



FRONTEX, A EUROPEAN AGENCY OUT OF CONTROL

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Although criticism from NGOs has been ignored for many years, today Frontex is under the spotlight. Since it began operating in 2005, the European border and coast guard agency has played a growing role in the implementation of the European Union's (EU) security-driven migration policy. Frontex has been hailed for a long time by European institutions which have relentlessly increased its competences for 15 years in the areas of control and expulsions, as well as its budget (which has risen from 5 to 543 million euros). In 2020, it was publicly questioned about its activities and governance (by the European Commission and Parliament, the EU ombudswoman, OLAF) for the first time, and some of its supporters have partly turned their backs.

In effect, the agency stands accused of repeated human rights violations, and in particular of pushbacks at European borders (by NGOs and international media), of non-compliance with its regulatory duties, of internal malfunctions, and even of ineffectiveness (by the Court of Auditors).

The media have been relaying the rights defenders, who have complained for over ten years about the way in which Frontex's mandate undermines the human rights of people on the move, its secrecy, its unchecked autonomy and its structural impunity. Its harmful development is now noted even within the agency, as the former deputy director of the agency said he was "very concerned about the threat to the agency's reputation, its decision to arm its agents and its inability to prevent the far right from infiltrating its ranks, within the context of anti-migrant movements across Europe".

The years that have passed have amply demonstrated the dangerousness of an agency that is out of control and operates outside of the law, as the symbol of a hypersecitarian European border policy and of the war against migrants. Frontex cannot be reformed, only its abolition could usher in a new era in which attachment to fundamental rights is not a mere rhetorical artifice.

Frontex's growing powers at the service of security-minded EU migration policies

Nearly a million people on the move arrived in Europe in 2015 (that is, 0.2% of Europe's population), unleashing hostile and repressive political reactions towards migrants in both law and practice, thus strengthening the European security framework once more. The European Union (EU) has mainly concentrated on control of its external borders, investing substantial resources to reinforce the Frontex agency in the hope of overcoming the "limitations" in the management of migratory movements by EU member states alone.

It is no coincidence that the agency's mandate – after it was first revised in 2011 – has been reformed twice in just three years, in 2016 and 2019, with a view to increasing its powers. Frontex was perceived as the bulwark against "unwanted" migration in a period of frantic reworking of the legal and political frameworks in the fields of migration and asylum (the European Agenda on Migration).

EU Regulation 1624/2016 marked a shift: the argument used was that the "migratory pressure" which European territory is supposedly subjected to justifies an unprecedented strengthening of the agency's competences and capabilities to "fight effectively" against so-called irregular migration, always further away along migration routes (i.e. the "pre-frontier" area and EUROSUR). Apart from the border agency's joint operations and

rapid interventions, it is now a matter of support teams to "manage migrations" within the Schengen Area, and the establishment of an increasingly tight network of interconnected actors (international organisations, European agencies, so-called third countries), which is supported by a growing number of Frontex liaison officers, including outside the EU. The regulation also provides the possibility for Frontex to impose measures upon member states that do not cooperate in response to situations that it considers "critical" at their borders.

The issue of returning the "unwanted" also has a central position in the 2016 regulation: Frontex acquires a dominant role in the coordination and organisation of expulsions on a European scale, despite being riddled by several charges of rights violations, referred to as "incidents". The adoption of a complaints mechanism, which was long-awaited, has swiftly proved to be ineffective and constitutes one of the mandate's most critical aspects, which has barely been modified by subsequent reforms.

The philosophy that pervades EU Regulation 1896/2019 – leading to a new reform of the agency's mandate – rests on the principle of extending the agency's powers for independent and swift intervention. The most significant novelties include enlarging the agency's statutory corps from 1,500 to 10,000 officers

between now and 2027 (attempting to make recruitment in the ranks of Frontex personnel more attractive); almost tripling the budget for operational costs; and management (and no longer the centralisation) of the EUROSUR system that enables access to information concerning surveillance of borders and of "pre-frontier" areas. This last aspect is a particular cause for concern, considering the new rules on information exchange with member states, facilitated by the EUROSUR structures which feed Frontex's risk analyses and its launch of operations.

Regarding respect for fundamental rights, the new regulation provides for an expansion of the mandate of the officer in charge of fundamental rights, by appointing 40 officers for monitoring and investigating this aspect. However, delays in their recruitment, two years after the regulation was approved, demonstrate the agency's lack of interest for this issue.

With the new European Pact on Migration and Asylum, the Commission has confirmed its political agenda based on returns by assigning Frontex a leading role in European "return" policies. Thus, the agency has been further supported in its function as the operational arm of the EU in the implementation of its migration policies, which are increasingly security-minded.

