

WHO WATCHES THE WATCHMAN?

Border Violence
and Impunity at Frontex

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EXECUTIVE SUMMARY

The European Border and Coast Guard Agency (Frontex), created to prosecute cross-border crime in 2004, has a long history of controversy. In a context where total global forced displacements are increasing by the millions every year, it is worth asking whether this EU-created agency is best placed to ensure the protection of forcibly displaced people. Irrespective of the question of whether or not some have the right to seek asylum, such as those fleeing poverty, climate degradation or suffering from other causes of migration not recognised in the 1951 Refugee Convention.

This report continues the work begun in 2019 with the publication of our *Guarding the Fortress* report. It analyses the evolution of an agency whose resources, functions and staff constantly increase.

- From 2019 to 2022, the Frontex budget increased by over €2 billion, or 55.15%. Half of the entire Frontex budget approved in the years until 2022 was spent over the last four years analysed (2019 – 2022), while the remaining 45% was spent in the previous 13 years, from 2005 to 2018.
- In 2019, Frontex's functions and budget were expanded to standardise and strengthen the EU returns system. The budget for these operations increased from €80,000 in 2005 to over €69 million in 2020. An accelerated and comprehensive returns system is being legalised and institutionalised, under what some experts have called "the Orbanisation of EU asylum law".
- The low budget of Frontex's Fundamental Rights Office (FRO), which began operating in 2019, stands in stark comparison. In 2018 the FRO budget for its implementation represented only 0.17% of the total bu-

dget for Frontex operational activities. It increased ever so slightly by 0.21% in 2019 and 0.31% in 2020, when it was assigned a €1 million budget.

- The Fundamental Rights Office recognises serious limitations on its own ability to carry out its mission. It has difficulties accessing all Frontex departments and activities; it claims to have insufficient access to operational documents; and states that it is impossible to meet migrants and Frontex staff in certain operational areas without the presence of national authorities.
- In terms of Spain's operational activity, the Spanish government is maintaining the same operations included in the last report: Indalo, Hera and Minerva. It is worth noting that Indalo has grown from deploying 69 Frontex officers to 257 in 2021, with a 118.5% budget increase from 2017 to 2018. As of 1 June 2019, Spanish Armed Forces naval and air assets joined these missions for the first time, consolidating the militarisation of migration.
- People fleeing Ukraine were given an exemplary and exceptional welcome. The urgent measures taken by the European Commission included: re-activation of the *Temporary Protection Directive*, which included a more equitable distribution of Ukrainian refugees among European countries and a 'solidarity platform' coordinated by the European Commission. The operation proves how the EU can guarantee a welcome, dignity and human rights.
- Frontex missions carry out collective expulsions, which are prohibited by Article 4 of Protocol 4 to the European Convention on Human Rights. Collective expulsion is only possible following individual examination of each asylum application.
- Rights violations at Spain's southern border are constant, with flashpoints including the 2014 Tarrajal tragedy and the overcrowding of some 2,600 people at the Arguineguín dock in 2020; massive pushbacks took place from 17-19 May 2021 in Ceuta, and most recently, on 24 June 2022, 37 people died at the Melilla border.
- In 2020, the cases of migrants being prevented from travelling to mainland Spain multiplied, contravening up to six Spanish Supreme Court rulings stating that the police do not have the authority to prevent such travel when passengers have the proper documentation.



INTRODUCTION

With more than 100 million people forcibly displaced in 2022, border management has become a major political priority all over the world. Border securitisation and the major challenge of migration are advancing unstoppably, carrying numerous controversies about the violation of human rights and the expansion of control and surveillance societies in their wake.

The current trend in global border management is to build border walls and create more and more border control agents and new border control agencies, from a security perspective that has completely renounced any humanitarian approach. Thus, basic human rights such as freedom of movement and asylum are systematically violated in border areas around the world.

Since the 2018 publication of *Guarding the Fortress*, in which the *Centre of Studies for Peace J.M. Delàs* comprehensively analysed the operations and actions carried out by the European Border and Coast Guard Agency (Frontex), that agency has significantly evolved. In 2018, we were able to shed light on Frontex's mandate and on its real format, objectives and *modus operandi*, from its creation to 2018. That research provided us with the knowledge to gain an in-depth understanding of the agency's foundations. Five years on, this new report seeks to continue to shed light on Frontex's activities and its remarkable evolution as a border management agency in a European Union that is demonstrably failing in its duty to protect human rights.

