



Study supporting the evaluation of the EBCG Regulation and the review of the Standing Corps

Executive Summary

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Executive Summary

This study aims to support the European Commission Directorate-General for Migration and Home Affairs (DG HOME) with the evaluation of **Regulation (EU) 2019/1896 on the European Border and Coast Guard** (EBCG Regulation), assessing its relevance, effectiveness, efficiency, coherence, and EU added value. This is done by analysing the functioning and results of the European Border and Coast Guard Agency (Frontex), including its objectives, mandate, resources, and tasks from the entry into force of the EBCG Regulation (2019) to January 2023. It also considers the whole EBCG, including the role of Member States¹ and Frontex, and the division of responsibilities.

The study also supports the **review of the Standing Corps**, including its functioning and composition, size of Member States' contributions, number of staff, level of training, expertise, and professionalism (in line with Article 59 of the EBCG Regulation).

The results of this study 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. As such, the study identifies key conclusions and lessons from the analysis.

The findings presented are based on extensive data collection, including desk research, three surveys, 149 interviews with Member State national authorities, Frontex, other European Union (EU) stakeholders (European Commission, European Parliament, European External Action Service (EEAS), EU agencies), non-governmental organisations, international organisations, and third countries. The study team undertook five field visits to Member States where joint operations with Frontex are taking place (Bulgaria, Finland, Greece, Italy, Romania), as well as to Frontex headquarters in Warsaw.

Evaluation of the EBCG Regulation

Overall, the EBCG Regulation remains relevant to addressing current and future emergencies at EU external borders and will remain so in the foreseeable future. Irregular migration continues to be a major challenge and is still at the top of the EU policy agenda, requiring a common and coordinated response by all Member States and the EU. The EBCG Regulation has contributed to the effective development and implementation of European Integrated Border Management (EIBM), and despite the short period since its entry into force, led to the establishment and deployment of the first ever EU uniformed service – the EBCG Standing Corps.

While the EBCG Regulation's implementation is still ongoing, challenges and certain areas for improvement have been identified. Some of the challenges stem from the EBCG Regulation itself, such as lack of legal clarity, gaps, or inconsistencies with existing needs and objectives. Others are the product of organisational, technical, or operational shortcomings in the implementation. Finally, another set of issues impacting implementation stem from legal limitations identified in Member State or broader EU legislation.

Some of the issues reflect the fact that the 2016 EBCG Regulation (Regulation (EU) 2016/1624) had not been fully implemented when the EBCG Regulation was amended in 2019. Nor had there been an evaluation of the 2016 EBCG Regulation, nor an impact

¹ 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.

assessment of the 2019 amendments. This meant that the legislative changes introduced were not supported by a detailed assessment of the gaps and needs.

The period of implementation was marked by significant external factors and crises, including the COVID-19 pandemic, the instrumentalisation of migration by Belarus, and Russia's full-scale invasion of Ukraine. Moreover, a steep rise in irregular migration was observed: in 2022, around 330,000 irregular border crossings were detected at the EU's external borders. This was the highest number since 2016.² The evaluation period was further marked by increased external scrutiny of Frontex by EU institutions, as well as internal turmoil, which led to a change in the Agency's leadership in 2022.

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 primarily outlines the activities and governance of Frontex (the Agency), rather than the entirety of the EBCG. As such, the current governance framework contained in the EBCG Regulation apply largely to Frontex itself. Furthermore, while the EBCG Regulation sets out fundamental rights obligations for the entire EBCG, the existing fundamental rights safeguards contained in the 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 a somewhat moveable target.

The legal basis of the EBCG Regulation, namely Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the EU (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

² In the first quarter of 2023, the pressures shifted towards the Central Mediterranean, with 3-fold increase (See <https://frontex.europa.eu/media-centre/news/news-release/detections-in-central-mediterranean-up-three-fold-in-the-first-3-months-of-2023-fBX34V>)

human beings and terrorism.³ However, in practice, there remains areas in which room for interpretation of what the limits of Frontex's supporting role in this area are.

