



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

Final Report

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## Abstract EN

This study supports DG HOME with the evaluation of **Regulation (EU) 2019/1896 on the European Border and Coast Guard** (also known as the EBCG Regulation), assessing its relevance, effectiveness, efficiency, coherence, and EU added value. This is done by analysing the functioning of and the results achieved by Frontex, including its objectives, mandate, resources, and tasks from the entry into force of the EBCG Regulation (2019) to January 2023. It also takes into consideration the whole European Border and Coast Guard, including the role of Member States and Frontex and the division of responsibilities. In addition, the study supports the **review of the Standing Corps**, including the functioning, composition, size of Member States' contributions, number of the staff members, level of training, expertise, and professionalism (in line with Article 59 of the EBCG Regulation).

## Abstract FR

Cette étude soutient la DG HOME dans l'évaluation du **règlement (UE) 2019/1896 relatif à l'agence européenne de garde-frontières et de garde-côtes** (également connu sous le nom de règlement EBCG), en évaluant sa pertinence, son efficacité, son efficience, sa cohérence et la valeur ajoutée européenne. Pour ce faire, elle analyse le fonctionnement de Frontex et les résultats obtenus, y compris ses objectifs, son mandat, ses ressources et ses tâches, depuis l'entrée en vigueur du règlement EBCG (2019) jusqu'en janvier 2023. Elle prend également en compte l'ensemble du corps européen de garde-frontières et de garde-côtes, y compris le rôle des États membres et de Frontex et la répartition des responsabilités. En outre, l'étude soutient **l'examen du corps permanent**, y compris le fonctionnement, la composition, l'importance des contributions des États membres, le nombre de membres du personnel, le niveau de formation, l'expertise et le professionnalisme (conformément à l'article 59 du règlement relatif au corps européen de garde-frontières et de garde-côtes).

## Abstract DE

Diese Studie unterstützt die Generaldirektion HOME bei der Evaluierung der **Verordnung (EU) 2019/1896 über die Europäische Grenz- und Küstenwache** (auch bekannt als EBCG-Verordnung), indem sie deren Relevanz, Wirksamkeit, Effizienz, Kohärenz und EU-Mehrwert bewertet. Zu diesem Zweck werden die Funktionsweise von Frontex und die von ihr erzielten Ergebnisse analysiert, einschließlich ihrer Ziele, ihres Mandats, ihrer Ressourcen und ihrer Aufgaben in der Zeitspanne vom Inkrafttreten der EBCG-Verordnung (2019) bis Januar 2023. Die Studie untersucht auch die Europäische Grenz- und Küstenwache in ihrer Gesamtheit, einschließlich der Rolle der Mitgliedstaaten und jener von Frontex, sowie die Aufteilung der Zuständigkeiten. Darüber hinaus unterstützt die Studie die **Überprüfung der ständigen Reserve** im Einklang mit Artikel 59 der EBCG-Verordnung, einschließlich ihrer Funktionsweise und Zusammensetzung, des Umfangs der Beiträge der Mitgliedstaaten, der Anzahl der Mitarbeiter, des Ausbildungsniveaus, des vorhandenen Fachwissens und ihrer Professionalität.

# 1 Introduction

## 1.1 Purpose and scope of the study

The focus of the study is the evaluation of the **EBCG Regulation**<sup>1</sup>, assessing its relevance, effectiveness, efficiency, coherence, and EU added value. This is done by analysing the functioning of and the results achieved by Frontex, including its objectives, mandate, resources, and tasks from the entry into force of the EBCG Regulation (2019) to January 2023 (as set out in Article 121 of the EBCG Regulation). It also takes into consideration the whole European Border and Coast Guard, including Member States<sup>2</sup> and Frontex.

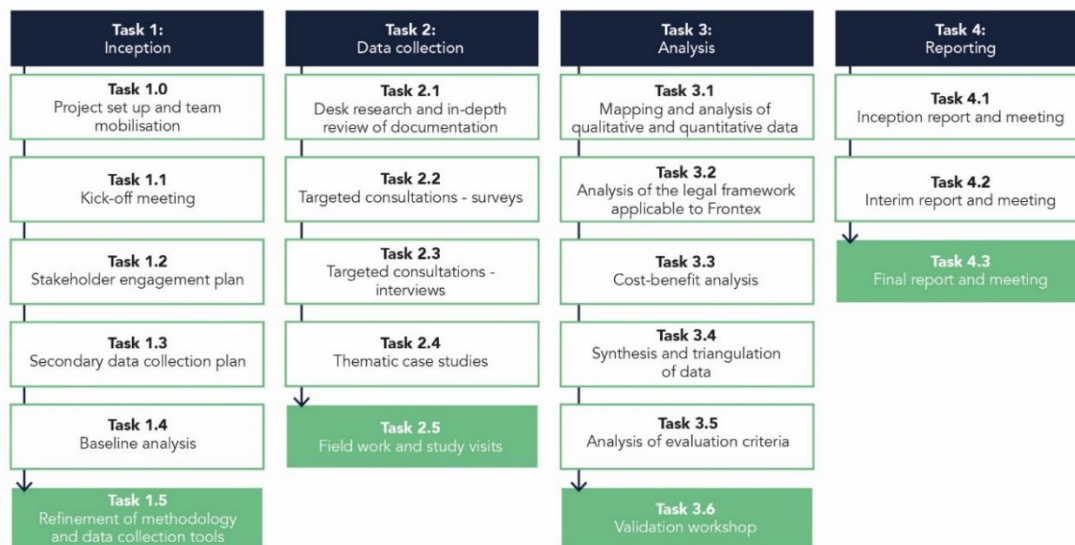
In addition, the study supports the **review of the Standing Corps** (Article 59 of the EBCG Regulation), including the functioning, composition, size of Member States' contributions, number of the staff members, level of training, expertise, and professionalism.

The study covers the EU Member States, the Schengen Associated Countries, and third countries with which the Agency has closer relations due to the conclusion of working arrangements and/or status agreements. The results will support the Commission by providing the necessary evidence to prepare a **Staff Working Document** on the evaluation of the EBCG Regulation and review of the Standing Corps.

## 1.2 Methodology

This study was guided by a methodological approach, which was divided into four tasks (summarised in Figure 1 below). The full methodology is elaborated in detail in Annex 3.

Figure 1. Overview of the methodological approach



Source: ICF elaboration

The findings are based on extensive data collection, including desk research, three surveys, 149 interviews with Member State national authorities, Frontex, other EU

<sup>1</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) No 1052/2013 and (EU) 2016/1624.

<sup>2</sup> In the context of this study, the term 'Member State' includes 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.

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stakeholders, non-governmental organisations (NGOs), international organisations, and third countries. The study team undertook five field visits to Frontex operations (Bulgaria, Finland, Greece, Italy, Romania), as well as to Frontex headquarters in Warsaw.



## 2 Background and context

### 2.1 Context and baseline

#### 2.1.1 European Border and Coast Guard

**Regulation (EU) 2016/1624 first established the European Border and Coast Guard (EBCG)**, which comprises the EBCG Agency (Frontex) and the national authorities responsible for border management, including coast guards (to the extent that they carry out border control tasks).

The aim of the EBCG is to ensure **European Integrated Border Management (EIBM)** at the external borders, with a view to managing those borders efficiently, in full compliance with fundamental rights and increasing the efficiency of the EU return policy. The concept of EIBM developed gradually, becoming legally binding with the adoption of the EBCG Regulation in 2016. EIBM is based on the four-tier access control model, which comprises measures in third countries (tier 1), measures with neighbouring third countries (tier 2), border control measures at external borders (tier 3), and measures within the Schengen area and return (tier 4).<sup>3</sup> Article 3 of the EBCG Regulation lists the components of EIBM, which are further detailed in the 2023 Commission Communication establishing the multiannual strategic policy for EIBM.<sup>4</sup>

Implementing EIBM is the shared responsibility of Member State authorities responsible for border management and return, and of Frontex, together forming the EBCG. While national border management authorities retain primary responsibility for managing their sections of the external borders, the members of the EBCG have a duty to cooperate in good faith and exchange information within the community.<sup>5</sup>

#### 2.1.2 The European Border and Coast Guard Agency

In 2004, Council Regulation (EC) 2007/2004 established the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). This was a crucial step towards the EU's common policy on external border management. The Agency's primary objective was to improve inter-agency and operational cooperation among the border control agencies of Member States. It also aimed to create and promote common policies for training, risk assessment, and joint operations. Essentially, the Agency served as the EU's operational tool to strengthen coordinated management of its external borders.

The structure, mandate and capacity of the Agency have since changed and expanded. The Frontex founding Regulation has been amended in 2007 and in 2011. The 2016/1624 EBCG Regulation repealed the Frontex Regulation (EC) 2007/2004. Two years after the entry into force of the 2016 Regulation, the Commission proposed a new regulation to reinforce the Agency, which came into force on 4 December 2019. It was adopted without conducting a prior impact assessment, largely due to the political expectation to prepare and adopt the proposal within a very short timeframe. The new (EU) 2019/1896 EBCG Regulation repealed the 2016 Regulation. Overall, the Agency progressively adopted a more operational role and moved away from a purely coordinating role (see Figure 2).

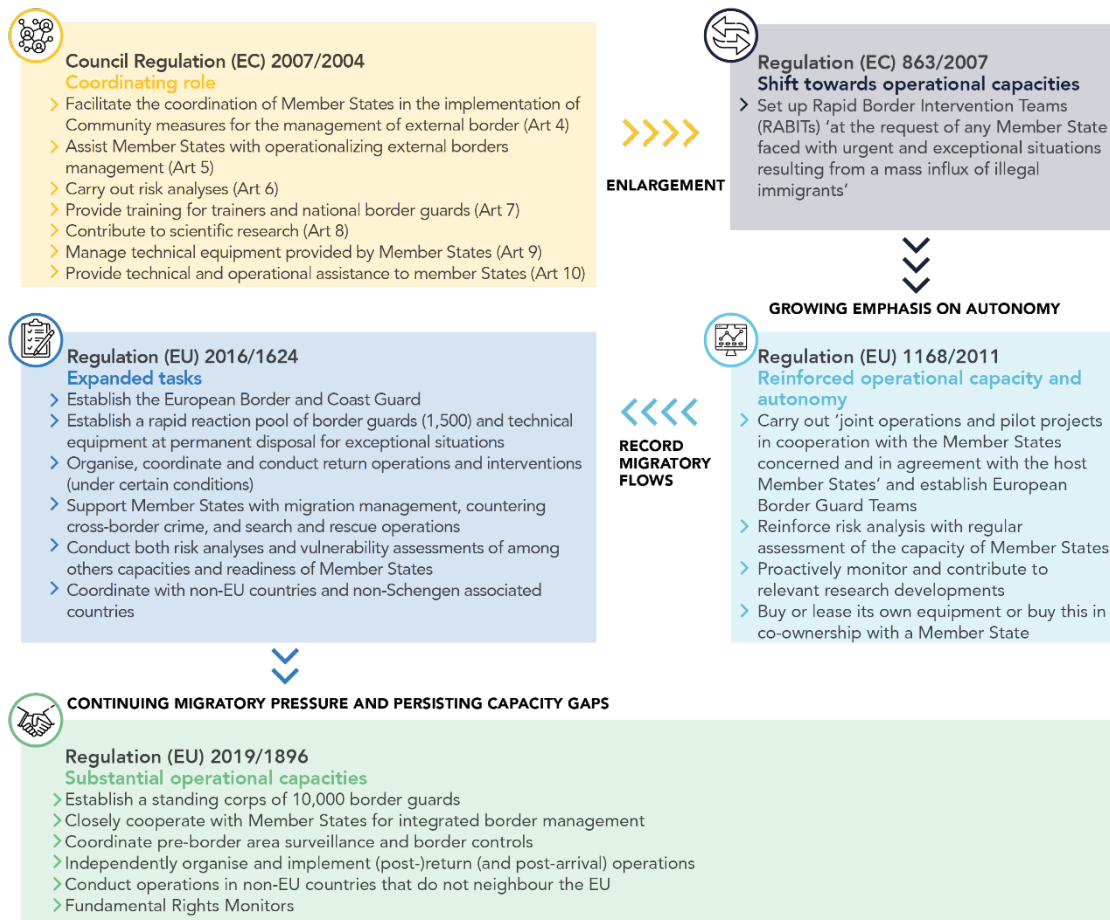
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<sup>3</sup> Recital 11 of the EBCG Regulation; European Commission (2023). 'Communication establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final.

<sup>4</sup> European Commission (2023). 'Communication establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final.

<sup>5</sup> European Commission (2023). 'Communication establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final; Article 7 EBCG Regulation (shared responsibility).

Figure 2. The evolution of Frontex's legal framework



Note: The overview of the main changes introduced is not exhaustive.

Source: ICF elaboration.

Frontex's annual budget increased gradually, from EUR 333 million in 2019 to EUR 754 million in 2022, representing a significant change from EUR 6 million budget in 2005.<sup>6</sup> A budget of EUR 845 million is allocated for 2023.<sup>7</sup>

### 2.1.2.1 Frontex's mandate

Frontex's mandate is to support Member States to efficiently manage external border crossing and address migratory challenges and potential future threats at the EU external borders. Frontex implements EIBM as a shared responsibility with the national authorities responsible for border management.<sup>8</sup> Member States retain primary responsibility for the management of their sections of the external borders, as well as for issuing return decisions. The Agency supports the application of Union measures relating to the management of the external borders and the enforcement of return decisions by reinforcing, assessing, and coordinating the actions of Member States, and providing technical and operational assistance in the implementation of those measures and in return matters.

<sup>6</sup> Frontex Budgets: 2019: [budget\\_2019.pdf](#); 2020: [budget\\_2020.pdf](#); 2021: Microsoft Word - FrontexVOBU2021 (europa.eu); 2022: [frontex\\_vobu\\_2022.pdf](#)

<sup>7</sup> Frontex Budget 2023: [frontex\\_vobu\\_2023.pdf](#)

<sup>8</sup> Article 7 EBCG Regulation (shared responsibility).

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Article 10 of the EBCG Regulation lists the tasks of the Agency, summarised below in Figure 3:

Figure 3. Frontex tasks



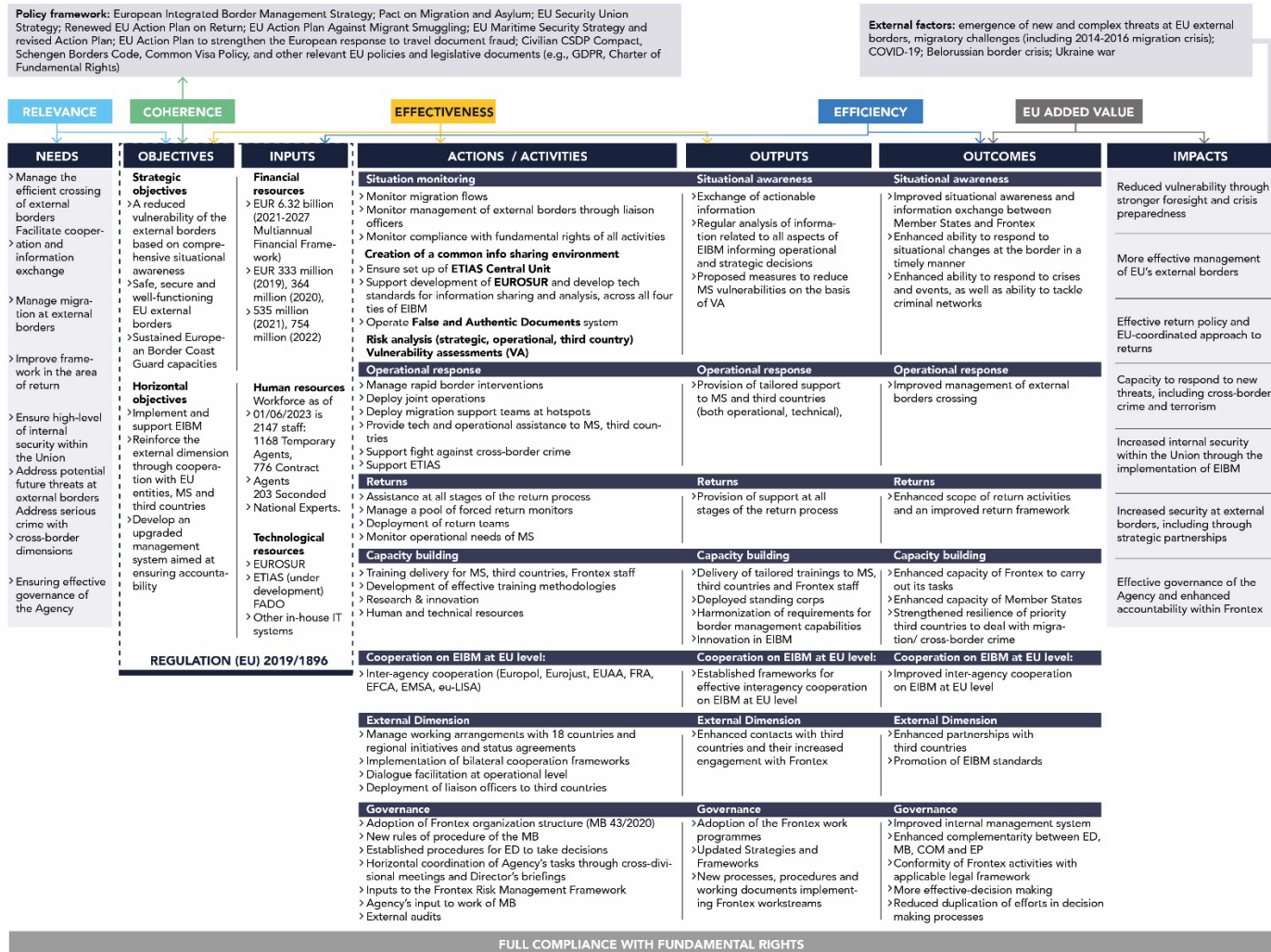
Source: ICF elaboration based on the EBCG Regulation

## 2.2 Intervention Logic

As per the Better Regulation Guidelines, the intervention logic summarises how the intervention was expected to work at the time of adoption. Figure 4 presents the **intervention logic** of the EBCG Regulation.

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Figure 4. Intervention Logic of Regulation 2019/1896



Source: ICF elaboration

### 3 How has the situation evolved over the evaluation period

This section provides a summary of key steps taken toward implementation of the EBCG Regulation, rather than an exhaustive overview of Frontex activities during the evaluation period.

Implementation of the 2019 EBCG Regulation (2019/1896/EU) is ongoing. Together with the Commission and the Management Board (MB), Frontex developed an Implementation Roadmap, which is regularly updated to reflect progress on key tasks.<sup>9</sup> The Roadmap is structured along the key tasks foreseen in the Regulation, with a focus on rapid operationalisation. The Roadmap has provided an overview of steps to be taken over a timeframe of one to two years, focusing on more immediate and short-term priorities. Currently, there is no indication of exactly when the Regulation will be implemented in full.

The period under evaluation was marked by a number of external events that influenced the implementation of the EBCG Regulation. The start of the COVID-19 pandemic in 2020 led to restrictions on global travel and delays in recruiting Standing Corps staff, as well as cancellations or delays of additional Frontex activities in 2020 and into 2021. The closure of international travel reduced the pressure from irregular migration at the external borders of the European Union (EU), reducing the need for Frontex support from Member States.

The situation at the EU's external borders continues to be dynamic. 2021 was characterised by the instrumentalisation of migration for political purposes by the Belarusian regime, requiring the deployment of additional resources at Europe's eastern land borders. This was followed by the full-scale invasion of Ukraine by the Russian Federation in 2022, creating an unprecedented mass influx of people into the EU as they fled the war in Ukraine.

Implementation of the EBCG Regulation took place in an evolving policy environment, including ongoing reform of the Schengen Borders Code (Regulation 2016/399/EU), the new Visa Code, changes to or developments of new border information technology (IT) systems (Schengen Information System (SIS), European Travel Information and Authorisation System (ETIAS), Entry-Exist System (EES), Visa Information System (VIS)) and interoperability between EU information systems (Regulations (EU) 2019/817 and 2019/818); as well as changes to key partner agencies' mandates (Europol, European Union Agency for Asylum (EUAA)).

The evaluation period was a period of significant turmoil for the Agency itself, with an investigation by the European Anti-Fraud Office (OLAF),<sup>10</sup> a critical report from the European Court of Auditors (ECA),<sup>11</sup> significant media scrutiny, and criticism from civil society, eventually resulting in a change to the Agency's leadership in 2022.<sup>12</sup> On 20 December 2022, the MB appointed a new Executive Director, Hans Leijtens, who took office on 1 March 2023.<sup>13</sup>

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<sup>9</sup> EBCG Agency and DG HOME (2020, 2021, 2022). 'Roadmap for the implementation of the European Border and Coast Guard 2.0.'

<sup>10</sup> See: [https://www.europarl.europa.eu/doceo/document/E-9-2022-000861-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2022-000861-ASW_EN.html)

<sup>11</sup> See: <https://www.eca.europa.eu/bg/publications?did=52964>

<sup>12</sup> Politico (2022). 'EU border agency chief resigns after critical watchdog probe.' Available at: <https://www.politico.eu/article/eu-border-agency-fabrice-leggeri-resigns-watchdog-probe-findings-released-misconduct/>

<sup>13</sup> Frontex (2022). 'Management Board appoints Hans Leijtens as new Frontex Executive Director'. Available at: <https://frontex.europa.eu/media-centre/management-board-updates/management-board-appoints-hans-leijtens-new-frontex-executive-director->

## 3.1 Implementation of the EBCG Regulation

### 3.1.1 Standing Corps

The EBCG Regulation established the European Border and Coast Guard Standing Corps, the **EU's first border and coast guard management service**, to improve the integrated management of the EU's external borders. During the period under review, the Agency has been operationalising the Standing Corps, in line with the EBCG Regulation.

The Agency initially faced delays in the establishment of the Standing Corps, partly due to the impact of COVID-19 on recruitment and training.<sup>14</sup> Nevertheless, Frontex has progressed the establishment of the Standing Corps, including additional recruitment between 2021 and 2022:

- Category 1 Standing Corps increased from 495 in 2021 to 678 in 2022;
- Seconded Category 2 Standing Corps increased from 347 in 2021 to 459 in 2022;
- Nominated Category 3 Standing Corps decreased from 3,444 in 2021 to 3,392 in 2022;
- Category 4 Standing Corps remained at 1,500.

### 3.1.2 Operations

Frontex carried out joint operations and rapid border interventions, providing continuous operational assistance to Member States. The evaluation found, based on the results of the stakeholder consultation that its extensive support enabled Member States and partner third countries (under status agreements) to draw on additional human resources and technical equipment when needed.

Overall, there were 14 joint operations in 2020, 19 joint operations in 2021 and 20 joint operations in 2022, with the majority being maritime joint operations.<sup>15</sup> Frontex also continued to facilitate the standardisation of procedures and harmonise operational implementation of good practices at EU level.

### 3.1.3 Return

The EBCG Regulation scaled up the Agency's support to all phases of return procedures, including voluntary returns, post-arrival and re-integration. It reinforced cooperation with third countries, in line with the EU's comprehensive external engagement, through exchange of information and facilitation on returns.

In 2022, for the first time, the Agency carried out two end-to-end return operations entirely organised by Frontex, with charter flights. A third operation was organised in March 2023 to Bangladesh. In 2022, Frontex recorded an increase of 36% in the total number of people returned, compared to 2021, of which a steadily increasing share were voluntary returns.

### 3.1.4 Capability development activities

The Agency expanded its capability development activities over the course of 2020-2022. Most targets for training activities were met across 2020-2022. The Technical Equipment

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<sup>14</sup> Frontex (2020). 'State of play of the implementation of the ECG 2.0 Regulation in view of the current challenges'. Available at: <https://www.statewatch.org/media/documents/news/2020/may/eu-council-frontex-ECBG-state-of-play-7607-20.pdf>; Frontex (2022). 'Consolidated Annual Activity Report 2021'. Available at: <https://prd.frontex.europa.eu/wp-content/uploads/caar-2021.pdf>

<sup>15</sup> Frontex (2020-2022). 'Consolidated Annual Activity Reports'.

Pool (TEP) grew from 1,245 items in 2020 to 1,870 items in 2022. Frontex also deployed major equipment, light equipment and portable equipment to existing joint operations in response to the full-scale invasion of Ukraine by the Russian Federation. On research and innovation, technical standards for maritime equipment, aerial equipment, land border surveillance equipment, and document inspection equipment were all adopted through Management Board Decision 51/2021 of 21 September 2021 adopting technical standards for the equipment to be deployed in Frontex activities. Management Board Decision 36/2022 of 28 June 2022 adopting the methodology for development of technical standards for the equipment to be deployed in Frontex activities followed in 2022.

### 3.1.5 Situational awareness

The Agency conducted its regular situational awareness activities, including providing regular risk analysis products, carrying out vulnerability assessments, and facilitating information exchange in the framework of the EUROSUR.

In line with the 2019 EBCG Regulation, Frontex developed a **Strategic Risk Analysis** (2022),<sup>16</sup> which provided the basis for the multiannual strategic policy cycle for the EIBM. Frontex and the European Commission also worked towards greater coherence between the Agency-led vulnerability assessments and the Commission-led Schengen evaluation mechanism.

In April 2021, the European Commission adopted an **Implementing Regulation** on the situational pictures of EUROSUR.<sup>17</sup> Frontex has however not yet begun to upgrade the Communication Network to the security level CONFIDENTIAL UE/EU CONFIDENTIAL (Article 14).

### 3.1.6 International cooperation

To facilitate enhanced cooperation with third countries, the model status agreement was revised and adopted in December 2021, in line with Article 76(1) of the EBCG Regulation.<sup>18</sup> The EU has since signed new status agreements with North Macedonia (2022),<sup>19</sup> Moldova (2022)<sup>20</sup> and Montenegro (2023).<sup>21</sup>

The Commission also adopted a revised model for working arrangements in December 2021. However, the Commission is awaiting the agreement of the European Data Protection Supervisor (EDPS) on the revised data protection modalities of the model working arrangements that would allow Frontex to conclude new working arrangements with third countries. Until then, Frontex continues to cooperate with third countries in the context of existing working arrangements (aligned with the 2016 EBCG Regulation).

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<sup>16</sup> Frontex (2022). 'Strategic Risk Analysis 2022-2032'. Available at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-publishes-strategic-risk-analysis-for-2022-2032-lcl5jq>

<sup>17</sup> Commission Implementing Regulation (EU) 2021/581 of 9 April 2021 on the situational pictures of the European Border Surveillance System (EUROSUR).

<sup>18</sup> European Commission (2019). 'Communication on the model status agreement as referred to in 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'. COM(2021) 829.

<sup>19</sup> European Commission (2022). 'Border management: EU signs agreement with North Macedonia'. Available at: [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_22\\_6417](https://ec.europa.eu/commission/presscorner/detail/es/ip_22_6417)

<sup>20</sup> European Commission (2022). 'EU signs agreement with Moldova on Frontex cooperation'. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1844](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1844)

<sup>21</sup> European Commission (2023). 'Border management: EU signs status agreement with Montenegro'. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2764](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2764)

### 3.1.7 Fundamental rights

The 2019 EBCG Regulation strengthened fundamental rights safeguards. In particular, the tasks of the Fundamental Rights Officer (FRO) were extended, and Fundamental Rights Monitors (FRMs) were introduced to assess fundamental rights compliance in operational activities.

To implement the legislative framework, the Agency updated the **Fundamental Rights Strategy**<sup>22</sup> (in 2021) and **adopted the implementing Action Plan**<sup>23</sup>.

To enhance the position of the **FRO**, Management Board Decision 6/2021<sup>24</sup> was adopted on the independence of the FRO, as well as Management Board Decision 43/2022,<sup>25</sup> which lays down the procedures and timelines for the Executive Director and MB to act on the recommendations of the FRO and Consultative Forum on fundamental rights (CF).

The EBCG Regulation provides for the recruitment of at least 40 FRMs by December 2020. The Agency reported initial delays but completed the recruitment of 46 FRMs in 2022. To guarantee effective monitoring, the Executive Director adopted the **Standard Operating Procedure (SOP) for FRMs**<sup>26</sup> in 2023. The SOP aims to clarify the scope of monitoring and reinforces FRMs' access to all areas of operational activity of the Agency (in line with Article 110(3)) of the EBCG Regulation), including land and sea patrolling, as well as FRMs' participation in briefing interviews (previously limited, if even possible). The Agency also **increased the monitoring of forced-return operations** through the pool of forced-return monitors and the FRMs.

The Agency adopted implementing rules/procedures to enhance the functioning of the reporting mechanisms (**Serious Incident Report (SIR) mechanism**,<sup>27</sup> **complaints mechanism**,<sup>28</sup> and **supervisory mechanism on the use of force**<sup>29</sup>).

To strengthen the functioning of the **procedure to trigger Article 46** of the EBCG Regulation, the Agency adopted the SOP<sup>30</sup> to clarify roles and responsibilities within the Agency to support the decision-making process of the Executive Director.

On **data protection**, to implement the requirements of Regulation 2018/1725 (EU DPR), the MB adopted Management Board Decision 68/2021,<sup>31</sup> and Management Board

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<sup>22</sup> Frontex (2021). Fundamental Rights Strategy.

<sup>23</sup> Management Board Decision 61/2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

<sup>24</sup> Management Board Decision 6/2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff.

<sup>25</sup> Management Board Decision 43/2022 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>26</sup> Frontex (2023), 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FRMs) in Frontex operational activities'. Internal document.

<sup>27</sup> Frontex (2021). Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

<sup>28</sup> Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

<sup>29</sup> 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; 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>30</sup> Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.

<sup>31</sup> Management Board Decision 68/2021 adopting the rules on processing personal data by the Agency.



Decision 69/2021.<sup>32</sup> However, these are under revision to respond to the critical opinions issued by the EDPS.

### 3.1.8 European Integrated Border Management

The establishment of the **multiannual strategic policy cycle for EIBM** (Article 8) was finalised in March 2023 with the adoption of the Commission's strategic guidance.<sup>33</sup> Frontex and the Member States are now preparing respectively the new Technical and Operational Strategy for EIBM (TO-EIBM) and the national strategies for EIBM to implement the multiannual strategic policy for EIBM.

Elements of **integrated planning and EBCG capability development** (Article 9) are yet to be finalised. Following Management Board Decision 2/2021 of 15 January 2021 adopting the methodology and the procedure for establishing the national capability development plans, 23 out of 28 Member States and Schengen Associated Countries (SACs) sent their national capability development plans to Frontex in 2022 (Article 9(4)). As part of the Agency's capability planning, the multiannual plan for profiles of the Standing Corps was adopted in 2023 through Management Board Decision 11/2023 of 22 March 2023 adopting the European Border and Coast Guard Standing Corps annual planning for 2024 and indicative multiannual planning of profiles. In 2022, the multiannual acquisition plan for technical equipment (Article 63(2)) was submitted to the European Commission for an opinion, with the Commission opinion adopted on 11 May 2023. Given the status of these developments, the capability roadmap (Article 9(8)) has not yet been finalised.

### 3.1.9 Organisation of the Agency

The Agency adopted a new, expanded organisational structure (nine Divisions) to better align with its enhanced mandate.<sup>34</sup> Discussions are ongoing on further adaptations to reflect the mandate and needs of the Agency, especially in the management of the Standing Corps. In line with the EBCG Regulation, the management structure of the Agency was expanded from one to three Deputy Executive Directors with specific thematic portfolios.

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<sup>32</sup> Management Board Decision 69/2021 adopting the rules on processing operational personal data by the Agency.

<sup>33</sup> European Commission (2023). 'Communication establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final. Available at: [https://home-affairs.ec.europa.eu/communication-establishing-multiannual-strategic-policy-european-integrated-border-management\\_en](https://home-affairs.ec.europa.eu/communication-establishing-multiannual-strategic-policy-european-integrated-border-management_en)

<sup>34</sup> Management Board Decision 46/2022 on the agency's organisational structure. Available at: [file:///C:/Users/54950/Downloads/mb-decision-46\\_20222\\_amending-mb-decision-43\\_2020-on-the-agencys-amended-organisational-structure..pdf](file:///C:/Users/54950/Downloads/mb-decision-46_20222_amending-mb-decision-43_2020-on-the-agencys-amended-organisational-structure..pdf)

## 4 Evaluation findings

This section presents key findings stemming from the evaluation of the EBCG Regulation in line with the evaluation criteria of effectiveness, efficiency, coherence, relevance and EU added value. The focus is on the functioning and results achieved by Frontex, including its objectives, mandate, resources and tasks from the entry into force of the EBCG Regulation (2019) to January 2023. The analysis also takes into consideration the whole European Border and Coast Guard, including the role of Member States and Frontex and the division of responsibilities. The analysis has been guided by an Evaluation Framework (Annex 2), which also indicates which sections of the report provide responses to which evaluation questions.

### 4.1 To what extent was the intervention successful and why (effectiveness, efficiency, coherence)?

The extent to which the EBCG Regulation was successful is analysed under the effectiveness, efficiency and coherence criteria. The analysis in this section starts with an overview of legal coherence and the policy framework governing Frontex and the EBCG. The following sections present findings per key thematic area of Frontex activities, including its governance and organisational structure, operations, return, situational awareness, capacity-building, external cooperation and fundamental rights. The efficiency analysis subsequently considers the use of human and financial resources by Frontex, as well as costs and benefits generated by the EBCG Regulation.

#### 4.1.1 Legal coherence<sup>35</sup>

The coherence assessment focuses on the internal and external coherence of the EBCG Regulation. The **internal coherence** assessment examines the extent to which the provisions of the EBCG Regulation are sufficiently clear and coherent with one another, as well as any possible gaps and inconsistencies. It then examines the **external coherence**, namely the extent to which the EBCG Regulation is in line with other relevant EU-level instruments, including (but not limited to) data protection requirements, Regulation 656/2014 and Regulation 2008/115/EC. This section presents a summary of the assessment, with the full legal coherence analysis included in Annex 4.

Table 1. Summary of key findings

Summary of key findings
<p><b>Key findings</b></p> <p><b>Internal coherence:</b></p> <ul style="list-style-type: none"><li>• <b>Overall, the EBCG Regulation’s provisions are generally coherent with one another, although several issues affect their internal coherence.</b> Examples include the absence of a clear definition of the objectives of the EBCG Regulation, or uncertainties in the allocation of responsibility between the Agency and Member States’ authorities during operations.</li><li>• <b>The analysis found that some provisions are drafted very broadly, risking a wide margin of interpretation from a data protection point of view</b> (e.g. risk analysis, EUROSUR), <b>while others are very narrow</b> (e.g. checking travel documents). It also highlighted <b>some unclarities in the data protection framework within the EBCG Regulation.</b> These were not sufficiently addressed and clarified by the implementing rules (Management Board Decisions 68/2021</li></ul>

<sup>35</sup> This section responds to the evaluation question 27 and partially 18.

and 69/2021) which are now being revised. On the allocation of responsibilities between the Agency and the Member States, it is not clear directly from the EBCG Regulation (and relevant Management Board Decisions), who is the data controller, data processor, data supervisor, or the applicable rules given that key elements are indicated in operational plans only (which are not public documents in their entirety). The flexibility given for exceptional cases to process personal data other than ship and aircraft identification numbers in Article 89 of the EBCG Regulation impacts understanding of the data flows within the EUROSUR framework. Interpretation issues were raised during the stakeholder consultation on 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 of the EBCG Regulation).

**External coherence:**

- **The EBCG Regulation is coherent with other EU-level legislative instruments, but there is room for improvement.** Despite the EBCG Regulation's coherence with the Return Directive (2008/115/EC), the term 'assisted voluntary return' introduced in the EBCG Regulation is not defined. There are also some discrepancies between the EBCG Regulation's provisions and international standards on the use of force. Coordination with the Schengen Evaluation Regulation is enhanced by the recent Council Regulation (EU) 2022/92 (reformed Schengen Evaluation Regulation), although a mismatch remains between the vulnerability assessment/risk analysis and the Schengen evaluations of fundamental rights matters.
- **The application of the EU Staff Regulations to the EBCG Regulation and the Standing Corps presents challenges** due to their lack of suitability for an operational, uniformed, and armed service with executive powers, resulting in inconsistencies in working conditions, selection procedures, deployment locations, leave entitlements, disciplinary measures, and complaints mechanisms.
- **The EBCG Regulation does not explicitly mention the EU information systems and databases to which EBCG team members is granted access.** Rather, access rights to EU level information systems are determined in the legislative basis of some (but not all) information systems and databases (SIS, ETIAS), whilst access to national databases is regulated at national level. **The references in the EBCG Regulation to the ETIAS Central Unit (ECU) are limited** and are outlined in the ETIAS Regulation, and in the Interoperability Regulations. The functioning of ETIAS, including its risk indicators and screening rules, might carry the potential risk of discriminatory profiling for certain categories.
- On the **international transfers** of personal data to third countries, the EBCG Regulation refers to the conditions laid down in Chapter V of the EU DPR. The Agency is relying on the Member States to do the transfer or uses derogations ('of important reasons of public interest') on a case-by-case basis. However, derogations for transfers should be applied as a last resort and further discussions should focus on the possibility for the Agency to adopt implementing rules (with Frontex negotiating regular or structural data transfer arrangements with third countries rather than applying derogations).

#### 4.1.1.1 Internal coherence

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

Although the **objectives of the EBCG Regulation** are mentioned in the preamble<sup>36</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>37</sup> That lack of clarity is also evident in the **objectives of the Standing Corps**.<sup>38</sup> The EBCG Regulation focuses on the composition and tasks of the Standing Corps, rather than clearly defining the objectives to be achieved.<sup>39</sup>

While Article 4 of the EBCG Regulation defines the **EBCG** as a body comprising both the relevant Member States’ authorities responsible for border management and Frontex, the provisions focus primarily on the Agency. 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). 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.

Although the EBCG Regulation reiterates that Frontex implements EIBM as a shared responsibility with 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>40</sup> Frontex cooperates with different national authorities (for example, 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, spanning different jurisdictions and obligations, depending on their legal nature and the legal order to which they are subject. Frontex’s operational staff is under the tactical command and control of the host State, yet both Frontex and national operational staff are still responsible under EU law and international law, including the EU and international level fundamental rights frameworks. 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 is 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 about Frontex’s involvement in potential individual and collective expulsions of migrants.<sup>41</sup> Although the personnel of the Agency was not found to violate

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<sup>36</sup> Recital 120 EBCG Regulation.

<sup>37</sup> Interviews with Frontex (2).

<sup>38</sup> Articles 5 and 54 EBCG Regulation.

<sup>39</sup> Interviews with Frontex.

<sup>40</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/>

<sup>41</sup> See also: 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.

fundamental rights,<sup>42</sup> stakeholders stressed their concerns about the possible indirect involvement of the Agency (see section 4.1.9.2 and Annex 5). 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), which are generally not made public.

Despite the EBCG Regulation setting out mechanisms for accountability (such as the monitoring activities of the FRO,<sup>43</sup> or the complaints mechanism<sup>44</sup>), there is **uncertainty about accountability where both Frontex and national border management actors are involved in operations**.<sup>45</sup> This has a considerable impact on the Agency's perceived ability to respect and comply with fundamental rights, opening questions about the responsibility of national authorities and limiting FRO monitoring (see section 4.1.9).

The analysis found **inconsistencies** within the EBCG Regulation in relation to the use of force (Article 82 and Annex V). In defining 'force', the EBCG Regulation does not clarify what is meant by 'the use of any instruments' when resorting to force.<sup>46</sup> 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.

The use of force and the circumstances in which it is allowed also depend on the national law of the host Member State and are further defined in the relevant 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.<sup>47</sup> It also

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<sup>42</sup> European Parliament Frontex Scrutiny Working Group (FSWG) (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'; 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 (FRALO WG). During their investigations, neither the FRALO WG nor FSWG found evidence of Frontex's staff involvement in fundamental rights violations.

<sup>43</sup> Articles 109 and 110 EBCG Regulation.

<sup>44</sup> Article 111 EBCG Regulation.

<sup>45</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 Regulation; interviews with Frontex and civil society organisations/ members of the CF (2/5).

<sup>46</sup> Annex V to the EBCG Regulation: 'For the purposes of this Regulation, 'use of force' refers to recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment [...]'.  
<sup>47</sup> Article 82 EBCG Regulation adopts different formulations, such as 'for the purposes of performing their functions or ensuring self-defence', 'achieve the legitimate law enforcement objective', 'achieve the immediate law enforcement aim', 'to ensure the performance of the Agency's duties' and 'legitimate self-defence and legitimate defence of members of the teams or of other persons'.

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 gaps in the EBCG Regulation that affect its internal coherence and the ability of the Agency to achieve its objectives.

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, there are some clarity issues in the fundamental rights framework set out by the EBCG Regulation, affecting the overall coherence (see section 4.1.9 and Annex 5). These findings are discussed in greater detail in Annexes 4 and 5.

### **External coherence**

Overall, the EBCG Regulation is coherent with other EU-level legislative instruments, but there is room for improvement.

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

The **Sea Borders Regulation**<sup>48</sup> applies to all Frontex-coordinated maritime border surveillance operations and includes a set of search-and-rescue (SAR) and disembarkation obligations for Member States’ law enforcement vessels. EU Member States are obliged to render assistance to any person in distress at sea, in accordance with international law and respect for fundamental rights, and to proceed with all possible speed to the rescue of those persons in distress, including disembarkation to a place of safety.

Article 10(i) of the EBCG Regulation 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. However, Frontex cannot conduct SAR operations independently or without the coordination of a national Maritime Rescue Coordination Centre (MRRC).<sup>49</sup> SAR is a specific objective of the operational plan of every Frontex joint maritime operation and vessels deployed by Frontex to an operational area are always ready to provide national authorities with SAR support.<sup>50</sup>

Although Regulation 656/2014 and the EBCG Regulation are generally coherent, the former does not capture Frontex’s expanded mandate in SAR under Regulation EU/2016/1624 (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 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 United Nations Convention on the Law of the Sea (UNCLOS) and SAR**

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<sup>48</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.

<sup>49</sup> Frontex (2023). ‘How search-and-rescue works’. Available at: <https://frontex.europa.eu/media-centre/news/focus/how-search-and-rescue-works-83WoGT>

<sup>50</sup> 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)

**Convention), particularly when a decision is taken not to initiate SAR.**<sup>51</sup> Hence, it remains difficult to distinguish accountability in situations where both Frontex and national border management actors are involved (see internal coherence).<sup>52</sup>

### **Common Approach to Decentralised Agencies**

**The EBCG Regulation is coherent with the Common Approach to Decentralised Agencies.**<sup>53</sup> Frontex's structure and governance is generally in line with the principles set out in the Common Approach, such as the appointment of 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>54</sup> Other requirements set out in the Common Approach, on accountability, controls and transparency requirements, are in line with the EBCG Regulation.

### **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.<sup>55</sup> The EBCG Regulation refers to the Return Directive in several instances.

The EBCG Regulation and the **Return Directive** (2008/115/EC) are coherent with 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>56</sup>

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<sup>51</sup> 'Cooperation on SAR in EU remains challenging: with Frontex given a new mandate in coast guard operations, the coordination between Frontex and Member States has become rather more complex than facilitated' (International Maritime Organization (IMO) (2017). 'Record of views of the inter-agency meeting with the maritime industry on mixed migration'. Available at: [https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Record of views Inter\\_agency meeting with the maritime industry on mixed migration 30 October 2017\\_Final.pdf](https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Record%20of%20views%20Inter_agency%20meeting%20with%20the%20maritime%20industry%20on%20mixed%20migration%2030%20October%202017_Final.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); 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)'. Available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13557-European-Border-and-Coast-Guard-Frontex-standing-corps-review-and-evaluation-of-Regulation/F3347064\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13557-European-Border-and-Coast-Guard-Frontex-standing-corps-review-and-evaluation-of-Regulation/F3347064_en); Salzano L. (2021) 'Frontex accountability: an impervious path'. Available at: EU Law Analysis: Frontex accountability: an impervious path

<sup>52</sup> Frontex (2023) How Search and Rescue works. Available at: [How Search and Rescue works \(europa.eu\)](https://www.europa.eu); 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)

<sup>53</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>54</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: European Council on Refugees and Exiles (ECRE) (2021). 'Holding Frontex to account'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>55</sup> Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>56</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.

**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 where two or more Member States cooperate to return third-country nationals who are the subjects of individual removal orders. Council Decision 2004/573 does not apply to Frontex.

Nevertheless, the Agency has the power to coordinate or organise return operations (Article 50(1) EBCG Regulation). However, Article 50 is unclear on the legal framework for return operations and on coordination between Frontex operations and other types of operations. It does not clearly set out a specific framework for return operations organised by Frontex, nor does it 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 differences between Frontex-organised return operations and those organised by Member States based on Council Decision 2004/563/EC.<sup>57</sup>

**EU Staff Regulations and conditions of employment**

**There are challenges in applying the EU Staff Regulations<sup>58</sup> 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.<sup>59</sup> Indeed, a number of tasks carried 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. However, not all Member States' legislation allows Standing Corps staff to carry weapons on their territory and Frontex is not always recognised as providing law enforcement services. Hence, the challenges do not solely derive from the application of the EU Staff Regulations but also arise from national legislation limitations and national authorities' willingness to allow Standing Corps Category 1 staff to perform certain tasks.

As a result, aspects of shift work and stand-by patterns, ranks, recognition of hardship, specific deployment rules outside the mission guide, disciplinary proceedings, rights, and entitlements are not suitable for the Standing Corps.<sup>60</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 misalignment in working hours could create challenges for both Frontex as an Agency and for its officers in the field.

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<sup>57</sup> Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document.

<sup>58</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. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20230101>

<sup>59</sup> Interviews with DG HOME (2/4) and Frontex.

<sup>60</sup> Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.



## 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)**.<sup>61</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 (see section 4.1.6 and Annex 4).

During the reform of the Schengen Evaluation Regulation, the Commission acknowledged the risk of duplication and limited cooperation between these instruments.<sup>62</sup> The two instruments were not fully coherent with each other, thus the reformed 2022 Schengen Evaluation Regulation aims 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 and design better Schengen evaluations.<sup>63</sup> A mismatch persists, however. The vulnerability assessment and risk analysis (feeding in the preparation of the Schengen evaluations) 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* (with the Fundamental Rights Agency (FRA) providing a thorough fundamental rights analysis feeding in the Schengen evaluations and participating as an observer - in return).

## Schengen Borders Code

Article 5 of the EBCG Regulation indicates that Frontex facilitates and effectively applies Union measures on the management of the external borders, in particular **Regulation (EU) 2016/399** (Schengen Borders Code)<sup>64</sup> and Union measures on return.

The Schengen Borders Code was adopted for the first time in 2006 and replaced in 2016 (Regulation 2016/399). It refers to the European Agency for the Management 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, which contributes to the effective implementation of the EIBM by Frontex. The proposal fully reflects the competences of Frontex in supporting Member States. The analysis did not find inconsistencies between the two current texts, nor were any discrepancies 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>65</sup> The internal

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<sup>61</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>

<sup>62</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>63</sup> Articles 8 and 10 Council Regulation (EU) 2022/922.

<sup>64</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>

<sup>65</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.

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>66</sup> This Decision was not updated and still refers to the 2016 Frontex Regulation.

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 in several cases the Agency did not follow up on some of the requirements (such as publishing summaries of the operational plans, regularly updating the public register of documents, publishing 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), somewhat limiting transparency and access to documents (see Annex 4).

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

To ensure good functioning of the Schengen area and to facilitate checks at the external borders, the EU has developed a number of information systems and common frameworks for the exchange of information. Three large-scale IT systems are in place to manage external borders, the SIS,<sup>67</sup> Eurodac,<sup>68</sup> and the VIS,<sup>69</sup> while three other systems are under development – the EES,<sup>70</sup> ETIAS,<sup>71</sup> and the European Criminal Records

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<sup>66</sup> 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>67</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>68</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>69</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.

<sup>70</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>71</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

Information System (ECRIS-TCN).<sup>72</sup> Furthermore, 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>73</sup>

Considering that the systems are set up for distinct purposes, the EU will ensure the interoperability of systems.<sup>74</sup>

The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) is tasked with developing and managing operations of the central components of the six information systems (SIS, Eurodac, VIS, EES, ETIAS, ECRIS-TCN), while EUROSUR is managed by Frontex and Member States. In view of the key role of the ETIAS Central Unit, ECU, (established within Frontex) in the development and implementation of ETIAS, the ETIAS Regulation is analysed separately, while EUROSUR is analysed under the data protection framework and under its own thematic section (see section 4.1.6).

The EBCG Regulation does not explicitly mention information systems, instead referring generally to the systems.

Frontex team members' access 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. Frontex team members already have or are foreseen to have access to SIS, EES, ETIAS (and to VIS, Eurodac, ECRIS-TCN in relation to ETIAS). The EES Regulation (Article 63) only foresees access in relation to risk analysis and vulnerability assessment. 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 ECU), 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.

For ETIAS, Frontex is the data controller in relation to processing by the ECU for the tasks that has been specifically allocated to it. In addition, Frontex is data controller in relation to the Multiple-Identity Detector (MID) links that it manually verifies during the transitional period of the multiple-identity detector in accordance with the Interoperability Regulations.

During the consultation, it was highlighted that generally, at the Member State level, the information systems are usually provided in the national language of the Member States, adding a practical obstacle for the Standing Corps members to access the systems when deployed in host Member States. It was also reported that in one Member State only

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(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>72</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>73</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>74</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.

(Iceland), all relevant information systems are provided entirely in English.<sup>75</sup> Frontex is developing its own access to SIS, and, in the case of ETIAS, the ECU will have its own case management system, so these will not be provided in national language.

In line with the provisions of the Regulations governing the information systems, the Agency has 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.<sup>76</sup>

## ETIAS

The EBCG Regulation requires Frontex to fulfil the tasks and obligations entrusted to it under the ETIAS Regulation<sup>77</sup> and to ensure the set-up and operation of the **ECU** within Frontex.<sup>78</sup> Among its key tasks and obligations, the ECU ensures that data stored in application files and personal data recorded in the ETIAS are correct and up to date. Where necessary, the ECU 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 applicants' data. It also defines, evaluates, tests and reviews specific **risk indicators** of the **ETIAS screening rules**.<sup>79</sup>

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). ECU has access to all these systems for the purpose of verifying the hits.

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

References in the EBCG Regulation to the ECU are limited. Rather, the tasks of the ECU are explained in the ETIAS Regulation.

The analysis highlighted that the risk indicators and screening rules for ETIAS might pose a **risk of discriminatory profiling** for certain categories (such as asylum seekers). This was also highlighted by some stakeholders.<sup>80</sup> In addition, the collection of information (to set up the ETIAS system) from underlying databases could also create **data quality issues** (in case of low quality information collected for the other EU information systems – for instance low quality fingerprint 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

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<sup>75</sup> Interview with Frontex.

<sup>76</sup> Such as Article 60 of Regulation (EU) 2018/1861 and Article 74 of Regulation (EU) 2018/1862.

<sup>77</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>78</sup> Articles 10(1) (af) and 67 EBCG Regulation.

<sup>79</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>80</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/>

store the link for future use. Specific rules regulate the transitional period of the MID.<sup>81</sup> During such transitional period, the ECU 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 adopted yet). After the transitional period, the ECU will deal with links related to ETIAS applications. In this context, Frontex is the data controller in relation to the processing of personal data in the MID during the MID transitional period by the ETIAS Central Unit. This is further explored in Annex 4.

#### 4.1.1.2 Data protection framework

Articles 86 to 92 of the EBCG Regulation establish the framework on the Agency's processing of personal data. Frontex processes personal data in accordance with the **EU DPR**.<sup>82</sup> The EBCG Regulation requires the MB to adopt internal rules on the application of the EU DPR.<sup>83</sup> Accordingly, the MB adopted two Decisions in 2021: **Management Board Decision 68/2021 on processing personal data**<sup>84</sup> and **Management Board Decision 69/2021 on processing operational personal data**.<sup>85</sup> The **EDPS** adopted two separate **Opinions on these Decisions**, highlighting several concerns and areas for improvement.<sup>86</sup> Frontex's Data Protection Officer (DPO) then submitted an implementation plan to the EDPS and work is ongoing to redraft the two Decisions.<sup>87</sup> Recommendations in this area may be premature, given the Agency's plan to modify these two Decisions.

There are a number of **unclearities within the EBCG Regulation** in relation to data protection (internal coherence). Some of these areas were not sufficiently addressed and clarified by the implementing rules (Management Board Decisions 68/2021 and 69/2021).