The next chapter, *Boundless growth for Frontex*, examines how its resources evolved from our last report in 2018, to the most recent report (published in 2020), as well as its most significant functional advances under the latest approved directives. Regarding budgets, we have an-

analysed the main sub-categories of Frontex's largest and most important operations. It should be noted that we don't have enough information to be able to define the meaning of each heading precisely, and that some category names have also changed over the years. Frontex official sources were used to draft this chapter, although the agency's reports do not publish the same kind of information each year (either in terms of budget or concerning the operations carried out), as will be explained below.

Chapter 2, *Who Watches the Watchman?* takes a closer look at one of the new functions created at Frontex in 2019. The Fundamental Rights Office (FRO) was created following human rights scandals. Chapter 2 analyses the functions and functioning of this office, as well as some of its complexities. It uses official Frontex, FRO and European Parliament documents to do so, along with some academic articles.

The third chapter analyses Frontex's operations from our last report to the latest information available. Here, special emphasis is placed on the Spanish government's role in operations to control the southern border, which presents so many risks to migrants. Again, we highlight the lack of homogeneity in the reports published by Frontex which, as explained, suffer from notable differences in the information provided each year. This chapter also highlights the outstanding operation deployed in response to the war in Ukraine, in contrast to other operations, as we will show throughout this report.

The fourth and final chapter addresses some of the most significant human rights violations that have occurred at Frontex on the Spanish side of the southern border. They address various cases of human rights violations by the agency and Spanish security forces. Official documents, reports produced by human rights organisations and press articles are the main sources used here.

Fortunately, we are not the only people, nor the only organisation examining one of the most complex EU agencies, whose capacities increase in line with the controversies it generates every year. Therefore, we cannot fail to thank other organisations that share our concern and denounce the abuses that this agency carries out with absolute impunity, on a daily basis. On this occasion we are sharing this publication with one such organisation: Irídia. They have contributed an analysis of the real impact that these operations have on the ground, and on the lives of forcibly displaced people, with a special focus on the southern border.

It is also fair to mention the work of other fellow organisations, such as porCausa, Caminando Fronteras, Transnational Institute, Novact, Ongi Etorri Errefuxiatuak, and CEAR, who are among the many others, working to shed light on the countless abuses increasingly committed at borders around the world.

We hope this publication will provide new insights for the critical analysis of migration management.



1. BOUNDLESS GROWTH FOR FRONTEX

1.1 EXTENDED BUDGET AND EXTENDED FUNCTIONS

Our 2018 publication analysed the budget of the European Border and Coast Guard Agency from its establishment to 2018. Over that period, the total budget allocated to Frontex exceeded €1.6 billion. As we will see below, Frontex has grown in recent years, not only in terms of budget, (as illustrated in Figure 1,) but also in terms of the number of functions it performs. This has also affected the distribution of its budget lines.

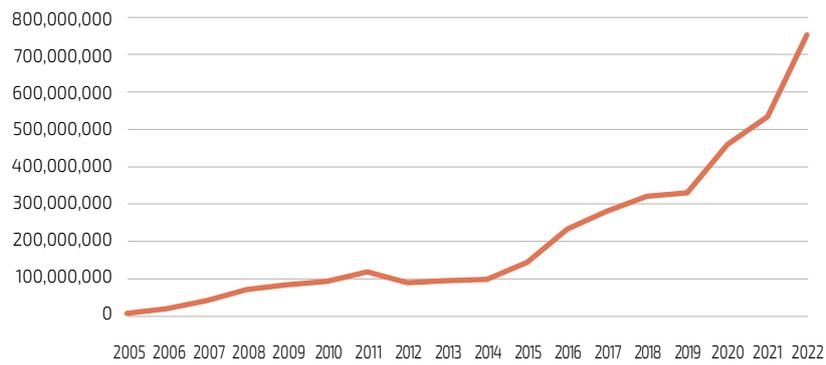
As figure 1 shows, Frontex's budget increased considerably since our last report (which was published in 2018). And from 2019 to 2022, Frontex's budget increased by over €2 billion euros or 55.15%. In other words, half of the agency's total budget since creation was spent in the last four years, while the remaining 45% was spent during the previous 13 years, from 2005 to 2018. This shows how the European Union is

betting heavily on Frontex as a border control system, through budgetary increases that now seem unstoppable.

Figure 2 shows the total 2020 Frontex budget. (This is the most recent year for which disaggregated data is available. The categories are simple and, although they are broken down into sub-categories, they do not really provide enough detail to allow us to know exactly how and to what purposes Frontex allocates its budget. The published version of Frontex's budget covers only five pages, so the information it contains lacks considerable information.