Governance and organisational structure

The governance structure of Frontex is well established within the EBCG Regulation. It includes clear tasks for the Management Board (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. The implementation of the existing governance mechanisms could however be improved by ensuring that MB meetings are better managed to allow enough time for the MB to discuss issues of strategic importance, rather than focusing on technical discussions. Return is also not yet adequately covered in the existing governance structure, as the MB continues to be represented primarily by national border management authorities that are not necessarily responsible for returns.

The European Parliament has yet to make use of Article 112 of the EBCG Regulation, which foresees cooperation with national parliaments and would be 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 to its new mandate. Most importantly, its current structure is not adequate to support effective deployment of the Standing Corps. 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 responsibility. Discussions on a potential new structure are ongoing within Frontex and should address these challenges.

Operations

During the evaluation period, Frontex provided extensive technical and operational assistance to Member States through joint operations and rapid border interventions (RBIs), including technical and operational assistance in support of search-and-rescue (SAR) operations. The majority of joint operations and RBIs focus on land and sea borders, which are under significant migratory pressure. Other types of operational activities are carried out through focal points established at key border crossing points.

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 and technical equipment to Member States and third countries, as well as through the standardisation of procedures and harmonisation of good operational practices at EU level.

A range of factors limit the effectiveness and efficiency of Frontex's operational response, including (long-term) planning of resources to be deployed in operations, lack of availability of certain specialised profiles, application of EU Staff Regulations to the Standing Corps, and a command-and-control structure that is yet to be developed.

Some Member States noted that when the Standing Corps was established initially, the availability of different profiles (such as Advanced Level Document Officers (ALDOs) or

³ Recital 41 of the EBCG Regulation.

Motor Vehicle Crime Detection Officers (MVCDOs))⁴ did not fully correlate with the overall needs. Specific profiles are in high demand and Frontex is reporting gaps for certain profiles. However, this seems to be improving over time. Another related issue is the mismatch between the resources requested and those actually deployed, as Frontex needs to prioritise deployments to key operational areas.

Several additional organisational issues have been identified that further undermine the operational effectiveness of Frontex, and in some cases, impact Standing Corps Officers' (SCOs) morale. These include practical issues with weapons transportation, lack of equipment and lack of advanced logistical support and infrastructure.

The impact of the EU Staff Regulations on the deployment of Category 1 SCOs was already mentioned above, under scope. The limitations this sets on Category 1 are not the case for Categories 2, 3 and 4 SCOs, who are dealt with differently.

The deployment of Standing Corps staff to Member States is also impacted by language barriers. Member States' border and coast guard authorities' hosting capacities are limited by the number of staff that speak a second language/English.

The effectiveness and efficiency of Frontex operations at border crossing points is impacted by the limited access of Standing Corps staff to key databases, including the Schengen Information System (SIS) and national databases. While Regulations (EU) 2018/1861 and 2018/1862 provide EBCG teams the right to access data in SIS, Frontex has yet to implement the necessary technical solution. Larger challenges include 1) language (at border crossing points, Member State border guards access EU systems via integrated national portals, in their own language), and 2) access to other relevant databases and national systems and databases, which are integrated into border crossing point systems and are needed to carry out systematic checks in accordance with Regulation 2017/458. 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.

The evaluation found that the lack of a command-and-control structure for the Standing Corps hinders its 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 (FC2).

Return

Overall, 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.

The study identified several factors that impede the effectiveness of the Agency's return operations and return-related activities. For example, return is not yet fully embedded into the Agency's governance structure nor all of its key activities, including vulnerability assessments and risk analysis. Furthermore, while the EBCG Regulation is coherent with the Return Directive (2008/115/EC), the lack of a definition of the terms 'assisted voluntary return' and 'voluntary departure' in the EBCG Regulation is gap.

Situational awareness

Situational awareness activities remain one of the highest EU added value activities of the EBCG Regulation. Since 2019, Frontex is also progressing towards providing a fully up-to-date, reliable and actionable information through 24/7 (near) real-time situation and crisis

⁴ See Standing Corps profiles for more information: <https://frontex.europa.eu/about-frontex/standing-corps/profiles/>

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 the collection of open-source intelligence and certain categories of data (such as incidents linked to secondary movements, especially outside border areas) can limit the level of situational awareness at the EU borders. Additionally, return is yet to be reflected in Frontex products.

