitoring the return operations;
- Explores the obligations on Member States' authorities set by the EBCG Regulation and focuses on Frontex's support provided to Hungary, Lithuania, Greece and for the operation in the Central Mediterranean and cooperation with third countries considering the high risks to fundamental rights in these operations highlighted by stakeholders.

#### Key documents adopted from 2020 by Frontex (Management Board and Executive Director):

Frontex, Management Board Decision 39/2020 of 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations, 2020

Frontex, Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff, 2021

Frontex, Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps, 2021

Frontex, Executive Director Decision on Standard Operating Procedure (SOP) – Serious Incident Reporting, 2021

Frontex, Fundamental Rights Strategy, 2021

Frontex, Management Board Decision 61/2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy, 2021

Frontex, Management Board Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex, 2021

Frontex, Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities, 2022

Frontex, Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism, 2022

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<sup>199</sup> This section provides additional analysis in response to evaluation questions 14, 5.6 and 6.4.

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Frontex, Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer, 2022

Frontex, Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard standing corps, 2022

Frontex, Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities, internal document, 2023

### A5.1.1 Promotion and respect of fundamental rights through all the Agency's activities

The EBCG Regulation aims to establish a comprehensive **fundamental rights framework**, given that it includes **horizontal safeguards** as well as a number of **roles, procedures and instruments** (to be set up and/or implemented by the Agency) to ensure the protection of fundamental rights in the execution of the Agency's mandate.

Nonetheless, more could be done to **better streamline** the respect for fundamental rights in the structure and procedures of the Agency. The analysis found that the overall effectiveness of the framework risks being limited by **gaps, inconsistencies and lack of clarity** identified within the EBCG Regulation as well as in implementation issues. This section outlines the framework and identifies **potential limitations**, based on the analysis of the EBCG Regulation and implementing rules, and considering the stakeholders' views.

**Respect for fundamental rights** is a legal obligation upon the EBCG (made of Member State's authorities and the Agency) under EU and international law. **Recital 103 of the EBCG Regulation** states that the EBCG Regulation respects fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on the European Union (TEU) and by the Charter of Fundamental Rights of the European Union.<sup>200</sup>

Regarding international obligations, **Article 80 of the EBCG Regulation** requires the Agency and the Member States to "*guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement*".

To comply with these EU and international obligations, the EBCG Regulation provides for a **number of horizontal safeguards, procedures and mechanisms** to ensure and monitor the Agency's compliance with fundamental rights.

As indicated in these sections, the EBCG Regulation provides for **horizontal safeguards** (such as Articles 1, 3, 5, 46, including data protection safeguard -Articles 89 to 92), specific **roles (FRO, FRMs), CF, cooperation with FRA**, and procedures and

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<sup>200</sup> Recital 103 of the EBCG Regulation: "*This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 TEU and by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child*".

instruments (**Codes of conducts, SIR procedure, complaints mechanism, supervisory mechanism on the use of force**) to ensure the protection and monitoring of fundamental rights. Moreover, the Agency adopted the **Fundamental Rights Strategy** and implementing **Action Plan** to deliver on its obligations.

Figure 2. Fundamental rights framework



Source: ICF elaboration

The 2011 amendments to the Agency’s Regulation already introduced important fundamental rights safeguards, such as the position of the FRO and the CF.<sup>201</sup> The 2016 Regulation<sup>202</sup> further strengthened the fundamental rights framework, e.g. with inclusion of an individual complaints mechanism, and by guaranteeing the CF’s effective access to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions. The EBCG Regulation of 2019 extended the mandate and capacity of the Agency, and the respect for fundamental rights was strengthened and better streamlined in the legislative text (to a certain extent at least). In particular, the tasks of the FRO were extended and the position of FRMs was introduced to assess fundamental rights compliance in operational activities.

#### Horizontal safeguards

The EBCG Regulation provides **horizontal fundamental rights safeguards**, as the Agency has to ensure carrying out its activities while complying with fundamental rights, as required particularly by **Articles 1, 3, 5 and 46**.

The EBCG (comprising both the Member States’ authorities and the Agency) was established to ensure the European integrated border management (EIBM) at the external

<sup>201</sup> Regulation (EU) 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing an European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304, 22.11.2011, p. 1–17.

<sup>202</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251/1, 16.09.2016.



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borders with a view to managing those borders efficiently in full compliance with fundamental rights.<sup>203</sup> **Article 1** of the EBCG Regulation seeks to ensure that there is a high level of internal security within the Union whilst ensuring the full respect of fundamental rights and safeguarding the free movement of persons within the Union.<sup>204</sup> **Article 3(2)** of the EBCG Regulation reinforces that fundamental rights are an *overarching component* in the implementation of EIBM by the EBCG (comprising the Member States and the Agency).<sup>205</sup>

Although **Article 5** of the EBCG Regulation requires the Agency to contribute to the continuous and uniform application of Union law, it refers to external borders only, and it does not cover explicitly the Agency's activities concerning returns<sup>206</sup>, though this is indicated in other provisions (such as Article 48 of the EBCG Regulation). This may be considered as a **gap in the text** and the respect of fundamental rights by the Agency in all areas covered by Frontex's mandate, including in the area of return, could be better reflected in this provision.

#### *Article 46 of the EBCG Regulation*

**Article 46** provides for another important fundamental rights safeguard of the EBCG Regulation, as it reinforces, compared to the 2016 Regulation, the **obligation of the Executive Director to withdraw financing of, suspend, terminate or not launch any activity of the Agency in case of violations of fundamental rights**.<sup>207</sup> This Article imposes an obligation for the Executive Director to suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist. It also includes withdrawing the financing for any activity by the Agency.<sup>208</sup>

Article 46 has also a preventive component, which was introduced with the 2019 EBCG Regulation. Currently, it includes the decision to not launch an activity in case there would already be serious reasons at the beginning of the activity.<sup>209</sup>

Regarding the **sources of information**, the EBCG Regulation provides that the Executive Director's decisions are based on duly justified grounds, taking into account relevant information: “[...] *such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation*”.<sup>210</sup>

The main issue, flagged by various stakeholders, is that the EBCG Regulation leaves **ample discretion to the Executive Director's decision**.<sup>211</sup> They highlighted that despite the reporting of alleged fundamental rights violations at borders where Frontex is

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<sup>203</sup> Article 1(1) of the EBCG Regulation.

<sup>204</sup> Article 1(2) of the EBCG Regulation.

<sup>205</sup> Article 3(2) of the EBCG Regulation.

<sup>206</sup> Fundamental Rights Agency (FRA) (2018), Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-opinion-ebcg-05-2018\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-opinion-ebcg-05-2018_en.pdf)

<sup>207</sup> Article 25 of Regulation (EU) 2016/1624 (no longer in force) referred to the suspension or termination of activities only, without including the preventive component (i.e. not launching the activities).

<sup>208</sup> Article 46(4) of the EBCG Regulation.

<sup>209</sup> Article 46(5) of the EBCG Regulation.

<sup>210</sup> Article 46(6) of the EBCG Regulation.

<sup>211</sup> Based on interviews with civil society organisations/non-members of CF (2/4) and civil society organisations/members of CF (3/5) and international organisation/member of CF (1/3).

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operational, the Executive Director has long been reluctant to trigger Article 46 in the case of Hungary and Greece.<sup>212</sup>

In the case of Hungary, the decision to suspend the Agency's operations (in border management<sup>213</sup>) was adopted only following the decision of the Court of Justice (which ruled against Hungary)<sup>214</sup>, despite long-standing concerns expressed by the FRO and other stakeholders (as indicated in section A5.1.1.5).

In this respect, the FSWG<sup>215</sup> suggested that clearer criteria and procedures should be established for the adequate application of Article 46, including a strong role of the FRO, and an obligation to take account of information received from external actors.<sup>216</sup>

During the consultation, the Fundamental Rights Office indicated that this Article should be seen as a last resort when all other interventions and actions fail to bring host Member States in compliance. The Office is of the opinion that the Article does not focus sufficiently on prevention, and does not include intermediary/mitigation measures. It also does not provide for a more elaborate procedure to evaluate whether '*conditions to conduct those activities are no longer fulfilled*' or whether any '*violations of fundamental rights or international protection obligations*' had been committed.<sup>217</sup> The Agency does not have investigative powers and it is outside its mandate to evaluate charges of violations in case these are committed by Member States' staff. This is further explored under the role of the FRO and FRMs.<sup>218</sup>

To strengthen the functioning of this mechanism, in 2022 the Agency adopted the **SOP to establish the roles and responsibilities within the Agency to support the decision-making process of the Executive Director**.<sup>219</sup> Increased transparency of the process might have the potential to depoliticise it.

The SOP also aims to **clarify the applicable criteria for decisions** based on considerations related to fundamental rights or international protection obligations; and it makes reference to definitions in the European Convention on Human Rights (ECHR) and as further developed by the European Court of Human Rights (ECtHR).

Additionally, the SOP provides a **non-exhaustive list of key sources of information** to be taken into consideration before the Executive Director takes a decision. This list does not explicitly mention sources from civil society organisations; however, it is indicated that it is at the Executive Director's discretion to consider other sources of information, and

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<sup>212</sup> E.g. Border Violence Monitoring Network (2020), Annual Torture Report. Available online at: <https://borderviolence.eu/app/uploads/Annual-Torture-Report-2020-BVMN.pdf>

Human Rights Watch (2021), Frontex Failing to Protect People at EU Borders. Available online at: <https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>

<sup>213</sup> However, the Agency continued to provide support in the area of return (as explained in section on return monitoring and fundamental rights).

<sup>214</sup> Court of Justice of the European Union (CJEU), Case C-808/18 Commission v Hungary, 2020. Available online at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0808>

<sup>215</sup> The Frontex Scrutiny Working Group (FSWG) of the European Parliament's LIBE Committee was constituted in 2021 to monitor all aspects of the functioning of Frontex, including its reinforced role and resources for integrated border management, the correct application of the EU *acquis*, and its execution of EBCG Regulation and Regulation (EU) 656/2014.

<sup>216</sup> European Parliament, Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. Available online: [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)

<sup>217</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>218</sup> Evaluation of EBCG Regulation, Frontex Internal Document (20/03/2023).

<sup>219</sup> Frontex (2022), Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities. Available online at: <https://prd.frontex.europa.eu/document/frontex-executive-director-decision-on-standard-operating-procedure-mechanism-to-withdraw-the-financing-of-or-suspend-or-terminate-or-not-launch-frontex-activities/>

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compare information available from different sources provided that they are substantiated, non-biased and authoritative.

The SOP foresees the possibility for the Executive Director to establish a **Working Group with the task to prepare a detailed assessment of the situations referred to in Article 46 including respective recommendations**. The assessment and recommendation aim at facilitating the decision of the Executive Director under Article 46.

Regarding the **FRO's role**, Article 46 indicates that the FRO advises the Executive Director on the recommended course of action if serious or persistent violations are identified prior to the launch or during the Agency's activity. The SOP introduces the obligation to always invite the **FRO as an advisor to the Working Group** (if established) when the situations arising under Article 46 are related to fundamental rights and international protection considerations.

The SOP suggests that a **gradual approach** and the **principle of proportionality** should be considered when deciding on the actions to be taken under Article 46. Whenever appropriate, mitigation/corrective measures should be put in place with the aim to resolve the situation without triggering Article 46. Moreover, the SOP foresees a **monitoring mechanism for the follow-up** on activities which were suspended, or their financing was withdrawn, and **provides guidance on the follow-up** of a decision not to launch an activity.

**Data protection violations** are currently not considered as basis to trigger Article 46, and are not directly mentioned in the SOP.<sup>220</sup> However, data protection and privacy are fundamental rights established in the Charter of Fundamental Rights of the European Union; consequently, violations of those rights would constitute fundamental rights violations which could give the frame for the application of Article 46 of the EBCG Regulation.

One stakeholder indicated that limitations come from the fact that the DPO is not receiving any of the FRO's evaluation of joint operations and is not being embedded in the process of providing recommendations on the joint operations. The DPO's role is restricted to the participation in the drafting of data protection requirements in the operational plans.<sup>221</sup>

Debate is ongoing on the **consequences of triggering Article 46**. The potential risks of the Agency withdrawing its activities in a Member State accused of breaching fundamental rights would limit the monitoring and reporting of the violations at the EU level.<sup>222</sup> In the absence of Frontex, the fundamental rights situation may even deteriorate. Some stakeholders suggested a '*reverse Article 46*' that could entail additional safeguards and/or enhanced presence of the Agency in response to Member States' violations at the borders to monitor/ensure compliance (instead of withdrawing).<sup>223</sup> A different point of view was expressed by a civil society organisation, which argued that such reasoning would work only if the Agency would be effectively promoting/ensuring the respect of fundamental rights<sup>224</sup>, whose indirect responsibility, instead, was put into

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<sup>220</sup> Based on an interview with Frontex (1).

<sup>221</sup> Based on an interview with Frontex (1).

<sup>222</sup> Based on interviews with Frontex (1 – scoping interview) and with DG HOME (1 – scoping interview). Field visit interviews with MS representatives with NFPOC from EL and BG.

<sup>223</sup> Based on an interview with Frontex (1 – scoping interview) and the Fundamental Rights Office (1/5).

<sup>224</sup> Based on an interview with a civil society organisation/non-member of CF (1/4).



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question in recent years by media investigations and civil society/international organisations.<sup>225</sup>

When discussing additional safeguards and/or enhanced presence, it should be noted that currently – under the EBCG Regulation – the support of Frontex is provided on the basis of **operational plans agreed between the Agency and the host Member States**. Member States might not be inclined to be under enhanced monitoring and might not agree on the renewal of such plans.<sup>226</sup>

To avoid such risk, a potential solution (suggested during the consultation) suggested by a stakeholder foresees minimum standards according to which Frontex, and the FRO, should be operating at/monitoring the external borders as they are EU borders, hence limiting Member States' decisions to ask Frontex to leave the country in case of fundamental rights concerns.<sup>227</sup>

This was confirmed during the stakeholders' consultation by a Member State recommending that rules could be envisaged to prevent Member States from sending Frontex away if potential violations of fundamental rights are found.<sup>228</sup>

Another topic widely discussed during the consultation is related to the **authority adopting the decision referred to in Article 46**. On one hand, by delegating the decision to trigger Article 46 to the Executive Director, the EBCG Regulation may risk placing excessive public and political pressure on the Executive Director alone, without involving the relevant 'political' actors (e.g. MB, Commission or the Council of the European Union). On the other hand, the potential involvement of such actors could lead to the politicisation of the process (with the risk of having actors blocking in practice the possibility of triggering Article 46).

On this point, **several stakeholders proposed different suggestions** on who should contribute to the adoption of such a decision.

Frontex pointed out that the decision to terminate an operation has high political impacts, consequently, the decision should be done with the involvement of the appropriate political level (such as the Council).<sup>229</sup>

Various solutions were suggested during the consultation by representatives of the European Parliament.

On the potential involvement of the MB, concerns were raised considering that the Board is a very political body and, given that the majority of its members are from Member States' authorities, there is supposedly a political culture for Member States not willing to take decisions against other Member States because of political interests and considerations.<sup>230</sup>

According to two representatives, the decision on triggering Article 46 should stay with the Executive Director provided that a more proactive approach would be adopted.<sup>231</sup> For

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<sup>225</sup> E.g. The Guardian (2022), Revealed: EU border agency involved in hundreds of refugee pushbacks. Available online at: <https://www.theguardian.com/global-development/2022/apr/28/revealed-eu-border-agency-involved-in-hundreds-of-refugee-pushbacks>

Hungarian Helsinki Committee (2021), Protecting fundamental rights or shielding fundamental rights violations? Evaluating Frontex's human rights mechanisms related to Hungary. Available at: <https://helsinki.hu/wp-content/uploads/Frontex-human-rights-mechanisms.pdf>

<sup>226</sup> Based on an interview with Frontex (1).

<sup>227</sup> Based on an interview with Frontex (1).

<sup>228</sup> Based on the reply by a Member State (CH) to the survey with MS/SAC authorities, Question 8.1.

<sup>229</sup> Evaluation of EBCG Regulation, Frontex Internal Document (20/03/2023).

<sup>230</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>231</sup> Based on an interview with a Member of the European Parliament (1/4).



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implementation of its fundamental rights obligations and advises (including on its own initiative) the Agency on fundamental rights-related issues.<sup>239</sup> As discussed in this section, the FRO plays a crucial role in ensuring the Agency's respect and compliance with fundamental rights. Nevertheless, certain **factors have hindered the effectiveness of the FRO's role**; among these: the **limitations arising from the FRO's position** within the Agency, the **scope of FRO's mandate and constraints on the monitoring and investigative powers**, and the **advisory role** and the **limited follow-up to the FRO's recommendations**. These limitations were further exacerbated by the **limited resources** available to the Fundamental Rights Office until 2021.

The FRO is independent but it is not an external actor. The Agency has to ensure that the FRO is able to act autonomously and is able to be **independent** in the conduct of his or her duties.<sup>240</sup> To ensure independence from the Agency (thus from the Executive Director), the EBCG Regulation establishes that the FRO is appointed by the MB on the basis of a list of three candidates, after consultation with the CF; and reports directly to the MB.<sup>241</sup>

The current position of the FRO may have both advantages and disadvantages. On one hand, being part of the Agency's structure might be seen as limiting the FRO's independence; however, if the FRO were to be an external entity, this might hinder the monitoring role as it would restrict the FRO's access to valuable information and internal databases, as well as limit the cooperation with other entities within the Agency.

Internally, the role of the FRO could be strengthened within the Agency and be part of the decision-making process for matters with potential impacts on fundamental rights. To enhance the monitoring of the FRO, it would be beneficial for his or her responsibilities to be further integrated into the structure and activities of the Agency, particularly within the management's activities. This would involve ensuring the FRO's inclusion in important meetings and decision-making processes (such as the Executive Management Briefings).<sup>242</sup>

**Limitations of the FRO's role** might stem from the **mandate** and the fact that he/she has **advisory and monitoring functions** only (as opposed to decision-making).

Many concerns on fundamental rights reported to the FRO are often not related to Frontex's staff or assets; rather, in many cases, they relate to **alleged violations by Member States' staff** during operational activities. In such cases, the powers of the FRO are limited as they do not include monitoring *per se* the national authorities' activities, which should rather be covered by national monitoring mechanisms (such as the national ombuds institutions). However, it was pointed out that current **national monitoring mechanisms** are weak at times and unable to match the FRO's role and activities, and in some cases, they have a general mandate, which is not specific to monitoring compliance with fundamental rights by authorities involved in border management. There are no strong counterparts of the FRO at the national level; and currently, coordination with national mechanisms is limited and not carried out in a structured or systematic way. The FRO's monitoring activities of the Member States' staff involved in operational activities have created **tension between the FRO and some Member States**, whose authorities are questioning the extent of the FRO's activities and suggesting that the FRO is overstepping its mandate if monitoring would cover national staff.<sup>243</sup>

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<sup>239</sup> Article 109 of the EBCG Regulation.

<sup>240</sup> Article 109(4) of the EBCG Regulation.

<sup>241</sup> Article 109(4) and (5) of the EBCG Regulation.

<sup>242</sup> Based on an interview with Fundamental Rights Office (1/5).

<sup>243</sup> Based on an interview with a member of the European Parliament (1/4) and Frontex (1).

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A Member State's reply to the survey (addressed to national authorities) stressed that the respect of fundamental rights by national authorities is ensured by the national monitoring system, and should not be covered by the FRO.<sup>244</sup> In this regard, another State asked for enhanced clarity on the limits of the FRO's monitoring activities in relation to Frontex's and national staff.<sup>245</sup>

The limits of the Office's monitoring are further explored in connection to the role of FRMs in the following section on FRMs.

The FSWG acknowledged the FRO's difficulties in investigating the fundamental rights situation in host Member States.<sup>246</sup>

Regarding the FRO's function established in Article 109 of the EBCG Regulation, the FRO issues **Recommendations**, and provides **Opinions** to fulfil the tasks indicated by the EBCG Regulation.<sup>247</sup> Thus, the FRO has an advisory function only, and the MB and Executive Director of the Agency are not obliged to act on advice provided by the FRO. The absence of an obligation on the MB and Executive Director reduced the **follow-up** to the FRO's recommendations. In this regard, the EBCG Regulation provides only that the MB should ensure that action is taken with regard to the recommendations of the FRO<sup>248</sup>, but it does not provide for what *actions* the MB should take in consideration regarding the FRO's recommendations. This allowed the Executive Director and the MB to disregard the FRO's advice and fail to act on the FRO's recommendations, as noted by some of the stakeholders.<sup>249</sup> In the case of Hungary, the suspension of the Agency's support for border management took place five years after the first recommendation of the FRO.<sup>250</sup>

The 2021 **Management Board Decision 6/2021 on the independence of the FRO** did not provide specific procedures on the follow-up. It indicates only that the MB ensures *appropriate actions* are taken following the recommendations by the FRO, in particular in the context of taking the strategic decisions of the Agency, and that if the MB or the Executive Director does not take appropriate action, the FRO is informed about the reasons.<sup>251</sup>

In 2022, the MB adopted a separate **Decision on the follow-up 43/2022**, laying down the procedures, including timelines, for the Executive Director and MB to act on the

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<sup>244</sup> Based on the reply by a Member State (ES) to the survey with MS/SAC authorities, Question 8.1.

<sup>245</sup> Based on the reply by a Member State (EL) to the survey with MS/SAC authorities, Question 8.1.

<sup>246</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations.

<sup>247</sup> In line with Article 109(2), the FRO issues recommendations and provides opinions to fulfil the tasks indicated by the EBCG Regulation. These include, inter alia: "[...] (a) contributing to the Agency's fundamental rights strategy and the corresponding action plan, including by issuing recommendations for improving them; [...] (d) advising the Agency where he or she deems it necessary or where requested on any activity of the Agency without delaying those activities; (e) providing opinions on the operational plans drawn up for the operational activities of the Agency, on pilot projects and on technical assistance projects in third countries; (f) providing opinions on working arrangements; [...] (i) informing the executive director about possible violations of fundamental rights during activities of the Agency."

<sup>248</sup> Article 109(4) of the EBCG Regulation.

<sup>249</sup> Based on interviews with civil society organisations/non-member of CF (2.4) and a civil society organisation/member of CF (1/5).

<sup>250</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. Available online: [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)

<sup>251</sup> Frontex (2021), Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2021/MB\\_Decision\\_6\\_2021\\_adopting\\_special\\_rules\\_to\\_guarantee\\_the\\_independence\\_of\\_the\\_FRO\\_and\\_his\\_or\\_her\\_staff\\_.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2021/MB_Decision_6_2021_adopting_special_rules_to_guarantee_the_independence_of_the_FRO_and_his_or_her_staff_.pdf)

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recommendations of the FRO.<sup>252</sup> This time, the Decision provides for specific **procedures** and **deadlines** to be respected. When the FRO provides recommendations to the Executive Director, the Director, without *undue delay*, makes *immediate efforts* to implement the recommendations of the FRO to the *maximum possible extent*. To increase the accountability of the Executive Director, the Decision envisages that the MB issues conclusions urging the Executive Director to comply with his or her obligations in case the Executive Director fails to act within the prescribed deadline or does not sufficiently address the (second) recommendation of the FRO.<sup>253</sup> In case of recommendations addressed to MB, the Decision also provides that the MB make *timely and appropriate efforts* to implement the recommendations of the FRO by issuing conclusions and/or by instructing the Agency on the expected follow-up actions. Following a second recommendation from FRO<sup>254</sup>, the MB must inform the FRO in writing of the follow-up to the recommendations or, alternatively, explain in writing the specific reasons for not taking appropriate action and invite the FRO to exchange views on the matter.<sup>255</sup>

In the survey addressed to national authorities, the majority of Member States strongly agree (4)/agree (18) that the FRO's role is conducive to ensuring the protection of fundamental rights within the Agency's mandate.<sup>256</sup> Regarding the follow-up to the recommendations of the FRO, one Member State expressed that, for the MB, it is difficult to engage properly on fundamental rights matters as core information (for example the exchanges between the FRO and Executive Director) is not accessible systematically to the MB's members. This Member State also highlighted the need to have explicit rules on the **information exchanges between the internal entities of the Agency**, as this may enhance a more structure follow-up by the MB.<sup>257</sup>

In other areas, as indicated below, the EBCG Regulation is also limiting the FRO's action, which may undermine the effectiveness of the fundamental rights framework.

For the complaints regarding the Agency's staff lodged through the **Complaints Mechanism**, the EBCG Regulation restricts the role of the FRO to recommending appropriate follow-up to the Executive Director, who is tasked with ensuring it and reporting back to the FRO.<sup>258</sup> This is further explored in section A5.1.1.3.

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<sup>252</sup> Frontex (2022), Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer. Available online at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D=43%2F2022&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=MzI4ZDJIYzJjNzBmNmQ2MDI4NDAxYTM3YmE1ODg5ZjhhNVFkOT0E9PTYyOTk3ODcyMzNhOGRiYmE1MmUzOGNkY2MxNmMxMzRiM2NmMmZiNjcwNDI4NDg0MTU0&form-fields%5Bmodule-post-id%5D=NzVINWNjYmlzMWJkNWMyMjRhMzdlMjJiODBmNmY5MGRNemt3TVE9PTlwNTg3Mzc1ODQ1ZGFjYjdlNjJjMjY0MGNIMThmYzZDZkNWYwMDJmNzc0MTA2ODQw>

<sup>253</sup> Article 3(4) of the Management Board Decision 43/2022: *"In case of failure to act by the Executive Director or to provide a response within 20 working days, or 10 working days in case of urgency, from the issuance of the second recommendation, or in case he or she does not sufficiently address the recommendation of the Fundamental Rights Officer or the inadequacy of the content of his or her response persists, the Management Board shall ensure that appropriate actions are taken in accordance with Article 6 of this Decision."*

<sup>254</sup> Article 4(3) of the Management Board Decision 43/2022: *"In case the Fundamental Rights Officer concludes that no action has been taken or that the actions taken by the Management Board do not sufficiently address his or her recommendation, the Fundamental Rights Officer shall issue a second recommendation to the Management Board."*

<sup>255</sup> Article 4(4) of the Management Board Decision 43/2022 provides that the action is taken by the Management Board within 30 working days from its own deliberation on the recommendation of the FRO.

<sup>256</sup> Survey with MS/SAC authorities, Question 8.1(1): 4/27 MS/SAC Strongly agree (BG, EE, RO, SE); 18/27 MS/SAC Agree (AT, BE, CZ, DK, FI, FR, DE, EL, HU, IS, LU, LV, MT, NO, PL, PT, SI, CH); 4/27 MS/SAC Neither agree nor disagree (IE, LT, SK, ES); 1/27 MS/SAC No Answer (it).

<sup>257</sup> Based on the reply by a Member State (LU) to the survey with MS/SAC authorities, Question 8.1.

<sup>258</sup> Article 111 of the EBCG Regulation.



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Although the EBCG Regulation envisages that the FRO may carry out **on-the-spot visits** to any joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation or return intervention, including in third countries,<sup>259</sup> it does not include explicitly *unannounced visits*. Therefore, to enhance the effectiveness of FRO's monitoring, the FRA has suggested that this provision could be amended or be interpreted broadly to allow unannounced visits.<sup>260</sup>

Other challenges to the work of the FRO derive from the improper or lack of implementation of some of the EBCG Regulation's provisions. For example, the EBCG Regulation requires that sufficient and adequate human and financial resources are provided to the FRO to fulfil its tasks.<sup>261</sup> Despite this obligation, the **capacity** of the Fundamental Rights Office was not sufficient for long, and it was increased considerably only from 2021-2022.<sup>262</sup> The capacity is still considered limited compared to the increased number of tasks of the Agency and the growing Standing Corps staff.<sup>263</sup>

From 2021, the FRO made significant efforts to increase its activities and contribution to ensure the Agency's compliance with fundamental rights.

### *Fundamental Rights Monitors*

The 2019 EBCG Regulation introduced the role of the **Fundamental Rights Monitors (FRMs)** who have the pivotal task to "[...] *assess fundamental rights compliance in operational activity, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of European Integrated Border Management*".<sup>264</sup> Regrettably, the Agency failed to fulfil its commitment required by the EBCG Regulation to recruit *at least* 40 FRMs by December 2020. It was not until August 2021 that the first deployment of FRMs took place. Furthermore, interpretative issues regarding the **scope of the FRMs' mandate/monitoring** and **access to operational areas and documents** hindered the effectiveness of the monitoring activities. In addition, limitations in carrying out certain activities, such as **participating in (land and sea) patrolling and/or debriefing interviews**, further constrained the FRM's effectiveness in fulfilling their monitoring capabilities.

The EBCG Regulation requires the FRO to appoint and manage the FRMs.<sup>265</sup> The FRMs are under the FRO's hierarchical supervision and are independent in the performance of their duties.<sup>266</sup> In line with Article 109(4) of the EBCG Regulation, the MB adopted in 2021 special rules which reinforce the independence of the FRMs.<sup>267</sup>

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<sup>259</sup> Article 119(2)(g) of the EBCG Regulation.

<sup>260</sup> Fundamental Rights Agency (FRA) (2018), Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications.

<sup>261</sup> Article 109(5) of the EBCG Regulation.

<sup>262</sup> In 2020, the Fundamental Rights Office consisted of 10 professionals only. Increased was registered from 2021-2022, and, April-May 2023, the Office is composed of a total staff of 65 (currently 63 posts are filled), including 46 FRMs.

<sup>263</sup> Based on interviews with a civil society organisation/member of the CF (1 out of 5), and a civil society organisation/non-member of the CF (1/4).

<sup>264</sup> Article 109(3) and Article 110(1) of the EBCG Regulation.

<sup>265</sup> Article 109(3) and Article 110(1) of the EBCG Regulation.

<sup>266</sup> Article 110(5) of the EBCG Regulation

<sup>267</sup> Frontex (2021), Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2021/MB\\_Decision\\_6\\_2021\\_adopting\\_special\\_rules\\_to\\_guarantee\\_the\\_independence\\_of\\_the\\_FRO\\_and\\_his\\_or\\_her\\_staff\\_.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2021/MB_Decision_6_2021_adopting_special_rules_to_guarantee_the_independence_of_the_FRO_and_his_or_her_staff_.pdf)

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For the **recruitment** of FRMs, the Agency reported delays to recruit the minimum number of FRMs. In 2021, the FSWG found that ‘the Executive Director caused a significant and unnecessary delay in the recruitment of at least 40 FRMs’.<sup>268</sup>

Although the Agency completed the recruitment in 2022, the number of FRMs, initially set at 40 (currently 46), may be considered low compared to the increasing staff of the Agency, including the members of the Standing Corps (which is set to eventually have a capacity of up to 10 000 operational staff). Article 110 of the EBCG Regulation envisages the possibility to increase the number of FRMs, which is assessed by the Executive Director on an annual basis, in consultation with the FRO. The FRO already expressed the need to further increase the number of FRMs and overall FRO’s staff in view of the Agency’s increase in activities and staff.<sup>269</sup>

The FRO assigns at least one FRM to each operation, and may also decide to assign FRMs to monitor any other operational activity considered relevant.<sup>270</sup> As further explained in the section on return, the FRMs may be nominated by the fundamental rights officer as forced-return monitors for the pool of forced-return monitors.<sup>271</sup>

To allow effective **monitoring**, the EBCG Regulation requires that the FRMs have **access to all areas** in which the operational activity of the Agency takes place and to all its **documents** relevant to the implementation of that activity.

**Interpretative issues** exist on the scope of the access to all areas and documents related to the operational activity of the Agency and FRM’s monitoring, as explained below.

The EBCG Regulation does not specify the modalities for host Member States to ensure this access, which is left to implementing rules. The presence of the FRMs and areas to which they have access are indicated in the operational plans as agreed with the host Member States and third countries, and the FRMs are required to make a request to host Member States to have access to certain areas, when such permission is required.

A member of the European Parliament reported that in case the request for increased cooperation is not clearly indicated in the operational plans, Frontex risks being excessively reliant on host Member States’ cooperation.<sup>272</sup>

In the context of joint operations, some activities are carried out with the support of Frontex’s staff and/or assets; whereas, other activities may be carried out by the Member States’ staff only but these are still covered by the joint operation framework (for instance, areas where there is a reception activity run by the Member State’s staff only but placed in the area of the joint operations). It was reported that in the first case, the FRMs have always had access to the operational areas; in the second case, the FRMs’ access encountered difficulties from the Member States, such as delays in receiving approval by Member States and proposals by Member States to visit different locations and/or be part of other activities (for security reasons).<sup>273</sup> According to a civil society organisation, there are some operational areas in a Member State to which access was never granted to the FRMs so far.<sup>274</sup>

The fact that some activities are conducted by the Member States (without the support of Frontex) but part of a broader joint operation supported by Frontex may create tension

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<sup>268</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>269</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>270</sup> Article 110(3) of the EBCG Regulation.

<sup>271</sup> Article 110(4) of the EBCG Regulation

<sup>272</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>273</sup> Based on interviews with the Fundamental Rights Office (2/5) and a civil society organisation/non-member of the CF (1/4).

<sup>274</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).



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between the FRO/FRMs and the host Member State. According to one interpretation, the framework of a joint operation would cover all activities carried out by Frontex staff and by national authorities. According to another interpretation, the framework would cover only the activities carried out specifically by Frontex's staff and/or with Frontex's equipment, and therefore do not cover the activities by the Member States in the context of a joint operation. These divergent interpretations have different consequences for the access of FRMs to operational areas. During the consultation, it was reported that, for some host Member States, the activities of national staff in the context of the joint operation are not covered by FRO's mandate and thus should not be under the monitoring of the FRMs.<sup>275</sup> It is worth noting that excluding such areas from the FRMs' access might have the risk of leaving blind spots for the FRO's monitoring, considering that if violations would take place in those areas, they would not be reported by the FRMs with the difficulty to distinguish between Member States' and Frontex's involvement.

The scope of the monitoring is clarified in the **Standard Operating Procedure (SOP) for the FRMs of 2023** (Frontex's internal document), as indicated below in this paragraph.

The FSWG also reported on FRO's and FRMs' limited access to areas/documents, e.g. when evaluating joint operations, and difficulties in investigating the fundamental rights situation in host Member States.<sup>276</sup>

There is a growing assumption among some stakeholders that, following the public pressure on Frontex, some Member States have been using Frontex's support in a way that is limiting the FRO's monitoring. This could be achieved for instance by not deploying Frontex's staff in certain areas where most fundamental rights violations are suspected to happen according to reports of civil society and international organisations, as well as based on SIRs and complaints.<sup>277</sup>

The FRM's **access to documents** includes access to databases; however, the collection of information by the FRMs is limited by the relevant EU rules and national rules on accessing national databases and information collected by national authorities active at the borders (as footage from national video-surveillance).<sup>278</sup>

In August 2021, the first **deployment** of FRMs took place and the FRMs have been assigned to monitor, assess, and advise on fundamental rights across Frontex operational activities. In 2021, 207 days were spent monitoring operational activities (deployment in 8 Member States) between June and December 2021.<sup>279</sup> For the 2021 field monitoring, the FRO identified **key challenges** for the FRMs, and, among these, revealed that FRMs had limited or no access to all areas and activities (such as in the East border region), and insufficient access to operational documents relevant to assess the Agency's activities from a fundamental rights perspective (for instance in the case of Italy and Spain).<sup>280</sup>

In 2022, FRMs spent about 1,000 days in the field monitoring.<sup>281</sup>

Challenges in having access to all areas and documents were also reported in the survey addressed to the FRMs, as shown in the Figure below.

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<sup>275</sup> Based on an interview with the Fundamental Rights Office (2/5).

<sup>276</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>277</sup> Based on an interview with a Member of the European Parliament (1/4), Fundamental Rights Office (2 out of 5), and civil society organisation/non-member of the CF (1/4).

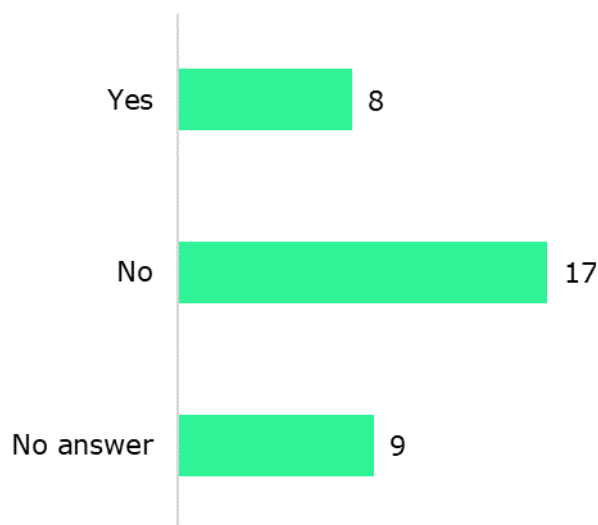
<sup>278</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>279</sup> Frontex, Fundamental Rights Officer Annual Report 2021. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/The\\_Fundamental\\_Rights\\_Officer\\_Annual\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/FRO_Reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf)

<sup>280</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>281</sup> Based on an interview with the Fundamental Rights Office (1/5).

Figure 3. FRMs survey results in response to the question: *In your experience during the monitoring missions, do you always have sufficient access to all areas and documents relevant to the joint operations?*



Source: ICF elaboration based on results from the Survey with Fundamental Rights Monitors<sup>282</sup>

One participant in the survey reported that FRMs have not been able to conduct first-hand monitoring of some operational activities (especially for patrolling), while another participant described that the FRMs are forced to rely mostly on secondary data, e.g. interviews with participants of the operation and reports by international organisations. This was also confirmed during an interview with a civil society organisation, which recalled meeting with FRMs (during a monitoring mission to the host Member State) to discuss possible violations. According to this organisation, the FRMs' monitoring activity does not include proper shadowing of border guards.<sup>283</sup>

FRMs' participation in **land and sea patrolling** requires careful planning (considering security concerns), and some Member States are not inclined to have FRMs' involvement and in practice it has been often difficult to get their approval so far.<sup>284</sup> The Agency organised pilot operations for sea patrolling involving the FRMs recently.<sup>285</sup>

Another main challenge reported for 2021 was the inability of the FRMs to interview migrants and Frontex officers in certain operational areas without the presence of national authorities.<sup>286</sup> This was also mentioned by a participant in the survey.

Member States have been reluctant to have the FRMs participate in the **debriefing interviews** with migrants, arguing that during these interviews the presence of the FRMs might limit the migrants' willingness to share intelligence information.<sup>287</sup> However, FRMs are bound to the same degree of discretion on operational matters that is expected by other deployed staff. To guarantee effective monitoring, the Executive Director adopted the **Standard Operating Procedure (SOP) for the FRMs in March 2023** (which is not a

<sup>282</sup> Survey with Fundamental Rights Monitors, Question 10.

<sup>283</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

<sup>284</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>285</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>286</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>287</sup> Based on an interview with the Fundamental Rights Office (1/5).

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public document).<sup>288</sup> This was approved following a long discussion among the FRO, FRMs, Frontex's management and the Member States. The SOP further defines the FRMs' role and responsibilities and lays down the procedures for the work of the FRMs.<sup>289</sup>

The SOP aims to clarify the scope of monitoring related to FRMs actions, which is limited to the Agency's operational activities (in line with Article 110(2) of the EBCG Regulation). However, for the FRO to comply with his advisory role to the Agency (and therefore including his role as described within Article 46 of the EBCG Regulation), the SOP indicates that the FRMs may collect information and assess the situation of fundamental rights related to border and migration management in the Member States and third countries in which the Agency conducts operational activities, including relevant activities of national authorities. This is to be done in view of evaluating the situation in operational areas and Member States that may have an impact on Frontex's activities.<sup>290</sup>

While the new rules provide clarification on the scope of monitoring and suggest a non-explicit connection between the activity of the FRMs and the FRO's/SIRs' role in Article 46, it is worth noting that the SOP could have gone even further in terms of providing clarity, for instance on the extent to which the information collected on national authorities could be used by the FRO, and on the limits between FRO's monitoring and national monitoring by relevant entities. The SOP could have also explicitly highlighted the links between FRMs' observations, SIRs and FRO's role in Article 46 of the EBCG Regulation.

For the decision on the activation of Article 46, it could be clearer that the investigation would include FRMs' information and SIRs not related only to Frontex's staff activities, but rather related to the general fundamental rights situation in the framework of joint operations, therefore also covering the activities carried out by the national staff involved in the joint operations. Only in this way, it would be possible for the SIRs to fulfil the monitoring/reporting role in the context indicated at Article 46.<sup>291</sup>

For the monitoring tasks, the SOP reinforces that the FRMs have access to land and sea patrolling, and that they can participate in briefing interviews (conducted between people detected at the borders and border guards), which was limited or not possible at all in the past.<sup>292</sup>

Since September, the FRMs monitor the **Multipurpose Aerial Surveillance (MAS) service** operated by the Agency, and have been given full access to the European Surveillance Room (ESR).<sup>293</sup>

The FRM's activities include **monitoring in third countries**; this covered Western Balkans and Moldova, and other preparatory monitoring visits are planned for the region of North-Western Africa.<sup>294</sup> This is further explored under in sections A5.1.1.4 and A5.1.1.5.

Stakeholders also highlighted other aspects, such as the **transparency of the FRMs' reports**. The EBCG Regulation requires that the FRMs inform the Coordinating Officer and report to the FRO on any concerns related to possible fundamental rights violations within the Agency's operational activities.<sup>295</sup> The FRMs' reports are not public. Based on

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<sup>288</sup> Frontex (2023), Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities, internal document.

<sup>289</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>290</sup> Frontex, Standard Operating Procedure (SOP) for the FRMs, Internal document, 2023.

<sup>291</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>292</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>293</sup> Based on an interview with the Fundamental Rights Office (1/5); and, Frontex, Fundamental Rights Officer Annual Report, 2021.

<sup>294</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>295</sup> Article 110 of the EBCG Regulation.

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specific requests for Public Access to Documents (PAD), the FRM's report may be shared; typically, only significantly redacted versions are shared with members of the public.<sup>296</sup> A civil society organisation reported that this limits the transparency of the mission's findings and, overall, of monitoring system and that it is very difficult to access the monitors' findings through PAD applications, given the Agency's delays in replying to requests.<sup>297</sup> However, certain findings based on FRMs' missions are present, to a certain extent, to the public as the FRO Annual Reports are based, among others, on information from FRMs. To increase transparency, an option could be the publication from the FRO of summaries/regular reviews (of FRMs' reports) that are regularly accessible.