As usual, *Operational Activities* is the largest category. In 2020, total expenditure in this category represented €327 million: over 70% of the total budget. This category is followed by *Staff*, which represents more than 19% of the total budget, and administrative expenditure, at more than 9%. Frontex operations are usually deployed in cooperation with the national security forces of the member state where they are deployed, which explains its reduced staff costs.

Figure 1. Evolution of the Frontex budget (2005-2022)



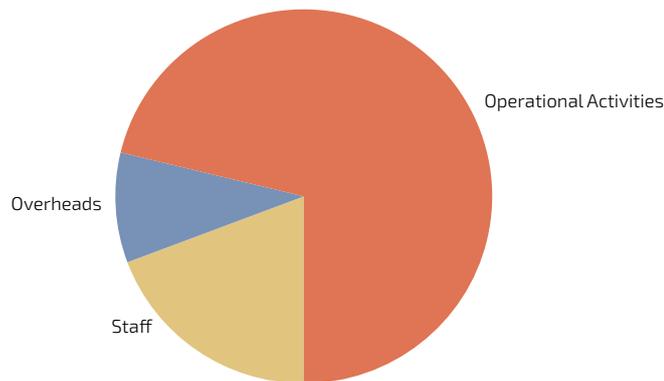
Notes:

The 2018 and 2019 budgets are settled, the 2020 budget is approved, the 2021 and 2022 numbers are approximate data provided by Frontex.

Source: Own calculations based on Frontex annual budgets (Frontex, 2005-2022)

Euros

Figure 2. Frontex budget allocations (2020)



Source: Own calculations based on Frontex data (2020)

The next question to ask is where Frontex's budget comes from. The following table shows the published data for the last few years. Although this information is not yet available for 2021 and 2022, it at least gives an idea of how the agency is financed.

As table 1 shows, Frontex's budget is mainly covered by the European Commission and, to a much lesser degree, by the Schengen Area countries.¹ When we say that the source is the European Commission, we mean that the Commission proposes a figure for the budget, which it presents to the European Council and the Parliament, which can amend it, until an agreement is reached. Once approved, the Commission can submit amendments.

1. Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and Switzerland.

Let's look at how Frontex spends its main budget line: Operational Activities. This category is divided into several sub-headings that have changed as Frontex has evolved and its functions have expanded over the years. Analysing Frontex's budget for the last 3 years for which disaggregated data is available reveals how Frontex has evolved.

A number of points stand out from the breakdown of items related to Frontex's recent budgets. For example, in 2020 'Shared resources' was replaced by 'Own resources', as the 2019 regulation (2019/1896) decided that Frontex should have its own resources, whereas it had previously been entirely dependent on material provided by the Member States, which explains the considerable increase in this heading in 2020.

One of the most notable new developments in recent years is the budget allocation for the Fundamental Rights Office (FRO). FRO received its mandate under

Table 1. Sources of Frontex financial resources

Euros

	2018	2019	2020
European Commission subsidy	298,286,000	307,289,000	428,160,041
Contribution from Schengen member countries	21,912,000	22,818,000	31,795,000
Contribution from Ireland and the United Kingdom	0	0	0
Total	320,198,000.00	330,107,000.00	459,955,041

Notes: The 2018 and 2019 budgets are settled, the 2020 budget is approved, the 2021 and 2022 numbers are not available.

Source: Own calculations based on Frontex data (Frontex, 2020).

Table 2. Frontex operational activities (2019-2020)

Euros

	2018	2019	2020
TOTAL Presupuesto operaciones	214,650,962	244,574,928	327,604,153
Operaciones conjuntas (Tierra, mar y aire) ^{*1}	128,100,000	124,577,000	124,485,000
Monitoreo y vigilancia ^{*2}	15,975,999	12,931,128	25,259,589
Entrenamiento	8,845,499	12,000,000	26,000,000
Investigación e innovación ^{*3}	2,290,000	2,400,000	1,800,000
Recursos compartidos	10,559,265	25,100,200	
Recursos propios de Frontex ^{*4}			57,575,185
Reserva operacional ^{*5}		5,027,000	5,220,175
Operaciones de apoyo en el retorno		59,642,000	
European Center for Return Division	47,853,080		69,149,204
Fundamental Rights Office	374,119	505,000	1,000,000
Cooperación Europea e Internacional	653,000	1,915,000	1,315,000
ETIAS ^{*6}		477,600	
Proyectos especiales ^{*7}			15,800,000

*1 From 2018, this item was renamed "Operational response".

*2 Prior to 2018 this item was named "Risk Analysis, Situation Centre and EUROSUR".