The EBCG Regulation establishes the **framework for the EBCG** (Article 4),<sup>88</sup> but in the area of data protection it only sets the rules for the processing of personal data by the Agency (Articles 86-92).

On the **allocation of responsibilities** between the Agency and the Member States, the EBCG Regulation (Article 88) requires the Agency and the host Member State to determine in a transparent manner the responsibilities for compliance with data protection obligations. However, the Management Board Decisions refer to the operational plans for the allocation of data protection roles and responsibilities. Considering that the operational plans are not publicly available and that only the publication of the summary of the plans

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<sup>81</sup> Article 69 of Regulation (EU) 2019/817 and Article 65 of Regulation (EU) 2019/818.

<sup>82</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.

<sup>83</sup> Article 86(2) EBCG Regulation.

<sup>84</sup> Management Board Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex.

<sup>85</sup> Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

<sup>86</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>87</sup> Interview with Frontex (1).

<sup>88</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'.

is required on the Agency's website, this might have implications for data protection. It is not always clear directly from the EBCG Regulation and relevant Management Board Decisions who is the data controller, data processor, data supervisor, or the applicable rules (i.e. without assessing the applicable provisions of the operational plans).

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>89</sup> Despite the Agency's expanding mandate and tasks, it has allocated limited resources and staff to monitoring data protection compliance, which are considered insufficient.<sup>90</sup>

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

Full analysis of the relevant data protection framework is presented in detail in Annex 4. Here, the analysis focuses on three areas: the lack of clarity in Article 87 for the processing of personal data; Frontex's role and the purpose of processing operational personal data under Article 90; and personal data transfers to third countries. It also presents key findings for EUROSUR.

Although the analysis presents the main findings on data protection, it does not provide definitive conclusions or recommendations, given the ongoing work between Frontex and the EDPS to redraft Management Board Decisions 68/2021 and 69/2021.

#### *Processing personal data*

**Management Board Decision 68/2021** 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. However, the EDPS found that 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>91</sup>

According to Frontex, **Article 87** is not sufficiently clear, as the purposes indicated in Article 87 cross-reference other articles of the EBCG Regulation for which the need to process personal data are not clear.<sup>92</sup> This is reported for Article 87(1)(d, e), on the **facilitation of information exchange with law enforcement authorities of the Member States, Europol or Eurojust** and for **risk analysis** (see Annex 4).

Frontex also highlighted a **gap** in the text, as 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). In practical terms, the Agency could transmit personal data to the host third country, but not receive it.<sup>93</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

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<sup>89</sup> Interviews with EDPS and Frontex (10).

<sup>90</sup> Interviews with EDPS and Frontex (1).

<sup>91</sup> EDPS (2022). 'Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148'.

<sup>92</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>93</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

for the purpose of ‘identifying suspects of cross-border crimes’,<sup>94</sup> in accordance with **Chapter IX of the EU DPR**. Frontex may only exchange such personal data with Europol or Eurojust,<sup>95</sup> and with the competent law enforcement authorities of the Member States.<sup>96</sup>

This means that in performing 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 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>97</sup>

However, Frontex indicated that the purpose of processing operational person data for the ‘identification of suspects of cross-border crime’ is too restrictive for the Agency. For Frontex, the current 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>98</sup>

The Agency 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>99</sup> However, considering the current division in the EU Treaties between border control and law enforcement and the reference to specific law enforcement bodies, it is to note that Frontex 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. This is further explained in section 5.1 and Annex 4.

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, as reflected in Management Board **Decision 69/2021** on the rules on processing operational personal data by the Agency.<sup>100</sup> Although the EBCG Regulation is clear on the purpose of operational personal data processing, the Management Board Decision leads to some ambiguity, as stressed by the EDPS: ‘some wording in Articles 6, 7, 8 and 9 of the Annex [to the Management Board Decision] lends itself to conclude that collection of operational personal data is a primary task of Frontex, which is not the case [...]’.<sup>101</sup>

According to Frontex, the current framework poses **limitations to the exchange of operational data** with entities not mentioned by the EBCG Regulation or relevant Management Board Decisions, but may nevertheless be important partners, such as OLAF or the European Public Prosecutor Office (EPPO).<sup>102</sup>

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<sup>94</sup> In line with its tasks established in Article 10(1)(q) EBCG Regulation.

<sup>95</sup> Article 90(2)(a): ‘[...] where they are strictly necessary for the performance of their respective mandates and in accordance with Article 68.’

<sup>96</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.’

<sup>97</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>98</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>99</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>100</sup> Management Board, Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

<sup>101</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0247’.

<sup>102</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

*Transfer of personal data to third countries*

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. 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** (such as Memorandum of Understanding (MoU) and letter of intent).<sup>103</sup> Five **status agreements** are in place between the European Commission and third countries.<sup>104</sup> Frontex may conclude **working arrangements** with third countries for the purposes of cooperation to the extent required for the fulfilment of its tasks.<sup>105</sup> Where those working arrangements provide for the transfer of personal data, and where provided for by the EU DPR, Frontex is required to request prior authorisation from the EDPS.<sup>106</sup>

The **European Commission model working arrangement** was drafted in accordance with Article 76(2) of the EBCG Regulation and adopted in 2021. However, the EDPS indicated that the model lacked essential data protection safeguards and any working arrangement predicated on that draft model needs to be supplemented to ensure compliance with EU data protection law.<sup>107</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**. The EDPS did not authorise the use of the Working Arrangement, considering its Opinion on the model working arrangement and noting the need for changes such as ensuring adequate safeguards.<sup>108</sup>

The Agency did not submit any other requests to the EDPS for prior authorisation for working arrangements.<sup>109</sup>

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

Data protection considerations also arise in the area of **returns**. The EBCG Regulation does not provide separately for the processing of personal data in the context of return activities, despite the increased mandate of the Agency. 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**. Frontex reported that it relies on the Member States to do the transfers, or uses derogations on a case-by-case basis, as foreseen under Article 50 of

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<sup>103</sup> Interview with Frontex (1).

<sup>104</sup> Albania, Serbia, Montenegro, North Macedonia, and Moldova.

<sup>105</sup> Article 73 EBCG Regulation.

<sup>106</sup> Article 73(4) EBCG Regulation.

<sup>107</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>108</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>109</sup> Interview with Frontex (1).



the EU DPR.<sup>110</sup> However, it is uncertain whether the wording of Article 50 of the EU DPR extends to cover ongoing data exchanges with third countries, as distinct from occasional transfers, and **systematic use of such derogations by Frontex could amount to inappropriate use.**

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>111</sup> The Agency acknowledged that these derogations cannot be applied to transfers if they are structural and regular.<sup>112</sup> Nevertheless, the consultation indicated that the Agency is not currently negotiating these administrative arrangements.<sup>113</sup>

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

Considering the processing of personal data taking place by Frontex, some inspiration on the level of depth on the rules could be taken by the Europol Regulation, which dedicates more space to the processing of personal data.

### *EUROSUR*

Article 89 of the EBCG Regulation, on **EUROSUR**, is an important data protection provision. Article 89 regulates the **processing of personal data in the framework of EUROSUR**, and limits the categories of personal data processed to **ship and aircraft identification numbers**, while subsequently allowing 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 is not clear on the exceptional situations, as it 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>114</sup>

The lack of clarity was not addressed by Management Board Decision 68/2021, which, as noted by the EDPS, does not contain any specific rules on the processing of personal data in the framework of EUROSUR and lacks key data protection elements (such as purpose, controller, safeguards).<sup>115</sup>

The various modalities for Frontex to cooperate with third countries and exchange information, as laid down in the EBCG Regulation, is complex, making reference to various provisions, and at times unclear, 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 72, 73, 74, 75 and 76 of the EBCG

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<sup>110</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>111</sup> EDPS (2021). ‘Opinion on international data transfers by Frontex in the context of return operations’.

<sup>112</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>113</sup> Interview with Frontex (1).

<sup>114</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>115</sup> EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by the European Border and Coast Guard Agency, Case 2022-0148’.

Regulation. Article 89 refers 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)**.

Despite having working arrangements or status agreements in place, the Agency reports that it has 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 Court of Justice of the European Union (CJEU) Schrems II judgment<sup>116</sup>).<sup>117</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 limitation.<sup>118</sup>

#### 4.1.2 Policy framework<sup>119</sup>

This section looks at the extent to which the objectives and activities of the EBCG are **coherent** with other relevant EU policies and objectives. It also looks at the policy framework of EIBM and the extent to which Frontex has contributed to coordination in that context.

Table 2. Summary of key findings on policy framework

Summary of key findings		
<b>Key provisions of the EBCG Regulation</b>		
<b>Article 3, 8 and 9</b> defining the EIBM, including the components of EIBM, the multiannual strategic policy cycle for EIBM, and integrated planning.		
<b>Key findings</b>		
<ul style="list-style-type: none"> <li>• <b>Objectives of the EBCG</b> are coherent with other relevant EU policies and objectives, notwithstanding delays in the implementation of the wider migratory legal framework (e.g. implementation of the New Pact on Migration) making it harder to assess full coherence.</li> <li>• <b>Implementation of key aspects of EIBM</b> is on-going, making it difficult to assess the effectiveness of efficiency of EIBM and Frontex activities in support of EIBM. This includes the recent finalisation of a multiannual strategic policy cycle for EIBM by the Commission (adopted in March 2023), which will inform the update/alignment of the Frontex Technical and Operational EIBM Strategy and of the Member States’ national strategies for EIBM. Article 9 on integrated planning is also yet to be implemented fully.</li> </ul>		
Typology/source of challenge	Severity of challenge (moderate – medium – high)	Brief description of challenge

<sup>116</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=st&dir=&occ=first&part=1&cid=12312155>

<sup>117</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>118</sup> Interviews with EDPS and Frontex (10).

<sup>119</sup> This section responds to the evaluation questions 8, 18, 25.

Implementation	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p>Integrated planning (Article 9 EBCG Regulation) is yet to be finalised, with lack of clarity on expectations among some Member States</p> <p>The Commission's adoption of a multiannual strategic policy cycle for EIBM in March 2023 will now inform revisions to the Technical and Operational Strategy for EIBM (TO-EIBM) by Frontex and Member States' national EIBM strategies. Originally this was expected to happen sooner. As such, this has led delays in the provision of strategic direction to Frontex on EIBM.</p>
EU policy	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>Implementation and adoption of the New Pact on Migration is ongoing, including finalisation of the full legal framework, making it harder to evaluate full coherence</p>

#### 4.1.2.1 Coherence with EU policies and objectives

**Overall, the objectives and activities of the EBCG are coherent with other relevant EU policies and objectives.**

The adoption of the **International Cooperation Strategy** provides an overarching framework for ensuring the coherence of Frontex activities with other EU policies, as it is grounded in the EU legal and policy framework, including the Common Approach on Decentralised Agencies. The Strategy was drafted in consultation with relevant EU partners (such as the Directorates-General for Migration and Home Affairs (DG HOME), Neighbourhood and Enlargement Negotiations (DG NEAR), International Partnerships (DG INTPA), the European External Action Service (EEAS), Member States and SACs, and the CF)<sup>120</sup> to ensure coherence and synergies with other EU actors. It highlights the guiding policies<sup>121</sup> Frontex uses to prepare its external priorities.<sup>122</sup>

The **New Pact on Migration and Asylum** sets out, as its objective, a fairer 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 enhanced role in returns.<sup>123</sup>

The New Pact mainly focuses on the roles of the former European Asylum Support Office (EASO) (now the European Union Agency for Asylum (EUAA)) and Frontex. In principle,

<sup>120</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 9. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>121</sup> For example, the New Pact on Migration and Asylum; the Commission proposal to recast the Return Directive, the new European Security Union; the European Neighbourhood Policy; the European Development Policy, such as the European Consensus on Development; the Global Approach to Migration and Mobility (GAMM); the European Maritime Security Strategy (EUMSS) and the Global Strategy on Foreign and Security Policy for the EU; as well as region-specific strategies, such as the Commission Strategy on the Western Balkans, complemented by the Zagreb Declaration, the joint Council and the EEAS Eastern Partnership policy beyond 2020, and the EU Strategy with Africa.

<sup>122</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023'. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>123</sup> Interviews with European Commission Secretariat-General (2), and EEAS (1).

the New Pact is coherent with the Agencies' practices. However, significant parts are yet to be adopted by the co-legislators, making it harder to fully evaluate coherence.<sup>124</sup>

The renewed **EU Security Union Strategy**,<sup>125</sup> adopted on 24 July 2020, highlights Frontex's supporting role in contributing to the prevention and identification of cross-border crime, including terrorism, at the external borders through border control, and reflects its enhanced mandate to strengthen EU coordination so as to 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>126</sup>

The **CSDP** is an essential part of the EU's Common Foreign and Security Policy (CFSP), described in the Treaty of the European Union (TEU) and serving as the main framework for CSDP missions.<sup>127</sup> Article 21 of the TEU 'recalled that multilateralism is at the core of the EU's external action. Accordingly, EU partners can participate in CSDP missions and operations.'<sup>128</sup> The EBCG Regulation is aligned with these frameworks and establishes guidelines and objectives for the cooperation between Frontex and CSDP missions.<sup>129</sup>

Frontex's work in the external dimension is coherent with the **EU Action Plan on the Western Balkans (2022)**<sup>130</sup> and the **EU Action Plan for the Central Mediterranean (2022)**.<sup>131</sup> The Action Plan on the Western Balkans sets out 20 operational measures to support Western Balkan countries on their path toward EU accession. The priorities set out in the Action Plan include strengthening border management, ensuring swift asylum procedures, taking action against the smuggling of migrants, and return. It emphasises the cooperation of Western Balkan countries with Frontex under the framework of existing and new Status Agreements. The Action Plan for the Central Mediterranean refers to Frontex's work in the area of returns, the role of Frontex and Member States in carrying out targeted assessments of the situation in the Central Mediterranean and reinforcing support through joint operations, as well as the need to conclude the working arrangement between Frontex and EUBAM Libya, and intensify cooperation with EUCAP Sahel Niger.

#### 4.1.2.2 European Integrated Border Management

**The multiannual strategic policy for EIBM, as envisaged in the 2019 EBCG Regulation, was established in March 2023, and therefore falls outside the**

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<sup>124</sup> Interviews with European Parliament (2/4); for an overview, see European Commission (2023). '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>125</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>126</sup> Recital 89 EBCG Regulation.

<sup>127</sup> Legrand, J. (2022). 'Common security and defence policy'. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_5.1.2.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.2.pdf)

<sup>128</sup> Legrand, J. (2022). 'Common security and defence policy'. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_5.1.2.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.2.pdf)

<sup>129</sup> Interview with EEAS (1).

<sup>130</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>131</sup> European Commission (2022). 'EU Action Plan for the Central Mediterranean.' Available at: [https://home-affairs.ec.europa.eu/eu-action-plan-central-mediterranean\\_en](https://home-affairs.ec.europa.eu/eu-action-plan-central-mediterranean_en)

**evaluation period. Other key aspects of EIBM (integrated planning) are yet to be finalised and cannot be evaluated at present.**

The concept of EIBM has developed gradually, becoming legally binding with the adoption of Regulation (EU) 2016/1624. The 2016 EBCG Regulation set out the Agency's objective to develop and implement EIBM. The 2016 and 2019 EBCG Regulations also outlined the main components of EIBM, with the 2019 EBCG Regulation including the 15 components of EIBM.

The 2019 EBCG Regulation specifically sets the EIBM **policy cycle** as a strategic governance framework for the effective implementation of EIBM. 'The EIBM policy cycle has as a strategic objective to determine how the European Border and Coast Guard should address the challenges in the area of border management and return in a coherent, integrated and systematic manner.'<sup>132</sup> The policy cycle is intended to provide the strategic direction to inform the implementation of EIBM over five years.

To inform the implementation of EIBM as outlined in the 2016 EBCG Regulation, Frontex developed a first TO-EIBM, which was adopted in May 2019. At the time of drafting the TO-EIBM, the 2019 EBCG Regulation was in the process of being finalised and, when adopted, set a new framework for the Agency's activities. As such, Frontex has since focused on the implementation of its new mandate rather than the operationalising of its existing TO-EIBM.

The first step in creating the EIBM policy cycle as envisaged in the 2019 EBCG Regulation was the publication of the Frontex Strategic Risk Analysis in 2020,<sup>133</sup> followed by the publication of a Commission policy document on EIBM in May 2022.<sup>134</sup> This was followed by the adoption of the multiannual strategic policy cycle for EIBM in March 2023, which used the 2022 Strategic Risk Analysis<sup>135</sup> as a basis. While the EBCG Regulation does not set deadlines for any of these documents, the original Roadmap<sup>136</sup> for the Regulation's implementation (developed by Frontex and the Commission) foresaw the preparation of the Frontex Strategic Risk Analysis in 2019 and the finalisation of the EIBM policy cycle in the course of 2020, suggesting delays in implementation.

In its programming documents, Frontex emphasises that strategic-level EIBM-related activities depend on the establishment of the policy cycle. The expectation is that with the new policy document now in place, Frontex will revise its TO-EIBM by autumn 2023, which will then inform changes to national strategies and ensure better alignment with Frontex programming documents.<sup>137</sup> The revision of TO-EIBM is supported by the MB EIBM Working Group established in June 2022.<sup>138</sup>

Additional elements related to EIBM, including integrated planning (Article 9), are not yet fully implemented. Not all Member States have finalised their national capability

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<sup>132</sup> European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896'. COM(2022)303 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0303>

<sup>133</sup> Frontex (2022). 'Strategic Risk Analysis 2020'. Available at: <https://frontex.europa.eu/publications/strategic-risk-analysis-2020-7hMUZY>

<sup>134</sup> European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896'. COM(2022)303 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0303>

<sup>135</sup> Frontex (2022). 'Strategic Risk Analysis 2022.' Available at: <https://frontex.europa.eu/publications/strategic-risk-analysis-2022-Kj2kic>

<sup>136</sup> Frontex and DG HOME (2019). 'Roadmap for the implementation of the European Border and Coast Guard 2.0.'

<sup>137</sup> Interview with Frontex (2).

<sup>138</sup> Management Board Decision 33/2022 of 7 June 2022, establishing the Management Board Working Group on European Integrated Border Management.

development plans. These plans, as well as the Frontex Acquisition Strategy (also yet to be finalised) should subsequently inform the preparation of the Frontex capability roadmap.

While the full implementation of EIBM is pending, some enhanced coordination in the area of EIBM has been achieved through the implementation of the Frontex mandate overall, which includes close coordination with Member States in several thematic areas (returns, joint operations, capacity-building, situational awareness, etc.). This is further supported by the deployment of FLOs in Member States (Article 31 EBCG Regulation), a move rated positively by the majority of Member States.<sup>139</sup>

### 4.1.3 Governance and organisational structure of Frontex<sup>140</sup>

This section looks at the extent to which the governance, organisational structure of the Agency, and internal procedures and working practices have supported Frontex to perform its tasks and to do so efficiently.

Table 3. Summary of key findings on governance and organisational structure

Summary of key findings
<b>Key provisions of the EBCG Regulation</b> <b>Article 99</b> (Administrative and management structure of the Agency); <b>Articles 100-101, 103-105</b> (Functions and composition of the Management Board), <b>Article 102</b> (Multiannual programming and annual work programmes), <b>Article 106</b> (Functions and powers of the executive director), <b>Article 109</b> (Fundamental rights officer), <b>Article 112</b> (interparliamentary cooperation). <b>Powers of the Commission</b> include issuing: (positive) opinions (Articles 45, 55, 60, 63, 77, 82, 102), approvals (Articles 76, 92), recommendations (Articles 22, 69), proposals (Article 42, 107), implementing acts (Articles 24, 61) <b>Key findings</b> <ul style="list-style-type: none"><li>• Frontex’s governance as defined in the legislation is effective, with the MB and Executive Director roles clearly differentiated, although the Board could provide stronger strategic guidance to the Agency. Moreover, return is not yet fully integrated into the current MB structure, with limited representation of return authorities.</li><li>• Oversight by the Commission and European Parliament are adequate, but the Parliament could make use of Article 112 and engage national parliaments.</li><li>• Internal oversight structures have sufficient independence (FRO, DPO, Internal Audit Capability (IAC)) but still need time to build their capacity and powers to exercise their roles fully. Additional internal control structures are not foreseen within the EBCG Regulation, such as an inspectorate or an office internal affairs, which are common for the management and oversight of uniformed staff at Member State level.</li><li>• Frontex’s organisational structure has expanded to incorporate the Agency’s new responsibilities, but does not adequately cover its new mandate and the Standing Corps. The Agency is in the process of developing a new structure.</li><li>• Frontex’s internal processes and planning procedures largely support the implementation of its tasks. However, implementation could be improved through</li></ul>

<sup>139</sup> Survey of MS/SAC authorities: 18/27 agreed or strongly agreed that the network of Frontex Liaison Officers (FLOs) fostered cooperation and dialogue between Frontex and national authorities in the context of EIBM; 6/27 did not provide an answer or neither agreed nor disagreed.

<sup>140</sup> This section responds to the evaluation question 18, 22, 23.

better horizontal coordination (which is also tied to the current organisational structure) and ensuring better synergies between different processes.

- Delays in implementation of certain provisions (e.g. Article 9, on integrated planning) make it harder to assess their impact on the Agency and the EBCG.

Typology/source of challenge	Severity of challenge (moderate – medium – high)	Brief description of challenge
Implementation		Internal procedures of Frontex are not fully aligned with each other  Delays in implementation of Article 9 (integrated planning)
Governance		More strategic guidance needed from MB  Lack of clear strategic-governance framework covering return  Limited engagement with national parliaments (as foreseen by Article 112)
Resources		Insufficient human resources in some key internal oversight offices (e.g. DPO)
Organisational structure		Organisational structure of the Agency is not fully aligned with its new mandate/ needs

#### 4.1.3.1 Governance

**The EBCG Regulation currently lacks a governance structure for the EBCG as a whole. The existing governance structure, which focuses on Frontex, supports the performance of its tasks. However, effectiveness and efficiency improvements could be achieved through greater strategic guidance from the MB, simplifying some of the approval procedures within the European Commission, and enhancing internal resources in key offices (e.g. DPO).**

Looking at **governance** in the context of the EBCG Regulation, the focus remains on the governance of Frontex itself and not Member State authorities, as Member States retain primary responsibility and competence for management of their borders. The **governance model of Frontex** is largely in line with the Common Approach on Decentralised Agencies.<sup>141</sup> The roles of the MB and Executive Director – as well as the accountability of the Director to the Commission, Council and European Parliament – are well-defined in the EBCG Regulation, with the Agency expected to report fully on its activities to the European Parliament, to the Council and to the Commission. Several independent bodies were established within the Agency to support its governance, including a DPO, FRO and IAC.

The MB is the main governing body of Frontex and is responsible for the Agency's strategic decisions.<sup>142</sup> It comprises representatives of the heads of the border authorities

<sup>141</sup> Interview with European Commission, Secretariat-General (1).

<sup>142</sup> Functions of the MB are outlined in Article 100 EBCG Regulation: the MB establishes the organisational structure of Frontex, adopts the budget and multiannual/annual work programmes, appoints the Executive Director and Deputy Executive Directors, and ensures adequate follow-up to findings and recommendations deriving from evaluations and audits.

of the 26 EU Member State signatories to the Schengen acquis<sup>143</sup> and two representatives from the European Commission. There appears less of a need to redefine the role of the MB, but, rather, an impetus to simplify its procedures to make its decision-making and oversight more efficient.

The expanding workload of the MB in line with the expanding mandate of Frontex represents a challenge. According to a small minority of Member States, this creates a high workload for MB members, often leading to discussions of very technical issues that are not a priority for all<sup>144</sup> and leaving limited time for high-level strategic discussions (including providing comments to key documents, like the Single Programming Document (SPD)).<sup>145</sup> Attempts in recent months to steer discussions within the MB towards more strategic topics are seen as an improvement.<sup>146</sup> For many Member States, the national authorities represented at the MB are not those responsible for return activities, impacting the effectiveness of strategic-level governance on return policies.<sup>147</sup>

The creation of an Executive Board to support the MB was seen as a positive step in helping to identify and analyse strategic issues.<sup>148</sup> The MB and the Executive Board are also supported by the Working Group on Budget and Accounts,<sup>149</sup> which undertakes the preparatory work on accounts and budget to facilitate decision-making by the Management Board, as well as dealing with human resources and audits.

Strategic guidance by the MB may be strengthened by the multiannual strategic policy cycle for EIBM, which will allow the MB and its dedicated Working Group on EIBM to guide and oversee the development of strategy and implementation processes.<sup>150</sup>

The importance of ensuring effective oversight of the Agency by the MB was highlighted during the tenure of the previous Executive Director, Fabrice Leggeri, when Frontex experienced intense media scrutiny about alleged fundamental rights violations. At that time, the MB had to ensure closer oversight,<sup>151</sup> in light of the European Parliament's criticism that it had not played a 'more proactive role in acknowledging the serious risk of fundamental rights violations and in taking action to ensure that Frontex fulfils its

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<sup>143</sup> Representatives from IE are also invited to participate in MB meetings, in line with Article 104(4) EBCG Regulation. SACs (CH, IS, LI, NO) also participate in the Agency's MB meetings, in line with Article 101(3) EBCG Regulation. Each sends one representative to the MB but retains limited voting rights (Frontex (n.d.). 'Management Board'. Available at: [Management Board \(europa.eu\)](https://europa.eu/management-board/).

<sup>144</sup> Interviews with MS/SAC authorities (6/27) (AT, BE, DK, ES, PL, SE).

<sup>145</sup> Interviews with MB (2) and Frontex (1).

<sup>146</sup> Interview with DG HOME (1).

<sup>147</sup> Interviews with BG, SE.

<sup>148</sup> Interviews with MB (4/5), DG HOME (1), Frontex (1).

<sup>149</sup> The Management Board Working Group on Budget and Accounts was established by Management Board Decision 25/2014 of 27 November 2014; then reinforced by Management Board Decision 33/2016 of 19 October 2016, which adopted a new concept; Management Board Decision 23/2021 of 25 March 2021 stipulates that the Working Group on Budget and Accounts should support the Executive Board.

<sup>150</sup> European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896'. COM(2022)303 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0303>; European Commission (2023). 'Communication establishing the multiannual strategic policy for European Integrated Border Management'. COM(2023) 146 final. Available at: [https://home-affairs.ec.europa.eu/communication-establishing-multiannual-strategic-policy-european-integrated-border-management\\_en](https://home-affairs.ec.europa.eu/communication-establishing-multiannual-strategic-policy-european-integrated-border-management_en)

<sup>151</sup> Interviews with MB (1/5) and Frontex (1).



obligations.<sup>152</sup> A new Management Board Decision<sup>153</sup> was adopted in 2022, ensuring improved procedures for following up on recommendations by the FRO and CF. This enhanced oversight by the MB is expected to decrease somewhat with the new Executive Director in place.<sup>154</sup> This points to a need for a level of flexibility, especially by the MB, to ensure additional political steering of the Agency, where necessary. The approval rights of the MB ensure that it cannot be bypassed in key decision-making processes.

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). Overall, the stakeholders interviewed felt that the Commission's powers were well defined.<sup>155</sup> At the same time, the high volume of responsibilities confers a high workload, including very formalised procedures, such as having to issue a formal opinion, approval or recommendation, which may require an approval of the College of Commissioners (sometimes on quite technical issues). DG HOME expressed an interest in reviewing internal procedures to (potentially) simplify these approval processes.<sup>156</sup>

The **European Parliament** provides political scrutiny and budgetary oversight of the Agency. The EBCG Regulation foresees that an expert of the European Parliament *may* be invited to MB meetings (Article 104(7)), and a permanent observer from the Parliament's LIBE Committee Secretariat is participating in MB meetings, with reporting function.<sup>157</sup> Article 112 of the EBCG Regulation also allows for interparliamentary cooperation between the European Parliament and national parliaments.

The political scrutiny and budgetary oversight of the European Parliament appears largely effective according to stakeholders, with the Parliament enhancing its oversight following intense media pressure on Frontex. In January 2021, it created a Frontex Scrutiny Working Group (FSWG) to monitor the Agency's compliance with fundamental rights.<sup>158</sup> A report of the FSWG on its investigation at the time was presented in July 2021.<sup>159</sup>

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<sup>152</sup> European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee, p.6. 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>153</sup> Frontex (2022). 'Management Board Decision No. 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=43%2F2022&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=MzI4ZDJlYzljNzBmNmQ2MDI4NDAxYTM3YmE1ODg5ZjhNVFk0T0E9PTYyOTk3ODcyMzNhOGRiYmE1MmUzOGNkY2MxNmMxMzRiM2NmMmZiNjcwNDI4NDg0MTU0&form-fields%5Bmodule-post-id%5D=NzVINWNjYmZlMWJkNWVhMjRhMzdlMjJiODBmNmY5MGRNemt3TVE9PTlwNTg3Mzc1ODQ1ZGFjYjdINjJmYjY0MGNIIMThmYzM3ZDJkNWYwMMDJmNzc0MTA2ODQw>

<sup>154</sup> Interview with MB (1/5).

<sup>155</sup> Interviews with MB (5/5, with one Member State questioning whether the Commission requires two representatives) and Frontex.

<sup>156</sup> Interview with DG HOME.

<sup>157</sup> Interview with the European Union Agency for Fundamental Rights (FRA).

<sup>158</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>159</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)

In April 2021 and May 2022, the Parliament postponed its decision on granting Frontex discharge respectively for the financial years 2019 and 2020.<sup>160,161</sup> The second decision was linked to a report by the OLAF on its investigation of Frontex following allegations of involvement in illegal pushbacks. On 10 May 2023, the Parliament discharged the Frontex budget for 2021.<sup>162</sup>

The report by the European Parliament's FSWG noted that parliamentary oversight could be strengthened in relation to the role of national parliaments holding their own national governments accountable.<sup>163</sup> This has highlighted the need to use 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 representative on the MB would enhance oversight.<sup>164</sup> However, interviewees from the Parliament did not favour this option, given the perceived need for the Parliament to retain independence.<sup>165</sup>

The **Executive Director** manages and represents the Agency and is responsible for the preparation and implementation of the strategic decisions taken by the MB, thus assumes full responsibility for the tasks entrusted to the Agency.<sup>166</sup> The Executive Director is assisted by three Deputy Executive Directors,<sup>167</sup> each assigned to a specific area of responsibility (Returns and Operations; Standing Corps Management; EBCG Information Management and Processes).

Overall, stakeholders considered the powers of the Executive Director to be well defined in Article 106 of the EBCG Regulation. The decision to expand the management structure of the Agency to include three Deputy Executive Directors with well-defined portfolios is seen to add efficiency in light of the expanding Agency mandate, as well as moving towards delegated decision-making rather than relying on an overly centralised model.<sup>168</sup>

Discussions with stakeholders pointed to the need to further decentralise decision-making to better account for the Agency's growing size and tasks. The appointment of three Deputy Executive Directors is a step in the right direction, but additional decentralisation

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<sup>160</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>161</sup> Strik, T. (2022). 'European oversight on Frontex'. Available at: <https://verfassungsblog.de/european-oversight-on-frontex/>

<sup>162</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>

<sup>163</sup> Strik, T. (2022). 'European oversight on Frontex'. Available at: <https://verfassungsblog.de/european-oversight-on-frontex/>

<sup>164</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>165</sup> Interviews with MEPs (3/4).

<sup>166</sup> The functions and powers of the Executive Director are outlined in Article 106 EBCG Regulation.

<sup>167</sup> Frontex (2022). 'Frontex Management Board selects interim Executive Director'. Available at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-management-board-selects-interim-executive-director-7xkc1H>; at the time of writing, the Deputy Executive Director for Standing Corps Management is currently serving as the Executive Director ad interim as of 1 July 2022, assisted by the Deputy Executive Director for Returns and Operations and the Executive Director for Information Management and Processes.

<sup>168</sup> Interviews with Frontex (1) and the European Commission (1).

at division level could be beneficial (including on technical decision-making powers that currently sit with the Executive Director, e.g., Article 106(4)(i)).<sup>169</sup>

The **FRO** is responsible for monitoring Frontex's implementation of its fundamental rights obligations and reports directly to the MB. Certain oversight limitations have been identified in the FRO role (see section 4.1.9). OLAF also raised concerns, such as the inability of FRO to access operational information, the FRO not being assigned as a case-handler for reports on serious incidents, and insufficient follow-up on serious incidents reports.<sup>170</sup> In 2022, the Agency adopted a decision on the follow-up to the FRO's recommendations,<sup>171</sup> laying down the procedures and timelines for the Executive Director and MB to act on the recommendations of the FRO. This strengthened the efficiency and effectiveness of the FRO role. The FRO also expressed the need to keep enhancing the capabilities of the office with the continued growth of the Agency (including need for additional FR monitors as the standing corps increases).

The tasks, duties and powers of the **DPO** are specified in a Management Board Decision adopted in 2021.<sup>172</sup> The DPO is independent in the performance of their duties, in accordance with the General Data Protection Regulation (GDPR). The DPO reports directly to the MB<sup>173</sup> and also reports to the Executive Director. One of the challenges for the DPO is the low number of staff, which makes it difficult to manage the high workload associated with the expanding Agency.<sup>174</sup>

An **IAC** was established under Article 80 of the Frontex Financial Regulation,<sup>175</sup> through the adoption of Management Board Decision 43/2020, to create an internal auditing function within Frontex.<sup>176</sup> The IAC is functionally independent and reports to the MB and the Executive Director.<sup>177</sup> As a recent initiative, there is insufficient time to evaluate its contribution to enhancing the effectiveness of internal governance, but it is assumed that it will support internal decision-making and improved governance. The Head of IAC believes that there are sufficient human resources to carry out their function.

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<sup>169</sup> Interview with Frontex (1).

<sup>170</sup> Frontex (2022). 'Statement of Frontex Executive Management following publication of the OLAF report'. Available at: <https://frontex.europa.eu/media-centre/news/news-release/statement-of-frontex-executive-management-following-publication-of-olaf-report-amARYy>

<sup>171</sup> Frontex (2022). 'Management Board Decision No. 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=43%2F2022&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Boffset%5D=0&form-fields%5Bform-post-id%5D=MzI4ZDJYzljNzBmNmQ2MDI4NDAxYTM3YmE1ODg5ZjhNVFk0T0E9PTYyOTk3ODcyMzNhOGRiYmE1MmUzOGNkY2MxNmMxMzRiM2NmMmZiNjcwNDI4NDg0MTU0&form-fields%5Bmodule-post-id%5D=NzVINWNjYmlzMWJkNWVjYmZlMjJiODBmNmY5MGRNemt3TVE9PTlwNTg3Mzc1ODQ1ZGFjYjdlNjJmY0MGNI4MzZDZjNkNWYwMDJmNzc0MTA2ODQw>

<sup>172</sup> 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. It should be noted that MB Decision 9/2023 of 18 March 2023 repealed and replaced MB Decision 56/2021.

<sup>173</sup> Including on serious breaches of the data protection regulatory framework OR issues which may have direct impact on data processing activities conducted jointly by Frontex and Member States.

<sup>174</sup> Interview with Frontex.

<sup>175</sup> Management Board Decision 19/2019 of 23 July 2019 adopting the Frontex Financial Regulation.

<sup>176</sup> The IAC aims to 'support Frontex to accomplish its objectives by applying a systematic approach to evaluate and make evidence-based and realistic recommendations for improving the effectiveness of governance, risk management and control processes' (Management Board Decision 56/2022 of 22 September 2022).

<sup>177</sup> Management Board Decision 56/2022 of 22 September 2022 approving the Frontex Internal Audit Charter.

### 4.1.3.2 Organisational structure

**The current structure of the Agency is not sufficiently aligned with its new mandate and further changes are needed.** Frontex's tasks are carried out by divisions and offices, as outlined in its organisational structure. The Agency waited for the appointment of a new Executive Director (in post as of March 2023) to start internal discussions about possible reorganisation.<sup>178</sup>

Comparing the 2018 structure of the Agency with its current structure shows that despite its expansion in response to its new mandate, it still failed to adequately accommodate the necessary operational management for the Standing Corps. The transformation from a traditional EU agency administration into an operational agency able to deploy, manage and logistically support a 10,000-strong Corps, consisting (primarily) of law enforcement officers and specialised equipment and assets, is still incomplete.

In 2018, Frontex comprised **four divisions and one unit**.<sup>179</sup> As of 2022, it has **nine divisions**,<sup>180</sup> each with a **coordination office** to facilitate horizontal cooperation. The current organisational structure suggests an initial underestimation of the human and administrative resources needed to support the expanding mandate (e.g. logistical human resources support for the Standing Corps is still being developed).<sup>181</sup>

The split of competences across a number of divisions is unclear, leading to a lack of ownership or clear processes.<sup>182</sup> According to the updated Roadmap for EBCG Regulation implementation (November 2022), the Agency 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 the timely implementation of the EBCG Regulation. The need for a functional review was emphasised by the IAC, which pointed to the need to ensure that the new structure corresponds to the needs of the Agency (outputs, needs, key functions and outcomes).

Discussions are ongoing on how best to embed the Standing Corps into the organisational structure of the Agency. The Standing Corps is currently overseen by a number of divisions, which creates ambiguity. On the operational level, this results in multiple reporting channels, including the functional line of reporting and the Coordinating Officer. Standing Corps officers are not clearly informed that they should report to their Coordinating Officer on the ground and sometimes perceive their functional manager as their line of reporting. It also means that functionally, Deployment Management Division staff have responsibility for Standing Corps (including writing their performance reviews) though they have no clear understanding of the day-to-day work each SC staff performs. Frontex is currently developing a new Frontex operational control and command (FC2)

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<sup>178</sup> Interview with Frontex (2).

<sup>179</sup> Management Board Decision 4/2018 on the new organisational structure of the Agency. Available at: [https://frontex.europa.eu/assets/Management\\_Board/decisions/2018/MB\\_Decision\\_4\\_2018\\_amending\\_MB\\_Decision\\_18\\_2017\\_on\\_the\\_new\\_organisational\\_structure\\_of\\_the\\_Agency.pdf](https://frontex.europa.eu/assets/Management_Board/decisions/2018/MB_Decision_4_2018_amending_MB_Decision_18_2017_on_the_new_organisational_structure_of_the_Agency.pdf)

<sup>180</sup> Management Board Decision 46/2022 on the agency's organisational structure. Available at: [file:///C:/Users/54950/Downloads/mb-decision-46\\_20222\\_amending-mb-decision-43\\_2020-on-the-agencys-amended-organisational-structure..pdf](file:///C:/Users/54950/Downloads/mb-decision-46_20222_amending-mb-decision-43_2020-on-the-agencys-amended-organisational-structure..pdf)

<sup>181</sup> Scoping interviews (2); interview with Frontex (2).

<sup>182</sup> Examples include the split management of standing corps across a number of divisions; the split of the corporate governance division into two (creating a fragmented approach and inconsistencies, with one division responsible for ICT, finance and other for human resources, legal and procurement). Moreover, one unit has responsibility for procurement, while another oversees budget, with two directors holding decision-making power.

concept, which is being piloted in Romania in 2023 and which will likely result in a change to the way the Standing Corps are structured, including ensuring clearer reporting lines.

#### 4.1.3.3 Frontex procedures and working practices

**Frontex internal procedures, including planning, support the coherence of its activities at least to some extent. However internal horizontal coordination mechanisms should be strengthened to improve the execution of the Agency's tasks.**

In 2022, the European Commission's Internal Audit Service (IAS) highlighted the lack of sufficient internal coordination mechanisms as one weakness within Frontex.<sup>183</sup> This is partly due to the fragmented organisational structure outlined above, as well as to insufficient existing horizontal coordination mechanisms.

There appears to be an overall lack of a depository on rules of procedure, workflows, etc., which was highlighted during interviews with the IAC. In its 2022 report to the MB on its progress on implementing recommendations from the IAS and European Court of Auditors (ECA) audits, Frontex highlighted that the Frontex Internal Structure and Rules of Procedure (FISRoP) are currently being revised and a comprehensive review of the organisational structure of the Agency may take place.<sup>184</sup>

Key forums for horizontal coordination include regular director briefings, which allow for updates from the director of each division to the Executive Director. Each division has a coordination office, which has met regularly with the Frontex Executive Management Bureau in an attempt to improve and operationalise internal coordination.<sup>185</sup> Nevertheless, there is reportedly room for further improvement, to ensure better coordination across divisions and units.<sup>186</sup>

Overall, the Agency has a clear planning process, with the programming process substantiated by a clear legal basis.<sup>187</sup> Existing documents set out the requirements informing the preparation of the Agency's programming documents, which are sent to the Commission, the European Parliament and the Council, and are endorsed by the MB.<sup>188</sup>

In consultation with the European Commission and the MB, Frontex developed a Roadmap for the implementation of the EBCG Regulation. Structured according to sections of the Regulation, the Roadmap is continuously updated, most recently in 2022,<sup>189</sup> and helps to inform Frontex programming documents and the implementation of its mandate. However, this Roadmap has provided an overview of steps to be taken in a horizon of 1-2 years, focused on more immediate and short-term priorities. As such, at this point in time, there is no Roadmap in place indicating when exactly the Regulation will be implemented in full. Beyond the Roadmap, progress and planning related to information and communications technologies (ICT)-related activities (including EUROSUR, FADO

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<sup>183</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>184</sup> Frontex (2022). 'Agenda Point 6: Explanatory note the Implementation of IAS and ECA recommendations.'

<sup>185</sup> Interview with Frontex (1).

<sup>186</sup> Interviews with Frontex (2).

<sup>187</sup> Including: EBCG Regulation; Management Board Decision 19/2019; European Commission communication C(2020) 2297; Executive Director Decision 2021-130.

<sup>188</sup> Articles 106(2)(c) and 115 EBCG Regulation; Article 32 Frontex Financial Regulation; the programming process works in a two-year cycle, starting with the internal preparation (N-2); process of adoption and finalisation (N-1) and implementation (N), followed by reporting in the Consolidated Annual Activity Report (N+1) and discharge of the budget (N+2).

<sup>189</sup> Frontex (2022). 'Roadmap: Implementation of Regulation 2019/1896'. EMB/ESO/November/2022.

and ETIAS) are also reported in the Frontex Information Management Framework and ICT Strategy 2022-2027.

#### 4.1.4 Operations<sup>190</sup>

This section examines the extent and types of support provided by Frontex to Member States in the management of external borders through joint operations and rapid border interventions (RBIs). It then assesses the effectiveness of the implementation of operational activities.

During the evaluation period, Frontex provided extensive technical and operational assistance to Member States through joint operations and RBIs, including technical and operational assistance in SAR operations. Frontex's operational support was mainly in terms of border surveillance and border checks activities via joint operations at the external borders. The majority of joint operations and RBIs focused on the land and sea external borders under significant migratory pressure. Other types of operational activities are carried out through focal points established at key border crossings.

Table 4. Summary of key findings related to operations

### Summary of key findings

#### Key provisions of the EBCG Regulation

Chapter 7, Articles 36 - 47

#### Key findings


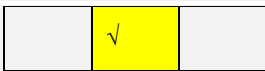
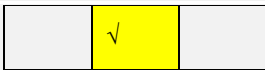
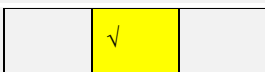
- Overall, Frontex's operational support is valued by Member States and has contributed to achieving the objectives of the EBCG. Frontex brings added value through human resources and technical means sent to Member States and third countries facing challenges related to heightened migratory flows, as well as standardising procedures and harmonising operational implementation of good practices at EU level.
- Some factors potentially limit the effectiveness of Frontex's operational response, including resource planning for operations, availability of certain profiles, different work rules and practices of SCOs compared to Member States ones, access to information and relevant databases, and command-and-control structures yet to be streamlined. The majority of issues stem from operational implementation rather than the Regulation itself.
- The application of EU Staff Regulation rules to the Standing Corps (category 1) is disruptive at an operational level and limits the overall added value of the Standing Corps.
- The lack of well-developed command-and-control structures and mechanisms of the Standing Corps hinders its operational effectiveness. Multiple reporting channels, including the functional line of reporting and the role of the Coordinating Officer, create inconsistencies.
- The availability of certain Standing Corps profiles needs to improve over time. Some profiles are in higher demand and Frontex is reporting up to 80% gaps for certain profiles, such as dog handlers, Advanced Level Document Officers (ALDOs) and Frontex Return Escort and Support Officers (FRESOs).
- Frontex has not yet finalised the technical implementation of access to SIS as provided by Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862. Legal and technical issues, limiting access to other relevant databases and national

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<sup>190</sup> This section responds to the evaluation question 3.1, 5.1.

systems and databases for SCOs in most EU Member States, reduce the level of support the Agency can provide for border checks.

- The Agency does not carry out a robust evaluation of operational activities.

Typology/sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges
Legislative		Application of EU Staff Regulations to Standing Corps staff in the Regulation hinders effectiveness
Operational/implementation		Lack of a clear chain-of-command and clear reporting lines creates confusion
Organisational/internal procedures		Logistical issues and inefficiencies in the deployment process; challenge in acquiring and maintaining land border equipment;
External factors		Dynamic external environment, with changing migratory pressure across external borders

#### 4.1.4.1 Frontex support to Member States and use of Frontex by Member States through operational activities

During the evaluation period, Frontex carried out joint operations and other operational response activities summarised in Table 5. Almost 80% of Frontex’s joint operations budget is devoted to operations at sea on important irregular migration routes to the EU. Frontex has organised joint maritime operations since 2006. The main focus of maritime operations is border surveillance, although other key activities are often carried out, including border checks. Frontex allocates most of the remaining 20% of its joint operations budget to establishing focal points at airports and land borders.

While most of the operational budget is spent at the maritime external borders – the cost of deploying sea vessels, helicopters and surveillance planes is high – patrol cars, drones and thermal imaging vehicles at land borders are also perceived as highly relevant. Joint operations Focal Points Air, Land and Sea are an important platform for the deployment of first-line and second-line experts (document experts, interviewers, stolen vehicle detection experts, intelligence officers, etc.) at border crossing points along the external land and sea borders and in the main EU airports, where they assist/reinforce the detection of many types of cross-border crime. At key border crossing points, the Focal Point concept functions throughout the year. Focal Points also host common actions and operations initiated by other law enforcement agencies (e.g. Europol).

The EBCG Regulation envisages the initiation of **RBIs** when a Member State under urgent and exceptional pressure at its external border may ask Frontex to deploy an RBI on its territory for a limited period. During the evaluation period, two such interventions were initiated by Greece and one in Lithuania in response to the Belarus crisis (in 2021). Greece and Lithuania valued the support received, but Lithuania reported that significantly more resources were received than requested, which presented challenges (for example, finding accommodation for the additional officers). Results from the Romanian case study showed that at the beginning of Russia’s full-scale invasion of Ukraine in 2022, local authorities preferred to supplement the resources for an ongoing operation (Terra) rather than initiate and manage an RBI. This is because an RBI requires lists of needs (profiles and types of equipment), new budgets, identification of additional human and technical resources by all contributing Member States, and solutions for complex logistical problems

in a very short timeframe. Local authorities preferred to receive additional resources more flexibly under the umbrella of regional Frontex joint operations.

Table 5. Type / number of Frontex joint operations (2020-2022)

Operation	2020	2021	2022
Total number of joint operations (JOs)	14 operations	19 operations	20 operations
Air, land and maritime operations	1 operation JO Coordination Points Air, Land and Sea	1 operation JO Coordination Points Air, Land and Sea	1 operation JO Coordination Points Air, Land and Sea
Land joint operations	JO Flexible Operational Activities Land JO Focal Points Land JO Serbia-Land JO Albania-Land	5 (+ 1 RBI Lithuania) JO Focal Points Land JO Flexible Operational Activities Land JO Montenegro-Land JO Serbia-Land JO Albania-Land	5 operations JO Terra JO Moldova JO Montenegro JO Serbia-Land JO Albania-Land
Maritime joint operations	8 operations JO Poseidon JO Themis JO Indalo JO Minerva JO Canary Islands JO Ledra JO Montenegro Sea JO Black Sea	11 operations JO Opal Coast JO Poseidon JO Themis JO Indalo JO Minerva JO Albania Sea JO Canary Islands JO Ledra JO Montenegro Sea JO Constanta JO Neptune	13 operations JO Poseidon JO Ledra JO Themis JO Indalo JO Canary Island JO Minerva JO Opal Coast JO Montenegro Sea JO Albania Sea JO Neptune JO Genoa JO Netherlands Sea MMO Black Sea
Air joint operations	1 operation JO Focal Points Air	1 operation JO Focal Points Air	1 operation JO Focal Points Air
Total number of rapid border interventions	2 (Greece – Turkey)	1 (Lithuania - Belarus)	

Source: Frontex CAARs (2020- 2022).



Most Member States surveyed participated in joint operations,<sup>191</sup> with about half participating in operational activities to fight cross-border crime<sup>192</sup> and document fraud.<sup>193</sup>

Frontex reports the results of operational activities involving both its co-financed assets and host Member States' assets. It is not possible to attribute results solely to Frontex's contribution (such as through incremental increases in results due to Frontex's assistance to Member States in joint operations). Stakeholders at EU level and Member States agreed that despite this volatile and unpredictable environment, Frontex maintained its footprint in joint operations, including an exponential increase in operational results in 2022.

#### 4.1.4.2 Implementation of operational activities

Overall, Frontex's operational support is valued by Member States and has contributed to managing the migratory pressures and protecting and managing EU external borders. Frontex adds value to Member States by providing human resources and equipment, standardising procedures, and harmonising operational implementation of good practices at EU level. At least 30% of the Member States surveyed did not experience any issues during Frontex operations.

The main issues reported during the study included planning operations, command-and-control issues, language, availability of SCO profiles, different work practices and work rules, and sharing/access to information.

- **Operational planning:** Frontex joint operations are planned and implemented on the basis of the standard operational cycle, comprising: initiation; planning; implementation; and evaluation. Eleven Member States<sup>194</sup> surveyed experienced no issues with the joint planning of operations, while 10<sup>195</sup> experienced some issues. France, for example, found the operational planning of a joint operation to be cumbersome. Finland and Slovakia stated that national operational awareness is usually more up-to-date than the information provided by Frontex products. Similarly, Belgium noted that the Agency's analyses of national operational planning are not immediately useful, being overly general and insufficiently focused on the situation at Belgium's external borders (while recognising that this may reflect the low threat level at Belgium's borders). Romania reported delays in the (Multipurpose Maritime Operation (MMO) 2022 and pointed to Frontex's bureaucratic approach to both operational activities and fundamental rights.
- Member States believe that the annual bilateral negotiations process works well overall, despite being informed by individual national perspectives. In the past, there was no clear concept for prioritising the needs of various countries, but the recently developed four-category prioritisation concept (critical/high/medium/low) has improved matters. Finland reported that the joint planning process coordinated by the Operational Response Division (ORD) works well, despite being administratively burdensome during the annual planning and operation. Interviewees noted that even very minor administrative matters may require several steps.

Article 47 of the EBCG Regulation requires Frontex to produce detailed evaluation reports on operational activities. The OLAF audit found several shortcomings in the evaluation

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<sup>191</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>192</sup> Survey of MS/SAC authorities: 15/27 (AT, BE, BG, DE, EL, ES, FI, FR, LT, LV, MT, SK, PL, PT, RO).

<sup>193</sup> Survey of MS/SAC authorities: 14/27 (AT, BE, BG, CZ, DE, DK, ES, FR, LT, LV, MT, PL, RO and NO).

<sup>194</sup> Survey of MS/SAC: 11/27 (BG, CZ, EL, IT, MT, LT, PT, RO, SI, SK and CH).

<sup>195</sup> Survey of MS/SAC: 10/27 (AT, BE, DE, EE, ES, FR, PL, FI, LV and NO).

process and concluded that the Agency does not carry out sufficiently robust evaluations of operational activities.