### *Consultative Forum*

The **CF** was established in 2012. Currently, it brings together European agencies and international and civil society organisations.<sup>298</sup> It is led by two chairs, elected by its members for a two-year term. Following the resignation of the Agency's previous Executive Director, the FRO asked the members of the Forum to extend their mandate for one year, until the end of 2023, to allow continuity of work in the area of fundamental rights. Most members agreed to this extension.<sup>299</sup>

Unlike FRO and FRMs, the CF does not have the **mandate** to monitor Frontex activities; rather, the CF assists the Agency by **providing independent advice on fundamental rights matters**. The Executive Director and the MB, in coordination with the FRO, **may consult the Forum** on any matter related to fundamental rights.<sup>300</sup>

Despite being an important instrument, several **challenges**, stemming from the EBCG Regulation itself and/or from its implementation, risk **limiting the impact of the Forum's work**, as highlighted below based on the CF's reporting activity and the stakeholders' interviews.

According to the EBCG Regulation, the Agency should provide the CF with *timely* and **effective access to information** concerning the respect for fundamental rights, including by facilitating on-the-spot visits to its operations. However, the feedback from consultation suggests this has not been the case. On access to information, Article 108 does not define *timely*, and various stakeholders indicated that the Agency did not share the requested information in a timely manner, and, in some cases, did not share it at all.<sup>301</sup>

The CF may carry out **on-the-spot visits to the Agency's operations** (to the Agency's headquarters and to the ones in host Member States). One civil society organisation indicated that the visits require the Member State's consent and in one case, delays in receiving the consent led to the cancellation of a visit.<sup>302</sup> Another civil society organisation reported that the possibility to acquire valuable information during the visits depends on the visit's setup and cooperation from host Member States and Frontex. While during a visit to one Member State the members of the team were able to speak freely with the national authorities and make proposals on the organisation of the visit, during a visit to another Member State the action of the Forum's members was framed by Frontex and the host Member State and the members of the Forum were prevented from accessing some

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<sup>296</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>297</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

<sup>298</sup> From January 2023, the Forum is composed of the following twelve organizations. The list of members is available online at: <https://frontex.europa.eu/fundamental-rights/consultative-forum/general/>

<sup>299</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>300</sup> Article 108(1) of the EBCG Regulation.

<sup>301</sup> Based on interviews with civil society organisations/members of the CF (2/5).

<sup>302</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

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areas and asking questions that could be considered controversial from national authorities.<sup>303</sup>

The CF's visits are not aimed at fundamental rights monitoring; their objective is the collection of information, which may be used to inform the CF's work to advise the Agency (for instance to get familiar with the operational context). Therefore, the CF cannot adopt recommendations addressed to Member States directly, even in cases where potential fundamental rights risks and/or violations were to be spotted during the Forum's visits. However, such information is still used within the Forum to inform their work and where to focus their future attention.

Although the CF should be **consulted by the Agency on the development and implementation of the Fundamental Rights Strategy, functioning of the Complaints Mechanism, codes of conduct and common core curricula**, stakeholders raised as an issue the Agency's lack of requests for consultation; in other cases, limited time was given to review the information and provide meaningful answers to such requests.<sup>304</sup>

The **Working Methods of the CF** regulate the confidentiality of information provided by the Agency shared among members.<sup>305</sup> Various stakeholders are of the view that strict confidentiality is not beneficial for the Forum itself and for its members. The CF's recommendations cannot be disseminated before their publication in the Annex of the Annual Report of the CF, limiting the outreach of the Forum's activity. For the members, considerable efforts are put into providing information and expertise to the Forum and Agency; however, in return, information from the Agency to the CF's members cannot be shared with the members of the civil society organisations (e.g. in case of network organisations) or used for the organisations' own reporting activities.<sup>306</sup>

Further dissemination is allowed with the **Management Board Decision 43/2022**, which establishes that the recommendations presented by the CF (and by FRO) as part of their respective reports to the MB are transmitted via the MB Secretariat to the European Parliament, following the discussion by the MB. The Management Board Decision does not establish a timeline for this transmission.<sup>307</sup>

The main issue reported by civil society organisations and the CF's members is the **lack of (or improper) follow-up to the CF's recommendations**.<sup>308</sup> The EBCG Regulation requires that the Agency informs the CF of the follow-up to its recommendations.<sup>309</sup> Article 108 of the EBCG Regulation does not provide a timeline for the Agency's reporting and/or consequences in case of insufficient or no reporting. This is a long-standing concern of the Forum and its members. Several stakeholders (including CF's members) reported that already in 2016, the CF adopted a recommendation on Frontex operational activities at

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<sup>303</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>304</sup> Based on interviews with a civil society organisation/non-member of the CF (1/4) and civil society organisations/members of the CF (2/5) and an international organisation/member of the CF (1/3).

<sup>305</sup> Consultative Forum, Working Methods of the Frontex Consultative Forum on fundamental rights. Available online at: <https://frontex.europa.eu/fundamental-rights/consultative-forum/general/>

<sup>306</sup> Based on interviews with a civil society organisation/non-member of the CF (1/4) and civil society organisations/member of the CF (2/5) and an international organisation/member of the CF (1/3).

<sup>307</sup> Frontex (2022), Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

<sup>308</sup> Interviews with international organisations/members of the CF (3/3), civil society organisations/members of the CF (5/5), civil society organisations/non-members of the CF (4/4).

<sup>309</sup> Based on interviews with civil society organisations/non-members of the CF (3/4), civil society organisations/members of the CF (4/5).



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the Hungarian-Serbian border, suggesting the Executive Director immediately take action and suspend operational activities at the Hungarian-Serbian border.<sup>310</sup>

In line with the CF's suggestions<sup>311</sup>, the Agency established a **procedure to follow-up on the CF's and the FRO's advice**.<sup>312</sup> The new rules introduce a **timeframe** for the follow-up and provide for a **procedure to ensure the accountability of the Executive Director**, including the MB's obligation to issue conclusions urging the Executive Director to comply with his or her obligations.<sup>313</sup>

During the consultation, some stakeholders expressed frustration at the Agency's disregard for the CF's role and work especially taking into account the considerable workload and efforts required to contribute to the work of the CF.<sup>314</sup> The members of the Forum provide their expertise on a voluntary basis, which limits the contributions of Forum's members, especially of civil society organisations given their limited resources and staff, as highlighted by a few stakeholders.<sup>315</sup> This also limited the possibility for civil society organisations to take the role of Chairs of the Forum, which has been carried out mostly by the FRA and United Nations High Commissioner for Refugees (UNHCR) with the support of the CF Secretariat (consisting of one Fundamental Rights Office staff member). Only one civil society organisation co-Chaired the Forum so far.<sup>316</sup> Within the Forum, discussion is ongoing among members and Chairs on how to best address such practical challenge, for instance through financial support for the Chairs of the Forum or having members contributing only to certain areas of expertise.<sup>317</sup>

Given the limited direct results of the Forum's work and insufficient follow-up by the Agency, various stakeholders noted that there have been internal discussions about the added value of being members of the Forum.<sup>318</sup> A member reported that the consultation of the Forum seems a 'ticking box exercise' for the Agency rather than an effective tool for the Forum's members to provide significant input to the work of Frontex.<sup>319</sup>

More recently, **positive developments** were observed following the resignation of the previous Executive Director (2015-2022) and the recent attention (especially under the Executive Director *ad interim*, 2022-2022) on fundamental rights within the Agency. Stakeholders reported that the **cooperation** between the Agency's management and the CF has improved, and **access to information** has been enhanced.<sup>320</sup> Therefore, it appears that the problem is rather in the enforcement of the existing rules on the CF.

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<sup>310</sup> Consultative Forum, Annual Report 2016. Available online at: [https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_annual\\_report\\_2016.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2016.pdf)

<sup>311</sup> Consultative Forum, Annual Report 2021. Available online at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

<sup>312</sup> Frontex (2022), Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

<sup>313</sup> Articles 1, 2 and 6 of Frontex Management Board Decision 43/2022.

<sup>314</sup> Based on interviews with civil society organisations/non-members of the CF (2/4), civil society organisations/members of the CF (3/5), international organisations/members of the CF (3/3), and the Fundamental Rights Agency (FRA).

<sup>315</sup> Based on interviews with civil society organisations/member of the CF (3/5).

<sup>316</sup> Jesuit Research Service co-Chaired the CF between 2012 and 2019.

<sup>317</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>318</sup> Based on interviews with a civil society organisation/non-member of the CF (1/4), and civil society organisations/members of the CF (1/5).

<sup>319</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>320</sup> Based on interviews with civil society organisations/members of the CF (5/ 5), and international organisations/members of the CF (3/3).

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### *Supervisory Mechanism on the use of force*

The **use of force**, which includes the use of weapons, ammunition, and equipment, must take place in strict adherence to the principles of necessity, proportionality, and the duty of precaution.<sup>321</sup>

In the legislative text, there are significant **inconsistencies** in relation to the use of force and firearms, specifically between **Article 82** and **Annex V** of the EBCG Regulation (internal coherence). Inconsistencies are also found regarding the use of force between the EBCG Regulation and **international standards** (external coherence).

For the **core principles on the use of force**, the EBCG Regulation refers to the principles of necessity, proportionality, precaution, without explicitly mentioning the principle of legality, which is expressly stated in the European Convention on Human Rights (ECHR).

In line with **Article 55** of the EBCG Regulation, the **supervisory mechanism** (as referred to in point (a) of Article 55(5)) provides a framework for the Agency to monitor the application of the provisions on the use of force by the statutory staff of the Standing Corps deployed as members of the team. It sets rules on reporting and measures of a disciplinary nature.

In 2021, the **MB (Decision 7/2021)** adopted implementing rules on the supervisory mechanism on the use of force.<sup>322</sup> Despite this, the FSWG found that these rules fail to guarantee that sufficient fundamental rights expertise is involved in the decision-making of these cases.<sup>323</sup> To address concerns on the functioning of this supervisory mechanism, the **MB Decision 61/2022** amended the 2021 in relation to the role of the **Advisory Committee on the Use of Force (ACUF)** with regard to the supervisory mechanism. In particular, it is established that the members of the ACUF are appointed by the MB, which has to ensure that members with fundamental rights expertise are represented in the ACUF. The Committee has the task to issue recommendations to the Executive Director regarding the supervisory mechanism, and, upon a request of the Executive Director or the MB, to analyse specific topics related to the supervisory mechanism and providing recommendations on them.<sup>324</sup>

### *Codes of Conduct*

Initially, the Agency adopted a **Code of Conduct** that applies to all persons participating in Frontex activities, which aims to promote professional values based on the principles of the rule of law and the respect of fundamental rights and to establish the ethical behaviour standards that guide all persons participating in Frontex activities.<sup>325</sup>

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<sup>321</sup> Annex V of the EBCG Regulation.

<sup>322</sup> Frontex (2021), Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2021/MB\\_Decision\\_7\\_2021\\_on\\_supervisory\\_mechanism.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2021/MB_Decision_7_2021_on_supervisory_mechanism.pdf)

<sup>323</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations.

<sup>324</sup> Frontex (2021), Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard standing corps.

<sup>325</sup> Frontex, Code of Conduct for all persons participating in Frontex activities. Available online at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://frontex.europa.eu/assets/Publications/General/Frontex\\_Code\\_of\\_Conduct.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf)



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More recently, in line with the EBCG Regulation's obligations,<sup>326</sup> the Agency adopted two codes: the **Code for participants in operational activities**, and the **Code in the field of return**.

As the Agency's staff participating in operational activities might face challenging situations when delivering on the Agency's tasks, the Code (for participants in operational activities) sets high behavioural standards that participants have to respect during operational activities, including a strong commitment to fully respecting, upholding, and fulfilling fundamental rights.<sup>327</sup>

In the area of return, the Agency adopted a Code of Conduct, which is applied during all return operations and return interventions coordinated or organised by the Agency.<sup>328</sup> The EBCG Regulation requires that the Code assures returns are carried out with full respect for fundamental rights.

These codes, although not a codification of legislation, envisage common standardised procedures and principles that contribute to increasing knowledge of fundamental rights' respect among operational staff.

#### *Cooperation with the Fundamental Rights Agency (FRA)*

The Agency extensively cooperated with the FRA before the 2019 EBCG Regulation, as indicated by the **2010 Cooperation Arrangement** between the two agencies.<sup>329</sup> The EBCG Regulation formalised this cooperation, with **Article 10** stating that Frontex cooperates with the FRA, within their respective mandates, to ensure the continuous and uniform application of the Union *acquis* on fundamental rights.<sup>330</sup> Given the FRA's expertise in the identification, protection and treatment of vulnerable people, the cooperation focuses on this area in particular.

The FRA cooperates with the FRO actively. Recently, the FRA and FRO organised jointly annual planning meetings to assess activities and create synergies. The FRA provides valuable inputs and expertise to the FRO, which is used to improve the Agency's legal assessment of fundamental rights matters.

Over the years, the agencies cooperated to mainstream fundamental rights in designing, implementing, and evaluating training activities for the Frontex's staff when dealing with fundamental rights. The FRA offered its fundamental rights expertise in the development and upgrading of the Common Curricula training. More recently, the agencies signed an **agreement** for the FRA to provide advice and expertise to help set up effective fundamental rights monitoring during Frontex's operations and develop a comprehensive manual for the FRMs.<sup>331</sup> This involvement helped to establish high fundamental rights standards in the training. However, the FRA has reported that Frontex has recently been

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<sup>326</sup> Article 81 of the EBCG Regulation.

<sup>327</sup> Frontex, Code of Conduct applicable to all persons participating in Frontex operational activities. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/Code\\_of\\_Conduct/Code\\_of\\_conduct\\_applicable\\_to\\_all\\_persons\\_participating\\_in\\_Frontex\\_operational\\_activities.pdf](https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf)

<sup>328</sup> Frontex, Code of Conduct for return operations and return interventions coordinated and organised by Frontex. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/Code\\_of\\_Conduct/Code\\_of\\_Conduct\\_for\\_Return\\_Operations\\_and\\_Return\\_Interventions.pdf](https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf)

<sup>329</sup> Cooperation arrangement between the European Agency for the management of operational cooperation at the external borders of the member states of the European Union and the European Union Agency for fundamental rights. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/891-Cooperation-Agreement-FRA-Frontex\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/891-Cooperation-Agreement-FRA-Frontex_en.pdf)

<sup>330</sup> Article 10(1)(s) of the EBCG Regulation.

<sup>331</sup> Fundamental Rights Agency (FRA) (2020), FRA and Frontex to work together on developing fundamental rights monitors, News of 10 June 2020. Available online at: <http://fra.europa.eu/en/news/2020/fra-and-frontex-work-together-developing-fundamental-rights-monitors>

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outsourcing training to Member States authorities, which makes it difficult to assess the extent to which previously achieved high standards (developed by the FRA for Frontex's training) were incorporated into these new models into the development of new models.<sup>332</sup>

Besides training, the FRA provides different types of support to Frontex, such as by providing guidance documents and checklists.<sup>333</sup>

However, the FRA is a small agency, which put limits to the extent it may assist Frontex, considering particularly its increasing mandate and staff, as well as new areas of activities.<sup>334</sup>

One **gap** is that the **EBCG Regulation does not provide for the FRA's involvement in the current monitoring mechanisms**; while the expertise of the FRA could be valuable in these systems.<sup>335</sup>

#### *Data protection*

The analysis of the data protection framework, including the indication of gaps/inconsistencies and stakeholders' concerns, is indicated under the section A4.1.3.

### A5.1.1.1 Conditions to ensure and promote the respect of fundamental rights

#### **EQ14.2. In which ways has Frontex created the conditions for ensuring and promoting the respect for Fundamental Rights in its activities?**

The Agency put in place a number of **conditions** with the objective to ensure and promote the respect of fundamental rights, by adopting and/or implementing rules and procedures, as indicated below. This section outlines the main conditions set by the Agency, which include the **Fundamental Rights Strategy** and **Action Plan**, **FRO's activities** (contributing to a wide range of tools and procedures, such as operational plans), **FRMs** (and increased monitoring activities), **Management Board Decisions** (on the **Complaints Mechanism**, **SIRs**, **supervisory mechanism on the use of force**, etc.), **data protection safeguards** and **DPO's activities**, and **trainings** and efforts to promote a **fundamental rights culture** within the Agency. The research shows that these elements have the potential to guarantee fundamental rights compliance by the Agency, though some **issues** were reported (and illustrated below), which may pose **risks to delivering on the commitments to ensure respect for fundamental rights**, such as delays in adopting Management Board Decisions and in recruiting staff (as in the case of FRMs).

#### *Fundamental Rights Strategy and Action Plan*

In 2021, the Agency updated the **Fundamental Rights Strategy**<sup>336</sup> and approved an **Action Plan**<sup>337</sup> to implement the Strategy, indicating key time-bound action points to ensure that the Agency's work is aligned with fundamental rights.

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<sup>332</sup> Based on an interview with the Fundamental Rights Agency (FRA).

<sup>333</sup> Based on an interview with the Fundamental Rights Agency (FRA).

<sup>334</sup> Based on an interview with the Fundamental Rights Agency (FRA).

<sup>335</sup> Based on an interview with the Fundamental Rights Agency (FRA).

<sup>336</sup> Frontex, *Fundamental Rights Strategy*, 2021. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/Fundamental\\_Rights\\_Strategy/Fundamental\\_Rights\\_Strategy.pdf](https://frontex.europa.eu/assets/Key_Documents/Fundamental_Rights_Strategy/Fundamental_Rights_Strategy.pdf)

<sup>337</sup> Frontex (2021), Management Board Decision 61/2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy. Available online at: <https://prd.frontex.europa.eu/document/management-board-decision-61-2021-adopting-the-fundamental-rights-action-plan-for-the-implementation-of-the-fundamental-rights-strategy/>

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### *Fundamental Right Officer (FRO)*

Overall, the **expanded role** introduced by the EBCG Regulation for the oversight and monitoring provided by the FRO may be considered as a contributing factor to higher level of compliance with fundamental rights across the activities and operations of the Agency and its staff.

Respect for fundamental rights has to be ensured in all Agency's activities; the **FRO** seeks to make sure that it is a mandatory element during all stages of activities (planning, implementation, and monitoring/evaluation). To this end, the FRO makes an assessment and provides his Opinion on all new activities by the Agency and on the renewals of any activities. The FRO contributed actively to a wide range of tools and procedures, such as the annual planning, Annual Risk Analysis Reports, codes of conduct, development of the operational plans and working arrangements with third countries, rules on the complaints mechanism, SOPs on SIRs, supervisory mechanism on the use of force.<sup>338</sup>

According to the FRO, this participation allows better **mainstreaming of fundamental rights within these procedures and mechanisms**.<sup>339</sup>

To guarantee fundamental rights compliance during operational activities, the Agency draws up **operational plans** that include general instructions on how to ensure the safeguarding of fundamental rights during the operational activity of the Agency.<sup>340</sup> In this respect, the FRO provides, among others, Opinions on the operational plans, and may recommend to the Agency to adopt fundamental rights safeguards and practical measures during the operations.<sup>341</sup> The FRO is asked to provide a **fundamental rights assessment** (that could be interpreted as an impact assessment) for each operational plan on an annual basis, but also in the evaluation of each operation at the end of the operational year.

Providing **Opinions on all operational plans** requires significant efforts by the FRO and it is very time-consuming for the staff. This activity is crucial to uphold fundamental rights in operational context provided that the input by the FRO is taken into consideration. However, although the Agency adopted some of the measures proposed by the FRO, the input is subject to negotiations and is, in practice, read by the Operational Response Division of the Agency only, even if the FRO is advising the Agency as a whole.<sup>342</sup>

On the inclusion in the operational plan of conditions for compliance with fundamental rights, the FSWG found limitations, which include unclear conditions in the operational plans for the cooperation by the host Member State with the FRO.<sup>343</sup>

The timeline is five days, which is generally respected by the FRO, though considered short at times (with the risk that Frontex's entities requesting the observations might not have sufficient time to include the FRO's input in the implementation plans).<sup>344</sup>

To guarantee that the FRO's inputs are adequately taken into account, the inputs should rather be considered as horizontal and thus applied as a pre-requisite to operational plans, and not subject to negotiations, and entity-specific.<sup>345</sup>

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<sup>338</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>339</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>340</sup> Article 38 of the EBCG Regulation.

<sup>341</sup> Listed among the tasks of the FRO in Article 109 of the EBCG Regulation.

<sup>342</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>343</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>344</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>345</sup> Based on an interview with the Fundamental Rights Office (1/5).

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On the **staff of the Fundamental Rights Office, limited capacity** was reported in 2020.<sup>346</sup> However, in 2021 the Agency recruited a new FRO, hired the Deputy FRO (who took office in 2022), and increased the staff of the Office (around 60 in 2022). In 2023, the total staff of the FRO is 65 (currently 63 posts are filled), and a request for six additional staff members from 2024 is pending and a need for 18 more in 2026 has been expressed.<sup>347</sup>

To ensure **transparency**, pursuant to Article 109, the FRO started to publish **annual reports** to inform on the implementation status of fundamental rights in the Agency's activities in line with the Fundamental Rights Strategy. The first report<sup>348</sup> was published in 2021 and refers to the 2020 annual activities, while a second report<sup>349</sup> was prepared concerning activities undertaken in 2021 and was published in 2022. The Annual Report for 2022 was published in July 2023, although the FRO granted access to the Draft 2022 Annual Report (for the purpose of this study).

The MB adopted Decisions to strengthen the role of the FRO (Decisions 6/2021 and 43/2022). For the FRO to be in the condition to significantly mainstream the respect of fundamental rights within the Agency' structure, it was suggested that the grade of the FRO could be increased to match the relevant counterparts in the Agency.<sup>350</sup>

#### *SIR mechanism*

The Agency also adopted the **SOPs for SIRs**, which define the respective steps to be followed, as well as the roles and responsibilities of individual actors concerned, in the reporting of serious incidents.<sup>351</sup>

#### *Complaints Mechanism*

In 2022, the MB adopted the **Decision on the Agency's rules on the Complaints Mechanism**. These further specify the grounds for the complaints to be declared admissible, introduce timelines to be observed when assessing the admissibility and handling complaints, and expand the sources to be consulted.<sup>352</sup>

#### *Supervisory mechanism for the use of force*

In 2021 and in 2022, the Agency adopted **rules on the supervisory mechanism for the use of force**, which provide a framework for the Agency to monitor the application of the provisions on the use of force by the statutory staff.<sup>353</sup>

#### *Codes of Conduct*

To guarantee high professional and behavioural standards, the Agency adopted the **Code of conduct for staff participating in the operational activities** and the **Code of**

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<sup>346</sup> Frontex, Fundamental Rights Officer Annual Report 2020. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/fro\\_annual\\_report\\_2020.pdf](https://frontex.europa.eu/assets/FRO_Reports/fro_annual_report_2020.pdf)

<sup>347</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>348</sup> Frontex, Fundamental Rights Officer Annual Report 2020.

<sup>349</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>350</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>351</sup> Frontex (2021), Executive Director Decision on standard operating procedure (SOP) – serious incident reporting. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/SIR\\_SOP.pdf](https://frontex.europa.eu/assets/Key_Documents/SIR_SOP.pdf)

<sup>352</sup> Frontex (2022), Management Board Decision No. 19/2022 of 16 March 2022 adopting rules on the complaints mechanism. Available online at [https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-19\\_2022-on-the-complaints-mechanism.pdf](https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-19_2022-on-the-complaints-mechanism.pdf)

<sup>353</sup> Frontex (2021), Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps, 2021; and, Frontex (2022), Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard standing corps.

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**conduct for return operations and return interventions coordinated or organised by the Agency** (as explained in the sections A5.1.1 and A5.1.1.4). Both Codes stress the Agency's commitment to fully respecting, upholding and fulfilling fundamental rights.

#### *Data protection*

In the area of data protection, to implement the requirements of Regulation 2018/1725 (EU DPR), the MB adopted **rules applicable to processing activities conducted by Frontex**<sup>354</sup>, and **rules on processing operational personal data by the Agency**.<sup>355</sup> These are under revision based on the comments received by the EDPS.

#### *Training on fundamental rights*

The Agency continued to provide **training on relevant fundamental rights standards and practices**. To this end, the FRO cooperated with the Training Unit of the Agency to include fundamental rights aspects in various training sessions (basic training following deployment, training for FRMs, training for Standing Corps' members, sessions on monitoring systems, training specific to Units, refresher training and training to national authorities and third country officials).<sup>356</sup> The FRO staff provided around 140 training days over 2022.<sup>357</sup>

With the start of recruitment of the FRMs from 2020, the Agency provided **specific training sessions for the FRMs**. In the context of this consultation, 26 out of 34 FRMs respondents indicated that the courses attended prepared them for the role of FRM only to some extent, as shown in the figure below. In particular, 15 respondents (out of the total of 34 respondents) indicated that the training did not address sufficiently the practical aspect of monitoring (such as information from practical examples from the field, how to access relevant documents, interactions with other Frontex's staff, policy on managing relationships with relevant stakeholders during monitoring missions, including journalists and civil society organisations).

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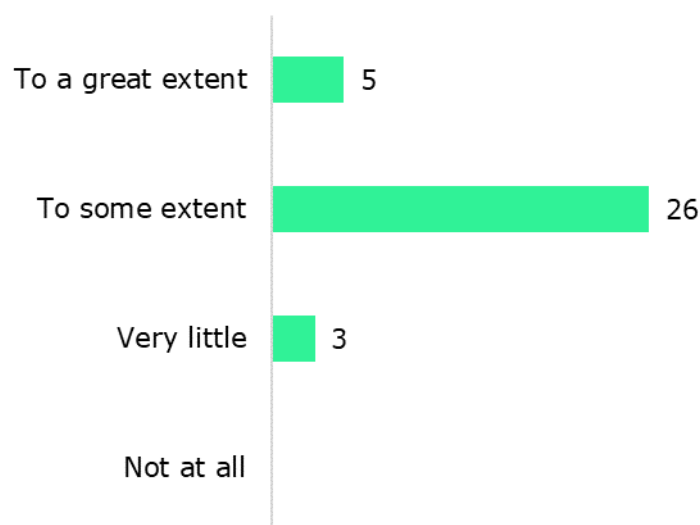
<sup>354</sup> Frontex (2021), Management Board, Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex.

<sup>355</sup> Frontex (2021), Management Board, Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

<sup>356</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>357</sup> Frontex (2022), 2022 in brief. Available online at: [https://frontex.europa.eu/assets/Publications/General/In\\_Brief\\_2022/2022\\_in\\_brief.pdf](https://frontex.europa.eu/assets/Publications/General/In_Brief_2022/2022_in_brief.pdf)

Figure 4. FRMs survey's results in response to the question: *To which extent has the course(s) attended prepared you for the role of FRM?*



Source: ICF elaboration on the basis of results from the Survey with Fundamental Rights Monitors<sup>358</sup>

To improve training for FRMs, the FRO is engaging with the Training Unit of the Agency to discuss changes to the training programme and how to improve its effectiveness.<sup>359</sup>

#### *Fundamental rights culture*

An **internal culture attentive to the respect of fundamental rights** is a prerogative for the Agency's compliance with the fundamental rights framework established by the EBCG Regulation and by implementing rules.

However, some stakeholders (including CF's members) raised concerns and doubts on the extent to which Frontex's staff pays adequate attention to the respect for and promotion of fundamental rights in all Frontex's activities and on the effectiveness of the Agency's actions to foster a fundamental rights culture.<sup>360</sup> In particular, one civil society organisations voiced frustration on the insufficient attention from the Executive Director and MB to fundamental rights matters and on the systematic dismissal of many Opinions put forth by the FRO.<sup>361</sup>

One civil society organisation highlighted that there is a notable difference on knowledge of and attention to fundamental rights between the staff working at the Headquarters of the Agency and staff deployed at operational areas, suggesting the latter group tends to place a lower emphasis on fundamental rights related matters. This may also derive from deployed staff's considerations of not wanting to jeopardise relations with Member States.<sup>362</sup>

More recently, **the Agency, and the FRO particularly, made efforts to foster a fundamental rights culture among staff.** For instance, the increasing presence of the FRMs is valuable to inform deployed staff on practices in line with fundamental rights,

<sup>358</sup> Survey with Fundamental Rights Monitors, Question 5.

<sup>359</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>360</sup> Based on interviews with a Member of the European Parliament (1/4), and civil society organisations/non-members of the CF (2/4).

<sup>361</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

<sup>362</sup> Based on an interview with a civil society organisation/member of the CF (1/5).



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identify potential violations and encourage the use of reporting mechanisms.<sup>363</sup> Further, the FRO dedicated significant endeavour to include fundamental rights aspects in training and engage (formally and informally) with the members of the CF.

The CF's on-the-spot visits may also contribute to increase staff's knowledge and attention to upholding fundamental rights, as a civil society organisation reported that during a visit to a Member State, the deployed staff was attentive and open to CF's members observations.<sup>364</sup>

Despite the mentioned positive changes, some stakeholders remain of the opinion that the overall culture of the Agency should change and there remains considerable work to be done to achieve a substantive cultural shift within Frontex.<sup>365</sup> In this regard, increasing communication on fundamental rights matters and establishing open channels for dialogue within the Agency would be essential. By fostering an environment that encourages open discussions and addresses concerns related to fundamental rights, the Agency could actively promote a culture that prioritises the respect of and compliance with fundamental rights.<sup>366</sup>

### A5.1.1.2 Serious Incident Reports mechanism

The **SIRs mechanism** is one of the main reporting mechanisms of the Agency and it is used to promptly inform the Agency's management and relevant stakeholders<sup>367</sup> of a Serious Incident (SI).<sup>368</sup> This section focuses on the SIRs related to fundamental rights violations (so-called SIRs category 1, as indicated below).

From the fundamental rights perspective, the SIRs mechanism provides important information for the FRO to monitor the Agency's compliance with its obligations to respect fundamental rights. However, the research found a **number of factors that limit the effectiveness of this reporting tool, which include, inter alia, insufficient involvement of the FRO in handling reports, limited sources of information, long processing time, insufficient cooperation and follow-up from national authorities, difficulty in ascertaining/imposing sanctions, and lack of incentives to submit SIRs, of transparency, and of options for redress.**

The EBCG Regulation is vague regarding this reporting mechanism. SIRs are mentioned in **Article 46** only, as the Executive Director takes into account relevant information, such as SIRs, when triggering Article 46(4) and (5).<sup>369</sup> Instead, the SIR procedure is regulated by internal rules, currently by the 2021 Decision of the Executive Director establishing the

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<sup>363</sup> Based on interviews with the Fundamental Rights Office (2/5) and a civil society organisation/member of the CF (1/5).

<sup>364</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>365</sup> Based on interviews with a Member of the European Parliament (1/4), a civil society organisation/member of the CF (1/5), and international organisations/members of the CF (2/3).

<sup>366</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>367</sup> The SIR informs primarily the Frontex Executive and Senior Management, the FRO as well as the Member States and third countries (where appropriate and in accordance with the relevant Status Agreement and Operational Plan), the Frontex Management Board and possible other relevant stakeholders.

<sup>368</sup> Frontex (2021), Executive Director Decision on standard operating procedure (SOP) – serious incident reporting. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/SIR\\_SOP.pdf](https://frontex.europa.eu/assets/Key_Documents/SIR_SOP.pdf)

Definition from the SOP: 'A *Serious Incident* is an event, caused by an action or failure to act by a person, or by force of nature, which directly or indirectly involves Frontex participants or assets, and which potentially violates EU or international law, in particular related to fundamental rights and international protection obligations, and/or Frontex Codes of Conduct, and/or actual or potential negative implications on Frontex's tasks or activities and/or has a serious potential life-changing impact on a participant's health'.

<sup>369</sup> Article 46 of the EBCG Regulation refers to the decisions to suspend, terminate or not launch activities.



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**Standard Operating Procedure (SOP).**<sup>370</sup> The lack of SIR rules in the EBCG Regulation was pointed out by Frontex. Despite the fact that there is an established internal protocol for reporting through the 2021 Decision, a provision in the EBCG Regulation on this mechanism could help solidify the reporting of serious incidents, as reported by Frontex.<sup>371</sup>

The **SOP** defines the respective steps to be followed, as well as the roles and responsibilities of individual actors concerned, in the reporting of serious incidents. Participants in the Agency's activities are under the obligation to report any event which could be a SI in case they learn, witness or are directly or indirectly involved in such an event and/or have grounds to believe that such event took place. This means that such obligation applies to all participants, including to Member States' officers who are participants in Frontex operations.

The **SI-Handler**<sup>372</sup> is assigned according to the category of the SI. SIs are categorised into three types<sup>373</sup>, and a single event may fall into multiple categories. In case the SI includes a potential violation of fundamental rights and/or international protection obligations, the SI is categorised as category 1 and FRO is assigned as SI Handler. For SIR category 2 and 3, the case is reported to the coordinating structure of the activity.

The FRO, in addition to acting as the SI-Handler, is responsible for assessing initial information on cases related to potential violations of fundamental rights and reports regularly to the MB. When handling SIRs, the FRO gathers and verifies information, monitors the situation, investigates, and takes necessary actions. For every SIR, a final report is drafted by the SI-Handler, which contains the follow-up measures, assessment of the case and the final conclusions with proposals. The **final report** is submitted to the relevant stakeholders (Frontex entities, Member States/third countries involved) and the Executive Management for assessment and possible decision making for further action.

Initially, the **number of SIRs** coordinated by the FRO (cases related to potential violations of fundamental rights) stayed low (3 in 2018; 9 in 2019, 10 in 2020); while a significant increase was registered in 2021 with 61 SIRs. As of end of 2021, the FRO reported 16 closed and 45 open SIRs.<sup>374</sup> For 2022, the Agency reported a continuously increased number of SIRs related to fundamental rights (72 SIRs category 1, out of which 8 still remain open by April 2023). For 2023, the FRO opened 6 SIRs concerned with fundamental rights, out of which all were open by March 2023.<sup>375</sup>

The **low number of SIRs** (in the first years) might indicate that the mechanism had not been fully utilised and/or not functioning well, as the number of SIRs is low compared to the high number of potential fundamental rights violations documented by independent observers. This was also raised by various civil society organisations in the FSWG's report.<sup>376</sup>

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<sup>370</sup> Frontex (2021), Executive Director Decision on standard operating procedure (SOP) – serious incident reporting. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/SIR\\_SOP.pdf](https://frontex.europa.eu/assets/Key_Documents/SIR_SOP.pdf)

<sup>371</sup> Based on an interview with Frontex (1 – scoping interview).

<sup>372</sup> The SI-Handler is responsible for the management, follow-up, coordination and finalisation of the SIR.

<sup>373</sup> Category 1: Situations of potential violations of Fundamental Rights or international protection obligations; Category 2: Situations of potential violations of Codes of Conduct provisions; Category 3: Situations with serious actual or potential negative implications on Frontex core tasks.

<sup>374</sup> Frontex, *Fundamental Rights Officer Annual Report 2021*. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/The\\_Fundamental\\_Rights\\_Officer\\_Annual\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/FRO_Reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf)

<sup>375</sup> Frontex, Fundamental Rights Office, internal document, 2023.

<sup>376</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

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Regarding the **FRO's involvement**, the Working Group on fundamental rights and legal operational aspects of operations in the Aegean Sea (FRaLO)<sup>377</sup> and the FSWG pointed out the insufficient involvement of FRO in SIRs handling in the first years (before 2021). The Frontex MB acknowledged, in response to the European Anti-Fraud Office (OLAF) inquiry, that the FRO was not assigned as a case-handler for SIRs with alleged violations of fundamental rights.<sup>378</sup>

Although the FRO is informed of situations that can lead to SIRs, a clear role for the FRO in labelling the SIRs by category could be envisaged.<sup>379</sup>

The well-functioning of the SIRs mechanism assumes a **shared culture of high attention to fundamental rights' protection within the Agency and among all the participants in Frontex's activities**, who should report not only evidence but also suspected cases of violations.

However, the FSWG raised concerns about the fundamental rights culture among deployed staff and found that some deployed border guards, who needed to submit a SIR through the chain of command, were discouraged from submitting the report.<sup>380</sup> A member of the European Parliament shared a similar opinion.<sup>381</sup>

This was also indicated during the consultation, with one stakeholder reporting that part of the limitations to the use of this mechanism comes from Frontex's staff being afraid of **negative consequences** (for instance of being redeployed for security reasons) and/or not feeling protected by the Agency (and by Member States's authorities in case of national staff). There are also some considerations to be made in relation to the Agency's role, as reporting violations via the **SIR might jeopardise the relationship with host Member States** and the very task of the Agency, which – according to staff – is limited to supporting Member States.<sup>382</sup> A shared and enhanced fundamental rights culture within the Agency could encourage staff to make increased use of the mechanism.

One Member State indicated, during the consultation, that the members of the Standing Corps who have reported a SI should be better guided by Frontex when being reintegrated into their service after having reported a SI.<sup>383</sup>

During the consultation, it was reported that, in practice, not all participants submit SIRs in practice; it is the Frontex staff mainly that do so.<sup>384</sup> Therefore, the obligations of Member States' officers who are participants in Frontex operations to submit SIRs could be strengthened.

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<sup>377</sup> Frontex (2020), Management Board Decision 39/2020 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2020/MB\\_Decision\\_39\\_2020\\_on\\_the\\_establishment\\_of\\_the\\_Management\\_Board\\_Working\\_Group\\_FRaLO.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2020/MB_Decision_39_2020_on_the_establishment_of_the_Management_Board_Working_Group_FRaLO.pdf)

<sup>378</sup> Frontex (2022), Statement of Frontex Executive Management following publication of OLAF report, Press release of 14.10.2022. Available online at: <https://frontex.europa.eu/media-centre/news/news-release/statement-of-frontex-executive-management-following-publication-of-olaf-report-amARYy>

<sup>379</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>380</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violation.

<sup>381</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>382</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>383</sup> Based on the reply by a Member State (FR) to the survey with MS/SAC authorities, Question 8.1.

<sup>384</sup> Based on an interview with the Fundamental Rights Office (1/5).

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To report SIs, the presence of Frontex staff is crucial; yet, some stakeholders reported an increasing impression that Frontex staff is often kept away from the location where significant numbers of violations take place.<sup>385</sup>

Other challenges reported include the **long processing time of individual SIR** (which depended, inter alia, on limited staff) and **insufficient cooperation from national authorities during investigations and inadequate follow-up from national authorities**.<sup>386</sup>

For the **investigation and follow-up**, the FRO uses different tools to collect additional information in cases when the relevant national authorities provide no or insufficient information for the investigations of SIRs. The FRO might request additional information from national authorities and Frontex staff, including records of exchanges; conduct interviews online or in person with victims, witnesses, or staff with insight or knowledge on the incidents; gather information from external sources, be it from persons or documents (including video and satellite images); and, pursue further investigations through national mechanisms, including by collaborating with national prosecutors.<sup>387</sup>

In case of issues faced by the FRO during the investigations of SIRs, the Agency has been involved at times to support the requests by the FRO. Increased leverage might be achieved by raising the issue with the Executive Director and/or the MB. With one Member State, the Agency set up a dedicated liaison system to ensure an effective response.<sup>388</sup>

Various civil society and international organisations raised the **lack of follow-up on SIRs**, especially by one Member State.<sup>389</sup> On this, during the consultation it was reported that the SIRs are followed up in terms of the recommendations made by SI-Handler with the final report and, through the reporting on patterns of SIRs to the MB, a continuous follow-up is ensured by the FRO. Currently, a model is being tested with one Member State where dedicated liaisons have been appointed, with closer interaction with the FRO.<sup>390</sup>

To ensure direct consequences to the SIRs and strengthen the deterrent effect of this mechanism, the follow-up to SIRs could be explicitly formulated in the SOP and/or in the EBCG Regulation.

In this respect, the civil society organisations pointed out the absence of **sanctions for failing to report SIRs** related to fundamental rights violations, and the insufficient indication on which sanctions are applicable to those responsible and how often they are imposed.<sup>391</sup>

The SIRs could lead to disciplinary measures through not complying with the Code of Conduct. However, Frontex indicated that for SIRs category 1 the responsibility and sanctions are more difficult to ascertain and impose as these are mostly related to national authorities' actions (with some rare pending exceptions).<sup>392</sup>

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<sup>385</sup> Based on an interview with a Member of the European Parliament (1/4), with the Fundamental Rights Office (2 out of 5), a and civil society organisation/non-member of the CF (1/4).

<sup>386</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>387</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>388</sup> Based on an interview with the Fundamental Rights Officer(1/5).

<sup>389</sup> Based on an interview with international organisations/members of the CF (2/3).

<sup>390</sup> Based on with the Fundamental Rights Office (1/5).

<sup>391</sup> Based on interviews with civil society organisations/non-members of the CF (2/4); civil society organisations/members of the CF (2/5); and, information from:

European Council on Refugees and Exile (ECRE) (2021), Holding Frontex to account. ECRE's proposals for strengthening non-judicial mechanisms for scrutiny of Frontex. Available online at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>392</sup> Based on an interview with the Fundamental Rights Office (1/5).

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**Clear sanctions for non-submitting SIRs and incentives to do so** (such as clear protection from formal and informal repercussions) could be useful to ensure the well-functioning of the mechanism.

On the **transparency** of this mechanism, it is to note that the SIRs are treated as restricted documents, limiting stakeholders' access and, potentially, its transparency and accountability of Frontex for taking/not taking action. On this aspect, the FRaLO is of the opinion that a too-restrictive classification regime of reports reduces transparency.<sup>393</sup>

The shortcomings with the SIRs mechanism, in particular following the investigations into allegations of Frontex's involvement in pushbacks, prompted the **Agency to take action to improve the SIRs mechanism**. As indicated at the beginning of this section, one such initiative is the amended **SOP in 2021**, which enhanced the role of the FRO by allowing for direct reporting of situations that potentially violate fundamental rights and for the FRO to be automatically assigned as case-handler for those on alleged violations of fundamental rights.<sup>394</sup>

In the Fundamental Rights Action Plan, the commitment to reinforce the SIR process was reiterated.<sup>395</sup> To monitor the implementation of the revised SOP, an implementation report describing changes implemented under the new SOP on SIR was adopted with contributions from the FRO. Such report also announced a revision of the SOP in 2022 to reflect lessons learnt in the first year since its adoption.<sup>396</sup> The SOP was revised but not adopted in 2022 as planned.<sup>397</sup>

Regarding the **sources of information**, the SOP indicate that the FRO may receive from third parties or from other sources (international organisations, other EU Agencies, open sources, NGOs, etc.) information on potential violations of fundamental rights and international obligations.<sup>398</sup> Although third parties are not allowed to submit SIRs directly, the information from third parties or from other sources may be used by the FRO to integrate the assessment of initiated SIRs and/or to launch SIRs (based on the FRO's own initiative power).<sup>399</sup> Despite this possibility, one stakeholder reported that for the SIRs submitted by deployed staff the reporting procedure has had more credibility internally; whereas for SIRs launched based on information from third parties and/or open sources, it has been more difficult to substantiate the claims made by civil society organisations and to move forward these cases.<sup>400</sup>

#### *Key findings from the analysis of four SIRs*

This section presents key findings based on a first-hand analysis of four SIRs. The team that conducted the study had been granted access to these Final Reports and the information contained within has undergone a thorough process of data anonymisation to ensure confidentiality. The analysis of first-hand information had the objective to provide valuable insights into the operational aspects and performance of the SIRs mechanism, and in particular the sources of information for SIRs. It is important to note

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<sup>393</sup> Working Group on fundamental rights and legal operational aspects of operations in the Aegean Sea (2021), Preliminary Report of the Frontex Management Board Working Group.