*3 Prior to 2018 this item was named "Research and Development".

*4 This new item appeared in 2020, and "Shared resources" disappeared.

*5 Formerly "Miscellaneous".

*6 This item only appears in 2019. ETIAS is the "European Travel Information and Authorisation System".

*7 This item appeared for the first time in 2020.

Source: Own calculations based on Frontex annual budgets (Frontex, 2019-2022).

the 2019 regulation, although it had received an implementation budget in 2018. Its mandate is to oversee compliance with fundamental rights in any Frontex activity. Its functions include reporting to the Frontex executive director, and training agents involved in on the ground operations and monitoring. The 2019 regulation (2019/1896) also provides for the publication of an annual report including recommendations. To date, two reports have been published: in 2019 and 2020. We will examine this office in detail in the next chapter. Despite the due relevance of this office for

an agency working in such a sensitive area as borders and migration, it was allocated the smallest proportion of the Operational Activities budget. Its resources barely reached €1 million in 2020. In fact, the FRO represented only 0.17% of the total Operational Activities budget in 2018, 0.21% in 2019 and 0.31% in 2020. It therefore seems necessary to question the priority Frontex gives this office, especially as we will soon see that their budget has serious shortcomings. This is on top of the obvious question of whether the watchdog can monitor itself with the necessary rigour.

Recent years have also seen the emergence of other new budget categories. For example, in 2019, over €400,000 euros was assigned to the ETIAS border control system.² Its 2019 appearance does not mean that Frontex had previously spent no money on this system, as it could have been covered under other headings. Although the amount is not remarkable, it is worth asking if its appearance as a separate category means Frontex is acquiring a greater role in managing the system, or whether the Frontex ETIAS budget became sufficiently important to justify a dedicated budget line. Frontex's budgets lack the necessary transparency and detail to be able to answer this and other questions.

The Special Projects budget category appears in 2020, when it is assigned over €15 million euros. Insufficient information is available to allow us to know the meaning, function and destination of such 'special projects'.

1.2 COLOSSAL INCREASE IN THE RETURN OPERATIONS BUDGET AND FUNCTIONS

This section looks at one of the Frontex budget and operations categories that has evolved most, namely Return Operations.

This category started life as 'Return Cooperation Operations'. With the approval of the new regulation giving Frontex a greater role in these operations in 2016, it was renamed 'Return Operations', and received an

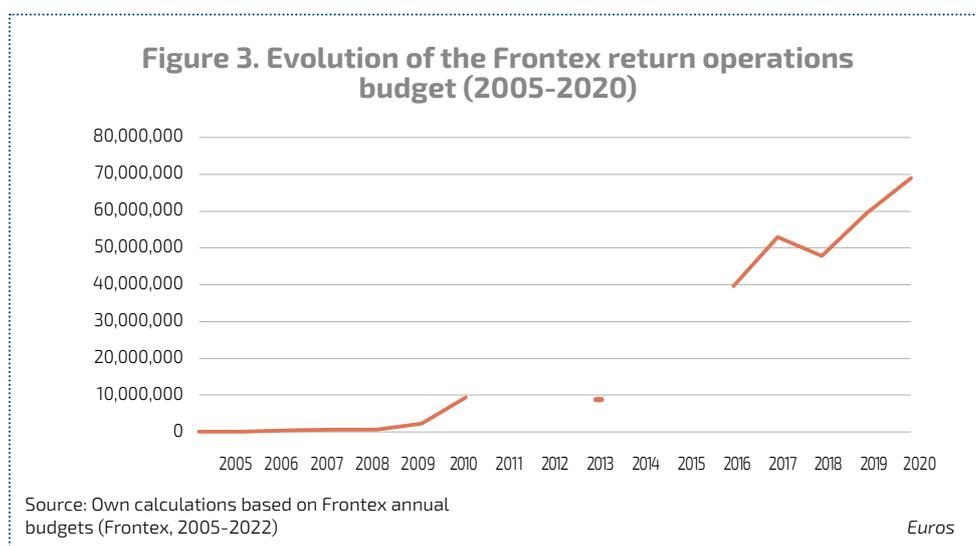
2. ETIAS is the system used to carry out checks on nationals from countries for which a visa is not required for visits of less than 90 days, and who wish to enter the Schengen Area. The system carries out a comprehensive check on the person applying for entry by recording a range of data to assess the level of threat that the entrant may pose. The types of data used by this system, along with any other potential biases, are unknown.

increased budget. 2018 saw the creation of the European Centre for Returns Division, and Frontex now coordinates and co-finances Schengen members' return operations and can also do so on its own initiative (Frontex, 2021a).

