

PROPOSED FRONTEX REFORM AND ITS IMPACT

BORDER POLITICS AND THE EXTERNAL SECURITY NEXUS IN THE EU

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- The EU Commission has proposed that the European Border and Coast Guard Agency, known as Frontex, should have a standing corps of 10,000 operational staff, who could be deployed anywhere in the world to willing host countries.
- Frontex would emphasize its focus on migration management and returns, and expands its tasks to countering terrorism.
- The reform would increase Frontex’s operational capabilities, but decrease the role of the member states by centralizing decision-making within the Commission.
- A partial overlap with the Common Security and Defence Policy (CSDP) instruments, especially with civilian crisis management, could have an impact on the external action of the EU.
- Since the member states have diverging views on how to improve border security and the role that the Council should have in the decision-making, it is likely that the proposal will face some changes before it can be accepted by the Council and the European Parliament. To this end, the planned timeframe seems unrealistic.



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INTRODUCTION

In September 2018 the EU Commission proposed that the capacities and capabilities of the European Border and Coast Guard Agency, known as Frontex, should be significantly increased.¹ In practice this would mean the creation of a standing corps of 10,000 operational staff and its own equipment, which should be ready to engage in operations from the beginning of 2020. This would make Frontex less dependent on member states' contributions. Another goal is to improve the Agency's ability to respond to border management-related challenges both in the EU and abroad, such as migration, cross-border crime, and terrorism.

Moreover, the Commission also proposes expanding the current operational area of Frontex from the EU and its immediate neighbourhood to the rest of the world. Despite the evident political willingness to "secure the borders", the Commission's proposal has not been received well in all member states. If executed, the reform would mean transferring already scarce border management resources to Frontex, and centralizing decision-making to the Commission. This would also have an impact on the wider security apparatus of the EU.

This Briefing Paper analyses the plan to reform Frontex, and its possible consequences regarding the border management and the EU's external security and defence policies and practices.

THE PROPOSAL

Irregular migration and asylum seekers were effectively securitized, that is regarded as a security threat requiring exceptional measures, after over 1.83 million irregular border crossings were detected at the external borders of the EU in 2015.² This exposed severe shortcomings in border and asylum management. In

light of persistent and serious deficiencies in border management in Greece, some Schengen member states established temporary controls at their national borders. Some of them are still in place due to the internal political situation in those member states, although the Schengen Border Code limits the maximum duration of controls to two years.³

The different responses to the situation revealed that the common European asylum system was in practice far from common. In order to manage the issue of irregular migration more effectively, the European Border and Coast Guard system was reformed in 2016. The reform saw border management as a joint responsibility between the member states and Frontex, whose operations at the borders of the member states would support and assist the national authorities. Special emphasis was placed on establishing a common pool of experts, improving the use of databases, and cooperation with other law enforcement agencies.⁴

The situation along the external borders has improved since, as the number of irregular arrivals in the EU through the Mediterranean routes fell from a peak of over one million in 2015 to 186,000 in 2017.⁵ While the EU has managed to improve security along its external borders and most of the incomers are now checked, identified, and registered according to the regulations, the decrease in arrivals is mostly due to joint action agreed with Turkey.

Since 2015, Frontex has multiplied its operations, but it does not meet the desired level. In the 2018 annual pledging exercise between Frontex and the member states, 49% of border guards and 45% of equipment needed for the Agency's land border activities were covered. The results for sea border operations were better, with 96% of guards and 60% of technical assets covered.⁶ On the other hand, Frontex has not reported any failures to complete its tasks, or cases of deficits in capacities endangering border management. Nevertheless, the EU Commission is concerned over

1 The European Border and Coast Guard Agency refers to Frontex, and the European Border and Coast Guard to the common European border management structures. Since the names and their usage are rather complicated and confusing, the term Frontex is used when referring to the border management agency of the EU.

2 This is not the same as the number of people who entered the EU irregularly in 2015, as the same persons can attempt to cross the border in many locations. For comparison, 1.34 million people applied for asylum in the EU member states in 2015. See European Parliament Research Service: 'Migration and asylum', <http://www.europarl.europa.eu/thinktank/infographics/migration/public/index.htm?#page-migration>, accessed 22 January 2019.