<sup>394</sup> Frontex (2021), Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

<sup>395</sup> Frontex (2021), Management Board Decision 61/2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

<sup>396</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>397</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>398</sup> Frontex (2021), Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

<sup>399</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>400</sup> Based on an interview with the Fundamental Rights Office (1/5).

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that the analysis was limited to these four reports. Hence, the findings presented below do not allow drawing general conclusions but rather serve to confirm some of the findings from the analysis of the EBCG Regulation and/or implementing rules and reported by stakeholders during the consultation process.

Regarding the sources of information, the analysis of the four SIRs confirmed that the information from third parties or from other sources (such as reports from civil society organisations, videos published on open sources and/or shared by civil society organisations) is used as additional information to investigate and assess a SIR, as well as the basis to trigger a SIR (for instance, a civil society organisation providing information – reports, videos, etc. – to the FRO about a potential SI).

From the SIRs' analysis, it is clear that, during the investigations of SIRs, the FRO conducts searches into open-source information and civil society organisations' reports to obtain additional information on the incident reported to corroborate/refute the allegations. Information from third parties or from other sources may be compared with the information provided by the authorities involved in the SI to confirm and/or confute their accounting of the incident.

In case a SI involves authorities and/or a geographical area indicated in other SIRs, the FRO may also cross-check internally the information reported in separate SIRs and compare it to identify a potential pattern of violations.

In relation to the cooperation by the authorities involved, in the SIRs analysed, the records of the exchanges between the FRO and authorities involved are reported, with the indication of the interviews conducted with staff, witnesses, and victims.

The Final Reports present the FRO's conclusions (for instance on the confirmation of the incident, likelihood of the incident, etc.) and the recommendations for the authorities involved/potentially involved on how to address the consequences of the incidents and/or how to avoid similar situations in the future (by adopting additional safeguards and mitigating measures).

As indicated in the SIRs accessed, the information retrieved from the incidents may be used by the FRO to inform its monitoring activities (for example, to evaluate the need of long-term deployment of FRMs to specific areas) and provide recommendations to the Agency on potential risks for the indirect involvement of Standing Corps officer in certain operational contexts where a high number of SIRs has been reported for fundamental rights violations.

To ensure increased reporting, the **FRO made significant efforts to increase awareness** among the Agency's staff on the use of this mechanism and on the revised SOP by conducting training and briefing activities. The limited awareness was pointed out by a Member State during the consultation, indicating that more work remains to be done to ensure that all Standing Corps officers make use of the procedure when needed.<sup>401</sup>

To address the recent increase in SIRs cases registered starting from 2021, the FRO created a **dedicated SIR team** (6 staff members) within his Office. The capacity of such SIR team is considered sufficient for the time being, though there is a clear need to increase in the future the resources allocated for the SIRs with the growing number of Standing Corps officers and new deployment activities.<sup>402</sup>

On the increase of SIRs, the **work of FRMs** could be considered a contributing factor to the growing number of SIRs. The presence on the ground of the FRMs encourages deployed staff to submit SIRs, considering that the FRMs are better able to identify

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<sup>401</sup> Based on the reply by a Member State (SE) to the survey with MS/SAC authorities, Question 8.1.

<sup>402</sup> Based on an interview with the Fundamental Rights Office (1/5).

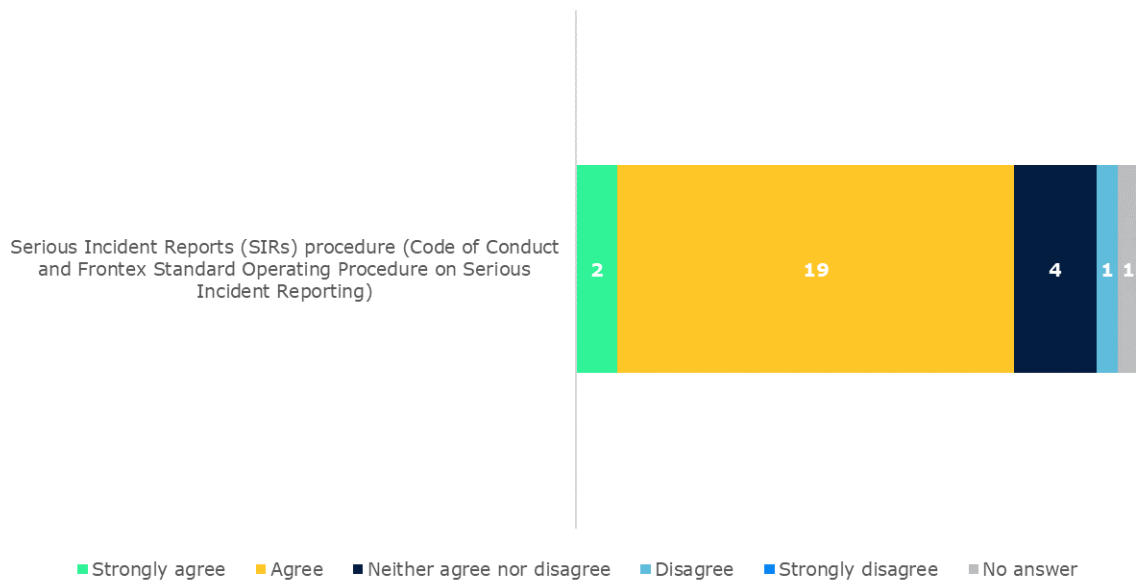


violations and indicate to Frontex’s staff that violations are occurring and advise the staff to act accordingly, including by suggesting to submit a SIR. In some cases, when there has been reluctance in submitting a SIR by deployed staff, the FRMs have submitted a SIR.<sup>403</sup>

The SIR mechanism is a remedial tool to correct participants’ mistakes; it does not foresee a **redress** to the identified victims other than getting confirmation of the violations through the SIRs and that the perpetrator may be disciplined. Nonetheless, the victims have the possibility to pursue redress through other mechanisms, and the SIRs mechanism does not prevent legal avenues.

As highlighted in this section, in the context of the stakeholders’ consultation, various civil society organisations (4 out of 9 interviewed), international organisations (2 out of 3 interviewed), members of the European Parliament (1 out of 4 interviewed) raised concerns on the functioning and results of the SIR mechanism. On the other hand, the results of the survey addressed to Member States’ authorities show that most Member States (21 out of 27 respondents) strongly agree (2)/agree (19) that the SIR mechanism is conducive to ensuring the protection of fundamental rights in the course of executing the Frontex’s mandate.<sup>404</sup>

Figure 5. MS/SAC survey results in response to the question: *To what extent do you agree with the statement “The fundamental rights monitoring framework outlined in the EBCG Regulation is conducive to ensure the protection of fundamental rights in the course of executing the Frontex’s mandate.”? Please consider the following: Serious Incident Reports (SIRs) procedure (Code of Conduct and Frontex Standard Operating Procedure on Serious Incident Reporting)*



Source: ICF elaboration on the basis of results from the Survey with MS/SAC authorities<sup>405</sup>

<sup>403</sup> Based on interviews with the Fundamental Rights Office (1/5).

<sup>404</sup> Survey with MS/SAC authorities, Question 8.1(5): 2/27 MS/SAC Strongly agree (BG, EE); 19/27 MS/SAC Agree (AT, CZ, DK, FI, FR, DE, HU, IC, LV, LU, MT, NO, PL, PT, RO, SK, ES, SE, CH) ; 4/27 MS/SAC Neither agree nor disagree (EL, IE, LT, SI); 1/27 MS/SAC Disagree (BE); 1/27 MS/SAC No Answer (IT).

<sup>405</sup> Survey with MS/SAC authorities, Question 8.1(5).

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Overall, the analysis pointed out **several factors that might have limited the effectiveness of the SIRs mechanism** (category 1), thus the number of SIRs does not reflect necessarily the potential violations occurring on the ground. Nonetheless, the SIRs mechanism remains an important instrument in the toolbox of the FRO to map and give an indication of the fundamental rights challenges and monitor the Agency's compliance with fundamental rights.

**Positive developments** were reported more recently, with the adoption of the 2021 SOP by the Executive Director, efforts made by the FRO and the increasing number of SIRs submitted in 2021-2022. As suggested by a Member State during the consultation, the adoption of the SOP on SIRs is relatively recent, and further monitoring is needed to assess the functioning of the SIRs mechanism considering the new rules.<sup>406</sup>

### A5.1.1.3 Complaints mechanism

The complaints mechanism, introduced in 2016, is an important component of the Agency's fundamental rights protection framework. Despite being one of the main reporting mechanisms, there are **concerns** – as indicated below – **on the set-up and implementation of this mechanism**. As outlined in this section, the Agency registered a low number of complaints initially (before 2021), while the number has been increasing recently, and it has more than doubled in 2022 (compared to the previous year). To analyse the reasons for this increasing trend, a number of factors were analysed. It is reported that, to strengthen the mechanism, the Agency made efforts to increase the awareness of the use of the mechanism among staff (e.g., by providing trainings) and individuals (e.g. by making information available about the mechanism at various operational areas), and the Management Board adopted Decision 19/2022 on the rules of the complaints mechanism<sup>407</sup> in 2022 to respond to the need to develop an adequate framework to ensure the further development and independence of the complaints mechanism. The Agency's recent actions might be considered as contributing factors to the **increasing number of complaints** submitted and are further analysed in this section.

According to the EBCG Regulation, the complaints mechanism is set up by the Agency to monitor and ensure respect for fundamental rights in all the activities of the Agency.<sup>408</sup>

Regarding the **access to the mechanism**, Article 111 of the EBCG Regulation allows for the submission of individual complaints in writing to the Agency from persons, or any party representing such a person, who are directly affected by the actions or failure to act on the part of staff involved in Frontex activities, and who consider themselves to have been subject to a breach of their fundamental rights due to those actions or failure to act.<sup>409</sup>

Additionally, any person suspecting breaches of the rules on the use of force by statutory staff deployed as members of the teams, applicable under Annex V of the EBCG Regulation, may report those breaches through the complaints mechanism.<sup>410</sup> In this case, the scope of access is wider as any person may report such alleged violations.

On the **functioning of this mechanism and entities involved**, the EBCG Regulation indicates that the FRO is responsible for handling the complaints received by the Agency.

According to the EBCG Regulation, the FRO reviews the admissibility of the complaints and forwards all registered complaints to the Executive Director, and forwards complaints

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<sup>406</sup> Based on the reply by a Member State (DE) to the survey with MS/SAC authorities, Question 8.1.

<sup>407</sup> Frontex (2022), Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism. Available online at [https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-19\\_2022-on-the-complaints-mechanism.pdf](https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-19_2022-on-the-complaints-mechanism.pdf)

<sup>408</sup> Article 111 of the EBCG Regulation.

<sup>409</sup> Article 111 of the EBCG Regulation.

<sup>410</sup> Frontex (2021), Fundamental Rights Strategy.



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concerning national staff to the home Member State, including the relevant authority or body competent for fundamental rights in a Member State for further action in accordance with their mandate.<sup>411</sup>

In the case of **complaints concerning Frontex's staff**, the FRO recommends appropriate follow-up, including disciplinary measures, to the Executive Director and, where appropriate, referral for the initiation of civil or criminal justice proceedings in accordance with the EBCG Regulation and national law. The Executive Director ensures the appropriate follow-up and reports back to the FRO on the findings, the implementation of disciplinary measures, and follow-up by the Agency in response to a complaint. On the follow-up from the Executive Director to the FRO, the EBCG Regulation indicates that this is to be done within a determined timeframe and, if necessary, at regular intervals thereafter, though it does not quantify this timeframe.<sup>412</sup>

As pointed out by one stakeholder, the decision on the complaint is made by the Executive Director, who might launch, among others, an inquiry on the case, whereas the FRO's role is limited to the admissibility assessment of complaints and recommendation of appropriate follow-up.<sup>413</sup>

The FRO received two complaints on Frontex's staff where findings and follow-up were requested from the Executive Director. In both cases, the Executive Director provided a proper reply to the FRO in a timely manner. Both cases were decided before the adoption of the new rules brought by Decision 19/2022.<sup>414</sup>

In case of **complaints concerning national staff**, the home Member State has the obligation to ensure appropriate follow-up, including disciplinary measures, referral for the initiation of civil or criminal justice proceedings as necessary, and other measures in accordance with national law. The Member State is required to report back to the FRO within a determined time period in relation to the findings and follow-up to the complaint, and, if necessary, at regular intervals thereafter. In case the Member State transmits no report, the Agency follows up on the matter. Where the relevant Member State, within the determined time period, does not report back or provides only an inconclusive response, the FRO informs the Executive Director and MB.<sup>415</sup>

Regarding **transparency**, the FRO reports on the complaints mechanism in his/her Annual Report by making specific references to the Agency's and Member States' findings and the follow-up to complaints.<sup>416</sup>

Over the years, a number of stakeholders – indicated below – raised **concerns** in relation to the set-up and implementation of the complaints mechanism which might have limited its capacity to provide an effective and accessible tool for reporting, investigating, and remedying alleged breaches of fundamental rights. In particular, these concerns relate to access to, scope of, independence of and transparency of the mechanism, and limited role of the DPO in the process, follow-up to complaints, absence of remedy, and appeal.

### Access

The **access to the complaints mechanism** is considered too limited as it is restricted solely to those affected 'directly' by an action or omission.

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<sup>411</sup> Article 111(4) and (5) of the EBCG Regulation.

<sup>412</sup> Article 111(6) of the EBCG Regulation.

<sup>413</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>414</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>415</sup> Article 111(7) of the EBCG Regulation

<sup>416</sup> According to 111(4) and (9) of the EBCG Regulation.

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The mechanism does not provide access to those who have not been affected 'directly' by actions or omissions<sup>417</sup>, and does not allow the possibility to initiate a complaint *ex officio*<sup>418</sup> (whereas, it is possible for the FRO to initiate the SIRs category 1 based on third party information and sources) or to submit anonymous complaints<sup>419</sup>. The possibility to present complaints anonymously would permit the use of the mechanism to new irregular migrants, who might be discouraged to disclose their personal data considering their concerns about potential negative consequences on their asylum application if submitting a complaint.

Third parties cannot submit complaints in the public interest, which, according to a civil society organisation, would be useful, particularly in the case of a consistent pattern of fundamental rights violations.<sup>420</sup>

The restricted access might be a contributing factor to the low number of complaints submitted to the Agency via this mechanism, which registered: in 2018 total of 8 complaints (out of which three deemed admissible);<sup>421</sup> in 2019, 18 complaints (including 7 admissible); in 2020, 24 complaints (including 7 admissible). However, from 2021, the number increased significantly with 27 complaints in 2021 (out of which 6 admissible),<sup>422</sup> and 69 complaints in 2022 out of which 9 were determined as admissible, and 10 under admissibility assessment. For 2023, until April, 10 complaints were presented, out of which one has been deemed admissible so far. Since the start of the mechanism, there have been a total of some 170 complaints, with an admissibility rate of 22%.<sup>423</sup>

### Scope

On the identification of the alleged **perpetrator of violations**, the EBCG Regulation (Article 111(2)) refers to the '*actions or failure to act on the part of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, return intervention or an operational activity of the Agency in a third country*'. This is interpreted as including Frontex's staff and national staff involved in the aforementioned activities.

#### *Complaints and cultural mediators*

The study team had authorised access to documents on a complaint concerning a cultural mediator (interpreter) who took part in a Frontex's activity. The complaint was declared admissible; however, the Agency concluded that considering that the mediator was employed based on a private contract with one of the Frontex's service providers, the mediator would not qualify as Agency's staff nor as Member States' staff. Therefore, the complaints mechanism would not cover such case. This leaves a gap for the cases in which the alleged perpetrators of fundamental rights violations are individuals

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<sup>417</sup> European Council on Refugees and Exile (ECRE) (2021), Holding Frontex to account. ECRE's proposals for strengthening non-judicial mechanisms for scrutiny of Frontex.

<sup>418</sup> Fundamental Rights Agency (FRA) (2018), The revised European Border and Coast Guard Regulation and its fundamental rights implications Opinion of the European Union Agency for Fundamental Rights. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-opinion-ebcg-05-2018\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-opinion-ebcg-05-2018_en.pdf)

<sup>419</sup> Based on interviews with the European Ombudsman, Fundamental Rights Agency, a civil society organisation/member of the CF (1/5) and a civil society organisation/non-member of the CF (1/4); and, European Ombudsman, Decision in OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer. Available online at: <https://www.ombudsman.europa.eu/en/decision/en/143108>

<sup>420</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>421</sup> Frontex, Fundamental Rights Officer Annual Report 2020.

<sup>422</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>423</sup> Based on an interview with the Fundamental Rights Office (1/5).

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involved in Frontex's activities but not part of Frontex's or Member State's staff and employed by the Agency via external contractors.

#### *Independence of the mechanism*

The European Parliament<sup>424</sup> and the European Ombudsman<sup>425</sup> called into question the **independence** of the mechanism, given the role of the FRO and Executive Director in assessing/deciding on the complaints. It is an administrative Frontex mechanism, and not an external mechanism although the FRO's independence has to be ensured.

After the FRO reviews the admissibility of the complaints, the registered complaints are forwarded to the Executive Director, concerning Frontex staff, and to Member States, when related to national team members. Although the FRO recommends appropriate follow-up, the decision on the merits of the complaints lies with the Executive Director, who should ensure proper follow-up and report back to the FRO. Regarding the merits of the decision on the complaints, the EBCG Regulation does not establish the criteria to be used by the Executive Director for these decisions, nor was this addressed by the Management Board Decision 19/2022.

For the complaints concerning national staff, the merits of the complaints are assessed by the national authorities as the FRO forwards those complaints to relevant Member State and sends a copy to the national human rights institutions for further action according to their mandate.

#### *Limited role of the DPO*

In case a complaint is related to data protection issues, the Executive Director consults the **DPO** of the Agency before taking a decision on the complaint.<sup>426</sup> During the consultation, it was reported that the work of the DPO in this area has been very limited so far.<sup>427</sup> Moreover, there is a risk of overlaps between the FRO's and the DPO's activities in case of complaints related to data protection, as the processing of personal data requirements has been considered in a way that is regulated as a fundamental right, limiting the DPO's involvement.<sup>428</sup> According to the EBCG Regulation, the FRO and DPO should establish, in writing, a **memorandum of understanding** specifying their division of tasks and cooperation as regards complaints received. Such memorandum of understanding was adopted, though it is in need of an update and there is an ongoing discussion between the DPO and FRO for this purpose.<sup>429</sup>

#### *Transparency/lack of awareness*

In relation to the merits of the decisions on the complaints, the EBCG Regulation does not establish the criteria to be used by the Executive Director for such decisions. The issue of **transparency** was raised during the consultation, with one stakeholder voicing concerns on the discretion left to the Executive Director in the decisions of complaints.<sup>430</sup>

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<sup>424</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>425</sup> European Ombudsman, Decision in Case OI/5/2020/MHZ, Functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer. Available online at: <https://www.ombudsman.europa.eu/en/decision/en/143108>

<sup>426</sup> Frontex, Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism, Article 10.

<sup>427</sup> Based on an interview with Frontex (1).

<sup>428</sup> Based on an interview with Frontex (1).

<sup>429</sup> Based on interviews with Frontex (1) and the Fundamental Rights Office (1/5).

<sup>430</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

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The low number of complaints received could be due to the lack of **awareness** and engagement by Frontex officers in providing information on the mechanism, such as to potential victims in reception centres). This was highlighted by the European Ombudsman inquiry<sup>431</sup>, and pointed out during the consultation by a civil society organisation, indicating a limited knowledge of the existence of and access to the complaints mechanism among the legal practitioners and civil society organisations.<sup>432</sup> In particular, a Member of the European Parliament highlighted that there is insufficient or no awareness in third countries of this reporting mechanism.<sup>433</sup> To this end, in 2022 the FRO worked to update the information materials (such as the complaints mechanism booklet) and facilitate their distribution in various Frontex operational areas and delivered information sessions to relevant stakeholders.<sup>434</sup>

#### *Inadequate and non-timely follow-up to complaints*

The FSWG<sup>435</sup> and the European Ombudsman<sup>436</sup> stressed the inadequate and non-timely **follow-up** to complaints.

Regarding complaints towards Frontex staff, two of the interviewed civil society organisations expressed doubts regarding the follow-up to complaints and the extent to which corrective measures are being implemented within the Agency.<sup>437</sup>

In the case of complaints concerning national staff, the FRO reported that the follow-up from the national authorities has been inadequate.<sup>438</sup> In this respect, the FSWG recommended that the FRO and/or the Executive Director should ensure that complaints remain open until the Agency receives an adequate response from the relevant national authorities.<sup>439</sup>

The need for enhanced guarantees regarding the procedures to ensure follow-up to the FRO's recommendations was highlighted by a Member State during the consultation.<sup>440</sup>

#### *Complaints concerning national staff and follow-up by Member States*

In line with Article 111 of the EBCG Regulation, the FRO forwards the complaint and the admissibility decision to the home Member State for findings and follow-up, including with the relevant national authority or body competent for fundamental rights for further action in accordance with their mandate. The complaint and the admissibility decision are further sent to Frontex's Executive Director for information. The national authorities proceed to review the admissible complaints, decide on finding, take appropriate follow-up measures, and inform the FRO of their findings and follow-up.

In the final report on complaints, the FRO provides a summary of the facts and complaints, as submitted by the complainants, a description of the undertaken

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<sup>431</sup> European Ombudsman, Decision in Case OI/4/2021/MHZ, How the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities. Available online at: <https://www.ombudsman.europa.eu/en/case/en/58639>

<sup>432</sup> Based on interviews with civil society organisations/non-members of the CF (2/4).

<sup>433</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>434</sup> Frontex Fundamental Rights Officer, Draft Annual Report 2022, internal document.

<sup>435</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>436</sup> Based on an interview with the European Ombudsman.

<sup>437</sup> Based on interviews with civil society organisations/members of the CF (2/5).

<sup>438</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>439</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations.

<sup>440</sup> Based on a reply by a Member State (BE) to the survey with MS/SAC authorities, Question 8.1(6).

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procedural steps, the competent authorities' findings and follow-up to the complaints, as well as the FRO's observations and recommendations on the case.

Since the EBCG Regulation entered into force, the FRO received complaints involving national staff and reported receiving, for the admissible complaints, information from Member States in a timely manner. However, the inputs from national authorities have not always been adequate in the sense they did not provide sufficient and/or detailed information, e.g. regarding applicable national rules or description of investigative activities.<sup>441</sup>

So far, the FRO processed complaints only on the basis of the previous rules on the complaints (Executive Director Decision 106/2016<sup>442</sup>). Since the entry into force of the new Agency's rules on the complaints mechanism (Management Board Decision 19/2022) the FRO has not yet handled any complaints, concerning national staff, where the home Member State has failed to report back to the FRO in reply to an admissible complaint. It is yet to be seen how the Agency would follow up on the matter in such cases.

### *Appeal*

Regarding the **admissibility of complaints**, the complainants have no remedy to appeal the decision by the FRO that the complaint is not admissible. The only possibility provided by the EBCG Regulation is for the complainants to submit new evidence when the complaints are declared inadmissible or unfounded; in such cases, the FRO reassess the complaints.<sup>443</sup>

There is lack of clarity on Article 111(5) of the EBCG Regulation in the part that indicates that: “[...] *The Agency shall provide for an appropriate procedure in cases where a complaint is declared inadmissible or unfounded*”. The EBCG Regulation does not provide further details on such a procedure, which the Agency did not set up so far, nor was this addressed by the Management Board Decision 19/2022. In this regard, the FRO reported one case where this issue was raised by a complainant who saw the complaint declared non-admissible and asked for the possibility to appeal the decision referring to the procedure indicated in Article 111(5).<sup>444</sup>

The EBCG Regulation does not provide for the possibility of **appeal for complaints**.

On appeal and **scrutiny** of decisions, the European Ombudsman found that the mechanism is lacking scrutiny; thus, for the decisions on complaints, the European Ombudsman indicated that the decisions by the Executive Director on complaints forwarded by the FRO may be challenged before the European Ombudsman.<sup>445</sup>

The complaints mechanism is not exclusive, in the sense that submitting a complaint to the FRO does not prevent the individual from accessing other legal avenues, such as national or European Ombudspersons or the courts ((in parallel to the complaint procedure or afterwards, in case the complaint is not admissible).

### *Remedy*

When individuals experience a violation of their fundamental rights ascertained through the complaints mechanism, a clear **remedy** is missing, as a compensation fund or other concrete remedies. The lack of remedy and the need to introduce it (in the form of a

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<sup>441</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>442</sup> Frontex, Executive Director Decision No R-ED-2016-106 of 6 October 2016 on the Complaints Mechanism.

<sup>443</sup> Article 111(5) of the EBCG Regulation.

<sup>444</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>445</sup> Based on an interview with the European Ombudsman.

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formal apology and/or financial compensation) was discussed during the consultation by some stakeholders.<sup>446</sup>

Following pressure from EU-level stakeholders, e.g., from European Parliament, European Ombudsman<sup>447</sup>, and attention from civil society organisations, the Agency started a process to strengthen the mechanism and, in particular, review the rules on the complaints mechanism.

To increase the effectiveness of the mechanism, in 2021, the **FRO**'s work focused on different initiatives. Firstly, the FRO aimed to strengthen the mechanism and increase awareness by updating the complaint form, introducing a new online submission tool, and distributing information about the mechanism to various Frontex operational areas. Secondly, the FRO provided input on the new rules of the complaints mechanism. Lastly, the FRO conducted training sessions on the mechanism for Frontex staff at headquarters and in the field, as well as for local partners during the monitoring of Frontex operational areas to build capacity.<sup>448</sup>

In 2022, the MB adopted the **Decision on the Agency's rules on the complaints mechanism**.<sup>449</sup>

The new rules further specify the **grounds for the complaint to be declared admissible**. They establish that for any complaint declared inadmissible, the complainant is informed and, if available, provided with further options for addressing their concerns. In particular, the complainant is informed about the possibility to submit new evidence within one year of the date on which the initial decision on inadmissibility was communicated. If the complainant submits new evidence, the FRO reassesses all the information.<sup>450</sup>

The new rules also clarify the **steps of the procedures and introduce timelines**, as illustrated by the following Figure 6.<sup>451</sup>

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<sup>446</sup> Based on interviews with Frontex (1) and a Member of the European Parliament (1/4); and on the reply by a Member State (SE) to the survey with MS/SAC authorities, Question 8.1(6).

<sup>447</sup> The European Ombudsman launched an inquiry launched in 2020; the findings were published in June 2021 indicating recommendations to make the complaints mechanism effective and address its shortcomings.

<sup>448</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

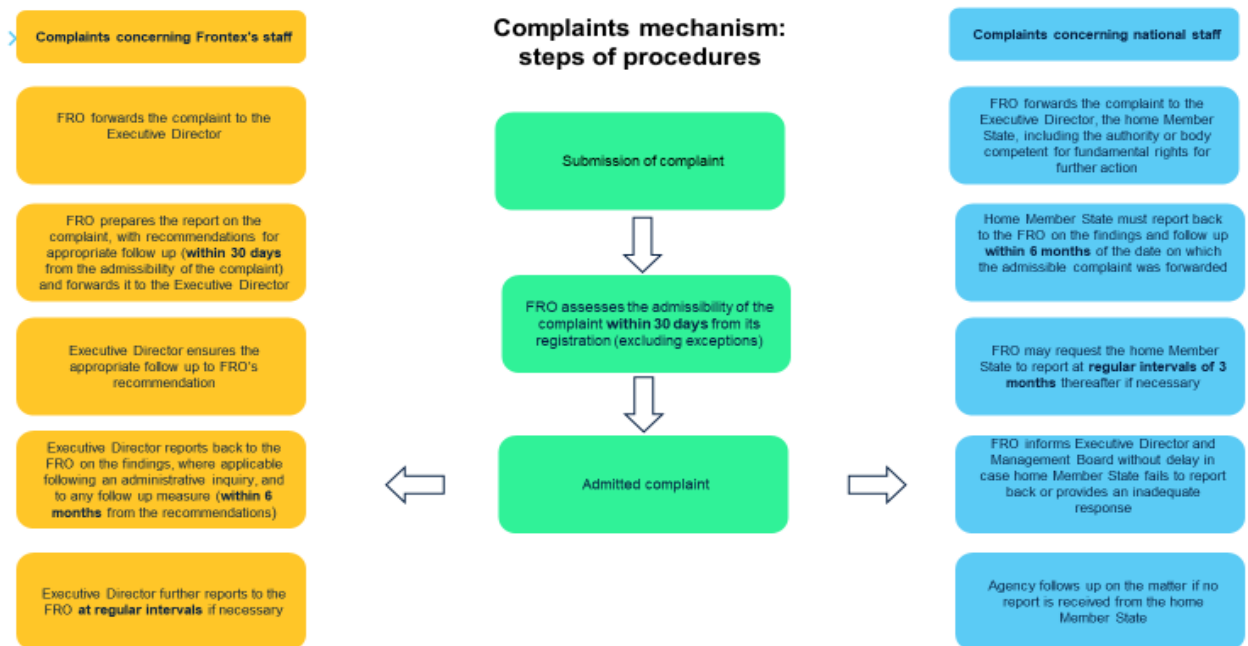
<sup>449</sup> Frontex (2022), Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

<sup>450</sup> Article 5 of the Management Board Decision 19/2022; see also European Ombudsman (2020) Decision in OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer.

<sup>451</sup> Articles 7, 9, 10 of the Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.



Figure 6. Complaints mechanism



Source: ICF elaboration

During the consultation, a **potential discrepancy** was highlighted related the FRO's role in the procedures on complaints between the EBCG Regulation and the Management Board Decision. In Article 111 of the EBCG Regulation, FRO's role is limited to assessing the admissibility of the complaints, proposing recommendations and ensuring follow up by relevant authorities. The 2022 rules specify further the FRO's role and particularly the assessment made by the FRO when handling admissible complaints. The Decision indicates that the FRO ascertains the accuracy of the facts alleged in the complaint as far as reasonably possible and in close cooperation with other entities in the Agency, provides a legal analysis of the concrete fundamental rights violations and draws up recommendations for appropriate follow-up. In this regard, it was pointed out that the new rules seem to introduce a new fact-finding role of FRO (following the admissibility assessment) and the possibility of opening an investigation to ascertain the facts, which would be done by the Executive Director according to the EBCG Regulation.<sup>452</sup>

The new rules also expand the **sources consulted** for complaints concerning Frontex's staff by the FRO, where relevant, may rely on information provided by the FRMs collected during their monitoring activities and request the complainants and third parties to submit further information.<sup>453</sup>

The 2022 Decision regulates the cases of **complaints concerning staff involved in Frontex's activities in third countries**. For allegations concerning Frontex's staff, the complaints are treated by the FRO in accordance with the procedure set out by the 2022 Decision; whereas, in cases involving allegations of fundamental rights violations concerning third country staff, the competent national authority of the respective third country deals with it in accordance with its national rules and regulation.<sup>454</sup> The FRO

<sup>452</sup> Based on an interview with the Fundamental Rights Office (1/5).

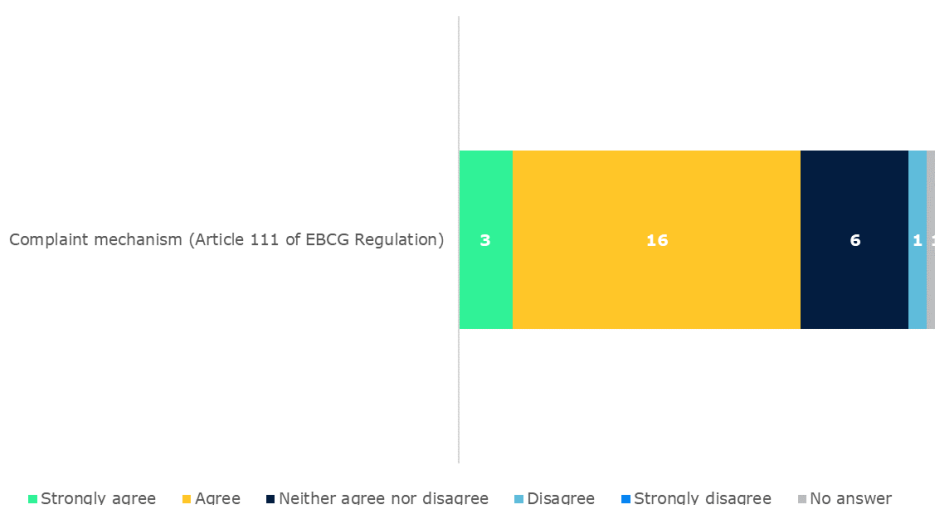
<sup>453</sup> Articles 7 and 10 of the Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

<sup>454</sup> Article 9 of the Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

indicated receiving one complaint concerning third-country staff so far; this was forwarded by the FRO to the competent national authority.<sup>455</sup>

In the context of the stakeholders' consultation, a survey was addressed to Member States' authorities to gather, among others, their points of view on the functioning of the complaints mechanism. According to the results of the survey (indicated below), the majority of Member States (19) strongly agree (3)/agree (16) that the complaints mechanism is conducive to ensuring the protection of fundamental rights in the course of executing Frontex's mandate.<sup>456</sup> As indicated above in this section, two Member States expressed suggestions for improving the complaints mechanism.<sup>457</sup>

*Figure 7. MS/SAC survey results in response to the question: To what extent do you agree with the statement "The fundamental rights monitoring framework outlined in the EBCG Regulation is conducive to ensure the protection of fundamental rights in the course of executing the Frontex's mandate."? Please consider the following: Complaints mechanism (Article 111 of EBCG Regulation)*



*Source: ICF elaboration on the basis of results from the Survey with MS/SAC authorities<sup>458</sup>*

The research team gathered information to analyse the extent to which the complaints mechanism constitutes an effective and accessible tool for reporting, investigating, and remedying potential breaches of fundamental rights. The analysis found that the well-functioning of the complaints mechanism was limited by a number of factors (as highlighted in this section) related to the **set-up and implementation of this mechanism**. As indicated, there are also **some unclarities in the EBCG Regulation** (the procedure referred at Article 111(5)) and **potential inconsistencies between the EBCG Regulation and Management Board Decision 19/2022**. To strengthen the mechanism's functioning, the Agency, and specifically the FRO, adopted **positive steps** and worked towards raising **awareness of the use of the mechanism**, and the Management Board Decision 19/2022 adopted **rules** to further develop the complaints mechanism.

<sup>455</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>456</sup> Survey with MS/SAC authorities, Question 8.1(6): 3/27 MS/SAC Strongly agree (BG, EE, LT); 16/27 MS/SAC Agree (AT, CZ, DK, FI, DE, HU, LV, MT, NO, PL, PT, RO, SK, ES, SE, CH); 6/27 MS/SAC Neither agree nor disagree (FR, EL, IC, IE, LU, SI); 1/27 MS/SAC Disagree (BE); 1/27 MS/SAC NO Answer (IT).

<sup>457</sup> Survey with MS/SAC authorities, Question 8.1(6): BE and SE.

<sup>458</sup> Survey with MS/SAC authorities, Question 8.1(6).

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#### A5.1.1.4 Return and fundamental rights

This section focuses on the fundamental rights aspects of monitoring the return operations, indicating the Agency's activities and fundamental rights safeguards in this area, and analysing their effectiveness. It also presents an overview of the monitoring activities by the Agency in return operations, as well as concerns expressed by stakeholders – as indicated below – on the level of fundamental rights protection ensured by the Agency in this area. The analysis shows that the EBCG Regulation and Code for Return provide for fundamental rights to be respected during return operations through a number of **obligations and good practices** to be observed/implemented. To ensure compliance, the Agency adopted **changes to increase the monitoring level** of return operations. Despite this framework and instruments, the analysis identified some **challenges that might impact how effectively the Agency is carrying out monitoring activities**.

The EBCG Regulation of 2019 amended the tasks of the Agency, and included a more significant role for the Agency in return operations and interventions. It establishes that the Agency is tasked with providing assistance to Member States throughout the entire return process, including pre-return, return-related, and post-arrival and post-return activities of third-country nationals. However, it is important to note that the Agency does not enter into the merits of return decisions, which remain the sole responsibility of the Member States, as established by Article 50 of the EBCG Regulation.

In every return operation organised or coordinated by the Agency, the team members must fully respect fundamental rights while performing their tasks.<sup>459</sup>

The Agency's commitment to upholding fundamental rights during return operations is underlined in the **Code for return**.

Whenever an issue with **fundamental rights implications** for an activity of the Agency at the external borders and **in return operations** is under consideration, the Executive Director or authorised staff members must inform the FRO. This is to be done prior to taking any decision, ensuring that fundamental rights are taken into account at all stages of the process.<sup>460</sup> To guarantee fundamental rights respect in **operational plans**, the FRO is asked to provide a fundamental rights assessment (similar to an impact assessment) for each operational plan on an annual basis, as well as in the evaluation of each operation at the end of the operational year.

The **FRO** is also assigned the task of providing concrete and tangible advice, Opinions, and responses to consultation related to day-to-day operations at the external borders and activities related to the return of third-country nationals. This is intended to promote fundamental rights standards and best practices in the Agency's work.<sup>461</sup>

As per the EBCG Regulation, if the Agency has any concerns about the respect of fundamental rights during any stage of a return operation, it must communicate them to the involved Member States and the European Commission.<sup>462</sup>

##### *Code of conduct for return*

In line with the EBCG Regulation's obligation<sup>463</sup>, the Agency adopted a **Code of conduct for return operations and return interventions**, which reinforces the need to respect

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<sup>459</sup> Article 82(3) of the EBCG Regulation.

<sup>460</sup> Article 3 of Frontex Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff.

<sup>461</sup> Article 12 of Frontex Management Board Decision 43/2022.

<sup>462</sup> Article 50(6) of the EBCG Regulation.

<sup>463</sup> Article 81(2) of the EBCG Regulation.

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fundamental rights when carrying out these activities.<sup>464</sup> According to the Code (in line with Article 46 of the EBCG Regulation), the Executive Director must suspend or terminate (in whole or in part) any activity if he/she considers that there are violations of fundamental rights or of international protection obligations that are of a serious nature or are likely to persist. Moreover, Frontex's financial support for the return operations is conditional on respecting the Charter of Fundamental Rights of the EU.<sup>465</sup>

To increase transparency, the relevant Agency's staff have to ensure that information is provided about the possibilities to lodge a complaint concerning an alleged fundamental rights violation during return operation and return intervention, for example via the complaints mechanism.<sup>466</sup>

The Code indicates that the monitoring system for forced-return operations aims at gathering information on and reporting fundamental rights compliance and, where appropriate, making recommendations for the strengthening of the protection of the rights of returnees.<sup>467</sup>

On reporting, the Code establishes that any participant in the return operation and return interventions who has reasons to believe that a violation of this code or of fundamental rights has occurred is required to report it to the Agency via the appropriate channels, such as the Serious Incident Report system.<sup>468</sup>

#### *Return monitoring*

When providing support to Member States, the Agency has the responsibility of **monitoring compliance with fundamental rights in return operations**, as part of its tasks.<sup>469</sup>

The **monitoring of forced-return operations** is carried out by the **pool of forced-return monitors**. For each forced-return operation, the monitors report to the Agency (Executive Director and FRO) and to the competent national authorities of Member States involved in the given operation. If necessary, appropriate follow-up has to be ensured by the Executive Director and competent national authorities respectively.

The pool is set up by the Agency from monitors of competent bodies of the Member States. The Agency also contributes fundamental rights monitors to the pool.<sup>470</sup>

The **governance of the pool of forced-return monitors** is one of the issues raised by the FRA, as the management of the pool of forced-return monitors is currently assigned to the FRO and not by an external entity, which according to the FRA would enhance the independence of the pool.<sup>471</sup> Before 2021, the pool was made of monitors from Member States only, whilst the FRO started training and appointing FRMs as forced-return monitors.<sup>472</sup>

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<sup>464</sup> Frontex, Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

<sup>465</sup> Article 4 of the Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

<sup>466</sup> Article 6 of the Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

<sup>467</sup> Article 15 of the Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

<sup>468</sup> Article 19 of the Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

<sup>469</sup> Article 10(1)(e) of the EBCG Regulation.

<sup>470</sup> Article 51 of the EBCG Regulation.

<sup>471</sup> Based on an interview with the Fundamental Rights Agency (FRA).

<sup>472</sup> Based on an interview with the Fundamental Rights Office (1/5).

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On the **Member States' level of contribution to the pool**, issues were reported in relation to the number of experts made available by Member States, which might limit the capacity to meet monitoring needs for all relevant operations.<sup>473</sup>

Experts from the FRO participate in these activities, and, with the recruitment of **FRMs**, they started participating in forced-return operations. In 2021, three FRMs were recruited to act as forced-return monitors, and, at the time of writing, there are 5-6 trained and appointed monitors; an additional 5-6 monitors will be trained in July 2023 and then ready to also be appointed.<sup>474</sup>

Regarding the **monitoring level**, the FRO reported that in the first half of 2020, 59 out of 72 operations by charter flights with Frontex support had monitors on board; while, in the second half of same year, 92 monitors participated in return operations by charter flights, of which 68 were deployed from the pool upon Member States' request.<sup>475</sup>

For 2021, the FRO's Annual Report indicated that the FRMs monitored 18 return operations.<sup>476</sup>

Starting from 2022, the FRO published Observations to return operations conducted in the 1st and 2nd half of 2022. In the first half of 2022, out of the 136 forced-return operations by charter flights supported by Frontex, 104 were covered by monitors present on board.<sup>477</sup> For the second half of 2022, monitors were present for 104 of the total 151 of return operations by charter flights supported by Frontex.<sup>478</sup>

On the **FRMs' level of participation** in these monitoring activities, in 2021 they monitored a total of 18 return operations supported by the Agency.<sup>479</sup>, while in 2022 they covered 40 return flights and 20 pre-departures.<sup>480</sup> In the first months of 2023 (until April) FRMs covered an estimated 15 return operations.<sup>481</sup>

To strengthen fundamental rights safeguards in monitoring, the FRO contributed to the **training for forced-return monitors** and created **networks to increase trust between the monitors and national authorities, and international and national organisations**.<sup>482</sup> According to a Member of the European Parliament, such a network

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<sup>473</sup> Based on an interview with DG HOME (1).

<sup>474</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>475</sup> Frontex, Fundamental Rights Officer Annual Report 2020.