EUROSUR has largely 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 increased considerably in recent years. However, EUROSUR is impacted by implementation issues, where not all Member States report border events with the same completeness or regularity, and national coordination centres' (NCC) practices differ in incident formats and timing, leading to lower quality data and an incomplete situational picture. Stakeholders also questioned the added value of upgrading the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL (provided for in the EBCG Regulation), due to very limited categories of information requiring such level of confidentiality, and the high implementation costs. The upgrade is yet to be implemented.

In terms of the text of the EBCG Regulation, the study found possible contradictions between Articles 28 and 89. These contradictions affect the type of personal data that EUROSUR can process and may then impact the effectiveness of the services provided by EUROSUR.

Vulnerability assessment is considered 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, which has broadly been achieved, although a minority of Member States noted that some overlaps in data collection remain.

Capability development

Progress was achieved in various areas of capability development, including training, research and innovation, and the provision of technical resource support. 2022, for example, saw 4,294 graduates from specialised training for Member States, Schengen Associated Countries and third countries, as well as a Technical Equipment Pool containing 1,870 items (major, light and portable equipment) overall. Flexibility was shown in light of the COVID-19 pandemic and Russia's full-scale invasion of Ukraine. Capability-building activities are generally valued by Member States, although several factors hinder the effectiveness of these activities, some more significant than others.

The Agency's priorities shifted to training Category 1 SCOs, which limited the training activities available to Member States. Overall, the effectiveness of the current training activities is hindered by the lack of trainers, lack of Frontex training facilities, and inefficiencies in the 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, which could provide a solution to some of these inefficiencies.

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 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 a lack of strategic direction and vision for long-term capability development within the Agency. Although a great majority of Member States recently sent their national capability development plans to Frontex, as of 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 is 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. There does not appear to be either an Agency vision or guidance by the MB on capability planning, especially in relation to a 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 State jurisdictions; and issues with registration and maintenance of vehicles.

External cooperation

Frontex's external cooperation is rated positively and is seen as effective and efficient. Its work is coordinated with the European Commission and relevant EU agencies to ensure that activities contribute to the wider objectives of EU external action.

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 also signed with Montenegro, with another with Albania is pending. However, Frontex experienced delays in concluding new working arrangements with third countries in line with the 2019 Regulation. While the new model working arrangement was finalised in 2021, an Annex on personal data (to be added to the model) is pending agreement due to ongoing discussions between the Commission and the European Data Protection Supervisor (EDPS) on provisions on personal data protection.

The 2019 EBCG Regulation may potentially have had a negative impact on Frontex's work in the external dimension by setting new limitations on the international organisations with which Frontex can cooperate. By setting out an exhaustive list of organisations for Frontex cooperation (Article 68) in the context of working arrangements, the Agency is limited in its ability to develop new partnerships in response to emerging needs, including with organisations with which it has usefully cooperated in the past (International Centre for Migration Policy Development (ICMPD), North Atlantic Treaty Organization (NATO) or relevant customs organisations). Given that the Agency has a legal obligation to work with international organisations through working arrangements (requiring prior approval by the Commission and the MB), this should provide sufficient safeguards to ensure that the Agency's cooperation is limited to those organisations deemed most relevant.

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 Fundamental Rights Officer (FRO) (including contributions to a wide range of tools and procedures, such as to operational plans), Fundamental Rights Monitors (FRMs), relevant Management Board Decisions (on the complaints mechanism, serious incident report (SIR) mechanism, supervisory mechanism on the use of force, independence of the FRO, etc.), data protection safeguards and Data Protection Officer (DPO) activities. The Agency carried out training on fundamental rights (including on data protection) and is making 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 its commitments. Overall, more could be done to better streamline respect for fundamental rights within the EBCG Regulation, as well as in the structure and procedures of the Agency.

