



Paris, 14 December 2022

## **POLITICAL OPINION**

### **On the future of the European border and coast guard agency (Frontex)**

The European Affairs Committee of the French Senate,  
Having regard to Article 12 of the Treaty on European Union,  
Having regard to Articles 67 and 77 of the Treaty on the  
Functioning of the European Union,  
Having regard to Regulation (EU) 2019/1896 of the European  
Parliament and Council of 13 November 2019 on the European  
Border and Coast Guard and repealing Regulations (EU) no.  
1052/2013 and (EU) 2016/1624, currently under review by the  
European Commission,  
Having regard to the special report of the Court of Auditors of the  
European Union dated 7 June 2021<sup>1</sup> expressing disappointment that  
the actions conducted by Frontex at the external borders of the EU  
have not been "sufficiently effective to date",  
Having regard to the decisions of the European Ombudsman dated  
15 June 2021 and 17 January 2022,<sup>2</sup>  
Having regard to the confidential investigation report of the  
European Anti-Fraud Office (OLAF), partially published in the  
press on 13 October,

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<sup>1</sup> Special Report "Frontex's support to external border management: not sufficiently effective to date," 7 June 2021.

<sup>2</sup> Decisions 01/5/2020/MHZ and 01/4/2021/MHZ.

Considering the crisis faced over the past few months by the European Border and Coast Guard Agency, commonly known as Frontex,

Considering, as illustrated by the aforementioned special report of the Court of Auditors of the European Union, that this crisis is first and foremost a "growth crisis" for an agency which, under the aforementioned Regulation 2019/1896, was endowed with unprecedented resources to contribute to the monitoring of the external borders of the European Union, but has not had time to conduct the recruitment activities and reforms needed to perform the entirety of its mandate in compliance with the proper procedures,

Considering that this crisis is also "a crisis of confidence" with regard to an agency that has been criticised on the one hand for potential irregularities and shortcomings in its internal management, and on the other for its alleged participation in violations of the fundamental rights of irregular migrants in the Aegean Sea,

Considering that OLAF therefore opened an investigation into these accusations in November 2020 and that the resulting report, issued in February 2022, observed operational deficiencies characterised by ignorance of the procedures to be followed, failures to act in good faith, and multiple breaches of duty on the part of management,

Considering the partial publication of this confidential report in the press on 13 October,

Considering that the European Ombudsman has issued several concrete recommendations to the Frontex agency to effectively ensure respect for fundamental rights in its decisions and operations,

Considering the unilateral establishment of a Frontex Scrutiny Working Group by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 23 February 2021 to monitor the European border and coast guard forces, and its 14 July 2021 investigative report into allegations of fundamental rights violations by Frontex, claiming to have "*found no evidence*" of illegal direct-action push-backs or collective expulsions committed by the agency;

Considering, however, the implementation of enhanced scrutiny of Frontex by the European Parliament, and the successive

postponements of the vote on its budgetary discharge for financial year 2019 in March 2021, and for financial year 2020 in May and October 2022 due to the *"extent of the serious misconduct committed and possible structural problems"* observed,

Considering, with grave concern, the resignation of Fabrice Leggeri from his position as Executive Director of the Frontex agency on 28 April 2022 in the wake of these investigations and audits, and the appointment of Aija Kalnaja as temporary Executive Director, as well as their hearings before the Senate's European Affairs Committee and its Legislative Committee, which were held respectively on 14 June 2022 and 10 November 2022,

Considering the meeting of the Frontex Management Board scheduled for 20 December 2022, at which the next Executive Director of the agency is expected to be appointed,

Considering the consultation undertaken by the European Commission from 5 September to 3 October 2022, and the evaluation procedure under the aforementioned Regulation (EU) 2019/1896, with a view to a possible modification of the latter at the end of 2023,

Considering the 77% increase in irregular crossings of the external borders of the European Union over the first ten months of 2022 compared to the same period in 2021,

Considering the attempts to exploit migratory movements by certain third countries bordering the European Union aiming to weaken the solidarity and security of the Member States,

Considering the sharp increase in sea crossings to the United Kingdom by irregular migrants from the coasts of France, which have become external borders of the European Union since the entry into force of Brexit,