The graph shows the evolution of Frontex's budget for Return Operations since the agency's creation in 2005 until 2020, the most recent year for which disaggregated data is available. Frontex went from managing an €80,000 budget for returns in 2005 to managing over €69 million in 2020. The 2020 return operations budget is equivalent to 21% of the total operational activities budget. Frontex acknowledges having returned 18,300 people in 2021 (Frontex, 2023a).

A lack of transparency prevents us from knowing the nature of these returns, especially as Frontex has the capacity to carry out these operations. The existence of a human rights protection office is no guarantee that asylum seekers' fundamental rights have been respected. Questions increase when this office's budget suggests that it may not have been completely able to monitor these operations, as will be discussed below.

In addition to its considerable budget increase, the new rules adopted in 2019 also gave an expanded role in these operations. The 2016 European Border and Coast Guard Agency regulations ((EU) 2016/1624) were updated by Regulation (EU) 2019/1896. We will analyse the most relevant regulatory changes that give Frontex an expanded role in areas such as returns policy. The agency started providing increased support to member states in returning people to third countries. We will also highlight the agency's role in developing new border surveillance systems. Finally, we will look at the details of the new Fundamental



Rights Office set up under Article 109.4 of Regulation (EU) 2019/1896. Here, it is worth highlighting the agency's contribution to creating a platform for sharing and exchanging returns data between the member states and the agency itself, as discussed below.

As established in the 2016 legislation, Frontex's objective is to "ensure European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently while respecting fundamental rights... to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it" (Regulation (EU) 2016/1624). However, since 2019, it should also "increase the efficiency of Union return policy," (Regulation (EU) 2019/1896). Frontex's structure reflects these objectives. For the first time, it now has its own standing corps of uniformed officers, who work together with national authorities. This service includes various categories whose role is to assist border controls and support migration management.³ By 2027, the Frontex Standing Corps will include 10,000 staff, of whom 3,000 officers will be directly employed by the agency.⁴ Staff will also be seconded from member states' national authorities, including coastguards involved in border control, and from the national authorities responsible for returns.

Under Directive 2008/115/EC, only member states can issue return decisions. Such decisions are addressed to "any third-country national staying illegally on their territory" (Art. 6.1), except in some cases, for example, on humanitarian grounds (Art. 6.4). Member states are also empowered to take "all necessary measures to enforce the return decision" (Art. 8) but can now also request or approve Frontex's technical and operational assistance in the implementation of such measures (Regulation (EU) 2019/1896 Art. 7.2).

One of the tools used to carry out return procedures is to detain third-country nationals. In this regard, the directive states that detention shall not be carried out if less coercive measures can be applied, but may be carried out when there is a risk of absconding or when the third-country national avoids or hampers the preparation of return or the removal process (2008/115/EC Art. 15.1). The regulation also provides for return decisions to be made in close cooperation with Frontex (Regulation (EU) 2019/1896 Art. 7.3). In short, although the return decision must be substantiated and issued by the member states; by law, Frontex now has an essential role in carrying out these

decisions, which is divided into different functions, as we will see below.

The expansion of Frontex's role in return operations has mainly taken place in two areas. First, as under the previous 2016 regulation, Frontex will be able to offer technical and operational support to member states experiencing difficulties with their returns systems, for which the agency received a substantial budget increase, as we have seen. However, under the new 2019 regulation, it will not only be able to provide member states with practical information about the third countries to which people are being returned, it will also be able to analyse the situation on the ground and make recommendations regarding these countries, in cooperation, where appropriate, with other EU bodies and agencies, notably EASO⁵ (Regulation (EU) 2019/1896 Art. 48.2.b).

Secondly, the information Frontex provides to member states includes, *inter alia*, the collection of data needed to issue return decisions. This brings us to the second area in which Frontex's functions have been expanded: the exchange of information between member states. The new directive provides for the creation of a centralised database containing information on the identity of third-country nationals, with a capacity for up to 300 million files. The aim of this tool is to create an 'Area of Freedom, Security and Justice' (AFSJ) in the EU, through a unified system of return systems. Each file will contain basic biographical data, (name, nationality, date of birth and travel document details,) and biometric data (fingerprints, facial image or both), (Mariana Gkliati et al. 2020: 12). Specifically, Frontex shall:

[...] develop, in consultation with the fundamental rights officer, a non-binding reference model for national IT systems for return case management which describes the structure of such systems, as well as provide technical and operational assistance to Member States in developing such systems compatible with the model; Regulation (EU) 2019/1896 Art. 48.1(c).

