

10,000 standing corps and expanded responsibilities: FRONTEX's reform and its impact

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Summary:

Faced with the most severe refugee crisis the world has seen since the Second World War, the EU ranks migration management and border protection among its high priorities. FRONTEX, since its establishment in 2004, has played a key role in this direction and has gone through various changes throughout the years. In the effort to address the situation in the borders, FRONTEX's current reform adopted by the EU Council in November 2019. This paper explores aspects of the new framework and assesses its impact. The new Regulation focuses on restructuring the Agency in the fields of recruitment and training of the new staff, by the creation of 10,00 standing corps. Under the new regulation, FRONTEX also acquires an expanded role as its mission is extended to include non-EU countries that do not neighbor the EU. Moreover, the member-states will be obliged to implement the "integrated border management" approach and recommendations in close partnership with the Agency. Furthermore, Frontex's enhanced competences are evident when examining return operations. However, strong criticism and concerns have been raised regarding the effectiveness of such measures as well as the compliance with European and international human rights provisions.

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- FRONTEX has been constantly changing through the years since its establishment in 2004. The recent reform was ratified by the EU Council in November 2019 and introduced new regulations on border management.
- A major change in the new Regulation is the creation of the 10,000 “standing corps” consisting of border guards, return escorts, return specialists, and other operational staff. The recruitment will be completed by 2027.
- The reform includes provisions towards a deeper reconstruction of the Agency in the fields of return operations and areas of missions.
- The new framework provides tools to member-states to manage their borders more effectively, but ultimately more has to be done to facilitate implementation.

Introduction

“Between now and 2027 we want to produce an additional 10,000 border guards. We are now going to bring that forward to 2020.” On July 1st, 2018 Jean-Claude Juncker, the former President of the European Commission, revealed his intentions for a stronger agency that will be operating at the borders of the European Union in an effort to restrict the migration flows. In 2019, in his State of the Union address, former President Juncker reaffirmed his plans for the enhanced European Border and Coast Guard Agency known as Frontex.

The reform was first introduced by the European Commission in the summer of 2018 and after one year of discussions, the Council ratified it on November 8th, 2019.

The proposal did not just focus on multiplying the number of border guards (standing corps) to support EU countries on the ground in border control and return tasks but also implied the deeper restructuring of the Agency towards a more integrated approach on migration management and counter-terrorism. Under the new regulation, FRONTEX also acquires an expanded role as its mission is extended to include non-EU countries that do not neighbor the EU. Moreover, the member-states will be obliged to implement the “integrated border management” approach and recommendations in close partnership with the Agency. Furthermore, Frontex’s enhanced competences are evident when examining return operations. According to the recent reform, the Agency will be able to organize and implement return tasks more independently. While all the above tasks are included in the new framework, there is considerable criticism as to whether the new provisions will be effective in practice. Also, there are questions about how FRONTEX would ensure transparency and accountability during key operations (i.e. returns).

Very recently, during the events in Evros, where the borders between Greece and Turkey were sealed as large groups of immigrants were gathered and attempted to enter, the Greek Government sent a request to FRONTEX for further assistance in border management. This policy paper argues that FRONTEX, under the new reform, could be beneficial for Greece and other countries in crisis as it will enhance surveillance and patrolling measures in the areas of interest and can help combat smuggling networks more effectively. FRONTEX will also contribute to return operations. However, the provisions for areal expansion of operations in third countries outside the EU face difficulties in implementation.

The first section offers a brief historical background of FRONTEX and its operations. It then describes the basic pillars of the reform and it assesses its impact critically. The final section addresses the relationship between Greece and Frontex, exploring the reform’s impact in the country.

Background

Since its establishment in 2004, FRONTEX has gone through various changes. In 2013, after a proposal by the European Commission, FRONTEX acquired its own border surveillance system to enhance information exchange (EUROSUR, see Sarantaki, 2019). In 2015, the Commission proposed the setup of European Border and Coast Guard Agency, largely due to the unfolding refugee flows of 2015. Its expanded responsibilities included the involvement of FRONTEX officers into operations such as screening, debriefing, identifying and fingerprinting in hotspots, as well as contributing to return activities. Moreover, due to these proposals, FRONTEX can aptly assess whether member states have the capacity to address the situation in their borders. These major shifts in FRONTEX's mandate also marked a significant increase in its resources and budget.