<sup>476</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>477</sup> Frontex (2022), Fundamental Rights Officer's Observations to return operations conducted in the 1st half of 2022. Available online at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D=Observations%20to%20Return%20Operations%20&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=ODFhNWU2NWY1OWEwMWZhNGZhZmY2MDFhMjgzMjhkY2FNVFk0T0E9PTUwMTkyMzQ1MzZjZjAzODAwMTJmMGQzNzFiMDE3ZTkWYjJmMDk1YzRkNzE2NDI3OTY4&form-fields%5Bmodule-post-id%5D=N2ZINjFIYjY5ZmU5MTRiNmMyY2JkODJINDc0NTc0YjJNemt3TVE9PTE3NjcyNjgxNDA4ZjFINTU4YWJiYWE3YzhjYTUyZDViZjZhZDU1MDUxMTQzODMxNDc2>

<sup>478</sup> Frontex (2023), Observations to Return Operations conducted in the 2nd half of 2022. Available online at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D=Observations%20to%20Return%20Operations%20&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=ODFhNWU2NWY1OWEwMWZhNGZhZmY2MDFhMjgzMjhkY2FNVFk0T0E9PTUwMTkyMzQ1MzZjZjAzODAwMTJmMGQzNzFiMDE3ZTkWYjJmMDk1YzRkNzE2NDI3OTY4&form-fields%5Bmodule-post-id%5D=N2ZINjFIYjY5ZmU5MTRiNmMyY2JkODJINDc0NTc0YjJNemt3TVE9PTE3NjcyNjgxNDA4ZjFINTU4YWJiYWE3YzhjYTUyZDViZjZhZDU1MDUxMTQzODMxNDc2>

<sup>479</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>480</sup> Frontex (2022), 2022 In brief.

<sup>481</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>482</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

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should include monitors based in third countries where irregular migrants are returned to.<sup>483</sup>

In its 2020 Annual Report, the FRO indicated that, based on the reports from monitors in return operations, the majority of the findings showed that the operations were undertaken in compliance with fundamental rights.<sup>484</sup>

In the Annual Report for 2021, the FRO informed that the return operations were performed while respecting fundamental rights, based on FRO's monitoring activities and reports submitted by the monitors from the pool of forced-return monitors. Some shortcomings were observed during return monitoring operations which included privacy incidents during searches, inadequate attention to the needs of children, insufficient numbers of female escorts, and sometimes disproportionate use of force. However, the FRO indicated that these challenges were not systematic and were therefore considered non-recurring individual cases.<sup>485</sup>

On the **use of force during forced-return operations**, the FRO clarified that force is to be used as the means of last resort; hence, the FRO recommended that national authorities should refrain from using restraints (returnees being hand-tied) as a preventive measure when conducting return operations unless this is deemed necessary based on an individual risk assessment.<sup>486</sup> During the 1st half of 2022, restraints (hand ties) were applied to every returnee as a preventive measure;<sup>487</sup> for the 2nd half of 2022, in one case, a monitor assessed that the measure used was excessive; while restraints were on all returnees for the entire (or the most of) duration of the operation and regardless of the undefined level of risk assessment.<sup>488</sup>

In the context of the stakeholders' consultation, the FRMs were asked to indicate the main challenges encountered when deployed as forced-return monitors. Based on the survey's results, only a small number of FRMs has been deployed as forced-return monitors so far. Out of the 34 respondents, 21 indicated that they have not been deployed as forced-return monitors so far, therefore were unable to answer questions in this regard. For the 13 respondents, who have participated in forced-return monitoring, sufficient resources represented the biggest challenge, followed by Member States' cooperation.

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<sup>483</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>484</sup> Frontex, Fundamental Rights Officer Annual Report 2020.

<sup>485</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

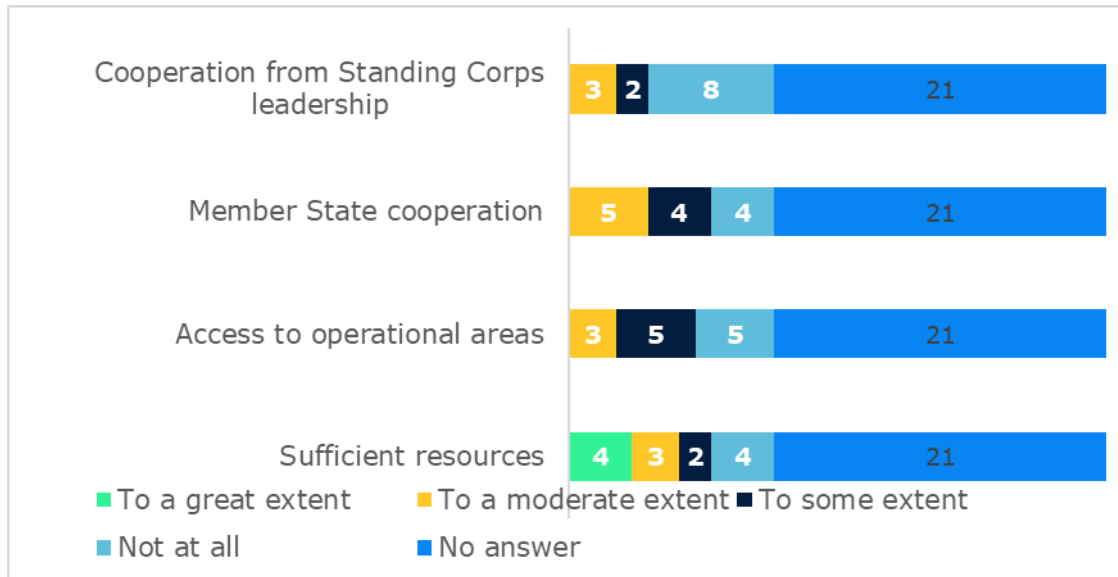
<sup>486</sup> Frontex, Observations to Return Operations conducted in the 2nd half of 2022, 2023.

<sup>487</sup> Frontex (2022), Fundamental Rights Officer's Observations to return operations conducted in the 1st half of 2022.

<sup>488</sup> Frontex (2023), Observations to Return Operations conducted in the 2nd half of 2022.



Figure 8. FRMs survey results in response to the question: *When deployed as forced-return monitors (i.e. to monitor the correct implementation of the return operations and return interventions), what are the main challenges you have encountered in these activities?*



Source: ICF elaboration on the basis of results from the Survey with Fundamental Right Office Monitors<sup>489</sup>

During the stakeholders' consultation, several concerns were raised on the pool of forced-return monitors, Frontex's support to Hungary in the area of return, cooperation with third countries in return and data protection matters in return activities, as indicated below.

#### *Frontex's support to Hungary in the area of return*

The interviewed civil society and international organisations raised particularly the **support provided by Frontex to Hungary**. In 2020, the **Court of Justice of the EU (CJEU)** concluded that Hungary failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals.<sup>490</sup> Following the decision of the Court, **Frontex suspended the operations at the Hungarian-Serbian border** (with the exception of a pilot project in 2021-2022 of a very limited duration, one week per year<sup>491</sup>); however, **Frontex continues to provide assistance to Hungary with return operations**. In this respect, the FSWG called on the Agency to immediately suspend operations supporting return-related activities.<sup>492</sup> The FRO recommended that the Agency should not be involved in the return of third-country nationals who are seeking international protection in Hungary,<sup>493</sup> while the CF suggested

<sup>489</sup> Survey with Fundamental Rights Monitors, Question 14.

<sup>490</sup> Court of Justice of the European Union, Judgment in Case C-808/18 Commission v Hungary. Available online at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0808>

<sup>491</sup> Based on an interview with the national authorities representing a Member State (HU).

<sup>492</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning fundamental rights violations. Available online: [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)

<sup>493</sup> Frontex, Fundamental Rights Officer Annual Report 2021. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/The\\_Fundamental\\_Rights\\_Officer\\_Annual\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/FRO_Reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf)

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the introduction of mitigating measures to address potential risks associated with return decisions issued by Hungarian authorities<sup>494</sup>.

According to one civil society organisation, new legislative developments at the Hungarian level make it difficult to assess separately Frontex support for border management and for return. In 2020, the transit zone asylum system (applications submitted at the border areas) was replaced by the new embassy system. With the new system, the individuals present on the territory of Hungary or at the border crossing points cannot apply for asylum in Hungary, but are directed to the nearest Embassy, with the exception of three categories of persons<sup>495</sup>. The civil society organisation considers that, in the case of joint operations, the individual received by Frontex to be returned might not have had the opportunity to ask for asylum.<sup>496</sup>

To address these concerns, the Agency put in place **mitigating measures**.<sup>497</sup> Among the mitigating measures, the Agency amended the **individual form** to be filled in by Hungarian authorities for each returnee and handed to the Agency's staff carrying out the joint operations. Now the form includes questions regarding the possibility ensured by the national authorities to the individuals subject to the return decision to claim asylum. Despite this change, some civil society organisations consider the addition to the form as a mere box-ticking exercise. Adding to the form that national authorities auto-declare that they guaranteed the right for asylum does not seem to have real value, as it is just transferring the responsibility to the Member States, without any investigation by Frontex to check if individuals really had the chance to claim asylum.<sup>498</sup> A Member of the European Parliament also stressed that Frontex should not be limited to automatically executing the Member States' decisions and should take precautionary measures during the return operations.<sup>499</sup>

To avoid such scenarios, it is suggested that, if there is a high risk that returns are not conducted in a way compatible with the relevant provisions, the possibility to introduce **mitigating measures**, such as carrying out spot checks could be made a prerequisite for returns. Spot checks refer to quality checks of return decisions (in case of high risks) by the national Ombudsperson or independent entities.<sup>500</sup>

In response to the risks presented by the Hungarian framework, in 2022 the Frontex Executive Director *ad interim* reported to the European Parliament that, although Frontex is continuing to provide support for return operations in Hungary, the Agency had never been involved in returns from the transit zone.<sup>501</sup> Nonetheless, one stakeholder was pointing out that, with the current circumstances, it cannot be excluded completely that the Agency is not involved in return operations that could pose risks to fundamental rights (without adopting additional safeguards).<sup>502</sup>

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<sup>494</sup> Consultative Forum, Annual Report 2021. Available online at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

<sup>495</sup> Three categories of persons: those already holding subsidiary protection status in Hungary; those recognised as a refugee or as having subsidiary protection for their family members; and anyone subject to measures restricting their liberty unless they are found to have entered the territory irregularly.

<sup>496</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

<sup>497</sup> Frontex, Fundamental Rights Officer Annual Report 2021. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/The\\_Fundamental\\_Rights\\_Officer\\_Annual\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/FRO_Reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf)

<sup>498</sup> Based on interviews with civil society organisations/non-members of the CF (2/4).

<sup>499</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>500</sup> Based on an interview with Frontex (1 - scoping interview).

<sup>501</sup> European Parliamentary Research Service (2022), European Parliament scrutiny of Frontex. Available online at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)

<sup>502</sup> Based on an interview with the Fundamental Rights Office (1/5).

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### *Cooperation with third countries on return*

The FRO advises the Agency on the implications of **return operations to third countries that present challenging fundamental rights situations**, as part of due diligence and the FRO's advisory role.

In some cases, the Agency did not provide support to return operations to third countries following the advice of the FRO.

The activities with Afghanistan (forced and voluntary return) and Belarus (return operations and voluntary returns) were suspended by the Agency based on the FRO's recommendations given the political situation and fundamental rights risks in those countries.

The FRO also provided a preliminary assessment of the fundamental rights situation in Iran in relation to return operations, as well as Opinions on Sudan, Somalia, Pakistan and Iraq.

There are other third countries for which the FRO put forward Opinions assessing potential fundamental rights implications in the area of return support by Frontex.<sup>503</sup>

### *Cooperation with third countries on return and data protection considerations*

Any **return operation** organised or coordinated by the Agency requires the handling of personal data, which must adhere to the applicable **data protection requirements**. In this respect, the European Data Protection Supervisor (EDPS) found that the Agency's activities in the return operations involve various personal data processing procedures, which are not sufficiently detailed by the Management Board Decision 68/2021<sup>504</sup> adopting the rules on the processing of personal data by the Agency.<sup>505</sup>

The **transfer of personal data to third countries** (for instance, to organise return flights) in the context of return operations organised by the Agency was at the centre of exchanges between Frontex's DPO and the EDPS. The latter published an Opinion on the use of the derogation of '*important reasons of public interest*' – which should be limited – for international data transfers carried out by Frontex in the context of return operations.<sup>506</sup>

## **A5.1.1.5 Effectiveness of the observance and promotion of fundamental rights**

This section focuses on the effectiveness of the observance and promotion of fundamental rights by Frontex in some **operations which present important fundamental rights implications**.

The EBCG Regulation describes the **EIBM as a shared responsibility** of the Agency and of the national authorities responsible for border management, while recognising that Member States retain primary responsibility for the management of their sections of the external borders. Member States, in close cooperation with the Agency, carry out the **management of the external borders and the enforcement of return decisions, in full compliance with Union law, including respect for fundamental rights**.<sup>507</sup> The respect

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<sup>503</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>504</sup> Frontex (2021), Management Board Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex.

<sup>505</sup> European Data Protection Supervisor (EDPS), Supervisory Opinion on the rules on processing of personal data by the European Border and Coast Guard Agency (FRONTEX) (Case 2022-0148).

<sup>506</sup> European Data Protection (EDPS) (2021), Opinion on international data transfers by Frontex in the context of return operations. Available online: [https://edps.europa.eu/data-protection/our-work/publications/supervisory-opinions/international-data-transfers-frontex\\_en](https://edps.europa.eu/data-protection/our-work/publications/supervisory-opinions/international-data-transfers-frontex_en)

<sup>507</sup> Article 7 of the EBCG Regulation.

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for fundamental rights is also stressed in the Schengen Borders Code, according to which Member States have the **obligation to respect fundamental rights** when applying the Schengen Borders Code, as a **general safeguard clause**.<sup>508</sup>

Although the respect of fundamental rights also applies to the Member States and not only to Frontex, there are different limitations to the scope of the instruments established by the EBCG Regulation (i.e. Frontex's or Member States' staff) and different rules and procedures apply, as indicated throughout the analysis (e.g. different procedures for SIRs and complaints related to Frontex's staff and national staff).

Despite these obligations, the observance of fundamental rights in a number of Frontex's operations to support some Member States has been called into question, as indicated below.

The following analysis focuses on **Frontex's support provided to Hungary, Lithuania, Greece and for the operation in the Central Mediterranean, and connected risks for fundamental rights**. It also explores briefly **Frontex's cooperation with third countries** (analysed in detail at the end of the section) highlighting the **main fundamental rights considerations**.

The Agency (also based on FRO's recommendations) adopted some mitigating measures for a number of operations to ensure that violations of fundamental rights do not occur in the context of the Agency's support to Member States and that there is no risk of Frontex's staff and/or assets being involved even indirectly in violations. This would have potential legal consequences (for being involved in possible illegal practices) for the Agency and high reputational risks.

The question remains on the extent to which the Agency makes full use of its current toolbox to ensure compliance with fundamental rights, including by adopting the decision referred to in Article 46 of the EBCG Regulation. The latter was triggered so far in one case only: for Frontex's support to border management in Hungary, despite fundamental rights concerns being raised in a number of operations, as outlined in the following paragraphs.

#### *Frontex's support to Hungary in border management*

The **support by Frontex to border management of Hungary** was widely discussed in the public debate for the **alleged violations of fundamental rights** by the Hungarian authorities/Frontex's staff at the border with Serbia, as reported by various media outlets<sup>509</sup>, civil society organisations<sup>510</sup> and investigated and discussed by EU stakeholders<sup>511</sup>.

Yet, Frontex decided not to suspend or terminate its support to Hungary in border management until the **2020 decision by the CJEU**<sup>512</sup> which ruled against Hungary. This

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<sup>508</sup> Article 4 of the Schengen Borders Code.

<sup>509</sup> E.g. The Guardian (2021), 'Help and you are a criminal': the fight to defend refugee rights at Europe's borders. Available at: <https://www.theguardian.com/global-development/2021/mar/01/help-and-you-are-a-criminal-the-fight-to-defend-refugee-rights-at-europes-borders>

<sup>510</sup> E.g. Hungarian Helsinki Committee (2021), 'Protecting fundamental rights or shielding fundamental rights violations? Evaluating Frontex's human rights mechanisms related to Hungary'. Available at: <https://helsinki.hu/wp-content/uploads/Frontex-human-rights-mechanisms.pdf>

<sup>511</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'. Available online: [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)

<sup>512</sup> Court of Justice of the European Union (CJEU), Case C-808/18 Commission v Hungary, 2020. Available online at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0808>. This case is still ongoing as the European Commission decided to refer Hungary to the Court again, as Hungary did not take the necessary measures to ensure effective access to the asylum procedure. This is based on: European

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was done by the Agency despite the long-standing opinions of the FRO<sup>513</sup>, CF<sup>514</sup>, Office of the High Commissioner for Human Rights of the United Nations<sup>515</sup> and various civil society organisations<sup>516</sup>.

Following the Judgement of the CJEU, Frontex suspended border management operations. **The late decision shows the issue of the wide discretion left to the Executive Director and points to the potential amendment of Article 46 of the EBCG Regulation (as indicated at EQ14.1).**

In the case of the operations in Hungary, the **FSWG's inquiry did not find direct involvement of Frontex's staff in alleged violations of fundamental rights at the Hungarian/Serbian border**. However, some international and civil society organisations as well as experts expressed **concerns about indirect involvement of the Agency**, e.g. through inaction by failing to suspend or terminate an operation in line with the Agency's obligations.<sup>517</sup> Although Frontex has suspended border management operations (with the exception of a pilot project in 2021 and 2022 of a very limited duration, one week per year<sup>518</sup>), support for return operations continues. The **Agency's ongoing support to Hungary in the area of return** is further explored in section A5.1.1.4.

#### *Frontex's support to Lithuania*

In the context of the increasing arrivals at the **border between Lithuania and Belarus**, the Agency launched a Rapid Border Intervention (RBI) in 2021, which was activated upon the request of the Lithuanian authorities.<sup>519</sup> Following the increased influx of arrivals, **Lithuania's legislation related to migration was amended**, introducing practices contrary to international and EU law, including unlawful collective expulsions and prevention of entry without providing effective access to asylum, as stated by the FRO.<sup>520</sup> Despite the concerns from a fundamental rights perspective regarding the amendments

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Commission (2021), Migration: Commission refers Hungary to the Court of Justice of the European Union over its failure to comply with Court judgment, Press release of 12 November 2021. Available online at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_5801](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5801)

<sup>513</sup> Frontex Fundamental Rights Officer, Opinion on Hungary. Available online at: [https://fragdenstaat.de/dokumente/142064-fro-opinion-on-hungary\\_redacted/](https://fragdenstaat.de/dokumente/142064-fro-opinion-on-hungary_redacted/)

<sup>514</sup> Consultative Forum, Annual Report 2021. Available at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

<sup>515</sup> E.g., UN High Commissioner for Refugees (UNHCR) (2016), Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016. Available online at: <https://www.refworld.org/docid/57319d514.html>

<sup>516</sup> E.g., Hungarian Helsinki Committee (2015), No country for refugees – New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary. Available online at: <http://goo.gl/yUYCKL>

Amnesty International (2015), Europe's borderlands violations against refugees and migrants in Macedonia, Serbia and Hungary. Available online at: <https://www.amnesty.org/en/documents/eur70/1579/2015/en>

Amnesty International (2015), Fenced Out: Hungary's Violations of the Rights of Refugees and Migrants. Available online at: <http://tinyurl.com/oasp4bj>

Human Rights Watch (2021), Frontex Failing to Protect People at EU Borders. Available online at: <https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>

<sup>517</sup> Based on interviews with civil society organisations/non-members of the CF (2/4), civil society organisations/members of the CF (3/5) and an international organisation/member of the CF (1/3); and from: Gkliati M., The Next Phase of The European Border and Coast Guard: Responsibility for Returns and Push-backs in Hungary and Greece, European Papers, Vol. 7, 2022, No 1, pp. 171-193. Available online at: <https://www.europeanpapers.eu/en/e-journal/next-phase-of-european-border-and-coast-guard-responsibility>

<sup>518</sup> Based on an interview with the national authorities representing a Member State (HU).

<sup>519</sup> Frontex (2021), Frontex launches rapid intervention in Lithuania, Press release of 12.07.2021. Available online at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-rapid-intervention-in-lithuania-MwIEXJ>

<sup>520</sup> Frontex, Fundamental Rights Officer Annual Report 2021. Available online at: [https://frontex.europa.eu/assets/FRO\\_Reports/The\\_Fundamental\\_Rights\\_Officer\\_Annual\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/FRO_Reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf)



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and their potential impact on operational activities pointed out by the FRO<sup>521</sup> and CF<sup>522</sup>, the management of the Agency did not suspend the support in reaction to these concerns; however, it asked for a legal assessment by the European Commission of the compatibility of the national legislation with EU law. The FRO recommend adopting additional measures and safeguards in order to minimise the risk of fundamental rights violations as well as the reputational and legal risk to the Agency.<sup>523</sup>

In this context, in **June 2022** the **Court of Justice found that the Lithuanian legislation allowed for mass detention and preventing asylum requests** for irregular arrivals in violation of EU law.<sup>524</sup>

In **July 2022**, on Lithuania's request, the **Agency reduced its presence** in the country significantly and stopped providing support on the disputed part of its border with Belarus considering that the situation at the border with Belarus stabilised.<sup>525</sup> Consequently, the Agency did not limit its activity on its own initiative, seemingly.

The fundamental rights risks posed by the Lithuanian legislation were highlighted during the interviews with civil society organisations.<sup>526</sup> In particular, the role of the European Commission's representatives in the MB was put in question by one civil society organisation, considering that risks were stemming from the national legislation rather than from the authorities' actions on the ground, which – according to the interviewee – should have allowed for the Commission, as 'guardian of the treaties', to have a better overview of the national legislative framework and its incompatibility with the EU law.<sup>527</sup>

#### *Frontex's support to Greece*

The **Agency's support to operations with Greek authorities** is explored given the **alleged fundamental rights violations** reported by international organisations<sup>528</sup> and civil society organisations<sup>529</sup> in Greece's Eastern Aegean Sea and Evros regions (Greek-Turkish border) particularly. Further, the OLAF investigation concluded that a number of allegations of irregularities were proven, which '*hindered the capacity of FRONTEX to fully comply with its responsibilities, namely monitoring compliance with fundamental rights in its activities at the external borders, and ensuring respect for, protection and promotion of, fundamental rights [...]*'.<sup>530</sup>

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<sup>521</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>522</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>523</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>524</sup> Court of Justice of the European Union (CJEU), Case C-72/22 PPU. Available online at: <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-72/22&jur=C>

<sup>525</sup> EUobserver (2022), Frontex ends Lithuania border surveillance operation. Available online at: <https://euobserver.com/migration/155523>

<sup>526</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4) and a civil society organisation/member of the CF (1/5).

<sup>527</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

<sup>528</sup> E.g., United Nation High Commissioner for Refugees (UNHCR) (2022), News Comment: UNHCR warns of increasing violence and human rights violations at European borders. Available online at <https://www.unhcr.org/news/press/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html>

<sup>529</sup> Greek Council for Refugees, Country Report: Greece. Available online at: <https://www.asylumineurope.org/reports/country/greece>

<sup>530</sup> European Anti-Fraud Office (OLAF), Final Report, CASE No OC/2021/0451/A1 (sensitive information). Available online: [https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate\\_A\\_redacted-2.pdf](https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf)

Among the irregularities indicated in the Final Report: 'possible witnessing of illegal pushbacks by FRONTEX-deployed assets (Multipurpose Aerial Surveillance – MAS); exclusion of the Fundamental Rights Officer (FRO) of FRONTEX from the reporting line; intimidation, humiliation and harassment of staff members' and 'potential



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To react to such allegations, the MB established in 2020 a **Working Group Fundamental Rights and Legal Operational Aspects of Operations** (WG FRaLO) with the assignment to investigate a number of allegations on the alleged involvement of Frontex with collective expulsions in the Eastern Mediterranean.<sup>531</sup>

In relation to the border between Greece and Turkey, the **FRO stressed the risk of the indirect involvement of Frontex's staff and assets** in potential individual and collective expulsions of migrants taking into account the existence of strong indications about persisting fundamental rights violations of a serious nature.<sup>532</sup>

On the expulsion of migrants, an investigation was launched in 2021 by Greek Ombudsman into the case of an interpreter, that was mistaken by a Greek border guard as an irregular migrant, assaulted and forced across the border into Turkey alongside dozens of migrants.<sup>533</sup> This case is pending investigation, but it holds significant importance as the interpreter is a legal European Union resident who was hired by Frontex via an external contractor (so not part of Frontex's staff per se) to provide translation support during the operational activity in Greece.

To address the long-standing FRO's recommendations on Frontex's operations in Greece, the Agency and the Greek authorities adopted in 2022 an **implementation plan** that also entails structured dialogue on information-sharing in cases of potential violations of fundamental rights, bringing together the Liaison Officers from the Greek Police and Coast Guard and the FRO. Furthermore, the plan foresees the adoption of a number of operational and procedural measures, including, among others, active engagement of Frontex staff and/or assets in front-line activities, Frontex assets remaining, as by principle, in the location of a detected incident until the operation is completed, increased follow-up by national authorities when Frontex staff and/or assets are involved in incidents.<sup>534</sup>

On the **insufficient follow-up by national authorities**, an international organisation indicated that, although patterns of violations can be reported by the FRMs and shared with the Agency by the FRO, the Member States must commit to implementing mitigating measures and safeguards fully and to take on the advice of the FRO. Such commitment has been lacking in the case of Greece.<sup>535</sup>

Regarding the involvement and responsibility of Frontex, one civil society organisation reported the opinion that there is a **responsibility for Frontex when (even if indirect)** supporting the operations of a Member State that might lead to potential violations, for instance in case of individual or collective expulsion at the border (in the framework of operational activities or when Frontex is handing over returnees to the Greek authorities without assessing if their fundamental rights are respected, in particular the right to claim asylum).<sup>536</sup>

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misconduct and/or irregularities related to FRONTEX, possible involvement in and/or cover up of illegal pushbacks'.

<sup>531</sup> Frontex Management Working Group, Final Report, Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea. Available online at: [https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Documents/Agenda\\_Point\\_WG\\_FRaLO\\_final\\_report.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Documents/Agenda_Point_WG_FRaLO_final_report.pdf)

<sup>532</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>533</sup> Euractiv (2021), Brussels worried about new pushback case involving EU employee. Available online at: [Brussels worried about new pushback case involving EU employee – EURACTIV.com](#)

<sup>534</sup> Based on an interview with the Fundamental Rights Office (1/5); and from: Frontex Fundamental Rights Officer, Draft Annual Report 2022, internal document.

<sup>535</sup> Based on an interview with an international organisation/member of the CF (1/3).

<sup>536</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

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However, it is clear from the Agency's mandate that Frontex cannot enter into the merits of return decisions, which remain the sole responsibility of the Member States.<sup>537</sup> This was also confirmed during the consultation, as the FRO does not have the mandate to act as an appeal body for national returnee decisions, nor would the Office of Fundamental Rights have the internal capacity and expertise to assess return decisions adopted by national authorities.<sup>538</sup>

Despite some **positive steps** taken by the Agency and Greek authorities, concerns remain as only some procedural steps were adopted but practices of concern have not been addressed fully.<sup>539</sup> Thus, the **question remains on the effectiveness of the Agency's actions** to ensure that violations of fundamental rights do not occur in the context of the Agency's support to Member States (at least, as this is explicitly covered by the Frontex's and FRO's mandate), and that there is no risk of Frontex being indirectly involved in any incident of unlawful return/expulsion, which might be considered as indirect involvement by the Agency in violating one's right to claim asylum (and have their case assessed individually). Considering the **limitations to the FRO's mandate** (indicated under A5.1.1, EQ14.1) and that the **termination of Agency's operations (based on Article 46 of the EBCG Regulation) do not solve fundamental rights violations** (as suggested by stakeholders under A5.1.1., EQ14.1), further discussion could focus on potential solutions to bolster protection and monitoring at national level (so to match the FRO's monitoring) given that the EBCG Regulation provides that the Member States have primary responsibility for the management of their sections of the external borders in full compliance with Union law, including respect for fundamental rights.

*Frontex's support in the Central Mediterranean and use of multipurpose aerial surveillance (MAS) service*

Frontex operates a **Multipurpose Aerial Surveillance (MAS) Service in the Central Mediterranean**, which, among other areas, covers the Libyan Search and Rescue Region (SRR). According to some of the interviewed stakeholders (indicated below), this activity has the potential to lead to fundamental rights' violations and, possibly, to Frontex's indirect responsibility.

In accordance with international law, the **Agency shares information on migrant vessels in distress with all relevant coastal states**, including in relevant cases with the national authorities of Libya (Maritime Rescue and Coordination Center, MRCC) to respond to the distress calls and conduct the rescue operation.

Various civil society and international organisations voiced concerns on Frontex's MAS service considering that the information collected and shared by the Agency with relevant national authorities might **risk leading to migrants being intercepted at sea by the Libyan authorities (as part of the rescue operation) and disembarked in/returned to Libya**, where serious human rights violations are reported, without guaranteeing them the possibility to claim asylum and in violation of principle of non-refoulement.<sup>540</sup>

This topic was also discussed within the CF, which reported that its members have pointed out MAS' role in facilitating maritime interceptions by Libyan authorities in the central Mediterranean.<sup>541</sup>

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<sup>537</sup> Article 50 of the EBCG Regulation.

<sup>538</sup> Based on an interview with the Fundamental Rights Office (1/ 5).

<sup>539</sup> Based on an interview with the Fundamental Rights Office (1/ 5).

<sup>540</sup> Based on interviews with a civil society organisation/non-member of the CF (1/4), civil society organisation/member of the CF (1/5) and international organisations/members of the CF (2/3)

<sup>541</sup> Consultative Forum, Annual Report 2021.

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Among the recommendations indicated in the 2021 report, the FSWG recalled “*that for maritime operations, every operational plan should include an agreement on Search and Rescue obligations, as well as on the port of disembarkation, which has to be a place of safety as it is laid down in international maritime law*”. Moreover, the FSWG recommended that: “[...] *the Agency, the Commission and the Member States develop protocols to respond to search and rescue needs and save lives at sea, and to ensure sufficient capacity to coordinate search and rescue operations*”.<sup>542</sup>

From September 2021, the **FRMs started monitoring the MAS services** in the Central Mediterranean Sea and **5 SIRs related to the aerial surveillance activities in the Central Mediterranean** were launched in 2021 (September-December).<sup>543</sup>

On the MAS service, the **FRO**, in line with his advisory role to the Agency (as set out by Article 109 of the EBCG Regulation), advised the Agency on this matter stressing the risks of fundamental rights’ violations.<sup>544</sup>

The FRO acknowledged that the rescue operations completed by the Libyan Coast Guard may result in migrants and refugees disembarked in Libya, which is not considered a safe port. **Sharing information collected by Frontex via the MAS service with the Libyan authorities where a vessel is in distress, and the Libyan MRCC is contacted to launch the SAR operations, might lead to potential legal consequences (for being involved - even indirectly - in possible illegal practices) and high reputational risks**<sup>545</sup>. To protect fundamental rights and for the Agency’s involvement, even indirectly, in violations, the FRO recommended the **adoption of mitigating measures**, such as, among others, to subject MAS service with relevant Member States to compliance with fundamental rights obligations, and to enable a timely and thorough fundamental rights assessment by the FRO in case of new or renewed MAS service request.<sup>546</sup>

The **complex legal obligations of sea operations contribute to creating uncertainty** in relation to the respective roles and responsibilities of the various actors involved during the search and rescue operations and disembarkation. Indeed, concerns arise regarding Frontex’s indirect responsibility in cases where (SAR) operations were not initiated, as the sole authority for making SAR decisions rests with the States, and Frontex is unable to independently conduct SAR operations without the coordination of a national Maritime Rescue Coordination Centre (MRCC).<sup>547</sup> Hence, the complex and non-harmonised rules on SAR operations in the EU have an impact on Frontex’s limited accountability vis-a-vis international law (notably, the UNCLOS and SAR Convention), particularly when a decision not to initiate a SAR is taken by the MRCC. The complexity of the legal framework is compounded by the fact that the Sea Borders Regulation does not take into account the extended mandate of the Agency in providing technical and operational assistance to Member States and third countries in support of SAR operations.

#### *Frontex’s cooperation with third countries and fundamental rights’ implications*

Fundamental rights safeguards are included in **Working Arrangements** concluded by Frontex and the **Status Agreements** concluded by the EU with third countries. Both

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<sup>542</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021), Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations.

<sup>543</sup> Frontex, Fundamental Rights Officer Annual Report 2021.

<sup>544</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>545</sup> For failure to act and/or failure to adopt all the necessary measures to ensure that migrants are promptly rescued and brought to a place of safety for disembarkation.

<sup>546</sup> Frontex, Fundamental Rights Officer, Internal documents, 2022; and based on an interview with the Fundamental Rights Office (1/5).

<sup>547</sup> Based on an interview with the Fundamental Rights Office (1/5); State Watch (2021): ‘To SAR or not to SAR’. Available here: [Statewatch | To SAR or not to SAR part 2: Legal firewalls of a very political agency](#)

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Working Arrangements and Status Agreements contain provisions related to fundamental rights, including practical measures.<sup>548</sup>

While Frontex is not involved in the conclusion of Status Agreements with third countries, the Agency adopts Working Arrangements with third countries. For the Working Arrangements, the Agency is required to seek the European Commission's prior approval, EDPS' prior authorisation, and opinion from the FRO. The Working Arrangements are adopted by the Agency's MB and there is the obligation to notify the European Parliament ahead of the signature of a Working Arrangement with a third country.<sup>549</sup>

As part of his advisory role, **additional fundamental rights safeguards** (such as the enhanced presence of FRMs) may be included in the **FRO's observations and recommendations to each Frontex's cooperation activity with third countries** so that the safeguards may be tailored to the context existing in a specific third country and considering the specific form of cooperation adopted.<sup>550</sup>

The FRO carries out a **due diligence assessment of fundamental/human rights** before the Agency starts to cooperate with third countries, based on information on the planned cooperation from the relevant Frontex Units. This is being done for all third countries.<sup>551</sup>

The cooperation of the Agency with third countries was discussed during the stakeholders' consultation.

A member of the European Parliament recommended the need for more attention on the cooperation activities (ongoing and planned) of the Agency with third countries and asked for thorough fundamental rights' impact assessment before any status agreement and/or working arrangement is negotiated by the European Commission or the Agency.<sup>552</sup> A civil society organisation questioned the Agency's and FRO's capability to assess the respect of fundamental rights by third countries sufficiently, considering that it is not an Agency specialised in fundamental rights nor does it have such internal capacity.<sup>553</sup>

Three civil society organisations questioned the adequacy of Frontex's activities in third countries and the potential risks of Frontex's staff being directly or indirectly involved in fundamental rights violations.<sup>554</sup>

One organisation indicated that considering violations are happening already in the EU, it might be too risky for Frontex to operate in countries where the fundamental rights standards might not match with the ones in the EU.<sup>555</sup>

The respect of data **protection requirements** in the context of Frontex's **cooperation with third countries** is explored in detail in A4.1.3.

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<sup>548</sup> Frontex, Fundamental Right Officer Annual Report 2020.

<sup>549</sup> Based on an interview with Frontex (1).

<sup>550</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>551</sup> Based on an interview with the Fundamental Rights Office (1/5).

<sup>552</sup> Based on an interview with a Member of the European Parliament (1/4).

<sup>553</sup> Based on an interview with a civil society organisation/member of the CF (1/5).

<sup>554</sup> Based on interviews with a civil society organisation/non-member of the CF (1/4) and civil society organisations/members of the CF (2/5).

<sup>555</sup> Based on an interview with a civil society organisation/non-member of the CF (1/4).

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## Annex 6 Capability development

This annex provides additional data supporting the findings described under Section 4.1.7 on Capability Development in the main body of the evaluation of the EBCG Regulation and under RQ 6 (Review of the Standing Corps).

### A6.1 Training

Table 7 presents an overview of the results of the specialised training activities planned and implemented throughout 2020-2022 for Member States/SACs and third countries. The table does not include the development of effective training methodologies (e.g., train-the-trainer courses),<sup>556</sup> training in response to ad hoc requests for support following vulnerability assessments, or training on Opera Evolution.

From Table 5, it appears that most targets for training activities were met across 2020-2022. The same applies to other activities linked to training, such as the awarding of grants to implement the Basic Training Programme or the creation of training maps for Standing Corps Category 1 and 2.<sup>557</sup> Not all planned training activities took place. For example, in at least 2020 and 2021, there were issues due to limited availability of trainers or training locations, as well as COVID-19.<sup>558</sup> In 2022, the target for planned versus implemented specialised training activities was not met, although the overarching target was.<sup>559</sup> Nevertheless, there was clear progress towards sustained EBCG capability.

In terms of whether training activities were effective in maintaining and raising the level of cooperation at strategic and operational level among Member States and with the assistance of Frontex:

- At strategic level, cooperation was somewhat guaranteed through Frontex-led training on the implementation of European systems such as EES and ETIAS, as well as by the implementation of the CCC (Article 62(6)), which is proof of the harmonisation of core basic competences. CCC-ML is being implemented through courses offered by Frontex, such as that on EIBM.<sup>560</sup> Member States/SACs noted that the education and training of the EBCG, in particular the common training standards, contributed to facilitating cooperation among Member States' border and coastguards training institutions.<sup>561</sup> However, it is difficult to assess the level of implementation of the CCC-basic, as there are no mandatory reporting standards.<sup>562</sup> As per the Interoperability Assessment Programme 2019-2020,<sup>563</sup> '55% of the participating countries have integrated more than 70% of the Frontex

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<sup>556</sup> In 2020, 53 Category 1 participants certified as trainers for the Standing Corps and 27 Member State/SAC and third-country participants certified as Frontex trainers. In 2022, 15 Member State experts were trained in course design and 30 Member State experts were certified as Frontex trainers in two courses on Border and Coast Guard Training Delivery Methodology. Among the Standing Corps, 85 experts certified as Frontex trainers for specialised courses and the BTP for Category 1.

<sup>557</sup> Frontex (2023). 'Consolidated annual activity reports 2020-2022'.

<sup>558</sup> Frontex (2021). 'Management Board Decision 41/2021 of 15 July 2021 adopting the Annual Implementation Report 2020'; Frontex (2022). 'Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021'.

<sup>559</sup> Frontex (2023). 'Draft consolidated annual activity report 2022'.

<sup>560</sup> Interview with Frontex (1).

<sup>561</sup> Survey of MS/SAC authorities: Q3.1: 13/27 agreed (AT, BG, EE, FI, LT, LV, LU, MT, PL, SE, SI, SK and NO), 3/27 strongly agreed (BE, HU, RO).

<sup>562</sup> Interview with Frontex (1).

<sup>563</sup> A new report is a target indicator within the 2022-2024 SPD, but is not reported in the draft CAAR 2022.



curriculum into their national programmes of basic training for BCGs'.<sup>564</sup> From the interviews, it emerged that several Member States have not fully implemented the CCC-basic because the division of tasks (responsibilities) is different in their Member State.<sup>565</sup> In addition, it remains a challenge to keep the core basic competences harmonised, as every time that CCC-basic is updated it has to be compared to necessary competences, and national border authorities need to update their programmes.<sup>566</sup>

- Assessing the level of cooperation at operational level is complicated. Training grants for (joint projects among) Member States were postponed in 2020 and no exchange and common training activities took place, due to the COVID-19 pandemic.<sup>567</sup> Similarly in 2021, the COVID-19 pandemic meant that no activities took place to support the partnership academies network, which brings together training institutions of the EU Member States.<sup>568</sup> The EJMP SBM, held by Frontex in collaboration with EU border guard training organisations, academies and partner universities, finished its third iteration in 2021. In 2022, the Agency developed a legal-financial and procedural framework for the EJMP SBM via a multiannual framework partnership agreement, financed with specific grants, but activities will recommence in 2023, at the earliest.<sup>569</sup>

The Interoperability Assessment Programme 2019-2020<sup>570</sup> and the Interoperability Assessment Report<sup>571</sup> noted that the CCC-basic and CCC-mid-level remain relevant and up to date.

Table 5. Overview of training results 2020-2022

	Type of training	2020		2021		2022	
		Target met	Result	Target met	Result	Target met	Result
<b>MS/SAC/TCs</b>	<b>Specialised</b>	√	Unknown	≈ <sup>572</sup>	6,622 graduates	√	4,294 graduates

Notes: √ = target met; ≈ = target not entirely met; 'Target met' refers to whether the training target was met, and not to whether the number of graduates matched the goals set out in the EBCG Regulation; N/A = not applicable.

Source: Frontex CAAR (2020-2022); interviews with Frontex (1).

Standing Corps Category 1 staff had to undergo the Basic Training Programme for the European Border and Coast Guard (BTP). The BTP is a six-month training programme for recruits with a law enforcement background. Next, the Agency introduced the Extended

<sup>564</sup> Frontex (2021). 'Common core curriculum for border and coast guard basic training in the European Union: Interoperability Assessment Programme 2019-2020 – Report', p. 27.

<sup>565</sup> Interviews with MS/SAC national authorities (2/27) (DK, EE).

<sup>566</sup> Interview with Frontex (1).

<sup>567</sup> Frontex (2021). 'Consolidated Annual Activity Report 2020'; Frontex (2022). 'Consolidated Annual Activity Report 2021'.

<sup>568</sup> Frontex (2022). 'Consolidated Annual Activity Report 2021'.

<sup>569</sup> Frontex (2023). 'Draft Consolidated Annual Activity Report 2022'.

<sup>570</sup> A new report is a target indicator within the 2022-2024 SPD, but is not reported in the draft CAAR 2022; Frontex (2021). 'Common core curriculum for border and coast guard basic training in the European Union: Interoperability Assessment Programme 2019-2020 – Report'.

<sup>571</sup> Frontex (2022). 'Common Core Curriculum for Border and Coast Guard Mid-Level Management Training in the European Union - Interoperability Assessment Report'.

<sup>572</sup> Due to complications following the COVID-19 pandemic, exchange and common training activities between border and coast guard training institutions did not take place as planned.



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Basic Training Programme (EBTP), a one-year programme targeting those without a law enforcement background. The statutory staff forming Standing Corps Category 1 are a mixed group of those with and without a law enforcement background. The Agency is currently considering offering only the EBTP instead of its current entry-level training.

The EBTP combines theoretical and experiential learning activities. The theoretical modules cover a range of topics, including the legal basis for border and coastguard activities, tactical and force measures, firearms training, border checks, land and maritime border surveillance, prevention, detection, combating cross-border crime, and return.