3 In 2016, the Commission proposed reforming the Schengen Border Code regarding temporary border controls, but the changes are still being processed.

4 E.g. T. Tammikko, 'The New Frontex and the Future of Schengen', FIIA Briefing Paper 219, 2017; J. Rijpma, 'The Proposal for a European Border and Coast Guard: evolution or revolution in external border management?', Study for the LIBE Committee, 2016.

5 'Migration Flows to Europe - 2017 Overview', Reliefweb, 31 December 2017, <https://reliefweb.int/report/world/migration-flows-europe-2017-overview>, accessed 22 January 2019.

6 Proposal of the EU Commission COM(2018) 631 final, 12 September 2018, p. 5.

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 within Frontex.

Other issues also need to be addressed, such as secondary movement inside the Schengen area – unregistered people crossing the internal borders – which is still a challenge after the failures in 2015. Information on people already registered is not shared as effectively as hoped. Furthermore, people are still losing their lives while trying to cross the Mediterranean Sea to Europe, which underlines the need for more efficient surveillance and ability to react quickly on the sea. According to the UNHCR, in the first half of 2018, over 1,000 refugees and migrants died at sea.⁷ Consequently, the EU Commission made its proposal to improve the operative capacities and capabilities of Frontex in September 2018, claiming that there is “a clear need to have permanent, fully trained staff of the Agency that can be deployed at any time anywhere”.⁸

The next elections to the European Parliament (EP) will be held in May 2019, and the proposal should be approved prior to that in order to execute the reform according to the planned timetable. However, approving such a large and expensive reform before the multiannual financial framework seems unlikely. Although the Council has already reached a partial agreement on returns and cooperation with third countries, that agreement does not allow the commencement of negotiations with the European Parliament.⁹ A political agreement on the proposal with the Council and the European Parliament is necessary. Furthermore, not all member states share the Commission’s ideas on how to bolster border management and how much it would strain their national staff. Hence, they might not support the proposal as it stands, which will slow down the process.

Besides the price tag, the question of decreasing the role of the Council will likely stir up opposition. As a consequence, the plan will likely undergo some changes before proceeding to the Committee vote, Trilogue, and finally to the European Parliament plenary vote.

BUILDING CAPACITY

The most significant change in the Commission’s proposal would be the creation of the 10,000-strong Frontex “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 from the beginning of 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.

The size of the standing corps builds largely on the current pooling mechanisms, which have been of a voluntary nature thus far, with the exception of the 1,500-strong Rapid Reaction Pool. More than 7,000 border guards are registered for Frontex operations at present, but their deployment depends on the member states. Hence, the reform is not so much about establishing a new force, but about restructuring the capacities to allow Frontex easier access to them. Article 75(3) of the proposal says that the rest of the standing corps, that is to say those 3,000 on long-term secondment and 4,000 short-term deployed staff, are also required to join the operations.

Along with the growing staff, Frontex should also have a bigger pool of equipment, including vessels, planes and vehicles. With this capacity, Frontex could fill the current operational gaps, boost support to frontline member states, cover more areas in the EU and third countries, and scale up returns.¹⁰ If the proposal is accepted and implemented as planned, Frontex would become a significantly bigger security actor in Europe.¹¹ With the standing corps, it could also allocate its resources with greater independence and agility.

Recruiting the necessary staff poses the biggest challenge to the plans. Since there have been challenges in deploying the existing experts, capacity building in practice would entail recruiting many new staff both in the member states and in Frontex. The Commission is aiming to establish a permanent staff of 1,500 at the beginning of 2020, and to increase the number to 3,000 by the end of 2027. The current approximately

7 UNHCR, Press release, 30 June 2018, <https://www.unhcr.org/news/press/2018/6/5b3747a54/unhcr-appalled-loss-life-sea-coast-libya.html>, accessed 22 January 2019.

8 COM(2018) 631 final.

9 Council of the EU, Press release 06/12/2018.

10 COM(2018) 631 final, p. 7.

11 The Helsinki headline goal from 1999 set a target whereby the Union should be able to deploy up to 50,000–60,000 personnel for military crisis management operations. In 2018 the number of military staff in CSDP operations was roughly 4,000, while civilian staff, which include law enforcement personnel like border guards, amounted to around 2,600 (‘Common Security and Defence Policy of the European Union: Missions and Operations Annual Report 2016’, EEAS, https://eeas.europa.eu/sites/eeas/files/e_csdp_annual_report1.pdf, accessed 19 January 2019).

