Frontex leading returns: Human rights responsibility for the long arm of EU migration policy

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Towards ‘operational effectiveness’

EUROPEAN BORDER AND COAST GUARD: COUNCIL CONFIRMS AGREEMENT ON STRONGER MANDATE

Stronger external border protection is essential for a safer Schengen area and a more efficient management of migration. The new rules will allow Frontex to provide faster, more efficient support to member states on a number of tasks, including border controls and returning those without a right to stay.

Carmen Daniela Dan, Romanian minister of internal affairs

#RO2019EU
The next phase of the EBCG


EBCG Regulation 2019

- An operational arm of 10,000 border guards with broad executive powers and their own equipment.
The next phase of the EBCG

- Broad powers in returns (voluntary returns and deportations) – own escorts, fundamental rights return monitors, preparing the return decisions
The next phase of the EBCG

- Extensive data sharing – centralized return management platform for automated information processing, information exchange, incl. personal and other sensitive data (asylum interview)
The next phase of the EBCG

izational increase

Total EU budget 2020-2021: doubling of funds for migration and border management (€ 22 billion)

*Discussions on the budget of both the EU and Frontex are currently ongoing. The information can change. The 'headline' figures for the budget have been finalised


## The next phase of the EBCG

<table>
<thead>
<tr>
<th>Frontex (2005-2017)</th>
<th>Budget (million €)</th>
<th>Budget increase</th>
<th>Total staff</th>
<th>Staff increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>6</td>
<td></td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>19</td>
<td>217%</td>
<td>70</td>
<td>56%</td>
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<tr>
<td>2007</td>
<td>42</td>
<td>121%</td>
<td>128</td>
<td>83%</td>
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<tr>
<td>2008</td>
<td>70</td>
<td>67%</td>
<td>181</td>
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<tr>
<td>2009</td>
<td>88</td>
<td>26%</td>
<td>226</td>
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<tr>
<td>2010</td>
<td>93</td>
<td>6%</td>
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<td>30%</td>
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<tr>
<td>2011</td>
<td>118</td>
<td>27%</td>
<td>304</td>
<td>3%</td>
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<tr>
<td>2012</td>
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<td>-24%</td>
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<td>2013</td>
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<tr>
<td>2014</td>
<td>93</td>
<td>-1%</td>
<td>311</td>
<td>3%</td>
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<tr>
<td>2015</td>
<td>143</td>
<td>54%</td>
<td>309</td>
<td>-0.6%</td>
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<td>2016</td>
<td>254</td>
<td>78%</td>
<td>370</td>
<td>20%</td>
</tr>
<tr>
<td>2017</td>
<td>302</td>
<td>19%</td>
<td>531</td>
<td>44%</td>
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<tr>
<td>2018</td>
<td>320</td>
<td>6%</td>
<td>643</td>
<td>21%</td>
</tr>
<tr>
<td>2019 - 2020</td>
<td>1,300 (1.3 billion)</td>
<td>306%</td>
<td>1,000</td>
<td>56%</td>
</tr>
</tbody>
</table>
The next phase of the EBCG

- **Budgetary increase in Frontex returns**

  €1.8 billion  300% increase

  excluding budget for aircrafts and vessels (€2.2 billion)

  Goal to facilitate the return of 50,000 people per year.
Frontex in Hungary

- Hungarian law 2015: applicants from safe countries, including Serbia rejected, no safeguards
- Collective expulsions to Serbia, summary dismissals of claims, refoulement to Afghanistan
- Advice to withdraw
Frontex responsibility

- Ultimate responsibility with MS even after 2019
  Preparing return decisions without entering into the merits

- Still responsible for compliance with non-refoulement within its operations

- Taking appropriate action to prevent, incl. suspension
Frontex responsibility

- Cannot review asylum applications.
- No disciplinary power, criminal, or civil jurisdiction over border guards.
- Does not have full control over the operation.
- Training of border guards
- Instructions of Frontex Coordinating Officer
- Reporting and accountability mechanisms
- Terminating and suspending an operation (persistent & systemic violations)
Responsibility after 2019

Increased possibility after 2019 with own aircrafts and own escorts

Before 2019: room for responsibility
Aid and Assistance (complicity)
- actively (e.g. technical and financial support)
- by omission (e.g. failing to suspend or terminate)

After 2019: shift of focus from complicity, to direct responsibility
Accountability - implementation

Recommendations - Frontex:

- strategic decisions on engagement – advice of FRO and CF
- appropriately follow up on complaints and SIRs
- empower the FRO
- immediately deploy the HR monitors
- allow more transparency
Accountability – amendments

Recommendations – legislature

- external follow-up of the complaints mechanism by the European Ombudsman
- review of complaints by the CJEU
- robust system of external monitoring of return operations (Committee for the Prevention of Torture, NHRIs, Ombudspersons)
Many Thanks!

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