Considering the current deployment of more than 2,000 officers from the Frontex standing corps to take part in eighteen simultaneous operations,

Considering the upcoming implementation of an integrated European border management system in late 2023 with the establishment of a database for the entry and exit of third-country nationals crossing the external borders of the European Union (EES) and the entry into force of the Electronic Travel Information and Authorisation System (ETIAS), which after performing the necessary verifications will issue authorisations for travel within the European Union to third-country nationals not requiring a visa,

And considering, lastly, the leading role of national parliaments in evaluating the effectiveness of border monitoring, allocating the resources to permit this monitoring, and voting to approve the Member State contributions to the budget of the European Union that finance the Frontex agency.

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*On renewed support for Frontex as the European border surveillance agency*

Reaffirms its dedication to the sustainability of the Schengen Area, an area of free movement of people, goods and capital that is unprecedented in the world and constitutes one of the main achievements of the European Union, and emphasises that free movement within this area must go hand in hand with effective and permanent control of its external borders;

Acknowledges that the effectiveness of this control depends on the support provided by Frontex, the European Border and Coast Guard Agency, to the Member States;

Specifies that the aforementioned Regulation (EU) 2019/1896 provides the Frontex agency with a reinforced mandate under which it is to be endowed with a standing corps of 10,000 border guards and coast guard agents by 2027, requiring it to act immediately in accordance with fundamental rights, allowing it to easily organise return operations and authorising it to cooperate with third countries;

Emphasises France's decisive role in granting Frontex this expanded mandate and the Senate's unfailing support for the development of the agency's prerogatives;

Expresses disappointment at the recent increase in violence at the borders, which sadly resulted in the death of a Bulgarian border guard on 7 November this year, and expresses its full support for the personnel deployed in the theatres of operation, commending their professionalism and readiness;

Underscores, lastly, that control of the European Union's external borders is closely linked to migration policy and asylum policy, and therefore supports the efforts of the European Union and the Member States to defend this comprehensive approach in the ongoing discussions regarding the New Pact on Migration and Asylum and regarding the revision of the Schengen Borders Code;

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*On strengthening the political management of the Frontex agency*

Regrets the excessive length of the process for appointing the future Executive Director of the agency, which is likely to further weaken it at a time when a significant increase in irregular crossings of the external borders of the European Union has been observed and geostrategic tensions are increasing to the south and east of the European Union; calls for the appointment of the future Executive Director at the next meeting of the management board, to be held on 20 December 2022;

Calls for an assessment of the candidates still in the running, with regard to three requirements: their professional competence, their desire to preserve the Member States' leadership role on the Frontex management board, and their determination to reinforce the agency's pursuit of its mission to monitor the external borders of the European Union;

Takes the view that the agency's management board must henceforth fully exercise its powers of guidance and political control with regard to the Executive Director and therefore must be composed of staff with sufficient experience and rank;

Recommends, moreover, increased political management of the agency by the Member States' ministers for home affairs at dedicated meetings of the Council of the European Union and exceptional meetings of the management board, when they can issue guidance to the agency on a regular basis;

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*On the clarification of Frontex's mandate*

On respect for fundamental rights

Emphasises that the Frontex agency's primary mission is to support Member States in monitoring the external borders of the European Union, and in so doing must act with respect for fundamental rights;

Underscores that the aforementioned Regulation (EU) 2019/1896 has put in place a specific mechanism for the protection of fundamental rights within Frontex, with the appointment of a Fundamental Rights Officer assisted by monitors responsible for compliance with these rights, the establishment of a consultative forum competent to advise the agency on the subject, and the establishment of a complaints mechanism for the benefit of persons

who believe their rights to have been infringed by the action or inaction of the agency;

Welcomes the measures announced by the interim management to promptly implement these arrangements and procedures and the lessons learned from the various audits and investigations conducted by the Court of Auditors of the European Union, the European Ombudsman and OLAF, in particular by improving the accessibility and publicity of the above-mentioned complaints mechanism and by appointing 46 Fundamental Rights Monitors;