1,000-strong Frontex staff¹² should be included in the permanent staff, but hundreds of new personnel would still need to be recruited in less than a year, or sourced from the member states. The member states have had problems finding suitable staff to fill the existing much smaller pool, so this is no mean feat. It takes many months to train a border guard, depending on the member state in question and the role and tasks of the guard.

Establishing a 10,000-strong border and coast guard corps would naturally be costly. The Commission has calculated that Frontex would need €1.3 billion for 2019–2020, and €11.3 billion for 2021–2027. In addition, member state border management authorities would be able to obtain support from the €9.3 billion Integrated Border Management Fund for maintaining and renewing their border management infrastructure and capabilities, which would raise the overall cost above €20 billion. It is reasonable to expect that political debates on the post-2020 Multiannual Financial Framework are not going to be easy regarding the Frontex budget.

CENTRALIZING POWER

Frontex currently operates within the EU area or in the neighbouring countries. If the Agency perceives vulnerabilities in a member state's border management system, it may intervene by recommending corrective action. In the event of disproportionate pressure at the external border, Frontex can organize and coordinate joint operations and rapid border interventions, and send teams from the standing corps and technical equipment, if the targeted member state is willing to deploy them. When deployed, Frontex staff act with the same powers as the national authorities.¹³

This right to intervene principle was the most politically contested issue in the 2016 proposal because the Commission had proposed excluding the Council from the decision-making. This suggestion was eventually watered down. Currently, in the event that a member state does not comply with the binding decision

of the Management Board of the Agency with regard to improving its national border management tasks or possible Frontex operation in its territory or in a neighbouring non-EU country, the Commission proposes that the Council should adopt a decision on further action. If the member state opposes the Council decision, the other EU countries can temporarily reintroduce internal border checks at the relevant borders.

However, in the current proposal the idea of leaving the Council out of the picture reappears. Regarding internal operations, this would have little impact on Frontex competences. Frontex could still only operate in a member state only if the state were willing to deploy the staff. However, it is still a matter of principle: Council decisions would enjoy wider legitimacy. Given that the issue of national sovereignty is currently a highly sensitive topic in many member states, it is likely that the proposal to exclude the Council will be rejected again.

The proposed decision-making structures regarding other operations may also stir debate. According to the proposal, relevant decisions on operations would be made by the Commission, and strategic guidance for border management development within the EU would be realized by setting up a multiannual strategic policy cycle for European Integrated Border Management. National authorities are naturally included in the policy cycle, but not at the political level. For example, Finland is represented by the Finnish Border Guard. However, this idea has been criticized, since the use of a delegated act is limited to amending non-essential elements of Union legislation. In other words, the policy cycle is valid for minor decisions falling within the Frontex mandate, but any bigger political decisions would call for parliamentary oversight.¹⁴

AREAL EXPANSION

The Commission also wants Frontex to be able to meet the relevant challenges “wherever and whenever needed – along the EU’s external borders as well as in non-EU countries”, which would mean lifting the current restrictions to act only within the EU or in the neighbouring countries. This includes the possibility of concluding status agreements between the EU and third countries, meaning that all operations in the territory of a third country require an agreement on the

12 In 2017, the exact number was 488, but the aim was to double the Agency staff in 2018 ('A year in review: First 12 months of the European Border and Coast Guard Agency', Frontex, https://www.irpa.eu/wp-content/uploads/2017/10/Frontex-A_Year_in_Review.pdf, accessed 22 January 2019). Statistics for 2018 are not yet available.

13 The Meijers Committee notes that this would stretch the boundaries of the Agency's legal basis to the maximum since, according to the Treaties, the ultimate responsibility in matters of internal security lies with the member states. (Meijers Committee, CM1817, 27 November 2018, https://www.eerstekamer.nl/eu/docu-menten/cm1817_notitie_van_de_commissie/f-/vku0ofm4fpqh.pdf, accessed 22 January 2019)

14 Articles 290 and 291 TFEU; Meijers Committee, CM1817

mandate with that country. Currently there are interests to establish Frontex operations in the Western Balkans.