Both the BTP and EBTP are fully align with the Common Core Curriculum (CCC) Basic and the Sectoral Qualifications Framework (SQF) for Border Guarding level four. Hence, the Category 1 basic training aligns with national trainings, with the exception of national legislation, while incorporating specific topics relevant to SC Category 1. Additionally, the SC Category 1 basic training encompasses components from the three primary domains of border checks, namely airports, land borders, and maritime borders.

The only difference to the national ones is that SC basic training does not include national legislation part, but it includes necessary SC cat.1 specific matters. Moreover, the SC cat.1 basic training includes elements from all three domains (airport, land, maritime), whilst national programmes include usually only one or two, according to the national division of tasks within authorities.

The experiential learning phase (ELP) is organised twice within the EBTP, for three weeks after semester one and for six weeks after semester two. The experiential learning phase was originally planned to be organised twice within the EBTP with the duration of three weeks (after semester one) and six weeks (after semester two). However, due to situation at the external borders (namely the Russian's war of aggression against Ukraine, which started in the time of implementation planning), the two phases of ELP were combined, and organised in the end of semester two. After graduation, Standing Corps Category 1 staff with a border guard officer profile can be deployed to borders and attend profile training.

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## A6.2 Research and innovation

Table 6, Table 7 and Table 8 below provide an overview of the extent to which the expected results of key activities as described in Frontex' multiannual programming documents were met in 2020-2022, based on the consolidated annual activity reports and on an assessment by ICF.

Table 6. Research and innovation: expected results versus goal met (2020)

Key activity	Expected results	Goal met (results + indicator target)
3.4.1. Deliver, in close cooperation with the Member States and the Commission, technical standards for the equipment to be included in the capability pools and to be deployed in the activities of the Agency.	Minimum requirements for aerial and terrestrial equipment developed.	√
	Performance assessment methodology for document inspection systems further validated, and a practical tool developed for the Member States to regularly test the performance of the system.	≈
	Regular end-user contribution to European and international standardisation bodies provided	≈
	Simulation and operational research conducted to support Member States with the implementation of an Entry/Exit System, and in support of other business units; with field visits organised to the BCPs in Member States and third countries.	≈
	Study on advance information at land and sea borders conducted and a meeting organised to disseminate the study results; potential working group established to develop best practice guidelines on the use of advance information at land and sea borders.	≈
	Study visits on advance information and traveller intelligence in selected EU Member States organised for Western Balkan countries to support them in the implementation of advance information systems.	≈
	Support provided for the organisation of industry days on analytics systems for EU Member States (and potentially pre-accession Western Balkan countries).	≈
	In accordance with the IPA II phase II project implementation, develop the capacity of Western Balkan countries to identify and register migrants.	√
	Development and delivery of training contents and expertise on Automated Border Control (ABC), EES and Advance Information – tactical risk profiling and traveller targeting provided.	√

Key activity	Expected results	Goal met (results + indicator target)
	International Conference on Biometrics for Borders organised, and optional workshops on advance information and traveller intelligence organised for Western Balkan countries.	√
	Needs assessment and plan of action with Member States in relation to the EES implementation. Actions with Western Balkan countries in the area of advance information and traveller intelligence.	≈
3.4.2. Develop and manage a comprehensive research and innovation platform to enable research and facilitate the dissemination of research information.	Drafting of the terms of reference for the design of the BoMIC taking into consideration research and innovation needs. Develop a simulation and testing framework, making available to Frontex and EU Member States a platform for testing technical solutions and technologies, and enabling simulation and replica of real border control and border surveillance environments, where pre-acquisition testing can be made and industry-available solutions can be audited in a near-to-real context.	√ (expected result) / ≈ (indicator target)
	<ul style="list-style-type: none"> <li>• Establishment of the research for innovation network.</li> <li>• Identify and assess common research needs.</li> </ul>	≈
3.4.3. Steer EU-wide border management research through the development of the Senior User role of Frontex in the implementation of the EU framework programmes for research and innovation.	Inputs to the European Commission for border security research topics and sub-topics.	√
	Evaluation of Horizon research proposals by experts selected from the Frontex pre-pool of evaluators.	√
	Regular workshops and meetings with selected projects and the EBCG community to check the continued relevance of the conducted research taking into account capability roadmaps and providing advice and support progress and results.	√ (expected result) / ≈ (indicator target)
	Contribution to the project progress review process, making available experts when indicated by the Commission.	√

Key activity	Expected results	Goal met (results + indicator target)
	Develop awareness and collaboration with existing border security research capabilities, within the EU (with special attention to the cooperation with DG JRC and other EU bodies, such as EUISS) and with key international partners.	√
	Implementation of a technology foresight methodology for the regular assessment of the future of technology and science with the aim of identifying the technologies that will most impact the EU borders and the EBCG community in the mid and long term.	≈
	Implementation of a border security research framework contract providing the capability to manage Frontex own research.	√
3.4.4. Pilot border management-related technological solutions and research findings fostering further development of EBCG capabilities.	Three innovation cells (specialised teams with MS and internal units' participation) will be set up, covering respectively: surveillance, border checks and analysis/tools for border management capabilities (e.g. training).	≈
	Increased Frontex and MS hands-on awareness of available technologies for border control achieved by the implementation of one to two pilot projects carried out by each of the innovation cells.	≈ (expected result) / √ (indicator target)
	Management of innovation relations with the industry through the organisation of new technology demonstrations, exhibitions and industry days, with the participation of MS, Frontex internal units, EU bodies and institutions.	√
	Technical advice and revision of Frontex own assets specifications – procurement documentation and technical advice to MS and third countries on technological plans and solutions, including invitation to non-EU countries regarding innovation activities.	√

√ = goal met

≈ = goal not entirely met

Source: Frontex, 2021, Consolidated Annual Activity Report 2020.

Table 7. Research and innovation: expected results versus goal met (2021)

Key activity	Expected results	Goal met (results + indicator target)
3.4.1. Deliver in close cooperation with the Member States and the Commission technical standards for the equipment to be included in the capability pools and to be deployed in the activities of the Agency.	Minimum standards for equipment established.	√
	Methodologies of standardisation process developed and validated.	≈
	Performance assessment methodology for document inspection systems completed.	≈
	A practical tool on document inspection systems developed.	≈
	Handbook for the implementation of EES	√ (expected result) / ≈ (indicator target)
	Study on advance information on land and sea borders finalised, published and disseminated to Frontex stakeholders; meeting organised to present the results of the study	≈
	Guidelines on advance information on land and sea borders in development by the advance information working group published, as a follow-up to the study on advance Information on land and sea borders	≈
	In accordance with the IPA II Phase II project implementation, developing the capacity of Western Balkan countries to join the EU Information System Network at the moment of EU accession	√
	Expert support to the development and delivery of training activities, including on automated border control (ABC), EES, advance information, provided to Frontex training unit	√
	2021 International Conference on Biometrics for Borders organised.	√
3.4.2. Develop and manage a comprehensive research and	Finalising the terms of reference for the design of the BoMIC taking into consideration research and innovation needs, in line with management decision.	√



Key activity	Expected results	Goal met (results + indicator target)
innovation platform to enable research and facilitate the dissemination of research information.	Fully functional Research for Innovation Network	√ (expected result) / ≈ (indicator target)
	Identify, assess, and oversee common research needs and developments	√
3.4.3. Steer EU-wide border management research through the development of the senior user role of Frontex in the implementation of the EU framework programmes for research and innovation.	Inputs to the European Commission for border security research topics and sub-topics.	√
	Evaluation of Horizon Europe research proposals by experts selected from the Frontex pre-pool of evaluators	≈
	Regular workshops and meetings with selected projects and the EBCG community to check the continued relevance of the conducted research taking into account capability roadmaps, and providing advice and support progress and results.	√
	Contribution to the project progress review process, making available experts when indicated by the Commission.	√
	Developed awareness and collaboration with existing border security research capabilities, within the EU (with special attention to the cooperation with DG JRC and other EU bodies, such as EUISS) and with key international partners.	√
	Implementation of a technology foresight methodology for the regular assessment of the future of technology and science with the aim to identify the technologies that will in a medium and long-term perspective impact the EU borders and the EBCG community the most.	√
	Effective use of a border security research framework contract providing the capability to manage Frontex own research.	√

Key activity	Expected results	Goal met (results + indicator target)
	Delivery of research studies addressing specific core border security tasks (border surveillance and border checks) as well as emerging and transformational technologies (artificial intelligence, cybersecurity, augmented and virtual reality, robotics)	√
	Share Horizon project outputs (new technological capabilities, reports, recommendations and lessons learned) with the Research for Innovation Network and Innovation Cells.	√
	Utilization of EU-funded research results as a key input for technological pilots, in order to facilitate the uptake of European innovation by European users.	Unclear
	Integration of innovation coming from research into Capability Development Planning.	√
3.4.4. Pilot border management related technological solutions and research findings fostering further development of EBCG capabilities.	Three innovation cells (specialised teams with MS and internal units 'participation) set up.	≈
	One to two pilot projects completed with the participation of the innovation cells, depending on budget availability	√
	Organisation of new technology demonstrations, exhibitions and industry days	√ (expected result) / ≈ (indicator target)

√ = goal met

≈ = goal not entirely met

Source: Frontex, 2022, Consolidated Annual Activity Report 2021.

Table 8. Research and innovation: expected results versus goals met (2022)

Key activity	Expected results	Goal met (results + indicator target)
3.4.1. Research, technology, and innovation for EBCG capabilities.	<i>N/A (overall)</i>	√
	Market research.	√
	Industry perspective on technological solutions and prospective tenders.	√ <sup>573</sup>
	Pilot projects.	√
	Comprehensive research and innovation structure: an innovation lab, a research network, innovation cells and technical groups on standards.	√
	Agreed research priorities, topics and advice including for EU funded research programmes.	√
	Collaboration with key institutional partners – Directorate-General Joint Research Centre (DG JRC), Interpol, European Union Satellite Centre (EU SatCen), European Union Agency for Law Enforcement Cooperation (Europol), European Defence Agency (EDA), European Space Agency (ESA), European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (euLISA), EU Innovation Hub for Internal Security.	√
	International Conference on Biometrics for Borders.	√
	Horizon Europe research project proposals evaluated by Frontex.	√
	Role of senior user in Horizon Europe border management-related research projects.	√
	Technology foresight studies for border management.	√
	Standards for technical equipment.	√
	Guidelines and best practices related to the roll-out of new technologies and policies.	√

<sup>573</sup> With the remark that there appears to be no specific goal or indicator target for this expected result, but that the industry days seemingly contribute to this expected result.

Key activity	Expected results	Goal met (results + indicator target)
	Operational research delivered to optimise border management processes.	√
3.4.2. Research, technology and innovation meeting specific Frontex needs.	Systematic innovation in the Agency.	√
	Roundtable on research and innovation meets regularly to provide contributions and feedback across the agency.	≈
	Thematic dialogue with industries achieves enhanced Frontex market innovation awareness and increase industries' knowledge on Frontex needs.	√
	Management of contacts with EIBM industry for the Agency.	√
	Delivery of research studies serves the needs of Frontex entities.	√
	Delivered technology pilot projects and/or demonstrations in line with operational needs of the Agency.	√
	Standards for technical equipment used for the acquisition of the Agency's equipment.	√
	Operational research delivered as a service in support of vulnerability assessment and other tasks of the Agency.	√

√ = goal met

≈ = goal not entirely met

Source: Frontex, 2023, Draft Consolidated Annual Activity Report 2022.

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## A6.3 Technical resources

Table 9 and Table 10 below provide an overview of the progress towards the Technical Equipment Pool in 2020-2022.

Looking forward to what might be needed for future operations, especially at land borders, data from one field visit showed the following needs: portable document forgery detectors, heartbeat and CO<sub>2</sub> detectors, density-measuring devices, portable cameras for day and night vision, AWD patrol vehicles for all BS experts, and (other) equipment for the detection of firearms/ammunition/explosives or migrants.<sup>574</sup>

As noted in the main report, Frontex staff reports concerns about not having enough internal human resources available to deal with the procurement, maintenance and deployment of own equipment.<sup>575</sup> At the same time, leasing is difficult to implement, as cars are not owned by the Agency, but there are no associated maintenance and repair services.

The survey data were mixed, but largely due to a lack of data. Some stated that the rules for use of rented cars prevented the full usage of equipment for operational needs in heavy terrain.<sup>576</sup> One Member State noted that none of their staff received computer or communication equipment from Frontex.<sup>577</sup> Finally, a separate comment pertained to fixed-wing aircraft, stating that during Joint Operation Opal Coast, the live streaming function was often unavailable and the plane's tracking device was switched off several times.<sup>578</sup>

Table 9. Results of Technical Equipment Pool in 2020

<b>TE Pool</b>	<ul style="list-style-type: none"><li>• 1,245 items overall.</li><li>• Frontex deployed 5 ME assets (839 asset days), 36 LE assets (9,401 asset days), and 275 PE assets (85,955 asset days).</li><li>• Frontex contributed 16 LE assets<sup>579</sup> and 183 PE assets<sup>580</sup>.</li><li>• MS contributed 457 ME assets<sup>581</sup>, 235 LE assets<sup>582</sup> and 399 PE assets<sup>583</sup>.</li><li>• Frontex signed 16 contracts for aerial surveillance, one FwC for medium altitude long endurance remotely piloted aircraft systems, three FwC for mobile surveillance systems, and contracts for chartering aircrafts for return operations, among others.</li></ul>
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<sup>574</sup> Field visit to RO.

<sup>575</sup> Interview with Frontex (1).

<sup>576</sup> Survey of MS/SAC authorities: Q4.2.1: LV.

<sup>577</sup> Survey of MS/SAC authorities: Q4.2.1: CH.

<sup>578</sup> Survey of MS/SAC authorities: Q4.2.1: BE.

<sup>579</sup> Patrol Cars.

<sup>580</sup> 15 CO<sub>2</sub> Detectors, 10 Heartbeat Detectors, 73 Document checking devices with microscope connected to a computer, 18 Thermal Cameras, 38 Night Vision Goggles, 29 other equipment for other surveillance.

<sup>581</sup> 35 Fixed wing Aircrafts, 49 Helicopters, 29 Offshore Patrol Vessels, 59 Coastal Patrol Vessels, 285 Coastal Patrol Boats.

<sup>582</sup> 141 Patrol Cars, 33 Thermo-Vision Vehicles, 3 Transportation Vehicles / Canine Team Vehicles, 13 Mobile Laboratories.

<sup>583</sup> 140 Basic Forgery Detection Kits, 6 CO<sub>2</sub> Detectors, 2 Heartbeat Detectors, 4 Document checking devices with microscope connected to a computer, 9 other equipment for border checks, 1 Mobile Radar Unit, 2 Infrared Cameras, 90 Thermal Cameras, 45 Night Vision Goggles, 100 Other equipment for border surveillance.

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- Frontex has logistics hubs in four Member States and maintained mobile field offices in six countries.
  - 
  - 77% of needs ME met, 81% of needs LE, 100% of needs PE.
  - There were significant shortages for almost every category of TE, in particular as regards Fixed wing Aircrafts, following the annual bilateral negotiations.
  - Needs of Rapid Border Intervention Aegean 2020 were not fully covered.

*Source: Frontex (2021). 'Management Board Decision 41/2021 of 15 July 2021 adopting the Annual Implementation Report 2020'.*



Table 10. Results of Technical Equipment Pool (TEP) 2021-2022

TEP			
Results		Observations	
2021	2022	2021	2022
<ul style="list-style-type: none"> <li>1,359 items overall.</li> <li>Frontex contributed 11 ME assets (3%)<sup>584</sup>, 320 LE assets (47%)<sup>585</sup> and 213 PE assets (62%)<sup>586</sup>, as well as other equipment for the SC – 40% of the TEP.</li> <li>MS/SAC contributed 327 ME assets (97%)<sup>587</sup>, 356 LE assets (53%)<sup>588</sup> and 132 PE assets (38%)<sup>589</sup> – 60% of the TEP.</li> </ul>	<ul style="list-style-type: none"> <li>1,870 items overall.</li> <li>Frontex contributed 15 ME assets (4%)<sup>590</sup>, 182 LE assets (24%)<sup>591</sup> and 447 PE assets (61%)<sup>592</sup>, as well as other equipment for the SC – 34% of the TEP.</li> <li>MS/SAC contributed 376 ME assets (96%)<sup>593</sup>, 568 LE assets (76%)<sup>594</sup> and 282 PE assets (39%)<sup>595</sup> – 66% of the TEP.</li> </ul>	<ul style="list-style-type: none"> <li>Following the annual bilateral negotiations 2021, there were significant shortages for in particular Fixed wing Aircrafts, helicopters, Coastal Patrol Vessels, as well as Offshore Patrol Vessels.</li> <li>Needs of Rapid Border Intervention in Lithuania were successfully (more than) covered.</li> </ul>	<ul style="list-style-type: none"> <li>Following the annual bilateral negotiations 2022, there were shortages for in particular Fixed Wing Aircrafts, helicopters, Coastal Patrol Vessels, as well as Offshore Patrol Vessels – similar to 2021.</li> <li>To reinforce ongoing Joint Operations, Frontex requested Coastal Patrol Boats, Patrol Cars and Mobile Surveillance Systems from MS/SAC.</li> </ul>

<sup>584</sup> 10 Fixed wing Aircrafts, 1 Unmanned Aerial Vehicle.

<sup>585</sup> 86 Patrol Cars, 191 Thermal Cameras, 43 Mobile Offices and other deployable facilities.

<sup>586</sup> 118 Night Vision Goggles, 64 CO2 Detectors, 31 Heartbeat Detectors. Thermal Cameras are counted under LE assets in this year.

<sup>587</sup> 109 Coastal Patrol Boats, 42 Fixed wing Aircrafts, 56 Helicopters, 31 Offshore Patrol Vessels, and 89 Coastal Patrol Vessels.

<sup>588</sup> 39 Thermal Cameras, 9 Canine Team Vehicles, 22 Mobile Offices, 240 Patrol Cars, and 46 Vehicles equipped for border surveillance.

<sup>589</sup> 30 Night Vision Goggles, 4 CO2 Detectors, 2 Heartbeat Detectors, and 96 Smart Dec Cameras.

<sup>590</sup> 13 Fixed wing Aircrafts, 2 Unmanned Aerial Vehicles.

<sup>591</sup> 86 Patrol Cars, 93 Mobile Offices / Mobile Laboratories, and 3 Mobile Surveillance Systems. Thermal Cameras are counted under PE assets this year.

<sup>592</sup> 213 Thermal Cameras, 109 Night Vision Goggles, 64 CO2 Detectors, 31 Heartbeat Detectors, and 30 Smart Dec Cameras.

<sup>593</sup> 119 Coastal Patrol Boats, 49 Fixed wing Aircrafts, 68 Helicopters, 34 Offshore Patrol Vessels, and 106 Coastal Patrol Vessels.

<sup>594</sup> 14 Canine Team Vehicles, 12 Mobile Offices, 483 Patrol Cars, and 59 Mobile Surveillance Systems.

<sup>595</sup> 37 Thermal Cameras, 32 Night Vision Goggles, 4 CO2 Detectors, 2 Heartbeat Detectors, and 207 Smart Dec Cameras.

<ul style="list-style-type: none"> <li>• Eight Coastal Patrol Vessels, 17 Coastal Patrol Boats, four Fixed wing Aircrafts and seven Vehicles equipped for border surveillance were co-financed by the ISF/SA.</li> <li>• Frontex established a new FwC for aerial surveillance.</li> <li>• Frontex provided Aerial Surveillance Services (through FwCs for (un)manned aircrafts) and services for transportation (land, sea, air).</li> </ul>	<ul style="list-style-type: none"> <li>• One Offshore Patrol Vessel, 13 Coastal Patrol Vessels, 23 Coastal Patrol Boats, nine Fixed Wing Aircrafts and seven Mobile Surveillance Systems were co-financed by the ISF/SA.</li> <li>• Frontex provided Aerial Surveillance Services (through FwCs for (un)manned aircrafts) and services for transportation (land, sea, air).</li> </ul>		<p>Frontex deployed ME, LE and PE to existing Joint Operations in response to the outbreak of the war in Ukraine.</p>
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*N/A = not applicable*

*Source: Frontex (2022). 'Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021'; Frontex (2023). 'Draft Annual Implementation Report 2022'.*

## Annex 7 Efficiency, including cost benefit analysis<sup>596</sup>

### A7.1 Use of human and financial resources

The EBCG Regulation significantly increased the human and financial resources available to Frontex to fulfil its mandate, with **the Agency's closing budget more than doubling between 2019 and 2022. The number of staff almost tripled over the same period.**<sup>597</sup> This expansion is set to continue, as the 2021-2027 Multiannual Financial Framework (MFF) foresees a steady increase in funding. The EU contribution to Frontex is expected to grow at an annual rate of 16% until 2027. The Agency, in turn, is expected to meet the increasing budgetary targets each year and to translate these resources into effective and efficient implementation of the EBCG Regulation. Figure 9 shows the magnitude of this increase, while Table 11 focuses on the 2021-2027 period. This section examines Frontex's ability to consistently allocate increasing human and financial resources to the tasks, activities and objectives assigned by the EBCG Regulation.

Figure 9. EU contribution to the EBCG Agency (2016-2027)



Source: ICF elaboration of EU Budget data: Multiannual Financial Framework 2014-2020 and 2021-27.

Table 11. MFF planned financing to the EBCG Agency (EUR)

Year	Opening EU contribution (EUR)	% increase in the opening EU contribution per year	Closing EU contribution (EUR)
2021	514,156,883	17%	499,610,043
2022	704,703,142	37%	647,484,860
2023	788,946,752	12%	

<sup>596</sup> This Annex provides additional data in response to evaluation questions under the efficiency criteria

<sup>597</sup> 'Frontex (2019-2022) Voted Budget'; Frontex (2022). 'Consolidated Annual Activity Report 2019-2021'.

Year	Opening EU contribution (EUR)	% increase in the opening EU contribution per year	Closing EU contribution (EUR)
2024	924,989,459	17%	
2025	1,049,849,465	13%	
2026	1,130,401,071	8%	
2027	1,177,330,159	4%	
<b>Total</b>	<b>6,153,185,360</b>		<b>1,147,094,902</b>

Source: ICF elaboration of EU Budget data: Multiannual Financial Framework 2021-27.

The ECA audit report for 2021 stressed how the calculation of the SAC contribution for the 2020 budget was understated by EUR 2.6 million, while the EU contribution was overstated by the same amount.<sup>598</sup> This appears to be a somewhat recurring problem arising from competing interpretations of the agreement with SAC.<sup>599</sup>

### A7.1.1 Allocation of resources

**The human and financial resources available to Frontex appear to have been largely allocated to the tasks assigned to the Agency by the EBCG Regulation (notably Article 10).** Section 2.1 of the main report provides a full summary of the tasks<sup>600</sup> assigned to the Agency by the EBCG Regulation, but its responsibilities include the following operational tasks related to implementation of the Regulation:

- Development of Standing Corps pool;
- Development of own technical equipment pools;
- Operational response;
- Returns;
- Situational awareness.

The analysis in this section shows, for each of the main tasks, the corresponding point under Article 10 of the EBCG Regulation, the focus areas (FAs), and the expenditure in the budget.

Table 12. Main operational tasks assigned to Frontex by the EBCG Regulation

Task	Point under Art. 10 of the EBCG Regulation	Focus Area	Budgeted expenditure <sup>601</sup>
Standing Corps	(j)	FA 3.2	A-30 European Standing Corps

<sup>598</sup> ECA report on EU Agencies for the financial year 2021 (2021), available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=62271>

<sup>599</sup> Frontex (2023). 'Methods of calculation'.

<sup>600</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) 1053/2013 and EU 2016/1624.

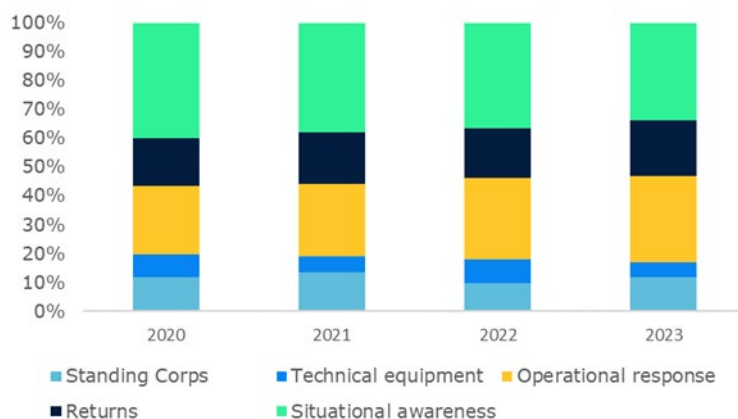
<sup>601</sup> Following the budget nomenclature employed since 2021.

Task	Point under Art. 10 of the EBCG Regulation	Focus Area	Budgeted expenditure <sup>601</sup>
Technical equipment	(k)	FA 3.3	A-31 Agency's equipment
Operational response	(g), (h), (i)	FA 2.1	A-30 European Standing Corps, A-31 Agency's equipment, A-37 Agency's horizontal operational support <sup>602</sup>
Returns	(n), (o), (p)	FA 2.4	A-32 Return activities
Situational awareness	(a), (b), (c)	FA 1.1 FA 1.2	A-33 Information and data analytics

Source: ICF elaboration on the basis of Frontex data in Single Programming Documents and Budgets.

Frontex's SPDs<sup>603</sup> provide an overview of the planned human and financial resources allocated to each of these tasks for the coming year. Figure 10 and Figure 11 show the planned allocation of human resources (headcount, non-Standing Corps staff allocated to specific activities) and financial resources (EUR) to the main tasks, from 2020 to 2023.

Figure 10. Allocation of human resources (headcount) across a selection of Frontex's tasks (2020-2023)<sup>604</sup>



Source: ICF elaboration on the basis of Frontex data in Single Programming Documents.

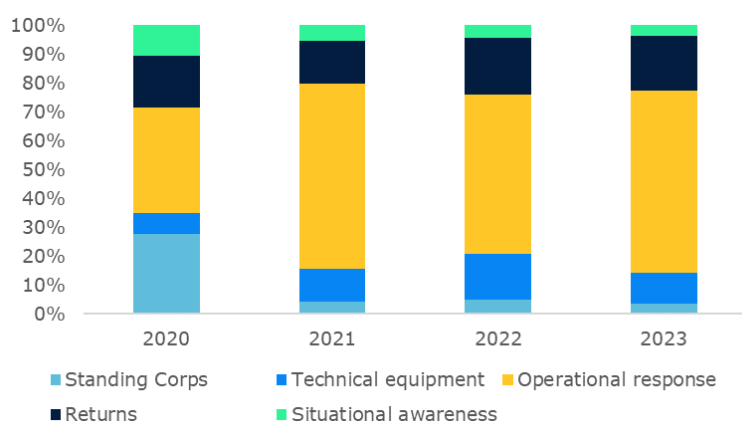
<sup>602</sup> As A-30 and A-31 include both the acquisition and the deployment of Standing Corps and technical equipment, while A-37 only includes horizontal operational support to Member States, the human and financial resources allocated to overall operational response correspond to a combination of these three categories of expenditure.

<sup>603</sup>

Frontex (2023). 'Single Programming Document 2023-2025'.

<sup>604</sup> The sum of the figures for each task does not amount to the whole of the Agency's resources, as only its main operational tasks are considered.

Figure 11. Allocation of financial resources (EUR) across a selection of Frontex's tasks (2020-2023)



Source: ICF elaboration on the basis of Frontex data in Single Programming Documents.

Between 2020 and 2023, human resources were more uniformly distributed across Frontex tasks than financial resources. The graph on the allocation of human resources shows that **since the beginning of the implementation of the EBCG Regulation, the number of staff allocated to operational response tasks increased slightly**, from 24% of the total in 2020 to 30% in 2023. Situational awareness followed the opposite trend, although it remained a relatively staff-intensive task. The share of human resources allocated to returns remained stable. The proportion of personnel focused on the development of Standing Corps and technical equipment pools remained broadly unchanged. The graph on the allocation of financial resources shows that **in 2020, immediately after the entry into force of the EBCG Regulation, the share of planned financial resources for the hiring and training of Standing Corps was highest**, at 28% of the total.<sup>605</sup> Similarly, the financial resources allocated to situational awareness were relatively higher in 2020, which may be linked to the upgrade of the EUROSUR system (see section 4.1.6 of the main report), while the opposite was true for operational response and technical equipment. As these estimates were made at the beginning of the year, the relatively lower allocation for operational response should not be interpreted as a consequence of the COVID-19 pandemic. The proportion of funds assigned to returns remained fairly stable between 2020 and 2023.

The main caveat of the analysis is that it is based on the planned allocation of resources and not their actual destination. Indeed, Frontex's budgets may be particularly vulnerable to deviations from strategic plans, as they depend on relatively volatile migration situations and can be easily influenced by external factors creating emergencies, such as the COVID-19 pandemic and the war in Ukraine. Examining the allocation of resources in the SPDs is indicative of Frontex's compliance with the EBCG Regulation in its strategic plans, but not necessarily of the alignment between tasks and the actual destination of resources over the years.

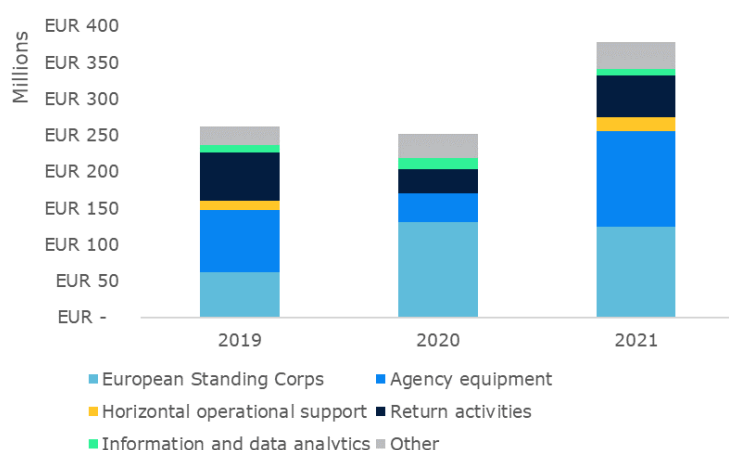
An analysis of the commitment of financial resources in the Agency's year-end executed budget provides a more accurate picture of the actual allocation of resources, before and after the introduction of the EBCG Regulation. Figure 12 shows the categories of expenditure under Title 3 'Operational expenditure' of Frontex, from 2019 to 2021 (2021 being the most recent year for which the executed year-end budget is available). The amounts shown are those legally committed to the activities, after accounting for any amendments during the year.

<sup>605</sup> The average for 2021-2023 is just below EUR 400,000, compared to EUR 1.87 million in 2020.



The adopted or forecasted budgets for 2022 and 2023 (Table 11) show that the financial resources committed to operational expenditure increased significantly following the introduction of the EBCG Regulation. **The commitments for operational response activities** – European Standing Corps, Agency equipment, and horizontal operational support – **increased most**.<sup>606</sup> The data show that relatively high amounts were committed to the development of the Standing Corps in 2020. As these figures account for the budget amendments triggered by the COVID-19 pandemic, they reflect any logistical or procurement difficulties encountered in 2020 and 2021. In particular, after internal transfers and reductions, commitments for return activities and information and data analytics were affected more than those assigned to the Standing Corps.<sup>607</sup>

Figure 12. Allocation of financial resources across operational expenditures (2019-2021). Commitments in executed year-end budgets.<sup>608</sup>



Source: ICF elaboration on the basis of Frontex budget data.

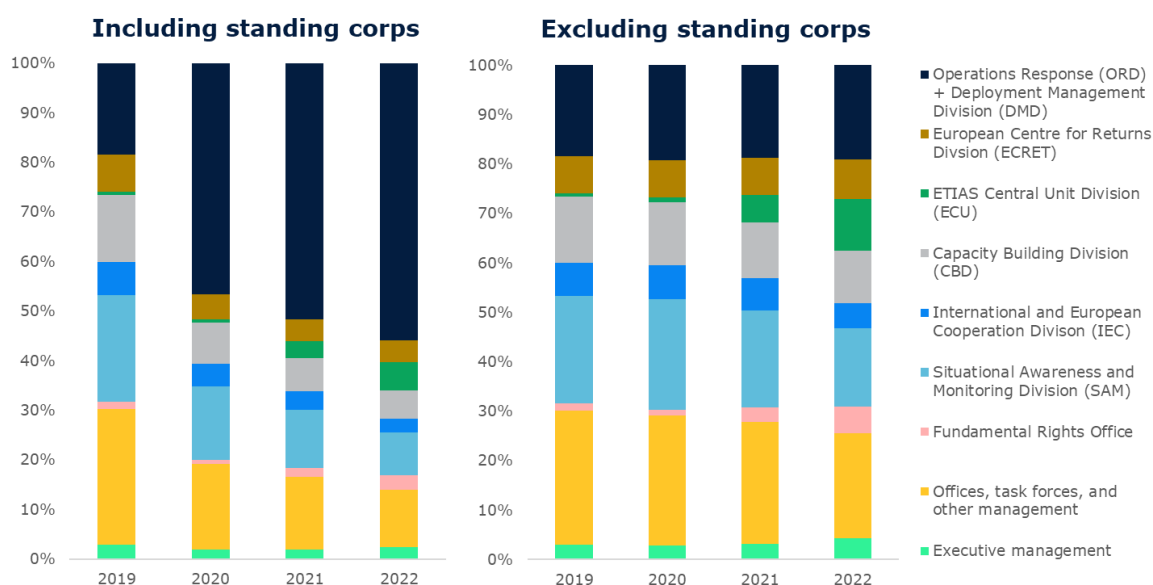
The actual, rather than planned, allocation of human resources across activities was also examined. Figure 13 shows the breakdown of staff by division or unit, including (on the left) and excluding (on the right) the Category 1 Standing Corps. Taking into account the total staff of the Agency, including the recruited permanent Corps, it is clear that **the human resources dedicated to operational response and management increased significantly in the years following the adoption of the EBCG Regulation**. The staff of the ETIAS Central Unit and the FRO also appear to have increased in relative terms. Conversely, the proportion of human resources devoted to internal management decreased. However, if the Category 1 Standing Corps are excluded, the proportion of non-deployable human resources allocated to operations remained unchanged over the years. The same is true for returns and international cooperation. Instead, the proportion of staff allocated to capacity-building and situational awareness decreased. The relative growth of staff allocated to ETIAS and FRO can also be observed here. Finally, the proportion of staff working in internal management decreased, while executive management increased slightly in relative terms.

<sup>606</sup> 102% increase for European Standing Corps, 53% increase for Agency equipment, 52% increase for Horizontal operational support, from 2019 to 2022.

<sup>607</sup> Frontex (2020). 'Final Annual accounts 2020'. Frontex (2021). 'Final Annual accounts 2021'.

<sup>608</sup> European Standing Corps were not yet established in 2019, but the term is used for budgeting purposes when referring to expenditures associated with deployable HR.

Figure 13. Breakdown of staff by division (2019-2022).



Source: ICF elaboration on the basis of Frontex data in Annual Activity Reports.

The activities related to the enforcement and monitoring of **fundamental rights** constitute an additional horizontal responsibility throughout the Agency's operations. Indeed, Frontex allocates a portion of its available human and financial resources to maintaining its fundamental rights framework,<sup>609</sup> and 'Fundamental rights activities' constitutes a separate category of expenditure in its budgets. Table 13 presents the human and financial resources foreseen in the strategic planning for fundamental rights activities, and the amounts actually committed in the budgets.

Table 13. Allocation of human and financial resources to fundamental rights activities.

	2019	2020	2021	2022	2023
Planned HR	12	11	10	29	50
Planned FR	EUR 465,000	EUR 505,000	EUR 1,279,000	EUR 2,000,000	EUR 2,000,000
Committed FR	EUR 264,167	EUR 84,521	EUR 34,443	-	-
Transfer/reduction from voted budget	- EUR 240,498	- EUR 689,702	- EUR 1,128,274	-	-

Source: ICF elaboration on the basis of Frontex data in Single Programming Documents and budgets.

This indicates that although the allocation of resources to fundamental rights activities increased following the introduction of the EBCG Regulation, the amounts committed in the budgets did not keep pace. In 2020 and 2021, the amendments to the voted budgets significantly reduced the resources allocated to such activities (see last row of Table 13). This reflects the delays in the recruitment of FRMs in 2020 and somewhat in 2021 (see section 4.1.9 of the main report). Indeed, the human and financial resources planned for 2022 and 2023 were significantly higher. The final budgets for these years have not yet

<sup>609</sup> Corresponds to Key Activity 6.4.1 in the Agency's SPDs.

been published so it is not possible to compare planned and actual allocations, but recent recruitment figures suggest that the shortfall in recruitment experienced in the years immediately following the implementation of the EBCG Regulation may have been resolved.

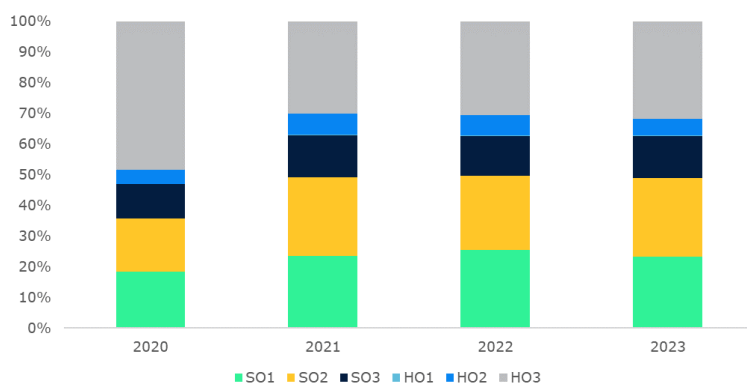
## A7.1.2 Use of human and financial resources by Frontex

Since 2019, Frontex has started to plan the allocation of its human and financial resources within its framework of strategic and horizontal objectives (SOs and HOs, respectively). The Agency's reports do not provide end-year estimates of the allocation of resources realised, but the programming of resource use within their strategic framework is a useful indicator of how Frontex prioritises its objectives.

### Human resources

Figure 14 presents the allocation of Frontex's human resources to SOs and HOs between 2020 and 2023. Since 2021, the allocation of human resources to SO1-3) appears to have increased in relative terms, at the expense of HO3 ('Develop an upgraded management system aimed at ensuring accountability, regularity and legality of all Frontex activities'). This may reflect Frontex's expectation that the implementation of the EBCG Regulation would require increased internal management efforts in the year following its adoption. The negligible number of staff allocated to HO1 ('Implement and support European Integrated Border Management to ensure safe and well managed EU external borders') is also noteworthy, with between two and three people allocated to this objective over the period considered. In general, these figures suggest a **greater concentration of staff on SOs related to operational activities, rather than HOs** concerning internal management or cooperation with other authorities.

Figure 14. Allocation of human resources to Strategic and Horizontal Objectives (2020-2023)

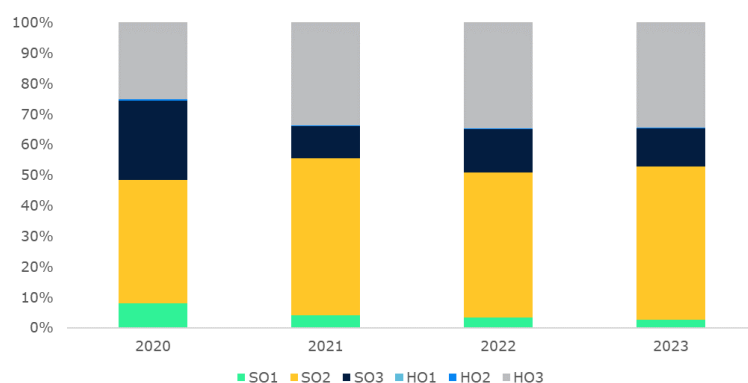


Source: ICF elaboration on the basis of Frontex data in Single Programming Documents.

### Financial resources

Figure 15 shows the allocation of Frontex's financial resources to SOs and HOs between 2020 and 2023. The resources allocated to each objective remained broadly stable since 2021. In 2020, SO1 and SO3 received a significantly higher proportion of the financial resources than in subsequent years, while SO2 (which includes operational response and return activities) and HO3 received relatively less. However, from 2021 onwards, these two objectives received around 84% of the total funding allocated. Finally, the amounts allocated to HO1 and HO2 appear almost negligible in relative terms. This analysis confirms the trends: **the development of the Standing Corps pools (under SO3) was a key driver of resource allocation in 2020**. On the other hand, **resource planning was more stable from 2021 onwards, as well as more focused on operational support, returns, and horizontal management**.

Figure 15. Allocation of financial resources to Strategic and Horizontal Objectives (2020-2023)



Source: ICF elaboration on the basis of Frontex data in Single Programming Documents.

**Example: Use of resources to develop standing corps and technical equipment pools**

In line with the extended mandate given to the Agency by the EBCG Regulation, the recruitment of Standing Corps and the development of own technical equipment pools have absorbed a significant share of the human and financial resources available. Given the nature of Frontex's operations, it is possible to measure the efficiency of the development of human resource and technical equipment pools, but not the activities for which they are/will be employed.<sup>610</sup>

Table 14 shows key information on the recruitment of Category 1 Standing Corps. From 2020 to 2021, the human and financial resources allocated to their recruitment, training, and equipment<sup>611</sup> decreased, although the allocation of financial resources fell more noticeably, as the bulk of the recruitment took place in 2020. As a result, **the efficiency of the financial resources allocated to the recruitment of standing corps** (represented by items (e) in Table 14) **improved during the first two years of implementation of the EBCG Regulation, while the opposite trend was observed for human resources** (item (d) in Table 14). Indeed, for each staff member assigned to this task, the number of recruitments decreased from 2020 to 2021. This does not necessarily mean a loss of efficiency, as the staff would also oversee the training and equipment of recruits. The ratio increased slightly (to only 10.75 recruited SCOs per staff allocated) when projected to 2022, when Frontex was expected to recruit the remaining 344 of Category 1 Standing Corps to meet its annual objectives and comply with the minimum requirements of the EBCG Regulation. On the other hand, the number of recruits per EUR million allocated increased from 2020 to 2021. The resources allocated to this task in 2022 would result in only 18.8 recruits per EUR million, given the projected additional recruitment.

Table 14. Efficiency of the recruitment of standing corps category 1

	2020	2021	2022
(a) Number of Standing Corps category 1 recruited	430	232	344 (minimum)
(b) Human resources (headcount) allocated to the development of SC category 1	18	17	32

<sup>610</sup> See section 4.1.7 and section 6 for analysis of the effectiveness of Frontex's capacity-building and of the deployment of Standing Corps and technical equipment.

<sup>611</sup> Corresponds to Key Activity 3.2.1 in the Agency's strategic planning: 'Recruit, train and equip Standing Corps Category 1'.