- **Command-and-control:** The evaluation found that the lack of a clear command-and-control structure hindered its operational effectiveness. Command-and-control issues were reported by six Member States. Multiple reporting channels, including the functional line of reporting and the Coordinating Officer, create inconsistencies. The delay in creating an organisational structure adapted to the needs of the managing of the SC, has also contributed to multiple unclear and inefficient command structures. SCOs had a poor understanding that they should report to their Coordinating Officer on the ground and sometimes believed their functional manager to be their line manager. Frontex is developing a new Frontex operational control-and-command (FC2) concept, which is currently ongoing in Romania. The results of the pilot will be analysed and presented to the MB. FC2 aims to establish an operational structure with clear reporting lines and shift decision-making capabilities from headquarters to the field. The aim is to empower staff to be more mobile on the ground, as the current silo approach does not allow resources to be flexibly relocated from one domain to another.
- **Organisational and logistical issues undermining effectiveness:** Several organisational issues undermine operational effectiveness, organisational image and, in some cases, SCO morale. These include practical issues with weapons transportation, lack of equipment and uniforms, and poor advanced logistical support. Issues with weapons transportation is largely a logistical issue, with Category 1 SCOs collecting their weapons at Frontex headquarters in Warsaw and travelling on the day of deployment (not earlier). Frontex cannot use blue lights in the host country in some cases, as national legislation prevents non-law enforcement agencies from doing so. Limitations and difficulties related to logistics such as availability of patrol/service vehicles (need to rent unmarked vehicles)<sup>196</sup>, non-availability of adequate fuelling and maintenance<sup>197</sup>. Lack of appropriate uniforms, for example for winter conditions, was also noted by the Member States. Overall, the lack of advanced logistical support (expected to be provided via the antenna offices) in assisting SCOs with car rentals and accommodation, as well as changes of deployment, undermined effectiveness and impacted SCOs' morale.

**Standing Corps profiles and training:** As the Standing Corps was just being established, Member States reported that the availability of different profiles did not fully correlate with the overall needs. The availability of certain profiles has gradually improved over time. Specific profiles are in high demand and Frontex reports up to 80% gaps for certain profiles. Some Member States also experienced issues with the level of training and preparedness during deployment. Over half of the Member States<sup>198</sup> reported language issues during Frontex operations (see section 6).

**Access to information and relevant databases:** Articles 38 and 82(10) of the EBCG Regulation refer to the use of databases, with Frontex's access to national databases dependent on the agreement of the host Member State. Challenges in sharing and accessing information were reported by nine Member States and confirmed during field visits.<sup>199</sup> Only four Member States facilitate some form of access (Czech Republic, France, Portugal and Iceland). Other Member States currently do not allow Frontex to consult relevant databases, including national databases for border checks. However,

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<sup>196</sup> Case studies Greece and Bulgaria

<sup>197</sup> Case studies Romania.

<sup>198</sup> Survey of MS/SAC: 14/27 (AT, BG, CZ, DE, EE, ES, FI, IT, LV, PL, PT, SK and CH, NO).

<sup>199</sup> Survey of MS/SAC: 9/27 (BE, BG, ES, FI, IT, LV, PL and CH, NO).

where such access is provided, the information is often available in the national language, which is an obstacle for Frontex officers.

Frontex has not yet finalised the technical implementation of access to SIS, as provided by Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862. In order to perform effective border checks, Frontex officers need access to SIS, Interpol's SLTD and relevant national databases. The current lack of access to relevant European databases (such as VIS, SIS), which is due to delays and implementation issues, further limits the support the Agency can provide for border checks.

**Application of EU Staff Regulation to Standing Corps staff in the Regulation** is found to hinder effectiveness of operational performance. The current legal framework is not adapted to reflect the role of Frontex Standing Corps staff, including their functions as a uniformed, armed service with executive powers. In Member States typically law-enforcement officers' employment is regulated by special legislation, different from the one of civil servants, foreseeing early retirement, special working hours, pay, and conditions, including for deployment; This situation is seen as disruptive at an operational level by some Member States and Frontex, which limits the operational effectiveness of the Standing Corps. The application of the EU Staff Regulations to the EBCG Regulation and the Standing Corps presents challenges as the EU Staff Regulations has not been created to meet the needs of an operational service with executive powers, resulting in inconsistencies in areas such as working conditions, selection procedures, deployment locations, leave entitlements, disciplinary measures, and complaints mechanisms.

Several Member States<sup>200</sup> reported that Frontex officers cannot perform tasks independently due to practical/logistical limitations.

#### 4.1.5 Return<sup>201</sup>

As per Section 8 of the EBCG Regulation, Frontex is tasked with assisting Member States in implementing returns of people who have exhausted all legal avenues to legitimise their stay. Frontex offers support to Member States in all phases of the return process – from pre-return and identification missions to post-return, including reintegration. Frontex is responsible for coordinating return operations at a technical and operational level, including voluntary returns. The Agency can also organise returns on its own initiative.

Frontex has become an essential actor in the common EU system for return, taking on new responsibilities related to return of people who have no legal right to stay in the EU. Frontex has effectively supported Member States through all phases of return procedures. Stakeholders at EU and national level value Frontex's operational and technical assistance in return, particularly in organising joint return operations (JROs), but also in other return-related support.

Table 6. Summary of key findings related to returns

### Summary of key findings

#### Key provisions of the EBCG Regulation

Article 2(24), Section 8 (Articles 48-53)

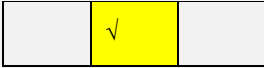


#### Key findings

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<sup>200</sup> For example, BG, CZ, EE, LT, RO.

<sup>201</sup> This section responds to evaluation question 3.2, 5.2, 15.

- The Agency’s extensive support in the area of return is valued highly and Member States see the added value of Frontex’s coordinating role and ‘catalogue of services’.
- The share of Frontex voluntary returns is increasing. This is seen as a positive development. Frontex is still developing its service and expertise in this area, as per the new mandate.
- A key issue is the unclear definitions of various return-related concepts and activities, which in turn create challenges in implementing the operational cycle. Certain concepts in the area of return are not defined, causing operational difficulties. This includes the absence of return-related definitions (for example, voluntary returns, voluntary departures, reintegration, post-arrival assistance).
- Key issues in processing personal data include transfer of data to third parties and third countries, as well as a short data retention period. A longer retention period would facilitate a more accurate and reliable situational picture of return, with the Agency making sure that any support to return operations and other return activities are planned and implemented efficiently.
- The EBCG Regulation does not provide for vulnerability assessment to cover the area of return, which is an essential part of EIBM. Instead, only limited risk analyses are carried out.
- The annual nature of the financial cycle hinders the effectiveness of operational planning and implementing activities in line with the operational cycle.
- Digitalisation of the return process is one of the key priority areas of Frontex. The Agency also provides extensive support in this area through key return management systems and the RECAMAS concept of capacity-building at national level.

Typology/sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges
Legislative		Unclear definitions for various return-related concepts and activities
Organisational/internal procedures		Issues with processing personal data; annual nature of financial cycle hinders implementation
External factors		No major external factors impacting the effectiveness of Frontex support in the area of return

#### 4.1.5.1 Use of Frontex by Member States throughout all phases of the return process

Frontex offers support to Member States in all phases of the return process. Frontex coordinates forced-return operations from individual Member States (national return operations) or jointly from more than one Member State (JROs), and with the use of means provided by third countries (collecting return operations). It may also propose to coordinate or organise returns on its own initiative. The returns are carried out by Member States by air (charter and scheduled flights), sea, and land. Returns by charter flights are carried out by airplanes chartered by either Member States or Frontex, while returns by scheduled flights are implemented on regular commercial flights. The Agency can also provide escort officers to Member States, either ad hoc (for a specific operation) or through long-term deployment of an SCO with the relevant profile.

The implementation of a charter operation is only possible with the consent of each country of return. In 2022, for the first time, the Agency organised and carried out two end-to-end return operations with charter flights to Albania and Nigeria. A third operation was organised in March 2023 to Bangladesh.

In 2022, Frontex recorded an increase of 36% in the total number of persons returned (compared to 2021), with a steady increase in the share of voluntary returns. Survey respondents reported no issues with the first end-to-end Frontex operations in 2022 and participating Member States were positive in their feedback.

Table 7. Key results of Frontex return operations

Operation	2019	2020	2021	2022
Total number of persons returned	15,850	12,072	18,301	24,850
Of which voluntary returns	1%	18%	26%	39%
Number of people returned via charter flights	10,903 on 330 operations to 40 third countries	7,952	10,193 persons (56%) on 337 operations to 33 countries	9 919 persons to 32 countries
Number of people returned via scheduled flights	4,776 to 81 destinations	3,981	8,108 persons (44%) to 107 countries	14 937 persons to 116 countries

Source: Frontex Consolidated Annual Activity Reports (2019-2022).

At least 55% of Member States surveyed did not encounter any challenges when cooperating with Frontex in the different stages of the return process. The majority reported positive cooperation with Frontex in the field of returns and also noted indirect benefits, such as reducing secondary movement.

The majority of respondents did not face any challenges when cooperating with Frontex in the different stages of the return process. Some Member States<sup>202</sup> particularly valued Frontex's assistance with organising charter flights, which are considered a safer option to return violent and difficult cases. Efforts were made to use scheduled flights for cases that could reasonably be returned that way. The remaining – often disruptive – cases were returned via a charter flight to avoid risk to other passengers, the escort or flight staff, or the returnee themselves. Two Member States<sup>203</sup> with small caseloads commented that JROs provide an opportunity to return the most difficult cases in a more controlled environment, which would be very inefficient in national return operations.

Pre-return assistance was valued by Member States, with reports of good experiences with European Return Liaison Officers (EURLOs), who helped with re-documentation and facilitated return operations. Particular added value was reported by Member States without representation in the third country.

Challenges included last-minute cancellations of JROs, which typically reflected issues of cooperation between the organising Member State and the third country of destination.

<sup>202</sup> Survey of MS/SAC authorities: Q6.2: 3/27 (FI, HU and NO).

<sup>203</sup> FI, HU.

The provision of technical expertise and assistance is one of the key areas where Member States enjoyed support from Frontex. The deployment of FRESOs was valued by several countries. FRESO return team members escort individuals who have received a return decision from national authorities, provide ground support in returns, and identify and assist vulnerable groups or families with children. FRESOs carry out their tasks in accordance with Member States' national legislation, under their command-and-control structures and in compliance with operational plans agreed between Frontex and the host Member State(s). Frontex support with identification missions was also highlighted. With small caseloads to many third countries, it is seen as more cost-effective and less of an administrative burden to join an identification mission with another Member State. EURLOs helped Member States with re-documentation and facilitated return operations. This added particular value in third countries where Member States did not have a consular presence.

Information sharing in different working groups and via questionnaires maintains a more unified European front and facilitates sharing of best practice. For example, an excellent networking platform was provided to meet Escort Leaders, which was seen as key to any international cooperation. Another issue highlighted was the lack of financial training for the officers organising JROs. The planning of training was also seen as a challenge, specifically the late confirmation of planning dates.

#### 4.1.5.2 Effectiveness of Frontex return activities

Stakeholders at EU and national level valued Frontex's operational and technical assistance in return, particularly in organising JROs and other return-related activities. Overall, Frontex has become an essential actor in the common EU system for return, taking on new responsibilities in the return of migrants. However, several factors hindered its effectiveness in return operations and return-related activities. These factors are grouped under different themes and discussed in turn.

##### **Definition and scope of return**

As per Article 2(24) of the EBCG Regulation, return is understood as defined in Article 3 of Directive 2008/115/EC (Return Directive) (and its proposed recast), referring to 'the process of a third-country national going back — whether in voluntary compliance with an obligation to return or enforced'. The Agency's mandate in return is broad and includes activities in the area of pre-return, post-arrival and post-return.

At a more conceptual level, the definition of EIBM may not fully reflect the area of return, as the business processes of return are different to those of border management (e.g. managing outflow vs inflow of people). Some of the provisions in the EBCG Regulation do not reflect the operational reality, with the European Commission and Frontex both noting that this should be better reflected in the Regulation. Recognising the interdependence of border management and return in the migration management process, it is not always clear in the EBCG Regulation if 'returns' are considered part of border management, as there are provisions where 'border management' is taken to mean 'border control and return', while others refer solely to 'border control'. This creates confusion for obligations such as 'contingency planning' (Article 9(4)).

A related aspect is the lack of a specific governance framework for the area of return. Sweden highlighted this as a key challenge. While the EBCG Regulation extended the Agency's return mandate, the governance structure of Frontex remained unchanged. Stakeholders at EU level, including Frontex, commented that competences in the area of return are typically scattered across different institutions in the Member States and there is no single interlocutor, creating communication difficulties. Member States also have different models of implementing returns, which hinders operational cooperation. Currently, the NFPOC (National Focal Point of Contact) is responsible for such

communication; however, the case study in Bulgaria shows that lack of clear division of responsibilities and overlapping responsibilities in the area of return between authorities hosting the NFPOC and other competent authorities may create inefficiencies.

Given the political priority and importance of return, stakeholders feel it needs to be more prominently acknowledged.

### **Return interventions**

Article 52 of the EBCG Regulation envisages that Frontex will carry out return interventions, providing Member States with enhanced technical and operational assistance, and Article 2(28) defines 'return intervention' as 'deployment of return teams and organisation of return operations'. In Article 53(1), the 'may' clause to some extent contradicts this definition. This is considered a dormant provision by Frontex, with 'intervention' perhaps having negative connotations. The concept may suggest that activities are against the will of the Member States, whereas in practice all activities are in alignment and cooperation with the Member State. A high return case load can be anticipated, as it first necessitates entry, apprehension and return decisions for irregularly staying third-country nationals. The concept does not cover the whole range of activities that the Agency can deliver to support Member States. To date, no Member State has requested a return intervention from Frontex. On the other hand, Frontex provides support by deploying Standing Corps return specialists and FRESOs in a more predictable and long-term manner.

### **Procedural aspects**

The European Centre for Returns Division (ECRET) stated that the annual nature of the financial cycle hinders the effectiveness of operational planning and implementing activities in line with the operational cycle. The deployment of EURLOs to countries like Iraq requires a longer deployment than one year. The annual tenders for reintegration partners do not allow for longer-term capacity-building or relationship-building in third countries of return. Additionally, the procurement processes create additional administrative burden for both Frontex and reintegration partners. This was confirmed in interviews with the Directorate-General for International Partnerships (DG INTPA), which observed inefficiencies in the process that did not allow for longer-term capacity-building.

### **Voluntary returns and voluntary departures**

The EBCG Regulation extended the Agency's mandate to include the possibility to provide assistance to voluntary returns. Since then, the Agency has enhanced its tailored support for this type of return. Voluntary returns made up 40% of all returns in 2022 - a significant share of Frontex's returns.

Recognising that this is a new and developing area for Frontex, stakeholders reflected that the area of voluntary returns requires a different approach and expertise that is closer to counselling people on voluntary return rather than law enforcement functions. Frontex is still developing this service and expertise, as per the new mandate. A majority of Member States surveyed did not experience any issues in the Agency's support to voluntary returns and departures.

Stakeholders at the European Commission (DG HOME) and Frontex commented that the distinction between voluntary departure and voluntary return is not defined in the EBCG Regulation. In the absence of a legal definition of (assisted) voluntary return (and/or of third-country nationals returning voluntarily), it is not always possible to clearly differentiate such returns from voluntary departures, which are no longer mentioned in the EBCG Regulation (unlike the 2016 EBCG Regulation). Member States' practices differ and the two terms are often used interchangeably.

### **Post-arrival and post-return activities**

Post-arrival support and reintegration are a relatively new area for the Agency, due to the recent expansion of its mandate. While Article 48(1) of the EBCG Regulation provides for Frontex to assist Member States with post-arrival and post-return activities, these activities are not clearly defined. The Regulation only refers to activities that happen after the return as 'post-arrival' and 'post-return assistance'. There is no reference to the common term 'reintegration' in the Regulation. Under the JRS, Frontex has a working definition of post-arrival as 'support upon arrival till a maximum three days after arrival' and post-return as 'support to help a returnee build a new livelihood in the country of return provided within 12 months after departure'. EU stakeholders commented that the lack of clear definitions of post-return and reintegration activities creates operational challenges and legal uncertainty. The business processes of reintegration services are very different to other forms of assistance offered by the Agency, which stakeholders find problematic.

Some Member States<sup>204</sup> reported that they do not (yet) have any experience in participating/requesting Frontex's assistance as part of JRS. Those countries that received assistance reported positive experiences overall.

Some Member States<sup>205</sup> believe that the Agency should be given a mandate to organise self-governed return operations from third countries to third countries, in order to prevent secondary movements to EU from neighbouring third countries and build effective return capacity.

### Return-related digitalisation

Digitalisation of the return process is a key priority for Frontex. The following section gives a preliminary overview of the systems managed by Frontex and the user experience. There are no public statistics on the use of these platforms by Member States.

Member States reported that **IRMA** (Irregular Migration Management Application) and **FAR** (Frontex Application for Return) are convenient and user-friendly, and the availability of useful source material and information in one place is useful. By contrast, Belgium noted that IRMA is not used often because it is not seen as user-friendly. FAR is considered efficient for purchasing tickets for certain groups of people, allowing the national border guard to carry out the return in an efficient and timely manner. One survey respondent suggested that, compared to the Asylum and Migration Integration Fund (AMIF), FAR is more effective as a means of obtaining a flight ticket for each returnee, with a shorter waiting time and associated reduced period of detention. Stakeholders noted that RIAT and FAR/IRMA should be integrated to ensure interoperability.

**RIAT** (Reintegration Assistance Tool) has continuously evolved, according to Member State feedback, allowing those in forced return to benefit, even where information exchange and/or cooperation with returnees proves difficult.

### 4.1.6 Situational awareness and monitoring, risk analysis, vulnerability assessment<sup>206</sup>

Frontex conducts and supports various situational awareness activities to underpin EU border management decisions that are intelligence-driven and to plan for targeted operational responses.

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<sup>204</sup> BE, EE, FI (induction phase), HU, IE, LV, LU, MT, RO, SK and IS, NO.

<sup>205</sup> HU, PL, SI.

<sup>206</sup> This section responds to Evaluation questions 3.3, 4, 5.3, 9, 16, 24.



Table 8. Summary of key findings on situational awareness

Summary of key findings
<p><b>Key provisions of the EBCG Regulation</b></p> <p>Article 29 (risk analysis); Article 32 (vulnerability assessment); Section 3, Articles 18-23; Articles 28 and 89 (EUROSUR)</p> <p><b>Key findings</b></p> <p><b>Situational awareness:</b></p> <ul style="list-style-type: none"><li>• Frontex has made progress towards being able to produce fully up-to-date, reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance. It is not yet fully capable of doing this, largely due to lack of access to data contributing to the pre-frontier situational picture, lack of access to intelligence sources; lack of data on irregular migrant incidents outside border areas;</li><li>• EUROSUR supports the provision of a European situational picture, but does not provide complete and up-to-date situational awareness at the EU's external borders. Some challenges stem from contradictions in the EBCG Regulation itself (specifically on access to personal data and potential contradictions between Articles 28 and 89) or its incomplete implementation (with cooperation levels, practices and development and integration of new capabilities varying amongst Member States);</li><li>• The upgrade of the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL has not been implemented. Frontex facilities do not meet the requirements for such an upgrade, while the added value of the upgrade to Member States, in view of the associated costs is questionable, as only military assets related information is presently considered to need a classified information exchange network.</li></ul> <p><b>Risk analysis:</b></p> <ul style="list-style-type: none"><li>• Risk analysis remains one of Frontex's highest-value activities. Member States view products generated by Frontex as highly informative and the products help inform Frontex operational activities. However, issues persist as products are not sufficiently tailored to Member States' operational needs or do not contain actionable information;</li><li>• Frontex risk analysis is incomplete when considering the full scope of EIBM, as pre-frontier and third-country analyses is insufficient;</li><li>• The objectives of the return-related risk analysis are not clear, while data to produce such analysis is largely unavailable from Member States, or could be gathered at disproportionate to the benefits costs.</li><li>• The extent of some risk analysis products is impacted by rules on processing of personal data (including suspects of cross-border crime and terrorism), as well as limits on collection of information from open sources (such as personal data from Social Networks), with work between Frontex and EDPS on-going to redraft the relevant MB Decisions (68/2021 and 69/2021).</li></ul> <p><b>Vulnerability assessment:</b></p> <ul style="list-style-type: none"><li>• Vulnerability assessments allow Frontex to effectively monitor potential vulnerabilities at the EU external borders and to work with Member States to reduce those vulnerabilities. However, this process tends to cause high additional administrative burden due to the exhaustive nature of the questionnaires and the reported inefficiency of its associated information technology (IT) system; Lack of</li></ul>

mechanism to enforce the implementation of the vulnerability assessment recommendations undermine the effectiveness of the process.

- Additional complementarity between vulnerability assessment and Schengen evaluations has been achieved through enhanced cooperation between the European Commission and Frontex. Nevertheless, some Member States still view the two processes as overlapping;
- The methodologies of risk analysis (CIRAM) and vulnerability assessments (CVAM) are not fully coherent with each other, and as such risk analysis cannot fully benefit from potential synergies with vulnerability assessments. This problem is compounded by the fact that Member States perceive vulnerability assessment data to be highly sensitive to their interests and are reluctant for it to be shared outside the realm of the Vulnerability Assessment Unit (VAU).

Typology/ sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges
Legislative		<p>Potential contradictions between Articles 28 and 89 on the type of personal data to be processed in the context of EUROSUR</p> <p>Some provisions of the EBCG Regulation are drafted very broadly, with the risk of leaving wide margin of interpretation in respect of data processing (including for the purpose of risk analysis)</p>
Operational /implementation		<p>EUROSUR is impacted by divergences in practices among national coordination centres, as well as insufficient implementation of operational and analysis layers</p> <p>Incomplete implementation of the provisions to upgrade the EUROSUR communication to CONFIDENTIEL UE/EU CONFIDENTIAL</p> <p>Returns are absent from Frontex risk analysis due to definitional and methodological challenges</p> <p>24/7 situational monitoring currently relies on use of Standing Corps staff in Frontex headquarters</p> <p>Frontex is unable to access sufficient data on migratory movements in third countries to support an accurate 24/7 situational picture at EU external borders</p> <p>Frontex risk analysis does not fully cover all aspects of the EIBM four-tier access control model</p>
Organisational/ internal procedures		<p>Exhaustive scope of data collection for vulnerability assessment, leading to administrative burden for Member States and capacity issues</p>
Technological		<p>Sub-optimal IT system for vulnerability assessments</p>

**Frontex has been able to contribute to improved situational awareness at external borders through its products (including risk analysis, vulnerability assessments and 24/7 situational monitoring).** Nevertheless, several elements impact its ability to provide up-to-date and comprehensive situational monitoring. This stems in part from limitations in the EBCG Regulation related to processing of personal data by Frontex (including in the context of EUROSUR and for risk analysis purposes, as outlined in

section 4.1.1 and Annex 4). A number of implementation issues have also been identified, including incomplete reporting by Member States in the context of EUROSUR and delays in Frontex providing risk analysis products in all four-tiers of EIBM, due to methodological and data issues (especially in relation to return and third-country data).

#### 4.1.6.1 24/7 situational monitoring

The Frontex Situation Centre is responsible for 24/7 situation monitoring, early alerts and a comprehensive and up-to-date situational picture of the external borders and the pre-frontier area of the EU. The Agency dispatches information to national authorities on the situation at the external borders through the European situational picture, as well as consistently reporting on events occurring in areas where it is deployed in an operational capacity. Frontex uses and supports EUROSUR, through EUROSUR fusion services, to reflect the situation at the European borders on a 24/7 basis. Nevertheless, there are some gaps in Frontex's ability to provide complete, consistent and timely situational awareness.

To a certain extent, this has resulted in a patchwork of national situational pictures rather than a single, uniform European situational picture.<sup>207</sup> In addition to the exemptions for land and sea border crossing points, Member States were not required to report illicit air border crossings, either at air border crossing points or into national airspace, until 5 December 2021.<sup>208</sup> As a consequence of these (permanent and previously temporary) measures, the situation at the EU borders was not adequately reported in a near-real-time capacity.<sup>209</sup>

The situation appears to have improved. A majority of respondents to the Member State survey declared that Frontex's activities contribute to comprehensive situational awareness and building a situational picture through 24/7 (near) real-time situation pictures, crisis monitoring and surveillance.<sup>210</sup>

The lack of access to intelligence information is one possible impediment to producing actionable and operationally relevant information, particularly with respect to the pre-frontier situational picture. Data made available from the EEAS' EU intelligence and Situation Centre (Intelligence Analysis and Reporting) is not available to the Frontex Situation Centre (despite being available to all Member States' Ministries of the Interior). Member States rarely share intelligence data with Frontex and, if they do so at all, it is on a bilateral basis.<sup>211</sup>

As regards resources, the Frontex Situation Centre relies on the availability of the Standing Corps to support its maritime and aerial situational monitoring. With discussions underway on the relevant operational tasks for Standing Corps staff, their removal from the Situation Centre would impact Frontex's ability to conduct 24/7 situational monitoring.<sup>212</sup>

Another aspect that continues to undermine the overall EU situational awareness is the reporting linked to interception of migrant movements outside the jurisdiction of authorities

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<sup>207</sup> European Court of Auditors (ECA) (2021). 'Frontex's support to external border management 08/2021, 22'. Special report. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58564>

<sup>208</sup> Article 123 EBCG Regulation; the Regulation contains a provision (in force until 5 December 2021) stating that Member States could provide information on border checks and air border surveillance on a voluntary rather than mandatory basis.

<sup>209</sup> ECA (2021). 'Frontex's support to external border management 08/2021, 22'. Special report. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58564>

<sup>210</sup> Survey of MS/SAC: Q2.1: 16/27 (AT, BG, EE, FI, HU, LT, LU, MT, RO, SE, SI and CH, NO).

<sup>211</sup> Interview Frontex

<sup>212</sup> Visit to Frontex headquarters included a visit to the Frontex Situation Centre and discussion with local staff.

responsible for border management.<sup>213</sup> In a number of Member States, the movements of irregular migrants are established not within the border zone, but after they have moved further into the Member States (whether arriving by sea or land). Data on such incidents remain outside the view of Frontex. For instance, in Bulgaria, the situational monitoring comprises both interceptions in border areas, as well as by police within the country. Consequently, in recent years, about 80% of irregular migrants (entered into Eurodac) are identified from inside the country.<sup>214</sup>

#### 4.1.6.2 EUROSUR

**Although EUROSUR largely supports the provision of a European situational picture, it is unable to fully provide complete and up-to-date awareness of the situation at the EU's external borders.** Challenges include possible contradictions in the text of the EBCG Regulation, as well as incomplete implementation. The upgrade of the communication network to CONFIDENTIAL UE/EU CONFIDENTIAL has yet to take place, and its value has been questioned, given the cost of the upgrade.

**EUROSUR** provides a common framework for information exchange and cooperation between Member States and Frontex to improve situational awareness and increase reaction capability at the external borders.<sup>215</sup> EUROSUR was established in 2013 through the adoption of **Regulation (EU) No 1052/2013** establishing the European Border Surveillance System,<sup>216</sup> which was repealed and replaced by Regulation (EU) 2019/1896 (EBCG Regulation), providing revised provisions on EUROSUR.<sup>217</sup> Under the EBCG Regulation, EUROSUR is established as an integrated framework for the exchange of information and operational cooperation, rather than a system.

With the entry into force of the 2019 EBCG Regulation, Member States must report **all events** in EUROSUR, including those detected at border crossing points or during air border surveillance operations.

In April 2021, the European Commission adopted an **Implementing Regulation** on the situational pictures of EUROSUR.<sup>218</sup> Recital 3 of the Implementing Regulation underlines that in order to ensure a coordinated approach that enhances information exchange, reporting within EUROSUR should be specified and standardised. It sets out details of each of the information layers of the situational picture, the type of information to be provided, and mechanisms to ensure quality control.

This focus on standardisation for the purpose of information exchange reflected the findings of the 2018 evaluation of the previous Regulation (EU) No 1052/2013 governing

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<sup>213</sup> Interviews with Frontex.

<sup>214</sup> Site visit to BG; based on Ministry of the Interior migration statistics, available at: <https://www.mvr.bg/министерството/programni-dokumenti-otcheti-analizi/статистика/миграционна-статистика>

<sup>215</sup> European Commission (2022). 'Eurosur'. Available at: [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/border-crossing/eurosur\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/border-crossing/eurosur_en)

<sup>216</sup> Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR).

<sup>217</sup> Section 3 (Articles 18-23) EBCG Regulation is dedicated to EUROSUR.

<sup>218</sup> Commission Implementing Regulation (EU) 2021/581 of 9 April 2021 on the situational pictures of the European Border Surveillance System (EUROSUR).

EUROSUR,<sup>219</sup> and the 2019 ECA report.<sup>220</sup> The present study confirmed that those earlier issues continue to persist:

- **Cooperation levels differ:** not all Member States and SACs report border events;
- **National coordination centres' practices differ:** reported incident formats and timing varies across Member States, leading to poor data quality. Some countries create incident reports for each individual, while others only created incident reports covering several people;
- **Development and integration of new capabilities are not fully implemented:** the operational and analysis layers of EUROSUR have not been implemented comprehensively.

The situational picture at the EU external borders that EUROSUR provides can thus only be partially accurate, complete and up-to date. A majority of Member State respondents to the study survey agreed that the implementation of the EUROSUR framework is effective in terms of information exchange to improve situational awareness.<sup>221</sup> However, only a minority agreed that it has been effective in terms of information exchange to increase the reaction capabilities among the relevant stakeholders<sup>222</sup> or sufficient to improve detection, prevention and combating of irregular migration and cross-border crime.<sup>223</sup>

While input of data by Member States remains a challenge, there have been **significant improvements in data quality, flow, and speed of reporting**. One of the most notable achievements is the marked **increase in data quality, with a decrease in re-entry rates**.<sup>224</sup> Frontex suggested that adding a tool to monitor the quality of data reports by Member States could be helpful, with data quality reports potentially feeding into existing quality control mechanisms (vulnerability assessments, Schengen evaluations, etc.), which would issue recommendations where needed.<sup>225</sup>

**The volume of data has increased in recent years** – albeit with limitations due to technical roadworks as part of the implementation process – leading to a more efficient and effective flow of information.<sup>226</sup> In 2020, 740 analytical reports were uploaded to EUROSUR, increasing to 783 reports in 2021 (+6%).<sup>227</sup> Frontex received significant recognition and demand from Member States, as demonstrated by 407 service requests in 2020. This trend continued in 2021, with a 30% increase in EUROSUR fusion service requests, to 539 requests.<sup>228</sup>

Despite these successes, some areas require further attention. The delay in data entry remains rather high, albeit with exceptions in some Member States. Data latency in

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<sup>219</sup> European Commission (2018). 'Evaluation of the Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR)'. Staff Working Document. Available at: [soteu2018-eurosur-evaluation\\_en.pdf](https://ec.europa.eu/external-affairs/sites/default/files/2018/11/soteu2018-eurosur-evaluation_en.pdf) (europa.eu)

<sup>220</sup> ECA (2019). 'EU information systems supporting border control – a strong tool, but more focus needed on timely and complete data'. Special Report No 20. Available at: [https://www.eca.europa.eu/Lists/ECADocuments/SR19\\_20/SR\\_Border\\_control\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR19_20/SR_Border_control_EN.pdf)

<sup>221</sup> Survey of MS/SAC: Q7.1.a: 17/27 (AT, BG, CZ, DE, DK, EE, EL, LT, LU, LV, MT, PL, PT, SE, SK and CH, NO).

<sup>222</sup> Survey of MS/SAC: Q7.1.b: 13/27 (AT, BG, CZ, DE, DK, EL, LT, LV, MT, PT, SE, SK and CH).

<sup>223</sup> Survey of MS/SAC: Q7.2.b: 6/27 (DE, EE, EL, LT, MT, SE).

<sup>224</sup> Frontex. 'Report to the European Parliament and the Council on the functioning of EUROSUR Article 121(5) of Regulation (EU) No 2019/1896'.

<sup>225</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document, p. 9.

<sup>226</sup> Interview with Frontex (3).

<sup>227</sup> Frontex. 'Report to the European Parliament and the Council on the functioning of EUROSUR Article 121(5) of Regulation (EU) No 2019/1896'.

<sup>228</sup> Frontex. 'Report to the European Parliament and the Council on the functioning of EUROSUR Article 121(5) of Regulation (EU) No 2019/1896'.

EUROSUR is not close to real-time, which makes the information less actionable. This needs to be addressed to ensure close to real-time, automated reporting.<sup>229,230</sup>

Frontex further highlighted possible contradictions between Articles 28 and 89 of the EBCG Regulation, which impacts on the type of personal data it can process in the context of EUROSUR, and may then impact the effectiveness of the services provided by EUROSUR.<sup>231</sup> These limitations are outlined in section 4.1.1 and Annex 4 (data privacy), and includes contradictions regarding the use of open source intelligence in the context of EUROSUR. A practical example of the possible use of social media monitoring in the context of EUROSUR would be monitoring of social media channels organising migrant caravans into the EU. For example, one caravan being organised in Turkey<sup>232</sup> was picked up by media channels on the basis of information available on social media, only after which could it be reflected in EUROSUR.

Finally, at a technical level, the cooperation between Frontex's Risk Analysis Unit (RAU) and EUROSUR has been described as the closest and most useful by Frontex staff, but there are some technical issues with the integration of information from the Joint Operations Reporting and Analysis Framework (JORA) and EUROSUR. Frontex's decision to temporarily sever the link between the two information frameworks – due to the increase of classification level to confidential – led to a duplication of information channels, with one Member State reporting that they abandoned reporting via EUROSUR in favour of JORA to avoid double reporting. EUROSUR is working on a technical fix, but it is not yet operational.<sup>233,234</sup>

#### 4.1.6.3 Upgrade of the communication network to CONFIDENTIEL UE/EU CONFIDENTIAL

**Although the Regulation foresees an upgrade of the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL, this has not been implemented.** The formal reason is that Frontex facilities do not meet the requirements for such an upgrade, but nor have the purpose and added value of the upgrade been clearly defined.

Frontex pointed out the considerable cost of upgrading the communication network, with little added value in terms of the additional information that could be shared via EUROSUR.<sup>235</sup> The data in EUROSUR do not require EU confidential classification level, and there would be extensive costs to set up the technical infrastructure for the secure network. This would include a data centre with Faraday cage, secure areas, network segregations, and certified network equipment. Frontex concluded that it 'is challenging to identify a real business need to have a secure network up to CONFIDENTIEL UE/EU CONFIDENTIAL level.'<sup>236</sup> Some Frontex stakeholders highlighted that upgrading to this higher level would have similar financial costs but could have higher added value.<sup>237</sup>

Similarly, when asked whether they believe that the upgrade of EUROSUR to CONFIDENTIAL UE/EU CONFIDENTIAL will allow them to share and input additional

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<sup>229</sup> Interviews with Frontex (4) and EU Institution (2).

<sup>230</sup> Survey of MS/SAC: 3/27 (ES, LV, RO).

<sup>231</sup> Interviews with Frontex (3).

<sup>232</sup> For example, see: Williams, J. (2022). 'Syrian refugees mass in convoy on Turkish border to walk into Greece'. *The Guardian*, 21 September 2022. Available at: <https://www.theguardian.com/global-development/2022/sep/21/syrian-refugees-mass-in-convoy-on-turkish-border-to-walk-into-greece>

<sup>233</sup> Interview with EU institution (1).

<sup>234</sup> Interview with Frontex (1).

<sup>235</sup> Scoping interview (1); interview with Frontex (1).

<sup>236</sup> Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

<sup>237</sup> Scoping interview (1); interview with Frontex (1).

information and improve the European situational picture, around half of the responding Member States were not in favour,<sup>238</sup> stating that this would have limited benefit because other networks allow such information to be shared. Critics of the idea highlighted that:

- Higher classification will not actually allow them to share additional information;<sup>239</sup>
- Could further limit access to EUROSUR data;<sup>240</sup>
- Cost of the upgrade.<sup>241</sup>

A minority of Member States see a potential advantage in upgrading the communication network, as this could help to improve information sharing<sup>242</sup> and would improve the European situational picture.<sup>243</sup> The only type of information specifically identified, which is classified and would add value to the situational picture, includes the location of military assets involved in operations where joint operations take place, such as the Aegean or Central Mediterranean.<sup>244</sup>

#### 4.1.6.4 Risk analysis

**The 2019 EBCG Regulation ‘reinforces significantly the analytical products focusing more than ever on prediction and prevention’.**<sup>245</sup> The risk analysis products generated by Frontex generally perform well across a number of key qualitative metrics. Its products are well received at strategic level, but lack of access to intelligence information limits their use at operational level.<sup>246</sup>

The RAU produced over 1,200 regular risk analysis products in 2022, excluding weekly and monthly risk analysis reports on joint operations. These products, especially annual and strategic risk analysis reports,<sup>247</sup> are primarily used by Member States to feed information into their own national-level analyses.<sup>248</sup> A minority of Member States have reported, to some extent, using Frontex’s risk analysis products directly for their operational planning.<sup>249,250</sup> However, it is not clear that the relevance and/or usefulness of Frontex’s risk analysis products is sufficient to support the operational planning of a majority of Member States. The main explanatory factor is that operational activities typically rely either on local risk analysis and data, or intelligence<sup>251</sup> information, which is not typically shared with Frontex.

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<sup>238</sup> Survey of MS/SAC authorities: Q7.8: 13/27 shared a negative opinion (AT, DE, DK, EE, ES, FI, FR, HU, LT, LU, LV, PL, RO).

<sup>239</sup> Survey of MS/SAC authorities: Q7.8: 1/27 (LV).

<sup>240</sup> Survey of MS/SAC authorities: Q7.8: 4/27 (AT, HU, PT, RO).

<sup>241</sup> Survey of MS/SAC authorities, Q7.8: 2/27 (EE, HU).

<sup>242</sup> Survey of MS/SAC authorities, Q7.8: 2/27 (BG, SK).

<sup>243</sup> Survey of MS/SAC authorities, Q7.8: 3/27 (CZ, EL, SE).

<sup>244</sup> Interview Frontex, Interview – site visit to EL (Hellenic Coast Guard); survey of MS/SAC authorities, Q7.8: 7/27 shared a positive opinion (BG, CZ, EL, MT, SE, SK and CH).

<sup>245</sup> Frontex (2022). ‘Single Programming Document 2022-2024’, p. 18.

<sup>246</sup> Interviews during site visits to BG, EL.

<sup>247</sup> Interviews with EL, SK.

<sup>248</sup> The ECA (2021) report revealed similar results: 95% of the 20 Member States/SAC surveyed reported that their national risk analyses were informed by Frontex’s risk analysis.

<sup>249</sup> Interviews with MS/SAC: 5/26 (DK, EE, EL, FR, RO, SK).

<sup>250</sup> Survey of MS/SAC authorities: Q.2.1: 12/27 agreed (AT, BG, DK, EE, EL, FR, LU, LV, MT, PT, RO and CH); 9/27 neither agreed nor disagreed (CZ, DE, HU, IE, LT, PL, SE, SI and NO), while 4/27 disagreed (BE, ES, FI, SK).

<sup>251</sup> Criminal intelligence (from various sources), as well as military and civilian intelligence agencies, with operations in third countries bordering EU, provide Member State authorities with useful information on risks and threats.

Another shortcoming identified by a minority of Member States was the lack of regional or locally specific analysis.<sup>252</sup> Others found the strategic analysis helpful, but felt there was not sufficient analysis linked to the joint operations.<sup>253</sup> Risk analysis on specific Member States may overlap with national risk analyses, adding limited value to the Member State in question, which is already aware of the level of risk at its own external borders.<sup>254</sup> Timeliness of reporting may also limit Member States' ability to use Frontex's risk analysis in their operational planning, with quarterly reports sometimes issued with two-month delays, 'way too late' for operational planning.<sup>255</sup>

#### 4.1.6.5 Use of risk analysis in Frontex's operational activities

**Frontex's operational activities are generally based on up-to-date risk analysis and are well received by key stakeholders.** It produces a wide range of risk analysis products specifically on its joint operations. These products are made available through the regular channels of FOSS/CIRCABC, as well as through daily or weekly briefing sessions for Standing Corps and national border control staff.

Frontex highlighted examples of rapid border interventions (RBIs) based on its risk analysis, namely at the Greek/Turkish border in February 2020.<sup>256</sup> One Frontex interviewee pointed to recent technological developments that have improved risk assessment and directly impacted the preparedness of Member States: new IT provided to officers, 250 information and communications technology (ICT)-related projects, the use of 80 business applications, and increased cooperation with European Maritime Safety Agency (EMSA) and European Fisheries Control Agency (EFCA).<sup>257</sup> They cited the Ukraine crisis as a prime example of Frontex's ability to monitor migration flows immediately. Cooperation with the EU Satellite Centre (SatCen) also improved Frontex's ability to keep its risk analyses up to date.<sup>258</sup>

During the field visits, a number of Member State authorities commented on the usefulness of these products during operations. For SAR operations, risk analysis is received as a post-event assessment that allows a better understanding of the situation (SAR are usually urgent and generally do not allow for preparatory action).<sup>259</sup> The Standing Corps receive weekly risk analysis updates (uploaded to FOSS). They stated that they are regularly informed and that these updates are helpful.<sup>260</sup> In Greece, local police receive weekly reports from Frontex about the whole operational area, which the interviewee considers useful, as well as monthly reports on the operational area.<sup>261</sup> Meanwhile for Joint Operation Terra, some stakeholders pointed out that they can attend daily risk analysis briefings,<sup>262</sup> but most do not and the briefings often have limited added value (much of the reporting focuses generally on areas where most of the issues are, but not specifically on the border sections with which they are concerned).

Some weaknesses were identified through consultation with Member States and Frontex. For example, **the risk analysis produced by Frontex does not adequately cover all**

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<sup>252</sup> Interviews with MS/SAC national authorities: 5/27 (BE, CZ, DK, ES and IS).

<sup>253</sup> Interviews during site visits to BG, EL.

<sup>254</sup> Interview with ES.

<sup>255</sup> Interview with BE.

<sup>256</sup> Frontex (2021). 'Consolidated Annual Activity Report 2020'.

<sup>257</sup> Interview with Frontex (13).

<sup>258</sup> Interview with SatCen.

<sup>259</sup> Interview with IT.

<sup>260</sup> Site visits interviews: BG, IT.

<sup>261</sup> Interview with EL.

<sup>262</sup> Interview with FI; site visit interviews in BG.



**four tiers of EIBM, leading to delays in full implementation of Article 29(3) of the EBCG Regulation**, which states that ‘the risk analyses referred to in paragraph 2 shall cover all aspects relevant to European integrated border management with a view to developing a pre-warning mechanism’.<sup>263</sup>

The key elements of EIBM not included in the Frontex risk analysis products are returns and third-country information. The EBCG Regulation stipulates that Frontex’s mandate on risk analysis is to ‘monitor migratory flows ...and other trends or possible challenges at the external borders and with regard to return’.<sup>264</sup>

Some stakeholders suggested the need to add return to Frontex risk analysis products (as well as vulnerability assessments) to ensure that they capture all components of EIBM<sup>265,266</sup>. However, there are a number of practical difficulties. The first is the lack of clarity on the purpose of analysing the risks linked to returns. For instance, if the main objective is to assess the risk of unsuccessful returns (for example, at strategic level), there will be a need for specific types of information to be collected both at Member State level (risk of absconding, for example), or in third countries (risk linked to compliance with international agreements, or security threats), neither of which is presently collected. Returns are not covered under the vulnerability assessment and national capacity for successful returns is unclear. If, for instance, an aspect of return is successful ‘reintegration’ of returnees, procedures and data to make such assessment are not available. Frontex and Member States are currently discussing the types of return indicators that could be added to the risk methodology.

In the context of the fourth tier of EIBM, ‘activities inside the EU/Schengen Area and between EU and Schengen countries’ is one area that can improve risk analysis. Stakeholders, particularly those from Member State authorities without land or sea external borders, consider that secondary movements are not sufficiently covered in Frontex’s risk analysis products. There are some significant gaps in data on incidents with movement and detection of irregular migrants outside internal border areas<sup>267</sup>.

#### 4.1.6.6 Vulnerability assessment

**Vulnerability assessments are a useful tool in allowing Frontex to monitor potential vulnerabilities at EU’s external borders, and to work with Member States to reduce those vulnerabilities.** Additional synergies with the complementary Schengen evaluation mechanism contribute to added coherence.

A majority of Member State respondents believe that Frontex’s vulnerability assessment activities help to assess Member States’ readiness and capacity to face challenges at external borders and are conducive to better preparedness.<sup>268</sup> The assessments are also seen as helpful in the context of the Schengen evaluations.<sup>269</sup>

However, Member States pointed to several issues in the vulnerability assessment process. A small group expressed concern that vulnerability assessment data collection is highly cumbersome and places a heavy administrative burden on their authorities.<sup>270</sup> This

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<sup>263</sup> Article 29(3) EBCG Regulation.

<sup>264</sup> Article 29 EBCG Regulation.

<sup>265</sup> Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

<sup>266</sup> Frontex (n.d.). ‘Regulation Review RAU contribution’. (Unpublished, provided to the study team).

<sup>267</sup> Border authorities report in EUROSUR only incidents that take place in border areas. If local police apprehends a vehicle transporting irregular migrants – they’re entered into EUROSUR by local authorities, but not necessarily passed on to the EUROSUR NCC. .

<sup>268</sup> Survey of MS/SAC: Q2.3: 14/27 (AT, DE, DK, EE, EL, FI, FR, LT, LU, MT, PT, RO, SE, SI).

<sup>269</sup> Interviews with DG HOME (2) and Frontex (1).

<sup>270</sup> Interviews with MS/SAC: 6/27 (DK, PL, FR, NO, ES, CH); Survey of MS/SAC: 3/27 (ES, PL, SE).

administrative pressure is compounded by a 'highly inefficient IT platform', with restrictive access, recurring technical errors and lost data, reducing the added value of the annual baseline vulnerability assessment. Nevertheless, Member States recognise the relative recency of the vulnerability assessment system, and Frontex has reported an ongoing upgrade to the Vulnerability Assessment Platform (VAP) to deal with this problem.<sup>271</sup>

Article 33(1) of the EBCG Regulation states that 'synergies between the vulnerability assessment and the Schengen evaluation mechanism shall be maximised in order to establish an improved situational picture on the functioning of the Schengen area, avoiding, to the extent possible, the duplication of efforts on the Member States' side, and ensuring a better coordinated use of the relevant Union financial instruments supporting the management of the external borders.'<sup>272</sup> The European Commission and Frontex have worked together to ensure better synergies between the two mechanisms and report improvements in this regard. Nevertheless, some Member States still see these mechanisms as overlapping.<sup>273</sup>

#### 4.1.6.7 Coherence of risk analysis and vulnerability assessments

**While the data collections for risk analysis and vulnerability assessment should be coherent with one another, the processes within Frontex are not sufficiently interlinked.** One issue is that vulnerability assessment data are not fully used in risk analysis products. This discrepancy is due to a certain level of conceptual misalignment between methodologies. In addition, the level of confidentiality of vulnerability assessment data means that it is harder to access this information for risk analysis.

Frontex has separate systems for producing risk analyses and vulnerability assessments, which impacts their coherence. These systems are managed by separate units (VAU and RAU), based on separate administrative processes and separate sources of information. Data collected as part of vulnerability assessments are classified, making them harder to share and access. While the purpose of vulnerability assessments is to allow Member States to address their own specific weaknesses, risk analysis can take a more overarching and EU-wide approach, with an associated lower level of sensitivity. A high-level stakeholder at Frontex underlined that these processes – particularly vulnerability assessments – should be treated separately as a matter of trust between the Member States and Frontex.<sup>274</sup>

The Frontex vulnerability assessment methodology is structured around a single overall process, resulting in annual baseline assessments.<sup>275</sup> From an institutional perspective, Frontex's vulnerability assessment and risk analysis processes are coherent, bear little to no overlap in data collection (with one being broadly internally focused and the other outwardly focused), and are inherently complementary processes. There is alignment, at least in principle, between the guidelines for each process.

In practice, however, there is incoherence between vulnerability assessment and risk analysis. While risk analysis is meant to include 'vulnerabilities', the Frontex vulnerability assessment does not feed into its risk analysis. The core of the problem, as identified by Frontex and Member States, is that the definition of vulnerability in CIRAM does not match

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<sup>271</sup> Frontex (2022). 'Single Programming Document 2023-2025', p. 41.

<sup>272</sup> Article 33(1) EBCG Regulation.

<sup>273</sup> Interviews with MS/SAC: 8/27 (DK, EE, FR, HR, SE, SK and CH, NO); survey of MS/SAC: 4/27 (AT, LV, MT, SI).

<sup>274</sup> Interview with Frontex (14).

<sup>275</sup> Management Board Decision 39/2016 on adopting the Common Vulnerability Assessment Methodology.

the definition of vulnerability in CVAM.<sup>276</sup> For Member States, vulnerability assessments (as conducted by the VAU) are a concrete, quantitative and capacity-based system with measurable outcomes. Conversely, the conceptualisation of vulnerability in CIRAM includes ‘pull factors’, reflecting broader factors influencing the arrival of migratory flows from outside the EU.<sup>277</sup> In terms of migratory movement, Member State capabilities in dealing with border management crises do not represent a pull factor for migrants.

The day-to-day management of these processes falls on Frontex. Two interviewees at Frontex stated that the two processes were definitionally intertwined but needed to be further integrated for the sake of the quality of situational awareness more broadly.<sup>278</sup>

Stakeholders raised questions about the level of access to vulnerability assessment data. Even without the conceptual conflict between CIRAM and vulnerability assessment, the level of classification of vulnerability assessment data creates an issue in Frontex’s ability to access and integrate those data in risk analysis. Perceived political sensitivity among Member States means that the level of classification of these data are set at a higher level, hindering associated EU institutions’ access (compared to the wider range of publicly available risk analysis data and products).<sup>279</sup> According to Frontex, Member States are reluctant for their vulnerability assessment data to enter the risk analysis process and therefore be available for scrutiny of other actors outside the one-to-one basis with Frontex.

#### 4.1.7 Capability development<sup>280</sup>

This section assesses the extent of Frontex support to three areas of capability development, the factors hindering the effectiveness of activities in these areas, and any unmet Member State needs. Annex 6 provides additional information (including on all types of training).

Table 9. Summary of key findings on capability development

Summary of key findings
<b>Key provisions of the EBCG Regulation</b>
Articles 55 and 62 (training);
Articles 16, 64 and 66 (research and innovation);
Articles 51, 55, 56, 57, 58 and Annex I to the Regulation, as well as Articles 63 and 64 (human and technical resources).
<b>Key findings</b>
<ul style="list-style-type: none"><li>Not all national capability development plans were submitted (Article 9(4) EBCG Regulation) as of January 2023. As a result, there have been delays in the adoption of the Capability Roadmap (Article 9(8)), along with a multiannual acquisition strategy (Article 63(2)) and an adequate multiannual plan for profiles of the Standing Corps (Article 54(4)(e)) (a very general plan was adopted in 2022 without clearly outlined future capabilities). Capability development, in particular the acquisition of (Frontex’s own) technical equipment, as envisioned by the EBCG Regulation, was complicated</li></ul>

<sup>276</sup> Interview with Frontex (headquarters visit).

<sup>277</sup> Interview with SK.

<sup>278</sup> Interviews with Frontex (11, 13).

<sup>279</sup> Interview with DG HOME (3).

<sup>280</sup> This section responds to evaluation question 5.4, 6.2, 6.3 + 10, 11.

by this. Other complications included the lack of understanding of the capability needs of the EBCG, or a lack of strategic direction and vision.

**Training:**

- Member States value existing training. However, training is not frequent enough, given the Agency's focus on training Standing Corps Category 1;
- There is a lack of high-quality trainers and it is difficult to find training centres in Member States that are willing to host the training, as well as to apply clear rules adapted to Frontex' needs (for example, discipline, code of conduct). The EBCG Regulation (Article 62(3)) leaves the decision of whether Frontex should have its own training centre to the MB, and so far this decision has not yet been taken.
- Other challenges include insufficient capacity within the Agency for the organisation of training activities.

**Research and innovation:**

- Frontex was able to progress in this area in particular in 2021 and 2022 and adopted flexible solutions to some issues hindering the implementation of activities.
- Frontex's work is somewhat complicated by a lack of clarity in the EBCG Regulation on the adoption of technical standards and methodology for defining standards (Articles 16, 64(5)), or minimum standards for border surveillance (Article 10(1)(z)). It could also be beneficial to further clarify the mandate of the Agency as a Senior User representing Member States in the area of research in the EBCG Regulation;
- Lengthy internal processes (for example, procurement) delay the delivery of activities (such as handbooks).

**Technical resources:**

- Given the existing challenges and the short timeline, a noteworthy amount of progress was made in this area.
- There are shortages of certain equipment, especially major equipment, such as fixed-wing aircrafts;
- Within Frontex, the provision of technical resource support is complicated by incomplete capability planning (the missing multiannual acquisition strategy) and by a mix of other issues at planning stage (unclear strategic angle of logistics, artificial segmentation between acquisition and logistics), procurement stage (annual nature principle (Article 115)), purchase of highly specialised equipment (Article 63 (3)(4)), staff hiring matrix), and deployment stage (lack of infrastructure for equipment (Article 63), customs and transportation (Article 64), adaptation of equipment, recognition of equipment across jurisdictions, registration and maintenance of vehicles, flags on vessels).