Negotiations with third countries are currently conducted by DG Home, and in the proposal the European External Action Service (EEAS) is linked to a supportive and coordinating role. This would allow for the deployment of 1) border management teams, 2) return teams, and 3) operations in the territory of third countries.¹⁵ Few countries are willing to have foreign law enforcement troops in an executive role – with similar powers as national law enforcement authorities – so the action is mostly limited to various forms of assistance and support, as is currently the case in CSDP (Common Security and Defence Policy) operations.

Since the idea is to expand Frontex's tasks more towards migration management and returns, the agency would also be able to deploy experts as liaison officers to countries of origin and transit. They would duly join the local and regional networks of the EU and the member states related to migration and security.¹⁶ Currently there are liaison officers in Turkey, Western Balkans, and Niger.

One idea that has been discussed concerns establishing 'controlled centres' for asylum seekers and refugees outside of the EU borders, where third-country nationals' applications could be rapidly processed to ensure access to protection for those who need it and swift returns for those who don't, already prior to their entry into the Schengen area. The idea is based on the so-called hotspot areas for border crossing, which have been in use in Greece and Italy. In the case of controlled centres outside of the EU, Frontex could coordinate with the EASO (European Asylum Support Office) and relevant international organizations, such as the International Organization for Migration (IOM) and United Nations High Commissioner for Refugees (UNHCR). However, when including third countries and local actors into missions, CSDP framework would be more suitable due to its integrated approach.

Irrespective of whether such centres are established, there should firstly be a third country willing to act as a platform for the EU asylum process, and a status agreement on the role of the EU authorities stationed there. There are also concerns as to whether such a centre outside of the EU area could be fully

compliant with European and international human rights standards and have a clear legal basis in national or EU legislation.¹⁷

Thus far, none of the potential countries in the EU neighbourhood have shown an interest in hosting such a centre, and a controlled centre of some sort is more likely to be launched inside the EU, perhaps in Italy or Greece, where the pressures of migration flows are the strongest. This kind of centre would be managed by the host member state with full support of the EU and EU agencies such as Frontex. However, the current political atmosphere in the key countries is not conducive to the idea of controlled centres.

Another possible external Frontex action would concern returns, which the Commission is aiming to scale up. This would require more personnel and proper liaison with target countries, such as Afghanistan and Iraq. However, the EU does not have the same diplomatic clout for returns as the member states¹⁸. Furthermore, since many member states have failed to execute even the current number of returns due to long court processing times, appeals, and the negligence of third countries in taking their nationals back, scaling up returns is not just a matter of increasing personnel.

IMPACT ON THE EU'S EXTERNAL ACTION

One of the most significant changes in the proposal is expanding the operational area of Frontex beyond the EU and its immediate neighbourhood. The Commission proposes that decisions regarding the external action of Frontex would be made by the Commission or by Frontex itself. This would make Frontex quicker when it comes to operational capability, but raises questions about the kind of power that the member states would have over their national contingents under Frontex control.

The proposed approach is for Frontex to decide upon the use of its permanent staff independently. If Frontex decided to set up an operation in Sahel, for example, Finnish nationals on the permanent staff would also be deployed without a separate decision by the Finnish authorities or politicians. However, the overall strategic view, tasks and mandates of possible external missions would be agreed upon beforehand,

15 Council of the EU, Press release 06/12/2018.

16 Ibid.

17 Meijers Committee, CM 1817.

18 J. Lisiecka & R. Parkes, 'Returns diplomacy: levers and tools', EUISS Brief 11, 2017.



Frontex border guards patrol at sea in during Operation Themis, a border control and sea rescue operation launched in 2018. (Image: Frontex.)

and the third country where the operation takes place would have to agree with them. Consequently, use of the standing corps would be regulated and decided jointly, and most of the seconded staff would be directly recruited to their posts overseas with governmental approval, as is currently the case in CSDP operations. However, this idea may not be approved as proposed, and the bigger border management operations would still require a Council decision, as is also the case with CSDP operations at present.

The issue of decision-making on external operations can be debated and the Commission's proposal modified before it is accepted, but increasing the operational capacity and capability of Frontex by centralizing power within the Commission has other outcomes beyond decreasing the role of the member states.