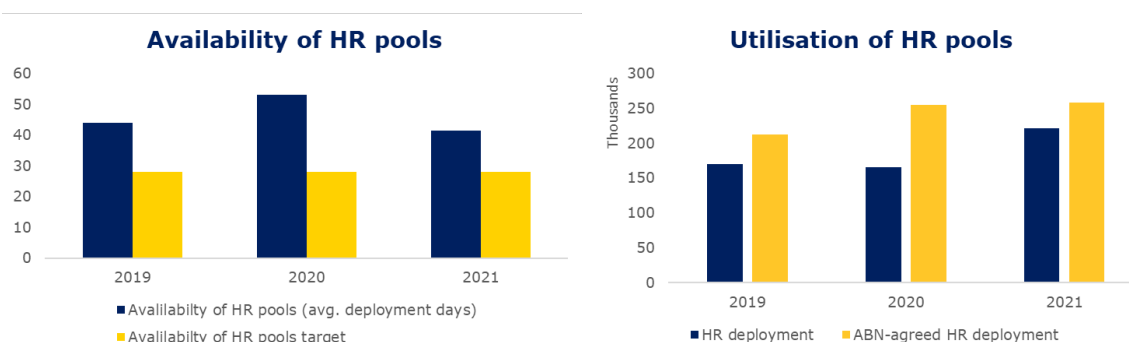
	2020	2021	2022
(c) Financial resources (million) allocated to the development of SC category 1	EUR 78.45	EUR 6.84	EUR 18.30
(d = a / b) SC category 1 recruited per human resource allocated	23.9	13.4	10.75 *
(e = a / c) SC category 1 recruited per million of financial resources allocated	5.5	33.8	18.8 *

Note: "\*" indicates estimates based on the minimum additional SCs that had to be recruited in 2022 its annual objectives and the requirements set out in the EBCG Regulation.<sup>612</sup>

Source: ICF elaboration of Frontex data in Single Programming Documents and Annual Implementation Reports.

These trends are reflected in Frontex's key performance indicators (KPIs) on the availability and utilisation of human resources. Figure 16 shows the availability and utilisation of human resources. The former is measured by the average deployment period (in days) of EBCG team members, per operation, in a given period of time; the latter is measured by number of deployment days, compared to the annual targets agreed in the annual bilateral negotiations (ABN). The key assumption is that the targets assigned to each indicator reflect the necessary value to achieve the Agency's objectives. The availability of human resources was consistently higher than the target. On the other hand, their utilisation seems to have been consistently under the agreed figures. Over the period considered, 2020 had the largest gap between target and actual numbers for both KPIs. This is likely due to a combination of the higher number of Standing Corps recruited and made available, and the limitations to deployment caused by the COVID-19 pandemic.

Figure 16. Availability and utilisation of HR (2019-2021)



Source: ICF elaboration of Frontex data in Annual Activity Reports.

Table 15 summarises the key information on heavy and light equipment. The focus is on the deployment (rather than acquisition) of technical equipment, as the unit cost of purchasing different types of equipment is much less comparable in terms of asset-days.<sup>613</sup> The allocation of resources for the establishment of technical equipment pools relates to the management and maintenance of equipment as well,<sup>614</sup> as underlined in an

<sup>612</sup> In the latest version of Frontex's roadmap for implementation of the EBCG Regulation, the Agency has reported that, as of 31 October 2022, it has recruited 943 SC deployable team members out of 1006 (93.7%).

<sup>613</sup> Asset-days = the number of days that specific asset is present in the operational area.

<sup>614</sup> Corresponds to FA3.3 in the Agency's strategic planning: 'Continue to develop and implement strategy for acquisition of own technical equipment and establish decentralised logistics system.'

interview with Frontex's Capacity-Building Division.<sup>615</sup> The deployment of major equipment increased over the three years considered, while the deployment of light equipment peaked in 2021. When both types of equipment are considered together, the ratio of equipment per person assigned, and per EUR million allocated, was highest in 2021. While the ratio for human resources (f) was higher in 2022 than in 2020, it was slightly lower for financial resources (g). **These results may indicate an improvement in the efficiency of the development and management of technical equipment pools, although they show a slowdown in 2022, especially for the use of financial resources.**

Table 15. Efficiency of the deployment of technical equipment

	2020	2021	2022
(a) Major TE deployed (asset-days) [% of total]	839 [8%]	925 [2%]	2,604 [9%]
(b) Light TE deployed (asset-days) [% of total]	9,401 [92%]	39,582 [98%]	27,994 [91%]
(c) Major + light TE deployed (asset-days)	10,240	40,507	30,598
(d) Human resources (headcount) allocated to the deployment of TE pools	34	23	34
(e) Financial resources (million) allocated to the deployment of TE pools	EUR 23.00	EUR 39.60	EUR 74.49
(f = c / d) TE deployed (asset-days) per human resource allocated	301	1,761	900
(g = c / e) TE deployed (asset-days) per million of financial resources allocated	445	1,023	411

Source: ICF elaboration of Frontex data in Single Programming Documents, Annual Implementation Reports, and Annual Activity Reports.

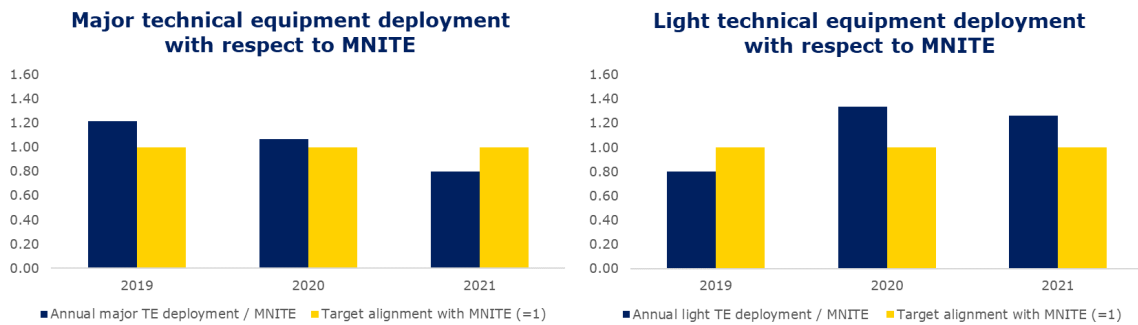
Using the same assumptions as for the human resources pools, it is possible to assess the Agency's KPIs on availability and utilisation of the technical equipment pools. Figure 17 shows the ratio of actual to planned deployment, which is the Minimum Number of Items of Technical Equipment (MNITE), of major and light technical equipment. This ratio is compared against the target alignment (=1), which indicates 100% alignment with MNITE. Computing the variance around the target of perfect alignment for all the categories of technical equipment, the degree of alignment with planned target deployment has improved over the years (Figure 18). This could indicate an improvement in the planning capabilities and hence efficiency in the deployment of technical equipment. However, these trends also indicate an 'oversupply' of technical equipment until 2020, which turned into 'undersupply' during and after the COVID-19 crisis and the resumption of migration flows. Difficulties in meeting technical equipment needs were raised in the interviews.<sup>616</sup> While significant differences between target and actual availability may be an issue for efficiency, whether positive or negative, an undersupply of technical equipment is likely to be far more disruptive to the Agency's operations than an oversupply.

<sup>615</sup> Interviews with Frontex (2)

<sup>616</sup> Interviews with MS/SAC national authorities (7/26) (BE, CZ, EE, EL, FI, HU, SE).

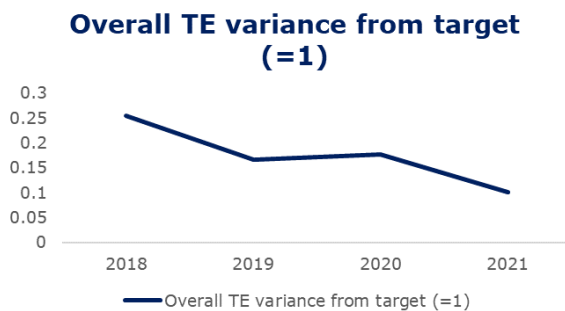


Figure 17. Availability of TE pools (2019-2021)



Source: ICF elaboration of Frontex data in Annual Activity Reports.

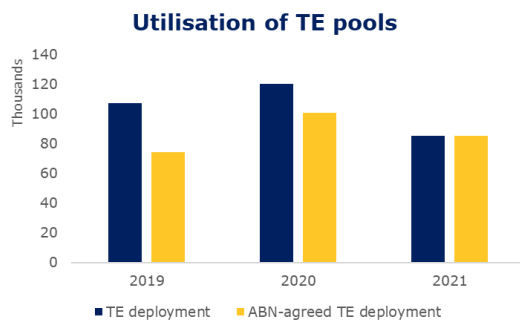
Figure 18. Variance of the degree of alignment with MNITE of overall TE (2018-2021)



Source: ICF elaboration of Frontex data in Annual Activity Reports.

Finally, Figure 19 shows the evolution of the utilisation (deployment) of the technical equipment pools against the ABN-agreed deployments. The indicator appears to be well within the targets for the three years considered, and was close to zero in 2021.

Figure 19. Utilisation of TE pools (2019-2021) (deployments)



Source: ICF elaboration of Frontex data in Annual Activity Reports.

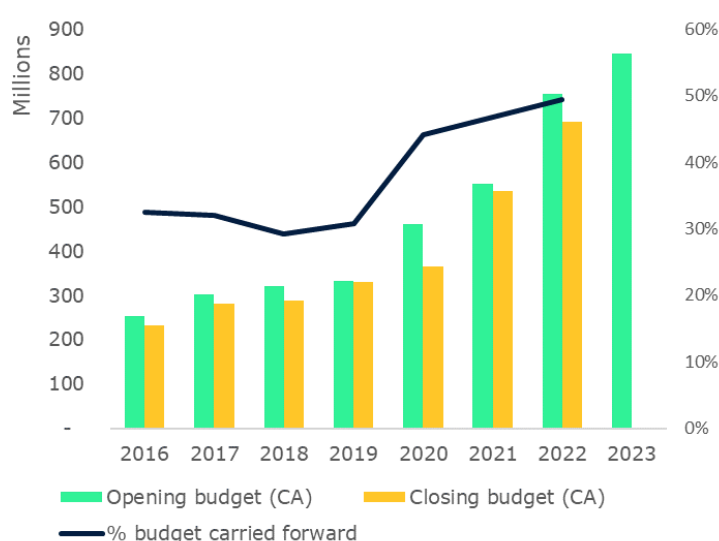
### A7.1.3 Budgetary and financial management implications for Frontex

The expansion of Frontex's mandate has corresponded with a significant increase in its budgetary resources. As the Agency's budget has grown, so have the challenges related to its implementation. Figure 20 shows the evolution of the voted opening budget and of the implemented closing budget (as commitment appropriations) since 2016, as well as the percentage of budget carried forward in each year until 2022. Both the gap between the voted and implemented budget and the budget carry-forward appear to have widened following the EBCG Regulation, although external factors such as the Covid-19 pandemic

and the war in Ukraine limit the causal interpretation of these results. Indeed, the amendments to the Single Programming Document (2020-2022) reflect the evolving expectations concerning the implementation of EBCG Regulation, such as on the recruitment process of standing corps and FRMs, and the operational challenges due to the pandemic.<sup>617</sup> Similarly, the amendments to the 2022-2024 SPD adjust for the migratory emergencies arising from the war in Ukraine.<sup>618</sup>

Overall, the evidence suggests that **Frontex has been facing a significant challenge in improving its ability to implement its increasing financial resources, but that it has largely been able to adapt its budgetary management to the new mandate and the expected operational results.** Some areas of expenditure, such as acquisition of equipment, trainings and fundamental rights activities, have proved particularly problematic from a budgetary and financial management perspective. These are generally expenditure related to the implementation of the EBCG Regulation.

Figure 20. Evolution of opening and closing budgets (commitment appropriations) (2016-2023)



Source: ICF elaboration of Frontex's budgetary data

The comparative analysis of the budget implementation in Frontex's Annual Accounts<sup>619</sup>, from 2019 to 2021 provides insights into the Agency's ability to accurately plan and execute its activities for the year, which may help to identify possible areas of inefficiency in the implementation of the EBCG Regulation. This analysis focuses on the implementation of the regular budget (C1) and of the automatic carry over (C8). For ease of understanding, the following list provides some of the key definitions related to budget management:

<sup>617</sup> Frontex (2020). 'Management Board Decision 29/2020 of 6 October 2020 adopting amendment N2 to the Single Programming Document 2020 – 2022'. Available at: <https://prd.frontex.europa.eu/document/management-board-decision-29-2020-of-6-october-2020-adopting-amendment-n2-to-the-single-programming-document-2020-2022/>

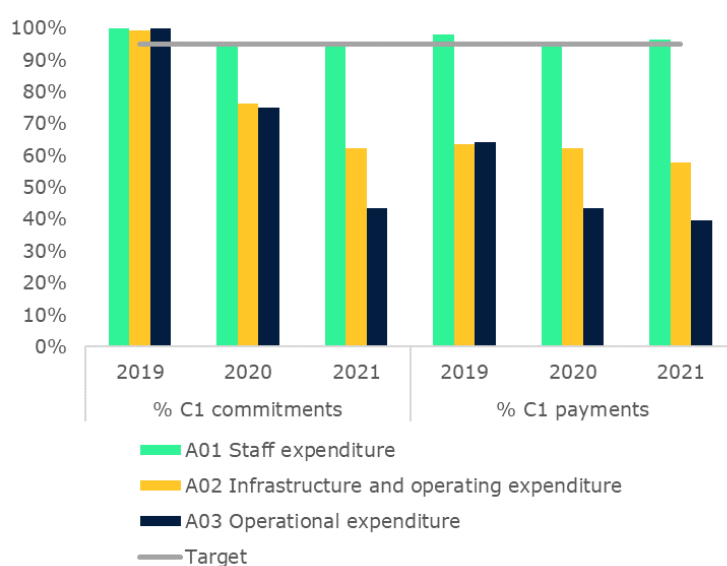
<sup>618</sup> Frontex (2022). 'Management Board Decision 65/2022 adopting amendment N2 to the Single Programming Document 2022 – 2024'. Available at: <https://prd.frontex.europa.eu/document/management-board-decision-65-2022-adopting-amendment-n2-to-the-single-programming-document-2022-2024/>

<sup>619</sup> Frontex (2019-2021). 'Final Annual Accounts'. Available at: <https://prd.frontex.europa.eu/document/annual-accounts-2019/>, <https://prd.frontex.europa.eu/document/annual-accounts-2020/>, <https://prd.frontex.europa.eu/document/annual-accounts-2021/>

- **A01-03:** Titles of the budget, represent the main sections of the expenditure side of the budget, Staff and related, Infrastructure and Operating, and Operational expenditure.
- **Regular budget, C1:** appropriations made available for the current period following the final adoption of the budget. It corresponds to the voted budget.
- **Commitments:** the funds from the general budget committed to fund specific activities in the year.
- **Payments:** the share of commitments for a given year paid during the same year.
- **Carry forward:** the process by which the outstanding commitments at the end of the current period are carried to the following period.
- **Carry over:** the process by which the residual budget of the current period is carried to the following period. The same term is used for the process of carrying the payment appropriations to the period following the current one, to ensure the financial source for the outstanding commitments at the end of the reported period carried forward to the following one.
- **Appropriations carried forward from previous year, C8:** the payment appropriations made available in the current period to ensure the financial source for the outstanding commitments at the end of the period preceding the current one which have been carried forward to the current period.
- **Cancellations, or carry-over to be returned:** carry-over funds that are not used at the end of the budgeting period, and therefore are cancelled.

Figure 21 shows the evolution of the commitments (as a percentage of regular budget appropriations, C1) and payments (as a percentage of commitment appropriations) from 2019 to 2021, for the three main budget titles. The implementation of staff expenditure is fully in line with the target of 95% for both commitments and payments. However, this is not the case for the other two categories of expenditure. In fact, the commitments for infrastructure and operating expenditure appear to be on a downward trend, while payments have consistently averaged around 63% even before the EBCG Regulation. On the other hand, both commitments and payments for operational expenditure are lower in 2020 and 2021 than in 2019. These results are indicative of the above-mentioned difficulties in delivering operational results in line with the growing budget and the consequent implementation challenges. Indeed, as the expenditure lines related to joint operations and the deployment of team members (now standing corps) and equipment have increased more than others under the EBCG Regulation, the carry-over generated by these items has also increased in absolute terms.

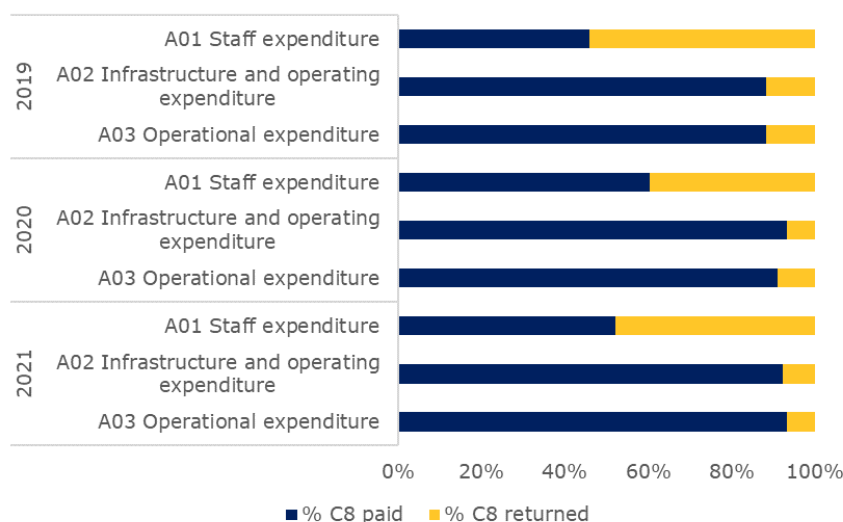
Figure 21. Regular budget (C1) implementation by budgetary titles (2019-2021)



Source: ICF elaboration of Frontex's budgetary data

Nevertheless, **Frontex has been generally able to spend the amounts carried over from the previous year**, with no significant difference between the three years considered. Figure 22 shows that the percentage of appropriations carried forward from the previous year (C8) paid for 'Infrastructure and operating expenditure' and 'Operational expenditure' is close to 90%. Conversely, the proportion of 'Staff expenditure' carried over that is returned remains high, but these amounts are relatively very small in absolute terms.

Figure 22. Appropriations carried forward from previous year (C8) implementation by budgetary titles (2019-2021)



Source: ICF elaboration of Frontex's budgetary data

In order to examine more closely the operational expenditure that has driven the carry-over of appropriations, especially when they have not been spent, Figure 23 further breaks down the budget title 'Operational expenditure'. For example, 'return activities' have consistently performed well, as evidenced by the relatively higher percentages of C1 payments and the even higher percentages of C8 payments. On the other hand, 'Fundamental rights activities', as discussed in section 4.1.9 of the main report, have suffered from significant implementation delays. In 2021, the budget items that appear particularly problematic, due to relatively low C1 payments and relatively high C8 cancellations, are 'Agency equipment', 'Strengthening capacities', which includes both trainings and research and innovation activities, and 'Horizontal operational support'.

The 'Agency Equipment' budget item presents comparatively low levels of commitments paid within the year (34%), high levels of payments automatically carried over (78%) and of funds returned (22%), to which correspond large figures in absolute terms (EUR 44.4 million, EUR 20.4 million and EUR 5.9 million respectively), since the acquisition of technical equipment is of key importance to Frontex. The evidence collected pointed to several factors which contribute to generate this situation.

An overarching limitation is the **annuality principle** imposed by the current Financial Framework, which makes the acquisition of assets across financial years difficult for Frontex. While this principle does not represent a problem for the acquisition of some of the equipment, it becomes a greater obstacle for the acquisition of more complex equipment, which takes several months or over a year for designing, building, testing and delivering. The procurement process therefore cannot be concluded within the boundaries set by the annuality principle, requiring systematic commissioning and decommissioning of funds. Complex equipment is sometimes acquired through several contracts as a way

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to circumvent the boundaries imposed by the annuality principle, but this may lead to inefficiencies (e.g. higher sums needed to acquire the equipment, higher administrative costs, delays in the acquisition). This situation may worsen, if Frontex starts acquiring air or maritime vessels, which typically take over a year to construct and deliver.

Another key challenge influencing the budgetary and financial management process concerning equipment is the **insufficient clarity of acquisition strategy and logistics concept**: the acquisition of equipment by Frontex has suffered from the consequences of insufficient and not well-defined short-, mid-, and long-term acquisition needs (largely as a result of delays in the preparation of the Capability Roadmap, and in the adoption of the multi-annual acquisition strategy, see section 4.1.7.3 of the main report). As a result, the acquisition of various items has been delayed, forcing the Agency to rely on options that proved to be at least initially inefficient, such as the renting of vehicles (and facing rental issues with the modification and deterioration of the vehicles), as opposed to investing in its own vehicles.<sup>620</sup> Within the timeline considered by the study, the strategic and operation planning process did not include equipment needs in terms of types of equipment, numbers, for the different types of borders – maritime, air, and land), and corresponding acquisition plans for short-, mid-, and long-term.

Both problems are closely linked to the adoption of the multi-annual acquisition strategy and were exacerbated by the delays in its adoption. Together with delays and, in some cases, the absence of the submission of national capability development plans (see section A7.2.1, on the strategic and operational planning process for Member States), this meant that integrated planning (Article 9) could not yet be fully implemented and that there were no well-defined short, medium and long-term acquisition needs within Frontex or the EBCG as a whole, nor a strategic direction and vision for the long-term development of the Agency's capabilities (see section 4.1.7.3 of the main report). This affected the efficiency of the procurement process and of the acquisition of technical equipment, as can be observed in the relatively high portion of funds allocated to equipment and capacity building activities that is carried over and then returned (Table 16).

Additional issues more related with implementation issues are described in the subsequent sections.

Data from the Frontex financial and budgetary management show a large increase in available funding for training activities over the years, from EUR 10 million to EUR 21 million in 2020 (likely an effect of the training activities for the Standing Corps), with sharp decrease in 2021 (EUR 3.5 million). Data from the Frontex financial and budgetary management at the same time show a systematic transfer of funds across the years (EUR 3.3 million in 2019, EUR 1.9 million in 2020 and EUR 312.5 thousand in 2021), coupled with a large reduction of EUR 6.2 million in 2020<sup>621</sup>. These figures seem to be the result of a large increase in the planned volume of activities, not necessarily fully implemented by the Agency. Some of the challenges for implementation depended on external factors (e.g. the Covid-19 pandemic and related restrictions to travel required the revision of the calendar and of the delivery mode of many training courses, especially in 2021). However, other challenges seem more structural, and related to low administrative support within the Agency, which makes it very difficult to provide everything that is planned, the rapid growth of the Agency, the high level of dependency on Member States for the trainers and the logistical aspects (e.g. hosting the training), the lack of Category 1 staff with sufficient on-the-job experience, delays in the development of the capability plans and in the overall planning process.

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<sup>620</sup> Frontex Interview, CBD E&A.

<sup>621</sup> Frontex (2019-2021). 'Final Annual Accounts'. Available at: <https://prd.frontex.europa.eu/document/annual-accounts-2019/>, <https://prd.frontex.europa.eu/document/annual-accounts-2020/>, <https://prd.frontex.europa.eu/document/annual-accounts-2021/>

Table 16. Implementation of C1 and C8: breakdown of A03 'Operational expenditure' (2019-2022)

A03 budget item	C1 commitments (% of budget appropriations)			C1 payments (% of commitments)			C8 paid (% of carry-over)			% C8 returned (% of carry-over)		
	2019	2020	2021	2019	2020	2021	2019	2020	2021	2019	2020	2021
European Standing Corps	N/A	N/A	93%	N/A	N/A	38%	N/A	N/A	92%	N/A	N/A	8%
Agency equipment	N/A	N/A	100%	N/A	N/A	34%	N/A	N/A	78%	N/A	N/A	22%
Joint Operations	100%	86%	N/A	65%	52%	N/A	92%	94%	N/A	8%	6%	N/A
Pooled resources	100%	81%	N/A	47%	30%	N/A	97%	86%	N/A	3%	14%	N/A
Return activities	100%	48%	100%	75%	62%	61%	97%	95%	97%	3%	5%	3%
Information and data analytics	100%	86%	99%	52%	28%	29%	83%	88%	94%	17%	12%	6%
Fundamental rights activities	100%	8%	23%	44%	41%	18%	30%	51%	0%	70%	49%	100%
Strengthening capacities	98%	69%	93%	58%	20%	34%	94%	74%	76%	6%	26%	24%
International and European cooperation	98%	15%	N/A	61%	48%	N/A	71%	46%	N/A	29%	54%	N/A



A03 budget item	C1 commitments (% of budget appropriations)			C1 payments (% of commitments)			C8 paid (% of carry-over)			% C8 returned (% of carry-over)		
	2019	2020	2021	2019	2020	2021	2019	2020	2021	2019	2020	2021
Horizontal operational support	N/A	N/A	83%	N/A	N/A	49%	N/A	N/A	56%	N/A	N/A	44%
Special projects/ETIAS/Digitalisation	100%	79%	84%	28%	23%	19%	N/A	71%	95%	N/A	23%	5%
<b>TOTAL A03 Operational Expenditure</b>	<b>99%</b>	<b>75%</b>	<b>95%</b>	<b>64%</b>	<b>43%</b>	<b>40%</b>	<b>93%</b>	<b>91%</b>	<b>88%</b>	<b>7%</b>	<b>9%</b>	<b>12%</b>

Source: ICF elaboration of Frontex's budgetary data

## A7.2 Costs and benefits generated by the EBCG Regulation<sup>622</sup>

This section considers the monetary, operational and wider costs and benefits generated by the EBCG Regulation in each Member States, in Frontex and for the wider EU economy and society. It also considers the major inefficiencies in the implementation of the Regulation, including as part of the procurement process.

Most of the costs associated with the EBCG Regulation have been borne by Frontex. Nevertheless, Member States have also incurred costs in fulfilling their obligations and activities outlined by the Regulation.

### A7.2.1 Costs and benefits for Member States

Like Frontex, Member States incurred in costs for implementing the different obligations and activities set by the EBCG Regulation. Concerning the benefits, in addition to transfers from Frontex for financing activities (e.g. Standing Corps) and the pooling of resources (meant to help achieving economies of scale and of scope), most of the benefits identified are non-monetary ones, related to the harmonisation of procedures across Member States and the sharing of best practices.<sup>623</sup>

In this section, the analysis will focus on the main costs (and benefits) incurred by Member States as a consequence of the EBCG Regulation, while elements specific to individual thematic areas (e.g. EUROSUR) are described in the related sections of the report. Based also on the analysis of the budgetary and financial management of Frontex (see previous section), the main areas analysed here will be the Standing Corps, technical equipment and returns.

The analysis of the costs and benefits generated by the EBCG Regulation for Member States is a partial one, that does not include an attempt to quantify and monetise (most of) the financial and human resources received by Member States, nor does attempt an estimation of the cost-effectiveness of the activities implemented. This is for several reasons. First of all, evidence collected is insufficient to have a view of the financial and human resources received by Member States, nor of the additional costs for their support. In addition, in the vast majority of cases it is not possible to identify the funds from national budgets allocated to staff deployment, since there is no distinction in national budgets between funds used for officers operating in the country and for officers seconded or deployed through Frontex. Similarly, in most cases national budgets are divided among several corps participating into Frontex operations, with no aggregated view<sup>624</sup>. The steady growth pattern of Frontex activities and resources imposed by the ECBG Regulation makes it very difficult to compare one year with the other, since such a rapid and sustained growth requires time to be assimilated by any organisation. Finally, the years considered for the evaluation of the Regulation were heavily influenced by external factors such as the COVID-19 pandemic and the war in Ukraine, which make it difficult to separate the effects of the Regulation from those of the broader context in which the Agency operates.

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<sup>622</sup> This section provides additional information in response to evaluation questions under the efficiency criteria related to cost-benefits analysis (EQ 17, 19).

<sup>623</sup> MS/SAC survey: responses to Q1.5 and Q6.3 (RO, FI, IT)

<sup>624</sup>MS/SAC survey, responses to Q1.1.12 13/27 (SL, MT, EE, FR, DK, NO, BE, SE, DE, PO, HU, BG, SI)

To look for possible trends and patterns in the analysis, Member States were grouped into clusters, based on two criteria:

- The type of external border (i.e., air, land, sea); and
- Their location with respect to the main migratory routes towards Europe relevant to this evaluation, elaborated from the Frontex one (i.e., Central/Western Mediterranean, Eastern Borders, Eastern Borders + Western Balkan, Eastern Mediterranean, Other)<sup>625</sup>.

The two criteria were combined to obtain several clusters, each with sufficient number of countries, while maintaining an appropriate level of detail. The ‘border type’ criterion was applied first, and then countries were grouped alongside the ‘border location’ criterion (those countries far from migratory routes and with only air external border were grouped under ‘other’).

Table 17 reports the classification for each of the Member States (and SACs) included in the evaluation, while Figure 23 shows the final clustering.

Table 17. Classification of each Member State (and SAC) for clustering

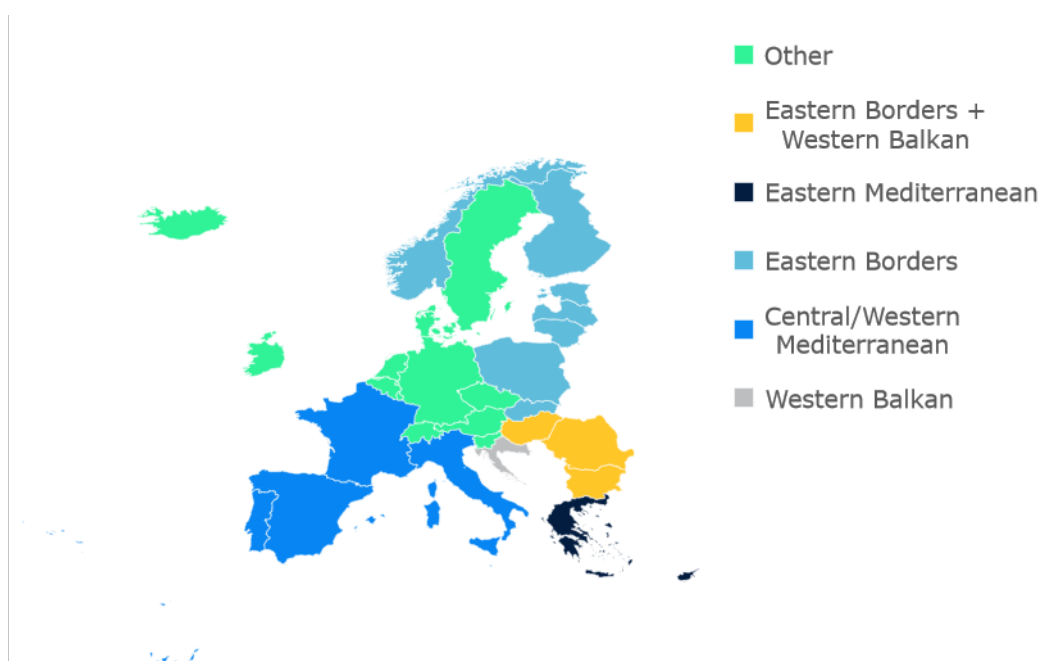
Member State/SAC	Border type	Border location (if land and/or sea)
AT	Air	Other
BE	Air	Other
BG	Air, Land, Sea	Eastern Borders + Western Balkan
CH	Air	Other
CY	Air, Sea	Eastern Mediterranean
CZ	Air	Other
DE	Air	Other
DK	Air	Other
EE	Air, Land, Sea	Eastern Borders
EL	Air, Land, Sea	Eastern Mediterranean
ES	Air, Land, Sea	Central/Western Mediterranean
FI	Air, Land, Sea	Eastern Borders
FR	Air, Sea	Central/Western Mediterranean
HR	Air, Land, Sea	Western Balkan
HU	Air, Land	Eastern Borders + Western Balkan
IS	Air	Other
IT	Air, Sea	Central/Western Mediterranean
LI	Air	Other
LT	Air, Land, Sea	Eastern Borders

<sup>625</sup> The full list used by Frontex is available at: <https://frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/western-mediterranean-route/>

Member State/SAC	Border type	Border location (if land and/or sea)
LU	Air	Other
LV	Air, Land	Eastern Borders
MT	Air, Sea	Central/Western Mediterranean
NL	Air	Other
NO	Air, Land, Sea	Eastern Borders
PL	Air, Land, Sea	Eastern Borders
PT	Air, Sea	Central/Western Mediterranean
RO	Air, Land, Sea	Eastern Borders + Western Balkan
SE	Air	Other
SI	Air	Other
SK	Air, Land	Eastern Borders

Source: ICF elaboration

Figure 23. Final clustering of Member States (and SACs)



Source: ICF elaboration

### Destination of national funds

Replies to the survey disseminated to Member States authorities provide a basic understanding of the use of funds from national budget to (co)finance Frontex activities. Table 16 shows the distribution of the used funds available in national budgets by their destination. Unfortunately, the incompleteness of the replies does not allow for an in-depth

analysis<sup>626</sup>. The assessment of the funds from national budgets allocated to staff deployment is particularly difficult for Member States, since in the vast majority of cases there is no distinction in the national budgets between the funds used for officers operating in the country and for officers seconded or deployed through Frontex. Similarly, in most cases the national budgets are divided through several corps participating in Frontex operations, with no aggregated view<sup>627</sup>.

Notwithstanding the partial data available, Table 18 shows that a non-negligible share of national funds is destined to IT-related activities, mostly concerning the EUROSUR upgrades. The amount of IT-related funds for Member States is consistent with the increasing investments of Frontex in IT systems for situational awareness, information exchanges and security. Such activities (and consequently the related budget allocations for both Frontex and Member States) are expected to increase from 2023 onwards, based on the Frontex Information Management Framework for the 2022-2027 period and related implementation strategy<sup>628</sup>. The Frontex ICT strategy as defined in those documents is based on three main pillars (improved situational awareness, Improved support to operations and Innovation and digitalisation of corporate services), which are meant to support the growth plan of the Agency for the different tasks and activities. While a relevant part of the IT-related investments is carried out by Frontex directly, Member States have to develop the national modules for connecting with the EU systems (e.g. ETIAS, EUROSUR) and for information exchange.

Table 18. Use of funds from national budget by destination and by (land/sea) border location (2020-2022) (EUR million).

MS/SAC	Border location	Staff deployed	Technical equipment	Returns	IT (EUROSUR upgrades)	Others
BE	Other	142.0			418.4	
BG	Eastern Borders + Western Balkan		25,820.7			
CZ	Other		499.0	1,296.0	8,560.0	
DE	Other			887.9		
EE	Eastern Borders	800.0	1,211.6			
FI	Eastern Borders		8,100.0	1,845.0		
HU	Eastern Borders + Western Balkan				1,573.2	

<sup>626</sup> Overall, 15 out of 27 MS/SAC replied to the relevant questions in the MS/SAC survey. However, all the replies available are incomplete (i.e. one or more of the funds destinations is missing). Furthermore, most of the larger MS/SAC are missing from the dataset, so that the analysis of the scale of the MS/SAC allocations compared to those from Frontex cannot be attempted.

<sup>627</sup>MS/SAC survey, responses to Q1.1.12 13/27 (SL, MT, EE, FR, DK, NO, BE, SE, DE, PO, HU, BG, SI)

<sup>628</sup> Frontex (2022), Information Management Framework 2022-2027, Ares(2022)6623627

MS/SAC	Border location	Staff deployed	Technical equipment	Returns	IT (EUROSUR upgrades)	Others
LT	Eastern Borders		13,946.6	856.7	4,311.2	908.1
LU	Other			483.8		600.5
LV	Eastern Borders		4,454.3	0.0		
MT	Central/Western Mediterranean	480.9	5,506.1	577.9		3,255.7
NO	Eastern Borders				715.9	
PL	Eastern Borders		9,503.6	8,515.6	19,033.3	2,088.8
RO	Eastern Borders + Western Balkan		35,576.5			
SE	Other		176.8	4,221.2	3,230.5	3,340.5

Source: ICF elaboration from MS/SAC survey data. 15 replies out of 27 participants (MS/SAC survey, combined replies to Q1.12 and Q1.15).

Note: the 'Others' category includes central coordination units and EMAS, among others.

### Destination of European funds

In addition to the resources derived from the national budgets, Member States can benefit from EU-level funds for the development of integrated border management and of a coherent approach to asylum and immigration. In the survey disseminated to Member States, national authorities have been asked to declare the amounts used derived from four cycles of funds<sup>629</sup>. Assessing what share of these funds could be specifically linked to the implementation of the Regulation is difficult, as it would imply analysis of all national programmes. These funds are:

- Internal Security Fund (ISF) - Borders and visa (2014-2020)<sup>630</sup>.** The ISF aimed to enhance security while facilitating legitimate travel. It allocated EUR 3 billion of funding over the seven-year period. All Member States/SAC, except Ireland, were beneficiaries. The 4 SAC (Iceland, Liechtenstein, Norway and Switzerland) also participated in the ISF Borders and Visa instrument. Moreover, there were the two specific actions aimed to strengthen the European Border and Coast Guard Agency's technical equipment pool. The total EU funding awarded for this purpose amounts to EUR 335.8 million<sup>631</sup>. The specific action was subject to national co-financing of at least 10% by Member States – or EUR 33.5 million. The component of the ISF programmes related to border management, which amounted to EUR 1.55 billion, supported the implementation of the EBCG Regulation at Member

<sup>629</sup> Survey with MS/SAC authorities, Question 1.12.

<sup>630</sup> See: [https://home-affairs.ec.europa.eu/funding/borders-and-visa-funds/internal-security-fund-borders-and-visa-2014-2020\\_en](https://home-affairs.ec.europa.eu/funding/borders-and-visa-funds/internal-security-fund-borders-and-visa-2014-2020_en)

<sup>631</sup> See [https://commission.europa.eu/system/files/2020-06/db\\_2021\\_programme\\_statement\\_internal\\_security\\_fund.pdf](https://commission.europa.eu/system/files/2020-06/db_2021_programme_statement_internal_security_fund.pdf) (p. 3)



State level. The levels of national contribution varied from 10% for EUROSUR, to 25% for visa related projects, to 5% for other migration management related projects – as final evaluation of these funds is not yet done – public information on overall national contributions is not yet available.<sup>632</sup>

- **Integrated Border Management Fund (Border Management and Visa Instrument (BMVI) 2021-2027).**<sup>633</sup> The BMVI is set up to continue the work of the ISF; hence it also focuses on strengthening EU capacity for borders and security controls and managing the EU's visa policy. However, it also aims at implementing the new mandate of the EBCG. Its overall budget is EUR 6.7 billion for the 2021-2027 period. All EU Member States, with the exception of Ireland and SAC, participate in the instrument. Again, a detailed analysis of the EUR 3.66 billion in national programmes is needed to assess the share of the financing directly benefiting the Regulation. The national contributions under the national programmes are at least 25% (or EUR 1.22 billion), while for specific actions they are 10%.<sup>634</sup> So far one specific action has been launched, and the awards are still in the process.
- **Asylum, Migration and Integration fund (AMIF) (2014-2020).**<sup>635</sup> The stated objective of the 2014-2020 cycle of the AMIF was to promote the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration. It allocated EUR 3.137 billion over the seven years, of which EUR 2.752 billion was spent under national programmes, while the rest was used for emergency assistance, Union actions, etc. All Member States except Denmark were beneficiaries of the Fund.
- **Asylum, Migration and Integration fund (AMIF) (2021-2027).**<sup>636</sup> The latest cycle of the AMIF aims to strengthen national capabilities and improve migration management processes, while also promoting solidarity and sharing responsibilities among Member States. The total budget is EUR 9.88 billion over the seven years. All EU Member States except Denmark are eligible beneficiaries of the Fund (third countries may be associated to AMIF and become eligible for financing, following an agreement with the EU).

Member States must make technical equipment co-financed by the ISF and BMVI available for deployment upon request by Frontex in the framework of the annual bilateral negotiations (Article 64 (14) of the EBCG Regulation). The co-financing entails an expenditure in the national budgets; this constitutes a cost for the Member States (and SACs).

Table 19 summarises the information derived from the survey to national authorities, concerning the use of these funds. Although the responses to the survey were again incomplete and inconsistent, and hence do not allow an in-depth analysis of the implementation of these funds, they are useful in giving an overview of their use. Survey respondents mentioned that the share of projects' costs co-financed through state budget range between 10% and 25%. Both the funds received and corresponding

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<sup>632</sup> Regulation No 515/2014 Article 6(2)

<sup>633</sup> See: [https://home-affairs.ec.europa.eu/funding/borders-and-visa-funds/integrated-border-management-fund-border-management-and-visa-instrument-2021-27\\_en](https://home-affairs.ec.europa.eu/funding/borders-and-visa-funds/integrated-border-management-fund-border-management-and-visa-instrument-2021-27_en)

<sup>634</sup> Regulation (EU) 2021/1148, Article 12

<sup>635</sup> See: [https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2014-2020\\_en#:~:text=The%20Asylum%2C%20Migration%20and%20Integration,approach%20to%20asylum%20and%20immigration.](https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2014-2020_en#:~:text=The%20Asylum%2C%20Migration%20and%20Integration,approach%20to%20asylum%20and%20immigration.)

<sup>636</sup> See: [https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027\\_en](https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en) To date, there are no third countries associated or in negotiation to be associated to AMIF.

national co-financing increased from 2020 to 2021, when the new funding cycles started. The 2022 data show a slight reversal of this trend, although this seems to be because some projects under BMVI or AMIF (2021-27) committed in 2022 had not yet been paid at the time, as pointed out by some national authorities<sup>637</sup>. In addition, respondents identified complex or unclear procedures for the use of funds at EU level and unforeseen events (such as COVID-19) that changed priorities and activities as the two main obstacles to the implementation of these funds.<sup>638</sup> The table also shows that the share of ISF and BMVI devoted to the acquisition of technical equipment is generally high. Again, 2022 is an exception which can be explained by the time lapse between the commitment and the disbursement of the amounts, as this seems to be particularly relevant for the procurement of TE (see A7.1.3).

Table 19. Use and co-financing of EU funds (ISF, BMVI, AMIF) by Member States (and SACs) (2020-2022) (EUR million).