**Typology/ sources of challenges**

**Overarching**


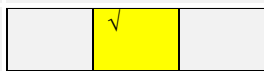
Operational /implementation

**Training**

**STUDY TO SUPPORT THE EVALUATION OF THE EUROPEAN BORDER AND COAST  
GUARD AGENCY (FRONTEX) AND REVIEW OF THE STANDING CORPS**

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Legislative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Payment of Member State trainers is not covered through Articles 56 and 57 (making it difficult to attract trainers)
Operational /implementation				
<b>Research and innovation</b>				
Legislative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Lack of clarity in the EBCG Regulation on how to adopt technical standards (through MB decision) or methodology for defining standards (Articles 16, 64(5))</p> <p>Lack of clarity in the EBCG Regulation on how to adopt minimum standards for border surveillance (as per Article 10(1)(z))</p> <p>Space for further clarity on the mandate of the Agency on research and innovation (Senior User representing Member States)</p>
Internal procedures				
<b>Technical resources</b>				
Legislative	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Annuality principle complicates financing the acquisition of assets across financial years</p> <p>Purchasing highly specialised equipment within the Agency is difficult to justify, but specialised EU-funded assets (in the period they are available to the Agency) cannot be used by the Agency in the country of procurement (Article 63(3)(4))</p> <p>Current hiring matrix (available roles/positions and linked pay, as per the EU Staff Regulations) are not sufficient for hiring specialised operational staff</p> <p>Lack of clarity in the EBCG Regulation on the strategic angle of logistics (Article 38; Article 60)</p> <p>Lack of clarity in the EBCG Regulation on the available infrastructure for purchased equipment (Article 63)</p> <p>Lack of clarity in the EBCG Regulation on the exemption from customs or other duties, taxes, prohibitions or restrictions on import/export on equipment; the exemption from transfer licences and permission to transfer weapons, ammunitions, other supplies or equipment in context of Standing Corps (re-)deployments</p> <p>It is not possible to fly an EU flag under international maritime law</p>

Operational /implementation		<p>Different Member States have different rules for recognising technical equipment (for example, emergency vehicles)</p> <p>Equipment (such as cars) needs to be registered in a Member State and then checked there every year in some Member States<sup>281</sup></p> <p>Member States normally maintain vehicles in-house or sign contracts with local providers; this is difficult for Frontex.</p>
Organisational		<p>Artificial segmentation between acquisition of own equipment and logistics, with different Frontex units and divisions working on these topics, explained by the fact that the EBCG Regulation only looks at equipment (Articles 63, 64)</p>

This section analyses the three areas of capability development or building: training, research & innovation, and human & technical resources. In the area of training, this section focuses on training for Member States and third countries, while training for the Standing Corps is discussed under section 6.2.6, although overarching issues complicating the effectiveness of training activities are touched on here as well.

In respect to capability development and the management and coordination of the human resources and technical pools, this section focuses on technical resources. Human resources (mainly the EBCG pool, and the Forced Return Monitor pool) are discussed under sections 6.2.5, 6.2.8 and 6.2.9 (review of the Standing Corps), and 4.1.9.1 (FRMs and return monitors). The findings on technical resources in this section are supported and expanded upon by Annex 7.

One horizontal observation spanning the three areas (particularly the provision of technical resource support) is that overarching capability planning – the strategic direction for the capability-building activities – was incomplete as of January 2023. Of the Member States, 23/28 sent their national capability development plans to Frontex (Article 9(4)), but no multiannual acquisition strategy (Article 63(2)) documenting short, medium and long-term needs, and therefore no capability roadmap (Article 9(8)), was presented under the evaluation period by Frontex. There is a lack of strategic direction and vision for the long-term development of the capabilities of the Agency. The multiannual acquisition plan for technical equipment was submitted to the European Commission for an opinion in 2022; the Commission adopted its opinion in May 2023. Only the multiannual plan for the Standing Corps (Article 54(4)(e)) was adopted in 2022. The fact that overarching capability planning was incomplete complicated capability development (see section 4.1.7.3).

#### 4.1.7.1 Training

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 by establishing common training standards), almost half of the Member States noted the lack of training for either Category 2 or 3 staff, or for Member States. The effectiveness of the implementation of training activities was hindered by operational/implementation issues, as well as by some legislative issues. The biggest training-specific issues were: (1) insufficient capacity within Frontex to deliver all training activities, (2) the lack of high-quality trainers (partly due to the lack of a trainer profile in

<sup>281</sup> For example, Belgium.

the Standing Corps and to inadequate compensation for trainers), and (3) difficulties in finding and managing host training centres.

Annex 6 presents an overview of the results of the specialised training activities planned and implemented throughout 2020-2022 for Member States and third countries. Overall, most targets for training activities were met across 2020-2022. 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 their needs.<sup>282</sup> Training satisfaction rate targets were met in 2020, 2021 and 2022.<sup>283</sup> Member States noted that the education and training of the EBCG, in particular the common training standards, provided by Frontex contributed to improving training of national border guards,<sup>284</sup> developing and strengthening border management capabilities in Member States,<sup>285</sup> facilitating cooperation among Member States' border and coastguard training institutions,<sup>286</sup> successfully mainstreaming fundamental rights in the national training programmes,<sup>287</sup> and ensuring a harmonised and common approach to EU border and coast guard training in the Member States<sup>288</sup>. Both the implementation of specialised training on the EES and ETIAS, for example, and the implementation of the Common Core Curricula (CCC) guaranteed strategic cooperation among Member States (with the assistance of Frontex, to some extent).

Implementing training for the Standing Corps, in particular for Category 1, has been a focus for Frontex over the last years. Member States valued Frontex's assistance in training national border/coastguards as part of the Standing Corps, but at least 14 Member States noted that the training for Category 2 or 3 or for Member States was not frequent enough, due to the focus on the training for Standing Corps Category 1 (see section 6.2.6).<sup>289</sup> Implementation of training for the Standing Corps has highlighted various issues hindering the effectiveness of training activities, identified by both Frontex and Member States<sup>290</sup>, including:

- **Lack of high-quality trainers<sup>291</sup>** : Frontex recruits trainers from the Member States and within its own staff. Member States have valuable and up-to-date expertise that they can teach, and their trainers can take their teaching experience at Frontex back to their country (enabling harmonisation of training). However, the (best) trainers in Member States are not always available. Three Member States

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<sup>282</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>283</sup> Frontex (2021). 'Consolidated Annual Activity Report 2020'; Frontex (2022). 'Consolidated Annual Activity Report 2021'. Information provided by Capacity Building Division (CBD), Frontex. The methodology for measuring training satisfaction changed in 2020.

<sup>284</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>285</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 training activities tailored for them 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>286</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>287</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>288</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).

<sup>289</sup> Interviews with MS/SAC national authorities: 10/27 (BE, DK, EE, HR, LT, PL, SE, SI, SK and NO); field visits to EL, FI, RO; survey of MS/SAC authorities: Q3.3.1: 1/27 (BG).

<sup>290</sup> Interviews with Frontex (3) and MS/SAC national authorities: 2/27 (SE, SI); scoping interviews (1) and (2).

<sup>291</sup> Field visits to FI, RO; interviews with Frontex (3) and MS/SAC national authorities: 2/27 (LU, SI).

remarked on the lack of communication between Frontex and the National Training Coordinators,<sup>292</sup> but trainer availability is also influenced by poor payment for trainers (Articles 45, 57(2); 95(6), 56(2); 56 and 57 EBCG Regulation) and the somewhat low Daily Subsistence Allowance (DSA) rate. There is no profile for trainers among the Standing Corps (decided by MB Decision, as per Article 54(4)), following the rules for deploying Standing Corps staff (Articles 54(2), 54(7)), despite the Standing Corps having relevant hands-on experience to share.

- **Training facilities**<sup>293</sup>: Frontex has difficulties in attracting a sufficient number of training schools to host their training because of its long duration and the relatively high number of learners. Frontex has allocated over EUR 20 million in grants over the past three years to MS police academies to host Frontex training of Standing Corps 1 officers<sup>294</sup>. This puts pressure on guaranteed training in the long term, and possibly on the quality of the training facilities (see section 4.1.11.3). Frontex has also dealt with a lack of clarity on the rules that apply to its trainees (as opposed to host Member State trainees) at training centres, including rules for code of conduct, discipline, rules that apply to training (for example, on physical training, the use of force), rules relating to the use of firearms (in case of accidents), and rules when not passing certain assessments. The EBCG Regulation specifies that the 'Agency training centre' should be established, upon decision of the MB (Article 62(3)). Such decision was not taken in the period under evaluation. There is no clarity, and no clear assessment of the financial efficiency for Frontex (i.e. assessment of building an operating its own training centre vs. grants-based trainings) and the long-term viability of the present approach.

The effectiveness of training activities is thus somewhat complicated by the shared responsibility of the implementation of the EBCG Regulation with Member States. At the same time, a majority of Member States agreed or strongly agreed that, in the spirit of shared responsibility, the division of competence 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>295</sup> From a design point of view, there appears to be a satisfactory level of involvement from both sides.<sup>296</sup>

#### 4.1.7.2 Research and innovation

Progress in research and innovation activities accelerated in 2021 and 2022. The effectiveness of the implementation of research and innovation activities was only slightly impeded by (mainly) legislative issues, with practical solutions applied. The EBCG Regulation does not contain a clear reference to the adoption of technical standards (through an MB decision), the adoption of a methodology for defining standards (Articles 16, 64(5)), or the adoption/publication of minimum standards for border surveillance (a task of the Agency as per Article 10(1)(z)). It could also be clearer on the mandate of the Agency on research and innovation, following the developments during the evaluation period.

In 2020, 2021 and 2022, Frontex supported capability-building in research and innovation by promoting and delivering standardisation and harmonisation of border management capabilities, promoting and delivering innovation in border management capabilities, and

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<sup>292</sup> Interviews with MS/SAC national authorities: 3/27 (ES, FR, SE).

<sup>293</sup> Interviews with Frontex (4).

<sup>294</sup> See calls for proposals at: <https://frontex.europa.eu/about-frontex/grants/>

<sup>295</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).

<sup>296</sup> Interviews with Frontex (2).



executing and supporting research.<sup>297</sup> In its multiannual programming documents, the Agency set out relevant key activities, linked to expected results and indicators. Essentially, these activities amounted to several main areas of support, assisting Member States, building EBCG capability, and responding to specific needs:

- Technical standards for the equipment to be included in the capability pools and to be deployed in the activities of the Agency;
- A comprehensive research and innovation platform to enable research and facilitate the dissemination of research information;
- Steering EU-wide border management research through the development of the Senior User role of Frontex in the implementation of EU framework programmes for research and innovation;
- Piloting border management-related technological solutions and research findings fostering further development of EBCG capabilities.

Annex 6 provides more details on specific activities and the extent to which the expected results were met in 2020-2022. Frontex was able to meet most of the 2021 and 2022 goals of its research and innovation activities from the development of minimum requirements for equipment, the organisation of industry days and conferences and the delivery of studies and guidelines/handbooks, to the development of the Research for Innovation Network, evaluation of Horizon research proposals and progress review, and work under Innovation Cells, among others. Importantly, technical standards were developed in 2020 (minimum requirements for aerial and terrestrial equipment) and released in 2021 through Management Board Decision 51/2021 (technical standards for maritime equipment, technical standards for aerial equipment, technical standards for land border surveillance equipment, and technical standards for document inspection equipment) in cooperation with Member States and the Commission.<sup>298</sup> In 2022, a methodology for the development of technical standards was adopted through Management Board Decision 36/2022.<sup>299</sup> Frontex provided support to the development of Common Minimum Surveillance Standards for Land Borders and Common Minimum Surveillance Standards for Maritime Borders, and completed the maintenance process for the standards adopted in 2021.

There is thus progress towards both strategic and operational cooperation, as well as sustained EBCG capability, especially in more recent years. However, the extent to which the Agency has been able to 'proactively monitor and contribute to research and innovation activities relevant for European integrated border management including the use of advanced border control technology, taking into account the capability roadmap referred to in Article 9(8) (Article 66(1)) and to assist Member States and the Commission in 'identifying key research themes' taking into account the capability roadmap (Article 66(2)), cannot be fully assessed, as the roadmap in question does not yet exist.

The analysis further revealed several minor issues hindering the development of relevant capabilities, innovation, and standardisation and harmonisation of capabilities.

Firstly, there were some difficulties with standards for technical equipment because – although it is a task of the Agency to define technical standards (Articles 16, 64(5)) – the EBCG Regulation does not contain a clear reference to their adoption (through an MB decision) or the adoption of a methodology for defining standards. At the same time, the

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<sup>297</sup> Frontex (2023). 'Research and Innovation'. Available at: <https://frontex.europa.eu/innovation/research-and-innovation/research-and-innovation-at-frontex/>

<sup>298</sup> Management Board Decision 51/2021 of 21 September 2021 adopting technical standards for the equipment to be deployed in Frontex activities.

<sup>299</sup> Management Board Decision 36/2022 of 28 June 2022 adopting the methodology for development of technical standards for the equipment to be deployed in Frontex activities.

Agency has to contribute to the development of common minimum standards for border surveillance (Article 10(1)(z)), yet there is no reference in the Regulation on how standards will be adopted/published. A solution was found in some cases (as evidenced by the description on released technical standards), but given the importance of the standards for the acquisition and deployment of equipment, for example, clarity in the EBCG Regulation would be beneficial.

Secondly, where the European Commission has not yet opted to delegate powers of implementation of parts of the Framework Programme for Research and Innovation related to border security to the Agency (Article 66(3)), current research cooperation between DG HOME and the Agency is based on Terms of Reference (resting on Articles 66(1) and (2)), giving Frontex a role as Senior User.<sup>300</sup> The last three years have shown close cooperation.<sup>301</sup> It could be beneficial to consolidate this cooperation in the EBCG Regulation, giving the Agency a clear mandate as a Senior User representing Member States.

Thirdly, there is nothing in Article 66 of the EBCG Regulation about being ready to counter future threats (apart from a reference to EIBM). According to one key Frontex stakeholder, in order to ensure tailored innovation, a clearer link should be made between capability development plans and risk and vulnerability assessments, for example.<sup>302</sup>

Finally, work in this area was hindered by lengthy internal processes<sup>303</sup> and by interdependencies with other work.<sup>304</sup>

#### 4.1.7.3 Technical resources

Despite significant efforts to provide technical resources, not all targets were fully met. There were shortages of certain equipment, and effectiveness of technical resource support within Frontex was impeded by incomplete capability planning (in particular the missing multiannual acquisition strategy), as well as by broader legislative issues (for example, with the Financial Regulation and the EU Staff Regulations), legislative issues with the EBCG Regulation, and operational/implementation and organisational issues across the planning, procurement and deployment of technical resources.

In 2020-2022, Frontex supported capability-building through technical resources via the Technical Equipment Pool (TEP). Activities included the management and coordination of the pool, as well as the provision of operational, logistical and technical support and expertise. The TEP includes major equipment (ME),<sup>305</sup> light equipment (LE), and portable equipment (PE). Each year, the MB decides on a minimum number of items of technical equipment (MNITE) needed for the TEP to respond to the needs of the Agency in the following year. Equipment is (co-)owned by the Member States or by the Agency. The contribution of the Member States is determined via annual bilateral negotiations and

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<sup>300</sup> European Commission (2020). 'Terms of reference between the Directorate-General for Migration and Home Affairs of the European Commission and the European Border and Coast Guard Agency regarding the role of the European Border and Coast Guard Agency in the parts of the Framework Programme for Research and Innovation which relate to border security'.

<sup>301</sup> As evidenced by the emphasis on Frontex in the Work Programme for EU civil security research and innovation 2021-2022 and 2023-2024.

<sup>302</sup> Interview with Frontex (1).

<sup>303</sup> For example, the procurement process, leading to a delay in the delivery of handbooks.

<sup>304</sup> Some planned activities could not be started by the relevant unit within Frontex because of their interdependence with the progress on the new Frontex headquarters and API legislation.

<sup>305</sup> Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy refers to 'large-scale operating equipment for border management [...] purchased by the Member States' ('that shall be registered in the technical equipment pool') (Article 13(14(b))).

agreements. The TEP also includes the Rapid Reaction Equipment Pool (RREP) and the equipment made available by the Member States and Frontex, services contracted by the Agency, technical equipment co-financed from the ISF Specific Actions fund, and technical equipment made available by host Member States.

Annex 6 provides an overview of the progress in the TEP in 2020-2022. Member States provided the largest share of the TEP in both 2021 and 2022 and contributed the most ME by far, but Frontex provided a significant amount of PE (as well as other equipment for the Standing Corps).<sup>306</sup> Significant work was undertaken. The provision of technical resources was somewhat effective in maintaining and raising the level of cooperation at strategic and operational level among Member States, and with the assistance of Frontex. Strategic cooperation on technical resources takes place (at a minimum) through the activities of the MB establishing MNITE via the ABN. Operational cooperation on technical resources takes place (at a minimum) in the deployment of equipment in operations. Nevertheless, a number of shortcomings were identified by the Agency:

- In 2020, there were some gaps in the percentage of technical equipment needs met, and shortages in almost every category of technical equipment following the annual bilateral negotiations (in particular, for fixed-wing aircraft), and in the percentage of RBI Aegean 2020 covered. Two additional resources requests were needed;<sup>307</sup>
- In both 2021 and 2022, there were shortages in specific technical equipment (mainly fixed-wing aircrafts, helicopters, coastal patrol vessels, offshore patrol vessels) following the annual bilateral negotiations.

On the one hand, certain Member States encountered challenges in acquiring TE, primarily due to conflicting national priorities and the requirement to contribute to shared resources. Annex A7.2.1 (“Technical Equipment”) illustrates this result further.<sup>308</sup> Indeed, in for example 2022, the annual bilateral negotiations showed that Member States were unable to make the necessary ME available to fully respond to the needs identified by the Agency at that time.<sup>309</sup> Other explanations ranged from not knowing whether national technical equipment will be available a year in advance, to being unable to commit because the area of Europe to which the technical equipment will be deployed is unknown (complicating planning), to simply not having a stock available for (the growth of) Frontex.<sup>310</sup> Two Member States underlined that their internal planning was previously complicated by deployed equipment being underused, or pledged equipment (in the case of RBI) not being used.<sup>311</sup> In 2021, the Agency also noted that the registration of ISF-SA purchased equipment remained low. In 2022, although the number of registered equipment increased, the Agency stated that in practice some of that equipment were not available for deployment (Article 64(14)) even though Article 64(9) was not invoked. This would suggest there are issues with the compliance with the EBCG Regulation. One explanation from the Member State perspective is that acquired equipment is 1) not necessarily immediately up to full operational capacity, or 2) not always suitable for the intended operation.<sup>312</sup> This matter will need to be addressed, also in light of the

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<sup>306</sup> Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021; Frontex (2023). ‘Draft Annual Implementation Report 2022’.

<sup>307</sup> Management Board Decision 41/2021 of 15 July 2021 adopting the Annual Implementation Report 2020.

<sup>308</sup> See also Annex A7.2.2 Procurement issues and impacts on the private sector.

<sup>309</sup> Frontex (2023). ‘Draft Annual Implementation Report 2022’.

<sup>310</sup> Interviews with MS/SAC national authorities: 3/27 (DK, EE, SE).

<sup>311</sup> Interviews with MS/SAC national authorities: 2/27 (DK and IS).

<sup>312</sup> Field visit to FI.

envisioned progress via the follow-up of the ISF-SA, the specific actions of the Border Management and Visa Instrument (BMVI).

On the other hand, Frontex was also not able to make available all of the technical equipment needed.<sup>313</sup> A minority of Member States indicated challenges or obstacles in obtaining technical equipment assistance from Frontex,<sup>314</sup> with some stating that Frontex's progress in this area has not been sufficiently fast.<sup>315</sup>

- Availability issues identified in the stakeholder consultations included:
  - Initial lack of use of force equipment for deployed Standing Corps at border crossing points. This issue has since been resolved;<sup>316</sup>
  - Lack of mobile surveillance system and patrol cars<sup>317</sup> (the latter was also noted by Frontex);
  - Pauses between the deployment of different fixed-wing aircraft in Joint Operation Opal Coast due to lack of sufficient planes,<sup>318</sup> or between the deployments of other types of equipment<sup>319</sup> (also noted by Frontex);
  - Lack of lorry scanners with technical operators;<sup>320</sup>
  - Lack of Offshore Patrol Vessels and aircraft;<sup>321</sup>
  - Not enough heavy equipment (ME) in general;<sup>322</sup>
  - Not enough crews deployed with heavy equipment (ME), which limits the operational use of said equipment.<sup>323</sup>
- Some compatibility issues of Frontex provided equipment with the technical equipment already in use by national border guards were also mentioned.<sup>324</sup>

The analysis of the ratio of actual to planned deployment (MNITE) shows that the deployment of TE has been consistently missing the target in recent years (2019-2021), although the decreasing variance of the degree of alignment with targets suggest a gradual improvement. The analysis of the relevant KPIs shows that, since 2020, 'over-deployment' has especially affected light TE, while 'under-deployment' has been an issue for major TE. Similarly, the utilisation of the TE pools has been higher than planned in 2019 and 2020, while it was almost at par in 2021. The detailed analysis and the figures are available in Annex A7.1.2 ("Example: Use of resources to develop standing corps and technical equipment pools").

Key stakeholders within Frontex confirmed that the demand for technical equipment was higher than could be met.<sup>325</sup> The ABN captures needs at a specific point in time, but those

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<sup>313</sup> Frontex (2023). 'Draft Annual Implementation Report 2022'.

<sup>314</sup> Interviews with MS/SAC national authorities: 3/27 (AT, CZ, HR); survey of MS/SAC authorities: Q4.2: 10/27 (AT, BE, BG, EE, ES, FI, FR, LV, PL, SK), 13/27 did not answer.

<sup>315</sup> Interviews with MS/SAC national authorities: 2/27 (AT, HR).

<sup>316</sup> Field visit to FI.

<sup>317</sup> Survey of MS/SAC authorities: Q4.2.1: 1/27 (LV).

<sup>318</sup> Survey of MS/SAC authorities: Q4.2.1: 2/27 (BE, FR). One comment stated that during Joint Operation Opal Coast, the live-streaming function of the fixed-wing aircraft was often unavailable and the plane's tracking device was switched off several times.

<sup>319</sup> Field visit to EL; survey of MS/SAC authorities: Q4.2.1: 1/27 (ES).

<sup>320</sup> Survey of MS/SAC authorities: Q4.2.1: 1/27 (BE).

<sup>321</sup> Field visit to EL.

<sup>322</sup> Interviews with MS/SAC national authorities: 1/27 (AT); survey of MS/SAC authorities: Q4.2.1: 1/27 (PL).

<sup>323</sup> Field visit to EL.

<sup>324</sup> Survey of MS/SAC authorities: Q4.2.1: 1/27 (SK). HR reported initially having issues with this, but not anymore, purchasing equipment according to Frontex specifications.

<sup>325</sup> Interview with Frontex (1).

needs may subsequently fluctuate.<sup>326</sup> Management of expectations might also be aided through the recently developed four-category prioritisation concept. In general, however, several Frontex stakeholders believe that the current goals might be too advanced, demanding operations at a scale Frontex cannot provide (for example, highly specialised teams with single pieces of equipment, even though the current hiring matrix is insufficient for hiring operational staff).<sup>327</sup>

The effectiveness of the provision of technical resource support within and by Frontex was hindered by incomplete capability planning, broader legislative issues (for example, with the Financial Regulation, the EU Staff Regulations), issues with the EBCG Regulation, and operational/implementation problems in the planning, procurement and deployment of technical resources.

## Planning

Capability development is supposed to be guided by a multiannual acquisition strategy (based on national capability development plans, and leading to a capability roadmap). A great majority of national capability development plans have been finalised, following the adoption of the Methodology and Procedure for Establishing National Capability Development Plans through Management Board Decision 2/2021 in 2021 (as per Article 9(6)).<sup>328</sup> However, the latter document does not detail how to assess and present capabilities, which could complicate the establishment of the Agency's capability roadmap – this would need to be assessed at a later stage. Secondly, the multiannual acquisition strategy was not finalised within the Agency during the period under evaluation. As a result, integrated planning (Article 9) could not be fully implemented yet and 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 capabilities of the Agency. This impacted the efficiency of acquisition within Frontex (see also Annex 7), which in turn impacted the TEP. For example, the acquisition of various items was delayed, forcing the Agency to rely on options that proved inefficient, at least initially, such as renting vehicles (and subsequent issues with modifying and deteriorating vehicles).<sup>329</sup> Given that the EBCG Regulation focuses on Frontex's technical equipment as the backbone of EU's border management, this presents a significant problem.

It is further unclear how maritime border management capabilities will be developed. The training and acquisition strategies are tailored to land and air border capabilities, despite far greater financial and human resources needs for maritime border management (as shown in Frontex's operational analyses). It is unclear if and what maritime equipment (vessels) will be acquired by Frontex, if and how many Category 1 SCOs will have profiles linked to maritime capabilities, and how they will be trained to a sufficiently high level. If the development of maritime capabilities is to take place via Member States, it is unclear how this (increase) will be supported, for example via Category 3 staff.

Several planning issues were evident in relation to logistics. Currently, the FTSOs take care of relevant on-the-ground logistical support, with antenna offices (Article 60), if implemented, expected to take over in future. However, the strategic location of logistics (decentralised or not) is still unclear (including in the EBCG Regulation, where it is mentioned under operational plans (Article 38) and antenna offices (Article 60)).<sup>330</sup> There

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<sup>326</sup> Interviews with Frontex (1) and MS/SAC national authorities: 3/27 (BE, DK, SE).

<sup>327</sup> Interview with Frontex (1).

<sup>328</sup> Management Board Decision 2/2021 of 15 January 2021 adopting the methodology and the procedure for establishing the national capability development plans.

<sup>329</sup> Field visit to Frontex headquarters; interview with Frontex (2); survey of MS/SAC authorities: Q4.2.1:1/27 (LV).

<sup>330</sup> Interview with Frontex (1).

is an artificial segmentation between acquisition of own equipment and logistics within the Agency, with different units and divisions working on these topics, as the EBCG Regulation looks solely at equipment (Articles 63, 64).<sup>331</sup>

Looking ahead to planning for the acquisition of own equipment, Frontex staff reports concerns about not having enough internal human resources available to deal with the procurement, maintenance and deployment of equipment.<sup>332</sup>

### **Procurement and deployment**

Table 10 presents an overview of some legislative and operational/implementation issues that hindered the implementation and deployment of technical resource support at procurement and deployment stage. At procurement stage, Frontex was hindered by the annuality principle, issues with the purchase of highly specialised equipment and with the staff hiring matrix. At deployment stage, Frontex was hindered by a lack of infrastructure for equipment, and issues with customs and transportation, adaptation of equipment to local environments, recognition of technical equipment across jurisdictions, registration and maintenance of vehicles, and flags (in the maritime context).

The Agency has already responded to some of the problems impeding effective technical resource support. Examples include supportability analyses 'to achieve improved performance at an affordable cost when operating in multiple and dynamic environments' and the design of a pilot project on joint procurement (acquisition of services/supplies).<sup>333</sup>

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<sup>331</sup> Interview with Frontex (1).

<sup>332</sup> Interview with Frontex (1).

<sup>333</sup> Frontex (2023). 'Draft Annual Implementation Report 2022'.

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Table 10. Factors hampering the implementation of technical resource support

Factor	Regulation articles	Description
Annuality principle	Article 115	The annuality principle in the current financial framework makes financing the acquisition of assets across financial years difficult for Frontex. Assets that need more than several months to design, build, test and deliver require multi-year financial commitments, but the annuality principle prevents this <sup>334</sup>
Purchase of highly specialised equipment	Article 63(3)(4)	It is difficult to justify the Agency's purchase of equipment for very specific areas or tasks (for example, jet skis) to European taxpayers, but Member States criticised the Agency for requesting them to contribute such equipment, as the Agency was supposed to help in capability-building. A suggestion to have a Member State use EU funds (e.g. ISF, BMVI) to buy such equipment for the TEP (that could be used by the Agency in areas of that Member State where such equipment is needed) was discarded, as EU-funded assets made available to Frontex (for up to four months per year) have to be used by Frontex in other Member States, as opposed to the country of procurement <sup>335</sup>
Lack of infrastructure	Article 63	There is a lack of infrastructure (garages, hangers, warehouses, berths for OPVs) for the equipment to be acquired – hosting countries are not necessarily willing to build this and are not always able to share their own infrastructure. In addition, the Agency cannot invest in Member State infrastructure <sup>336</sup>
Customs and transportation	Article 64	The Agency is not exempt by the host Member State from customs or other duties, nor from taxes, prohibitions or restrictions on import/export on technical equipment for operational use <sup>337</sup>  The Agency is not exempt from transfer licences and permission to transfer weapons, ammunitions, other supplies or equipment 1) from central storage to operational areas, and 2) among operational areas. <sup>338</sup> The latter is relevant in the context of Standing Corps (re-)deployments, support and training

<sup>334</sup> Interview with Frontex (1).

<sup>335</sup> Interview with Frontex (1). The equipment can be used in the country of procurement in the other eight months, but not by the Agency.

<sup>336</sup> Interview with Frontex (1).

<sup>337</sup> Interview with Frontex (1).

<sup>338</sup> Interview with Frontex (1).

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Factor	Regulation articles	Description
Adaptation of equipment	None	Very different types of vehicles are needed across the EU. <sup>339</sup> Standards applied to assets in the TEP may be different than (or not as high as) standards usually applied in a Member State. <sup>340</sup> For example, a vehicle from the TEP (meeting the standards for the TEP) may have sufficient characteristics for paved / dirt roads in a dry environment on an island in Greece, but not be able to reach all border areas on the Bulgaria-Turkey border where, national standards typically require higher vehicle clearance or off-road characteristics.
Recognition of technical equipment across jurisdictions	None	Different countries have different rules for recognising technical equipment. For example, a patrol car may be registered as an emergency vehicle in one country, but not in another. There are also different national regulations for recording images. There are no EU standards for emergency vehicles and Frontex vehicles can legally use signal lights to perform law enforcement duties in some countries, but not in others <sup>341</sup>
Registration and maintenance of vehicles	None	Equipment such as cars needs to be registered in a country and then checked there every year in some Member States (for example, Belgium). This means that all vehicles regardless of their location of deployment will need to be transported across Europe (e.g. from Spain or Greek islands to Warsaw), and then returned – adding significant costs to their annual operations.  Member States normally maintain vehicles in-house or sign contracts with local providers; at EU level, this would mean Frontex would have to sign hundreds of contracts across the EU. As there are different types of equipment, Member States may have no capability (specific spare parts or qualified technicians) to maintain equipment provided by Frontex or from the common technical pool
Flags (maritime context)	None	It is not possible to fly an EU flag under international maritime law. However, flying national flags implies requirements under national legislation, which Frontex then has to process and comply with <sup>342</sup>

<sup>339</sup> Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021.

<sup>340</sup> For example, two Member States mentioned that the patrol cars for border surveillance patrols were not suited to the environment. Survey of MS/SAC authorities: Q4.1.1: 2/27 (FI, LT).

<sup>341</sup> Interview with Frontex (1).

<sup>342</sup> Field visit to Frontex; interviews with Frontex (1).



### 4.1.8 Cooperation<sup>343</sup>

This section considers the work of Frontex externally, looking specifically at modalities of cooperation with international organisations, EU agencies, CSDP missions and operations, and third countries. It also examines the extent to which Frontex activities are coherent with those of other EU stakeholders, and how Frontex contributed to the implementation of EIBM horizontal components via intra-agency and inter-agency cooperation.

One of the most significant changes introduced in the 2019 EBCG Regulation was the possibility for Frontex to conduct joint operational activities with executive powers anywhere on the territory of a third country (as opposed to being limited to EU borders), subject to a status agreement. Frontex also cooperates with third countries via working arrangements (Articles 73 and 76(4)).

#### Summary of key findings

##### Key provisions of the EBCG Regulation

**Article 68:** Cooperation of the Agency with Union institutions, bodies, offices, agencies and international organisations; **Article 69:** European cooperation on coast guard functions

**Articles 71 – 76:** Cooperation with third countries

##### Key findings

- Frontex’s cooperation with international organisations is determined by the exhaustive list of organisations in Article 68. This limits cooperation with some relevant regional organisations or other international partners with which Frontex has cooperated or has ongoing cooperation, including the Geneva Centre for Security Sector Governance (DCAF), North Atlantic Treaty Organization (NATO), or customs organisations.
- Frontex’s cooperation with third countries is viewed positively by key stakeholders. The new model status agreement provides a good basis for enhanced cooperation with third countries.
- A new model working arrangement was finalised in 2021, but its personal data protection provisions are now being revised in consultation with the EDPS. This has delayed implementation of enhanced cooperation with third countries and other partners foreseen in the EBCG Regulation (including in the context of EUROSUR).
- Frontex activities are coherent with the activities of other EU stakeholders, and cooperation with EU agencies and the European Commission has been effective.

Typology/source of challenge	Severity of challenge (moderate – medium – high)	Brief description of challenge			
Legislative	<table border="1" style="width: 100px; height: 20px;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		Limitations set by Article 68 on international cooperation
	√				
Implementation	<table border="1" style="width: 100px; height: 20px;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		Delays in revising the model working arrangement delayed implementation of enhanced cooperation with third countries
	√				

<sup>343</sup> This section responds to evaluation question 5.5, 12, 13, 26.

#### 4.1.8.1 Cooperation with international organisations

**Cooperation with international organisations under working arrangements is limited by specific provisions in Article 68 of the EBCG Regulation, which sets out an exhaustive list of organisations<sup>344</sup> with which Frontex may cooperate.** The justification for, or added value of, setting such limits in the Regulation itself is unclear, as it limits the ability of the Agency to develop more structured cooperation with relevant partners, including some organisations with which it has established useful cooperation in the past (e.g. International Centre for Migration Policy Development (ICMPD), DCAF, NATO, World Customs Organization).

Concrete forms of cooperation can differ. For example, a number of these international organisations take part in the Frontex CF on Fundamental Rights and cooperate with Frontex on the promotion of EIBM that is fully compliant with human rights (such as the Council of Europe (CoE), Organisation for Security and Cooperation in Europe (OSCE)-Office for Democratic Institutions and Human Rights (ODIHR), the United Nations Refugee Agency (UNHCR), the United Nations Human Rights Office (OHCHR), International Organization for Migration (IOM)). Other areas include cooperation linked to border management/cross-border crime more broadly (including with Interpol, OSCE, and MAOC-N).

In its 2021 activity report, Frontex emphasised the importance of maintaining dialogue with international partners (UNHCR, IOM) in the context of unexpected crises (for example, in Afghanistan and Belarus), where building on established connections has proved relevant. Frontex highlighted that its ability to develop cooperation with key regional organisations is an important format for establishing contact with priority third countries, and would otherwise not be possible on a bilateral basis (for example, Arab Interior Ministers' Council, African Police Cooperation Organisations).<sup>345</sup>

In practice, Frontex has working arrangements with eight international organisations and international think tanks. This includes two that are not listed in Article 68 of the EBCG Regulation (DCAF, ICMPD), although all of these working arrangements pre-date the Regulation. Similarly, there is no reference in the EBCG Regulation to the Agency's cooperation with non-State actors, although Frontex is also involved in post-return and post-arrival activities alongside non-State actors, such as non-governmental organisations.<sup>346</sup>

The Agency's external work is coordinated with the support of the Commission. Any new working arrangements are subject to a Commission opinion and must be approved by the MB. This suggests sufficient mechanisms to steer the Agency in the external dimension and provide oversight of its cooperation with the right partners, making the added value of including an exhaustive list of organisations in the EBCG Regulation unclear.

Frontex is able to maintain less formal cooperation with organisations outside of working arrangements. With such organisations Frontex aims to promote dialogue and coordination in areas of mutual interest, including cooperation with the World Customs

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<sup>344</sup> United Nations (UN), International Criminal Police Organisation (Interpol), Organisation for Security and Cooperation in Europe (OSCE), Council of Europe (COE) and Maritima Analysis and Operations Centre – Narcotics (MAOC-N).

<sup>345</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 35. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>346</sup> Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document.

Organization, ICMPD, Allied Maritime Command (MARCOM) of NATO and the International Labour Organization (ILO).<sup>347</sup>

In its analysis of the EBCG Regulation, Frontex emphasised the importance of expanding Article 68 to ensure that it can maintain effective cooperation on **customs**, especially in relation to cross-border crime.<sup>348</sup> Article 68(4) of the EBCG Regulation explicitly calls for cooperation between the Agency and the Commission, Member States, and the EEAS in activities relating to customs, including risk management. Frontex cooperates with customs on coastguard functions, joint operational activities, training, and information sharing (among others).<sup>349</sup>

Article 68 of the EBCG Regulation does not foresee **NATO** as a cooperation partner. Frontex has had different forms of cooperation with NATO in the past, with NATO contributing to international efforts to stem illegal trafficking and migration in the Mediterranean Sea, deploying a maritime force in 2016 to provide intelligence, surveillance and reconnaissance (Operation Sea Guardian).<sup>350</sup> NATO has developed close cooperation with a number of EU operations in the Mediterranean (e.g. EUNAVFOR Med Operation Sophia),<sup>351</sup> and has set out methods of cooperation with Frontex operations.<sup>352</sup>

#### 4.1.8.2 Cooperation with EU agencies

**Frontex has well-established cooperation with key EU agencies, but some stakeholders nevertheless emphasised the need to avoid duplication of tasks (especially with Europol). Overall, Frontex activities are coherent with the activities of other EU institutions and justice and home affairs (JHA) agencies.**

As part of its synergies with EU partners externally,<sup>353</sup> Frontex specifies cooperation<sup>354</sup> with eight EU agencies.<sup>355</sup> That cooperation also supports the implementation of horizontal components of EIBM, including on fundamental rights (together with the FRA, research and innovation (Europol, eu-LISA, SatCen, etc.), and education and training (European Union Agency for Law Enforcement Training (CEPOL), EUAA, EMSA, EFCA, etc.). Joint activities are carried out under the EU Agencies Network (EUAN) and the Justice and Home Affairs Agencies' Network (JHAAN), where Frontex is an active member, contributing to the Networks' activities and meetings.

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<sup>347</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 35. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>348</sup> Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document, p. 7

<sup>349</sup> Frontex (2019). 'Smart borders: bringing Frontex and customs closer together'. Available at: <https://frontex.europa.eu/media-centre/news/news-release/smart-borders-bringing-frontex-and-customs-closer-together-Azessl>

<sup>350</sup> Drake, N.R. (2018). 'Efficiency and relevance of EU-NATO operations in the Mediterranean as a cure for irregular migration.' Available at: <https://behorizon.org/eu-nato-operations-mediterranean-irregular-immigration/>; [https://www.nato.int/cps/en/natohq/topics\\_136233.htm](https://www.nato.int/cps/en/natohq/topics_136233.htm)

<sup>351</sup> See: [https://www.nato.int/cps/en/natohq/topics\\_128746.htm#:~:text=NATO%20is%20contributing%20to%20international%20efforts%20to%20stem,international%20law%20and%20the%20law%20of%20the%20sea](https://www.nato.int/cps/en/natohq/topics_128746.htm#:~:text=NATO%20is%20contributing%20to%20international%20efforts%20to%20stem,international%20law%20and%20the%20law%20of%20the%20sea)

<sup>352</sup> European Commission (2016). 'Modalities of the cooperation between Frontex and NATO in the Aegean Sea'. Statement. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_16\\_601](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_16_601)

<sup>353</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023'. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>354</sup> Frontex (2023). 'EU partners'. Available at: <https://frontex.europa.eu/we-build/eu-partners/eu-agencies/e>

<sup>355</sup> CEPOL, EFCA, EMSA, EUAA, eu-LISA, European Union Agency for Criminal Justice Cooperation (Eurojust), Europol, and FRA.

There may be instances where Frontex's coherence with other EU agencies comes from the design of the regulations and directives used to determine priorities. The founding regulations of Frontex and other agencies are part of different Union policies set out in the Treaties, which also establish limitations to their competences. Overall, the cooperation with other agencies is considered satisfactory and coherent, although potential overlaps in mandates require close coordination and clarifications (for example, between Frontex and Europol).

Cooperation with specific agencies depends on areas of common interest. For example, cooperation with the **EFCA** and the **EMSA** is established to support the implementation of the European cooperation on coast guard functions. Through a Tripartite Working Arrangement, the three agencies support one another and national authorities responsible for coastguard functions, including via information-sharing, surveillance and communication services, capacity-building and risk analysis. The three agencies work jointly on multipurpose operations, where they undertake activities to support various coastguard functions.<sup>356</sup> As Frontex's functions deal with elements outside of EMSA and EFCA's mandates, the two agencies would like greater clarity on Frontex's core functions and thematic areas and the legal implications of operating outside territorial waters for coast guard functions. Overall, cooperation is rated positively by both agencies, and the legal base for their cooperation is sound.

Cooperation with **Europol** is also rated positively, although a minority of Member States stressed the importance of ensuring complementarity and avoiding overlaps, in view of Frontex tasks in the area of cross-border crime.<sup>357</sup> Overall cooperation is rated as good, with regular contact between the two agencies.<sup>358</sup> Europol cited some instances where Frontex took on tasks that fell with the Europol remit, requiring follow-up clarifications, for example where both agencies issued risk analysis products related to the impact on EU security of Russia's invasion of Ukraine. Nevertheless, Europol believes that communication between the two agencies is effective, and that it is possible to resolve such issues.

Frontex notes that the EBCG Regulation does not sufficiently specify the role, limitations and procedures in its tasks to **support Europol, Eurojust and national law enforcement authorities**.<sup>359</sup> Some Frontex stakeholders stated that the current interpretations of its mandate in this area are thus too narrow. Yet the importance of avoiding overlaps in mandates of Frontex and Europol has been highlighted by the Commission and some Member States, which explains the perceived need for a narrow interpretation of Frontex mandate in this field.<sup>360</sup> Moreover, the majority of Member States agreed that the cooperation with Europol and Eurojust is already well defined,<sup>361</sup> and did not suggest a need to further expand the mandate of Frontex in this field.

In line with the respective mandates of Frontex and **EUAA**, the two agencies are expected to coordinate their activities to support Member States on returns. They are also expected to cooperate on Migration Management Support Teams, shared risk analysis, training, support to Member States with contingency planning, and representation in one another's

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<sup>356</sup> Interviews with Frontex (1), EFCA, EMSA (2).

<sup>357</sup> Interviews with MS/SAC authorities: 9/27 (BE, DK, ES, FI, HU, SE, SI, SK and NO).

<sup>358</sup> Interviews with Frontex and Europol; survey of MS/SAC authorities: Q1.7: 14/27 agreed; 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

<sup>359</sup> Interviews with EDPS and Frontex.

<sup>360</sup> Interviews with MS/SAC authorities: 4/27 (ES, HU, SE, SI).

<sup>361</sup> Survey of MS/SAC authorities, Q1.7: 14/27 agreed and 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

CFs. The two agencies cooperate on multiple shared projects, often jointly with Europol (including cooperation in hotspot areas in Greece and Italy).<sup>362</sup>

Frontex has increased its cooperation with **eu-LISA**. The two agencies exchange expertise and best practice on training, information and communications technology (ICT)-related projects and services, research and development. The collaboration between eu-LISA and Frontex takes place within the framework of the implementation of ETIAS, EES and interoperability. eu-LISA also assisted Frontex to implement its access to the SIS, as well as with capacity-building for Frontex officers, with training modules developed by eu-LISA.

Frontex cooperates with **CEPOL** on capacity-building and contributes to the EU Strategic Training Needs Assessments (EU-STNA), which identifies training needs in the area of internal security and its external dimension.<sup>363</sup> Frontex contributes to CEPOL webinars and online modules and provides trainers and speakers. Frontex believes that the two mandates are complementary and can effectively reinforce one another, but has also specified the need to ensure close coordination and clear division of training tasks.<sup>364</sup>

**FRA** is a member of the Frontex CF on Fundamental Rights, and also participates in the ETIAS Fundamental Rights Guidance Board. A representative of FRA is invited to Frontex MB meetings when the agenda includes points related to fundamental rights. FRA assisted Frontex to establish, develop the concept for implementing the relevant provisions, and recruit the FRMs.<sup>365</sup>

Frontex cooperates with the **European Commission** to ensure coherence in the context of different EIBM activities. For example, Frontex now has a strengthened role in EU-funded security research and innovation. The Terms of Reference between the Commission and Frontex<sup>366</sup> recognise the Agency's key understanding and expertise on the standards, requirements and capability needs of the EBCG community, enabling it to assist DG HOME, which manages the security research part of the main funding instrument for research and innovation in Europe (Framework Programme for Research and Innovation, Horizon 2020 (2014-2020) and Horizon Europe (2021-2027)).

To help to coordinate its external work, Frontex established an informal EBCG Expert Working Group on technical assistance to third countries (EXT-TA) in 2022, which includes representatives of international cooperation entities of Member State border management authorities and works in cooperation with other EU policy and funding initiatives.<sup>367</sup> This should help to foster synergies in the future.

Frontex participates in the EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint).<sup>368</sup> The aim of this mechanism is to create a framework for real-time monitoring, early warning and centralised EU response. It brings together Member States, the Council, the Commission, EEAS, EUAA, Frontex, Europol, eu-LISA and FRA to work together on migration

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<sup>362</sup> Interviews with Frontex and EUAA.

<sup>363</sup> CEPOL (2022). 'European Union Strategic Training Needs Assessment 2022-2025'. Available at: <https://www.cepola.europa.eu/publications/european-union-strategic-training-needs-assessment-2022-2025>

<sup>364</sup> Interview with Frontex (1).

<sup>365</sup> Interview with Frontex (1).

<sup>366</sup> DG HOME (2020). 'Terms of Reference between DG Migration and Home Affairs and Frontex regarding the role of the European Border and Coast Guard Agency in the parts of the Framework Programme for Research and Innovation which relate to border security'. Available at: [https://home-affairs.ec.europa.eu/system/files\\_en?file=2020-02/20200206\\_tor-ec-dg-home-frontex.pdf](https://home-affairs.ec.europa.eu/system/files_en?file=2020-02/20200206_tor-ec-dg-home-frontex.pdf)

<sup>367</sup> Frontex (2023). 'Draft Consolidated Annual Activity Report 2022'. Activity 5.2.2.

<sup>368</sup> European Commission Recommendation (EU) 2020/1366 of 23 September 2020.

preparedness and crisis management. Frontex provides analytical products that contribute to situational awareness within the Network.<sup>369</sup>

Finally, Frontex provides ad hoc analytical contributions to support the **Council**, including inputs to the Council's Integrated Political Crises Response (IPCR) and Integrated Situational Awareness and Analysis Reports (ISAA).<sup>370</sup>

#### 4.1.8.3 Cooperation with CSDP missions and operations

**Frontex has successfully enhanced its cooperation with CSDP missions and operations. The war in Ukraine showed that having a more overarching mechanism for cooperation with CSDP missions could provide the necessary flexibility for Frontex to establish swift cooperation with those CSDP missions not previously considered a priority.**

Cooperation with CSDP missions and operations is limited to the areas specified in the EBCG Regulation (Article 68(1)(j)), which include '(i) the promotion of European integrated border management standards; (ii) situational awareness and risk analysis'. Current cooperation efforts vary depending on the country of interest and the mandate of the specific mission or operation. In practice, Frontex has a working arrangement with one CSDP mission (EUCAP Sahel Niger) and one CSDP operation (Operation UNAVFORMED Irini). It has also opened discussions with the EU Advisory Mission (EUAM) Ukraine and EUBAM Libya.<sup>371</sup> Not all CSDP missions or operations have mandates that are aligned with the tasks of Frontex, but those focused on civilian security and capacity-building are more natural partners.

The Civilian Planning and Conduct Capability (CCPC) within EEAS confirmed that it is in regular contact with Frontex to explore areas of cooperation with the CSDP missions. EEAS sees considerable added value in being able to draw on Frontex expertise. Interviews with different divisions of the EEAS<sup>372</sup> acknowledged general cooperation (both operationally and on policy) between Frontex and the EEAS, albeit with some room for improvement. Overall, EEAS sees the EBCG Regulation as sufficient to facilitate its cooperation with Frontex.

EEAS highlighted that CSDP missions can provide strong support to Frontex, as they usually have well-established contacts with authorities in their host countries and have a solid awareness of the local situation.<sup>373</sup> Frontex has indicated its interest in enhancing cooperation with CSDP missions, an interest shared by the EEAS, which suggested including CSDP missions in Article 10 of the EBCG Regulation to raise awareness of potential cooperation.<sup>374</sup>

EEAS favours having one overarching working arrangement for all CSDP missions, so as to enhance flexibility of cooperation. Negotiating a working arrangement can reportedly take between one and one-and-a-half years, which does not allow for adaptation to unexpected needs. The ability to develop swift cooperation between a CSDP mission and Frontex in response to new threats would have been beneficial in the case of the full-scale invasion of Ukraine by Russia in early 2022. Frontex was active on the EU side of the

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<sup>369</sup> Interview with Frontex (1).

<sup>370</sup> Frontex (2021). 'Programming Document 2019-2021', p. 39. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Programming\\_Document/2019/Programming\\_document\\_2019-2021.pdf](https://frontex.europa.eu/assets/Key_Documents/Programming_Document/2019/Programming_document_2019-2021.pdf)

<sup>371</sup> Frontex (2022). 'Draft Consolidated Annual Activity Report 2021'. Activity 5.2.1.

<sup>372</sup> Interviews with EEAS (3).

<sup>373</sup> Interview with EEAS (1/3).

<sup>374</sup> Interview with EEAS (1).

Eastern border but did not have a status agreement with Ukraine<sup>375</sup> or a working arrangement with EUAM Ukraine, limiting its ability to cooperate with both. However, one difficulty with having an overarching cooperation agreement is the fact that not all CSDP missions operate in third countries that are set as a priority by Frontex (on the basis of specifications set out in the EBCG Regulation). Any potential overarching working arrangement would likely need to include a mechanism for prior approval by the Commission and MB before launching cooperation with a new CSDP mission.

#### 4.1.8.4 Cooperation with third countries

**Overall, Frontex’s activities in the external dimension, especially cooperation with third countries, is well regarded by key stakeholders and has a clear legal basis.**

New joint operations to third countries have been successfully deployed, despite Frontex’s resource limitations. However, Frontex has faced some implementation challenges in third country cooperation, as it cannot conclude new working arrangements until the Commission and the EDPS agree supplementary data protection provisions.

The 2019 EBCG Regulation (Article 73) brought new opportunities for cooperation with third countries, including the ability for Frontex to conduct joint operational activities with executive powers anywhere on the territory of a third country, subject to a status agreement and an operational plan. It also allows for the exchange of information with third countries in the framework of EUROSUR (Article 75) through the inclusion of the model EUROSUR provisions in a status agreement or a working arrangement. Under the Regulation, Frontex can cooperate with third countries via status agreements, working arrangements, or through non-operational cooperation.<sup>376</sup>

The EBCG Regulation stipulates that Frontex should focus its external cooperation on neighbouring third countries and countries identified (through risk analysis) as countries of origin or transit for irregular migration.<sup>377</sup> Frontex’s engagement with third countries sits within the broader framework of EU external action, as outlined in its International Cooperation Strategy (2021-2023), and is an integral part of EIBM. Frontex aims to contribute to EU external action policy and promote EIBM standards through EU and Member State initiatives.<sup>378</sup> The great majority of Member States agreed that cooperation with third countries is clearly defined in the EBCG Regulation and is conducive to addressing specific needs and challenges at external borders.<sup>379</sup>

**The 2019 EBCG Regulation added new fundamental rights and data protection safeguards, improving the legal basis for cooperation with third countries.** The model status agreement was revised and adopted in December 2021 by the European Commission (with support from Frontex), in line with Article 76(1) of the EBCG Regulation.<sup>380</sup>

Currently, Frontex cooperates with some third countries under status agreements based on the 2016 EBCG Regulation (negotiations on new agreements in line with the new

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<sup>375</sup> Frontex did have a working arrangement in place with the Ukrainian State Border Guard Service.

<sup>376</sup> Non-operational cooperation (such as implementation of EU-funded capacity-building projects to build administrative capacity, transmit know-how or enhance situational awareness of border management) also contribute to developing new partnerships that can lead to more formalised forms of cooperation at a later stage.