Frontex 3.0: the European warmonger

To "protect" European borders from supposedly "uncontrolled" migration, Frontex has relied on military and technological means, as the military-industrial complex has been shaping EU migration policies over the years. Helicopters, satellites, drones, watchtowers, thermal cameras, CO2 probes, heartbeat detectors, geo-radars and biometric data are already used to push back unarmed civilians who exercise their right to freedom of movement, far away from European borders.

The European Commission envisages further extending the agency's containment and expulsion powers – which will coordinate expulsions as a whole (going so far as to call them "voluntary returns") –, as well as its technical means for new forms of surveillance: facial recognition and "intelligent" authentication of

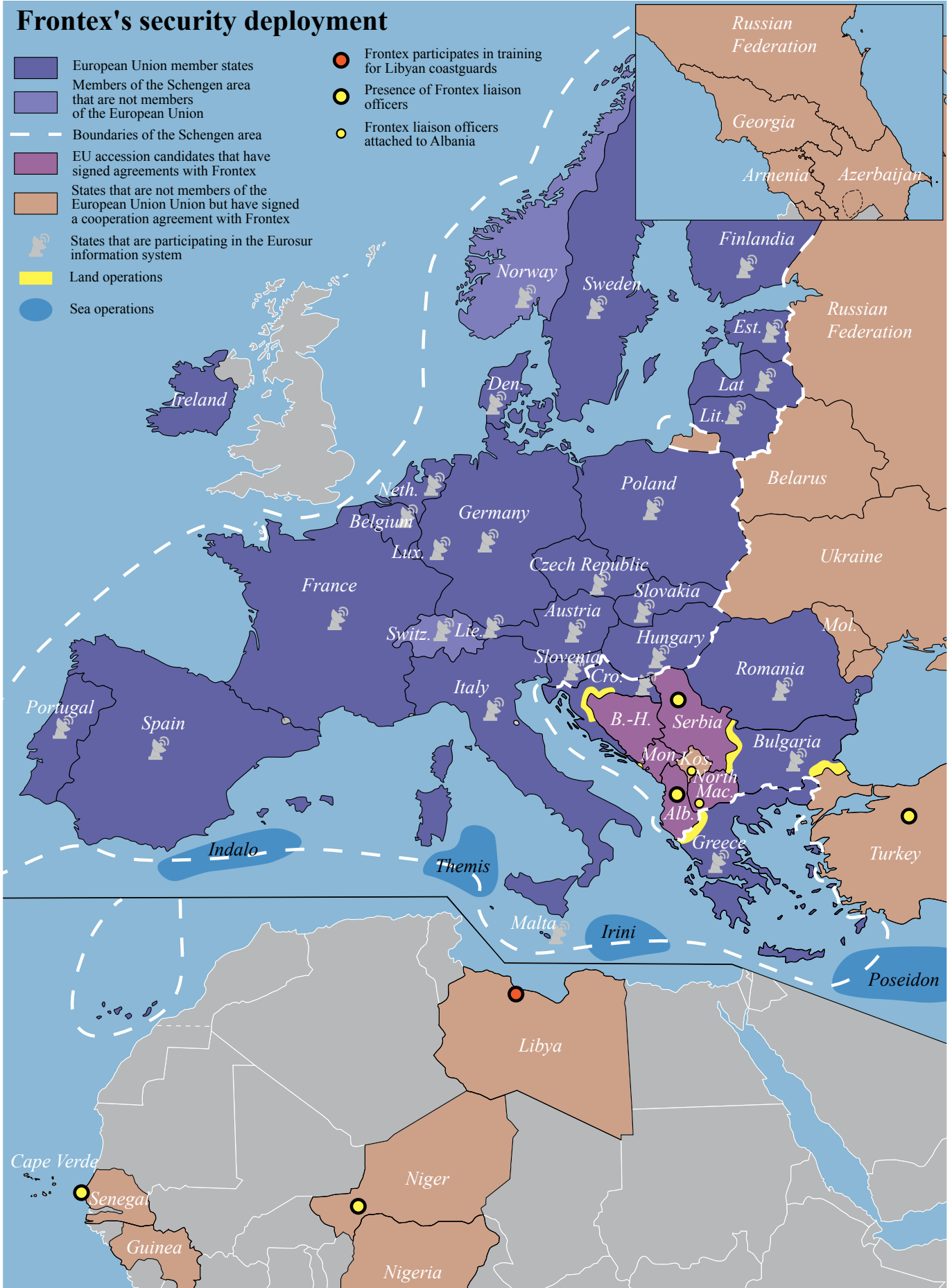
documents, cognitive robotics (robotised border patrol agents equipped with e-lie detectors). The legitimate concerns aroused by the use of automated and intrusive technologies for repressive purposes carry little weight, as these means contribute to dehumanising and brutalising people on the move, whilst trampling on rights and the principle of transparency.