Year / Fund	Number of replies	Use of funds			MS/SAC co-financing (10%-25%)	
		Average	Total	TE (% of total)	Average (range)	Total (range)
<b>2020</b>	<b>26</b>	<b>4.29</b>	<b>111.42</b>		<b>0.43-1.07</b>	<b>11.14-27.85</b>
ASIF (2014-20)	7	2.99	20.96	N/A	0.30-0.75	2.10-5.24
ASIF (2021-27)	3	13.27	39.81	N/A	1.33-3.32	3.98-9.95
BMVI (2021-27)	4	0	0	0%	0 - 0	0 - 0
ISF (2014-20)	12	4.22	50.64	83%	0.42-1.06	5.06-12.66
<b>2021</b>	<b>29</b>	<b>4.98</b>	<b>144.56</b>		<b>0.50-1.25</b>	<b>14.46-36.14</b>
ASIF (2014-20)	8	5.39	43.14	N/A	0.54-1.35	4.31-10.79
ASIF (2021-27)	5	8.06	40.32	N/A	0.81-2.02	4.03-10.08
BMVI (2021-27)	5	5.60	27.98	100%	0.56-1.40	2.80-7.00
ISF (2014-20)	11	3.01	33.11	54%	0.30-0.75	3.31-8.28

<sup>637</sup> Survey with MS/SAC authorities, Question 1.12, 5/27 MS/SAC (AT, EE, FI, SK, SE).

<sup>638</sup> Survey with MS/SAC authorities, Question 1.13, 16/27 MS/SAC.

Year / Fund	Number of replies	Use of funds			MS/SAC co-financing (10%-25%)	
		Average	Total	TE (% of total)	Average (range)	Total (range)
<b>2022</b>	<b>25</b>	<b>4.36</b>	<b>108.92</b>		<b>0.44-1.09</b>	<b>10.89-27.23</b>
ASIF (2014-20)	7	6.38	44.69	N/A	0.64-1.60	4.47-11.17
ASIF (2021-27)	2	19.91	39.81	N/A	1.99-4.98	3.98-9.95
BMVI (2021-27)	6	0.14	825.00	0%	0.01-0.03	0.08-0.21
ISF (2014-20)	10	2.36	23.60	61%	0.24-0.59	2.36-5.90

Source: ICF elaboration from MS/SAC survey data. 15 replies out of 27 participants (MS/SAC survey, replies to Q1.12).

### Strategic and Operational planning process for Member States

The EBCG Regulation imposes a number of obligations on Member States relating to the multiannual strategic planning process of Frontex, which include the preparation of: -

- national strategies for European Integrated Border Management (Article 8);
- operational Plans for border management and returns;
- contingency plans; and
- national capability development plans (Article 9).

It also imposes the creation of national contact points (Article 13), in addition to additional obligations related to specific activities (such as the creation of National Coordination Centres for EUROSUR (Article 21).

These plans are expected to help in the implementation of the Frontex multi-annual strategic plan and to support Member States in the programming and implementation of their activities (see also section 4.1.7 of the main report.). However, it is not clear how much resources (e.g. person-days of relevant officers) their preparation absorbs.

The operational plans and the contingency plans have been the most problematic so far, for different reasons. Concerning the **operational plans**, Member States highlighted that they overlap with the situational awareness/risk analysis tools to some extent, as well as with other mechanisms (e.g. SCHE-VAL<sup>639</sup>). While the situational awareness/risk analysis tools help Member States with the operational planning in some cases (12/26)<sup>640</sup>, this hinders the process in others<sup>641</sup>. Furthermore, the number of plans to prepare is considered a burden by some of the smaller Member States, that do not have necessarily

<sup>639</sup> Schengen evaluation and monitoring mechanism, see: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring_en)

<sup>640</sup> Survey with MS/SAC authorities, Question 2.1, 12/27 MS/SAC (LV, SE, BG, RO, AT, MT, EE, LU, GR, FR, PT, DK)

<sup>641</sup> Survey with MS/SAC authorities, Question 2.1, 4/27 MS/SAC (BE, FI, SK, ES)

sufficient resources to prepare all the plans requested, national strategies required by national legislation, Schengen strategies and carry out the vulnerability assessment<sup>642</sup>.

The development of **capability plans** has been a complex process, with delays already at EU level. Frontex Capability Development Plan has been postponed to mid-2023, with the Multi-Annual Strategy for Developing the Agency's own Technical Capabilities (elaborated with Member States) presented to the MB in November 2021 only as a draft version for information.<sup>643</sup> The strategy was only submitted to the Commission for its opinion in November 2022, and it is scheduled to be adopted by the Frontex MB in the third quarter of 2023. In addition, although Member States were supposed to submit the national capability plans in 2022, not all of them did so on time, and some are still missing. According to some Member States, the criteria for developing of national plans are not sufficiently clear, and this has contributed to the delays. As discussed in A7.1.3, the combination of delaying factors from the Agency and the Member States has contributed to slowing down the implementation of integrated planning under Article 9 of the EBCG Regulation.

The process of capability planning and establishing of pools for the operational activities for the following operation cycle requires Member States to decide on the deployment of TE by the end of February. Such an advance planning poses problems for Member States, which find it difficult to plan the use of TE well over one year in advance (referred to some Member States as the 'crystal ball' problem<sup>644</sup>). The delays in the capability planning process and the limited guidance available may have exacerbated the issue, together with the relative novelty of the process (started in 2020). It is therefore possible that the planning of TE deployment will become less of a challenge in the next years.

### **Main benefits for Member States**

Concerning the benefits experiences by Member States, these are mostly intangible and as thus are mostly treated qualitatively. Whenever possible, additional information (including quantitative data) is provided. Non-monetary benefits are to be considered in addition to transfers from Frontex for financing activities (e.g. Standing Corps) and the pooling of resources (meant to help achieving economies of scale and of scope).

Overall, Member States recognise the importance of the cross-border dimension in achieving the objectives of the EBCG Regulation. The majority of Member States disagrees or strongly disagrees with the statement that the objectives of the EBCG Regulation could have been achieved sufficiently by Member States alone, in all the areas considered, with the exception of measures within the Schengen Area, where views are more neutral<sup>645</sup>. The Member States expressing more consistently satisfaction with the support received by Frontex are smaller countries, and countries having borders facing the Eastern Border and Western Balkans, Eastern Border and Western Balkans migratory routes. Member States having borders facing the Eastern and Central/Western Mediterranean migratory routes express satisfaction especially for what concerns risk analysis and returns.

A possible reason for such differences in the perceived benefits of Frontex across Member States can be found in their different operational needs and levels of support received. Sea borders are more costly to protect due to the high costs related to

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<sup>642</sup> Interviews with MS/SAC national authorities (4 out of 26), (CZ, SK, SE, IS)

<sup>643</sup> Frontex, Consolidated Annual Activity Report 2021, K.A. 3.1.1

<sup>644</sup> Frontex interview (CBA&EA), also MS/SAC Survey: responses to Q1.1.3 2/27 (SE, FI, CZ)

<sup>645</sup> Survey with MS/SAC authorities, Question 1.5, 28/30 MS/SAC (On Returns, 22/30 MS/SAC, on measures within the Schengen Area 7/30 MS/SAC, on risk analysis 20/30 MS/SAC, on Border control measures at the external borders 17/30 MS/SAC, on measures with neighbouring countries 15/30 MS/SAC, on measures in third countries 16/30 MS/SAC)

operations of sea vessels, and surveillance aircraft. Member States with boundaries facing the main migration sea routes (Eastern Mediterranean – Greece JO-Poseidon, JO Terra, Central/Western Mediterranean (Italy- JO Themis, and Spain (JO Indalo, JO Minerva) received the largest overall support in terms of human resources and equipment (vessels) deployed by Frontex. These Member States benefited from cost reimbursement of deploying also internally resources (e.g. as case studies indicated from Greece’s West coast or inland to the Eastern Mediterranean islands, or in Bulgaria from the border with N. Macedonia to the border with Turkey). Nevertheless, it is possible that issues with the availability of resources and speed of deployment, values of the reimbursements received and problems with filling the quotas for secondments and deployments (see infra) may have impacted heavily in the overall perception of Frontex support.

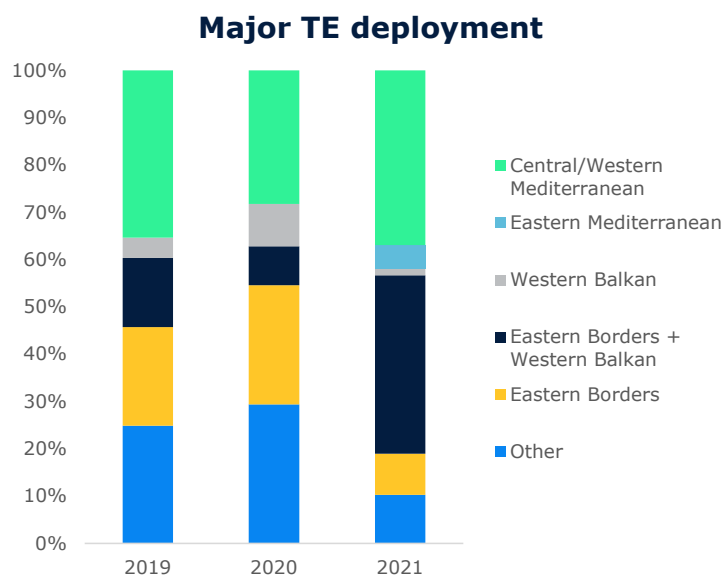
### Technical equipment

When it comes to the support provided by Frontex to Member States in the form of technical equipment, opinions are somewhat divided.

This section provides an overview of the technical equipment resources deployed by Member States in the period considered, considering both major TE (i.e. Offshore Patrol Vessel (OPV), Coastal Patrol Vessel (CPV), Coastal Patrol Boat (CPB), Fixed Wing Aircraft (FWA) and Helicopters) and light and portable TE (i.e. Patrol cars, Thermo-vision vehicles, Other light and portable equipment).

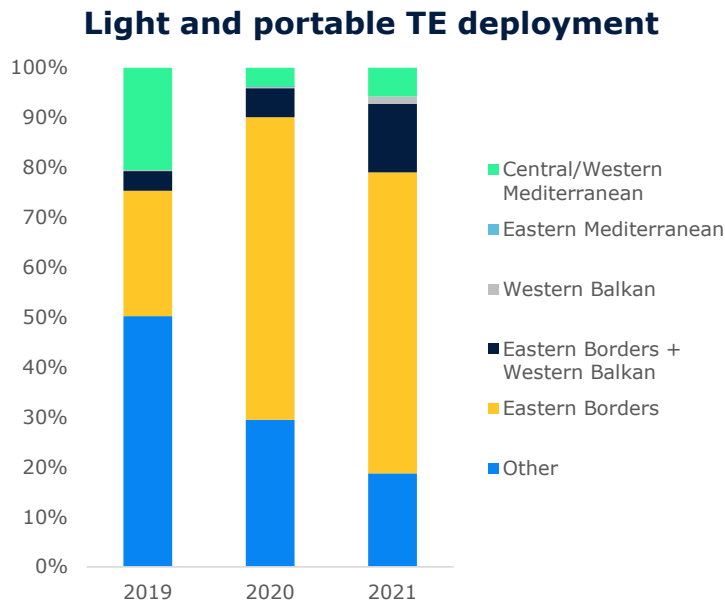
Overall, the number of TE available for deployment under Frontex support has increased notably in the years for which data is available (from 2019 to 2021), especially comparing 2019 with the 2020-2021 period. The total increase in TE from 2019 and 2020 was of 51% for the TE available and of 61% for the asset-days. Such increase, however, concerned mostly the availability of light and portable TE rather than major TE. The values for 2021 show a limited decrease compared to 2020, considering both the absolute values of TE and asset-days, and the breakdown between major and light and portable TE. Figure 24 and Figure 25 show the distribution of both major and light and portable TE deployed across Member States in the years considered.

Figure 24. Major TE deployment by group of countries, 2019-2021 (asset days)



Source: ICF elaboration from Frontex Report on operational resources 2019, and Annual Activity Reports 2020 and 2021

Figure 25. Light and portable TE deployment by group of countries, 2019-2021 (asset-days)



Source: ICF elaboration from Frontex Report on operational resources 2019, and Annual Activity Reports 2020 and 2021

The figures show a shift in the deployment of major technical equipment (mostly vessels and helicopters) towards the Member States at the Central/Western Mediterranean and Eastern Mediterranean migratory routes, as well as towards those at the Eastern Borders and Western Balkans migratory routes. Conversely, there has been an increase in the deployment of light and portable TE deployment towards Member States at the Eastern Borders migratory routes. These trends seem consistent with the migratory pressures and routes more solicited in the years considered, and with the type of border to be surveyed, so that major (maritime) equipment was used for the sea borders and light and portable equipment (mostly patrol cars and thermo-vision vehicles) for the land border.

The availability of a larger pool of TE (either owned by Frontex, co-owned by Member States and Frontex or made available by Member States) is expected to support and complement the TE pool available with the potential to reduce the costs for Member States over time (i.e., Member States would not need to purchase TE available via Frontex, to use it only for a limited period of time). While the principle is supported by Member States, the availability of sufficient equipment from Frontex is sometimes questioned, as is the speed with which such resources are deployed in Member States following their requests.

A few Member States reported that the technical equipment support involved additional costs on their part<sup>646</sup>, and that they encountered obstacles in obtaining technical equipment from Frontex.<sup>647</sup> Only in few cases, however, the obstacles faced to obtain technical equipment support were related to costs.<sup>648</sup> In those cases, most of the challenges were due to trade-offs with national priorities and tasks (some of which generated by external factors such as the war in Ukraine and the subsequent pressure to

<sup>646</sup> Survey with MS/SAC authorities, Question 4.1, 4/27 MS/SAC (FI, BG, EE, PT)

<sup>647</sup> Survey with MS/SAC authorities, Question 4.2

<sup>648</sup> Survey with MS/SAC authorities, Question 10.5, 10/27 MS/SAC (to a limited extent 7 (HU, BG, PL, LT, LU, GR, DE), to some extent 2 (IS, PT), to a great extent 1 (FR))



the external Eastern borders), which made it difficult from Member States to deploy technical resources outside of the country.

Additional challenges were encountered with the availability of specific equipment, both major and portable, such as planes and helicopters for coastal surveillance (during the JO Opal Coast for instance). The issues with the availability of equipment seem to be related to problems in procurement and in time and procedures for maintenance of the equipment itself, which makes it unavailable for several months of the year.

### **Standing Corps**

The deployment of the Standing Corps has been a key innovation introduced by the EBCG Regulation, to support Member State in the protection of EU external borders, migration management and returns. Overall, Member States consider positively the contribution of the Standing Corps to border management activities and consider that the profile categories are adequately defined in terms of their roles and responsibilities<sup>649</sup>, the recruitment procedures and content of the training are appropriately defined<sup>650</sup> and that the length of training is adequate<sup>651</sup>. However, the view on the adequacy of individual Member States contributions to the Standing Corps is less clear-cut<sup>652</sup>.

Since their creation, the number of officers, as well as the number of deployments and the total person-days of deployment within one year have increased, consistently with the plan for Frontex growth set by the EBCG Regulation.

Figure 26 shows their distribution across the different Member States grouped according to their position with respect to the main migratory routes and their type of border.

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<sup>649</sup> Survey with MS/SAC authorities, Question 10.1, 5/27 MS/SAC (NO, SE, IS, SI, MT, SW, DK, BE, SK, LU, PT, PL, LV, ES)

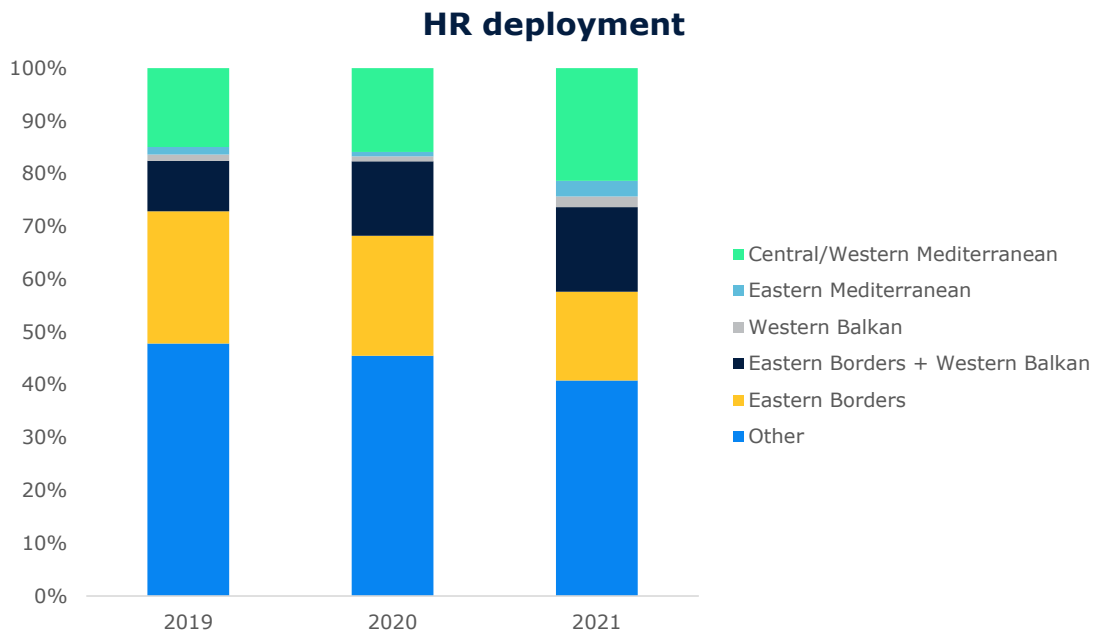
<sup>650</sup> Survey with MS/SAC authorities, Question 10.1, 18/27 MS/SAC (SI, RO, AT, MT, EL, FR, NO, BE, CZ, SE, LT, LU, DE, PT, PL, IT, IS, BG)

<sup>651</sup> Survey with MS/SAC authorities, Question 10.1, 12/27 MS/SAC (RO, AT, MT, EE, EL, NO, BE, FI, SE, DE, IT, BG)

<sup>652</sup> Survey with MS/SAC authorities, Question 10.1, 10/27 MS/SAC (SL, AT, EE, EL, DK, LU, DE, LV, IT, BG)



Figure 26. Deployment of Standing Corps by (land/sea) border location (2020-2022) (total person-days)



Source: ICF elaboration from Frontex Report on operational resources 2019, and Annual Activity Reports 2020 and 2021

The figure above shows that, within an overall increase in the number of person-days deployed, Member States with boundaries facing the Central/Western Mediterranean and Eastern Borders + Western Balkans migratory routes seen the highest proportional increase of human resources deployed, in line with the migratory pressures of the years considered. Member States on the Eastern Mediterranean Migratory route have also seen an increase in deployments, although more limited.

The use of Standing Corps, together with the pool of TE, had the purpose of helping Member States to control the borders and make available resources in a limited amount of time. The pooling of resources should help Member States to achieve economies of scale and of scope, additional efficiency gains to the coverage of officers' costs provided by Frontex via reimbursements. However, majority of Member States reports that the preparation/deployment of Categories 2 and 3 officers resulted in additional costs<sup>653</sup>. Such costs derive from inadequacy of reimbursements to cover the full cost of deployment, so that Member States have to integrate the costs with additional funds and/or cover some of the expenses not covered by Frontex reimbursement (e.g. full travel costs, costs for some equipment, language courses). Both interviews and field visits indicated that for some Member States it remains difficult to meet the conditions set in Article 61(3), due to budgetary restrictions at national level, difficulties in recruiting new staff quickly (also compensation for retirements, voluntary resignations, transfers), so that they are not eligible for reimbursements as per Article 61(3) and increase the overall number of officers<sup>654</sup>. As a result, secondment to Standing Corps is not attractive for experienced officers (coverage of costs is inadequate) making it difficult for Member States to recruit sufficient personnel with the required skills and experience.

<sup>653</sup> Survey with MS/SAC authorities, Question 10.3, 5/27 MS/SAC (NO, SE, IS, SI, MT, SW, DK, BE, SK, LU, PT, PL, LV, ES)

<sup>654</sup> Interviews with MS/SAC national authorities (2 out of 27) (RO, Field visits to BG, EL)

Finally, the procedures and administrative workload necessary (e.g. entering information on staff, financial information linked to reimbursements require significant internal resources, mobilising resources which could be dedicated to other tasks).

## Returns

Support from Frontex in the area of return is highly appreciated by Member States, that have used Frontex support in all phases of the return process – i.e., from pre-return, identification missions to post-return, including reintegration (see section 4.1.5 of the main report).

When considering more specifically possible savings and efficiency gains, possible advantages from Frontex support include savings in time and burden for organising the returns, financial savings (for instance, concerning the costs of tickets) and in the development of procedures and expertise for carrying out the returns, as well as in freeing national staff for other tasks. Replies to the Member State Survey stress the following types of gains:

- Time savings and reduced administrative burden<sup>655</sup>
- Financial savings (e.g. organisation of charter flights, costs of tickets)<sup>656</sup>
- Execution of returns (less cumbersome, quicker, easier exchange of documentation with third countries, availability of resources additional to national ones only)<sup>657</sup>

In particular, the FAR system is widely appreciated for its easy of use and for notably reducing the financial burden on Member States. Member States have also appreciated how the Frontex in the area of returns did not stop during the Covid-19 pandemic, but adapted quickly to the additional requirements dictated by the health situation, for instance including cost such as PCR-tests in the reimbursement (Sweden).

Some Member States also highlighted how CROs and FRESOs Frontex officers not only have increased the number of expert resources available for carrying out returns, but also allow freeing time for national staff to fulfil other tasks<sup>658</sup>.

Switzerland highlighted indirect benefits brought by Frontex support in the area of returns, and in particular the reduction in secondary movements. Another indirect benefits mentioned by Greece was the possibility to get in contact with other Escort Leaders and create networks provided by the EL courses organised by Frontex as part of return support activities.

A limited number of Member States also provided estimates of the financial savings realised at national level thanks to the support from Frontex in the area of returns. However, these figures need to be taken cautiously, since it is not clear how they were estimated (details were not provided by Member States), and therefore to what extent they are comparable across countries. Since return support from Frontex was already implemented before the ECBG Regulation entered into force, it is not possible to assess what share of these savings can be attributed to the changes brought by the Regulation rather than to Frontex support more in general. Furthermore, it is not clear what share of the savings reported is in fact a transfer (i.e. expenses previously paid by Member States and now paid by Frontex, such as return officers provided by Frontex instead of the Member State) and what share represents an overall savings (i.e. overall gain in the effort needed for the return activities, e.g. lower time needed to book tickers thanks to the

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<sup>655</sup> MS/SAC Survey: responses to Q 6.3, 9/27 MS/SAC (AT, BE, FI, FR, IT, LV, LT, PT, SI)

<sup>656</sup> MS/SAC Survey: responses to Q 6.3, 10/27 MS/SAC (BE, FI, IS, LV, LT, PL, PT, RO, SI, SE)

<sup>657</sup> MS/SAC Survey: responses to Q 6.3, 9/27 MS/SAC (BG, CZ, DK, FI, IE, PL, SK, ES, CH)

<sup>658</sup> MS/SAC Survey: responses to Q 6.3, 3/27 MS/SAC (FR, AT, IT)

Frontex platform). Figure 27 below can provide an idea of the order of magnitude of savings realised by Member States.

Figure 27. Savings in return activities realised by Member States (self-reported)

Member State/SAC	Year	Amount	Additional information
Austria	2022	Approx. EUR 190,000 in the field of reintegration support	N/A
Belgium	2022	Approx. EUR 1 million from used of FAR Scheduled Flights	Total estimated savings from 2018 approx. EUR 5.4 million
France	2021-2022	Approx. EUR 2.5 million in 2021 and approx. EUR 3.1 million in 2022	Combined savings from reimbursement of charter and staff
Malta	2021-2022	Approx. EUR 34.3 million per year	Estimated savings per returnee per year EUR 9,800, for 3,500 returnees/year in 2021 and 2022
Switzerland	Previous years (not qualified)	Approx EUR 2 million/year	Savings are expected to increase with joint scheduling flights

Source: ICF elaboration from replies to MS/SAC Survey, replies to question 6.4

## A7.2.2 Planning and procedural issues

Frontex's issues with procurement and planning of activities are not new nor related only to the implementation of the EBCG Regulation, but were indicated already in the past by the European Court of Auditors' (ECA) unqualified opinions on the results of their audit

The ECA highlighted some issues related to critical aspects of Frontex's procedures, mainly concerning the procurement of technical equipment and the management of grants.

Some expenditure related to technical equipment was found to be error-prone, linked to the limited implementation of simplified financial management for the use of technical equipment.<sup>659</sup> The ECA audit report for 2019 pointed out to inappropriate use of grants for procurement which, due to differences in the manner participating countries' authorities calculate the expenses covered by the grant resulted in a burdensome and inefficient managing of those grants.<sup>660</sup>

<sup>659</sup> ECA report on EU Agencies for the financial year 2019 (2019), available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=54031>

<sup>660</sup> ECA report on EU Agencies for the financial year 2019 (2019), available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=54031>

However, available sources point to a **gradual improvement in the management and procedural aspects of Frontex's functioning**, with some areas, mainly procurement and grant management, still facing major challenges.

After the implementation of the EBCG Regulation, the analysis still points to issues with procurement, as well as with the calculation of SAC contributions for 2020. The ECA audit report for 2020 highlighted weaknesses related to the lack of ex-ante/ex-post controls, a concerning level of carryovers, only partially explained by the consequences of the Covid-19 pandemic.<sup>661</sup>

The 2021 ECA report also highlighted issues with procurement procedures, as well as in financial management, with excessive carry-overs of appropriations and high rates of late payments.<sup>662</sup>

In addition to the annuality principle and the restrictions it brings in the procurement process (especially for major equipment) and the delays in strategic planning and needs assessment, additional challenges have hampered the efficient implementation of Frontex activities in the years considered, mostly concerning the procurement of TE. The disruption in the supply chain caused by the covid-19 pandemic added an additional layer of complexity.

These challenges include the lack of highly specialised operational staff, with sufficient operational experience to be able to assess the technical specifications for the wide variety of TE needed for Frontex activities (ranging from laptops to patrol cars to vessels and helicopters operating in very different contexts) and to design and carry out the related procurement processes.<sup>663</sup>

Key procurement choices (e.g. purchase vs. leasing of equipment such as patrol cars) have to be made, taking into account needs for adapting TE to the deployment in different terrains and to account for different standards applied in Member States. A learning curve with regard to TE procurement can be expected in the early phases of implementation of the EBCG Regulation, so that some of the issues experienced in the 2020-2022 period would not be experienced in the future. Nevertheless, inefficient procurement choice can have several repercussions, both in financial terms (increasing costs) and for the overall functioning and image of Frontex. Financial costs can include higher insurance costs, extra costs for maintenance of vehicles (e.g. equipment such as cars needs to be registered in a country, and consequently be checked there every year, which complicates acquisition and increases maintenance costs of those acquired already), higher administrative costs (e.g. acquisitions cancelled and then re-issued because requirements had to be revised)<sup>664</sup>. Non-financial costs include delays in the availability of TE, possible duplication of costs with Member States, damage to the image of Frontex (caused by frustration with delays, technical and maintenance issues, among others). Inefficiencies in the implementation of the EBCG Regulation

In addition to the inefficiencies in Frontex in implementation and procurement, Member States also experience problems with the implementation of the EBCG Regulation. Some of those problems related to the complex and cumbersome administrative process and insufficient amount of reimbursement for staff deployed (Categories 2 and 3) or seconded to Standings Corps (Category 2 as per Article 56). Other issues concern the deployment

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<sup>661</sup> ECA report on EU Agencies for the financial year 2020 (2020), available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59697>

<sup>662</sup> ECA report on EU Agencies for the financial year 2021 (2021), available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=62271>

<sup>663</sup> Frontex interview (CBA&EA).

<sup>664</sup> Frontex interview (CBA&EA).

process per se (with the management of (re) deployment process and the short-term commitment of officers). Finally, there are issues concerning the training process.

**The majority of Member States experienced additional costs due to the preparation/deployment of Category 2 and Category 3 officers<sup>665</sup>.** The issues for Category 2 officers concern the amount of the reimbursements, as well as the procedures and administrative workload necessary (e.g. entering information on staff, financial information linked to reimbursements), which require significant internal resources at the National Frontex Focal Points (NFPOC). Reimbursements for travel costs are contentious in some instances, since the real travel costs are often higher than the capped amount defined by the EBCG Regulation.<sup>666</sup> The reimbursements and additional costs covered for both Category 2 and Category 3 officers are not always sufficient to cover the full costs and to motivate experienced officers to be deployed, so that Member States have to cover some of the related costs (e.g. equipment needed for deployment such as gun cases and laptops, insurance, medical examination prior and after deployment, language courses) and/or provide additional expatriation fees to cover the differences in living costs between the countries of origin and of destination.<sup>667</sup> Authorities from Malta remarked also that the daily allowances for calculating the reimbursements have not been revised for a long time and do not reflect the economic situation and cost of living anymore.<sup>668</sup> While the value of the daily allowance is not strictly linked to the EBCG Regulation, it is an integral part of the reimbursement system, and contributes to inefficiencies of the system. The low economic incentives for deployment provided by the current system make it more difficult for some Member States to recruit sufficient experienced officers for deployment and fill their quotas.<sup>669</sup>

**Similar issues apply with regard to the financial support linked to Article 61 (Category 2 officers seconded to the Standing Corps).** The combination of a cumbersome administrative system to apply for reimbursements and inadequacy of the levels of financial support makes it complex for Member States to fill their quotas and maintain the adequate levels of staff for national needs. The problems encountered are similar to those reported above.<sup>670</sup> As a result, secondment to Standing Corps is not attractive for experienced officers (coverage of costs is inadequate) making it difficult for Member States to recruit sufficient personnel with the required skills and experience. As for Article 61(2) of the Regulation, the financial support for the Standing Corps is calculated using as a reference amount the annual salary of contractual agents in function group III, grade 8, step 1 of the institutions of the Union, adjusted by a corrective coefficient per Member State. The correction coefficient is calculated by Eurostat on an annual basis (with a mechanism foreseen for infra-annual correction in case of particularly high inflation rate).<sup>671</sup> While there is some consensus among Member States that the current system for financial support often is not sufficient nor adequate to make the experience attractive for officers and thus fill the quotas, there are uncertainties about the reasons.

Similar to the preparation/deployment of Category 2 and Category 3 officers, the procedures and administrative workload necessary to apply for the reimbursements as per Article 61 of the EBCG Regulation are considered too complex and burdensome by

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<sup>665</sup> MS/SAC Survey: responses to Q 10.3, 14/27 MS/SAC (NO, SE, DE, IS, SL, MT, SW, DK, BE, SK, LU, PO, PT, LV, ES)

<sup>666</sup> MS/SAC Survey: responses to Q 10.3, 3/27 MS/SAC (MT, FI, SK)

<sup>667</sup> Interviews with MS/SAC national authorities (5 out of 27) (SK, MT, SI, FI, IS)

<sup>668</sup> Interviews with MS/SAC national authorities (1 out of 27) (MT)

<sup>669</sup> Interviews with MS/SAC national authorities (2 out of 27) (MT, SK)

<sup>670</sup> Interviews with MS/SAC national authorities (2 out of 27) (RO, Field visits to BG, EL)

<sup>671</sup> See: <https://ec.europa.eu/eurostat/web/civil-servants-remuneration/correction-coefficients>



Member States, that ask for a simplification of the system<sup>672</sup>. The complexity of the reimbursement systems mobilised resources within Member States staff that could be used for other tasks instead.

- **The management of (re) deployment process**, which treats one individual officer at the times, rather than larger groups of SCOs, creates significant financial inefficiency for both – the Agency and SCOs. Officers are forced to spend significant time looking for accommodation, renting of vehicles, arranging travel and other logistical issues linked to their deployment. The site visits to Greece and Bulgaria indicated that this is typically done at the officer's own time, and at significant expense. Seeking accommodation and service car-rental services in remote areas near border regions is difficult. Member State Border Guard forces often consist of local residents, or Member State authorities provide accommodation to their staff, leaving Frontex SC officers often with difficulty in identifying proper accommodation.
- **Short term commitment of officers:** In Member States, the law-enforcement career typically is a lifetime career, profiting from early retirement, and strongly linked to a sense of mission. The present situation and way of management of the Standing Corps provides a fairly short long-term view, and relies on working primarily with SC officers for a 5-year contract, and a possibility for a 10-year contract. The lack of any consideration for keeping a meaningful work-family balance of the officers, as well as long-term career prospects (due to lack of established hierarchy, or a possibility to be promoted to a headquarters position), means that in the long-term the Agency will face higher than the average staff turnover ratios, with a need to hire and train a higher number of officers, when compared to Member State border guard / law-enforcement authorities. These issues are mostly relevant for Category 1 officers.
- **Inefficiency of the training process** – the lack of own training centre and trainers forces Frontex to invest continuously in short-term solutions by providing grants to different Member States training centres, without building its own capacity for high-quality conditions and quality of the training process. The lack of own training staff, also forces Frontex to continuously look for training staff, deal with last-minute cancellations, which sometimes undermine the quality of the training process (see section A7.1.3).<sup>673</sup>

### A7.2.3 Simplification and cost reduction potentials due to inefficiencies in the Regulation

The analysis carried out points to possible actions to achieve simplification and cost reduction in relation to inefficiencies in the EBCG Regulation.

A first element for possible simplification is that of financial support and reimbursement schemes for the **preparation/deployment of Category 2 and Category 3 officers**<sup>674</sup>. The amount of the reimbursement schemes is often considered insufficient, so that Member States have to cover some of the related costs and/or provide additional expatriation fees to cover the differences in travel costs (often higher than the capped amount defined by the EBCG Regulation<sup>675</sup>) and living costs between the countries of

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<sup>672</sup> Interviews with MS/SAC national authorities (4 out of 27) (EL, FR, DK, BG)

<sup>673</sup> Conclusions from the Report on Evaluation of the Extended Basic Training of Standing Corps (2023) ICF

<sup>674</sup> MS/SAC Survey: responses to Q 10.3, 14/27 MS/SAC (NO, SE, DE, IS, SL, MT, SW, DK, BE, SK, LU, PO, PT, LV, ES)

<sup>675</sup> MS/SAC Survey: responses to Q 10.3, 3/27 MS/SAC (MT, FI, SK)



origin and of destination.<sup>676</sup> In addition, the procedures and administrative workload necessary (e.g. entering information on staff, financial information linked to reimbursements), require significant internal resources at the National Frontex Focal Points (NFPOC) (see section A.7.2.3).

**Similar issues apply with regard to the financial support linked to Article 61 (Category 2 officers seconded to Standing Corps).** Issues about the adequacy of the financial support linked to Article 61 are reported also in this case. As for deployment, the procedures and administrative workload necessary to apply for the financial support as per Article 61 of the EBCG Regulation are considered too complex and burdensome by Member States, that ask for a simplification of the system.<sup>677</sup> Such simplification could allow Member States to free resources currently used to support this administrative process for other tasks instead (see section A.7.2.3).

#### A7.2.4 Simplification and cost reduction potentials due to inefficiencies in implementation

In addition to those concerning the Regulation (described in the previous sub-section), the analysis carried out points to possible actions to achieve simplification and cost reduction in relation to inefficiencies in implementation.

A first element concerns the streamlining and simplification of obligations on Member States relating to the multiannual strategic planning process of Frontex, and in particular of the **operational plans**. Member States highlighted that they overlap with the situational awareness tools to some extent, as well as with other mechanisms (e.g. SCHE-VAL<sup>678</sup>). While there may be some synergies between the situational awareness and the operational planning, the overall is considered more of a burden by Member States, and calls for further analysis in view of streamlining the various processes and achieve synergies (see section A7.2.1)

The simplification and streamlining could also extend to the **(re) deployment process**, which, treating one individual officer at the times, rather than larger groups of SCOs, creates significant financial inefficiency for both – the Agency and SCOs. Seeking accommodation, renting vehicles and other logistical issues could be better supported by Member States' Border Guard forces, which often consist of local residents. Similarly, Member States authorities provide accommodation to their staff, leaving Frontex SCOs often with difficulty in identifying proper accommodation (see section A.7.2.3).

Finally, a more stable **structural organisation of the training process** could reduce dependencies on Member States' logistics and availability of personnel, develop the Agency's capacity for high-quality conditions and quality of the training process and improve the planning and execution of training (see section A7.1.3).

#### A7.2.5 Indirect effects on EU businesses and citizens

Businesses operating in areas relevant to Frontex activities (e.g. equipment, logistics) could in principle benefit from centralised procurement procedures managed by Frontex, as well as for a possible harmonisation of standards which can result from Frontex activities. However, these are indirect effects hard to detect and assess, especially in the

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<sup>676</sup> Interviews with MS/SAC national authorities (5 out of 27) (SK, MT, SI, FI, IS)

<sup>677</sup> Interviews with MS/SAC national authorities (4 out of 27) (EL, FR, DK, BG)

<sup>678</sup> Schengen evaluation and monitoring mechanism, see: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring_en)

years under consideration due to the challenges with procurement processes experiences by Frontex.

There is limited anecdotal evidence of indirect effects for citizens, too partial for any projection at EU level or quantification. The activities in the area of returns of Frontex and the participation of Member States to JROs have contributed to a larger use of charter flights for the return of citizens, instead of commercial flights.

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The following Table 20 summarises the main costs and benefits identified during the evaluation for the different categories of stakeholders. They are classified to the extent possible along the classification of direct and indirect costs and benefits defined by the BRGs Toolbox for evaluations.

Table 20. Overview of costs and benefits identified in the evaluation

Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
<b>Costs identified</b>	<i>Direct compliance costs (adjustment, administrative regulator charges: one-off)<sup>679</sup></i>						
	<i>Direct compliance costs (adjustment, administrative regulator charges: recurrent)</i>	<b>Overall contribution to Frontex budget</b> Opening EU contribution: approx. EUR 329.6 million (2019), 438.2 EUR million (2020), EUR 514.2	<i>Year-to-year increase in opening contribution in 2019-2023 of appr. 22% (25% from 2020)</i> <i>Difference between opening</i>	National co-funding of TE (between 10% and 25% of EU funding received, based on information from Member States) purchased via EU Funds	<i>Additional costs for Standing Corps staff, including shares of their costs not covered by EU financial contribution as per Art. 61 of the</i>		

<sup>679</sup> The EU contribution has been treated as a recurrent cost for the EU

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Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
		million (2021), EUR 704.7 million (2022), EUR 788.9 million (2023), EUR 925 million (2024), EUR 1,049.9 million (2025), EUR 1,130.4 million (2026), EUR 1,117,330.2 million (2027)	<i>and closing contribution in general between 7% and 9%, with a peak in 2020 (22.6%), where the EBCR Regulation started being implemented, also due to external factors</i>	available for this purpose (ASIF and BMVI for the 2014-2020 and 2021-2017 periods-- see below): estimated in appr. EUR 11.1-27.8 million (2020), EUR 14.4-36.1 million (2021) and EUR 10.9-27.2 million (2022) for the limited number of MSs (15) for which data was available for the years considered.	<i>EBCG Regulation, specific equipment and training needs,</i>		
	<i>Enforcement costs (monitoring, inspection, litigation): one-off</i>						

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Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
	<i>Enforcement costs (monitoring, inspection, litigation): recurrent</i>						
	<i>Indirect costs (indirect compliance or transaction costs)</i>	-	-	-	-		
<b>Benefits identified</b>	<i>Direct benefits: one-off</i>		<i>Differences in EU opening and closing contributions (see above) represent an increase in EU budget available for other uses<sup>680</sup></i>  <i>On the other hand,</i>		<i>Pooling of resources (e.g. for TE) is meant to help achieving economies of scale and of scope)</i>  <i>Harmonisation of procedures across Member</i>		

<sup>680</sup> Cancellations are treated as one-off benefits. While common to all EU agencies, their occurrence and amounts vary

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Overview of costs and benefits identified in the evaluation						
	EU institutions		Member States		Businesses and citizens	
	Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
			<i>cancellations can be signal of issues with planning of resources and activities and/or inefficiencies in implementation</i>		<i>States and sharing of best practices.<sup>681</sup></i>	
	<i>Direct benefits: recurrent</i>		<p><i>More efficient use of resources through pooling of resources and centralisation of some processes</i></p> <p><i>Harmonisation of practices and sharing of best practices</i></p> <p><i>Better and more direct cooperation with Member States</i></p>	<p><b>EU Funds available</b></p> <p>ISF-Borders and visa (2014-2020): approx. EUR 335.8 million to strengthen European Board and Cost Guard's Agency TE pool. Overall, EUR 1.55 billion across the whole cycle</p>	<p><i>Member States can use the assets for at least eight months per year for national use</i></p> <p><i>It is not possible to identify what TE was purchased exactly with these funds and how much each of it used by Frontex, as it</i></p>	

<sup>681</sup> MS/SAC survey: responses to Q1.5 and Q6.3 (RO, FI, IT)



STUDY TO SUPPORT THE EVALUATION OF THE EUROPEAN BORDER AND COAST  
 GUARD AGENCY (FRONTEX) AND REVIEW OF THE STANDING CORPS

Overview of costs and benefits identified in the evaluation						
	EU institutions		Member States		Businesses and citizens	
	Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
				BMVI 2021-2027: EUR 6.7 billion for the whole cycle, of which EUR 3.66 billion in national programmes  AMIF 2014-2020: overall budget of EUR 3.137 for the period  AMIF 2021-2027: overall budget of EUR 9.88 billion for the period  <b>Returns</b>  Member States identify: time savings and reduced administrative burden, Financial savings, better and quicker	<i>depends on bi-                      lateral                      agreements                      between the                      Agency and                      Member States</i>  <i>Assessing what                      share of these                      funds could be                      specifically                      linked to the                      implementation                      of the                      Regulation is                      difficult, as it                      would imply                      analysis of all                      national                      programmes.</i>  <i>Concerning                      financial                      benefits form  <b>returns</b>, the                      figures are self-                      reported by                      Member States,</i>	

STUDY TO SUPPORT THE EVALUATION OF THE EUROPEAN BORDER AND COAST  
 GUARD AGENCY (FRONTEX) AND REVIEW OF THE STANDING CORPS

Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
				execution of returns Estimated (self-reported) savings from 4 Member States for 2022 range from EUR 190,000 (Estonia) to EUR 34.3 million (Malta) -	<i>so it is not possibly to clearly compare them. Furthermore, it is unclear to what extent these are net financial benefits or simply transfers of costs from Member States to Frontex</i>		
	<i>Indirect benefits: one-off</i>						

STUDY TO SUPPORT THE EVALUATION OF THE EUROPEAN BORDER AND COAST  
 GUARD AGENCY (FRONTEX) AND REVIEW OF THE STANDING CORPS

Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
	<i>Indirect benefits: recurrent</i>					<i>Businesses operating in areas relevant to Frontex activities (e.g. equipment, logistics) could in principle benefit from centralised procurement managed by Frontex, and from possible harmonisation of standards</i>	<i>These are indirect effects hard to detect and assess  It is anecdotal evidence, insufficient for quantification and projection at EU level</i>

## A7.2.6 Factors influencing efficiency

This section summarises key external and internal factors identified as influencing the efficiency of the implementation of the EBCG Regulation.