In addition to the creation of such an integrated return management platform the agency shall:

[...] finance or co-finance from its budget, in accordance with the financial rules applicable to the Agency, the operations, interventions and activities referred to in this Chapter, including reimbursing the costs incurred for the necessary adaptation of the national IT systems for return case management for the purpose of ensuring secure communication to the integrated return management platform. Regulation (EU) 2019/1896 Art. 48.1(f).

5. European Asylum Support Office.

3. <https://www.Frontex.europa.eu/about-Frontex/standing-corps/standing-corps/>

4. Frontex's (2023b): "Standing Corps", available at: <https://www.Frontex.europa.eu/about-Frontex/standing-corps/standing-corps/> Accessed (in Spanish) on 29 April 2023.

In other words: Frontex will not only create an IT system that facilitates information exchange between the member states to manage return operations, it will also allocate part of its budget to helping the member states to adapt national IT systems to the new platform. According to the European Parliament, the AFSJ system will allow for a more democratic and efficient decision-making procedure when it comes to the external control of European borders (European Parliament, 2022a). However, expert voices are raising concerns about this interoperability initiative, both because of the threat to data protection and because of the risk that this new centralised database could be used for racial profiling in identity checks (Gkliati *et al.*, 2020: 12). Such racial profiling, which is common in data collection, may generate a system in which racialised persons of non-Schengen origin systematically appear as a security threat.

In addition, although not exclusively in relation to return operations, the agency will also assess member states' vulnerability when it comes to addressing challenges at their external borders. This analysis includes an assessment of whether member states are prepared and able to address identified border issues, e.g. in terms of equipment, infrastructure, personnel and financial resources, as well as their contingency plans for managing potential crises at the external borders. Member states must also take measures to

remedy any shortcomings identified in this assessment (Regulation (EU) 2019/1896, p. 6, para. 43). In practice, this means that governments will have almost no scope for proposing their own border management policies, as Frontex acquires the power to impose the model for external border control in Europe. This also significantly reduces citizens' ability to express their desire for a change in their country's border management policies.

In conclusion, Frontex's functions have been expanded to standardise and strengthen the EU returns system, both in terms of cooperation between member states and logistically. These changes affect the internal functioning of member states, as well as Frontex's transnational role (e.g. the assignation of its budget to facilitate the unification of returns systems). Thus, an accelerated, comprehensive returns system is being legalised and institutionalised in the EU. Some experts have called this process 'the Orbanisation of EU asylum law' (Peers, 2016). Is it necessary to allocate so many resources to returning people to their countries of origin? Are European citizens aware of the degree of racism and xenophobia distilled by publicly financed EU migration policies? Could this unified procedure mean systematising the violation of forcibly displaced people's human rights? Let's continue to reflect on these questions.



2. WHO WATCHES THE WATCHMAN?

2.1 THE CREATION OF THE FRONTEX FUNDAMENTAL RIGHTS OFFICE

Frontex's impact on the fundamental rights of people crossing EU borders has been in the spotlight for years, as we will see in the following sections. The substantial expansion of the agency's mandate and capacities under Regulation 2019/1896 has also increased its potential impact on human rights. To this end, Frontex seeks to create bodies that remove it from the social and political spotlight, which has on occasion led to serious scandals. Former Executive Director, Fabrice Leggeri, resigned over allegations of Frontex involvement in the pushbacks of nearly 960 asylum seekers in the Aegean Sea (Gil, 2022). It is worth noting that, although Leggeri resigned, these return operations could not have been carried out without the involvement of the agency's own officials and the law enforcement agencies from the states who participated in the operations. This shows the extent to which actions that deliberately violate fundamental rights are normalised at Frontex.

These scandals took place after the 2019 creation of the bodies mentioned below, which was supposed to ensure the application of European human rights law. Article 109.4 of the newer Regulation 2019/1896 orders the agency directors to appoint a Fundamental Rights Officer. This officer, in the form of the Fundamental Rights Office (hereinafter FRO), will be governed by its own rules, and must aim to ensure that its tasks are carried out independently (of Frontex).