The planned reform of Frontex would have a significant impact on the wider security architecture of the EU, since giving the Agency power over external action overlaps with some of the powers that other EU actors already have. This applies to the civilian CSDP operations in particular, since some of them already focus on border management and migration.

The EU has ongoing border assistance operations within the CSDP framework in Libya, Moldova and

Palestine, and EUCAP operations in Niger and Mali are reinforcing regional law enforcement agencies to fight cross-border crime and terrorism. Meanwhile, Frontex operates within the FSJ framework, especially in the Mediterranean Sea, to counter irregular migration and cross-border crime.

Although Frontex's objectives differ somewhat from those of crisis management, some overlap is evident when it comes to tasks related to border and migration management in third countries, not least because in practice both CSDP and Frontex operations currently rely on the commitment and deployments of the member states. In the framework of border management this means that both Frontex and CSDP operations need the same experts from member state national staff. Establishing a 10,000-strong standing corps would change this picture quite dramatically. Article 75(3) in the proposal would bind the standing corps to participate in the decided operations. Therefore Frontex operations would not be dependent on the member states and their political will, unlike civilian CSDP operations.

Furthermore, using Frontex in external operations would be tempting from the point of view of the EEAS, since its operations would not need pledge

negotiations, as in the case of the CSDP. This would give Frontex an advantage when planning external operations related to border and migration management in the EU.

Regarding possible operations in third countries, cooperation should take place in the framework of the external action, and the CSDP in particular. In such cases, the High Representative of the EU and her services in the EEAS should assist the Commission. In other words, the Commission sees the FSJ-CSDP division as a matter of cooperation and coordination.

This division may be more complicated in practice. Possible scenarios for joint external action include: 1) the CSDP and FSJ operate in different geographical areas, 2) operations are sequential, meaning that the CSDP could start in the acute and more risky phase of a conflict and hand over tasks to FSJ agencies when the situation calms down, 3) the Civilian CSDP Compact makes CSDP operations flexible, so FSJ personnel could ‘plug in and out’ as required, and 4) the FSJ and CSDP would be fully integrated regarding the EU’s external action, and the division lines in operations would be dissolved.¹⁹

CONCLUSIONS

There are three main factors in the Commission’s proposal to reform Frontex that may have significant repercussions for both internal and external security: 1) the size of the planned standing corps, 2) emphasizing Frontex’s role on migration management and returns, and 3) expanding the operational area beyond the EU’s immediate neighbourhood to the relevant countries of origin, and the transit of migratory flows.

A 10,000-strong corps sounds substantial, but when it is broke down, it seems that it is mostly about restructuring the existing pools so that Frontex could use the personnel more efficiently and more independently of the political moods of the member states. Since the idea is to have a contingent of 3,000 permanent staff while 7,000 would still be deployed from the member states, Frontex might easily operate with the permanent staff, whereas the challenges of getting the required resources from the member states would remain.

Since some of the decision-making would be delegated to the policy cycle that sets the long-term goals and tasks of Frontex, the political role of the member

states would decrease. However, the member states may oppose this idea, which could force the Commission to change its proposition.

Emphasizing the role of Frontex in migration management and returns means increased focus on land and sea borders, although most migrants enter legally through airports. However, it is used to justify the external action of the FSJ agency. Tackling such a complicated topic as migration requires networking with the countries of origin and countries along the migratory routes. It is not yet clear how the external operations and tasks will take shape, and whether or not they will overlap with EEAS instruments, such as the civilian CSDP. Although the CSDP has different tasks and normally a wider focus, some CSDP operations have focused entirely on border management, either from the perspective of security sector reform or border assistance. Since the reformed Frontex would supposedly have the operational capacity to take over some of these tasks, the civilian CSDP operations might be sidelined, at least in border and migration management-related tasks.

From the perspective of the member states, the most relevant issue in the proposal concerns the fact that they would be bypassed in decisions on the use of their national experts under Frontex control, and it would obligate them to give their national staff to Frontex. Hence, they might prefer decision-making regarding the policy cycle to be subject to the Council instead of the Commission.

¹⁹ R. Parkes in C. Böttcher & M. Wolf (eds.), ‘Moving EU Civilian Crisis Management Forward. More Capable, More Flexible, More Responsive’, DGAP Report, 2019.