However, the European Commission detected areas that need improvement within Frontex as it identified inconsistencies in the implementation of European border management in the member states, disparity in deployments by member states, as well as a lack of common training, sufficient linguistic skills, and a common operational culture (Tammikko, 2019). In addition, there are issues concerning secondary movement within the Schengen area as there are still unregistered people crossing the internal borders. Apart from that, a big challenge arises when one looks at how many people lose their lives every year in the Mediterranean Sea trying to cross the sea borders. The EU Commission was then concerned about this situation and issued a proposal in 2018 which suggested that there is a “a clear need to have permanent, fully trained staff of the Agency that can be deployed at any time anywhere” (COM(2018) 631 final).

The European Union Council has supported a budget for 2020 that projects the allocation of €101.4 million to the European Border and Coast Guard Agency (Frontex), or a 32.4% increase compared to 2019 to set up a standing corps of 10,000 border guards by 2027.

This development marked the most significant reform that has been attempted in FRONTEX since its foundation. Approval for the proposals and plans for the FRONTEX reforms by the European Parliament was initiated on the eve of the European Elections. These proposals include various changes to FRONTEX's budget, operation capacity, cooperation with member states, areas of expansion etc. Eventually, the European Coast Guard reforms were ratified by the Council in early November 2019. In a joint statement, Dimitris Avramopoulos and Frans Timmermans stressed the importance of the reform and assured that the member states will have unprecedented operational support.

Assessing FRONTEX's reform

The major change in the forthcoming Frontex's reform is the creation of the 10,000 strong "standing corps" consisting of border guards, return escorts, return specialists, and other operational staff. The corps should be ready and able to carry out border control and return tasks beginning in 2020. By 2027, the corps should consist of 3,000 permanent Agency staff, 3,000 on long-term secondment, and 4,000 on short-term deployment from the member states. This new standing corps is tasked with supporting EU countries on the ground in border control and return tasks in an effort to tackle cross border crime (trafficking, smuggling, etc.) (European Parliament, 2019). However, a number of questions have been raised mainly in reference to the process of recruiting and training the staff.

Many states have already expressed doubts and claimed that the target date of 2027 is challenging as there is a lack of human resources both in the EU and the member-states. Additionally, the fact that the internal security requirements of the member states are constantly growing will affect the recruitment process as well. Another issue that needs further elaboration is the training that the officers will receive from Frontex. The reform states that the new officers will attend a 6-month training course provided by the Agency. The main goal here should be for the officers to have a common and a high standard training from Frontex as many of them will come as seconded to Frontex from member states where various law frameworks exist.

Another important feature is that FRONTEX still has the privilege to exercise powers that include verifying the identity and nationality of persons, authorising or refusing entry upon border check, stamping travel documents, issuing or refusing visas, patrolling, and registering fingerprints. The refusal of entry and refusal of issuing visas still exist in the new Regulation in accordance with Article 14 of Regulation (EU) 2016/399 and Article 35 of Regulation (EC) No 810/2009 of the European Parliament and of the Council.¹ Such

¹ Article 6 Regulation (EU) 2016/399 sets the criteria for refusing entry to third country nationals who: 'i) are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria: a) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived; b) it shall have been issued within the previous 10 years; ii) are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001, except where they hold a valid residence permit or a valid long-stay visa; iii) justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully. iv) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry and v) are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds. Also, all three Regulations provide that the Agency will cooperate

decisions shall be taken only by border guards of the host Member State or by members of the teams if they are authorised by the host Member State to act on its behalf.

Frontex's enhanced role is evident when examining its relations with the countries of deployment. Member states are strongly encouraged to implement the Agency's policy recommendations in their border management systems. Under the new Regulation, the Director and Management Board are responsible for making proposals to individual states. In case a member state fails to take the appropriate measures, the Council retains the right to suggest the suspension of that member state from the Schengen zone. However, looking at the operational missions, Frontex still needs the approval of the respective member states to deploy its forces. The latter are commanded by the inviting state and are only operating in cooperation with it.