To this end, the FRO is responsible for investigating any Frontex activities, including by carrying out on-site visits. The Fundamental Rights Officer can issue opinions related to any of these activities, both at political and operational level, and on cooperation with its partners (national law enforcement agencies and third countries), pointing out fundamental rights challenges, and potential fundamental rights violations or risks thereof. More specifically, the FRO is instructed to advise the Executive Director and report directly to the Frontex Management Board regarding potential fundamental rights violations by the agency during its activities (Frontex, FRO Annual Report, 2020, p. 5; Regulation 2019/1896 Art. 109). In compliance with Ar-

title 109.4 of Regulation 2019/1896, the Management Board should ensure that the Fundamental Rights Officer's recommendations are acted upon. In the light of these instructions, it is worth asking how the FRO acted in the above-mentioned scandals. A press release published by Frontex claims that the Fundamental Rights Officer was prevented from accessing information related to the operation, and that those people who did report the facts were subsequently ignored (Frontex, 2022a).

These events at the very least suggest conclusions this office's serious shortcomings when it comes to rights protection. And, although the same communiqué states that "These were practices of the past", Frontex's role in managing forcibly displaced persons should be subject to serious scrutiny.

The FRO is also tasked with publishing annual reports on Frontex activities and assessing whether fundamental rights are respected. These reports must include information regarding whistleblowing and complaints procedures and the application of the fundamental rights strategy (Art. 108, Regulation 2019/1896), which form part of the instruments created to supposedly ensure compliance with the human rights regulations.

Let's look at the four instruments the Fundamental Rights Office can use to review Frontex operations' compliance with these regulations:

Fundamental Rights Strategy, aims to create guidelines that ensure Frontex's compliance with both international and European standards (Frontex, 2020, Annual Report: 5). This strategy has already been developed into an Action Plan published in November 2021. The Action Plan guides the operational aspects of applying the Fundamental Rights Strategy, and defines outcomes, activities and indicators to ensure all activities effectively respect, protect, promote and comply with fundamental rights in accordance with Regulation 2019/1896, and national, international and EU law. For example, some of the Action Plan's objectives emphasise the establishment of measures to ensure compliance with human rights in returns operations. They also establish protection of the right to life through the provision of timely and appropriate support in search and rescue operations. The plan also sets out specific objectives aimed at paying particular attention to protecting the fundamental rights of persons in vulnerable situations (Frontex, 2021d, Management Board Decision 61/2021).

Serious Incident Reporting (SIR) procedure. This mechanism is designed for the staff involved in Frontex operations and activities. Under the Fron-

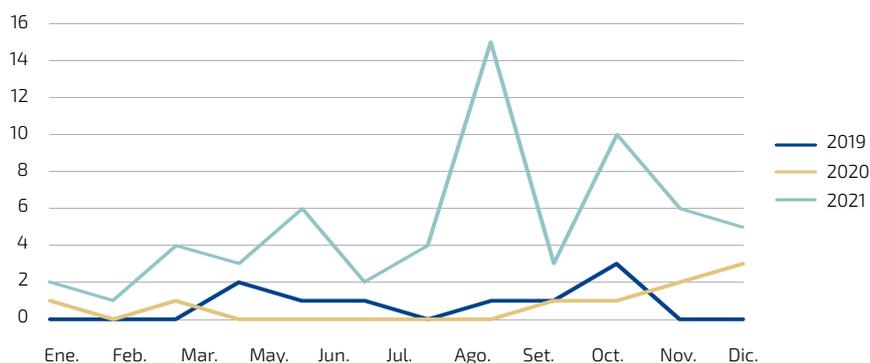
tex Standard Operating Procedure on Serious Incident Reporting,⁶ Frontex staff must immediately report any serious incident when he or she, "learns, witnesses, is directly or indirectly involved in such incident and/or has grounds to believe that such an event took place". Serious incidents are defined as any violation or potential violation of fundamental rights that violates international law, European law, the Frontex Code of Conduct or that may have actual or potentially serious negative implications for Frontex's tasks or activities and/or have a serious, potentially life-changing impact on a participant's health (Frontex, 2021d; Decision of the Executive Director, No 2021/51). Any suspected such incident must be reported to the Frontex Executive Directorate, the Fundamental Rights Officer, member states and third countries (where appropriate and in accordance with the relevant Status Agreement and Operational Plan), the Frontex Management Board and other relevant potential stakeholders, as soon as possible (Frontex, 2021d; Decision of the Executive Director, No 2021/51). According to reports published by the FRO, there was a slight increase in SIRs between 2019 and 2021, with a total of 31 cases open since 2021 (Frontex, 2022; FRO Annual Report, 2021: 22).