Considers that before their appointment, the Fundamental Rights Officer and the Fundamental Rights Monitors to be named by the latter should attest to having operational experience in the field of border surveillance and have the appropriate resources to perform their duties;

Recommends the establishment of a permanent dialogue within the agency between the Executive Director and the Fundamental Rights Officer, so as not to institutionalise two distinct and structurally competing chains of command;

Confirms the need for the agency's management board to subject the Fundamental Rights Officer to an annual professional evaluation, and suggests that the latter's decisions regarding respect for fundamental rights should be evaluated on an annual basis by the European Ombudsman so as to guarantee external control;

Acknowledges the welcome overhaul of the serious incidents alert procedure in April 2021; and calls nevertheless for measures to be taken to ensure that the procedures for triggering alerts for fundamental rights violations by Frontex personnel – even upon the mere suspicion of such a violation – will not be such as to permit the exploitation of the procedure by parties hostile to the very existence of Frontex, proliferating disputes so as to potentially cause its paralysis.

#### On joint operations

Emphasises that in the context of joint operations, the Frontex agency intervenes only in response to requests from the requesting State, which has the leading role in monitoring its borders, and acts under its authority; adds that these operations are based on the principle of good faith cooperation;

Recalls that the mission of Frontex does not in any case include monitoring the actions of Member States in regard to fundamental rights;

Considers that Frontex personnel cannot be held legally responsible for any disputed actions committed, in the context of joint operations by agents of the partner State;

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*On maintaining the operational efficiency of Frontex*

Insists on the importance of a substantial extension of the prerogatives of the Frontex agency, which has become the largest operational agency of the European Union under the aforementioned Regulation 2019/1896; and thus emphasises that Frontex now exercises unprecedented prerogatives of public power for a Community agency;

Notes simultaneously that the security of the European Union is today being weakened by the aforementioned increase in irregular crossings of its external borders, the exploitation of migratory pressure by certain third countries for the purpose of destabilising the European Union, and by cross-border crime, which has a major role in opening up irregular migratory routes and exploiting the desperation of migrants;

Observes that these threats require the Frontex agency to anticipate migration risks more effectively, provide a "supply" of services better adapted to the situations of the Member States, and demonstrate greater responsiveness in the event of a crisis;

On strengthening support for Frontex operations

Stresses that the broadening of the Frontex agency's jurisdiction and increase in its budget must be accompanied by a proportional increase in its responsibilities and transparency;

Calls in this regard, together with the Court of Auditors of the European Union, for an improvement of the information provided by Frontex on the objectives, impact and costs of its operations; and also supports the on-going efforts to professionalise the agency's public procurement activities and organise an internal audit process in that regard;

Takes the view that the attractiveness of positions offered by the agency must be improved, in particular by upgrading the pay echelon currently assigned to agency staff based on the geographical location of the headquarters;

Requests the hiring of human resources with the expertise necessary to urgently remedy the agency's reduced capabilities in regard to the design and dissemination of risk analyses and

vulnerability assessments; calls, moreover, for an improvement in the transmission of information by the Member States to Frontex, which is an essential condition for achieving better quality in its risk analyses;

Expresses its strong desire for joint training and operational exercises to be organised regularly between the personnel of the Frontex agency and competent Member State organisations.

#### On improving Frontex's operational response

Emphasises the symbolic and operational importance of the Frontex standing corps, made up of personnel trained in border surveillance and wearing for the first time a uniform with EU colours, concretely embodying the EU's solidarity with the Member States in regard to border surveillance;

Formally demands the acceleration of current efforts to ensure compliance with budgetary commitments and the timetable provided for the effective implementation of a corps of 10,000 officers by 2027; adds that these recruitment efforts must be carried out with consideration for the skills of the personnel and for the geographical diversity of the Member States;

#### On improving the operational capacity of Frontex

Takes the view that the joint maritime surveillance operations in which the Frontex agency participates on the southern shores of the European Union are of strategic importance in the fight against irregular immigration and cross-border criminal networks;

Emphasises in particular the effectiveness of the existing partnership between Frontex and Greece in protecting the external borders of the European Union, and supports the current discussions intended to strengthen this partnership while specifying the responsibilities of each participant in these operations;