Although FRONTEX is commonly known to the general public for its role in search and rescue operations, the new Regulation further broadens its competencies in return tasks. The process of returns includes a two-stage process; a pre-return stage and the return itself and according to the new Regulation 2019/1896, FRONTEX's role has been strengthened in both activities. In the pre-return phase, FRONTEX is involved in the process of collection of all necessary information for the TCNs that take the return decisions from member states. FRONTEX also assists member states in identifying TCNs who are subject to return decisions, as stated in (Article 48(1)(a)(i)), and can contribute to issuing travel documents in cooperation with the Member States and the authorities of the third country. In the return phase, FRONTEX assists the member states in conducting the operations by charting aircrafts or book seats on commercial flights. Under the new Regulation, the Agency can also buy or lease its own aircrafts to support the process (Article 63). The new Regulation also allows FRONTEX to employ various experts to assist member states in return operations (return monitors, return escorts and return specialists), who are part of the Agency's new standing corps. As a last point, it is important to stress the role FRONTEX has in the assessment of fundamental rights compliance during the return operations. As there is the possibility to use force against returnees who do not cooperate or cause harm to others, FRONTEX can deploy forced-return monitors who inspect the process and ensure compliance with fundamental rights (Article 50(3)).

When examining the role of FRONTEX in returns and the potential violations of human rights, it is important to describe how the new Regulation addresses the Agency's accountability. A first level of accountability is the increase of transparency by requiring the Executive Director to report on the return

with Union institutions, bodies, offices and agencies, including Europol, towards this direction. Particularly, Europol assists FRONTEX in the effort to combat cross border crime, trafficking, and terrorism.

operations biannually to the European Parliament, particularly to the LIBE Committee. This report must take into account the observations of the Fundamental Rights Officer who has the right to conduct investigations into FRONTEX's activities including to carry out investigations on the field during return operations (Article 109(2)). In addition, a group of fundamental rights monitors support the works of FRO. Under the 2019 Regulation, FRONTEX is required to recruit 40 fundamental rights monitors to support the efforts of FRO. As an extra layer of achieving accountability, the new Regulation maintains the individual complaints mechanism as introduced in the 2016 Regulation.²

Finally, a significant change in the current Regulation is that FRONTEX is responsible not only for safeguarding the EU's external borders or in the neighbouring countries, but for other areas as well. This provision implies that the EU will agree with third countries on a plan for FRONTEX to operate. FRONTEX has already been present in Albania since Spring 2019, where 60 border police officers have been deployed to support the country's border management and offer technical assistance. Under the new Regulation, FRONTEX's operations can be extended beyond states that directly share a border with the EU (i.e. North Africa). However, assuming that FRONTEX can conduct operational tasks only if the third countries sends an invitation, it is doubtful whether the latter would like to issue such an invitation. FRONTEX would forward the EU's interests in deterring and detaining irregular migrants before they reach the shores of the EU. What has been clear from previous experience in similar missions in Niger is that the EU is not interested in conducting extended relocations of migrants to Europe and it has only accepted vulnerable persons. Therefore, the African Union decided to block the "disembarkation platforms" and other centres, from which the migrants could submit asylum applications (Bossong, 2019).

FRONTEX and Greece: a close relationship

The increased securitization of migration by political elites in Europe and the restricted measures set by the EU member states lead to a more comprehensive approach on border management and consequently, to a more enhanced role for FRONTEX. In this manner, the member states facing major challenges by migration flows crossing their borders are those that are mostly affected by changes in FRONTEX's extended role.

Traditionally, Greek authorities and politicians of all governmental parties consider the EU assistance on migration and border control as highly necessary in the effort to cope with the situation. According to the then speaker of the Hellenic Parliament, Vangelis Meimarakis "...the effective coordination of institutions dealing with issues directly or indirectly related to migration such as FRONTEX, the European Asylum

² According to this, individuals can submit a complaint to FRONTEX if they consider that some of its actions violate fundamental human rights.