Among the key challenges limiting the functioning of this framework, the analysis highlighted the EBCG Regulation's lack of a clear delineation between Frontex and Member State responsibilities and their respective obligations in the fundamental rights area, with consequences for the scope of the FRO's mandate and FRMs' monitoring activities. In this respect, some clarification was brought by the Standard Operating Procedure (SOP) on FRMs in 2023.

Article 46 of the EBCG Regulation allows for the withdrawal of financing, suspension, termination or decision not to launch activities if they could lead to violations of fundamental rights of international protection obligations of a serious nature. Some stakeholders pointed out that the EBCG Regulation leaves ample discretion to the Executive Director's decision. Some progress was made by the Agency with the adoption of the 2022 SOP on Article 46, with discussions ongoing as to whether the decision referred to in Article 46 should be retained by the Executive Director alone or delegated to other actors (potentially to the MB).

A number of factors limit the effectiveness of the SIR mechanism as a reporting tool (limited sources of information, limited cooperation and follow-up from national authorities, lack of redress, etc). Nevertheless, this 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 and FRO's dedicated SIR team) were reported recently.

The complaints mechanism is another crucial component of the Agency's fundamental rights protection framework. However, its functioning was limited by several factors related to its set-up and implementation. There is some 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 the adoption of the Management Board Decision 19/2022) and the FRO to improve the functioning of the complaints mechanism are ongoing.

Data protection framework

Articles 86 to 92 of the EBCG Regulation establish the framework for the Agency's processing of personal data. Despite this framework, there are some unclarities within the EBCG Regulation in relation to data protection.

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 (which are not public in their entirety).

Some provisions of the EBCG Regulation are drafted very broadly, with the risk of leaving a wide margin of interpretation in respect of data protection (risk analysis and EUROSUR), while being too narrow for other activities (such as checking travel documents).

The flexibility given in Article 89 of the EBCG Regulation for exceptional situations 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 within the EUROSUR framework, and the exchange of information with third countries.

Stakeholders further 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) of 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) of the EBCG Regulation) frame its role and scope of responsibilities in this area. Although the EBCG Regulation is clear on the purpose of operational personal data processing, Management Board Decision 69/2021 leads to 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 Regulation 2018/1725 (EU DPR). Although the EBCG Regulation is in line with the EU DPR, the Agency's 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 its obligations under the EBCG Regulation, the Agency adopted implementing rules through Management Board Decisions 68/2021 and 69/2021. However, some of the areas indicated above were not sufficiently addressed or clarified and the two Decisions are now being redrafted based on the EDPS' recommendations. It remains to be seen if the two revised Management Board Decisions will provide sufficient clarity to mitigate the identified areas.

Review of the Standing Corps

During the period under review, the Agency has operationalised the Standing Corps, in line with the EBCG Regulation, despite delays caused by the COVID-19 pandemic. Recruitment progressed in 2021 and 2022, reaching the targets foreseen in Annex I to the Regulation in early 2023. However, there is an imbalance in the distribution of nationalities within Category 1, affecting geographical representation.

The Standing Corps remains relevant to meeting the needs of Member States, as it allows them to draw on additional resources when needed. Notwithstanding the added value, there are some inefficiencies with the deployment of the Standing Corps and some factors hinder its full potential. These include language barriers when operating on the ground, legislative challenges, and lack of access to national databases (explored above).

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. Few national stakeholders feel there should be more flexibility to allow for adjustment to national contributions in response to unexpected migratory pressures at external borders.

Some Member States do not yet feel confident that the training and experience of Category 1 SCOs is sufficient for them to be able to operate without close supervision, leading to preference for Category 2 and 3 SCO officers. Nevertheless, the training provided to Category 1 SCOs has been found to be overall relevant to preparing them for their tasks. This suggests that the content of the training itself is adequate, but it will take time for Category 1 SCOs to gain relevant on-the-job experience to allow them to operate with higher level of independence.

The reserve for rapid reaction (Category 4 SCOs) has not been found to be relevant to supporting Member States as they have not been deployed in response to new pressures at EU borders in 2021 and 2022. This provides further ground for their phasing out, as currently foreseen in the EBCG Regulation as of 2025.

Several Member States stated concerns about provisions within the EBCG Regulation related to the financial support system for their contributions to the Standing Corps.

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