Calls for the strengthening of Frontex's operational monitoring activities for surveillance of the French and Belgian coasts along the Channel and North Sea, in order to contribute to their security, dissuade departures, improve the dismantling of migrant-smuggling networks and save human lives;

Commends the rapid deployment of teams from the Frontex agency to the external borders of the European Union and Ukraine following its invasion by Russia, and the contribution of these teams both to facilitating the registration and identification of Ukrainian nationals in order to grant them temporary protection in

the European Union, and enhanced surveillance of border crossings;

Affirms the relevance of the new capacities given to the Frontex agency to support third country actions against irregular immigration and to deploy personnel in these countries, under status agreements, to analyse migration risks or to support national authorities in the surveillance of their borders; welcomes the first positive effects of these agreements seen in Albania and Moldova, and takes the view that it is necessary that such agreements continue to be signed as a priority in Western Balkan countries, which today present the leading route taken by irregular migrants towards the European Union;

Emphasises the decisive role of the Frontex agency in preparing, organising and overseeing the return to their country of origin of irregular migrants not permitted to remain in the European Union; acknowledges the significance of its support for French authorities in this regard;

Encourages the Frontex agency to strengthen its efforts to combat cross-border crime, which organises and exploits irregular immigration to the European Union, by ensuring increased cooperation with the competent Member State organisations and with Eurojust and Europol;

Expresses its approval that the Frontex agency is to be assigned responsibility for the management of the ETIAS central unit, which will be made permanently operational in order to conduct in-depth checks on the information submitted by third-country nationals not subject to visas for the granting of travel authorisations;

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#### *On parliamentary oversight of the Frontex agency*

Points out that Article 112 of Regulation (EU) 2019/1896 requires the implementation of joint parliamentary scrutiny of Frontex with the participation of the European Parliament and Member State parliaments;

Expresses regret, however, at the fact that several months ago the European Parliament unilaterally established a working and monitoring group for the agency's activities and holds regular hearings of its officials without wishing to involve the national parliaments of the Member States of the European Union;

Considers the establishment of joint parliamentary control a necessary and urgent matter; and indeed emphasises that although it is today shared with the Frontex agency, the surveillance of Member State borders is still a duty fundamental to their national sovereignty, for which they are responsible first and foremost;

Proposes that the joint parliamentary oversight group be modelled on the group established between 2016 and 2018 to oversee the European police cooperation agency, Europol;

Specifies that this group, co-chaired by the European Parliament and the national Parliament of the Member State holding the 6-month Presidency of the Council of the European Union, could therefore consist of 4 members from each national Parliament and several members for the European Parliament, and should meet at least once every six months;

Asserts that this group could hear, upon request, all the managers and staff of the Frontex agency, put questions to the management board and Executive Director, and conduct administrative and on-site verifications;

Specifies that this joint parliamentary oversight group could be represented on the Frontex management board by a member from one of the national parliaments, insofar as the regulation governing Frontex already provides for European Parliament to be represented on this board by an MEP;

Observes that the establishment of this joint parliamentary oversight for the activities of the Frontex agency requires a decision by the Conference of Presidents of the Parliaments of the European Union, but is not, however, contingent upon any prior modification of regulation (EU) 2019/1896.

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*On the possible revision of the Frontex regulation*

Observes that the European Commission has opened an evaluation period for the implementation of Frontex Regulation 2019/1896, in order to assess, at the end of 2023, the need for a revision of this regulation; expresses regret in this respect at the short duration of the public consultation period provided by the European Commission on this matter and the absence of any systematic consultation with national parliaments;

Takes the view, in any case, that the assessment of the European Commission is being conducted too early to conclude that a

revision of this legal framework may be needed; and stresses that the opening of new inter-institutional negotiations on the future of the Frontex agency would risk paralyzing the action of the European Union in this area, when the latter has already failed to agree on the New Pact on Migration and Asylum, in a context of renewed migration pressures and unprecedented geostrategic threats;

Finds that it is necessary to give the Frontex agency time to fully implement its current mandate;

Takes the view, therefore, that any proposal for reforms to Regulation 2019/1896 at the end of 2023 would be inappropriate.