Support Office (EASO), Europol, and the European External Action Service should be sought,"(Hellenic Parliament, 2014).

Greek Prime Minister, Kyriakos Mitsotakis has repeatedly urged the EU to assist Greece in managing the situation and has highlighted the need for a more enhanced role of FRONTEX in the islands and the sea borders with Turkey as the migrant flows are still increasing. Specifically, the Greek Government announced a number of measures in an effort to address the recently increased migrant flows crossing the Aegean including the more active role of FRONTEX and NATO with operations across the sea borders with Turkey, a better coordination of the Greek and Turkish Coast Guards as well as calling for more effective operations with the effective technologically equipped tools of FRONTEX.

More recently, during the developments at the Greek external borders with Turkey across Evros river, the Greek government officially requested FRONTEX to launch a rapid intervention to deal with the situation. FRONTEX accepted its request and decided to deploy about one hundred emergency personnel in the area. The operation is for a period of two months, which may be extended.

Why does Greece insist on the assistance of FRONTEX with border management?

- FRONTEX offers assistance in various areas on the ground, in which Greece lacks expertise and resources. Since 2011, border management and migration controls have significantly expanded in Greece and the Greek political authorities adopted the Integrated Border Management Program for Combating Illegal Immigration. According to an evaluation report published in November 2015, the European Commission noticed shortcomings in border management in Greece and insisted that there is a need for a more effective border control which includes better screening, identification and registration processes, as well as a more systematic fingerprinting.
- Apart from the need to better control the borders, FRONTEX implemented a more sophisticated border surveillance system, called the European Border Surveillance System (EUROSUR) in Greece in 2014 which included the use of technologies such as thermal cameras, thermovision vans, helicopters, airplanes, surveillance systems, the Surveillance Operational Center and Geographical Information Systems (GIS), drones and satellites. It is clear that by using this high-end technology, Greece is moving towards a more "intelligence-driven" logic in the effort to monitor its borders. The primary aim here is to prioritize the prevention of migrant flows on Turkish territory and to monitor the situation from a distance, before they cross the Aegean. Moreover, FRONTEX holds an important role in readmission processes in cooperation with the Greek police and the Hellenic Coast Guard.

- The EU's united stance on migration is tested. FRONTEX represents the EU's common response to migration and border management. For this reason, Greek governments argue for an enhanced role of FRONTEX in the outer EU borders as it would "de-nationalize" the issue, offering a common approach.
- The new Regulation makes returns a top priority for FRONTEX and enhances its role in both pre-return and return-related stage. The agency will, apart from organizing, and financing return flights, also prepare the return decisions and offer its own return escorts. It will also support member states with the acquisition of travel documents and the identification processes.

The rationale of a policy that prefers a more flexible operation of FRONTEX that would allow it to operate even in third countries outside the EU is very central to Greece's arguments. The new plan is twofold.

- FRONTEX in coordination with EASO and other international organizations could deploy officials and experts to countries of origin and provide transit to support efforts on the ground.
- It has been proposed to establish "controlled centres" for asylum seekers and refugees in third countries where there would be an opportunity for them to submit their application for asylum. For those who are qualified, there would be a chance to have access to international protection. For those who are not granted international protection, there will be a provision for returns. Again, concerning the establishment of the controlled centres, FRONTEX will need the assistance of EASO and other International Organizations, such as the International Organization for Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR).

Conclusion

Strong criticism and concerns have been raised regarding the effectiveness of such measures. Bearing in mind that there is a reluctance in countries outside the EU to launch the "controlled centres" on their soil, there is a risk that the latter will be launched inside the EU borders in countries like Greece or Italy. This would have little effect on the situation and would not take the burden off the first host countries. Moreover, there are doubts over the compliance of such centres with European and international human rights provisions.

Reforms adopted by the EU on how FRONTEX will operate in the border management are generally considered to be likely beneficial for Member states at the external borders of the EU. There will be a

significant staff increase in the Agency, the centralized executive powers will allow for a rapid tackling of the issue, and the expansion of the areas of operations, even in third countries could facilitate asylum processes and ease member states at the EU borders.

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