### A7.2.6.1 External factors

The overall disruptive impact of COVID-19 on the implementation of the EBCG Regulation cannot be underestimated. As a result, Frontex was not able to implement all of its activities, recruitment and deployment of the Standing Corps was delayed, and financial implementation was affected. Disruptions in the global supply chain made the provision of TE more complex, leading to delays in availability.

The unpredictable geopolitical environment of recent years has further meant that Frontex has had to adapt quickly to unforeseen challenges at external borders, impacting its ability to plan and diverting its resources away from anticipated activities. The most challenging events have been the Belarus border crisis and the creation of an artificial migration route on Europe's Eastern border, as well as the full-scale invasion of Ukraine by the Russian Federation in February 2022. For an Agency in transition, having to react quickly in such a challenging environment leaves less room for the proper development of its own internal procedures and processes. At the same time, Frontex's ability to step-up its operational support to Member States on the Eastern border has highlighted the added value of the Agency.

### A7.2.6.2 Internal factors

A number of internal factors impacting the efficiency of Frontex activities have been identified across this study.

Firstly, instances of a lack of legal coherence (summarised in section 4.1.1) has created a number of challenges impacting on the implementation of Frontex mandate, including:

- Inefficiencies stemming from the application of the EU Staff Regulations to the Standing Corps, as the Staff Regulations are not best suited to an operational, uniformed and armed services (e.g., complex travel management for numerous deployments of individuals leading to cumbersome administrative process and delays in reimbursements of staff, misalignment of working hours, etc.) See section of the main report 4.1.3 (governance and organisational structure) + 4.1.4 (operations).
- Interpretation issues in relation to Frontex's supporting role (including limitations and procedures) in the fight against cross-border crime and on the purpose (and limits) to processing operational personal data (Article 90 EBCG Regulation). The explicit narrowed possibilities for Frontex to process operation data (as per Articles 90 and 10(1)(q) of the EBCG Regulation) frame its role and scope of responsibilities in this area. Although the EBCG Regulation is clear on the purpose of operational personal data processing, the Management Board Decision 69/2021 leads to some ambiguity, as stressed by the EDPS (See section 4.1.1 legal coherence + section 4.1.4 operations).

Furthermore, additional internal challenges impacting on efficiency are:

- The current organisational structure of Frontex, which does not currently fully support the implementation of its mandate. This is especially true of the Standing Corps, which is overseen by several Divisions, leading to multiple reporting lines as well as a lack of clear structure for the Standing Corps. (See section 4.1.3).

- Operational issues faced by Standing Corps staff when deployed (including lack of access to databases) leads to inefficiencies in the support they are able to provide on the ground (See section 4.1.4 + Section 6 Review of the Standing Corps).
- Procurement issues (see above).

When asked about the division of competences between Frontex and Member States, overall, both Member States and Frontex felt that this was clear and did not lead to additional inefficiencies.<sup>682</sup>

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<sup>682</sup> Survey with MS/SAC authorities, Question 1.4., Frontex interview (1).

## Annex 8 Stakeholder synopsis report

This annex presents a concise overview of the results of the stakeholder consultation carried out for the study to support the evaluation of the EBCG Regulation and review of the Standing Corps.

### A8.1 Stakeholder consultation overview

The goal of the consultation strategy was to ensure that, across a series of consultation activities, all relevant stakeholders at EU and national level were given an opportunity to express their views. The consultation strategy relied on a mix of methods and tools to ensure a comprehensive and representative collection of views.

The first step of the data collection was the launch of **three surveys** (see Table 21). The surveys collected factual information about the implementation of specific activities and results of the EBCG, as well as opinions and views on the five evaluation criteria and key evaluation questions. These surveys targeted three stakeholder groups:

- Member State authorities (including Schengen Associated Countries);
- Standing Corps staff;
- FRMs.

The surveys were developed in consultation with DG HOME (and the Interservice Group) to ensure that the questions were finetuned to the needs of the study and captured all relevant elements. The external panel of experts also provided feedback.

The Member State authorities survey was disseminated as a Word document, divided into thematic sections. National authorities were asked to consult all relevant internal departments and authorities (such as Ministries of the Interior, border management and return authorities) to ensure that they could provide comprehensive answers to the different elements of the evaluation. This process allowed for internal consultation at national level and for each Member State to present a consolidated national response.

Table 21. Overview of surveys

Stakeholder group	Survey inputs
Member State authorities	27 responses
Standing Corps	529 responses
FRMs	34 responses

Following the launch of the surveys, the study planned to conduct up to **130 interviews** with key stakeholder groups, including:

- Frontex staff;
- Member State authorities;
- EU-level stakeholders (including the Commission, European Parliament, EU agencies);
- Civil society and international organisations;
- Third countries' authorities.

The interview questionnaires were refined with the support of DG HOME (and the ISG) to ensure that the questions met the needs of the study and captured all relevant elements. The external panel of experts also provided feedback. The interview questionnaires were

further finetuned in line with emerging evidence (including after the submission of the Interim Report, to address outstanding data gaps).

The study team carried out 149 interviews, more than originally foreseen, in addition to five scoping interviews at the inception phase. This final number does not take into account final interviews with Frontex during the field visit to headquarters in Warsaw, as this represented follow-up interviews with units and divisions interviewed previously. The interviews mostly took place online through MS Teams (with the exception of the field visits to Member States and the visit to Frontex headquarters). The high number of interviews reflected different requests by Member States, with some asking for separate interviews on different thematic areas with different responsible authorities, while others preferred longer joint interviews. Where possible, the study team accommodated these requests to make the process smoother for national authorities and to allow for engagement with all key stakeholders. The team also took the opportunity to conduct additional interviews during some of the field visits and the visit to Frontex headquarters.

The data collection task concluded with five **field visits** to Frontex operations (Bulgaria, Finland, Greece, Italy, Romania), as well as a sixth and final visit to Frontex headquarters in Warsaw. Over two-three days, the study team met with central-level national authorities and visited land border crossing points or coordination centres of maritime operations to conduct on-site interviews with national and Frontex staff. Findings from the field visits helped to inform the review of the Standing Corps, as well as Frontex operations overall (and their relevance and added value to Member States). Several of the external panel experts with previous border management expertise participated in the field visits.

The final two-day visit to Frontex headquarters was the closing step in the data collection. As the study team conducted extensive online interviews with Frontex units and divisions prior to the on-site visit, the visit allowed the team to focus its discussions on emerging findings and address final data gaps.

Table 22. Overview of interviews, by stakeholder group

Stakeholder group	Interviews
MB representatives	AT, DK, ES, NL, PL
Member State authorities ( <i>with multiple authorities, either in a joint format or as separate interviews</i> )	AT, BE, BG, CH, CZ, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI, SE, SK and CH, IS, NO Field visits to BG, EL, FI, IT, RO
EU level (except Frontex)	DG HOME DG INTPA DG JUST DG MARE DG NEAR EASA EDPS EEAS



Stakeholder group	Interviews
	EMSA EUAA eu-LISA European Parliament (LIBE Committee) European Ombudsman Europol EFCA FRA SatCen Secretariat-General of the European Commission
Frontex	Deputy Executive Director Executive Management Bureau Governance Support Centre Deployment Management Division Capacity-Building Division European Centre for Returns Division Situational Awareness and Monitoring Division Operational Response Division International and European Cooperation Division Data Protection Office Fundamental Rights Office Internal Audit Capability Standing Corps staff Frontex Liaison Officers
International organisations	<i>CF member: 3</i>
Civil society organisations	<i>CF member: 5</i>  <i>Non-members of CF: 4</i>
Third-country authorities	2 (Moldova and Montenegro)

Table 23. Overview of interviews completed for the Final Report

Stakeholder group	Total interviews
Member State authorities	63
EU level (except Frontex)	33
Frontex	39
International organisations	<i>CF members: 3</i>
Civil society organisations	<i>CF members: 5</i>
	<i>Non-members of CF: 4</i>
Third-country authorities	2
Total	149

## A8.2 Results

The following section provides a summary of the key findings for each category of stakeholder consulted, sub-divided by key themes.

### A8.2.1 Member State authorities

As Member State authorities were one of the main relevant stakeholder groups, they were consulted via (i) survey; (ii) interviews; and (iii) as part of the field visits. This allowed for triangulation of comparative data (survey), as well as more in-depth insights into Member States' views and experiences (interviews and field visits).

Overall, 27 Member States responded to the survey.<sup>683</sup> It was sent to the authorities as a Word document, divided into thematic sections. National authorities were asked to consult all relevant internal departments and authorities (such as Ministries of the Interior, border management and return authorities) to ensure that they could provide comprehensive answers to the different elements of the evaluation. This process allowed for internal consultation at national level and for each Member State to present a consolidated national response.

In addition to the survey, the study team concluded 63 interviews with national authorities, including during field visits. The interviews with national authorities often took a combined format, with several authorities present, allowing for in-depth discussion. Some Member States preferred to have separate interviews with different authorities. The results of the interviews were analysed and compared to other sources of information to integrate the findings presented in the Draft Final Report.

#### Implementation of the EBCG Regulation in the context of EIBM

A majority of survey respondents from relevant Member State authorities agreed or strongly agreed that the EBCG Regulation is relevant to current challenges and needs at external

<sup>683</sup> 27 survey responses from MS/SAC authorities: AT, BE, BG, CZ, DE, DK, EE, EL, ES, FR, FI, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK and CH, IS, NO.

borders, in particular: meeting situational awareness and risk analysis needs;<sup>684</sup> using state-of-the-art identification technologies;<sup>685</sup> supporting return activities;<sup>686</sup> and in light of increased cross-border crime and cross-border migrant smuggling and trafficking activities.<sup>687</sup> A majority also agreed that the Regulation was relevant to facilitating legal border crossing and legitimate travellers<sup>688</sup> and increasing passenger and cargo flows.<sup>689</sup> Only a minority agreed or strongly agreed that it addresses increased international migration, including secondary (intra-EU) migratory movements,<sup>690</sup> terrorism, and hybrid threats.<sup>691</sup>

When asked whether they believed the current EBCG Regulation remains relevant to address current and emerging needs and challenges of external border management, Member State authorities agreed that it largely does overall. However, some stressed that it is difficult to fully assess the extent to which the EBCG Regulation addresses needs and challenges in external border management, due to the ongoing status of its implementation. Nevertheless, stakeholders affirmed that the EBCG Regulation addresses most current and emerging needs and challenges at this stage, particularly those tasks that are seen as part of the core Frontex mandate, including external border management and return.

When asked about possible gaps not yet addressed by the EBCG Regulation, Member States emphasised the importance of first ensuring full implementation of the current EBCG Regulation before deciding on substantive revisions. The majority believe that the EBCG Regulation has gaps, with different gaps identified by individual respondents.<sup>692</sup> For example, a small minority<sup>693</sup> referred to hybrid threats and pointed to the need to ensure that the Agency's mandate is fit for purpose to deliver in this area. Belgium highlighted the need to ensure complementary with the work of Europol and avoiding overlaps in mandates.<sup>694</sup>

### **Shared responsibility under EIBM**

A majority of Member States/SACs agreed or strongly agreed that, in the spirit of shared responsibility, the division of competences between Member States and Frontex, as set out in the EBCG Regulation, is sufficiently clear and adequate to meet the objectives on education and training of border and coast guards.<sup>695</sup> A great majority of Member States also believe that the training of border and coastguards and return experts component of

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<sup>684</sup> Survey of MS/SAC authorities: Q1.1: 18/27 agreed (AT, HU, LU, LV, MT, PL, RO, SE, SI, SK and CH, IS, NO), 5/27 strongly agreed (BG, CZ, EE, LT).

<sup>685</sup> Survey of MS/SAC authorities: Q1.1: 14/27 agreed (CZ, EE, LV, MT, PL, RO, SE, SI and IS), 5/27 strongly agreed (AT, BG, FI, LT).

<sup>686</sup> Survey of MS/SAC authorities: Q1.1: 10/20 agreed (CZ, FI, LV, MT, PL, SE, SI, SK and IS, NO), 4/20 strongly agreed (BG, EE, LT, RO).

<sup>687</sup> Survey of MS/SAC authorities: Q1.1: 17/27 agreed (AT, BE, CZ, EE, FI, LT, LV, LU, MT, RO, SE, SI and IS), 1/20 strongly agreed (BG).

<sup>688</sup> Survey of MS/SAC authorities: Q1.1: 13/27 agreed (AT, EE, FI, LU, MT, PL, RO, SE and IS), 3/27 strongly agreed (BE, BG, LT).

<sup>689</sup> Survey of MS/SAC authorities: Q1.1: 12/27 agreed (AT, EE, FI, LT, LU, MT, PL, RO, SE and IS), 2 strongly agreed (BE, BG).

<sup>690</sup> Survey of MS/SAC authorities: Q1.1: 8/27 agreed (EE, MT, SE, SI), 1 strongly agreed (BG); nearly half of respondents (8/27) neither agreed nor disagreed (CZ, FI, LT, LV, LU, RO and CH, IS).

<sup>691</sup> Survey of MS/SAC authorities: Q1.1: 6/27 agreed (BE, LT, LV and IS), 2/27 strongly agreed (BG, SE); 12/27 neither agreed nor disagreed (AT, CZ, EE, FI, HU, LU, MT, RO and CH, IS).

<sup>692</sup> Survey of MS/SAC authorities: Q1: 15/27

<sup>693</sup> Survey of MS/SAC authorities: Q1: 5/27 (DE, EE, FI, PL and NO).

<sup>694</sup> Survey of MS/SAC authorities: Q1: 1/27 (BE).

<sup>695</sup> Survey of MS/SAC authorities: Q1.4: 14/27 agreed (AT, BG, CZ, EL, FI, FR, HU, LV, MT, PT, SE, SI and CH, IS), 4/27 strongly agreed (BE, EE, IT, LT).

Frontex's mandate is clearly defined and conducive to addressing the specific needs and challenges.

Considering the areas of EIBM activity outlined in the EBCG Regulation, the overall consensus among Member States is that all four tiers could not have been achieved sufficiently by Member States acting alone. The majority of respondents felt that this was particularly true in the areas of: 1) returns;<sup>696</sup> 2) risk analysis contributing to a comprehensive situational awareness;<sup>697</sup> and 3) border control measures at the external borders.<sup>698</sup> There is overall support for Frontex helping to coordinate measures in third countries, with some comments highlighting that Frontex could do more to ensure unified and coherent action.<sup>699</sup>

### Capacity-building

Frontex implemented a range of training activities for Member States and third countries and met most internal training targets. Although Frontex successfully delivered assistance (including establishing common training standards), almost half of the Member States noted the lack of training for either Category 2 or 3 Standing Corps staff, or for Member States.

Member States noted that the biggest training-specific issues included insufficient capacity within Frontex to deliver all training activities, the lack of high-quality trainers (partly due to the lack of a trainer profile in the Standing Corps and to inadequate compensation for trainers), and difficulties in finding and managing host training centres. A great majority of Member States reported that the training of border and coastguards and return experts, as per Frontex's mandate, is clearly defined and conducive to addressing the specific needs and challenges.<sup>700</sup>

Member States noted that the education and training of the EBCG, in particular the common training standards, by Frontex contributed to improving training of national border guards,<sup>701</sup> developing and strengthening border management capabilities in their Member State,<sup>702</sup> facilitating cooperation among Member States' border and coastguards training institutions,<sup>703</sup> successfully mainstreaming fundamental rights in the national training programmes,<sup>704</sup> and ensuring a harmonised and common approach to EU border and coast guard training in the Member States.<sup>705</sup>

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<sup>696</sup> Survey of MS/SAC authorities: Q1.5 on returns: 2/27 strongly disagreed (AT, LU); 20/27 disagreed (BE, BG, CZ, EE, FI, LT, LV, MT, PL, SE, SI, SK and CH, NO).

<sup>697</sup> Survey of MS/SAC authorities: Q1.5 on risk analysis: 4/27 MS/SAC strongly disagreed (CZ, LT, SE and CH); 16/27 MS/SAC disagreed (BE, BG, EE, FI, LU, LV, MT, RO, SI, SK and IS, NO).

<sup>698</sup> Survey of MS/SAC authorities: Q1.5 on border control measures at the external borders: 17/27 disagreed (AT, BG, CZ, EE, FI, LT, LU, MT, SE, SI, SK and CH, IS, NO).

<sup>699</sup> Survey of MS/SAC authorities, Q1.5, FI comment.

<sup>700</sup> Survey of MS/SAC authorities: Q1.7: 15/27 agreed (AT, DE, DK, EE, EL, FI, HU, IE, LV, MT, PL, PT, RO, SI and IS), 5/27 strongly agreed (BG, CZ, IE, LT, LU).

<sup>701</sup> Survey of MS/SAC authorities: Q3.1: 18/27 agreed (AT, BG, DK, EE, EL, ES, FI, FR, IT, LT, LU, LV, MT, PL, SE, SI, SK and NO), 4/27 strongly agreed (BE, HU, PT, RO).

<sup>702</sup> Survey of MS/SAC authorities: Q3.1: 16/27 agreed (AT, BE, BG, DK, EE, EL, HU, IT, LT, LU, LV, PT, RO, SE, SK and NO). Member States'/SACs' overall satisfaction with the extent to which tailored training activities met broader objectives (such as developing and strengthening border management capability) is coherent with the higher extent of cooperation of national stakeholders in the design of training activities.

<sup>703</sup> Survey of MS/SAC authorities: Q3.1: 13/27 agreed (AT, BE, CZ, BG, DE, EE, EL, FI, LT, LU, LV, RO, SK), 3/27 strongly agreed (HU, PT and NO).

<sup>704</sup> Survey of MS/SAC authorities: Q3.1: 16/27 agreed (AT, BG, CZ, EL, FI, IT, MT, LT, LU, LV, PL, PT, RO, SI, SK and NO), 2/27 strongly agreed (BE, HU).

<sup>705</sup> Survey of MS/SAC authorities: Q3.1: 17/27 agreed (AT, BG, CZ, DE, DK, EE, EL, FI, IT, LT, LU, LV, MT, PT, RO, SE, SK), 4/27 strongly agreed (BE, HU, SI and NO).

### **Situational awareness, risk analysis and vulnerability assessment**

A majority of Member States declared that Frontex's activities contribute to comprehensive situational awareness and building a situational picture through 24/7 (near) real-time information, crisis monitoring and surveillance.<sup>706</sup> Similarly, the majority of respondents agreed that Frontex's risk analysis products are comprehensive, timely, up-to-date, adequately sourced, and successful in monitoring migration flows.<sup>707</sup>

A majority of Member States agreed that the implementation of the EUROSUR framework is effective in terms of information exchange to improve situational awareness.<sup>708</sup> However, at the same time, the majority do not see the current scope of EUROSUR and the information requested as sufficient to improve detection, prevention and combating of irregular migration and cross-border crime, or to contribute to protecting and saving the lives of migrants,<sup>709</sup> with almost half of the respondents neither agreeing or disagreeing with the statement or providing no answer.<sup>710</sup>

### **Operations**

Most Member States participated in joint operations<sup>711</sup>, while about half participated in operational activities to fight cross-border crime<sup>712</sup> and operational activities related to document fraud.<sup>713</sup> Overall, at least 30% did not experience any issues in the course of a Frontex operation. The main issues reported include language issues; availability of Standing Corps profiles; joint planning; different work practices and work rules; and sharing/access to information. While 11 Member States<sup>714</sup> did not experience any issues with the level of training of Standing Corps Officers, 10<sup>715</sup> noted issues related to the level of training and preparedness of SCOs during deployment.

### **Return**

The majority of survey respondents did not face any challenges when cooperating with Frontex in the different stages of the return process. Some Member States<sup>716</sup> particularly valued Frontex's assistance with organisation of charter flights, as a safer option to return extremely violent and difficult cases. Efforts were made to use scheduled flights for cases that can reasonably be returned using that mode. The remaining – often disruptive cases – were returned by charter flight to ensure no risk to other passengers, the escort or flight staff, or the returnee themselves. Two Member States<sup>717</sup> with small caseloads commented that joint return operations provide an opportunity to return the most difficult cases in a more controlled environment, where it would have been highly inefficient to do so on

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<sup>706</sup> Survey of MS/SAC authorities: Q2.1: 16/27 (AT, BG, EE, FI, HU, LT, LU, MT, RO, SE, SI and CH, NO).

<sup>707</sup> Survey of MS/SAC authorities: Q.2.1: 'Comprehensive', 19/27 (AT, BE, CZ, DE, DK, EE, EL, ES, FI, HU, IE, LT, LU, MT, PT, RO, SE, SI, SK); 'Timely', 15/27 (AT, BG, DE, EE, EL, ES, FI, IE, LU, LV, MT, PT, RO and CH, NO); 'Up-to-date', 19/27 (AT, BE, DE, DK, EE, EL, ES, FI, FR, IE, LT, LU, LV, MT, PT, RO and CH, NO); 'Adequately sourced', 17/27 (AT, BE, CZ, DK, EE, EL, FI, FR, HU, LT, LU, LV, MT, RO, SE, SI, SK); 'Successfully monitored migration flows', 16/27 (AT, BE, CZ, DK, EE, EL, FI, FR, LT, LU, MT, RO, SE, SI, SK and NO).

<sup>708</sup> Survey of MS/SAC authorities: Q7: 17/27 (AT, BG, CZ, DE, DK, EE, EL, LT, LU, LV, MT, PL, PT, SE, SK and CH, NO).

<sup>709</sup> Survey of MS/SAC authorities: Q7: 6/27 (DE, EE, EL, LT, MT, SE).

<sup>710</sup> Survey of MS/SAC authorities: Q7: 11/27 (BE, CZ, HU, IT, LU, LV, PL, PT, SI and CH, NO).

<sup>711</sup> Survey of MS/SAC authorities: 22/27 (AT, BE, BG, CZ, DE, DK, EE, ES, EL, FI, FR, IT, LT, LV, PL, PT, RO, SI and CH, IS, NO).

<sup>712</sup> Survey of MS/SAC authorities: 15/27 (AT, BE, BG, DE, EL, ES, FI, FR, LT, LV, MT, SK, PL, PT, RO).

<sup>713</sup> Survey of MS/SAC authorities: 14/27 (AT, BE, BG, CZ, DE, DK, ES, FR, LT, LV, MT, PL, RO and NO).

<sup>714</sup> Survey of MS/SAC authorities: 12/27 (AT, CZ, DK, EL, FR, LT, MT, PT, SI, SK and CH, NO).

<sup>715</sup> Survey of MS/SAC authorities: 10/27 (BE, BG, DE, EE, ES, IT, FI, LV, PL, RO).

<sup>716</sup> Survey of MS/SAC authorities: Q6.2: 3/27 (FI, HU and NO).

<sup>717</sup> FI, HU.

NROs. Pre-return assistance was also valued by the Member States with good experience and responsiveness from EURLOs.

## A8.2.2 Frontex

The study team conducted extensive online interviews with Frontex units and divisions, as well as a two-day visit to Frontex headquarters in Warsaw. The visit allowed the team to focus its discussions on emerging findings and addressing final data gaps.

Frontex described the challenges in applying the EU Staff Regulations to the EBCG Regulation and the Standing Corps, as they are not best suited to an operational, uniformed, and armed service with executive powers. Put simply, the rules set out in the EU Staff Regulations do not match the needs of the Standing Corps. For instance, aspects related to shift work and stand-by patterns, ranks, recognition of hardship, specific deployment rules outside of the mission guide, disciplinary proceedings, rights, and entitlements are not suitable for the Standing Corps. SCOs may work shifts under the operational command of a Team Leader from a certain Member State, who will work according to their national rules. The hours of work may not correspond to Frontex hours of work, which derive from the EU Staff Regulations.

The EU legal framework was not developed with an operational, uniformed, and armed corps with executive powers in mind. The lack of an appropriate legal framework applicable to such service has negatively affected recruitment, management, and deployment of the Standing Corps.

The Agency's view is that its current **organisational structure** is not sufficiently aligned with its new mandate and further changes are needed. It waited for the appointment of a new Executive Director (in post as of March 2023) to start internal discussions about possible reorganisation. The transformation from a traditional EU agency administration into an operational agency able to deploy, manage and logistically support a 10,000-strong Standing Corps, consisting (primarily) of law enforcement officers and specialised equipment and assets, is still incomplete. Frontex plans to carry out a broad functional evaluation of the workload and available competencies of staff, including considering possible reallocations between divisions and units in 2023 to ensure that all units have the staff to ensure timely implementation of the EBCG Regulation. Discussions are ongoing on how best to embed the Standing Corps into the organisational structure of the Agency.

Another emerging key finding from the consultations with the Agency related to key issues in **processing personal data**, including the general rules governing processing of personal data by the Agency (Article 86), the main purposes of processing of the personal data (Article 87), as well as provisions concerning processing of personal data collected during joint operations (Article 88). According to the Agency, the Regulation contains vague and unclear provisions on the possibility and scope of the Agency to process operational personal data. This means that Frontex cannot fully successfully engage in operational activities without proper mechanisms to exchange information, secure communication channels and other crucial provisions to ensure national ownership of data, handling codes, data retention and logging obligations (when communicating with Europol/Eurojust). The question remains as to whether the current framework impedes possible cooperation on exchange of personal data with entities not mentioned by the EBCG Regulation or MB decisions, but that are nevertheless important JHA partners in many domains (for example, OLAF or EPPO).

The study team developed a **survey for Standing Corps' members**. This was transmitted to Frontex contact points for dissemination, and 529 responses were received. The objective of the survey was to gather the inputs of SCOs on their background and their experience with recruitment, training and deployment. The survey included questions for all categories, as well as category-specific questions. Most of the respondents were



Category 1 Standing Corps (76.4%), followed by Category 2 Standing Corps (15.5%) and Category 3 Standing Corps (8.1%). Most of the officers were deployed as BGOs (58%) and had a law enforcement background (93%). Almost half of the respondents were between 40 and 49 years old (47%), with the next-largest age group aged 30-39 years old (35%). The vast majority of respondents were male (87%).

In consultation with DG HOME, the study team prepared a **survey for FRMs**. This was transmitted to Frontex contact points and the FRO for further dissemination. In total, 34 responses were received. The survey aimed to gather information on FRMs' training and main challenges encountered during monitoring activities. However, based on the survey results, only a small number of FRMs have been deployed as forced-return monitors so far. Of the 34 responses, 21 indicated have not yet been deployed as forced-return monitors and were unable to answer related questions.

### A8.2.3 EU stakeholders

The **European Commission** oversees the work of EU decentralised agencies and is represented on Frontex's MB. The EBCG Regulation confers several wide-ranging powers on the Commission, which allow for political oversight of key Frontex activities (including externally).

A total of 13 interviews were carried out with the European Commission (DG HOME, DG INTPA, DG JUST, DG MARE, DG NEAR, and Secretariat-General (Sec-Gen), and one scoping interview with the Commission's MB representative.

According to the Commission, the governance model of Frontex is largely in line with the Common Approach on Decentralised Agencies.

The New Pact on Migration and Asylum sets out a fairer, more European approach to managing migration and asylum within and outside the EU. Its rationale is that no Member State should bear a disproportionate responsibility and that all Member States should consistently contribute to solidarity in the field of migration and asylum. The New Pact builds on the EBCG Regulation and foresees the Agency contributing to several of the dimensions in Regulation (EU) 2019/1896, especially given its new role in returns.<sup>718</sup>

The New Pact mainly focuses on the roles of the former EASO (now the EUAA) and Frontex. In principle, the New Pact is coherent with these agencies' practices. However, Member States are still implementing the New Pact, making it harder to fully evaluate coherence. In addition, the EU has yet to finalise the full scope of new migration legislation foreseen in the New Pact, complicating the coherence assessment.

The renewed EU Security Union Strategy<sup>719</sup> adopted on 24 July 2020 highlights Frontex's role in tackling cross-border crime and terrorism at the external borders through border control, and reflects its enhanced mandate to strengthen EU coordination and thereby support Member States to address common challenges. The Commission is specifically tasked with providing additional oversight and support to ensure coherence of Frontex activities with wider EU policies. As stated in the EBCG Regulation, 'the Commission should ensure consistency between European Integrated Border Management [EIBM] and other Union policies in the field of the Union's external action and, in particular, the Common Security and Defence Policy [CSDP].'<sup>720</sup>

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<sup>718</sup> Interviews with European Commission Secretariat-General (2), and EEAS (1).

<sup>719</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU New EU Security Union Strategy'. COM(2020) 605 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0605&from=ES>

<sup>720</sup> Recital 89 EBCG Regulation.



Interviews with the EEAS indicated that the CSDP is an essential part of the EU's CFSP, described in the TEU and serving as the main framework for CSDP missions. The EBCG Regulation is seen as aligned with these frameworks and establishes guidelines and objectives for cooperation between Frontex and CSDP missions.<sup>721</sup> Frontex's work in the external dimension is coherent with the EU Action Plan on the Western Balkans (2022),<sup>722</sup> which sets out 20 operational measures to support Western Balkan countries on their path toward EU accession. Priorities include strengthening border management, ensuring swift asylum procedures, taking action against migrant smuggling, and return. The Action Plan emphasises the cooperation of Western Balkan countries with Frontex under the framework of existing and new status agreements.

The European Commission's IAS highlighted the lack of sufficient internal coordination mechanisms as a weakness within Frontex.<sup>723</sup> This is partly due to the fragmented organisational structure, as well as to insufficient horizontal coordination mechanisms.

The **European Parliament** provides political scrutiny and budgetary oversight of the Agency. Four interviews were carried out with Members of the European Parliament (MEPs) of the LIBE Committee. Interviews with the MEPs revealed that the political scrutiny and budgetary oversight of the European Parliament appears largely effective, with the Parliament enhancing its oversight following intense media pressure on Frontex in recent years.<sup>724</sup> In January 2021, the LIBE Committee created the FWSG to monitor all aspects of the functioning of Frontex and to investigate alleged violations of the Agency's compliance with fundamental rights in which the Agency was involved, was aware of and/or did not act upon.<sup>725</sup> A final report of the Working Group was presented in July 2021.<sup>726</sup> Following the parliamentary FWSG's inquiry, the Parliament withheld its approval of the management of the Agency's budget.<sup>727</sup> This was done for the first time in April 2021, when the Parliament decided not to discharge the Frontex budget for 2019 and again in May 2022 for 2020.<sup>728</sup> The second decision was linked to a report by OLAF on its investigation of Frontex following allegations of illegal pushbacks.<sup>729</sup> According to an MEP withholding the Agency's budget has an important political significance. It should be noted that on 10 May 2023, the Parliament discharged the Frontex budget for 2021.<sup>730</sup>

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<sup>721</sup> Interview with EEAS (1).

<sup>722</sup> European Commission (2022). 'EU Action Plan on the Western Balkans.' Available at: [https://home-affairs.ec.europa.eu/eu-action-plan-western-balkans\\_en](https://home-affairs.ec.europa.eu/eu-action-plan-western-balkans_en)

<sup>723</sup> European Commission (2022). 'Final audit report on governance, stakeholder management and external communication in the European Border and Coast Guard Agency', p. 2.

<sup>724</sup> Interviews with MEPs (4/4).

<sup>725</sup> European Parliament (2022). 'Scrutiny of Frontex'. Briefing. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)698816](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698816)

<sup>726</sup> European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee. Available at: [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)

<sup>727</sup> European Council on Refugees and Exiles (ECRE) (2021). 'Holding Frontex to account: ECRE's proposal for strengthening non-judicial mechanisms for scrutiny of Frontex'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>728</sup> Strik, T. (2022). 'European oversight on Frontex'. Available at: <https://verfassungsblog.de/european-oversight-on-frontex/>

<sup>729</sup> European Anti-Fraud Office (OLAF), Final Report, CASE No OC/2021/0451/A1 (sensitive information). Available online: [https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate\\_A\\_redacted-2.pdf](https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf)

<sup>730</sup> European Parliament (2023). 'Discharge approval but MEPs concerned over control of EU's recovery and resilience funds.' Accessible at: <https://www.europarl.europa.eu/news/en/press-room/20230505IPR85005/discharge-approved-but-meps-concerned-over-control-of-eu-s-recovery-funds>

The final report by the FSWG noted that parliamentary oversight could be strengthened with national parliaments holding their own national governments accountable.<sup>731</sup> In this respect, one MEP highlighted during the consultation the opportunity to make use of Article 112 of the EBCG Regulation, which allows for cooperation between the European Parliament and national parliaments to exercise scrutiny more effectively. This is especially relevant in the context of the shared responsibility of Frontex and national authorities.

Some external stakeholders believe that a permanent European Parliament's representative to the MB of the Agency could enhance oversight; currently a member of the Secretariat of the LIBE Committee participates in the MB's meetings with an observatory role.<sup>732</sup> However, the interviewees from the Parliament expressed doubts on a permanent representative, given the perceived need for the Parliament to retain independence.<sup>733</sup> Rather, an interviewee stressed the need for the Parliament to be more systematic in executing its oversight function over the Agency and suggested the possibility to set up permanent Parliamentary Scrutiny Group (the current FSWG has a limited mandate).

On the appointment of Frontex's Executive Director, two MEPs highlighted the Parliament's lack of sufficient access to information on the candidates to the position, which was clear during the appointment process of the current Executive Director (2023).<sup>734</sup>

On Article 46 of the EBCG Regulation, the discussion focused on whether the decision referred to in Article 46 should be kept with the Executive Director alone or delegated to the political actors. On the potential involvement of the MB, an MEP raised concerns considering that the Board is a political body and, given that the majority of its members are from Member States' authorities, there is supposedly a political culture for Member States not willing to take decisions against other Member States because of political interests and considerations.<sup>735</sup>

According to two MEPs, the decision on triggering Article 46 should stay with the Executive Director provided that a more proactive approach would be adopted (e.g. the Agency would alert early on other relevant EU actors (Council and Commission) about issues with Member States' compliance with fundamental rights).<sup>736</sup>

A role for MB in the process could be envisaged in the sense that the Board should be more demanding towards the Executive Director's action in cases that there are serious fundamental rights violations.<sup>737</sup>

Another representative proposed introducing inter-institutional agreements between Frontex, Council and Parliament on the decision to trigger Article 46 or, in alternative, ensuring Member States' appropriate political representation in the MB of the Agency so as to make sure that the decision adopted by the Agency would be supported politically by national authorities.<sup>738</sup>

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<sup>731</sup> Strik, T. (2022). 'European oversight on Frontex'. Available at: <https://verfassungsblog.de/european-oversight-on-frontex/>

<sup>732</sup> ECRE (2021). 'Holding Frontex to account: ECRE's proposal for strengthening non-judicial mechanisms for scrutiny of Frontex'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>733</sup> Interviews with MEPs (3/4).

<sup>734</sup> Interviews with MEPs (2/4).

<sup>735</sup> Interviews with an MEP (1/4).

<sup>736</sup> Interviews with MEPs (2/4).

<sup>737</sup> Interviews with an MEP (1/4).

<sup>738</sup> Interviews with an MEP (1/4).

Overall, the four MEPs indicated issues with the implementation of the EBCG Regulation rather than with the legislative text, and expressed not being in favour of a new legislative proposal. Efforts should keep focusing at the implementation level.<sup>739</sup> Other EU-level stakeholders consulted included EASA, EDPS, EEAS, EMSA, EUAA, eu-LISA, European Ombudsman, Europol, EFCA, FRA, and SatCen, for a total of 15 interviews. They were consulted on specific issues pertaining to the EBCG Regulation, depending on their remit and focus. Europol, for example, commented that from its perspective, there is some degree of overlap and incoherence between the objectives and activities of the EBCG with the objectives and activities of other EU institutions, bodies and agencies. This is because the JHA architecture is complex at EU level. FRA highlighted that it would be necessary to increase the mainstreaming of fundamental safeguards in many areas of the Regulation (as per its legal opinion on the EBCG Regulation proposal). It also commented that the FRMs are not strictly speaking engaged in monitoring, but in other activities, such as shadowing. It is important for FRMs to reflect on their activities and fully utilise their potential, as they are not currently making the most of their capabilities.

#### A8.2.4 International organisations and civil society organisations

The study team carried out three interviews with international organisations that are members of the CF. The team also interviewed five civil society organisations that are members of the CF and four others that are not part of the CF.

The interviews aimed to gather the views of stakeholders on Frontex's compliance with fundamental rights. The views of international organisations and civil society organisations were largely aligned, with stakeholders' concerns centring on the limited functioning of Frontex's fundamental rights framework. One international organisation, for example, highlighted the importance of better mainstreaming fundamental rights in all operational activities of the Agency.<sup>740</sup> Key concerns are presented below on main elements of the fundamental rights framework.

On Article 46 of the EBCG Regulation, the main issue, flagged by various stakeholders, is that the EBCG Regulation leaves ample discretion to the Executive Director's decision.<sup>741</sup>

For the FRO's work, some interviewees highlighted the Agency's limited follow-up to the FRO's recommendations.<sup>742</sup>

On the FRMs' access to operational areas, an interviewee indicated that particularly in one Member State the FRMs encountered difficulties, such as delays in receiving approval by Member States' authorities and proposals to visit different locations and/or be part of other activities (because of security reasons).<sup>743</sup> According to another organisation, the FRMs' monitoring activity does not include proper shadowing of border guards.<sup>744</sup>

As regards the SIRs mechanism, various civil society and international organisations raised the lack of follow-up on SIRs by Member States' authorities.<sup>745</sup>, the absence of sanctions for failing to report SIRs related to fundamental rights violations, and the

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<sup>739</sup> Interviews with MEPs (3/4).

<sup>740</sup> Interview with international organisations/members of the CF (1/3).

<sup>741</sup> Interviews with civil society organisations/non-members of CF (2/4) and civil society organisations/members of CF (3/5) and international organisation/member of CF (1/3).

<sup>742</sup> Interviews with civil society organisations/non-member of CF (2 out of 4) and a civil society organisation/member of CF (1 out of 5).

<sup>743</sup> Interview with a civil society organisation/non-member of the CF (1/4).

<sup>744</sup> Interview with a civil society organisation/non-member of the CF (1/4).

<sup>745</sup> Interview with two international organisations/members of the CF (2/3).

insufficient indication on which sanctions are applicable to those responsible and how often they are imposed.<sup>746</sup>

For complaints, various interviewees raised concerns on the scope of access to this mechanism<sup>747</sup>, on the discretion left to the Executive Director in the decisions of complaints<sup>748</sup>, limited awareness of the mechanism among the legal practitioners and civil society organisations.<sup>749</sup> Regarding complaints towards Frontex staff, two of the interviewed civil society organisations expressed doubts regarding the follow-up to complaints and the extent to which corrective measures are being implemented within the Agency.<sup>750</sup> At operational level, a number of stakeholders discussed the risks to fundamental rights in some of Frontex's operations and Frontex's potential indirect involvement, referring particularly to the support to Hungary,<sup>751</sup> Lithuania,<sup>752</sup> Greece<sup>753</sup> and in the Central Mediterranean,<sup>754</sup> and cooperation with third countries.<sup>755</sup>

For the organisations that are members of the CF, the interviews covered specifically the overall functioning of the CF, whether the conditions set out in Article 108 of the EBCG Regulation enabled the CF to provide valuable fundamental rights advice, and the main challenges encountered in the CF's work. In this respect, the main issue reported by the CF's members and some civil society organisations (non-members of the CF) is the lack of (or improper) follow-up to the CF's recommendations.<sup>756</sup> On the limited requests for consultation of the CF, an interviewee reported that the consultation of the CF seems a 'ticking box exercise' for the Agency rather than an effective tool for the CF's members to contribute significantly to Frontex's work.<sup>757</sup>

During the consultation, some interviewees reported on the considerable workload and efforts required to contribute to the work of the CF.<sup>758</sup> Providing expertise on a voluntary basis limits the possibilities for CF's members to share meaningful input to the work of the CF. This is particularly relevant for the civil society organisations given their limited resources and staff, as highlighted by a few stakeholders.<sup>759</sup> This also affects the possibility for smaller civil society organisations to take up the role of Chairs of the CF. Within the CF, discussion is ongoing among members and Chairs on how to best address

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<sup>746</sup> Interviews with civil society organisations/non-members of the CF (2/4); civil society organisations/members of the CF (2/5).

<sup>747</sup> Interview with a civil society organisation/member of the CF (1/5).

<sup>748</sup> Interview with a civil society organisation/non-member of the CF (1/4).

<sup>749</sup> Interviews with civil society organisations/non-members of the CF (2/4).

<sup>750</sup> Interviews with civil society organisations/members of the CF (2/5).

<sup>751</sup> Interviews with civil society organisations/non-members of the CF (2/4), civil society organisations/members of the CF (3/5) and an international organisation/member of the CF (1/3).

<sup>752</sup> Interviews with a civil society organisation/non-member of the CF (1/4) and a civil society organisation/member of the CF (1/5).

<sup>753</sup> Interviews with an international organisation/member of the CF (1/3), a civil society organisation/non-member of the CF (1/4).

<sup>754</sup> Interviews with a civil society organisation/non-member of the CF (1/4), civil society organisation/member of the CF (1/5) and international organisations/members of the CF (2/3).

<sup>755</sup> Interviews with civil society organisations/members of the CF (3/5).

<sup>756</sup> Interviews with international organisations/members of the CF (3/3), civil society organisations/members of the CF (5/5), civil society organisations/non-members of the CF (4/4).

Interviews with international organisations/members of the CF (3/3), civil society organisation/member of the CF (5/5), civil society organisations/non-members of the CF (4/4).

<sup>757</sup> Interviews with a civil society organisation/member of the CF (1/5).

<sup>758</sup> Interviews with civil society organisations/non-members of the CF (2/4), civil society organisations/members of the CF (3/5), international organisations/members of the CF (3/3), and the Fundamental Rights Agency (FRA).

<sup>759</sup> Interview with a civil society organisation/member of the CF (1/3).

such practical challenge, for instance through financial support for the Chairs of the Forum or having members contributing only to certain areas of expertise.<sup>760</sup>

### A8.2.5 Third countries' authorities

To examine Frontex's cooperation with third countries, the study team carried out two interviews with the relevant authorities of Moldova and Montenegro, both of which emphasised their satisfaction with the cooperation with Frontex. For Montenegro, the new Status Agreement has only recently been signed (in 2023), making it too soon to assess the new modalities of cooperation foreseen under the new EBCG Regulation. Both countries emphasised the added value of Frontex, including additional resources (human and technical) needed locally, as well as the exchange of expertise with Member State staff, enabling capacity-building. Categories 2 and 3 Standing Corps staff were seen to add greater value. Both countries expressed interest in continued cooperation with Frontex and exploring new areas of enhanced cooperation in line with their new status agreements.

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<sup>760</sup> Interview with a civil society organisation/member of the CF (1/5).

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