<sup>377</sup> Article 3(g) EBCG Regulation.

<sup>378</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 36. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>379</sup> Survey of MS/SAC authorities: Q1.8: 20/27 agreed, 1/27 strongly agreed.

<sup>380</sup> European Commission (2021). 'Model status agreement as referred to in 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'. COM(2021) 829.

model status agreement are ongoing). Three new status agreements already follow the revised model, in line with the 2019 EBCG Regulation (Moldova, North Macedonia and Montenegro). The first-ever joint operation with executive powers on the territory of a third country was launched in Albania in 2019.<sup>381</sup> Since then, Frontex has launched operations in Montenegro (2020), Serbia (2021), and North Macedonia (2023).<sup>382</sup> The Commission also has a mandate from the Council to negotiate with a number of other countries.<sup>383</sup>

One of the implementation challenges reported by Frontex is the voluntary nature of Member State participation in operational activities stemming from a status agreement on the territory of a third country. This lack of obligatory participation creates gaps in operational needs and does not allow Frontex to fully perform its activities. This is also true in relation to technical equipment, with the current legal framework foreseeing (co-)financing of technical equipment only in the context of a participating and/or hosting Member State.<sup>384</sup>

**Working arrangements are a useful instrument and can facilitate different forms of cooperation with third countries.** Although not legally binding, they contain a commitment to provide technical and operational cooperation across areas of the Agency's remit (with the exception of providing 'boots on the ground' in terms of border management teams with executive powers). Where a working arrangement has been concluded, the Agency is able to launch joint operations without executive powers<sup>385</sup> on the territory of the third country in question (with Frontex playing an advisory role), enhance its cooperation in the area of situational awareness (including risk analysis), and exchange experts without executive powers.<sup>386</sup>

While the Agency continues to cooperate with third countries via working arrangements, it has been unable to conclude arrangements that reflect the enhanced possibilities for cooperation in its enhanced mandate. The Commission adopted a revised model for working arrangements in December 2021 on the basis of the new EBCG Regulation, yet the EDPS did not give prior authorisation to the data protection section of the first working arrangement (with Niger), as required by Article 73(4) of the EBCG Regulation. The Commission is currently negotiating with the EDPS to agree revised data protection modalities.

Once existing working arrangements are renewed based on the 2019 EBCG Regulation, it will be possible to exchange information in the framework of EUROSUR, provide for the use of airport or seaports of the third country concerned<sup>387</sup>, fully reflect enhanced fundamental rights tools and safeguards, allow for the exchange of sensitive non-classified information, and cooperate to combat fraud, in line with Frontex's activities with the third country concerned.<sup>388</sup>

Overall, the process to conclude a working arrangement is quite complex.<sup>389</sup> However, the high level of scrutiny by EU institutions exists to provide safeguards and ensure that

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<sup>381</sup> Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 4. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/Internation\\_Cooperation\\_Strategy/Frontex\\_International\\_Cooperation\\_Strategy\\_2021-23.pdf](https://frontex.europa.eu/assets/Key_Documents/Internation_Cooperation_Strategy/Frontex_International_Cooperation_Strategy_2021-23.pdf)

<sup>382</sup> Frontex (2023). 'Draft Consolidated Annual Activity Report 2022'.

<sup>383</sup> Albania, Serbia, Bosnia, Mauritania, Senegal.

<sup>384</sup> Frontex (2023). 'Evaluation of the EBCG Regulation EMB/2023', p. 2.

<sup>385</sup> Such an operation should also have an operational plan that shall be binding on the Agency, the host country and participating Member States.

<sup>386</sup> Interview with Frontex (1).

<sup>387</sup> Depending on the respective operational plans.

<sup>388</sup> Interview with Frontex (1).

<sup>389</sup> Interview with Frontex (1).



cooperation with third countries is in line with EU external action and compliant with fundamental rights and data protection principles. Apart from seeking the EDPS' prior authorisation (where an agreement provides for the transfer of personal data), the Agency must have the Commission's prior approval, an opinion from the FRO, and approval by the MB. Frontex also needs to inform the European Parliament ahead of the signature of a working arrangement with a third country.

Finally, there is one legal contradiction within the EBCG Regulation in relation to working arrangements. Article 117(5) legally requires the Agency to include 'provisions expressly empowering the [European Court of Auditors] ECA, [European Anti-Fraud Office] OLAF and [European Public Prosecutor's Office] EPPO to conduct [...] audits and investigations' in working arrangements concluded with third countries and with international organisations. However, working arrangements are by definition non-legally binding documents. While Frontex is able to include such provisions in working arrangements concluded with third countries and with international organisations, in reality it cannot 'empower' the ECA, OLAF and EPPO.<sup>390</sup>

### **Other areas of cooperation**

Given the EBCG Regulation's instructions on third-country cooperation and the multiple layers of approval required before a final action is deployed, Frontex has access to other means to cooperate with third countries. Article 73(4) of the EBCG Regulation links cooperation with third countries within the framework of working arrangements to be undertaken 'where available'. This allows the Agency to undertake other types of cooperation (capacity-building, technical assistance, etc.), which can serve as a trust-building tool before a more formalised agreement is concluded.

Another important mechanism is the deployment of FLOs to third countries, which are hosted in EU Delegations in those countries, ensuring EEAS support to Frontex activities. By 2022, it had deployed six FLOs, covering 14 countries.<sup>391</sup> In line with Article 77 of the EBCG Regulation, FLOs continue to support the operationalisation of status agreements, the implementation of working arrangements, and the negotiation of new or renewed arrangements. They are also part of the Immigration Liaison Officers Networks established at local level. From a Member State perspective, the role and contribution of FLOs is not always clear. The site visits to Greece and Bulgaria, for instance, found no contact between the Member State authorities and the FLO in neighbouring Turkey,<sup>392</sup> suggesting that the role and added value for the management of the EU-Turkey border could be improved. On the other hand, the Frontex headquarters' perspective was somewhat different, as the RAU received various types of useful data from the Turkey-based FLO.

### **4.1.9 Fundamental Rights<sup>393</sup>**

This section considers the effectiveness of Frontex's observation and promotion of fundamental rights, as well as how it promoted and respected fundamental rights through all of its activities. It also explores the fundamental rights obligations imposed on Member States' authorities by the EBCG Regulation. This section presents a summary of the key findings, with the full analysis available in Annex 5.

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<sup>390</sup> Interviews with Frontex (1) and DG HOME (1).

<sup>391</sup> Frontex (2023). 'Draft Consolidated Annual Activity Report 2022'. Activity 5.1.1.

<sup>392</sup> Interviews with national authorities (BG, EL).

<sup>393</sup> This section responds to evaluation question 5.6, 6.3 + 6.4, 14.

Table 11. Summary of key findings on fundamental rights

Summary of key findings
<b>Key provisions of the EBCG Regulation</b>
Recital 103
Articles 1, 3, 5, 10, 46, 48, 50, 55, 80, 82, 108, 109, 110, 111
Annex V
<b>Key findings</b>
<ul style="list-style-type: none"><li>• The Agency set a number of conditions to ensure and promote the respect of fundamental rights by adopting and/or implementing rules and procedures. However, some issues reported posed risks to delivering on the commitment to guarantee respect for fundamental rights, such as delays in recruiting the FRMs and limited follow-up with the FRO. Other limitations remain.</li><li>• The overall effectiveness of the fundamental rights framework risks being limited by:<ul style="list-style-type: none"><li>- Gaps and/or lack of clarity identified within the EBCG Regulation (which may leave a wide margin of discretion in interpretation, for instance for the Executive Director's decision referred to in Article 46, scope of FRO's mandate) and implementing rules;</li><li>- Lack of implementation or improper implementation of the EBCG Regulation's provisions (such as limited follow-up to the recommendations of the FRO).</li></ul></li><li>• Article 46 of the EBCG Regulation leaves considerable discretion to the Executive Director's decision. Accordingly, in 2022, the Agency adopted the SOP on Article 46.<sup>394</sup> Some stakeholders suggest expanding the decision-making power to other stakeholders (such as the MB).</li><li>• Article 80 of the EBCG Regulation, on the fundamental rights strategy, is addressed to the Agency alone, creating an asymmetry in the fundamental rights framework. By contrast, the Fundamental Rights Action Plan has two parts: one overarching component applicable to the EBCG as a whole, and a second component for the Agency specifically.</li><li>• The FRO contributes to ensuring the Agency's compliance with fundamental rights. Nevertheless, factors stemming from both the EBCG Regulation and its implementation limited the effectiveness of the FRO's role. These reflect the FRO's position within the Agency, the scope of the FRO mandate and constraints on the monitoring and investigative powers, the advisory nature of the role, and the limited follow-up to the FRO's recommendations. These limitations were further exacerbated by the limited resources available until 2021. To strengthen the FRO's role, the Agency adopted Management Board Decisions 6/2021<sup>395</sup> and 43/2022<sup>396</sup>.</li><li>• FRMs play a crucial role in assessing compliance at operational level. The Agency reported recruitment delays, but now has 46 FRMs in place. Differences in interpretation on the scope of the FRMs' mandate/monitoring and access to operational areas and documents can hinder their effectiveness. In addition,</li></ul>

<sup>394</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'.

<sup>395</sup> 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>396</sup> 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.

limitations in carrying out certain activities, such as participating in (land and sea) patrolling and/or debriefing interviews, can further constrain monitoring. The Executive Director adopted the SOP for the FRMs in March 2023.<sup>397</sup>

- The main factors limiting the work of the CF include insufficient access to information, lack of requests for consultations from the Agency or insufficient time to reply to requests, and limited follow-up to its recommendations. Management Board Decision 43/2022 set out a procedure to follow-up on CF (and FRO) recommendations.<sup>398</sup>
- The Agency registered a low number of SIRs (before 2021). The research identified several factors limiting the effectiveness of this reporting tool. These include 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, lack of incentives to submit SIRs, and lack of transparency and avenues for redress. In response, the Agency and the FRO took some positive actions, including adopting the 2021 SOP on SIR mechanism,<sup>399</sup> creating a dedicated SIR team, and raising awareness.
- Key concerns about the complaints mechanism relate to access, scope, independence, and transparency of the mechanism, as well as the limited role of the DPO in the process, follow-up to complaints, and lack of remedy or opportunities to lodge an appeal. Efforts by the Agency (Management Board Decision 19/2022)<sup>400</sup> and the FRO continue to strengthen the effectiveness of the complaints mechanism.
- The analysis identified issues with the number of return operations monitored (Member States' level of contribution to the forced-return pool of monitors and delays in FRMs' recruitment) and insufficient safeguards for some return operations. The Agency and FRO adopted changes to increase the number of return operations monitored, as well as additional safeguards/mitigating measures.

Typology/sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges			
Legislative	<table border="1" style="width: 100px; height: 30px;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; background-color: yellow; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		Definitions unclear and gaps in the EBCG Regulation
	√				
Operational /implementation	<table border="1" style="width: 100px; height: 30px;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; background-color: yellow; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		<p>Delays in adopting implementing rules (Management Board and/or Executive Director Decisions)</p> <p>Lack of/delays in the implementation of the EBCG Regulation and/or implementing rules (delays in recruiting FRMs, etc.) with the consequence of limiting monitoring</p>
	√				

<sup>397</sup> Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities, internal document.

<sup>398</sup> 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>399</sup> Executive Director Decision on Standard Operating Procedure (SOP) – Serious Incident Reporting.

<sup>400</sup> Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

Governance/EBCG	√	Delineation of responsibilities between Frontex and Member States (for example, in joint operations), with implication for the scope of FRO/FRM monitoring activities
Organisational/internal procedures	√	Internal inconsistencies, procedures not sufficiently clear, etc. (FRO's position within the Agency, cooperation between FRO and DPO, CF access to information, etc.)  Insufficient human resources in some key offices (for example, FRO, FRM, DPO)

#### 4.1.9.1 Promotion and respect of fundamental rights through all Agency activities

**The EBCG Regulation aims to establish a comprehensive fundamental rights framework.** Accordingly, it includes horizontal safeguards, 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. More could be done to better streamline respect for fundamental rights in the Agency's structure and procedures.

**Frontex has put in place a number of conditions to ensure and promote the respect of fundamental rights, by adopting and/or implementing rules and procedures.** This includes the Fundamental Rights Strategy and implementing Action Plan, FRO activities (contributing to a wide range of tools and procedures, such as operational plans), FRMs, Management Board Decisions (on the complaints mechanism, SIRs, supervisory mechanism on the use of force, etc.), data protection safeguards and DPO activities, and training and efforts to promote a fundamental rights culture within the Agency.

The analysis found that the overall effectiveness of the framework risks being limited by **gaps, inconsistencies and lack of clarity** within the EBCG Regulation, as well as **implementation issues**. This section provides an overview of the framework and identifies **potential limitations**, based on the analysis of the EBCG Regulation and implementing rules, and stakeholders' views (see full analysis in Annex 5).

Respect for fundamental rights is a legal obligation of the EBCG (Member States' authorities and the Agency) under EU and international law.<sup>401</sup> To comply with these EU and international obligations, the EBCG Regulation provides for **horizontal safeguards** (such as Articles 1, 3, 5, 46, including data protection safeguards in Articles 89 to 92), specific roles (FRO, FRMs, CF, cooperation with the FRA), and procedures and instruments (codes of conduct, SIRs procedure, complaints mechanism, supervisory mechanism on the use of force) to ensure the protection and monitoring of fundamental rights. The Agency also adopted the Fundamental Rights Strategy and implementing Action Plan to deliver on its obligations.

##### **Horizontal safeguards**

The EBCG Regulation provides **horizontal fundamental rights safeguards**, as the Agency must carry out its activities in compliance with fundamental rights, as required by **Articles 1, 3, 5 and 46**, in particular.

Although **Article 5** requires the Agency to contribute to the continuous and uniform application of Union law, it refers to external borders only and it not explicitly cover the

<sup>401</sup> Recital 103 and Article 80 EBCG Regulation.

Agency's activities on return,<sup>402</sup> although this is indicated in other provisions (such as Article 48). This may be considered 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 reflected better in this provision.

**Article 46** provides for another important fundamental rights safeguard of the EBCG Regulation, as it reinforces the obligation of the Executive Director to suspend, terminate or not launch any activity of the Agency that could violate fundamental rights.<sup>403</sup> Various stakeholders highlighted that the EBCG Regulation leaves considerable discretion to the Executive Director in this regard.<sup>404</sup>

To strengthen the functioning of Article 46, the Agency adopted the **SOP** in 2022, establishing the roles and responsibilities within the Agency to support the decision-making process of the Executive Director.<sup>405</sup> The SOP also aims to clarify the applicable criteria for decisions. It suggests taking a gradual approach and using the principle of proportionality when deciding actions to be taken under Article 46. Whenever appropriate, mitigation/corrective measures should be put in place so as to resolve the situation without triggering Article 46.

Debate is ongoing on the consequences of triggering Article 46, as withdrawing would limit monitoring and reporting of fundamental rights violations at EU level. 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>406</sup> Another topic widely discussed during the consultation related to the authority adopting the decision referred to in Article 46. 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 other relevant actors (such as the MB, European 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 political actors blocking in practice the possibility of triggering Article 46).

#### *Fundamental Rights Strategy and Action Plan*

To complement and implement the legislative framework, the EBCG Regulation requires the Agency to draw up, implement and develop a **Fundamental Rights Strategy**.<sup>407</sup> Initially adopted in 2011 and updated in 2021, its objective is to guarantee the protection of fundamental rights in the performance of the daily tasks of the Agency related to EIBM.<sup>408</sup> When setting out fundamental rights compliance with relevant EU and

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<sup>402</sup> FRA (2018). Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications. Available 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>403</sup> Article 25 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>404</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).

<sup>405</sup> 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/>

<sup>406</sup> Interview with Frontex (1 – scoping interview) and FRO (1/5).

<sup>407</sup> Article 80 EBCG Regulation.

<sup>408</sup> Frontex (2021). Fundamental Rights Strategy. Available at: <https://prd.frontex.europa.eu/?form-fields%5Bsearch%5D=fundamental%20rights&form-fields%5Bdate-from%5D&form-fields%5Bdate-to%5D&form-fields%5Bdocument-category%5D%5B0%5D=299&form-fields%5Boffset%5D=0&form-fields%5Bform-post->



To address this issue, the MB adopted Decisions 6/2021<sup>414</sup> and 43/2022.<sup>415</sup> As the 2021 Management Board Decision 6/2021 on the independence of the FRO did not provide specific procedures on follow-up to FRO recommendations, the MB adopted a separate Decision 43/2022, laying down the procedures, including timelines and deadlines, for the Executive Director and MB to act on the recommendations of the FRO and CF.<sup>416</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 Regulation requires that sufficient and adequate human and financial resources are provided to the FRO to fulfil its tasks.<sup>417</sup> Despite this obligation, the capacity of the Fundamental Rights Office was insufficient for quite some time and was increased considerably only from 2021-2022.

The Fundamental Rights Office had limited capacity in 2020.<sup>418</sup> In 2021, the Agency recruited a new FRO, hired a Deputy FRO (who took office in 2022), and increased the staff of the Office (to around 60 in 2022). The Agency experienced delays in recruiting FRMs and only completed recruitment in 2022 (46 in place in 2022),<sup>419</sup> with some monitors assigned to the pool of forced-return monitors.<sup>420</sup> As of 2023, the total staff of the Fundamental Rights Office is 65 (63 posts are filled), with a request for six additional staff members from 2024 pending and an expressed need for 18 more in 2026.<sup>421</sup> The current capacity may still be considered limited compared to expanded Agency tasks, growing Standing Corps staff, and increasing needs. This was also noted during the consultation.<sup>422</sup>

#### *Fundamental Rights Monitors (FRMs)*

The 2019 EBCG Regulation introduced the role of **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>423</sup> The first deployment of FRMs did not take place until August 2021.

To facilitate effective monitoring, the EBCG Regulation requires that FRMs have access to all areas in which the operational activity of the Agency takes place and to all documents relevant to the implementation of that activity. However, differences in interpretation on the scope of the FRMs' mandate/monitoring and access to operational areas and documents (including databases) has hindered the effectiveness of the monitoring activities. In addition, limitations in carrying out certain activities, such as participating in

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<sup>414</sup> Management Board Decision 61/2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

<sup>415</sup> 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>416</sup> Management Board Decision 43/2022.

<sup>417</sup> Article 109(5) EBCG Regulation.

<sup>418</sup> Frontex (2021), '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>419</sup> 2022 data are extracted from: Frontex (2022), '2022 in brief'. Available 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)

<sup>420</sup> Frontex (2022), 'Fundamental Rights Officer Annual Report 2021'.

<sup>421</sup> Interview with Fundamental Rights Office (1/5).

<sup>422</sup> Interviews with a civil society organisation/member of the CF (1/5), and a civil society organisation/non-member of the CF (1/4).

<sup>423</sup> Article 109(3) and Article 110(1) EBCG Regulation.

(land and sea) patrolling and/or debriefing interviews, further constrained FRMs' effectiveness in fulfilling their monitoring capabilities (see Annex 5).

To guarantee effective monitoring, the Executive Director adopted the SOP for the FRMs in March 2023.<sup>424</sup> It further defines the FRMs' role and responsibilities and lays down the procedures for their work.

The SOP aims to clarify the scope of monitoring for FRMs, which is limited to the Agency's operational activities (in line with Article 110(2) EBCG Regulation). However, for the FRO to comply with his advisory role to the Agency (including under Article 46), the SOP indicates that 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 facilitate evaluation of the situation in operational areas and Member States that may have an impact on Frontex's activities.<sup>425</sup>

While the new rules clarify the scope of monitoring and suggest a non-explicit connection between the activity of the FRMs and the FRO/SIR role in Article 46, the SOP could have gone further, for instance clarifying the extent to which information collected on national authorities could be used by the FRO, or the limits between the FRO/FRMs monitoring and national monitoring by relevant entities.<sup>426</sup>

Stakeholders also highlighted the transparency of FRMs' reports. These reports are not generally publicly available, which may limit the transparency of the mission's findings and the monitoring system overall.<sup>427</sup> However, certain findings of FRMs' missions are presented to the public, as the FRO Annual Reports draw on information from FRMs.

#### *Consultative Forum (CF)*

Unlike the FRO and FRMs, the CF does not have the mandate to monitor Frontex activities. Rather, it 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 CF on any matter related to fundamental rights.<sup>428</sup>

Although the CF may carry out **on-the-spot visits to the Agency's operations** (its headquarters and those in host Member States), these visits are not aimed at fundamental rights monitoring. Rather, their objective is to collect information, which may be used to inform the CF's work to advise the Agency (for instance, to become familiar with the operational context). Despite being an important instrument, several challenges stemming from the EBCG Regulation itself and/or its implementation, risk limiting the impact of the CF's work. These challenges include insufficient access to information, lack of request for consultations from the Agency or insufficient time to reply to requests, and limited follow-up to the CF's recommendations (see Annex 5). Several stakeholders also highlighted the difficulties for civil society organisations to continue contributing to the work of the CF on a voluntary basis, given their limited resources and staff.<sup>429</sup>

In light of the limited direct results of the CF's work and insufficient follow-up by the Agency, various stakeholders noted that there have been internal discussions about the

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<sup>424</sup> Frontex (2023), 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities'. Internal document.

<sup>425</sup> Frontex (2023), 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities'. Internal document.

<sup>426</sup> Interview with Fundamental Rights Office (1/5).

<sup>427</sup> Interviews with two civil society organisations/members of the CF (2/5).

<sup>428</sup> Article 108(1) EBCG Regulation.

<sup>429</sup> Interviews with civil society organisations/members of the CF (3, 4, 7).



added value of CF membership.<sup>430</sup> One member reported that consulting the CF seems a 'tick-box exercise' for the Agency rather than an effective tool for members to provide significant input to the work of Frontex.<sup>431</sup>

In line with the CF's suggestions,<sup>432</sup> the Agency established a procedure to follow-up on CF and FRO advice.<sup>433</sup> The new rules introduce a timeframe for 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 their obligations.<sup>434</sup>

It appears that the main challenge is the enforcement of the existing rules on the CF (implementation challenge).

More recently, **positive developments** were observed following the resignation of the previous Executive Director (2015-2022 and the subsequent attention (especially under the Executive Director *ad interim*, 2022-2022) to fundamental rights within the Agency. Stakeholders reported that cooperation between the Agency's management and the CF has improved, and access to information has been enhanced.<sup>435</sup>

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

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. Inconsistencies are also found in relation to the use of force between the EBCG Regulation and **international standards** (see section 4.1.1).

In line with **Article 55** of the EBCG Regulation, the **supervisory mechanism** (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. In 2021, the MB (Decision 7/2021) adopted implementing rules on the supervisory mechanism on the use of force.<sup>436</sup> Despite this, the FSWG found that these rules fail to guarantee that sufficient fundamental rights expertise is involved in the decision-making in these cases.<sup>437</sup> To address concerns on the functioning of this supervisory mechanism, Management Board Decision 61/2022 amended the 2021 Decision in relation to the role of the Advisory Committee on the Use of Force (ACUF) with regard to the supervisory mechanism.<sup>438</sup>

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<sup>430</sup> Interviews with a civil society organisation/non-member of the CF (1/4), and civil society organisations/members of the CF (1/5).

<sup>431</sup> Interview with a civil society organisation/member of the CF (1/5).

<sup>432</sup> Consultative Forum (2022). 'Annual Report 2021'. Available at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

<sup>433</sup> 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>434</sup> Articles 1, 2 and 6 Management Board Decision 43/2022.

<sup>435</sup> Interviews with civil society organisations/members of the CF (5/5), and international organisations/members of the CF (3/).

<sup>436</sup> 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 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>437</sup> FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'.

<sup>438</sup> 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.

### *Codes of conduct*

Initially, the Agency adopted a **Code of Conduct** that applies to all persons participating in Frontex activities. The Code promotes professional values based on the principles of the rule of law and the respect of fundamental rights, and establishes the ethical behavioural standards that guide all persons participating in Frontex activities.<sup>439</sup>

More recently, in line with the EBCG Regulation's obligations,<sup>440</sup> the Agency adopted two codes: the **Code for participants in operational activities**<sup>441</sup>, and the **Code in the field of return**.<sup>442</sup> Although not a codification of legislation, these codes envisage common standardised procedures and principles that contribute to increasing knowledge of fundamental rights' respect among operational staff.

### *Training on fundamental rights*

The Agency continues to provide training on relevant fundamental rights standards and practices. The FRO cooperated with the Training Unit of the Agency to include fundamental rights aspects in various training sessions.<sup>443</sup>

Cooperation with FRA has helped to establish high fundamental rights standards in the training. However, FRA has reported that Frontex has recently outsourced training to Member States' authorities, which makes it difficult to assess the extent to which those previous high standards have been incorporated into these new models.

Since the beginning of the recruitment of FRMs in 2020, the Agency has provided specific training for FRMs. During the consultation, 26 of 34 FRMs indicated that the courses prepared them for the role of FRM only to some extent.<sup>444</sup> More specifically, 15/34 indicated that the training did not sufficiently address the practical aspect of monitoring. 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>445</sup>

### *Fundamental rights culture*

An internal culture that is 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 its implementing rules. More recently, the Agency – particularly the FRO – has made efforts to foster a fundamental rights culture among staff. For instance, the increasing presence of the FRMs provides valuable advice to deployed staff on practices that are in line with fundamental rights, identifies potential violations, and encourages the use of the reporting mechanisms.<sup>446</sup> The FRO has dedicated significant effort to include fundamental rights in training and to engage (formally and informally) with the members of the CF. The CF's on-the-spot visits may also help to increase staff knowledge and attention to upholding fundamental rights.<sup>447</sup> Despite these positive changes, some stakeholders continue to believe that the overall culture of the Agency should change and

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<sup>439</sup> Frontex (n.d.). 'Code of Conduct for all persons participating in Frontex activities'. Available at: [https://frontex.europa.eu/assets/Publications/General/Frontex\\_Code\\_of\\_Conduct.pdf](https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf)

<sup>440</sup> Article 81 EBCG Regulation.

<sup>441</sup> Frontex (n.d.). 'Code of Conduct for all persons participating in Frontex activities'. Available at: [https://frontex.europa.eu/assets/Publications/General/Frontex\\_Code\\_of\\_Conduct.pdf](https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf)

<sup>442</sup> Frontex (n.d.). 'Code of Conduct for all persons participating in Frontex activities'. Available at: [https://frontex.europa.eu/assets/Publications/General/Frontex\\_Code\\_of\\_Conduct.pdf](https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf)

<sup>443</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

<sup>444</sup> Survey of FRMs: Q5 (15/34).

<sup>445</sup> Interview with the Fundamental Rights Office (1/5).

<sup>446</sup> Interviews with the Fundamental Rights Office (2/5).and a civil society organisation/member of the CF (1/5).

<sup>447</sup> Interview with a civil society organisation member of the CF (1/5).

that there remains considerable work to be done to achieve a substantive cultural shift within Frontex.<sup>448</sup>

#### *Serious Incident Reporting (SIR) mechanism*

The SIR mechanism is one of the main reporting mechanisms of the Agency and is used to promptly inform the Agency's management and relevant stakeholders<sup>449</sup> of a serious incident (SI).<sup>450</sup> This section focuses on the SIRs related to fundamental rights violations (so-called SIR category 1).

The EBCG Regulation is vague on 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>451</sup> Instead, the SIR procedure is regulated by internal rules, currently by the 2021 Decision of the Executive Director establishing the SOP.<sup>452</sup>

From a fundamental rights perspective, the SIR 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 continue to limit its effectiveness**. These include **insufficient involvement of the FRO in handling reports, limited sources of information, long processing time, insufficient cooperation during investigations and follow-up from national authorities, difficulty in ascertaining/imposing sanctions, and lack of incentives to submit SIRs, as well as lack of transparency** (SIRs are restricted documents) **and avenues for redress** (see Annex 5).

Early on, the Working Group on fundamental rights and legal operational aspects of operations in the Aegean Sea (FRaLO)<sup>453</sup> and the FSWG pointed out the insufficient involvement of FRO in handling SIRs (before 2021).

The functioning of the SIR mechanism assumes a shared culture of high attention to fundamental rights protection within the Agency and among all participants in Frontex's activities, who should report not only evidence but also suspected cases of violations. However, the FSWG found that some deployed border guards who needed to submit a SIR through the chain of command were discouraged from submitting the report.<sup>454</sup>

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<sup>448</sup> Interviews with a Member of the European Parliament (MEP) (1/4), a civil society organisation/member of the CF (1/5), and international organisations/members of the CF (2/3).

<sup>449</sup> SIR mechanism primarily informs Frontex Executive and Senior Management, the FRO, Member States and third countries (where appropriate and in accordance with the relevant status agreement and operational plan), the MB, and other relevant stakeholders.

<sup>450</sup> Executive Director Decision on standard operating procedure (SOP) – serious incident reporting. Available 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>451</sup> Article 46 EBCG Regulation refers to the decisions to suspend, terminate or not launch activities.

<sup>452</sup> Executive Director Decision on standard operating procedure (SOP) – serious incident reporting. Available at: [https://frontex.europa.eu/assets/Key\\_Documents/SIR\\_SOP.pdf](https://frontex.europa.eu/assets/Key_Documents/SIR_SOP.pdf)

<sup>453</sup> 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 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>454</sup> FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

Other challenges reported include the long processing time for individual SIRs (limited staff, for example), insufficient cooperation from national authorities during investigations, and inadequate follow-up from national authorities.<sup>455</sup>

In case of issues faced by the FRO during the investigations of SIRs, the Agency has sometimes been involved to support requests by the FRO, 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>456</sup>

SIRs are followed up through the recommendations made by the SI-Handler in a final report and through the reporting on patterns of SIRs to the MB, while continuous follow-up is ensured by the FRO. A model is now being tested with one Member State where dedicated liaisons have been appointed to facilitate closer interaction with the FRO.<sup>457</sup>

The analysis highlighted the absence of sanctions for failing to report SIRs related to fundamental rights violations, and the insufficient indications of the sanctions applicable to those responsible and how often they are imposed.

SIRs could lead to disciplinary measures for failing to comply 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 typically relate to national authorities' actions (with some rare exceptions pending).<sup>458</sup>

SIRs are treated as restricted documents, limiting stakeholders' access and, potentially, the transparency and accountability of Frontex insofar as it has taken/not taken action.

Initially, the number of SIRs coordinated by the FRO (for potential violations of fundamental rights) remained low (3 in 2018; 9 in 2019, 10 in 2020), with a significant increase registered in 2021 (61 SIRs).<sup>459</sup> In 2022, the Agency reported a continuously increasing number of SIRs related to fundamental rights (72 SIRs category 1, of which 8 remained open in April 2023). By March 2023, the FRO had opened six SIRs concerned with fundamental rights.<sup>460</sup>

The low number of SIRs initially may indicate that the mechanism was not fully utilised and/or not functioning well, as the number of SIRs is low compared to the potential fundamental rights violations documented by independent organisations.

The shortcomings with the SIR mechanism, in particular following the investigations into allegations of Frontex's involvement in pushbacks, prompted the Agency to improve the mechanism. One initiative was the amended SOP in 2021, which enhances the role of the FRO by allowing for direct reporting of situations that potentially violate fundamental rights, as well as automatically assigning the FRO as case-handler for alleged violations of fundamental rights.<sup>461</sup>

To ensure increased reporting, the FRO took steps to increase the Agency's staff awareness of the SIR mechanism and the revised SOP, through training and briefing activities. In addition, the FRO created a dedicated SIR team (around six staff members) within the Fundamental Rights Office. The capacity of the SIR team is considered

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<sup>455</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

<sup>456</sup> Interview with the Fundamental Rights Office (1/5).

<sup>457</sup> Interview with the Fundamental Rights Office (1/5).

<sup>458</sup> Interview with the Fundamental Rights Office (1 out of 5).

<sup>459</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'. Available 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>460</sup> Frontex (2023). 'Fundamental Rights Office'. Internal document.

<sup>461</sup> Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

sufficient for now, although there is a need to increase the resources allocated, given the growing number of Standing Corps and new deployment activities.<sup>462</sup>

The work of FRMs could be considered a contributing factor to the growing number of SIRs. The presence of FRMs on the ground encourages deployed staff to submit SIRs.<sup>463</sup>

The adoption of the SOP on SIRs is relatively recent and further monitoring is needed to assess the functioning of the SIR mechanism under the new rules.<sup>464</sup> Overall, the SIR mechanism remains an important instrument in the toolbox of the FRO to map and indicate fundamental rights challenges and monitor the Agency's compliance with its fundamental rights obligations.

### *Complaints mechanism*

Introduced in 2016, the complaints mechanism is an important component of the Agency's fundamental rights protection framework. According to Article 111 of the EBCG Regulation, the complaints mechanism is intended to monitor and ensure respect for fundamental rights in all of the activities of the Agency.<sup>465</sup> **Despite being one of the main reporting mechanisms, there are concerns about the set up and implementation of this mechanism.** The Agency registered a low number of complaints initially (before 2021): 8 in 2018 (3 admissible),<sup>466</sup> 18 in 2019 (7 admissible), and 24 in 2020 (7 admissible). However, from 2021, the number increased significantly, with 27 complaints in 2021 (6 admissible)<sup>467</sup> and 69 in 2022 (9 admissible, 10 under admissibility assessment). By April 2023, 10 complaints have been registered, with one deemed admissible so far. This gives a total of some 170 complaints under the mechanism, with an admissibility rate of 22%.<sup>468</sup> The inadmissibility may derive from different factors, such as complaints not concerning operational activities of the Agency, complaints not directly affecting the individuals submitting them or lack of fundamental rights issues, working relations between the Agency's and its staff, etc. Over the years, a number of stakeholders have raised **concerns** about the set up and implementation of the complaints mechanism, suggesting that these may have limited its capacity to provide an effective and accessible tool for reporting, investigating, and remedying alleged breaches of fundamental rights. More specifically, these concerns relate to **access, scope, independence, and transparency of the mechanism, the limited role of the DPO in the process, issues with follow-up to complaints, and absence of remedy and appeal** (see Annex 5).

The complaints mechanism does not provide access to those who have not been affected 'directly' by actions or omissions,<sup>469</sup> nor does it allow the possibility to initiate a complaint *ex officio*<sup>470</sup> (whereas it is possible for the FRO to initiate SIRs category 1 based on third-party information and sources) nor to submit anonymous complaints.<sup>471</sup> This restricted

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<sup>462</sup> Interview with the Fundamental Rights Office (1/5).

<sup>463</sup> Interview with the Fundamental Rights Office (1/5).

<sup>464</sup> Survey of MS/SAC authorities: Q8.1: 1/27 (DE).

<sup>465</sup> Article 111 EBCG Regulation.

<sup>466</sup> Frontex (2021). 'Fundamental Rights Officer Annual Report 2020'.

<sup>467</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

<sup>468</sup> Interview with the Fundamental Rights Office (1/5).

<sup>469</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>470</sup> 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 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>471</sup> Interviews with the European Ombudsman, an EU agency (FRA), a civil society organisation/member of the CF (5) and a civil society organisation/ non-member of the CF (9); European Ombudsman (2020).

access might be a contributing factor to the low number of complaints submitted via this mechanism.

On the identification of the alleged **perpetrator of violations**, the analysis found that the EBCG Regulation (Article 111(2)) leaves a gap for cases in which the alleged perpetrators of fundamental rights violations are individuals involved in Frontex's activities but not part of Frontex or Member State staff and are instead employed by the Agency via external contractors (such as cultural mediators).

The European Parliament<sup>472</sup> and the European Ombudsman<sup>473</sup> called into question the **independence** of the complaints mechanism, given the role of the FRO and Executive Director, respectively, in assessing and deciding on the complaints. Although the FRO recommends appropriate follow-up, the decision on the merits of the complaint lies with the Executive Director, who should ensure proper follow-up and report back to the FRO. The EBCG Regulation does not establish the criteria to be used by the Executive Director to decide the merits of the complaint, nor was this addressed by Management Board Decision 19/2022. For complaints concerning national staff, the merits of the complaints are assessed by the national authorities, as the FRO forwards those complaints to the relevant Member State and sends a copy to the Member State's national human rights institution for further action, according to their mandates.

Where a complaint relates to data protection issues, the Executive Director consults the **DPO** before taking a decision.<sup>474</sup> During the consultation, it was reported that the work of the DPO in this area has been very limited so far.<sup>475</sup> There is also a risk of overlap between FRO and DPO activities in relation to data protection complaints, as the processing of personal data requirements is regulated as a fundamental right, limiting DPO involvement.<sup>476</sup>

Another challenge is transparency, as the EBCG Regulation does not establish the criteria to be used by the Executive Director for the decisions on the complaints, giving them considerable discretion.<sup>477</sup>

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 to individuals (such as new arrivals).

The FSWG<sup>478</sup> and the European Ombudsman<sup>479</sup> stressed the inadequate and delayed **follow-up** to complaints.

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'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 at: <https://www.ombudsman.europa.eu/en/decision/en/143108>

<sup>472</sup> FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

<sup>473</sup> European Ombudsman (2020). '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 at: <https://www.ombudsman.europa.eu/en/decision/en/143108>

<sup>474</sup> Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism, Article 10.

<sup>475</sup> Interview with Frontex (1).

<sup>476</sup> Interview with Frontex (11).

<sup>477</sup> Interview a with civil society organisation/non-member of the CF (1/4).

<sup>478</sup> FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

<sup>479</sup> Interview with the European Ombudsman.

On complaints about Frontex staff, two civil society organisations expressed doubts about the follow-up to complaints and the extent to which corrective measures are implemented within the Agency.<sup>480</sup>

For complaints about national staff, the FRO reported that the follow-up from the national authorities has been inadequate.<sup>481</sup>

On 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 reassesses the complaint.<sup>482</sup>

There is lack of clarity on Article 111(5) of the EBCG Regulation: '[...] 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, the Agency has not set up this procedure, nor was it addressed by Management Board Decision 19/2022. The FRO reported one case where this issue was raised by a complainant whose complaint was declared inadmissible and who asked for the possibility to appeal the decision, referring to the procedure indicated in Article 111(5).<sup>483</sup>

The EBCG Regulation does not provide for the possibility of appeal within the complaints mechanism. The European Ombudsman found that the mechanism lacks scrutiny and indicated that decisions by the Executive Director on complaints forwarded by the FRO may be challenged before the European Ombudsman.<sup>484</sup>

When individuals experience a violation of their fundamental rights that is subsequently ascertained through the complaints mechanism, a clear remedy is missing (such as a compensation fund or other concrete remedies).

Following pressure from EU-level stakeholders (European Parliament, European Ombudsman<sup>485</sup>, etc.) and attention from civil society organisations, the Agency started a process to strengthen the complaints mechanism, in particular to review the implementing rules.

To increase the effectiveness of the complaints mechanism, the FRO increased awareness by updating the complaint form, introducing a new online submission tool, and distributing information about the mechanism to various Frontex operational areas. It also provided input on the new rules of the complaints mechanism and held training sessions 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>486</sup>

In 2022, the MB adopted **Decision 19/2022 on the Agency's rules on the complaints mechanism** to respond to the need to develop an adequate framework to ensure the further development and independence of the complaints mechanism.<sup>487</sup>

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<sup>480</sup> Interviews with civil society organisations/members of the CF (2/5).

<sup>481</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

<sup>482</sup> Article 111(5) EBCG Regulation.

<sup>483</sup> Interview with the Fundamental Rights Office (1/5).

<sup>484</sup> Interview with the European Ombudsman.

<sup>485</sup> The European Ombudsman launched an inquiry in 2020. The findings were published in June 2021 and included recommendations to make the complaints mechanism effective and address the shortcomings.

<sup>486</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

<sup>487</sup> Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

A potential discrepancy may exist between the EBCG Regulation and Management Board Decision 19/2022 in relation to the FRO's role in the procedures for complaints. 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, a role the EBCG Regulation ascribes to the Executive Director. This was discussed during the consultation.<sup>488</sup>

The Agency's recent awareness-raising actions might be considered contributing factors to the increasing number of complaints submitted (see Annex 5).

Overall, the analysis found that the good functioning of the complaints mechanism is limited by a number of factors related to its set up and implementation. There is some lack of clarity in the EBCG Regulation (the procedure referenced in 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 the FRO have taken positive steps and worked to raise awareness of the mechanism, while Management Board Decision 19/2022 adopted rules to develop the mechanism further. Nevertheless, some of the issues remain.

#### *Return monitoring and fundamental rights*

This section analyses the fundamental rights aspects of monitoring return operations. It describes the Agency's activities and fundamental rights safeguards in this area, and analyses their effectiveness.

The EBCG Regulation of 2019 amended the tasks of the Agency to include a more significant role in return operations and interventions. It provides for the Agency to assist Member States throughout the entire return process, including pre-return, return-related, and post-arrival and post-return activities of third-country nationals. However, 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 line with the EBCG Regulation's obligation,<sup>489</sup> the Agency adopted a **Code of conduct for return operations and return interventions**, which reinforces the need to respect fundamental rights when carrying out these activities.<sup>490</sup>

**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** (see Annex 5).

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 (such as level of contribution to the forced-return monitors pool) that might impact the Agency's effectiveness in carrying out monitoring activities.

The monitoring of forced-return operations is carried out by the pool of forced-return monitors. The pool is set up by the Agency from monitors of competent bodies of the Member States. The Agency also contributes FRMs to the pool.<sup>491</sup>

The governance of pool of forced-return monitors is one of the issues raised by FRA, as the management of the pool of forced-return monitors is currently assigned to the FRO (independent but not external). An external entity could enhance the independence of the

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<sup>488</sup> Interview with the Fundamental Rights Office (1/5).

<sup>489</sup> Article 81(2) EBCG Regulation.

<sup>490</sup> Frontex (n.d.). 'Code of conduct for return operations and return interventions coordinated and organised by Frontex'.

<sup>491</sup> Article 51 EBCG Regulation.



pool.<sup>492</sup> Before 2021, the pool solely comprised monitors from Member States, while the FRO worked to train and then appoint FRMs as forced-return monitors.<sup>493</sup>

Issues were reported in relation to the limited number of experts made available to the pool by Member States, which might limit the capacity to meet monitoring needs for all relevant operations.<sup>494</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, with five or six trained and appointed monitors in spring 2023 and an additional five or six to be trained in July 2023 and then appointed.<sup>495</sup>

To strengthen fundamental rights safeguards in monitoring, the Fundamental Rights Office contributed to the training for forced-return monitors and created networks to increase trust between monitors and national authorities, and international and national organisations.<sup>496</sup>

During the consultation, several concerns were raised about Frontex's support to Hungary with return operations (see Annex 5). 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>497</sup> while the CF suggested the introduction of mitigating measures to address potential risks associated with return decisions issued by Hungarian authorities.<sup>498</sup>

To address these concerns, the Agency put in place **mitigating measures**.<sup>499</sup> For example, it amended the **individual form** to be filled in by Hungarian authorities for each returnee and handed to Agency staff carrying out the joint operations. The form now includes questions on the possibility to claim asylum ensured by the national authorities to the individual subject to the return decision. Despite this change, concerns persist, with one stakeholder noting that, without additional safeguards, it cannot be excluded that the Agency is involved in return operations that could pose risks to fundamental rights.<sup>500</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 is at the centre of exchanges between Frontex's DPO and the EDPS (see section 4.1.1.2).

#### 4.1.9.2 Effectiveness of the observance and promotion of fundamental rights

The EBCG Regulation describes EIBM as a shared responsibility of the Agency and 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, must carry out the management of the external borders and the enforcement of return decisions in full

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<sup>492</sup> Interview with FRA.

<sup>493</sup> Interview with the Fundamental Rights Office (1/5).

<sup>494</sup> Interview with DG HOME (1).

<sup>495</sup> Interview with the Fundamental Rights Office (1/5).

<sup>496</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'. Available 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>497</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'. Available 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> Consultative Forum (2022). 'Annual Report 2021'. Available at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

<sup>499</sup> Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'. Available 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>500</sup> Interview with the Fundamental Rights Office (1/5).

compliance with Union law, including respect for fundamental rights.<sup>501</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). The respect for fundamental rights is also stressed in the Schengen Borders Code, according to which Member States must respect fundamental rights when applying the Code, as a general safeguard clause.<sup>502</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 (Frontex or Member State staff) and different rules and procedures apply (for example, different procedures for SIRs and complaints related to Frontex's staff and national staff). The analysis highlighted these limitations and their consequences, particularly for the activities of the FRO and FRMs (see Annex 5). Many concerns about fundamental rights reported to the FRO do not relate to Frontex's staff or assets, but, rather, to alleged violations by Member State staff during operational activities. In such cases, the powers of the FRO are limited, as they do not include monitoring the national authorities' activities, which are instead covered by national monitoring mechanisms (such as the national ombuds institutions). The FRO's monitoring of Member States' staff involved in operational activities has created tension with some Member States, whose authorities question the extent of the Office's activities and suggest that it is overstepping its mandate.<sup>503</sup> The limitations of the FRO's mandate have implications for the activities of FRMs and for their access to operational areas. Despite the EBCG Regulation (Article 110)<sup>504</sup>, there are diverging interpretations of the scope and limits of FRMs' access to operational areas and, thus, monitoring. For some host Member States, the activities of national staff in the context of the joint operation are not covered by the FRO's mandate and thus should not fall under the monitoring of the FRMs.<sup>505</sup>

Some clarification was brought by the 2023 SOP for FRMs (Frontex's internal document) (see 4.1.9.1). Although the scope of monitoring related to FRMs' actions is limited to the Agency's operational activities, 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 not to evaluate Member States' authorities per se, but, rather, to evaluate the situation in operational areas and in Member States insofar as it may have an impact on Frontex's activities.

The analysis also focused on the observance of fundamental rights in Frontex's operations to support Hungary (on border management), Lithuania, Greece and for the operation in the Central Mediterranean. It also explored Frontex's cooperation with third countries (see results in Annex 5), highlighting the main fundamental rights considerations. According to several stakeholders, these operations might present high risks to fundamental rights.<sup>506</sup> The Agency (based on FRO recommendations) adopted some mitigating measures to ensure that violations of fundamental rights do not occur in the context of its support to Member States and that there is no risk of Frontex's staff and/or assets being involved, even indirectly, in violations. Although the personnel of the

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<sup>501</sup> Article 7 EBCG Regulation.

<sup>502</sup> Article 4 Schengen Borders Code.

<sup>503</sup> Interviews with the Fundamental Rights Office (1/5).

<sup>504</sup> Article 110(3) of the EBCG Regulation: '[...] Fundamental rights monitors shall have access to all areas in which the operational activity of the Agency takes place and to all its documents relevant for the implementation of that activity'.

<sup>505</sup> Interviews with the Fundamental Rights Office (1/5).

<sup>506</sup> Interviews with civil society organisations/non-members of the CF (2/4), civil society organisations/members of the CF (3/5), an international organisation/member of the CF (1/3), and the Fundamental Rights Office (2/5).

Agency has not been found in violation of fundamental rights,<sup>507</sup> there are concerns about the possible indirect involvement of the Agency through inaction, by failing to suspend or terminate an operation in line with its obligations<sup>508</sup> (see Annex 5).

Nevertheless, a question remains on the extent to which the Agency makes full use of its current toolbox to ensure compliance with fundamental rights, including adopting the decision referred to in Article 46 of the EBCG Regulation. The latter was triggered in only one case to date: Frontex's support to border management in Hungary, despite fundamental rights concerns being raised by stakeholders for other operations (see Annex 5).

#### 4.1.10 Use of human and financial resources by Frontex<sup>509</sup>

This section considers the allocation and use of Frontex's human and financial resources, looking specifically at the budgetary and financial management process from one year to the next. It also considers the implementation process of the Agency's activities defined for a given year, and whether the resources allocated were adequate to the target activities.

The EBCG Regulation broadened the role of Frontex, setting a growth trajectory for Frontex staff and budget since 2019, with budget more than doubling and staff almost tripling between 2019 and 2022, and continuing through the 2021-2027 Multiannual Financial Framework (MFF). Such steady growth is expected to translate into effective and efficient implementation of the Regulation. Achieving such rapid growth can pose challenges to the organisation. However (see Annex A7.1).

Table 12. Summary of key findings on Frontex's use of human and financial resources

### Summary of key findings

#### Key provisions of the EBCG Regulation

Article 10 lists the tasks that the Agency shall perform. Annex I establishes the recruitment of Standing Corps Category 1, in compliance with Article 54 of the Regulation.

#### Key findings

- Both the planned and actual **allocation of human resources** is broadly in line with the tasks assigned by the EBCG Regulation. Apart from the large increase in the number of Standing Corps Category 1 recruits, the distribution of staff between activities and divisions has not changed substantially since the Regulation was introduced.
- Both the planned and actual **allocation of financial resources** reflect the implementation of the EBCG Regulation. In 2020, the recruitment and training of the Standing Corps attracted a larger share of funding. Since 2021, operations and technical equipment have accounted for a larger share of the budget.
- The allocation of resources to **fundamental rights activities** increased following the introduction of the EBCG Regulation, but the amounts committed in the



<sup>507</sup> FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'; 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 (FRALO WG).

<sup>508</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), and the Fundamental Rights Office (2/5).

<sup>509</sup> This section responds to evaluation questions 7, 20, 21, 22.

budgets have not kept pace. This is due to delays in the recruitment of FRMs, which were resolved in 2022.

- Since 2021, staff and funds have been more highly concentrated on achieving **strategic objectives** related to operational activities, rather than on **horizontal objectives**, for example, internal management or cooperation.
- The **efficiency of the development of human resources pools and TEPs** has varied considerably over time. Although it is not yet possible to derive a general trend, the efficiency of developing human resources and technical equipment seems to have been generally higher in 2021 and 2022 than in 2020.
- The **availability and utilisation rates of human resources pools and TEPs** have come progressively closer to the targets agreed at the beginning of each year. The allocation of human and financial resources available to Frontex has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation.
- Frontex has faced a significant challenge in efficiently implementing its increasing financial resources, but it has largely been able to adapt its budgetary management to the new mandate and the expected operational results.
- The principle of annuality poses a challenge for Frontex, particularly when acquiring complex equipment, such as vessels.
- A significant challenge is the lack of clarity in the acquisition strategy and logistics concept for equipment, due to a combination of insufficient and poorly defined acquisition needs and lack of operational experience among procurement staff.
- External factors (such as the COVID-19 pandemic and Russia’s invasion of Ukraine) have added complexity to an already challenging growth process.

Typology/sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges
Implementation		The EBCG Regulation mandates the development of the Standing Corps and TEPs, necessitating a reorganisation of the Agency's structure and activities. These implementation factors have shaped the allocation of resources, particularly financial resources
External factors		External crises, in particular the COVID-19 pandemic, led to delays in recruitment and reallocation of funding

#### 4.1.10.1 Allocation of resources

**The EBCG Regulation has significantly increased Frontex's resources**, with its budget more than doubling and staff almost tripling between 2019 and 2022. This trend is set to continue, as the EU contributions will steadily increase under the 2021-2027 MFF. Frontex, in turn, is expected to meet the increasing budgetary targets each year and to translate these resources into effective and efficient implementation of the Regulation. Figure 5 shows the magnitude of this increase.

Figure 5. EU contribution to Frontex (2016-2027)



Source: ICF, based EU budget data from MFF 2014-2020 and MFF 2021-27.

**The allocation of human and financial resources in Frontex's strategic planning has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation** (notably, Article 10). The adoption of the EBCG Regulation led to a significant increase in human resources dedicated to operational response, including the Standing Corps. However, excluding the recruitment of the Category 1 Standing Corps, non-deployable resources for operations remained relatively unchanged. In line with the Regulation, the staff allocated to ETIAS and FRO grew in relative terms. Similar conclusions apply to the relative distribution of financial commitments to the Agency's operational expenditure. Funding prioritised recruitment and training of the Standing Corps in 2020 but shifted towards operations and technical equipment from 2021 onwards. There does not appear to be a significant difference between planned and actual allocation of human and financial resources.

The EBCG Regulation increased resources for **fundamental rights activities**, but budget commitments lagged behind due to recruitment delays. However, this issue was resolved in 2022.

**Frontex has effectively allocated its human and financial resources, aligned with its strategic and horizontal objectives** and the implementation requirements of the EBCG Regulation. Since 2021, staff have shifted towards strategic objectives related to operational activities rather than horizontal objectives such as internal management and cooperation. The Standing Corps development drove financial resources allocation in 2020, while resource planning from 2021 onwards has been stable, prioritising operational support, returns, and horizontal management. **Resource allocation seems to have been somewhat adequate for developing and managing human resources and TEPs.** However, the analysis of the Agency's planned resource allocation and key performance indicators (KPIs) indicate that the efficiency of financial resources has varied considerably over the years and understaffing might have been an issue for the development of the Standing Corps.