At a time when the EU seeks – particularly through the European Pact on Migration and Asylum – to turn sorting upon entry, deprivation of liberty and summary returns at "smart" European borders into standard practices, Frontex embodies the war waged by the EU against civilians who are portrayed as threats.

Frontex's security deployment

- European Union member states
- Members of the Schengen area that are not members of the European Union
- Boundaries of the Schengen area
- EU accession candidates that have signed agreements with Frontex
- States that are not members of the European Union but have signed a cooperation agreement with Frontex
- States that are participating in the Eurosur information system
- Land operations
- Sea operations

- Frontex participates in training for Libyan coastguards
- Presence of Frontex liaison officers
- Frontex liaison officers attached to Albania



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Migreurop carte Balkans et rapport Balkans 2021.

Impunity by design: a destructive agency that is hard to challenge

Is Frontex's impunity without limits? Despite its notorious involvement in several refoulement cases, particularly in the Aegean Sea, even the European Commission has had to confess its inability to control this agency's activities. Like other European agencies whose mission should be limited to providing technical support for cooperation between member states, in practice, Frontex enjoys a very wide margin of manoeuvre, both at the decision-making level and at that of operational interventions.

Frontex's mode of operation and its discourse, which insists on portraying itself as a technical agency, illustrate this contradiction perfectly. Concealed by its "technical support" role, the activities that it undertakes are far from inconsequential for human rights: it strikes working agreements with countries where human rights violations are documented – like Belarus –, trains Libyan coastguards, it uses force to fingerprint people on the move who are denied their freedom in hot-spots, or it advises the Greek government to return people to Turkey. Transparency and a lack of legal responsibility have always been blind spots in the agency's mandate. In 2010, Frontex replied to the EU Ombudsman's query about a lack of preventive mechanisms in its nascent human rights strategy: these were deemed unnecessary since no one could know human rights violations would be committed before they happened (!). More generally, the "technical" argument works like a legal and political shield that allows Frontex to shift responsibility onto member states, even when it has

offered advice and guidance for operations during which rights violations are committed. When border guards were accused of shooting at migrants during a Frontex maritime operation in 2016, the competent Greek court limited its inquiries to Greek coast guards without involving Frontex, eventually ruling out any wrongdoing.

On external action, Frontex relies on its production of analyses that constitute migrants as a threat. This border management outlook promotes discrimination, unlawful practices and procedures, muscular police tactics and racism. The consequences in countries bordering the EU and beyond are undeniable: racialised people, who are specifically targeted by police checks, are prevented from entering the EU in a systemic context of violence and ill-treatment. Even when proven irregularities are committed, Frontex – despite being active in data collection and analysis, training for border controls outside of Europe and expulsions – remains untouchable.

Far from limiting itself to centrally storing the information that it holds, the agency plays an active information production role. Data collected and processed, using opaque procedures, feeds into risk analyses which go as far as treating "irregular border-crossings" and terrorism as a continuum under the "cross-border crime" heading, without any substantiation. These reports then become key references for policymaking in the area of migration.

2015 was an emblematic year regarding the shaping of narratives: on the basis of overestimated statistics that confused people and border crossings (the same person can cross several borders), Frontex contributed to decisions to withdraw official naval patrols, criminalise rescue activities by private actors and to enhance controls at the EU's borders.

Reporting to the EU Council in 2021, Frontex foresaw that an economic recovery in Europe would attract migrants who are deemed unwanted: hence, the EU should protect itself from this "pull factor". This warning is typical of the agency's mode of operation: constitute threats, propose solutions. However, until late in 2020, it had not been seriously questioned and there isn't any safeguarding mechanism for cases involving rights abuses that has proved effective. Frontex has never been penalised for its actions.

This is a concern, considering a steep and growing rise in its material and human resources, and the interplay between its power to initiate operations and its coercive competences. The human rights mechanisms adopted to please critics (Frontex's Fundamental Rights Officer and Consultative Forum on Human Rights in 2011; a complaint mechanism in 2016) have proved toothless. At the same time, EU institutions have used migration policies to undermine international law, especially the law of the sea, to put an end to "unauthorized" mobility. In this context, the European Commission's acknowledged powerlessness resembles crocodile tears in an ocean of impunity.

The bibliography is available on Migreurop website: www.migreurop.org in the section *Publications / Notes*.

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Migreurop is a network of associations, activists and researchers, with a presence in around twenty countries across Europe, Africa and the Middle East. The network strives to raise awareness of and to oppose policies that marginalise and exclude migrants, notably, detention in camps, various forms of displacement and the closure of borders, as well as the externalisation of migration controls by the European Union and its Member States. In this way, the network contributes to defending migrants' fundamental rights (including the right 'to leave any country, including their own') and to promoting freedom of movement and settlement.

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