#### 4.1.10.2 Budgetary and financial management implications

Frontex faces a **significant challenge in efficiently implementing its increasing financial resources**, but it has largely been able to adapt its budgetary management to the new mandate and expected operational results. Some areas of expenditure, generally related to the implementation of the EBCG Regulation, have proved particularly problematic from a budgetary and financial management perspective. Frontex's ability to

spend its voted budget within the year was lower in 2020 and 2021 than in 2019, but only for 'infrastructure and operating expenditure' and for 'operational expenditure', while 'staff expenditure' remained within targets. Nevertheless, **Frontex has generally been able to spend the amounts carried over from the previous year**, with no significant difference between the three years considered. The implementation analysis of these appropriations indicates that the great majority (about 90%) of the amounts carried forward under 'Infrastructure and operating expenditure' and 'operational expenditure' are paid within the year following the initial commitment, while a greater proportion (50%) of those recorded under 'Staff expenditure' is returned each year, although this is small in absolute terms.

A more in-depth analysis of budget implementation of 'operational expenditure' reveals that 'Agency equipment' and 'strengthening capacities', which includes training and research and innovation, are particularly problematic budget items, due to relatively low payments and relatively high carry-over cancellations (for instance, 22% of funds under 'Agency equipment' were returned in the years considered, corresponding to EUR 5.9 million). On the other hand, expenditure related to the Standing Corps displays low percentages of returned appropriations. The main findings for these budget items relate in one way or another to capacity-building (see section 4.1.7):

- **The principle of annuality poses a challenge for Frontex when acquiring complex equipment** that takes months or years to build, test and deliver, such as aircraft or maritime vessels. In these cases, the procurement process often cannot be completed within a single financial year. To overcome this, Frontex has to use multiple contracts, or commission and decommission funds, which leads to inefficiencies.
- **A significant challenge is the lack of clarity in the acquisition strategy and logistics concept for equipment.** Insufficient and poorly defined acquisition needs meant that Frontex has faced delays in acquiring various items, resorting to inefficient options like renting vehicles instead of investing in its own fleet, with rental conditions not necessarily appropriate for the use of the vehicles, resulting in complex procedures and high maintenance costs. The strategic and operational planning process has not adequately addressed equipment needs in terms of types, quantities, and acquisition plans for different types of borders (maritime, air, and land) in the short, medium, and long term. This was largely the result of delays in the preparation and adoption of the Agency's multiannual strategy for the acquisition of equipment (see section 4.1.7.3).
- **Challenges related to training activities** during 2020-2022 included limited availability of trainers and locations, COVID-19 restrictions, low administrative support, and delays in planning and capability development. Financial data showed fluctuating funding and a large volume of activities that may not have been fully implemented.

#### 4.1.11 Costs and benefits generated by the EBCG Regulation<sup>510</sup>

This section considers the monetary, operational, and wider costs and benefits generated by the EBCG Regulation in each Member State, 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.

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<sup>510</sup> This section responds to evaluation questions 17, 19.

Most of the costs associated with the EBCG Regulation have been borne by Frontex. Nevertheless, Member States have also incurred costs in fulfilling the obligations and activities outlined by the Regulation (see Annex A7.2).

Table 13. Summary of key findings on costs and benefits generated by the EBCG Regulation

Summary of key findings		
Key findings		
<ul style="list-style-type: none"> <li>• While the Regulation is largely implemented via the budget allocated to Frontex, there are also substantial additional investments via ISF/BMVI co-financed by EU and Member States, as well national funds for IT-related activities and EUROSUR upgrades.</li> <li>• The strategic and operational planning process imposed on Member States by the EBCG Regulation has proved burdensome and somewhat inefficient. Operational and contingency plans have posed challenges due to overlaps with situational awareness, and the development of the capability roadmap by Frontex was impacted by delays in the finalisation of national capability plans, causing further delays at both EU and national level.</li> <li>• The availability of technical equipment (TE) provided by Frontex to Member States has increased, particularly in light and portable TE. Challenges remain in terms of availability and deployment speed.</li> <li>• Frontex activities in the area of returns are recognised by Member States as providing benefits in time and administrative burden savings, financial savings, and the availability of additional resources. The FAR system was praised for its ease of use and cost reduction.</li> <li>• Reimbursement of Category 2 and Category 3 SCOs is burdensome for Member States, and often does not cover the full costs. It may also be insufficient to motivate experienced officers to be deployed.</li> <li>• Financial support under Article 61 to compensate Member States is assessed as cumbersome and inadequate by Member States, making it challenging for them to maintain staffing levels and meet national needs.</li> </ul>		
Typology/sources of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges
Operational/implementation		The EBCG Regulation mandates strategic and operational planning at European and national level in order to improve the availability of resources based on Agency's and Member States' needs. The planning process has proved somewhat complex and burdensome, with delays at EU and national level, and overlaps with other activities such as situational awareness. These challenges are expected to decrease in the future
Operational /implementation		Challenges remain in terms of availability and deployment speed of pooled TE. Issues with equipment availability and maintenance procedures have been reported
Operational /implementation		Burdensome administrative procedures and inadequate levels of reimbursement for officers (Category 2, Category 3) under Article 61 officers) make it difficult for

Member States to maintain staffing levels  
and meet national needs

#### 4.1.11.1 Costs and benefits for Member States

Along with Frontex, Member States have incurred costs in fulfilling the obligations and activities outlined by the EBCG Regulation. Apart from financial transfers from Frontex and resource pooling (which aims to achieve economies of scale and scope), the identified benefits are primarily non-monetary. They include harmonising procedures among Member States and sharing best practices (see Annex 7).

Main findings on the financial and non-financial costs borne by Member States :

- **A significant proportion of resources from national budgets is allocated to IT-related activities, particularly for 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, and these activities are expected to increase in the coming years, based on the Frontex Information Management Framework. While Frontex handles a considerable portion of IT investments, Member States are responsible for developing national modules to connect with EU systems and facilitate information exchange.
- **Member States have used EU funds<sup>511</sup>** to implement the EBCG Regulation and manage borders and migration. That use was substantial between 2020 and 2022, while the amounts committed for 2022 have yet to be spent. These funds benefit Member States and Frontex by supporting border management and asset acquisition. However, co-financing adds to the national budget costs for the Member States. The total EU funding awarded for this purpose amounts to EUR 335.8 million<sup>512</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-Borders and Visa (2014-2020), which amounted to EUR 1.55 billion, while in the BMVI 2021-2027 the amount foreseen is EUR 3.66 billion – both funds supported to a significant extent also the EBCG Regulation at Member State level.

Co-financing by MS ranged between 10% and 25%<sup>513</sup>. The information received via the MS survey was only a fraction what most likely was co-financed.<sup>514</sup> In 2018-2020 period EU funded via Specific Actions acquisition of equipment for common pool, for a total of EUR 335.8 million<sup>515</sup>, co-financed by (at least) 10% by Member States. An ongoing Specific Action call is awarding more funds for equipment.

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<sup>511</sup> Internal Security Fund (ISF) – Borders and visa (2014-2020); Integrated Border Management Fund (Border Management and Visa Instrument (BMVI) 2021-2027); Asylum, Migration and Integration fund (AMIF) (2014-2020); Asylum, Migration and Integration fund (AMIF) (2014-2020).

<sup>512</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)

<sup>513</sup> Estimates for 2021 - Based on the partial information available from Member States (on funds received and national co-financing rate), national expenditure is estimated between EUR 11.1- 27.8 million for 2020, EUR 14.4-36.1 million for 2021 and EUR 10.9-27.2 million for 2022. The overall co-financing for, was over EUR 150 million for ISF-BV (exact amount is difficult as co-financing varied), and EUR 1.22 billion for BMVI, which has higher 25% co-financing rate.

<sup>514</sup> Survey of MS/SAC authorities, Question 1.13, 16/27 MS/SAC (see section A.7.2.1).

<sup>515</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)



- **The strategic and operational planning process imposed by the EBCG Regulation on Member States has proved burdensome and somewhat inefficient.** Operational, capability and contingency plans have posed challenges due to overlaps with situational awareness tools (vulnerability assessment) and other mechanisms, burdening smaller Member States with limited resources. The development of capability plans was delayed, causing further delays at both EU and national level. The requirement for advance planning of TE deployment has been problematic for Member States, exacerbated by limited guidance and the novelty of the process. However, these challenges are expected to decrease in the future.

The study also identified the main benefits of the EBCG Regulation for Member States:

- **The majority believe that the objectives of the Regulation could not have been adequately achieved by Member States alone,** except for measures within the Schengen area where views are more neutral. Smaller countries and those with borders facing migration routes expressed greater satisfaction with the support received from Frontex, particularly in terms of risk analysis, returns, and deployment of resources. Differences in perceived benefits can be attributed to variations in operational needs and levels of support received. Issues such as resource availability, deployment speed, reimbursement values, and filling quotas for secondments and deployments may impact the overall perception of Frontex's support.
- **The availability of TE** provided by Frontex to Member States has increased, particularly in light and portable TE (total increase in TE from 2019 and 2020 was of 51% for the TE available and of 61% for the asset-days), while major TE such as vessels and aircraft have seen a shift towards the Central/Western Mediterranean, Eastern Mediterranean, Eastern Borders, and Western Balkans migratory routes. The deployment of TE aligns with migratory pressures and the type of border to be surveyed. While stakeholders supported the concept of a TEP to reduce costs for Member States, availability and deployment challenges remain. Some Member States faced obstacles in obtaining TE, mostly due to reported trade-offs between emerging national priorities and the need to contribute to the common pools. Issues with equipment availability and maintenance procedures were also reported (see section 4.1.7).
- **The Standing Corps is perceived positively by Member States for its contribution to border management activities.** The number of officers and deployments has increased, particularly for Member States facing Central/Western Mediterranean, and Eastern Borders and Western Balkans migratory routes. However, there are challenges with the adequacy of individual Member States' contributions and the reimbursement of costs, which has led to additional expenses for some countries. Budgetary restrictions, recruitment difficulties, and administrative workload were also identified as issues.
- **Member States greatly value the support provided by Frontex on returns,** recognising advantages such as time and administrative burden savings, financial savings, and the availability of additional resources. Estimated (self-reported) savings from four Member States for 2022 range from EUR 190,000 (in the case of Estonia) to EUR 34.3 million (in the case of Malta)<sup>516</sup>. The FAR system was praised for its ease of use and cost reduction. Frontex's adaptability during the COVID-19 pandemic and the freeing-up of national staff through the deployment of Frontex

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<sup>516</sup> Figures to be taken cautiously: since self-reported, their comparability is unclear. Furthermore, it is unclear to what extent these are net financial benefits or simply transfers of costs from Member States to Frontex

officers was also acknowledged. Indirect benefits include the reduction of secondary movements and networking opportunities.

#### 4.1.11.2 Procurement issues and impacts on the private sector

**The implementation of Frontex activities faced challenges in the procurement of TE,** exacerbated by the disruptions caused by the COVID-19 pandemic. These challenges include gaps in the current hiring matrix, which does not include highly specialised operational staff to assess technical specifications; adapting TE to different terrains, and navigating varying standards across Member States (see section 4.1.7). Inefficient procurement choices (including leasing of cars instead of purchase) can result in **financial costs (higher insurance and maintenance expenses) and non-financial costs (delays, duplication of costs, damage to Frontex's image)**. While centralised procurement procedures and harmonisation of standards could benefit relevant businesses, the indirect effects on citizens are difficult to assess. Anecdotal evidence suggests that Frontex's return activities and JROs have led to increased use of charter flights, benefiting both Member States and citizens by reducing commercial flight occupancy.

#### 4.1.11.3 Inefficiencies in the implementation of the EBCG Regulation

This report has discussed various inefficiencies arising either from the regulation itself, from its implementation, or a combination of both. The quantification of such inefficiencies is difficult, and Frontex itself has not carried out detailed estimates. The most substantial issues identified were linked to:

- **Structure and deployment of the Standing Corps:** the present deployment mode of SCOs is based on individual deployments. While such flexibility is well founded in some instances (e.g. ALDO experts at BCPs), in others (e.g. large groups of BGOs) it is inefficient. Frontex is considering within its new structure approaches to setup SC organisational units. Eliminating individual officers having to arrange logistics for accommodation, transportation, transfer of personnel equipment (firearms), etc, will help raise efficiencies of scale. These issues are discussed in more detail in section 3.1.2.
- **Lack of clearly developed logistics concept, absence of antenna offices:** As some of the case studies showed, lack of local arrangements forced SCOs to drive excessive distances to fuel service vehicles<sup>517</sup>, or to find accommodation<sup>518</sup>.
- **The lack of acquisition strategy** and delays in developing a clear vision for the deployment of the SC, resulting in reliance on rented or short-term leased vehicles. Such solutions are often not feasible for border guard needs (e.g. need to have vehicles of certain colour, or to install various equipment – communication, special lights, etc). The high costs born by Frontex for rentals in 2023<sup>519</sup>, could also be sufficient to purchase number of vehicles for Frontex needs. No analyses has been done by Frontex on buy vs. lease vs. rent.
- **The decision to use Member State training centres instead of developing Frontex own training facility.** The current reliance on Member State training centres leads to high costs. No analysis has been done so far by Frontex to assess

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<sup>517</sup> Case Study Romania.

<sup>518</sup> Case Study Bulgaria.

<sup>519</sup> See: Frontex rental requirements, <https://frontex.europa.eu/innovation/announcements/invitation-to-frontex-online-vehicle-rental-industry-day-6-july-2022-hIMZZy>, and tender: <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=13380>

if in the mid to long run, the current grants-based approach is more efficient than the development of the Agency's own training facility. (More on this issue is provided in section 3.1.4).

- **Decision to split the entry of incident information between JORA and EUROSUR.** NCCs reported that presently, they need to re-enter manually JORA incident data into EUROSUR (as well as their national systems), indicating in some instances triple entry of identical information.<sup>520</sup> Previously such information was simultaneously entered into both systems.

Several other inefficiencies linked to administrative burden resulting from the implementation of the EBCG Regulation were identified:

- **Member States face additional costs and administrative burdens related to the reimbursement of Category 2 and Category 3 officers,** including travel costs and other expenses, which are often insufficient to cover the full costs or to motivate experienced officers to be deployed. Recent changes in reimbursement reporting requirements for Member State staff have reportedly increased the administrative burden on Member States.<sup>521</sup>
- Similar issues arise with the **financial support under Article 61 for officers,** with a cumbersome administrative system and inadequate reimbursement levels making it challenging for Member States to maintain staffing levels and meet national needs. The administrative workload leads to a mobilisation of resources that could be used more effectively by Member States. Moreover, the correction coefficient for reimbursement under Article 61 does not adequately account for changes in the costs of living, but is not related to the implementation of the Regulation per se.<sup>522</sup>
- The EBCG Regulation imposes a number of **obligations on Member States relating to the multiannual strategic planning process** of Frontex, which open the door to potential duplication of efforts and thus present a potential for simplification. Member States highlighted that the operational plans (Article 9) overlap with the situational awareness tools to some extent, as well as with other mechanisms (e.g. SCHE-VAL<sup>523</sup>). While the situational awareness tools can help Member States with the operational planning, it can overburden resources. The EBCG Regulation's requirements may need further analysis in view of streamlining the processes and exploiting synergies with national strategies required by national legislation, and Schengen strategies.

### **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 regulation.

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<sup>520</sup> Interviews in Case Studies in BG, EL.

<sup>521</sup> Interviews in BG Case Study. Reportedly SCOs internally deployed from one border to a JO, also created significant additional workload – instead of bulk reporting of costs, individual receipts and reporting from each officer was introduced by Frontex. As personnel has a frequent rotation schedule (e.g. bi-weekly), this forces Member States to continuously report on costs and provide resubmission request.

<sup>522</sup> Article 61(2) EBCG Regulation states that the method of calculation of the reference amount for financial support under Article 61 takes into account the correction coefficient applicable to the Member States concerned, but does not define any target or threshold in terms of level of financial support or share of costs to be covered via this mechanism. c

<sup>523</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)

An item for possible simplification is that of financial support and reimbursement schemes for the **preparation/deployment of Category 2 and Category 3 officers**<sup>524</sup> as well as **for the financial support linked to Article 61 (Category 2 officers seconded to Standing Corps)**. Simplification of those systems could allow Member States to free resources currently used to support this administrative process for other tasks instead. In addition, both financial supports systems often are deemed insufficient. As a result, 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>525</sup>) and living costs between the countries of origin and of destination<sup>526</sup>.

## 4.2 How did the EU intervention make a difference and to whom?

This section answers questions under the evaluation criterion of EU Added Value. It analyses the extent to which the new mandate of Frontex introduced by the 2019 EBCG Regulation contributed to achieving the objectives of the EBCG as a whole and the extent to which it has supported Member States in implementing effective border management. This section also evaluates whether the objectives of the EBCG could have been achieved sufficiently by Member States acting alone.

Table 14. Summary of key findings on the added value of Frontex to Member States

Summary of key findings
<b>Key findings</b> <ul style="list-style-type: none"><li>• Frontex's new mandate contributed to achieving the objectives of the EBCG as a whole.</li><li>• The objectives of the EBCG could not have been achieved sufficiently by Member States acting alone.</li></ul>

### 4.2.1 Frontex mandate contribution to supporting Member States<sup>527</sup>

**Frontex's new mandate, as introduced by the EBCG Regulation, contributes to achieving the objectives of the EBCG as a whole, as it supports Member States to implement effective border management.** As stated in the first recital of the EBCG Regulation, the 'objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union'.<sup>528</sup> Article 77(2)(d) of the TFEU defines the Union's goal for 'the gradual establishment of an integrated management system for external borders.' Indeed, the concept of EIBM developed gradually and only became legally binding with the adoption of Regulation (EU) 2016/1624.

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<sup>524</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>525</sup> MS/SAC Survey: responses to Q 10.3, 3/27 MS/SAC (MT, FI, SK)

<sup>526</sup> Interviews with MS/SAC national authorities (5 out of 27) (SK, MT, SI, FI, IS)

<sup>527</sup> This section responds to the evaluation questions 29, 30.

<sup>528</sup> Recital 1 of EBCG Regulation.

As outlined across this report, Frontex's mandate has been designed in the framework of shared responsibility, with Frontex's tasks designed to ensure support to Member States in the effective management of external borders. To date, the key areas of support from Frontex to Member States have been deployment of the Standing Corps, operational support, situational awareness, return, capacity-building, deployment of technical equipment, and international cooperation.

For a great majority of Member States, the areas of Frontex's mandate considered most conducive to addressing the specific needs and challenges at external borders include: 1) **situational awareness** (especially monitoring migratory flows and carrying out risk analysis,<sup>529</sup> as well as supporting the development and operation of EUROSUR<sup>530</sup>); 2) **return**,<sup>531</sup> and 3) **joint operations**.<sup>532</sup> A majority of Member States also highlighted: 4) **international cooperation (with third countries)**;<sup>533</sup> **capacity-building** (training<sup>534</sup> and technical assistance),<sup>535</sup> as well as the management of the False and Authentic Documents Online (**FADO**) system.<sup>536</sup>

The implementation of **EIBM**, which aims to reinforce the protection of the EU's external borders, requires collective actions by both competent national authorities and the EU. The concept itself underlines that EIBM should be developed at EU *and* national level, in the context of shared responsibility between Frontex and Member States' national authorities.<sup>537</sup>

The ability of the Agency to provide **situational awareness** products, including via an enhanced EUROSUR mandate, is viewed positively by the Member States and perceived to provide added value. **EUROSUR situational awareness products**, which serve a number of stakeholders (including the European Commission), as well as EUROSUR Fusion Services products (including maritime and aerial surveillance), add significant operational value to Member States lacking such capabilities, as well as Member States requiring additional capacity for these analyses. **Risk analysis products** provide wide coverage across thematic and geographical areas and provide Member States with a comprehensive view of risks at all EU borders.

Frontex's enhanced mandate in **return** has been positively received and the Agency has become an essential actor in the common EU system for returns, taking on new responsibilities in relation to the return of people who have exhausted all legal avenues to legitimise their stay within the EU (see section 4.1.5). Frontex provides an extensive 'catalogue of services' supporting Member States in all areas of return. Member States

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<sup>529</sup> Survey of MS/SAC authorities: Q1.7: 23/27 agreed or strongly agreed (AT, BE, BG, CZ, DE, DK, EE, EL, FR, HU, IE, LT, LU, LV, MT, PT, RO, SE, SI, SK and CH, IS, NO).

<sup>530</sup> Survey of MS/SAC authorities: Q1.7: 23/27 agreed or strongly agreed (AT, BE, BG, CZ, DE, DK, EE, EL, FR, HU, LT, LV, MT, PT, RO, SE, SI, SK and CH, IS, NO).

<sup>531</sup> Survey of MS/SAC authorities: Q1.7: 23/27 agreed or strongly agreed (AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, IE, IT, LT, LV, MT, PL, PT, RO, SE, SI, SK and IS, NO).

<sup>532</sup> Survey of MS/SAC authorities: Q1.7: 22/27 agreed or strongly agreed (AT, BE, BG, CZ, DE, EE, EL, FR, IE, LT, LU, LV, MT, PT, RO, SE, SI, SK and IS, NO).

<sup>533</sup> Survey of MS/SAC authorities: Q1.7: 21/27 agreed or strongly agreed (AT, BG, CZ, DE, DK, EE, EL, FR, HU, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK and IS, NO).

<sup>534</sup> Survey of MS/SAC authorities: Q1.7: 20/27 agreed or strongly agreed (AT, BG, CZ, DE, DK, EE, EL, HU, IE, LT, LU, LV, MT, PT, RO, SI and IS).

<sup>535</sup> Survey of MS/SAC authorities: Q1.7: 20/27 agreed or strongly agreed (AT, BE, BG, CZ, DE, DK, EE, FR, IE, LT, LU, LV, MT, RO, SE, SI, SK and IS, NO).

<sup>536</sup> Survey of MS/SAC authorities: Q1.7: 18/27 agreed or strongly agreed (AT, BG, DE, EE, EL, FI, HU, LT, LU, LV, MT, PL, RO, SI).

<sup>537</sup> European Commission (2018). 'Progress Report on the implementation of the European Agenda on Migration. Annex 6: The main elements for developing the European Integrated Border Management Strategy. Available here: [http://www.cdep.ro/afaceri\\_europene/CE/2018/COM\\_2018\\_250\\_EN\\_ACTE7\\_f.pdf](http://www.cdep.ro/afaceri_europene/CE/2018/COM_2018_250_EN_ACTE7_f.pdf)

with smaller caseloads were particularly positive about the high added value of Frontex's JROs via charter flights, which provided an opportunity to return the most difficult cases in a more controlled environment. In addition to assisting with returns, including voluntary returns, the Agency also contributed to harmonisation and capacity-building of national return case management systems and their digitalisation and modernisation through the RECAMAS framework. Post-return reintegration activities also provide significant EU added value, especially as some Member States may lack diplomatic or development presence to support reintegration in countries of return.

As a result of the ongoing establishment of the Standing Corps, the Agency is able to deploy staff and equipment in response to needs identified by Member States through **joint operations**. Frontex brings EU added value to the Member States by providing additional human resources and equipment, as well as coordinating joint operations and other operational activities. At an EU strategic level, the EBCG Regulation provides for a mechanism to allocate or relocate resources (assets or personnel) to the sections where irregular migration flows are of greatest concern. Even though this process is not yet running smoothly (see section 4.1.4) and the scale of support will continue to grow, past and ongoing joint operations or RBIs have supported Member States effectively.

In theory, the national capability development plans, Agency capability development plan, and capability roadmap will lead to more effective development of capabilities across Member States. As these processes are being developed and not all elements are finalised, no definite conclusion can be drawn on the added value.

Member States believe that the education and training of the European border and coast guards, in particular the common training standards provided by Frontex, have contributed to improving the training of national border guards,<sup>538</sup> developing and strengthening border management capabilities in their Member State,<sup>539</sup> facilitating cooperation among Member States' border and coast guards' training institutions,<sup>540</sup> mainstreaming fundamental rights in national training programmes,<sup>541</sup> and ensuring a harmonised and common approach to EU border and coast guard training in the Member States.

#### 4.2.2 Achievement of EBCG Regulation objectives by Member States alone<sup>542</sup>

**The objectives of the EBCG Regulation could not have been achieved sufficiently by Member States acting alone.**

The EBCG is composed of both the national authorities responsible for border management including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for return and Frontex. The EBCG Regulation provides for the implementation of EIBM as the **shared** responsibility of national authorities and Frontex,<sup>543</sup> and the objectives and implementation of the EBCG Regulation as jointly shared by Member States and the Agency.

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<sup>538</sup> Survey of MS/SAC authorities: Q3.1: 18/27 agreed (AT, BG, DK, EE, EL, ES, FI, FR, IT, LT, LU, LV, MT, NO, PL, SE, SI, SK), 4/27 strongly agreed (BE, HU, PT, RO).

<sup>539</sup> Survey of MS/SAC authorities: Q3.1: 16/27 agreed (AT, BE, BG, DK, EE, EL, HU, IT, LT, LU, LV, NO, PT, RO, SE, SK).

<sup>540</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, NO, PT).

<sup>541</sup> Survey of MS/SAC authorities: Q3.1: 16/27 agreed (AT, BG, CZ, EL, FI, IT, MT, NO, LT, LU, LV, PL, PT, RO, SI, SK), 2/27 strongly agreed (BE, HU).

<sup>542</sup> This section responds to evaluation question 31.

<sup>543</sup> Article 1 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.

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 Member State respondents felt that this was particularly true in the areas of: 1) returns,<sup>544</sup> 2) risk analysis contributing to a comprehensive situational awareness,<sup>545</sup> and 3) border control measures at the external borders<sup>546</sup>. Some Member States highlighted that measures within the Schengen area remain primarily the competence of Member States rather than Frontex.<sup>547</sup> The activities of the Agency should always complement the efforts of Member States.<sup>548</sup>

### 4.3 Is the intervention still relevant?

The relevance of the EBCG Regulation is evaluated in the context of current and emerging needs and challenges at EU external borders. This section looks at the relevance of the EBCG Regulation in terms of its overall scope and objectives, as well as the relevance of Frontex activities prescribed in the EBCG Regulation.

Table 15. Summary of key findings in relation to relevance

Summary of key findings
<p><b>Key findings</b></p> <ul style="list-style-type: none"><li>• The EBCG Regulation remains relevant to addressing the current needs and challenges at external borders, although a minority of Member States believe that certain aspects could be better addressed in the Regulation (such as hybrid threats, secondary movements, returns from third countries to other third countries).</li><li>• The EBCG Regulation lacks clear objectives. In terms of scope, its provisions largely cover the activities of Frontex rather than the whole EBCG (which includes national authorities). This somewhat limits the scope of the governance and fundamental rights mechanisms introduced.</li><li>• The scope of responsibility of the Agency in respect of cross-border crime is currently limited but also leaves room for interpretation of what the limits of Frontex's supporting role are.</li><li>• Overall, Frontex activities remain relevant to support Member States, including via joint operations, return, situational awareness, capacity-building, and cooperation with third countries.</li></ul>

#### 4.3.1 Scope and objectives<sup>549</sup>

**The EBCG Regulation remains largely relevant to respond to the current and emerging needs and challenges in external border management.** The continuing migration pressures and outlook for the next decade indicate that the Regulation will remain relevant.<sup>550</sup> Some stakeholders pointed to a lack of clearly defined objectives within the EBCG Regulation itself.<sup>551</sup> Meanwhile the scope should be understood to

<sup>544</sup> Survey of MS/SAC authorities: Q1.5: 2/27 strongly disagreed; 20/27 disagreed.

<sup>545</sup> Survey of MS/SAC authorities: Q1.5: 4/27 strongly disagreed; 16/27 disagreed.

<sup>546</sup> Survey of MS/SAC authorities: Q1.5: 17/27 disagreed.

<sup>547</sup> Survey of MS/SAC authorities: Q1.5: 10/27 neither agreed nor disagreed; 6/27 agreed. 1/27 strongly agreed.

<sup>548</sup> Recital 12 of the preamble, Regulation (EU) 2019/1896. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896>

<sup>549</sup> This section responds to evaluation question 1.

<sup>550</sup> Frontex (2022). 'Strategic Risk Analysis', p.38.

<sup>551</sup> Interviews with MB (1) and Frontex (1).

largely regulate the activities of Frontex itself, rather than the whole EBCG (which includes national authorities).

### **Scope and objectives**

Some national and Frontex interviewees noted that the **objectives of the EBCG Regulation** are not clearly stated. This was seen as a weakness in relation to the achievement of the Regulation's objectives since 2019.<sup>552</sup> The main underlying objective of the Regulation can be interpreted as the implementation of EIBM at national and Union level (as stated in its Preamble). By outlining the key components of EIBM, the EBCG Regulation sets the scope for the Agency's activities (and thus helps to set objectives) in supporting the implementation of EIBM as a whole. However, this does not provide a clear set of strategic objectives to guide the implementation of the EBCG Regulation.

As outlined in the EBCG Regulation, the strategic guidance for the EBCG should come from the EIBM Multiannual Strategic Policy Cycle. However, this policy document was finalised in March 2023,<sup>553</sup> and as such has not yet been translated into new TO-EIBM by Frontex and Member States. As such, it remains to be seen to which extent this policy document will provide a clearer set of objectives for the EBCG as a whole, as it falls outside the timeframe of this study.

The **scope of the EBCG Regulation** is intended to encompass the EBCG, comprising Frontex and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, and the national authorities responsible for return activities. However, the Regulation largely outlines the activities and governance of Frontex<sup>554</sup> because Member States retain primary responsibility for the management of their external borders. Consequently, there is no overarching governance structure, somewhat limiting the scope of the EBCG Regulation and its relevance to the whole of the EBCG. This also creates legal ambiguity and can impact the overall efficiency of the Regulation's implementation (see section 4.1.1). The 15 components of EIBM aim to mitigate this by setting out overarching principles and guidelines to inform implementation by both Frontex and Member States.

**The scope of responsibility of the Agency in respect of cross-border crime is currently limited but also leaves room for interpretation of what the limits of Frontex's supporting role are.**

The EBCG Regulation's legal basis (Articles 77 (2) b, and d and Article 79 (2) c TFEU) pertains to the TFEU Chapter regulating policies on border checks, asylum, and migration. Building on the TFEU Article 77.2.d (*any measure for the establishment of integrated border management - IBM*), the EBCG Regulation (Article 3.1.a) includes as an IBM component – *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*.

Article 10(q) of the EBCG Regulation states that the Agency should '*support Member States in circumstances requiring increased technical and operational assistance at the external borders in the fight against cross-border crime and terrorism*'. However, the terms "technical" and "operational assistance" are not defined. This leads to confusion, given

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<sup>552</sup> Interviews with MB (1) and Frontex (1).

<sup>553</sup> European Commission (2023). 'Communication establishing the multiannual strategic policy cycle for European integrated border management'. COM(2023) 146 final. Available at: [https://home-affairs.ec.europa.eu/system/files/2023-03/Communication\\_integrated%20border%20management.pdf](https://home-affairs.ec.europa.eu/system/files/2023-03/Communication_integrated%20border%20management.pdf)

<sup>554</sup> Interview with Frontex (1),



that in the national legal frameworks "operational assistance" usually includes a wide range of investigative and operational activities conducted by law enforcement authorities.

The Agency provides various types of support to Member States at border checks.<sup>555</sup> Interviewees were clear that the Agency's mandate does not include 'investigations' or 'support to investigations of crime', which clearly fall within the remit of Europol and Eurojust. However, the lack of a definition of the operational assistance activities linked to 'detection, prevention, and combating' cross-border crime leaves the exact interpretation to the Member States and to Frontex.

In practice, for over a decade, Frontex's Coast Guard and Law Enforcement Unit has supported Member States with prevention and detection in broader range of crimes, than the ones defined in IBM. Presently the Agency coordinates the work of over 60 cross-border crime Standing Corps officers working across Member States, conducting border checks as part of joint operations and carrying out support activities on document fraud, vehicle crime, investigation of irregular migration, human trafficking and terrorism via debriefing activities (which are not formally defined anywhere in this context and leave room for interpretation). These support activities, include primarily 'crime detection and prevention' at BCPs – stopping stolen vehicles, detecting irregular migrants, terrorists, or victims of trafficking.<sup>556</sup> At the same time, Frontex Standing Corps do not have access to key criminal intelligence or other databases, which are crucial to detecting various types of crimes at the borders. This limits their ability to conduct support activities in this area, especially Category 1 officers. In the meantime, many Category 2 or 3 officers will rely on remote access their own national Member State databases in their daily work to support Member States where they are deployed to.<sup>557</sup> This also leads to a different perceived added value of Category 1 versus Category 2 and 3 SCOs by Member States and third countries.

### **Relevance to current and future challenges**

Despite the apparent gaps in the scope and objectives of the EBCG Regulation, the wider relevance of the EBCG Regulation in responding to current and future challenges at the EU's external borders can be assessed. Trends in the threats and risks of irregular migration and cross-border criminal activities have remained high since 2019 and are likely to continue, ensuring ongoing relevance of the broad objectives of the EBCG Regulation to the current and emerging needs and challenges of external border management.

The Commission's Communication on establishing the multiannual strategic policy cycle for European integrated border management highlights that in recent years the EU has 'faced the new reality of instrumentalisation of migration for political purposes, a novel trend that challenges traditional approaches to the management of external borders and that risks posing further challenges in the future. Beyond deliberate instrumentalisation by state actors, the situation at the external sea and land borders is also characterised by the continued operation of well-organised criminal networks that have grown in their ability and sophistication, creating additional challenges for the effective management of external borders.'<sup>558</sup>

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<sup>555</sup> Interviews with BG, EL (site visits) and Frontex (1).

<sup>556</sup> Interviews with Frontex, Site visits to Lesovo / Chios.

<sup>557</sup> Interviews with Lesovo BCP (BG), Chios (EL) (site visits) and with ME.

<sup>558</sup> European Commission (2023). 'Communication establishing the multiannual strategic policy cycle for European integrated border management'. COM(2023) 146 final. Available at: [https://home-affairs.ec.europa.eu/system/files/2023-03/Communication\\_integrated%20border%20management.pdf](https://home-affairs.ec.europa.eu/system/files/2023-03/Communication_integrated%20border%20management.pdf)

Member State authorities largely agreed that the EBCG Regulation remains relevant to addressing current and emerging needs and challenges in relation to external border management, particularly the tasks that are seen as part of the core Frontex mandate, including external border management and return. 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.

#### 4.3.2 Relevance of the EBCG and Frontex activities<sup>559</sup>

**Frontex activities (as per Article 10 of the EBCG Regulation) remain relevant in addressing the needs and challenges present at EU external borders.**

Frontex provided extensive **operational** assistance to Member States through joint operations and RBIs, including technical and operational assistance to support SAR operations. With over 42,000 km of coastline, almost 9,000 km of land borders and around 300 international airports, Europe sees around 500 million border crossings a year. Through its maritime, land and air operations, Frontex assists with the management of EU's external borders, including border surveillance and border management.

With high levels of irregular migration and persistent threat of trafficking in human beings into the EU, operations have been highly relevant to needs, enabling Member States overwhelmed by migratory flows to draw on additional human resources and technical equipment, and facilitating the standardisation of procedures and harmonisation of operational implementation of good practices at EU level.

**Deployment of SCOs** has corresponded to irregular migration pressures on migratory routes. Member States on the Central/Western Mediterranean and Eastern Borders and Western Balkans migratory routes have received the highest proportional increase of human resources deployed. Member States on the Eastern Mediterranean route have also seen an increase – albeit more limited – in deployments (see sections 4.1.4 and 6.2).

Although the deployment of the Standing Corps has been relevant to migration and return management, their ability to provide relevant support to Member States has been hindered by practical, organisational and legislative limitations, covered in section 4.1.4.

An effective and humane **return policy** is an integral part of the EU migration and asylum policy. Every year, over 300,000 third-country nationals are ordered to leave the EU because they have entered or are staying irregularly. However, only around 21% return to their home country or to the country from which they travelled to the EU.<sup>560</sup>

In this context, Frontex's assistance to Member States in implementing returns of people who have exhausted all legal avenues to legitimise their stay is highly relevant. Frontex offers support to Member States in all phases of the return process and has become an essential actor in the common EU system for return.

On **situational awareness**, Frontex produces a significant volume of risk analysis products designed for use in the Member States. Vulnerability assessments have proved relevant to Member States in promoting awareness of capability limitations and enabling an appropriate reaction mechanism through the form of simulation exercises and Executive Director's recommendations.

The majority of Member States agreed that the implementation of the EUROSUR framework has been effective in terms of information exchange to improve situational

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<sup>559</sup> This section responds to evaluation question 2.

<sup>560</sup> See: [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/return-and-readmission\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/return-and-readmission_en)

awareness.<sup>561</sup> However, only a minority believe that the information requested in EUROSUR is relevant to improving detection, prevention and combating of irregular immigration and cross-border crime, or contributing to the protection and life-saving of migrants,<sup>562</sup> with almost half of the respondents neither agreeing or disagreeing with the statement, or providing no answer.<sup>563</sup> There are some duplications between EUROSUR and other operational information channels (for example, JORA), stemming from the EBCG Regulation, which make EUROSUR reporting less relevant in some instances. However, it should be noted that the upgrade of EUROSUR is not yet complete.

A great majority of Member States believe that the **training** component of Frontex's mandate is relevant to address their needs and challenges.<sup>564</sup> If anything, Member States would prefer more specialised training on topics that are relevant to addressing current challenges, such as the use of EUROSUR, risk analysis and advanced level document inspection, for either Category 2 or 3 SCOs or for Member States themselves.

Frontex has undertaken a significant amount of effort to provide human and technical resources (a Standing Corps ready to deal with challenges, relevant profiles, and equipment that can be utilised in the face of certain challenges) to facilitate Member States' tackling migratory challenges or challenges related to cross-border criminal activity. Availability of certain profiles and types of equipment are insufficient (see section 4.1.7), which might mean that Member States have certain needs that cannot currently be met. It is unclear how maritime border management capabilities will be developed. The present training and acquisition strategies are geared towards land and air border capabilities, while the needs for maritime border management are much greater in terms of financial and human resources.

Frontex's work in the **external dimension** is relevant in helping to implement the four-tier-access control model of EIBM. The four-tier model includes measures in third countries – especially countries of origin and transit of irregular migration (first tier) and measures with neighbouring countries (second tier). Frontex has also continued to build partnerships and synergies with relevant international organisations.

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<sup>561</sup> Survey of MS/SAC: Q7: 17/27 (AT, BG, CZ, DE, DK, EE, EL, LT, LU, LV, MT, PL, SE, SK and CH, NO).

<sup>562</sup> Survey of MS/SAC: Q7: 6/27 (DE, EE, EL, LT, MT, SE).

<sup>563</sup> Survey of MS/SAC: Q7: 11/27 (BE, CZ, HU, IT, LU, LV, PL, PT, SI and CH, NO).

<sup>564</sup> Survey of MS/SAC authorities: Q1.7: 15/27 agreed (AT, DE, DK, EE, EL, FI, HU, IE, IS, LV, MT, PL, PT, RO, SI), 5/27 strongly agree (BG, CZ, IE, LT, LU).

## 5 Conclusions and lessons learned

This study aims to support DG HOME with the **evaluation of EBCG Regulation**, assessing its relevance, effectiveness, efficiency, coherence, and EU added value.

Overall, the EBCG Regulation remains **relevant** to addressing current and future emergencies at EU external borders. Irregular migration continues to be a major challenge and is at the top of EU's policy and political agenda, requiring a common and coordinated response by all Member States for the foreseeable future. The EBCG Regulation contributed to the effective development and implementation of all components of EIBM and, despite the short period, resulted in the establishment and deployment of the first-ever EU uniformed service – the EBCG Standing Corps.

Stakeholders agreed that the objectives of the EBCG Regulation could not have been achieved sufficiently by Member States acting alone. Frontex's new mandate, as introduced by the EBCG Regulation, contributes to achieving the objectives of the EBCG as a whole, as it supports Member States to implement effective border management, in the context of their shared responsibility. As such, the study confirms the **EU added value** of the EBCG Regulation.

Overall, the EBCG Regulation is to a large extent legally **coherent** internally and externally. Several inconsistencies were identified by the study, impacting on the implementation of the EBCG Regulation.

The **effectiveness** of Frontex's activities across a number of thematic areas (operations, return, capacity-building, situational awareness, international cooperation, fundamental rights) was at times impacted by a number of factors. Some of those challenges stem from the Regulation itself, such as a lack of legal clarity, gaps, or contradictions with existing needs and objectives. Others are the product of organisational, technical, logistical and operational shortcomings in the implementation of the Regulation by Frontex and to some extent by the Member States. Finally, effective implementation was also impacted by some wider legal limitations identified in Member State and broader EU legislation.

The 2016 EBCG Regulation was not fully implemented when the EBCG Regulation was amended in 2019. The lack of an evaluation of the 2016 EBCG Regulation or an impact assessment to inform the changes introduced in 2019 meant that the legislative changes introduced were not supported by a detailed assessment of the existing gaps and needs. This may have contributed to some of the contradictions found in the current EBCG Regulation. Implementation of the 2019 EBCG Regulation is still ongoing and has not been finalised in all areas.

The period of implementation was marked by external factors and crises, including the COVID-19 pandemic, the instrumentalisation of migration by Belarus, and the war in Ukraine. At the same time, a steep rise in irregular migration was observed: in 2022, around 330,000 irregular border crossings were detected at the EU's external border, - the highest number of irregular border crossings since 2016 and in the first four months of 2023 the increase was by another 30% compared to the same period in 2022.<sup>565</sup>

The following section summarises the conclusions emerging from the study, together with lessons and recommendations for each thematic area.

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<sup>565</sup> Available at: <https://frontex.europa.eu/media-centre/news/news-release/detections-in-central-mediterranean-at-record-level-xSzOka>

## 5.1 Scope and objectives of the EBCG Regulation

External border management is a shared competence of the EU and Member States. In this context, the **scope** of the EBCG Regulation mainly focuses on outlining the activities and governance of Frontex (the Agency), rather than the entirety of the EBCG. The current governance framework and fundamental rights safeguards contained in the EBCG Regulation apply largely to Frontex itself. The **EBCG Regulation** does not have clearly outlined objectives (only a general objective mentioned in passing in the preamble), which can make its achievement something of a moveable target.

The legal basis of the EBCG Regulation, **namely Article 77(2)(b) and (d) and Article 79(2)(c) of the TFEU**, pertains to border checks, asylum, and immigration policies (Title V, Chapter 2 TFEU) and not police cooperation (Chapter 5 TFEU). 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). This has led some Member States to adapt their national legal frameworks so as to deploy Standing Corps. Indeed, Member States have an obligation to implement the EBCG Regulation in their national legal framework, including removing obstacles hindering its full implementation.

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.

Additionally, the application of the EU Staff Regulations to the EBCG Regulation and the Standing Corps presents challenges, as the Staff Regulations were not intended to meet the needs of an operational service with executive powers, resulting in inconsistencies in areas such as working conditions, selection procedures, deployment locations, leave entitlements, disciplinary measures, and complaints mechanisms.

Finally, given its activities at the external borders, the Agency should contribute to preventing and detecting cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism (Recital 41 EBCG Regulation). However, in practice, there remains areas in which room for interpretation of what the limits of Frontex's supporting role in this area are.

### 5.1.1 Recommendations

#### **Adapt legal framework to the functions of the Standing Corps:**

- Consider defining the objectives of the EBCG Regulation and the Standing Corps more clearly.
- **Introduce additional tailored rules for the Standing Corps' conditions of employment**, given the different recruitment procedure and the nature of the tasks and risks associated with their deployment compared to other EU officials/employees. This could be done either by allowing for a derogation from the EU Staff Regulations, or developing a separate regulation for operational staff. Member States have special employment status (which covers Standing Corps Categories 2, 3, 4) and this could be arranged either via entirely different laws, or by including special provisions for law enforcement personnel. This status covers work schedules, deployment conditions, early retirement, additional payment for work in special conditions, special requirements for physical fitness, special rules

and higher level of control in terms of discipline and control of their professional activities (including integrity tests, alcohol and drug testing – typically linked to the fact that such employees carry and use firearms).

- The Regulation should define more precisely the scope of Frontex' role in combatting cross-border crime. One option will be to clearly limit the role of the Agency to support Member States in the 'detection' and 'prevention' of crime, which will provide a clear mandate for the role, especially at border crossing points. The nature of such 'detection' activities will also need to be defined, so as to allow officers to use relevant operational instruments, databases, or practices, or to handle personal data accordingly. The scope of crime areas falling within Frontex competence, besides irregular migration, should also be well defined, so as to include all areas covered typically in border management (vehicle crime, organised crime activities, trafficking in human beings, counterfeit documents, etc).

## 5.2 Governance and organisational structure

The **governance structure of Frontex** is well established within the EBCG Regulation. It includes clear tasks for the MB, Executive Director, and oversight by the European Commission, European Parliament and Council of the European Union, in line with the Common Approach on Decentralised Agencies. Additional processes have been put in place to ensure improved follow-up to FRO's recommendations by the MB and Executive Director. However, the existing governance framework within the EBCG Regulation functions as a mechanism for Frontex and not the EBCG as a whole (which includes national authorities of Member States).

Return is not yet adequately covered in the existing governance structure. The MB continues to be represented primarily by national border management authorities, which are not necessarily responsible for returns.

The implementation of the existing governance mechanisms could also be improved by ensuring that MB meetings prioritise issues of strategic importance, rather than focusing on technical discussions.

The European Parliament has yet to make use of Article 112, which foresees cooperation with national parliaments, and is relevant in the framework of shared responsibility, given that the current governance structure does not otherwise account for the full EBCG.

Finally, as Frontex is an Agency in transition, the analysis shows a need to align its organisational structure more closely with its new mandate, as the current structure is not adequate to support effective deployment of the Standing Corps, and results in several inefficiencies. The Standing Corps is constituted as a separate body of officers, managed by a typical EU administrative agency. National authorities with border management responsibilities are structured very differently, with border management functions at the centre, and general and specialised administrative tasks supporting operational needs. At Frontex, the management of the Standing Corps is spread over several divisions, leading to inefficiencies and lack of clarity on responsibilities.

### 5.2.1 Recommendations

In relation to governance as outlined in the EBCG Regulation, it remains a matter of political discussion to assess whether there is an appetite among Member States to enhance the current governance structure to cover the entirety of the EBCG. Until that is done, there will continue to be an inherent contradiction in the way the EBCG Regulation sets up the EBCG and the governance framework it actually sets out (for Frontex only).

A new organisational structure for Frontex that is in line with its current mandate and fully integrating the operational needs of the Standing Corps should be a priority. A new structure should streamline the operational command-and-control processes into a new

Standing Corps structure, which in turn should be integrated and aligned with operational and administrative support divisions and units, as well as the executive leadership. Conducting a functional review of the Agency could contribute to better assessment of the distribution of its current resources. Further streamlining of activities could improve efficiency, including better horizontal coordination and simplification of administrative processes (where possible). The current FC2 pilot project is a step in that direction. Frontex should work to improve its internal processes to facilitate horizontal coordination and ensure that they support effective and efficient implementation of its mandate.

In relation to Frontex governance, the MB should focus on providing strategic guidance to the Agency. This can be achieved by simplifying the current meetings and ensuring that the agenda of the MB is set up to allow sufficient discussion of strategic issues. The MB should also ensure that there is a governance framework to sufficiently cover return access to data issues.

### 5.3 Operations

During the evaluation period, Frontex provided extensive technical and operational assistance to Member States through joint operations and RBIs, including technical and operational assistance to support SAR operations. The majority of joint operations and RBIs focus on land and sea external borders, which are under significant migratory pressure. Other types of operational activities are carried out through focal points established at key border crossing points, as well as in the area of returns.

The operational support provided by Frontex is valued by Member States and has contributed to achieving the objectives of the EBCG. Frontex provides added value by offering additional human resources (especially through the Standing Corps) and technical means to Member States and third countries facing challenges related to heightened migratory flows, as well as through the standardisation of procedures and harmonisation of operational good practices at EU level.

However, a range of factors limit the effectiveness of Frontex's operational response, including resource planning of operations, lack of availability of certain profiles, lack of law enforcement status of Standing Corps officers Categories 1 and 2, different work rules and practices of SCOs, access to information and relevant databases, and command-and-control issues.

When the Standing Corps was initially established, the availability of different profiles did not fully correlate with the overall needs, as reported by some Member States. The availability of certain profiles seems to be improving over time. Specific profiles are in high demand and Frontex is reporting up to 80% gaps for certain profiles. A related issue is the mismatch between the human resources requested and those actually deployed.

Several additional organisational issues further undermine the operational effectiveness of Frontex, its organisational image and, in some cases, also Standing Corps officers' morale. These include practical issues with weapons transportation and the lack of equipment, uniforms and advanced logistical support during deployments.

The size of Standing Corps deployments to Member States is also limited by language barriers. Member States' border guards with surveillance functions often have limited English language skills, and few can be engaged in overseeing/accompanying deployed Standing Corps staff. Deployment of Standing Corps to their own country of origin is considered unacceptable by many Member States, due to the significant difference with local staff salary levels and impact on morale of local officers.

Another key factor hindering effectiveness is that the current legal framework is not adapted to reflect the role of Frontex Standing Corps staff, including their functions as a uniformed, armed service with executive powers. This is seen as disruptive at an operational level by some Member States and by Frontex, limiting the operational

effectiveness of the Agency and potentially reducing its ability to recruit and develop the Standing Corps in the longer term.

The treatment of Category 1 SCOs as regular staff subject to the EU Staff Regulations is perceived as operationally disruptive and limiting the overall added value of the Standing Corps by both Member States and Frontex (inability of Standing Corps staff to work night shifts, limitations on physical fitness requirements, disciplinary, and command-and-control mechanisms, early retirement, or compensation for various risks). This is not the case for Categories 2, 3 and 4 SCOs.

The effectiveness and efficiency of Frontex operations at border check points is impacted by the limited access of Standing Corps staff to key databases, including SIS and national databases. The limitations are not only the language of Member States' border systems (and lack of English interface), but also national legislation and technical interface requiring local border guards to consult and carry out tasks equivalent to those of national border guards, including crime and intelligence related tasks. Only four Member States have adapted legally and technically their systems and procedures to allow Standing Corps Staff to effectively conduct border checks and query the necessary databases. While Regulations (EU) 2018/1861 and 2018/1862 regulate and provide access to data in the SIS by EBCG teams, Frontex does not have access to SIS and is yet to develop a tool to enable such access.

The evaluation found that the lack of a clear command-and-control structure for the Standing Corps hampers operational effectiveness. Multiple reporting channels, including the functional line of reporting and the Coordinating Officer, create inconsistencies. Frontex is currently developing a pilot for a new command-and-control structure to increase effectiveness.

### 5.3.1 Recommendations

Given the rapidly changing and dynamic environment in which the Agency operates, it should be ensured that operational activities are implemented according to a comprehensive horizontal needs assessment and overall prioritisation at central level, taking into account the current situation and developments, while also allowing for flexibility. There is an increasing demand for Frontex support and thus a corresponding need for constant prioritisation/reprioritisation. This requires further development and modernisation of the Agency's handling of operations, including establishing an operational concept and a chain-of-command concept, as well as enabling factors such as enhanced capacity-building and capability development (training, management of deployments and equipment, acquisitions, etc.). Within this operational framework, the following actions are recommended to improve implementation of the EBCG Regulation at operational level:

- command-and-control that also ensures logistical support to SCOs.
- Availability of technical Standing Corps profiles needs to improve over time.
- Member States should be encouraged to improve access to national border check systems, including ensuring Standing Corps staff can access relevant European databases (VIS, SIS, etc.) and support Member States by independently and effectively conducting border checks. Frontex should ensure that technically and legally Standing Corps are able to conduct systematic checks into relevant EU and Interpol databases, as foreseen in the Schengen Border Code and Regulation 2017/458.
- Frontex to improve its monitoring and evaluation framework to carry out a robust evaluation of operational activities.
- Frontex and Member States should work together to develop a long-term strategy or mechanisms to increase hosting capacity of Member States, either by investing



and increasing the English language-speaking personnel of host Member States, or considering language capabilities when deploying personnel;

## 5.4 Return

Frontex has become an essential actor in the Common EU system for return, taking on new responsibilities and tools related to return of people who have no legal right to stay in the EU. Frontex has effectively supported Member States through all phases of return procedures. Stakeholders at EU and national level value Frontex's operational and technical assistance on return, particularly organising JROs and also other return-related support. For Member States, Frontex support in return is also believed to bring time savings and reduced administrative burden, as well as financial savings.

Several factors hamper the effectiveness of the Agency's return operations and return-related activities. Return is not yet fully embedded into all of the Agency's key activities, including vulnerability assessments and risk analysis.

Although the EBCG Regulation is generally coherent with the Return Directive (2008/115/EC), there are certain gaps in existing definitions. For example, the term 'assisted voluntary return' is not defined in the EBCG Regulation, which can cause operational difficulties.

Data protection considerations also arise in the area of returns. The EBCG Regulation does not provide separately for the processing of personal data in the context of return activities, despite the expanded mandate of the Agency.

Article 86(3) of the EBCG Regulation establishes that the transfer should take place under the conditions laid down in Chapter V of the EU DPR. 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 needing to negotiate arrangements with third countries in case of regular or structural data transfer arrangements.

### 5.4.1 Recommendations

Ensure return is further embedded across all of the Agency's activities.

Address the lack of legislative coherence in the area of return by clarifying definitions within the EBCG Regulation that are aligned with key concepts related to return activities.

## 5.5 Situational awareness

Situational awareness tasks of Frontex remain one of the highest EU added value activities of the EBCG Regulation. Frontex produces multiple risk analysis products, serving a wide range of stakeholders, in line with the objectives set out in the Regulation. Since 2019, Frontex is progressing towards providing a fully up-to-date, reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance. Lack of access to intelligence data from Member States (as well as EU sources, such as the EEAS Intelligence Centre) and limitations on collection of open-source intelligence and certain categories of data (such as on incidents linked to secondary movements, especially outside border areas) restrict the level of situational awareness at the EU borders.

The number and scope of risk analyses has steadily increased since 2019, as has the geographical extent of the underpinning risk analysis networks. The RAU, however, faces limitations set by the 2019 Regulation (especially processing personal data, including open-source and social media information) that impact its ability to provide comprehensive risk analysis. Moreover, not all areas of EIBM are covered in current risk analysis products, as return is yet to be reflected.

In terms of situational awareness and monitoring, EUROSUR has contributed to establishing a European situational picture, providing a common framework for information exchange, improving situational awareness and increasing reaction **capabilities**. The volume, quality, flow, and speed of the data exchanged has also noticeably increased in recent years. However, certain issues mean that it has not been able to provide complete and up-to-date situational awareness at the EU's external borders. **EUROSUR is impacted by issues in implementation**, as not all Member States report border events with the same completeness or regularity and NCC practices differ in incident formats and timing, leading to lower quality data. **Stakeholders have questioned the added value of upgrading the EUROSUR communication network to CONFIDENTIAL UE/EU CONFIDENTIAL**, due to very limited categories of information requiring such level and the high implementation costs. As a result, the upgrade has not been implemented.

The study found possible **contradictions between Articles 28 and 89 of the EBCG Regulation**, which affect the type of personal data that EUROSUR can process and may then impact the effectiveness of the services provided by EUROSUR. This lack of clarity impacts the understanding of the data flows that take place in this framework, creating uncertainties in terms of purpose specification, controllership, proper identification of data categories and/or data subjects within the EUROSUR framework (for example, 'other' personal data that may be processed besides ship and aircraft identification numbers) and exchange of information with third countries.

**Vulnerability assessment is valuable**, allowing Frontex to monitor vulnerabilities in Member States' border management capabilities and follow up with a coherent reporting system. The Regulation also set out to **ensure complementarity between vulnerability assessments and Schengen evaluations**. This added complementarity has broadly been achieved, although a minority of Member States point to some persistent overlaps, namely in data collection. Finally, the level of classification of vulnerability assessment data, as well as the inconsistency of definitions between the methodologies underpinning risk assessments (CIRAM) and vulnerability assessments (CVAM), mean that the contribution of vulnerability assessments to risk analysis is limited.

### 5.5.1 Recommendations

Possible contradictions in the EBCG Regulation in processing of personal data in the context of EUROSUR should be assessed and, if possible, revised to meet the objectives of EUROSUR. Similarly, limitations on processing of personal data (especially social media monitoring/ open-source information) should be reassessed in the context of risk analysis to ensure that Frontex has the right tools to provide up-to-date, relevant situational analysis to Member States.

Frontex could work to improve the implementation of situational awareness by enhancing risk analysis products and ensuring that they cover all four tiers of EIBM, including return. Improved functioning of EUROSUR depends on improved reporting by Member States.

Frontex should broaden its access to intelligence (relevant) information as well as its capability to collect open intelligence. As a minimum, such information should include sharing of relevant information from Europol (in respect to criminal intelligence) or the EEAS Intelligence Centre in respect to other relevant intelligence. Establishing a long-term mechanism between Frontex and Member States to share relevant intelligence information will strengthen significantly Frontex risk analysis and situational awareness capabilities.

Frontex should consider additional categories of incident data to improve its situational awareness – in particular data on incidents related to irregular migration outside border areas (as a significant number of migrants are apprehended in such areas, and possibly by police authorities).

The Vulnerability Assessment process should be further strengthened to ensure that recommendations are followed up and acted upon, and their implementation is reported by MS. Consideration should be given to using VA data in other relevant processes of the agency, including development of risk and threat assessments, or the capability roadmap and needs assessments.

The range of sources and databases used for the purpose of EUROSUR, should be expanded to ensure the operational effectiveness and added value of these services.

## 5.6 Capability development

Progress was achieved in various areas of capability-building, including training, research and innovation, and the provision of technical resource support. Flexibility was shown in the face of the COVID-19 pandemic and Russia's full-scale invasion of Ukraine. Capability-building is valued by Member States, but several factors hinder the effectiveness of these activities, some more significant than others.

In the area of **training**, the Agency's priorities shifted to training Category 1 SCOs, limiting the training activities available to Member States. Overall, the effectiveness of current training activities is hindered by the lack of Frontex trainers, lack of Frontex training facilities, and inefficiencies surrounding use of Member States training centres. The EBCG Regulation foresees the possibility of creating the Agency's own training facility, pending approval by the MB, but the latter has not occurred yet.

Frontex supported capability development in **research and innovation** by promoting and delivering standardisation and harmonisation of border management capabilities, promoting and delivering innovation in border management capabilities, and executing and supporting research. At the same time, the EBCG Regulation does not contain a clear reference to the adoption of technical standards, the methodology for defining standards, or the minimum standards for border surveillance.

The provision of **technical resources** is complicated by a lack of understanding of capability needs of the EBCG, due to delays in capability planning and the lack of a strategic direction and vision for the long-term development of capabilities at the Agency. Although a great majority of Member States recently sent their national capability development plans to Frontex, as yet there is no Agency multiannual acquisition strategy or capability roadmap (Article 9). This makes it difficult to plan for needs in the short, medium and long-term.

The present focus has been on equipment acquisition and staff training to land and air border-related equipment. Support for the management of maritime borders is handled by Member State Category 3 staff and their assets. The Agency does not appear to have a vision, nor is there guidance by the MB, of capability planning, particularly its future role in maritime borders. The Agency does not appear to be planning to acquire its own vessels or related infrastructure, nor to train personnel for maritime operations – also because of legal restrictions as to the status of Agency-owned vessels, such as the flag state. If the Agency is to procure vessels and hire or train its own staff to man them, this would take several years and require a clear strategy and planning.

**Other capability-related issues that undermine effectiveness and efficiency include:** unclear strategic vision for the development of logistics and logistical support of the Agency (including lack of any antenna offices); lack of sufficient integration between acquisition and logistics; difficulties with purchase of highly specialised equipment requiring multiannual delivery (due to annuality principle, difficulties with staff hiring matrix); lack of logistical infrastructure for new equipment; issues with customs and transportation; issues with adaptation of equipment; issues with recognition of equipment across Member States' jurisdictions; and issues with registration and maintenance of vehicles.

### 5.6.1 Recommendations

In respect to training, the most critical issue is **providing a stable long-term solution for a training facility for Frontex**. While the initial training of Standing Corps may require additional capacity by Member States, in the long run, Frontex will be continuously training new Standing Corps staff due to retirement and staff turnover. To facilitate the MB decision process, Frontex could develop a business case assessing the efficiency and value added of own center vs. providing grants to Member States. This would end the practice of the Agency having to ‘shop around’ annually in search of a Member State training centre that can be adapted to its needs (typically requiring significant EU financial resources). Such a solution should also ensure the presence of reliable, permanent, high-quality training staff, which could provide for the long-term needs of the Agency (training new Standing Corps staff in line with turnover, as well as specialised training for the Agency).

It is worth considering including a trainer profile for the Standing Corps (either through an Annex to the EBCG Regulation or via Management Board decision through Article 54(4), clarifying Article 54(2) where necessary). Including training as part of the secondment period would also help to ensure that payment for training becomes part of the secondment.

In relation to **research and innovation**, additional **clarifications in the EBCG Regulation** would be beneficial, including:

- Clarifying in the Regulation how technical standards should be adopted (through an Management Board Decision or the adoption of a methodology for defining standards, etc.). Standardisation and certification/accreditation work would be facilitated if collaboration with international, EU and national standardisation bodies and with EU conformity assessment bodies was mentioned in Article 68.<sup>[1]</sup>
- Clarify the mandate of the Agency in Article 66(3), as the representative of Member States and a Senior User (possibly through the establishment of a network of EBCG research and innovation representatives).

Given the importance of the multiannual acquisition strategy for strategic vision, the understanding of EBCG needs and the effective and efficient acquisition of equipment by Frontex – one of the key elements of EU border management, according to the EBCG Regulation – it is **crucial to finalise the implementation of Article 63(2) (multiannual acquisition strategy) and Article 9 (integrated planning)**. This will provide a clearer framework for future acquisition of resources by Frontex and wider capability planning in the context of the EBCG. The multiannual acquisition strategy could also reflect the approach to purchasing equipment in relation to the annuality principle. It remains to be seen whether the current methodologies used for contingency and capability plans will be sufficient to fully meet the needs of the EBCG as a whole. Member States reported a considerable burden associated with the different plans foreseen under Article 9, suggesting the potential added value of assessing the added value of those foreseen mechanisms at a later stage. This would also serve to identify potential overlaps with existing mechanisms and identify ways to streamline the planning process so as to reduce burden on Member States, while ensuring sufficient capability and contingency planning is in place. An evaluation of integrated planning (once fully implemented) could also ascertain the effectiveness of the current mechanism and identify improvements.

Additional recommendations include:

- **Logistics:** in the planning stage of technical resources, the present Regulation does not facilitate nor prescribe a strategy for logistical support of Frontex human and technical resources. While Article 60 foresees the antenna offices providing logistical support, the absence of such offices, and the complex arrangements for their establishment, calls for a different approach. The logistical support required

will increase in complexity once the Agency acquires its own equipment. This in turn will demand a thorough strategy and perhaps different solutions, including provision of logistics support by private parties, Member States, or the development of the Agency's own logistical support capabilities (as is the case in some Member States). This long-term vision on logistics is missing, due to delays in the adoption of the capability plans and roadmap. Along with the adoption of capability plans and roadmap, the MB, with the Agency, could assess the possibility for the Agency to develop its logistical support infrastructure for maritime, land, air assets, as well as Standing Corps staff at central level and throughout the EU (and whether this should be ensured through the Regulation or not).

- Other logistical issues linked to the **deployment stage of technical resources could be improved**. Legal solutions should be found for the following (either via the Regulation or otherwise):
  - The Agency may acquire/rent/refurbish/equip facilities when a hosting country cannot provide this service, with the sole purpose of providing support to operational areas (Article 63);
  - Host Member States exempt the Agency from customs or other duties, taxes, prohibitions or restrictions where applicable;
  - Member States exempt transfer licences and permission to transfer weapons, ammunitions, other supplies or equipment 1) from central storage to operational areas, and 2) among different operational areas (in the context of Standing Corps (redeployment, support, training).
- **Procurement:**
  - Where possible, the Commission could allow budgetary commitments for actions spanning more than one financial year to be broken down over several years into annual instalments (Article 115);
  - Where possible, the Commission discusses amendments to ISF rules to allow for the use of EU-funded assets in the country of procurement while the assets are at the disposal of Frontex;
  - As part of the development of the strategic direction of capability-building, the Agency should review owning vs leasing vs renting options for equipment that needs to be usable in different local environments.

## 5.7 External cooperation

The work of Frontex in the area of external cooperation is viewed positively by Member States and is seen as effective and efficient. Frontex's work is coordinated with the Commission and relevant EU agencies to ensure that it contributes to the wider objectives of EU external action. Nevertheless, some implementation challenges have been identified, as well as limitations on cooperation set by the EBCG Regulation itself.

Frontex has faced delays in the conclusion of new working arrangements with third countries, in line with the 2019 EBCG Regulation. While the new model working arrangement was finalised in 2021, its revision remains pending due to ongoing discussions between the Commission and the EDPS on provisions on personal data protection. The new model Status Agreement was adopted by the Commission in 2021, enabling the EU to sign new status agreements and Frontex to launch joint operations to North Macedonia and Moldova. A new Status Agreement was signed with Montenegro, while another with Albania is pending.

The 2019 EBCG Regulation may have negatively impacted Frontex's work by setting limits on the international organisations with which it can cooperate. In setting out an exhaustive list of organisations deemed relevant for Frontex cooperation (Article 68) in the context of working arrangements, the Regulation limits the Agency's flexibility to develop new partnerships in response to emerging needs, including with organisations with which it has usefully cooperated in the past (ICMPD, NATO, customs organisations). Given that the Agency has a legal obligation to work with international organisations via working arrangements (requiring prior approval by the Commission and the MB), this should provide sufficient safeguard to ensure that the Agency's cooperation is limited to those organisations deemed most relevant.

### 5.7.1 Recommendations

Consider broadening the scope of Article 68(1) and (2) of the EBCG Regulation to allow Frontex to cooperate with all necessary international organisations that fall within its mandate and for such cooperation to be carried out in the framework of a working arrangement.

Revise the model working arrangement, in consultation with the EDPS, to allow for enhanced cooperation with third countries and other partners as foreseen in the EBCG Regulation.

Consider facilitating easier cooperation with CSDP missions and operations by developing an overarching working arrangement with EEAS, foreseeing cooperation with any CSDP mission or operation on the basis of newly identified needs and approval by the MB.

## 5.8 Fundamental rights

In line with the EBCG Regulation, Frontex established a number of safeguards to protect and promote the respect of fundamental rights, by adopting and/or implementing rules and procedures. The main conditions set by the Agency include the Fundamental Rights Strategy and implementing Action Plan, the activities of the FRO (including contributions to a wide range of tools and procedures, such as operational plans), FRMs, relevant Management Board Decisions on the complaints mechanism, SIR mechanism, supervisory mechanism on the use of force, independence of the FRO, etc.), data protection safeguards, and DPO's activities. The Agency carried out training on fundamental rights (including on data protection) and made efforts to promote a fundamental rights culture within the Agency.

These elements have the potential to guarantee fundamental rights compliance by the Agency, although some limitations risk delivering on these commitments. Overall, more could be done to better streamline the respect for fundamental rights within the EBCG Regulation, as well as in the structure and procedures of the Agency.

The analysis highlighted the EBCG Regulation's lack of clear delineation between Frontex and Member State responsibilities and respective obligations in the fundamental rights area, with consequences for the scope of the FRO's mandate and FRMs' monitoring activities. Some clarification was brought by the SOP on FRMs in 2023.

On Article 46 of the EBCG Regulation, the main issue is that the EBCG Regulation leaves ample discretion to the Executive Director's decision. Some progress was made with the adoption of the 2022 SOP on Article 46, with ongoing discussion as to whether the decision referred to in Article 46 should be retained by the Executive Director alone or delegated to or otherwise involve the other actors (e.g., MB, Commission or Council of the European Union). 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. On the other hand, the potential involvement of

political actors could lead to the politicisation of the process (with the risk of having actors blocking in practice the possibility of triggering Article 46).

The research identified a number of factors that limit the effectiveness of the SIR mechanism (such as the limited sources of information, limited cooperation and follow-up from national authorities, lack of redress). Nevertheless, the SIR mechanism remains an important instrument in the toolbox of the FRO to map and indicate fundamental rights challenges and monitor the Agency's compliance with fundamental rights. Positive actions by the Agency and the FRO (such as the adoption of the SOP on SIRs in 2021, FRO's dedicated SIR team) were reported more recently and might be contributing factors to the increasing number of SIRs submitted from 2021.

The analysis confirmed that the complaints mechanism is a crucial component of the Agency's fundamental rights protection framework. However, its functioning was limited by several aspects of its set-up and implementation. There is a lack of clarity in the EBCG Regulation (the procedure referred to in Article 111(5)) and potential inconsistencies between the EBCG Regulation and Management Board Decision 19/2022 on the FRO's role in investigations for the admissibility assessment of complaints. Efforts by the Agency (such as Management Board Decision 19/2022) and the FRO continue to try and improve the functioning of the complaints mechanism.

The EBCG Regulation and Code for Return provide for a number of obligations and good practices to be observed and implemented to uphold fundamental rights in return operations. The analysis identified some challenges that might impact the effectiveness of the Agency's monitoring activities (such as insufficient contributions by the Member States to the pool of forced-return monitors). To ensure compliance, the Agency adopted changes to increase the monitoring level of return operations and introduced some additional safeguards (amended individual form to be filled in by national authorities for each returnee, for example).

### 5.8.1 Recommendations

More could be done to streamline the respect for fundamental rights in the structure and procedures of the Agency. Key recommendations have been identified in relation to the existing fundamental rights framework.

As the EBCG Regulation (Article 80) sets respect for fundamental rights as an obligation on the EBCG as a whole (including Member States' authorities), the EBCG Regulation could better delineate the responsibilities between the Agency and Member States and their respective obligations in the fundamental rights area, considering the implications of the scope of the FRO's mandate and FRMs' activities.

Article 5 of the EBCG Regulation could expressly indicate that the Agency contributes to the continuous and uniform application of Union law in all areas covered by Frontex's mandate, including in the area of return.

Article 46 could be further amended to clarify the applicable criteria for the Executive Director's decisions, in line with the 2022 SOP (principle of proportionality – including a more gradual approach, ensuring a monitoring mechanism for follow-up, etc), which would have the potential to increase the transparency of the process and depoliticise it. Different proposals to involve other actors in the decision-making on Article 46 (such as the MB, Council) could also be considered, although this involvement might bring the risk of politicising the process.

The mandate of the FRO could be more clearly defined in relation to monitoring of national staff involved in Frontex activities, as well as ensuring more systematic cooperation with national monitoring mechanisms (for example, establishing a network of national and EU monitoring bodies). Staff capacity in the Fundamental Rights Office could be linked to the increased number of tasks of the Agency and the growing Standing Corps

staff. The role of the FRO could be further strengthened through their inclusion in the decision-making process and at meetings on matters with fundamental rights' implications (such as Executive Management briefings).

For the role of the FRMs, Article 110 of the EBCG Regulation should clearly indicate the scope of their monitoring activities and stress that FRMs have access to all areas in which the operational activity of the Agency takes place and to all documents relevant to the implementation of that activity, including EUROSUR (some clarification was brought by the SOP on FRMs in 2023). The number of FRMs could be clearly linked to operational needs, while implementing rules could envisage FRMs' status as administrator personnel (AD level) rather than assistants (AST-level). Increased transparency of FRMs' reports could be achieved by accelerating the Agency's replies to requests for public access to documents.

On the supervisory mechanism on the use of force, the internal inconsistencies between Article 82 and Annex V of the EBCG Regulation should be addressed, as should inconsistencies with international standards.

The SIR mechanism should be explicitly regulated in the EBCG Regulation. The obligation to submit SIRs should be reinforced for all participants in Frontex joint operations, including Member States' officers, to the extent that there is reasonable doubt that any participant in a Frontex joint operation may have been involved in the incident. The role of the FRO as case-handler for SIRs with potential fundamental rights implications could be explicitly established in the EBCG Regulation. Redress should be introduced for identified victims of serious incidents. Follow-up to SIRs could be more explicitly formulated in the existing SOP and/or in the EBCG Regulation.

The scope of the complaints mechanism could be extended to include those not affected directly by an action or omission. There is a need to clarify Article 111(5) of the EBCG Regulation on the appropriate procedure to be provided by the Agency in cases where a complaint is declared inadmissible or unfounded. There are potential discrepancies between the EBCG Regulation and Management Board Decision 19/2022 on the FRO's role, which should also be clarified, notably the assessment by the FRO when handling admissible complaints. As the EBCG Regulation does not provide for the possibility of appeal, the European Ombudsman has indicated that the decisions by the Executive Director on complaints forwarded by the FRO may be challenged before the European Ombudsman.<sup>566</sup> This could be clarified by amendments to the EBCG Regulation and/or implementing rules. Further discussion could also focus on the possibility to introduce a clear remedy for ascertained violations, such as a compensation fund or other concrete remedies.

On return monitoring, the introduction of mitigating measures, such as carrying out spot checks (for return operations presenting higher risks to fundamental rights respect) could be beneficial. The Agency could also benefit from establishing a network of monitors based in third countries to support the work of the FRO. Lastly, it is important to ensure that any return operations organised or coordinated by the Agency adhere to the applicable data protection requirements on data transfers to third countries.

## 5.9 Data protection framework

Articles 86 to 92 of the EBCG Regulation establish the rules on the Agency's processing of personal data. Despite this framework, there are a number of unclarities in the EBCG Regulation in relation to data protection.

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<sup>566</sup> Interview with the European Ombudsman.



On the allocation of responsibilities between the Agency and the Member States, it is not clear directly from the EBCG Regulation and relevant Management Board Decisions who is the data controller, data processor, data supervisor, or the applicable rules, as key elements are indicated in the operational plans.

Some provisions of the EBCG Regulation are drafted very broadly, risking leaving a wide margin of interpretation in respect of data protection (risk analysis, EUROSUR, etc.), while being too narrow for other activities (such as checking travel documents).

The flexibility given for exceptional cases to process personal data other than ship and aircraft identification numbers in Article 89 of the EBCG Regulation impacts understanding of the data flows within the EUROSUR framework, creating uncertainties about purpose specification, controllership, proper identification of data categories and/or data subjects, as well as the exchange of information with third countries.

Stakeholders pointed to 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 explicitly narrowed possibilities for Frontex to process operational data (as per Articles 90 and 10(1)(q) 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, Management Board Decision 69/2021 created some ambiguity, as highlighted by the EDPS.

For personal data transfers to third countries, the EBCG Regulation refers to the requirements of Chapter V of the EU DPR. Although the EBCG Regulation is in line with the EU DPR, the Agency may not be adhering to the relevant rules, as 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 line with the EBCG Regulation, the Agency adopted implementing rules through Management Board Decisions 68/2021 and 69/2021. However, some areas identified were not sufficiently addressed and are now being redrafted based on EDPS' recommendations.

### 5.9.1 Recommendations

Despite the MB adopted Decisions 68/2021 and 69/2021, the Agency should continue working to redraft them taking into account the EDPS's recommendations. In light of this ongoing work, the analysis does not provide definitive conclusions or recommendations in this area.

Overall, to increase compliance with data protection rules, the Agency should increase the capacity of the DPO and data protection training, and make efforts to enhance data protection awareness within the Agency.

## 5.10 Use of resources

The allocation of human and financial resources to Frontex has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation and with its strategic and horizontal objectives, although there have been some difficulties related to implementation.

Frontex has faced a significant efficiency challenge in implementing its increasing financial resources. As the Agency's budget has grown, so have the challenges related to its implementation. However, it has largely been able to adapt its budgetary management to the new mandate and the expected operational results over time. Generally, it has been able to spend the amounts carried over from the previous year, although some problems

persist with the management of the budget assigned to 'Agency equipment' and 'strengthening capacities'.

Like Frontex, Member States incurred in costs for implementing the different obligations and activities set by the EBCG Regulation. Concerning the benefits, the main benefits to Member States are the 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). Additional benefits identified are non-monetary ones, related to the harmonisation of procedures across Member States and the sharing of best practices.<sup>567</sup>

The potential costs to Member States linked to the implementation of the EBCG Regulation appear to be in the form of increased funding to certain activities, such as the upgrade of IT systems, and compliance with the multiannual strategic planning process of Frontex, including developing operational, contingency and capability plans.

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. The availability of these funds is of direct benefit to Member States, enabling them to acquire assets and undertake activities that they would not otherwise have undertaken or acquired.

Frontex faces challenges in efficient procurement processes for equipment, including a lack of specialised staff, leading to financial and non-financial costs. Potential benefits for businesses and citizens remain difficult to quantify, with evidence remaining limited and as some are indirect effects hard to detect and assess. The principle of annuality poses a challenge when acquiring complex equipment such as vessels. The lack of clarity in the acquisition strategy and logistics concept for equipment also presents a considerable challenge, with acquisition needs poorly defined and a lack of operational experience among procurement staff (elaborated above).

The main benefit for Member States is the added value of the EBCG Regulation, whose objectives and results would likely not have been achieved by each country on its own.

### 5.10.1 Recommendations

Recommendations linked to efficiency have already been partially explored under the above thematic areas. Most important are issues identified in the context of technical equipment, inefficiencies in the management of the Standing Corps and their deployment, as well as burdens associated with double reporting for Member States in certain instances.

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<sup>567</sup> MS/SAC survey: responses to Q1.5 and Q6.3 (RO, FI, IT)

## 6 Review of the Standing Corps

This section presents the findings of the review of the Standing Corps, conducted as part of the overarching study evaluating the EBCG Regulation. In line with Article 59, the review looks at the functioning and composition of the Standing Corps, size of Member States' contributions, number of staff members, level of training, expertise, and professionalism. The analysis was guided by review questions included at the end of the Evaluation Framework (Annex 2), developed on the basis of the original Terms of Reference presented by DG HOME.

The findings are based on an extensive data collection and analysis exercise conducted as part of the formal evaluation of the EBCG Regulation (see Annex 3). Data collection included an in-depth review of documents, a survey of 500 Standing Corps staff, a survey of Member State national authorities, five field visits to Frontex operations (which included interviews with national and Frontex staff on the ground), and additional interviews with Frontex, Member States' authorities and EU stakeholders (including the Commission, European Parliament and EU agencies).

### 6.1 Introduction

The 2019 EBCG Regulation sets up the European Border and Coast Guard Standing Corps, a pool of up to 10,000 staff to be fully operational by 2027. It also stipulates that by 31 December 2023, the European Commission will present to the European Parliament and the Council a review of the number and composition of the Standing Corps (Article 59). The objectives of this review are to evaluate:

- The functioning of the Standing Corps;<sup>568</sup>
- Composition of the Standing Corps;<sup>569</sup>
- Size of individual Member States' contributions;<sup>570</sup>
- Overall number;<sup>571</sup>
- Level of training, expertise and professionalism;<sup>572</sup>
- Assess the need to maintain the reserve for rapid reaction.<sup>573</sup>

Annex I to the EBCG Regulation outlines the capacity target for the Standing Corps between 2021 to 2027 (and beyond) for each of the four categories:

- **Category 1:** statutory staff deployed as members of the teams (3,000);
- **Category 2:** staff seconded from Member States to the Agency for long-term deployment (1,500);
- **Category 3:** staff from Member States who are ready to be provided to the Agency for short-term deployment (5,500);
- **Category 4:** the reserve for rapid reaction consisting of staff from Member States (0).<sup>574</sup>

Standing Corps Category 1 includes statutory staff deployed as members of the team in operational areas, as well as staff (of the ECU) responsible for the functioning of ETIAS.<sup>575</sup> As per the Annex to the EBCG Regulation, the Standing Corps is intended to

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<sup>568</sup> RQ1, 2, 3, 7, 8.

<sup>569</sup> RQ 5, 6.

<sup>570</sup> RQ 4, 9,10.

<sup>571</sup> RQ 1, 9.

<sup>572</sup> RQ6.

<sup>573</sup> RQ3.

<sup>574</sup> For Category 4, the Regulation does not foresee any Standing Corps as of 2025 (included).

<sup>575</sup> Article 54(1) EBCG Regulation.

have a capacity of up to 10,000 operational staff. Management Board Decision 17/2021 set a target of 700 operational staff of Category 1 SCOs for 2022.

The number of Category 1 SCOs increased from 595 in 2021 to 963 in 2022.<sup>576</sup> Together with the 4% of recruited staff for support and monitoring functions (as per Article 54(7) of the EBCG Regulation),<sup>577</sup> by 2022 Frontex was able to meet the 1,000-target established in Annex 1 to the EBCG Regulation, despite some initial delays.

The EBCG Regulation states that the Agency is required to recruit, train and deploy members of the Standing Corps as members of the border management teams, migration management support teams and return teams in joint operations, RBIs, return interventions or any other relevant operational activities in the Member States or in third countries. All activities carried out by the Standing Corps require the authorisation of the Member State or the third country concerned. In addition, to make the Standing Corps fully operational, the EBCG Regulation increased the Agency's budget to acquire, maintain and use the necessary equipment. The review will look at how the situation has developed in three key areas: recruitment (including the geographical profiles of the Standing Corps and the challenges experienced by Member States and the Agency when recruiting); training; and deployment (including the relevance of the different categories of the Standing Corps, the level of efficiency of deployment, and the coherence between the Agency's operations and other missions in the area of EU internal and external security).

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<sup>576</sup> Frontex (2022). 'Annual Implementation Report'; Frontex (2023). 'Consolidated Annual Activity Report 2022'.

<sup>577</sup> 107 Standing Corps were involved in non-operational tasks at the Agency's headquarters in May 2022; Frontex (2022). 'Final audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'.

## 6.2 Findings

Table 16. Summary of key findings related to Standing Corps review

Summary of key findings
<p><b>Key provisions of the EBCG Regulation</b></p> <p>Article 36 on the role of the Standing Corps for the Agency’s mission and the Regulation’s objectives;</p> <p>Article 45 on the costs to be covered by the Agency to the Member States for the deployment of the standing corps and art 61, on financial support to Member States;</p> <p>Article 56 on the long-term secondment Standing Corps (category 2);</p> <p>Article 57 on the short-term deployment Standing Corps (category 3);</p> <p>Article 58 on the reserve for rapid reaction (category 4);</p> <p>Article 62 on the training of the Standing Corps;</p> <p>Annexes I to IV, setting the national quotas for all categories of the Standing Corps.</p> <p><b>Key findings</b></p> <ul style="list-style-type: none"> <li>• The Agency has faced delays in the recruitment of Standing Corps (Category 1) staff, in part due to the COVID-19 pandemic. Moreover, it continues to be difficult to ensure a geographical balance of Category 1 staff (in part due to the current remuneration, lack of long-term career perspective, etc).</li> <li>• The <b>deployment of the Standing Corps has been mostly relevant</b> to supporting Member State in the protection of EU external borders, migration management and returns. There are several factors hindering the Standing Corps’ ability to support Member States in border management tasks. These challenges are of a practical, organisational and legal nature.</li> <li>• By setting-up national quotas, the <b>EBCG Regulation puts the Agency in a better position for responding to Member States’ needs</b>: nearly all the most urgent requests from Member States have been addressed by the Agency since the Regulation’s implementation started.</li> <li>• <b>Most of the Standing Corps Categories 2 and 3 are, respectively, seconded or nominated by national authorities with law enforcement and border management tasks</b> or with immigration, integration and repatriation duties. The second large contribution to Categories 2 and 3 comes from defence authorities.</li> <li>• While Categories 2 and 3 Standing Corps are found to be experienced officers of the Member States, <b>the background and training of Category 1 is not always found to be adequate to providing an effective support to Member States</b>, though feedback from different Member States differs. Overall, the training for Category 1 staff has been found to be relevant to their tasks.</li> <li>• <b>Category 4 Standing Corps has not been deployed in 2021 and 2022</b> and hence, has not been relevant to supporting Member States in situations where categories 1,2 and 3 were exhausted. The finding that, even though there has been additional pressure at the EU’s external borders, Category 4 has not been activated provides further ground for their phasing out, as currently foreseen in the EBCG Regulation.</li> <li>• Though Member States have kept a good level of compliance with national quotas, <b>they face a number of challenges in nominating and seconding</b></li> </ul>

**Standing Corps to the Agency** and might encounter even greater challenges to do so in the future. Some challenges are due to the conditions for financial reimbursement of the Agency to the Member States and, more broadly, to the working conditions of the Standing Corps.

Typology/ source of challenges	Severity of the challenge (moderate – medium – high)	Brief description of challenges			
Legislative	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		<p>The current financial support system is not always adequate to support Member States with recruiting and training officers to nominate and second.</p> <p>Currently, the Standing Corps Category 1 are governed by the Staff Regulations that do not fit their role.</p>
	√				
Organisational and operational	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		<p>The mechanism for deciding deployments leads to mismatch between the standing corps' skills and their deployment.</p> <p>There are shortages in some profiles, including dog handlers, FRESO and ALDO officers.</p>
	√				
Technical	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		<p>The Standing Corps have so far had access to national databases for border and security management only in a few Member States. They have also not had access to the SIS, while performing their duties.</p>
	√				
External factors	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">√</td> <td style="width: 33%;"></td> </tr> </table>		√		<p>The COVID 19 pandemic has slowed down the initial recruitment process at the Agency and posed challenges to training.</p>
	√				

### 6.2.1 RQ1: Relevance of Standing Corps deployment

The deployment of the Standing Corps has been a key addition to the Agency's mandate, introduced by the EBCG Regulation to support Member States in the protection of EU external borders, migration management and returns. Geopolitical changes and increasing irregular migration flows have seen the Schengen policy environment in a constant state of flux in recent years. The response to the unprecedented migration crisis

in 2015 necessitated institutional innovation and for the first time, the EU introduced its own uniformed service tasked with supporting joint operations, RBIs, return interventions or any other relevant operational activities in the Member States or in third countries. The Standing Corps was created to ensure more comprehensive and effective management of migration at the EU's external borders and return operations.

The reasons for the creation of the Standing Corps are outlined in the explanatory memorandum of the Commission's 2018 proposal,<sup>578</sup> which identified gaps in Agency capacity leaving it unable to effectively support Member States operational needs. To increase the Agency's human resources capacity, the EBCG Regulation proposed to set up a Standing Corps of 10,000 operational staff. In order to remedy the shortcomings of the previous pooling mechanism, the 2019 EBCG Regulation also set up the number of contributions for each Member State gradually increasing for the period between 2021 and 2027.

Overall, the Member States consider the deployment of the Standing Corps to be relevant to their needs, primarily because they can **draw on additional resources when needed**. The number of **deployments correspond to migratory pressures along migratory routes**. Member States impacted by the Central/Western Mediterranean and Eastern Borders and Western Balkans migratory routes have received the highest proportional increase of human resources deployed. Member States on the Eastern Mediterranean migratory route have also seen an increase – albeit more limited – in deployments. The Standing Corps has provided significant and welcome support also to return operations.

Member States consider the profile categories to be adequately defined in terms of their roles and responsibilities.<sup>579</sup> However, the profiles needed for deployment are not always available and Member States face challenges when recruiting specific profiles (see section 6.2.10). The views on the adequacy of individual Member States' contributions to the Standing Corps is mixed.<sup>580</sup>

Although the deployment of the Standing Corps has supported Member States on tasks related to border and return management, its ability to provide relevant support is hindered by practical, organisational and legal obstacles. These include limited access to national databases, language and communication issues, training quality of SCOs, and command-and-control issues (see sections 6.2.1 and 6.2.8). Such challenges relate to the implementation of the EBCG Regulation and relevant recommendations are provided in section 6.3.

## 6.2.2 RQ2. Deployment in Headquarters

The current limitations set on the deployment of Standing Corps staff to headquarters aim to ensure that the necessary resources are available to support the Agency in implementing its full mandate, while focusing the work of Standing Corps staff on their core tasks (operational activities). The overall management of the Standing Corps remains highly burdensome: some in the Agency question whether the 'up to 4%' statutory staff for supportive or monitoring functions is enough, while others acknowledge that internal processes and procedures may need to be revised to improve efficiency. The Agency has not developed clear concept about the present and future needs for general administrative support, operational support and size of operational activities taking place

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<sup>578</sup> European Commission (2018). 'Proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard'. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:631:FIN>

<sup>579</sup> Survey of MS/SAC authorities: Q10.1: 13/27 (BE, DK, ES, LU, LV, PL, PT, MT, SE, SI, SK and IS, NO).

<sup>580</sup> Survey of MS/SAC authorities: Q10.1: 10/27 (AT, BG, DE, DK, EE, EL, IT, LU, LV, SI).

at the headquarters, vis-à-vis the overall size of the Standing Corps. Such clear view is likely to emerge as a result of the ongoing development of a new structure.

In the meantime, the deployment of some operational staff of the Standing Corps to the Agency's headquarters is justified for certain profiles, on the basis of relevant MB Decisions, providing some operational flexibility. Certain challenges do stem from the lack of recognition of Frontex headquarters as a place of deployment, despite it being the place of employment of Standing Corps staff.

The table below provides an overview of the relevant provisions regulating the deployment of the Standing Corps staff to the Agency's headquarters.

Table 17. Main provisions regulating the deployment of the Standing Corps staff to the Agency's headquarters

**Recital 69 of the EBCG Regulation** provides that statutory staff within the Standing Corps should **primarily be deployed as members of the teams**. It should be possible to recruit only a limited and clearly defined number of statutory staff to perform support functions for the establishment of the Standing Corps at Frontex headquarters.

**Article 54(2) of the EBCG Regulation** provides that Frontex shall deploy members of the Standing Corps as members of the border management teams, migration management support teams and return teams in joint operations, RBIs, return interventions or any other relevant operational activities in the Member States or third countries.

**Article 54(7) of the EBCG Regulation** provides that the Agency may recruit a sufficient number of statutory staff, up to 4% of the total number of the Standing Corps set out in Annex I, for support or monitoring functions for the establishment of the Standing Corps, for the planning and management of its operations, and for the acquisition of the Agency's own equipment.

**Article 54(8) of the EBCG Regulation** provides that the staff referred to in paragraph 7 and the staff responsible for the functioning of the ECU shall not be deployed as members of the teams, but shall nevertheless be counted as Category 1 staff for the purposes of Annex I.

According to the Annex to **Management Board Decisions 27/2021, 8/2022 and 5/2023** on the profiles of the Standing Corps, in principle the operational staff of the Standing Corps should not perform 'tasks in the Agency's headquarters related to the supportive and monitoring functions, planning and management of operations, including for their coordination and centralised reporting. These tasks should be performed by the Agency's headquarters staff reinforced with the 4% operational support staff recruited in accordance with Article 54(7) of the EBCG Regulation'.

Source: 2019 EBCG Regulation; Frontex Management Board Decisions 27/2021 and 8/2022.

The operational staff of the Standing Corps are to be deployed primarily in the field rather than performing tasks related to support or monitoring functions, planning and management of operations, coordination, and centralised reporting at the Agency's headquarters.

When the recruitment of Standing Corps staff was launched in 2020, the Agency had to redistribute its internal resources to manage this administratively complex task, placing additional strain on its resources. This initially created a mix between the support tasks performed by the 4% statutory staff recruited as part of Standing Corps and Frontex's wider staff. In this context it is worth noting that beyond the 4% statutory staff, Frontex has its own staff in a number of Divisions with responsibility for the management of the Standing Corps (including staff in HR, the Deployment Management Division, the



Operational Response Division and others). However, this has gradually improved over time.<sup>581</sup> Some Frontex units still feel that the 4% is too limiting and not sufficient to manage the administratively complex processes linked to Standing Corps planning and management. Others acknowledge that inefficiencies may partly stem from internal processes, which could be streamlined and improved (ensure more efficient planning and deployment, etc.).<sup>582</sup> Until a new structure of Frontex is adopted, and clear understanding about the overall ratio of general administration vs. operational staff, significant internal resources will likely continue to be taken up for administrative tasks, which become increasingly more burdensome as the Standing Corps continues to grow.

Some of this administrative burden stems from processes outside of the Agency's control (processing missions and expenses in the Mission Processing System (MiPS), etc.). In this context, the current discussions within the Agency on streamlining its structure to better integrate the Standing Corps and developing a new command-and-control structure that could lead to more efficient deployment could also improve the administrative needs at headquarters. Further simplifications could be achieved by applying different travel management rules to Standing Corps staff (outside the EU MiPS system), but this decision lies outside the Agency's remit. As such, it remains to be seen whether the 4% will be sufficient for the management of the Standing Corps once internal processes further improve and stabilise.

**The deployment of some operational staff of the Standing Corps to the Agency's headquarters is justified for certain profiles**, provided that the staff are included in the operational plans agreed between the Agency and the Member States concerned, and perform the tasks listed in the Annex to Management Board Decisions 27/2021, 8/2022 and 5/2023. The profiles in question included Debriefing Officers, Cross-Border Crime Detection Officers, Frontex Tactical Support Officers, ALDOs, Return Specialists, FRESOs, and Information Officers (to perform multi-purpose aerial surveillance).<sup>583</sup> This is seen as key for certain types of activities, as some operational tasks need to be performed by uniformed staff with specific tasks and permissions, such as the use of weapons.<sup>584</sup> Additionally, some operational activities (such as JO TERRA, FP Air and Coordination Points, Seaports, Montenegro Sea and Albania Sea, Opal Coast and MMO) required SCOs to be available at headquarters to support the chain of command and ensure effective coordination and reporting.<sup>585</sup> Similarly, Frontex underlined the importance of Standing Corps staff conducting maritime and air surveillance at the Agency's headquarters to inform operations. Without these staff, the Agency would struggle to carry out 24/7 surveillance.<sup>586</sup> The adaptation via Management Board Decisions has been helpful in ensuring that sufficient operational staff are available for key tasks, including in headquarters.

Despite not being recognised as a place of deployment, the Agency's headquarters in Warsaw is the place of employment for Frontex's statutory staff, creating administrative challenges. The division between statutory staff employed at the headquarters and statutory staff deployed in operations is reflected in the employment contracts of Frontex staff. Frontex staff are divided into two categories: Category A1 includes staff working at

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<sup>581</sup> Interviews with Frontex (2).

<sup>582</sup> Interviews with Frontex (3).

<sup>583</sup> Frontex (2022). 'Final Audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'.

<sup>584</sup> Interviews with Frontex; Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

<sup>585</sup> Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

<sup>586</sup> Interview with Frontex.

headquarters, while Category A2 refers to ‘deployed staff’ (the Standing Corps).<sup>587</sup> However, both categories of Standing Corps staff have Warsaw as their place of employment. The current set-up entails several practical and administrative challenges, including significant workload to process long-term missions and claims for rent, accommodation, and reimbursement.<sup>588</sup> For instance, because Standing Corps staff are officially employed in Warsaw but do not reside there or in their deployment location, they are unable to obtain vehicle licence plates.

### 6.2.3 RQ3: Relevance of the reserve for rapid reaction

**The reserve for rapid reaction (Category 4 Standing Corps) has not (yet) been relevant to supporting Member States with border management tasks as no Category 4 staff were deployed in 2021<sup>589</sup> or 2022.<sup>590</sup>** Annex I to the EBCG Regulation foresees phasing out this reserve, with Category 4 no longer containing any Standing Corps staff from 2025.

Articles 54 and 58 of the EBCG Regulation foresee that a reserve for rapid reaction (Category 4), formed of staff from the Member States, is ready to be deployed ‘in the event that other categories of operational staff are fully deployed for a rapid border intervention’. According to the Regulation, Category 4 represents a reserve made available to EU Member States for rapid border management during crisis situations. The Agency deploys Category 4 staff to assist Member States in circumstances requiring increased operational assistance, when Member States are facing ‘specific and disproportionate challenges’ at their borders.<sup>591</sup>

During the review period, in cases where RBI were needed, the deployment of Category 4 was not deemed necessary, as resources from other categories (especially Category 3) were available and sufficient to cover the needs. For example, following increased tensions at the border between Lithuania and Belarus, the Agency launched RBI Lithuania in 2021. The intervention lasted from mid-July until the end of November 2021. Lithuania received support primarily via the activation of Category 3 staff, that is, via short-term deployments, rather than Category 4. The Regulation already allows for the redeployment of available members of the Standing Corps or deployment of additional staff (Article 57) in case of launching an RBI.<sup>592</sup> Similarly, Category 4 staff were not deployed in response to the mass influx of persons arriving from Ukraine in the wake of Russia’s full-scale invasion of Ukraine in February 2022. Nevertheless, it should be kept in mind that 2021/2022 RBI took place in the post-COVID 19 period of generally low levels of irregular migration pressure, when deployment needs for other categories of SC were quite low. Under certain scenarios of continuously high levels of irregular migration, the needs for such reserve could be plausible. Several Member States, nevertheless were of the opinion that Category 4 may no longer be relevant.<sup>593</sup>

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<sup>587</sup> Frontex (2022). ‘Final Audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency’, pp. 31-32.

<sup>588</sup> Interviews with Frontex.

<sup>589</sup> Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021, p. 10.

<sup>590</sup> Frontex (2023). ‘Annual Implementation Report 2022’, p. 9.

<sup>591</sup> Frontex (2021). ‘Single Programming Document 2021-2023’, p.11.

<sup>592</sup> Frontex (2023). ‘Annual Implementation Report 2022’, p. 9.

<sup>593</sup> Interviews with MS/SAC national authorities: 2//27 (FR, SE); survey of MS/SAC authorities: 4/27 (CZ, DE, MT, SE).

## 6.2.4 RQ4. National authorities contributing to the Standing Corps

**The 2019 EBCG Regulation stipulates that the EBCG is constituted by the national authorities of Member States responsible for border management (Article 4).** These include the national authorities responsible for border management, including coast guards, where relevant, and the national authorities responsible for returns (Preamble, 12).

**The review has identified three main groups of national authorities that contribute to the Standing Corps: law enforcement and border management, defence authorities, and authorities with other duties.** Most of the Standing Corps (97%) are seconded (Category 2) or nominated (Category 3) by national authorities with law enforcement and border management duties. These include: police authorities, border and coast guard, as well as migration, integration, return management, and customs. A minority of the Standing Corps is nominated or seconded by defence authorities (1.8%), including the French and Portuguese Navy, the Armed Forces of Malta and the Defence Command of Denmark, or by other authorities (0.2%), such as the General Inspectorate of Aviation within the Ministry of Interior (Romania) or the Prison and Probation Service, responsible for returns.

The data do not always allow an assessment of whether the national police services providing officers belong specifically to border guard directorates, or other police units. This assessment is only possible for some countries. For Category 2, for example, Germany relies almost entirely on the federal police, but for Category 3 it includes 16 other regional/local police forces, as well as customs and criminal police. Such extensive reliance on local police forces is also visible from the data in other Member States (Latvia, Greece, France), and is likely the case elsewhere as well, where police forces have mixed powers, including border management.

## 6.2.5 RQ5. Number, composition of Standing Corps and operational needs

**The number, composition and geographical distribution of the Standing Corps meets the Agency's operational needs only to some extent.** With the increase of irregular migration in 2022, delays in recruitment of Category 1 staff and increased numbers of joint operations, operational needs have not been fully met. Member States reported gaps and deficiencies in certain profiles, such as dog handlers and ALDOs.

In terms of the number of Standing Corps Officers (SCOs), by 2027 the Standing Corps is to comprise 10,000 officers, including 3,000 Category 1 SCOs. The other 7,000 SCOs will be seconded from the Member States (1,500 from Category 2; 5,500 from Category 3). According to the 2018 Proposal for a new Regulation of the EBCG, the decision on the final number (10,000) was based on indications of engagement, calculated based on the number of Standing Corps registered in the Agency's OPERA system at the time (7,000), the number of border guards nominated for the Rapid Reaction Pool (1,500) and the number of three pools (return profiles) set up by the MB (1,500). In 2015, when the pressure from irregular migration at the EU's external borders increased, the Agency's operational needs for supporting Member States quadrupled: in 2015, the operations required the deployment of 52,359 man/days, compared to 189,795 man/days in 2017.<sup>594</sup>

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<sup>594</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n° 98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council. A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, COM/2018/631 final.

In 2020, a task force for deployment management was set up to ensure the full operationalisation of the Standing Corps. Following an information campaign for the recruitment of the first candidates to the EBCG, 495 officers were recruited, trained, and equipped during 2020, and a reserve list for appointments was established for 2021. Table 18 provides an overview of the planned and actual number of officers recruited, by category. Although the difference between the actual number of SCOs recruited, nominated and seconded is higher than the EBCG targets, there is a difference in the capability for the different categories. While the Agency has met the targets of officers deployed for Category 4 and exceeded the targets for Category 3, the targets for Categories 1 and 2 were not met in 2021 or 2022 (see sections 6.2.7, 6.2.8, 6.2.9).

Article 37(1) of the EBCG Regulation provides that as part of a request for a joint operation, a Member State may indicate the profiles of operational staff needed. In practice, the Agency provides the resources available, as part of the annual bilateral negotiations (Preamble 62) and the ongoing capacity with the recruitment of Category 1. The Capability Roadmap development process (Preamble 74) has yet to be completed, complicating Frontex’s assessment of its actual capacity needs.

Table 18. Target and actual numbers of Standing Corps, by category and year

Year	Category	EBCG target	Actual total	Percentage difference
2021	Total all categories	6,500	10,121	+55.7%
	1	1,000	495	-50.5%
	2	400	374	-6.5%
	3	3,600	7,752	+115.3%
	4	1,500	1,500	0%
2022	Total all categories	6,500	10,460	+60.9%
	1	1,000	678	-47.5%
	2	500	459	-8.2%
	3	3,500	7,823	+123.5%
	4	1,500	1,500	0%

Source: ICF, based on Frontex data, CAAR.

In terms of the composition of Standing Corps’ categories, Member States reported gaps and deficiencies in certain profiles, such as dog handlers and ALDOs. Table 19 provides an overview of coverage rate of Frontex’s needs for each profile in the Standing Corps, measured as the ratio of the availability of the various profiles over the identified needs,<sup>595</sup> by category, for 2021 and 2022. The gaps identified for profiles such as dog handler and Forced Return Escort and Support Officer (FRESO) are evident. Overall, a significant improvement in the coverage of needs of Category 3 Standing Corps (+24%) corresponds with a slight decrease in coverage of Categories 1 and 2 (-12%). The net total coverage

<sup>595</sup> Both needs and availability are expressed in total deployment periods. As such, Category 1-2 should foreseeably be available for a total of 13 deployment periods per operational year, while Category 3 should be available for four deployment periods. The three columns on the right compute the percentage point (pp) change in coverage from 2021 to 2022. The coverage rate is not capped at 100%, highlighting where there is an overabundance of availability for certain profiles. This also implies that a decrease in coverage from 2021 to 2022 might be a sign of better planning and more accurate alignment with Frontex’s needs.

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rate is negative (-18%), because while both needs and availability increased between the two operating years, the needs increased more than the available profiles.<sup>596</sup>

Table 19. Coverage of Frontex's needs of Standing Corps (in deployment periods), by profile and category, 2021 and 2022

Profile	Coverage rate 2021			Coverage rate 2022			Change in coverage (% change)		
	Cat. 1-2	Cat. 3	Total	Cat. 1-2	Cat. 3	Total	Cat. 1-2	Cat. 3	Total
Advanced Level Document Officer (ALDO)	106%	139%	119%	57%	103%	68%	-49%	-36%	-51%
Border Guard Officer (BGO)	104%	80%	90%	99%	52%	71%	-5%	-28%	-19%
Coast Guard Function Officer	124%	208%	134%	188%		194%	65%		60%
Cross-border Crime Detection Officer	99%	164%	110%	81%	56%	72%	-18%	-108%	-38%
Debriefing Officer	83%	103%	91%	80%	168%	95%	-3%	64%	4%
Dog handler		50%	50%		31%	31%		-19%	-19%
FRESO	140%	125%	133%	72%	61%	69%	-67%	-65%	-64%
Frontex Tactical Support Officer (FTSO)	90%	73%	82%	100%	148%	106%	10%	75%	25%
Information Officer	80%	83%	81%	103%	99%	102%	24%	16%	21%
Motor Vehicle Crime Detection Officer	128%	87%	111%	91%	59%	81%	-37%	-28%	-30%
Return Specialist	79%	205%	96%	104%	73%	95%	25%	-132%	-2%
Total	101%	42%	96%	89%	67%	79%	-12%	24%	-18%

Source: ICF, based on Frontex data, CAAR.

Table 20 reports the number of Standing Corps, by profile, nominated vs needed<sup>597</sup> by Frontex. There are significant gaps in the availability of certain profiles. Some of these gaps are due to the fact that Member States struggle to provide the Agency with SCOs that fit the profiles requested (see section 6.2.9). There are increasing gaps between the availability and need for ALDOs and Return Escorts, while support profiles seem to have increased between 2021 and 2022.

<sup>596</sup> Frontex data report a 31% increase in total needs and a 15% increase in total available resources.

<sup>597</sup> Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021.

Table 20. Overview of number of Standing Corps, by profile, December 2021 and 2022

Profile	% needs fulfilled in 2021	% needs fulfilled in 2022
ALDO	96%	64%
BGO	72%	59%
Crew member		100%
Coast Guard Function Officer	100%	
Cross-border Crime Detection Officer	89%	66%
Debriefing Officer	375%	87%
Dog handler	43%	24%
FRESO	55%	51%
FTSO	79%	99%
Information Officer	78%	93%
Motor Vehicle Crime Detection Officer	94%	77%
Return Specialist	74%	90%

Source: ICF, based on Frontex Annual Implementation Report 2021.

## 6.2.6 RQ6. Effectiveness of recruitment and training

Despite the significant delays caused by the COVID-19 pandemic, Frontex has been effective in **recruiting** Standing Corps Category 1. However, there is an imbalance in the distribution of nationalities within Standing Corps Category 1, which **affects geographical representation**.

The content of Standing Corps Category 1 **training** is relevant to their future tasks. However, although the recent external evaluation of the training found that new recruits consider themselves ready to perform their tasks, national authorities expressed concerns about the **level of professionalism**, primarily because some of the recruits lack previous law enforcement experience. Other issues that affect the Agency's ability to efficiently deliver training courses include the shortage of trainers and reliance on national training facilities.

The challenges discussed in this section relates to the implementation of the EBCG and relevant recommendations are provided in section 6.3.

### Effectiveness of the recruitment of Category 1 staff

Standing Corps Category 1 include statutory staff deployed as members of the team in operational areas, as well as staff responsible for the functioning of the European Travel Information and Authorisation System (ETIAS) Central Unit (ECU).<sup>598</sup> As per the Annex to the EBCG Regulation, the Standing Corps is intended to have a capacity of up to 10,000 operational staff. Management Board Decision 17/2021 set a target of 700 operational staff of Category 1 SCOs for 2022.

<sup>598</sup> Article 54(1) EBCG Regulation.

The number of Category 1 SCOs increased from 595 in 2021 to 963 in 2022.<sup>599</sup> Together with the 4% of recruited staff for support and monitoring functions (as per Article 54(7) of the EBCG Regulation),<sup>600</sup> by 2022 Frontex was able to meet the 1,000 target established in Annex 1 to the EBCG Regulation, despite some initial delays.

Indeed, the establishment of the Standing Corps required an unprecedented scale of staff recruitment and management, which was significantly impacted by the COVID-19 pandemic. As deployed staff may exercise executive powers, Frontex set out a differentiated pre-employment medical examination – a first for an EU institution or body.<sup>601</sup> Based on the volume and complexity of the Standing Corps' selection procedures, the time to fill a post typically takes between two and three months, for a simple procedure from an established reserve list with no notice period, to 12+ months for the complete recruitment procedure. Overall, the analysis found that the recruitment procedure was challenging, given the impact of the COVID-19 pandemic and the scale of the recruitment.<sup>602</sup>

Most Category 1 staff are satisfied with the different aspects of the recruitment and induction procedures, including the submission of their application, physical test, medical check, and clarity of the employment offer.<sup>603</sup>

When it comes to the **geographical balance** of the Standing Corps Category 1 recruits, the current workforce does not represent an EU-wide border uniformed service, nor does it reflect the diverse national backgrounds and working cultures of all Member States and SACs.

Figure 6 shows that Standing Corps staff from Greece, Romania, Portugal, Spain and Poland account for approximately 74% of all staff.

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<sup>599</sup> Frontex (2022). 'Annual Implementation Report'; Frontex (2023). 'Consolidated Annual Activity Report 2022'.

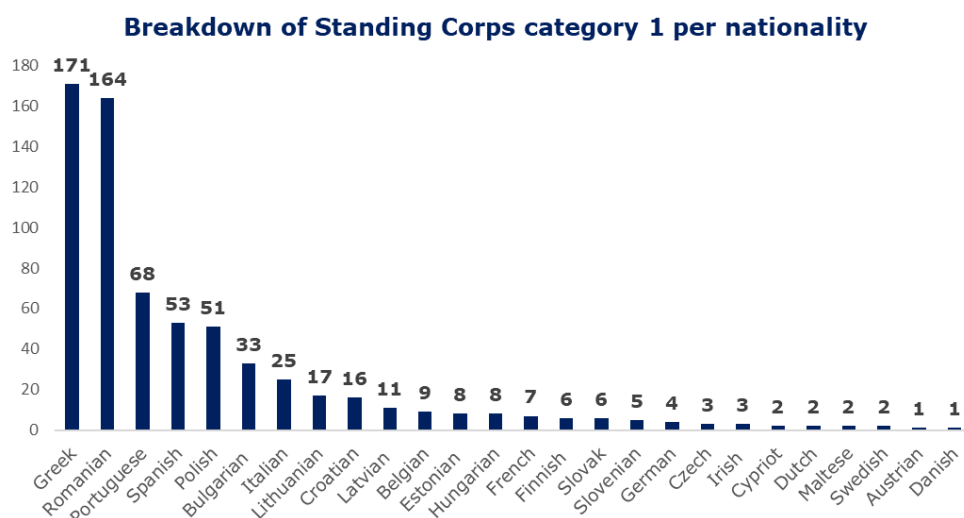
<sup>600</sup> 107 Standing Corps were involved in non-operational tasks at the Agency's headquarters in May 2022; Frontex (2022). 'Final audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'.

<sup>601</sup> Frontex (2022). 'Final audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'.

<sup>602</sup> Interviews with EU agencies (2 of 8) and Frontex.

<sup>603</sup> Survey of Standing Corps Category 1 (Q11): very satisfied or satisfied with: submission of application (86%), information on the recruitment process (63%), physical test (57%), medical check (69%), clarity of the employment offer (63%), and timing of the recruitment process (51%).

Figure 6. Breakdown of Standing Corps Category 1, by nationality



Source: ICF, based on Frontex Annual Implementation Report 2022.

There are several reasons why Standing Corps Category 1 is heavily weighted towards personnel from five Member States.

Firstly, neither the EBCG Regulation nor Management Board Decision 17/2021 introduce compulsory quotas for the recruitment of Category 1 statutory staff from Member States and SACs. Secondly, there are multiple challenges in attracting statutory staff, stemming from less favourable working conditions compared to national salaries and conditions, as well as family considerations.<sup>604</sup>

Thirdly, the national framework of most Member States does not allow the Standing Corps to remain part of its national forces when deployed. In some Member States, the Standing Corps need to leave the service and then reapply on their return, while in others, they must leave the service altogether. The implications may include the loss of benefits and a break in service, which can be detrimental to career development and progression. Of the Standing Corps Category 1 staff with previous law enforcement experience, around 93% reported having resigned from their previous employer or taking a long period of unpaid leave.<sup>605</sup>

The primary reasons for joining Standing Corps Category 1 staff include career ambition (65%), job satisfaction (63%) and salary (57%). The online survey suggests that recruits' profiles are overwhelmingly male, with an age range between 40 and 49.<sup>606</sup> Additionally, 13 of the 27 Member States reported that the recruitment of Category 1 staff does not ensure professionalism and geographical balance.<sup>607</sup>

### Delivery of high-quality training for Category 1 staff

Following their recruitment, Frontex statutory staff to be deployed must undergo necessary border guard or return-related training, including on fundamental rights, taking into account their previous qualifications and professional experience.<sup>608</sup> More specifically,

<sup>604</sup> Interviews with Frontex (2) and Member States: 6/27 (AT, DK, ES, FR, LU and NO).

<sup>605</sup> Survey of the Standing Corps, Q16.

<sup>606</sup> Survey of the Standing Corps, Q20.

<sup>607</sup> Survey of Member States: Q10.1(5); by contrast, 4/27 national authorities agreed that the recruitment of Standing Corps Category 1 ensures professionalism and geographical balance, while 5/27 preferred not to answer, and another 5/27 neither agreed nor disagreed.

<sup>608</sup> Article 55(2)(3) and Article 62(2)(6) EBCG Regulation.



the Agency has the mandate to provide the members of the Standing Corps with specialised training relevant to their tasks and powers. Between 2020 and 2022, most targets for training activities were met (see Annex 6).

The recent external evaluation of the Extended Basic Training Programme (EBTP) found the content of the training to be highly relevant to the needs and expectations of the Agency, Member States and trainees, as well as coherent with the EBCG Regulation.<sup>609</sup>

However, the evaluation of the EBTP took place before the programme was completed and thus could not fully assess its effectiveness.<sup>610</sup> Assessing its impact on the Standing Corps' ability to effectively perform field tasks remains challenging and relies on surveys and interviews with Standing Corps Category 1 staff and national authorities. In addition, during the initial phase of the one-year EBTP training, relevant national authorities (excluding those with the experiential learning phase) only had experiences from the iterations of the six-months Basic Training Programme (BTP) deployed. Consequently, it can be challenging for national authorities to determine whether the deployed Standing Corps have been trained through the BTP or the EBTP.

The majority of Standing Corps Category 1 staff reported that the training was effective in preparing them to perform specific tasks, such as border checks and border surveillance-related tasks, including refusal of entry, authorisation of entry, and patrolling.

However, several **national authorities reported that Standing Corps Category 1 staff are not sufficiently experienced at the time of their deployment.**<sup>611</sup> They noted that Category 1 staff need additional training, particularly those without a law enforcement background.

Although the duration of the EBTP was considered adequate, there were some concerns for learners without a previous law enforcement background.<sup>612</sup> The EBTP primarily targeted an audience without a law enforcement background, although the trainees also included learners with an extensive law enforcement background (who, conversely, considered the training overly long).

Despite the EBTP incorporating an experiential learning phase, participants expressed the need for a greater number of practical exercises to enhance their preparedness.<sup>613</sup> Although the EBTP is intended to be as practice-oriented as possible, its implementation did not always allow practical training methods to be carried out, due to the shortage of trainers, initial COVID-19 restrictions, and limited availability of equipment or training facilities such as mock-ups and operational databases in English.

Significantly, other factors also affected the Agency's ability to effectively deliver the training programme to Standing Corps Category 1. Firstly, the **limited availability of**

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<sup>609</sup> ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'. The final report reported the assessment of the relevance, coherence, effectiveness and impact, and efficiency of the EBTP.

<sup>610</sup> ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'.

<sup>611</sup> Field visits to EL, RO; interviews with MS/SAC national authorities: 7/27 (DK, FR, LV, PL, RO, SI and CH); survey of MS/SAC national authorities: 3/27 (EL, FR, SI).

<sup>612</sup> ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'; MS/SAC survey of national authorities: Q10.1: 10/27 agreed that 'the length of the training is adequate', while 14/27 neither agreed nor disagreed; interviews with MS/SAC national authorities: 2/27.

<sup>613</sup> ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'.

**trainers** had a negative impact on the running of the EBTP (and the earlier BTP).<sup>614</sup> Frontex encountered difficulties in attracting highly qualified trainers due to the lack of financial compensation and limited availability among trainers from Member States. The lack of a pool of trainers resulted in frequent schedule changes and occasionally in a lack of continuity and coherence during the running of the EBTP.<sup>615</sup> Currently, there is no trainer profile among Standing Corps staff.

Secondly, the Agency faced difficulties in securing **training centres** to deliver the training because of its long duration and the relatively high number of learners involved. Although the EBCG Regulation allows for the establishment of an Agency training centre, subject to approval from the MB, Frontex currently relies on applications from Member States' training facilities willing to host the training. This reliance raises concerns about the long-term assurance of training availability, as well as broader questions about overall training needs within the Agency (see section 4.1.7)

Thirdly, there was a lack of **sufficient administrative support within the Agency** to deliver all the work that the training activities required.<sup>616</sup> The establishment of training for Standing Corps Category 1 required a new organisational structure, introducing various roles such as a training commander, module coordinators, and monitors. Recently, Frontex has taken steps to re-establish the balance between workload and staffing in all Agency activities and entities.<sup>617</sup>

### 6.2.7 RQ7. Effectiveness of deployment of Standing Corps Category 1

**The deployment of Category 1 SCOs has been only somewhat effective.** Although consulted Member States noted an overall added value in the deployment of Category 1 SCOs to joint operations and other operational activities, several factors hindered their effectiveness, including: lack of desired profiles; inability of Category 1 SCOs to perform certain tasks; issues related to communication and language; issues related to command-and-control reporting lines, and logistical and procedural challenges (carrying weapons, uniforms, etc.).

#### **Lack of profiles and mismatch between officers' skills and their deployment tasks**

The Standing Corps contains different profiles corresponding to the various tasks and activities associated with the protection of external borders, border surveillance and border checks. As highlighted in RQ5, Member States reported gaps and deficiencies in certain profiles, especially technical profiles. Several Member States<sup>618</sup> reported challenges in Category 1 in meeting the needs for technical and specialised tasks.

There are some inefficiencies in the selection of the Category 1 SCOs to be deployed, as well as some concerns about their background skills and competences. The deployment team at Frontex does not have access to the complete list of background files for each officer. Reasons given include data protection and confidentiality rules, as well as the procedures for assigning specific officers to missions. As a result, there are cases where officers are deployed to take on tasks that are not aligned with their professional

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<sup>614</sup> Field visits to FI, RO; interviews with Frontex and MS/SAC national authorities: 2/27 (LU, SI); Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'; ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'.

<sup>615</sup> ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'.

<sup>616</sup> Interviews with Frontex and Member States: 2/27.

<sup>617</sup> Frontex (2022). 'Roadmap: Implementation of Regulation 2019/1896'.

<sup>618</sup> Interviews with Member States/SAC: CZ, DK, FI, SE, SK and CH.

background. According to several Category 1 SCOs interviewed and representatives of Member States, the statutory staff deployed often have different skills from those needed in the field. The officers interviewed during the field visits in Bulgaria, Greece and Italy highlighted this concern, with both Standing Corps and national officers expressing dissatisfaction with how deployments are decided. For example, an officer with a background in maritime security was deployed as a return escort, suggesting that his professional background was not utilised during his deployment. The SCOs surveyed believe that their level of competence and/or skill did not match the required tasks because their previous experience is not utilised, they are assigned to tasks never previously performed and thus require continuous training. They also noted that more training is needed for practical cases and scenarios.<sup>619</sup>

### **Difficulties in performing duties and tasks**

Another limiting factor is that Category 1 SCOs are unable to perform certain tasks. One of the main challenges for the effective deployment of the Standing Corps is the lack of clarity and sufficient degree of specific powers and rules in the EBCG Regulation, including obligations related to executive powers, use of lethal force and carrying firearms. Different Member States have different legislation dealing with the powers and treatment of officers/vehicles with law enforcement status. Several Member States reported that their insufficient law enforcement powers mean that Standing Corps can provide only limited support to the local authorities. The lack of (initial) familiarity with the specific procedures of the host country seems to further limit their contribution, though this is likely to improve over time.<sup>620</sup>

SCOs comply with the EU Staff Regulation, which is not designed for a uniformed executive force. This limits the duties and tasks officers can perform (for example, Category 1 cannot work night shifts). Results from the Romanian case study highlight specific procedural rules that Category 1 must follow, such as refuelling patrol cars only in Frontex-approved petrol stations, which create inefficiencies. The lack of a command-and-control structure and clear reporting lines also contribute to operational inefficiencies.

The Standing Corps has no access to national databases in the majority of the Member States, nor direct access to the Schengen Information System (SIS) for the period evaluated (a technical interface with the SIS II is being developed by Frontex). The Standing Corps' inability to access relevant databases, including national databases hinders their ability to provide relevant support in carrying out first-line border checks and related tasks.<sup>621</sup>

The limited English-speaking staff at local level in Member States means that deployed SCOs cannot effectively carry out their duties unless paired with English-speaking local officers. A related point concerns the language barrier. In some contexts, such as the Eastern border, knowledge of Russian or Ukrainian is a useful skill; however, the deployment does not systematically reflect SCOs' language knowledge. This is frustrating both for national officers, who cannot rely on the Standing Corps for border duties, and for those excluded from these tasks.<sup>622</sup>

### **Logistical and practical challenges and obstacles to the effective performance of duties and tasks**

Logistical concerns were reported as obstacles in the efficient implementation of duties, including carrying weapons and appropriate winter uniforms. During 2022, the Agency's

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<sup>619</sup> Survey of Standing Corps: Q14.

<sup>620</sup> Interviews with MS: LV, PL.

<sup>621</sup> Interviews with Category 1, 2, 3 Standing Corps.

<sup>622</sup> Interviews with MS/SAC authorities: EL, LV, PL.

own weapons were purchased, and Category 1 SCOs were deployed as border guard officers with weapons to perform border surveillance tasks. Category 1 SCOs must collect their weapons at Frontex headquarters in Warsaw and then can travel only on the day of deployment, and not the day before, for example. This is mostly a logistical issue, and a suggested solution by Member States and Frontex is to have a logistics hub to store these weapons or a separate Memorandum of Understanding (MoU) with Member State authorities to allow such storage.

All Category 1 SCOs received full-service uniforms, and 250 were also equipped with protective glasses, flashlights, tactical belts, gloves and multitool kits. In addition, the officers deployed with weapons received bulletproof vests and helmets.<sup>623</sup> However, lack of appropriate uniforms for winter conditions were reported by the Baltic States, including during the RBI in Lithuania.

Finally, one of the issues identified during the field visits concerns the length of deployment. Generally, frequent movement (less than one year) and changes of deployed SCOs are seen by Member States as less valuable. Time is needed to build trust with the hosting authority and for the SCO to learn local specifics. Some Member States commented that the longer the deployment period, the higher the added value of SCOs.<sup>624</sup>

### 6.2.8 RQ8: Effectiveness of deployment of Standing Corps Categories 2 and 3

**The Agency has been effective in deploying Categories 2 and 3 Standing Corps, based on the very positive feedback from Member State authorities.** The added value of both categories is based on their level of preparation and competences. Member States are satisfied with the experience of SCOs from both categories. As a consequence, national authorities value their background, professionalism and operational support.

Category 2 refers to operational staff seconded from Member States to the Agency for a longer term period of 24 months, in accordance with Article 56. Category 3 refers to operational staff for short-term deployments, in accordance with Article 57. By 30 June of each year, Member States contribute to Category 3 by nominating border guards and other relevant staff to the preliminary national list of available operational staff for short-term deployments.

For Category 2, alongside their experience, the length of deployment is particularly valued by the national authorities who receive them. For Category 3, Member States consider these officers useful to fill gaps in busy or intense periods, such as during holiday periods, sport tournaments, etc. There is some agreement that the deployment periods should be longer for both Category 1 and Category 2. At the same time, the length of deployment was quoted by some Member States as a factor that negatively impacts on their ability to recruit staff to deploy as Category 2. This seems to be influenced by work-life balance concerns, with remuneration not providing a sufficient incentive.

The length of deployment was noted as an issue in the context of participation in joint operations, in particular. The shortcoming of limiting deployment to one year, however, is that by the time an SCO is familiar with the hosting State's procedure, they must leave, making the deployment less efficient. The Agency recognises that the current deployment system is not efficient and is considering improvements, such as deploying teams rather than individuals. This will be developed as part of the work on the definition of chain-of-command structures.

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<sup>623</sup> Frontex (2023). 'Consolidated Annual Activity Report 2022'.

<sup>624</sup> Interviews site visits: BG, EL.

In terms of salary, Article 61(2) of the EBCG Regulation states that the reference amount shall be equivalent to the annual basic salary for a contract agent in function group III, grade 8, step 1, as set out in Article 93 of the Conditions of Employment, and subject to a correction coefficient applicable in the Member State concerned.

Category 2 SCOs (long-term secondment from national services) would benefit from alignment with Seconded National Experts. They should also be eligible for leadership functions in the Standing Corps.

### 6.2.9 RQ9. Size of Member States' contributions

**The size of individual Member States' contributions to the Standing Corps appears largely adequate to meet the objectives of the EBCG Regulation**, namely the development and implementation of a system for the integrated management of the external borders and for ensuring the functioning of the Schengen area. **The Agency has been able to answer all the requests for assistance by Member States, suggesting that overall contributions are adequate to meet the objectives.** Where needs have not been met, this is due to the type, rather than size, of contributions (see section 6.2.5). The latter should be tailored and adapted to deployment needs. The non-activation of the Category 4 reserve to date indicates that the available resources in Categories 1, 2 and 3 have been sufficient to meet the needs.

#### ***Adequacy of contributions***

The question of adequacy of Member States' contributions to the Standing Corps is closely linked to the broader question of the adequacy of the overall size of the Standing Corps. Therefore, the present section discusses both questions. Firstly, it examines the issue of the adequacy of the overall size of the Standing Corps, and then it assesses the extent to which the (foreseen) individual contributions of the Member States to the Standing Corps are adequate.

#### *Overall size of the Standing Corps*

To ensure the effective implementation of integrated border management at the EU's external borders and address the inefficiencies of the pooling mechanism prior to 2019<sup>625</sup> (see 6.2.1), the 2019 EBCG Regulation established the size of Member States' contributions to each category of the Standing Corps (Annexes I-IV). The Regulation sets national annual quotas for each Member State for the Standing Corps (Annexes I-IV). The quotas establish the number of contributions for Category 2, long-term secondment, and short-term deployment (Annex IV). Based on the Commission's Proposal (2018), the total size of the Standing Corps was established based on analysis of the capabilities and activities under the previous pooling mechanism.<sup>626</sup> It was not possible to ascertain how such an analysis was carried out, and how the overall number of 10 000 SC was fixed. Overall, the answers received indicated that it was a political, rather than an evidence or needs based decision.

Determining the overall size of a border force is subject to numerous factors and criteria, the most important ones being: the type of border (maritime, sea, air), the geographic specifics of the border area to be protected / managed (e.g., wooded vs. open areas,

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<sup>625</sup> For operational support to frontline Member States under regular joint operations – the most common type – the Agency relied entirely on the voluntary pooling of Member States' human and technical resources; Proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard, 2018.

<sup>626</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action No 98/700/JHA, Regulation (EU) No 1052/2013 of the European Parliament and of the Council and Regulation (EU) No 2016/1624 of the European Parliament and of the Council; A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018.

proximity of third country islands / coast); the surveillance technologies and systems used in the border management, the border overall infrastructure (e.g. availability and quality of roads in the border area / the of relevant port infrastructure / berths in proximity to high-risk areas), and last but not least the risks of irregular migration. The specifics of all these factors at each border section is dynamic and it is continuously analysed by Member States' authorities.

At the EU level, the process of assessing and determining the optimal size of the Standing Corps would entail a complex analysis, bringing together various types of analyses and sources of information, including of national capability development plans, data collected in the context of vulnerability assessments, risk analyses. So, far delays in the production of some Member States' capability development plans, and the Capability Roadmap have delayed the assessment of the actual needs and plans for both equipment and human resources at the external EU borders. As no such analysis has been developed so far by Frontex, any opinions to the question about the adequacy of the overall size of the Standing Corps, were largely based on subjective opinions, or were based on the fact that requests for JOs by MS have been addressed by Frontex (see section 4.1.4). The case studies, on the other hand showed that in the process of agreeing on the level of involvement by Frontex in Jos does not necessarily reflect actual needs for several reasons: First, because Member States are well aware of the Standing Corps resource constraints and therefore their requests already take into account what realistically can be provided. Secondly, the requests for support by Frontex, and the level of such support also involve a political decision, which may consider other factors.<sup>627</sup>

#### *Adequacy of Member States' contributions*

In the survey such opinion was shared by half of the responding<sup>628</sup> Member States who agree that the size of individual contributions to the standing corps is adequate to meet the objectives of the EBCG Regulation, as shown in the figure below.<sup>629</sup>

Focusing exclusively on the views of Member States, while half of the responding member states find the size of the contributions adequate, a minority of respondents disagree with this conclusion.<sup>630</sup> Accordingly, the size of the Standing Corps should be determined by 'the real needs' for deployment, rather than vice versa, i.e., the number of officers deployed being determined by the number available for deployment.

The actual needs of Member States are not fully understood by the Agency for a number of reasons. Firstly, not all national capability development plans, nor the capability roadmap have been finalised, meaning the understanding of capability needs is still limited and cannot be used as a basis for negotiating the size of the deployment in joint operations planning. Rather, the size of the deployments agreed are largely political, or driven by other practical limitations (such as the host capacity). The site visits confirmed that the size of deployments was not based on a bottom-up approach (identifying the needs of certain border sections, based on the needs expressed by local or regional commanders). Instead, the process was typically initiated by the Agency, by sharing their possible contribution and the Member State then agreeing to host a certain number of SCOs, following a political decision. In some cases, the respondents believed that the Agency was willing to deploy more personnel than requested.<sup>631</sup>

For Category 2 Standing Corps, there were no differences between the numbers planned and those committed. In Category 3, there were non-material discrepancies, with the

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<sup>627</sup> Interviews at Frontex, Case Study Interviews at EL, BG.

<sup>628</sup> Please note that there was a total of 22 answers to this question.

<sup>629</sup> Survey of MS/SAC authorities, Q 10.1, 11/27 MS/SAC (AU, CZ, DE, LS, GR, IT, LT, LV, RO, PT, SE)

<sup>630</sup> Survey of MS/SAC authorities, Q10.1, 62 MS/SAC (BE, BG, ES, LU, MT, SL, IS, NO).

<sup>631</sup> Interviews during site visits to EL, RO.

exception of Italy, whose contribution was 17% (53) lower than planned. Where the Standing Corps was unable to fully support Member States in managing the EU’s external border, the problem was not the number of Standing Corps available, but their individual and team skills and capacities (see section 6.2.1), as well as implementation challenges, such as logistics (see sections 6.2.5, 6.2.8).

For less urgent requests, in a small minority of cases, Member States expressed the wish to rely on additional staff in peak periods (for example, during summits or sport events), where staff leave causes shortages, or to strengthen their current capacity.<sup>632</sup> Overall, challenges related to meeting the EBCG Regulation’s objectives and Member States’ needs do not appear to be related to the number of Standing Corps available (the size of national contributions set by the Regulation), but, rather, to their individual profiles and skills (see sections 6.2.1, 6.2.10) and to the effectiveness of deployment (see section 6.2.8).

### **Proportionality of contributions**

There are different ways in which one can assess if the present Member States’ contributions to the Standing Corps are ‘adequate’ or well justified. The present analysis uses two criteria, either of which can be considered a valid and fair way to determine the size of the Member States’s contribution to the Standing Corps. The first criteria is the share of Member States’ territory relatively to the total territory of all Frontex countries. The second criteria is the share of the Member States’ population relatively to the total population of all Frontex countries.<sup>633</sup> These two criteria are then compared to (1) the share of the Member States’ contributions to Category 2 and Category 3 Standing Corps (as determined in Annex 1 of the Regulation), and (2) the share of the actual Member States’ contribution to the Standing Corps’ deployment in 2021 for both Category 2 and Category 3 officers (expressed in man-days). Table 21 below shows these comparisons. We have highlighted in pink the Member States (HR, DK, HU, LV, RO), which contribute more than both their share of the population and territorial size, and in green those Member States (ES, FR) which contribute significantly less than their share of population / territory. We have only highlighted the cases, where the deviations are more than 1%. For instance, Austria has 1.9% of the territory and 2.1% of the total population of all Frontex countries, and in 2021 contributed 2.9% of all man days in deployment. Because there is less than 1% ‘over-contribution’, the country has not been highlighted. Besides the exceptions highlighted in the table, overall, it could be concluded that most Member States contribute a fair share to the overall number of Standing Corps officers.

Table 21. Member States’ share of population / territory compared to their share of Categories 2 and 3 contributions

Member State	Share of EU territory	Share of EU Population	Share of CAT 2 committed	Share of CAT 3 committed	Share of 2021 CAT2&3 deployment man days
Austria	1.9%	2.0%	2.4%	3.3%	2.9%
Belgium	0.7%	2.5%	2.1%	2.3%	1.3%

<sup>632</sup> Interviews with MS/SAC national authorities: 2/27 (LV, MT).

<sup>633</sup> The territorial size of the country, it could be argued, is a proxy to the land border length, which a Member State hypothetically would have needed to manage if there was no Schengen area. The length of these borders, in turn would have determined the number of border guards that a Member State would have needed.

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Member State	Share of EU territory	Share of EU Population	Share of CAT 2 committed	Share of CAT 3 committed	Share of 2021 CAT2&3 deployment man days
Bulgaria	2.5%	1.5%	2.8%	1.7%	2.1%
Croatia	1.3%	0.8%	4.5%	3.0%	3.1%
Cyprus	0.2%	0.2%	0.6%	0.3%	0.2%
Czechia	1.7%	2.3%	1.5%	5.6%	2.6%
Denmark	0.9%	1.3%	2.1%	2.0%	3.4%
Estonia	1.0%	0.3%	1.3%	3.0%	1.5%
Finland	6.9%	1.2%	2.1%	4.8%	1.9%
France	12.4%	14.9%	10.7%	8.9%	6.0%
Germany	7.9%	18.2%	12.4%	17.1%	15.9%
Greece	2.9%	2.3%	3.9%	2.2%	2.4%
Hungary	2.1%	2.1%	4.7%	4.8%	5.0%
Iceland	1.6%	0.1%	0.2%	0.4%	0.3%
Italy	6.7%	12.9%	7.3%	6.8%	8.1%
Latvia	1.4%	0.4%	2.1%	3.6%	4.8%
Lithuania	1.4%	0.6%	3.0%	3.2%	2.6%
Luxembourg	0.1%	0.1%	0.6%	0.3%	0.3%
Malta	0.0%	0.1%	0.6%	1.2%	1.1%
Netherlands	0.8%	3.9%	3.4%	2.0%	3.6%
Norway	8.7%	1.2%	1.5%	0.7%	0.9%
Poland	6.9%	8.3%	7.1%	5.4%	6.5%
Portugal	2.1%	2.3%	1.9%	1.6%	6.7%
Romania	5.2%	4.2%	5.2%	3.7%	7.2%
Slovakia	1.1%	0.5%	2.6%	2.5%	1.4%
Slovenia	0.5%	1.2%	2.6%	1.6%	1.8%
Spain	11.3%	10.4%	6.9%	5.2%	3.3%
Sweden	9.2%	2.3%	2.6%	1.9%	2.2%
Switzerland	0.9%	1.9%	1.1%	1.1%	0.7%

Source: Population [DEMO\_GIND\_\_custom\_5468764] and Territory [REG\_AREA3\_\_custom\_5468707] data from Eurostat; Deployment data: Frontex Annual Implementation Report, p. 54-55

A related and important point concerns the extent to which providing contributions to Standing Corps is relevant and effective for Member States in periods of crisis. In situations where a Member State might face unexpected increased migratory pressures at its borders (for example, as it was the case for Poland and/or Latvia during Russia's full-scale invasion of Ukraine in 2022), these Member States may find it more relevant to



retain their own staff, who have the relevant language skills and local knowledge, rather than send their staff to the Standing Corps and receive Standing Corps staff as replacements. These Member States highlighted a need for more flexibility in the way deployments and Member States' contributions are decided, in order to be able to adapt to operational needs.<sup>634</sup>

### 6.2.10 RQ10: Coherence of Member State capabilities with their contributions to the Standing Corps

**In most cases, Member States' contributions to the standing corps are coherent with their capabilities.** Nevertheless, their ability to fulfil the national quotas set by the EBCG Regulation does not come without challenges, including difficulties in recruiting suitable personnel or personnel willing to join the Standing Corps, competing priorities and insufficient human resources in some periods of the year, when MS border guards or law-enforcement are busier, late financial support by the Agency to cover the costs of deployment, and different working conditions between the sending country and the Agency. Despite some difficulties related to internal capacity, their contributions did not have a significantly negative impact on the resources for other missions in the field of internal and external security, including in the area of Common Security and Defence Policy (CSDP).

Table 22 presents an analysis of the proportionality of Member States' contributions, comparing the potential impact that these contributions have on the overall law-enforcement capacity of a Member States. For instance, if Austria contributes with 218 officers to the Standing Corps, this represents 0.71% of its overall law-enforcement force, while for Estonia, the 202 SCOs represent almost 5% of its overall law-enforcement force – making the impact on its law-enforcement capacity much more pronounced. Available data included the number of Standing Corps seconded or nominated in 2023 and the overall number of the national law enforcement capacity of each Member State in 2020. Most of the Standing Corps are seconded or nominated by law enforcement and border and coastguard services (see section 6.2.4). The analysis presents two main limitations. Firstly, it is difficult to disentangle the numbers of law enforcement and border guards, given that in some EU countries police officers have also border management-related tasks, while in others there is a dedicated border force. The data provided by Frontex indicated, that the contributions come from a variety of law-enforcement forces, and for category three, Member States, such as Germany or France, rely on local police forces contributions to the Standing Corps to fulfil their obligations (See 6.2.4 above for more details). To be cautious, the counting of Standing Corps sent by law enforcement authorities includes the number of SCOs seconded or nominated by police authorities.<sup>635</sup> Secondly, the total number of law enforcement personnel is updated to 2020, when the Standing Corps was not yet fully operational. For the same reason, the number of the Standing Corps coming from law enforcement authorities is updated to 2023.

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<sup>634</sup> Interviews with MS/SAC national authorities: 2/27 (LV, PL).

<sup>635</sup> Includes police officers, gendarmerie and officers nominated or seconded by Ministries of the Interior.

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Table 22. Ratio between Member States' contributions to Categories 2 and 3 and their national law enforcement capacity

Member State	Category 2	Category 3	Total no Standing Corps coming from law enforcement authorities	Total	National law enforcement capacity	%
Austria <sup>636</sup>	11	216	218	227	31,897	0.71%
Belgium	10	153	128	163	38,828	0.31%
Bulgaria	13	114	127	127	29,170	0.43%
Croatia	21	201	222	222	20,576	1.07%
Cyprus	3	21	24	24	4,828	0.49%
Czechia	7	369	376	376	40,113	0.93%
Denmark	10	130	76	140	11,300	0.67%
Estonia	6	196	202	202	4,070	4.96%
Finland	10	316	N/A	326	7,503	N/A
France	50	585	562	635	215,948	0.26%
Germany	58	1,126	1,184	1,184	250,558	0.47%
Greece	18	146	94	164	56,232	0.16%
Hungary	22	317	339	339	37,559	0.9%
Iceland	1	24	6	25	640	0.93%
Italy	34	446	343	480	237,910	0.14%
Latvia	10	234	20	244	7,663	0.26%
Lithuania	14	208	N/A <sup>637</sup>	222	7,849	N/A
Luxembourg	3	18	18	21	2,039	0.88%
Malta	3	79	7	82	2,243	0.31%
Netherlands	16	130	131	146	50,628	0.25%
Norway	7	47	54	54	N/A	N/A
Poland	33	355	N/A	388	97,899	N/A
Portugal	9	106	71	115	45,588	0.15%

<sup>636</sup> For AT, Standing Corps are nominated or seconded by the Federal Ministry of the Interior. It was not possible to distinguish between those sent by law enforcement vs other services.

<sup>637</sup> All officers come from the Lithuanian State Border Guard Service. As this analysis focuses on police forces, due to consistency and data availability constraints, this number is excluded from the calculations.

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Member State	Category 2	Category 3	Total no Standing Corps coming from law enforcement authorities	Total	National law enforcement capacity	%
Romania	24	245	238	269	49,670	0.47%
Slovakia	12	162	174	174	21,167	0.82%
Slovenia	12	103	115	115	7,242	1,5%
Spain	32	345	377	377	175,082	0.21%
Sweden	12	127	100	139	20,942	0.47%
Switzerland	5	72	N/A	77	18,663	N/A

Note: The table shows the size of individual states' contributions to Categories 2 and 3 Standing Corps, updated to 2023.

**The size of the national contribution is proportionate to national capabilities.**

Individual contributions vary from a minimum of 0.14% to a maximum of 1.5%. The only outlier with 4.96% is Estonia. The set quotas may be difficult to meet in the future for a few Member States, who expressed concern about the overall numbers.<sup>638</sup> Others, as discussed, earlier, highlighted the difficulties in filling specific profiles, rather than meeting the overall numbers.

**Challenges in complying with national quotas**

Though the national quotas for the contributions to the standing corps are assessed as proportionate (see section 6.2.9) Member States face some challenges when complying with the national quotas set in the EBCG Regulation. Some of the main challenges reported include 1) lack of personnel;<sup>639</sup> 2) lack of personnel willing to be deployed;<sup>640</sup> 3) busy periods of the year.<sup>641</sup>

These challenges relate to how contributions affect Member States' capacity, particularly their ability to recruit staff to substitute the officers seconded and nominated to the Standing Corps. While most Member States are currently able to reach their quotas, providing the Standing Corps has an impact on a minority.<sup>642</sup> This applies specifically where there is already a shortage of resources,<sup>643</sup> and even more so when facing migratory pressure that has stretched internal capacity.<sup>644</sup> Compared to the previous

<sup>638</sup> Survey of MS/SAC authorities: Q 10.1: 2/27 (LU and NO), interviews with HR and SI.

<sup>639</sup> Survey of MS/SAC authorities: Q 10.4 (4/27 'to a great extent', 11/27 'to some extent', 7/27 'to a limited extent').

<sup>640</sup> Survey of MS/SAC authorities: Q 10.4 (3/27 'to a great extent', 8/27 'to some extent', 9/27 'to a limited extent').

<sup>641</sup> Survey of MS/SAC authorities: Q 10.4 (6/27 'to a great extent', 3/27 'to some extent', 8/27 'to a limited extent').

<sup>642</sup> Survey of MS/SAC authorities: Q10.4: 3/27 (LT, PL, SK).

<sup>643</sup> Survey of MS/SAC authorities: Q10.4: 2/27 (PL, SK).

<sup>644</sup> Survey of MS/SAC authorities: Q10.4: 3/27 (LT, PL).

pooling mechanism, the current arrangement set out in the EBCG Regulation allows Member States to plan their resources in advance.<sup>645</sup>

A similar challenge relates to Member States' ability to recruit officers to the Standing Corps. In some cases, there are differences between the working rules, conditions and pay in national authorities and those at the Agency. The working hours at the Agency are higher (40 hours per week) than those in some Member States (for example, 36 hours per week). The maximum length of shifts permitted can also vary from country to country, thus shifts at the Agency may be longer than those in SCOs' country of enrolment. The representatives of the countries participating in joint operations have an important role in ensuring that the Standing Corps staff are deployed following rules that are acceptable in their own countries.<sup>646</sup> Similarly, in some countries, the days of holidays, as well as the number of holidays allowed, are higher compared to those allowed at the Agency (25). Finally, not all officers are willing to be deployed all-year round in different locations.<sup>647</sup>

A related set of challenges stems from the fact that such working conditions make it difficult for some States to identify officers willing to join the Standing Corps. Where working conditions and holiday are less advantageous at the Agency, recruitment of SCOs becomes more challenging. For example, word-of-mouth on the experiences of Standing Corps of working conditions, the difficulty in reconciling family life and work (due to holidays and length of deployment), and the stressful working conditions (for example, long shifts) also impact on national officers' willingness to join the Standing Corps.

Member States also experience challenges in recruiting<sup>648</sup>, that is to finding officers to nominate or second to the Agency.<sup>649</sup> The first set of challenges concerns the financial compensation available to Member States.<sup>650</sup> Other than the daily subsistence allowance (DSA) no extra compensation is provided for being deployed abroad, even where there may be a gap between the sending and deployment countries with respect to pay or cost of living. Personal costs should also be considered,<sup>651</sup> which would warrant extra compensation.<sup>652</sup> The pay may be higher in the sending State, obliging them to close the gap between living costs and reimbursement to the Standing Corps, and between pay and/or compensation at home and that at the Agency.<sup>653</sup> In cases where the post itself is more stressful (for professional or personal reasons), or the standard of living is different in the sending and deployment countries, the lack of extra compensation makes it difficult for national authorities to incentivise officers to apply to the Standing Corps, and represents a challenge for the sending State itself. In Iceland, for example, the national authorities are willing to consider options for compensating Category 2 officers for being away from family for a long time.<sup>654</sup> Similarly, in Luxembourg, to make the Category 2

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<sup>645</sup> Survey of MS/SAC authorities: Q10.4: 1/27 (MT).

<sup>646</sup> Field visit to IT.

<sup>647</sup> Survey of MS/SAC authorities: Q10.4: 1/27 (BE).

<sup>648</sup> The term 'recruiting' is often used by national authorities to describe the process of searching and identifying officers to nominate or second to the Agency. It does not refer, therefore, to a recruitment process aimed at hiring, but rather at the process of finding officers to join the Agency.

<sup>649</sup> Survey of MS/SAC authorities: Q10.3: 1/27 (FI, SL).

<sup>650</sup> Interviews with MS/SAC national authorities: 2/27 (MT and IS); survey of MS/SAC authorities: Q10.4: 6/27 (CZ, FI, SE, SK, and IS, NO).

<sup>651</sup> 'Personal costs' refers here to the intangible and/or not always measurable costs that being deployed abroad, in a number of countries and for extended periods of time may have on the private life of the standing corps. These include, for example, social costs, namely the distance from home, or public and administrative costs, including the difficulty of attending to personal matters, amongst the others.

<sup>652</sup> Interviews with MS/SAC national authorities: 1/27 (NO); survey of MS/SAC authorities: Q10.4: 6/27 (CZ, LU, SE, SK and IS, NO).

<sup>653</sup> Survey of MS/SAC authorities: Q 10.3 and 10.4: 4/27 (CZ, LU, SI, SK).

<sup>654</sup> This policy is not yet in place.

deployment more attractive, the national authorities have implemented a higher bonus for each deployment day.<sup>655</sup>

In other Member States, the situation is quite different. Of the Member States that provide most contributions to Category 1, the working conditions and pay for those officers are better than in their home institutions. For officers deployed to countries with lower living costs than their home, the deployment period might allow for extra saving.<sup>656</sup>

Article 45 of the EBCG Regulation outlines the costs that the Agency must reimburse to the Member States for the deployment of the Standing Corps. These include travel costs, vaccinations, insurance, healthcare (including psychological assistance), daily subsistence, and accommodation. In a minority of cases, the financial support received to cover such costs meet just a fraction of the cost of deployment of Category 2 SCOs because the standard of living is much higher in the sending country.<sup>657</sup> In other cases, due to different procedures between the Agency and Member States, in the case of secondments of Category 2 Standing Corps, Member States have had to cover extra travel costs.<sup>658</sup> For example, the Finnish Border Guard is one of the national authorities that had to cover flights and rent deposits, for example, for Finnish Category 2 officers (see section 6.2.8). While the Agency reimbursed the national authorities, these additional payments represented upfront costs and led to additional administrative procedures and workload.<sup>659</sup>

Finally, the length of deployment for individual Category 2 officers (2 + 2 years) is too long from the point of view of some sending national authorities,<sup>660</sup> and a few have suggested a more flexible arrangement, such as the possibility to split the two years between two different officers, rather than having a single officer being away for the entire period.<sup>661</sup> Identifying the right profiles is also a challenge for some countries, particularly when: it is a highly specialised profile that is not easy to find in a Member State; the Member State needs the profile requested; or there is no correspondence between the specialised profile requested (i.e., a defined profile with corresponding skills and competences) and the profiles categorised in a given Member State.<sup>662</sup>

***Effects of Member States' contributions to other missions and operations*** (including CSDP)

**Overall, there is no direct evidence that contribution to the Agency withdraws resources that would otherwise be available to CSDP missions.** This may reflect the fact that a wider set of national authorities are involved in CSDP missions. Moreover, participation in CSDP Missions as well as deployment to Frontex are usually voluntary and it is not possible to conclude that staff deployed as Category 2 or 3 Frontex SCOs would have otherwise chosen to be deployed to a CSDP Mission (where the nature of tasks is different). When asked whether the resources allocated by the Agency might contribute to other CSDP missions, half of the Member States responded positively and half negatively.

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<sup>655</sup> Survey of MS/SAC authorities: Q10.3: 1/27 (LU).

<sup>656</sup> Interviews during site visits to BG, EL, RO.

<sup>657</sup> Survey of MS/SAC authorities: Q10.3: 2/27 (IS, NO).

<sup>658</sup> Survey of MS/SAC authorities: Q10.3: 1/27 (FI).

<sup>659</sup> Survey of MS/SAC authorities: Q10.3: 1/27 (FI).

<sup>660</sup> Survey of MS/SAC authorities: Q10.3: 2/27 (AT, SE).

<sup>661</sup> Interviews with MS/SAC authorities: 1/27 (MT); survey of MS/SAC authorities: Q10.4: 2/27 (LV, SE).

<sup>662</sup> Survey of MS/SAC authorities: Q10.3: 2/27 (FI, LU).

## 6.3 Conclusions and recommendations

The deployment of the Standing Corps was found to be relevant to supporting Member States in the protection of external borders, in migration and in return management. In view of the changes in migratory routes and pressure, the Standing Corps has provided relevant support to national authorities, meeting their needs for additional resources. The support provided by Standing Corps is discussed in sections 4 and 5 of the evaluation of the EBCG Regulation. This section summarises the key conclusions and recommendations from the review of the Standing Corps in areas not already identified.

### 6.3.1 Summary of findings and recommendations concerning the legislative challenges

One area impacting on the functioning of the Standing Corps is the application of the EU Staff Regulations to the Standing Corps, which is not adapted to the operational nature of their tasks (see sections 4 and 5).

The limitations set out in the EBCG Regulation on the deployment of Standing Corps staff to Frontex headquarters (including up to 4% of statutory staff for supportive or monitoring functions) is viewed negatively by some Frontex stakeholders, who noted the high administrative burden (and in some cases, additional resources required) associated with the management of the Standing Corps. It is likely that some issues stem from inefficiencies in implementation such as the management of Standing Corps across multiple units, the cumbersome management of their travel in MiPS, etc., which can improve over time, particularly if a new structure and the FC2 are introduced. However, it remains to be seen whether such changes will be sufficient, or whether additional changes to the 4% should be foreseen to allow sufficient resources for the management of the Standing Corps within Frontex once it is fully established.

Overall, the national contributions to the Standing Corps (as set out in the annexes to the EBCG Regulation) are seen as adequate, although Member States experienced challenges, especially in meeting requirements for specialist profiles, or, in some cases, meeting the required numbers of staff. Some stakeholders pointed out that there should be flexibility to adjust national contributions in response to unexpected migratory pressures at external borders.

A number of Member States highlighted concerns about the provisions within the EBCG Regulation related to the financial support system for their contributions to the Standing Corps. The current financing mechanism has one major advantage in that it calculates the amount of financing based on a uniform level of reimbursement. However, this also creates issues for Member States that may affect sustainability in the long-term. More specifically, the financial support that Member States receive is not always considered adequate (the amount is inadequate, insufficient, or is issued with delays, leading to upfront costs for Member States).

In a minority of cases, the amount reimbursed covers just a fraction of the cost of deployment of Category 2 Standing Corps because the standard of living is significantly higher in the sending country. In addition, the Member States receive an advance payment linked to the annual payment, which is initially covered by the Member State. In the case of secondments of Category 2 Standing Corps, Member States have had to cover extra costs related to travel arrangements. While the Agency has reimbursed the national authorities later, these additional payments represent upfront costs and create additional administrative procedures and workload.

The recommendations below should be read in conjunction with the main evaluation report, as to avoid repetition the recommendations are not repeated here, even though many of them are relevant to the Standing Corps.

### 6.3.2 Recommendations

Recommendations related to the application of EU Staff Regulations to the Standing Corps are addressed in sections 4 and 5 above.

On the limitations on the use of Standing Corps staff in headquarters, changes to the current management of Standing Corps should help to reduce the administrative burden. However, if this is not deemed sufficient once the Standing Corps is fully established, revising the 4% limit on statutory staff could be beneficial.

Assessing the current levels of contributions by those Member States that have identified potential challenges in the long-term should be considered. National contributions should have additional flexibility to reflect unexpected migratory pressures, thereby ensuring that they can retain necessary resources when needed.

Lastly, a follow-up discussion on existing challenges and possible improvements in the financing system could be initiated between DG HOME and the Member States to identify if changes are needed.

### 6.3.3 Summary of findings and recommendations concerning the organisational and operational challenges

Despite the significant delays caused by the COVID-19 pandemic, Frontex has been effective in **recruiting** Standing Corps Category 1. However, there is an imbalance in the distribution of nationalities within Category 1, affecting geographical representation. Overall, the ability of Frontex to attract staff from all Member States is linked to compensation, as well as ability to provide long-term career growth.

As discussed in section 4, there is an overall mismatch in the current organisational structure of Frontex, which is not aligned with the task of managing the Standing Corps. The Standing Corps also lacks a clear command-and-control structure, with Frontex currently developing a pilot project (FC2) to address this. Additional factors impacting the effectiveness of Standing Corps deployment are covered in section 4.1.4 (Operations).

Overall, Member States are largely satisfied with Category 2 and 3 Standing Corps. National authorities value Category 2 officers' experience, as well as the length of deployment. Member States consider Category 3 officers useful to fill gaps in busy or intense periods, such as during holiday seasons or events.

There is some dissatisfaction (though not from all Member States) with Category 1 Standing Corps, as officers are not always considered well-prepared and well-equipped for their tasks, given that in some cases they lack previous border management experience. This also relates to the training provided to Category 1, with some national authorities expressing dissatisfaction with their level of experience and preparation. The Agency faced challenges in organising training activities during (and after) the COVID-19 pandemic, due to resource and organisational challenges. It currently relies on the use of training centres in Member States and on Member State trainers. The limited availability of trainers and the different standards in the training centres have impacted the quality of the training activities delivered. Nevertheless, the current training provided to Category 1 has been found to be overall relevant to their tasks.

Current deployments of Standing Corps do not take sufficient account of their background, including their language skills and/or their work experience. As a consequence, there are situations in which there is a mismatch between the Standing Corps' background experience and the task to be covered (or geographical area of deployment and their language capacities). These organisational and operational issues impact the effectiveness of Frontex operations.

### 6.3.4 Recommendations

Improve the process behind deployment of Standing Corps staff. Ensure that the selection of the Standing Corps to be deployed takes into consideration the full profile of each individual (including their experiences, languages) and the needs of the Member State where the deployment takes place.

To overcome profile shortages, it is recommended that the Agency increases its training capacity and, eventually, provides Member States with support to provide specialised training to officers in their home country before deployment. This would also help to motivate Member States and their officers to join the Standing Corps, providing additional training and supporting the acquisition of new skills that can later be used in the home Member State.

In line with its new structure, which is being developed, the Agency should develop a clear concept of general administrative and operational support, and the ratio of such activities vis-à-vis uniformed staff that is subject to deployment, or other operational activities taking place at the headquarters. Such assessment could benefit from benchmarking the Agency against other national law-enforcement institutions to assess the optimal general administration vs. operational staff ratio. Only then, it will be meaningful to assess if the 4% is sufficient, or it needs to be revised.

The Agency should develop a business case for the consideration of the MB, highlighting the added value of having its own training centre.

The Agency should develop an internal pool of trainers (alongside external ones). Some of the Standing Corps could also be employed as trainers after they finish their deployment. This arrangement might have an additional benefit, that of extending the employment prospects for those officers whose national legislation does not allow them to (re-)join the national forces after being deployed at the Agency.

### 6.3.5 Summary of findings and recommendations concerning the technical challenges

There are some additional obstacles to the Standing Corps' ability to provide effective support. One such issue is their access to databases and systems. Only a very small minority of Member States provide the Standing Corps with access to their national border management systems and databases. The Standing Corps' inability to access national systems for border checks and other relevant databases, hinders their ability to fully carry out border checks and related tasks. With respect to EU databases relevant to border and security management, the Standing Corps has no direct access to SIS during the period evaluated.<sup>663</sup> The technical solution to allow for access to SIS is currently being developed by Frontex. Some Member States (for example, France) have developed technical solutions to facilitate tailored access to their national databases for Standing Corps staff, which could serve as an interesting practice to share with other Member States.

### 6.3.6 Recommendations

Finalise the technical solution that ensures that all Standing Corps deployed by Frontex have access to the SIS.

Ensure that the Standing Corps has access to all systems needed to carry out systematic checks in accordance with Regulation 2017/458.

Encourage Member States to adapt legislation and border systems so as to enable Standing Corps officers to carry out border checks.

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<sup>663</sup> Access was provided only recently, thus its effectiveness is outside the scope of this evaluation.





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