Lengthy processing times condition this mechanism's efficiency. The Fundamental Rights Office itself highlights staff shortages, as well as the lack of timely and exhaustive follow-up by national authorities as some of the issues here (Frontex, 2022; FRO Annual Report, 2021: 22). Several Frontex fundamental rights and operations working groups⁷ also noted insufficient FRO involvement in the handling of serious incidents under the standard operating procedure applicable in early 2021. A new standard operational procedure strengthening the role of the Fundamental Rights Office was adopted to improve the situation in mid-2021 (Frontex, 2021d; Decision of the Executive Director, No 2021/51). One change was to establish the direct referral of reports of human rights situations to the Fundamental Rights Officer, who was also given sole power to decide whether to launch the SIR procedure in such cases (Frontex, 2022; FRO Annual Report, 2021: 23).

One can suspect that these obstacles are a consequence of the Fundamental Rights Office underfunding revealed in the first chapter, although the FRO are not the only ones suffering in this regard. On the one hand, the pushbacks in the Aegean Sea from the end

6. Frontex. *Decision of the Executive Director N° R-ED-2021-51 on the adoption of the Frontex Standard Operating Procedure on Serious Incident Reporting*. FSC/1093000 /2021. (2021), replacing the *Decision of the Executive Director No 2014/55 of 28 July 2014 on the adoption of the Frontex Standard Operating Procedure on Serious Incident Reporting*.
7. Frontex's Management Board Working Group, Frontex's Working Group on Fundamental Rights and Operational Aspects of Operations in the Aegean Sea, and the Frontex Scrutiny Working Group.

Figure 4. Serious human rights violations reported to the FRO (2019-2021)



Source: Fundamental Rights Office Annual Report 2021, p. 22

of 2020 and throughout 2021 already discussed, call this system into question, as it depends on Frontex officials' good will and commitment. Secondly, serious incident reporting becomes more complicated when joint operations involve joint actions with national security agents, and get even more complicated when these agents are from third countries not subject to European directives. In both cases, it is the governments themselves that have the capacity to act in response to complaints filed by a Frontex agent. It is hard for Frontex to guarantee timely and opportune accountability in such situations. Last but not least, although serious incident reports are anonymous, we do not know the real degree of protection provided to and felt by potential whistleblowers. This mechanism can give an unrealistic picture of the agency's actions: a lack of reports cannot be understood to mean that there are no human rights violations during Frontex operations.

The vast majority of serious incident reports relate to allegations of collective expulsions (78%), of which 10% denounce the use of force. The remainder relate to potential violations of respect for human dignity, the right to life and the prohibition of torture and inhuman or degrading treatment or punishment (Frontex, 2021: 22-23).

The third instrument established through the Fundamental Rights Office is a **Complaints Mechanism**. This procedure can be triggered by individuals whose fundamental rights are directly affected by the operations and actions of Frontex staff. This instrument existed under the previous regulation (Regulation 2016/1624), but was developed by the new Regulation 2019/1896. One of the most striking issues regarding its implementation is that, according to FRO annual reports, despite a slight increase in the complaints submitted, from 2018 to 2021, only 23 of the 79 that

reached the Office were admitted (Frontex FRO, 2021: 26; Frontex FRO, 2020: 15). The reasons given for this inadmissibility in 2020 included the fact that the complaint was not related to a Frontex activity or to Frontex staff. This is striking as Frontex, by definition, operates in coordination with other teams, such as national coastguard authorities, as discussed above. Does this mean that the individual complaint mechanism does not cover reports about the behaviour of officers involved in Frontex actions?

Some experts consider that a broad reading should be made of Frontex's statutory personnel, since, precisely due to the way they operate, coastguards deployed by member states should also be considered Frontex agents when they act under the agency's command (Gkliati, 2022: 185). In any case, one might ask: are Frontex agents properly and sufficiently identified in such a way that allows complaints to be made against them?

The agency can also be held legally liable for having only contributed to an act, even when it is not directly responsible for said act. Such actions would involve vicarious liability for aiding and abetting an infringement, for having knowledge or control of the act or circumstances when it is also responsible for supervising the operations (Gkliati, 2022: 184). So, would a victim's complaint regarding harm caused by Frontex's failure to supervise the act be admitted? Under the current regulations, complaints can also be lodged regarding Frontex or member states officials' failure to act (Gkliati et al., 2020: 53). However, it seems that the acceptance of such complaints is conditional on the type of activity reported in line with Frontex's functions. This criterion seems to contradict the previously mentioned liability, and questions both the effectiveness of this individual complaint instrument and the SIR discussed in the previous point.

The **Consultative Forum** (CF) is responsible for supporting the FRO by giving independent advice on fundamental rights matters. Pursuant to Article 109.2(h) of Regulation 2019/1896, the FRO is responsible for appointing this Consultative Forum and acting as the CF secretary. In 2021, the CF comprised 14 organisations who offered their advice on a voluntary basis. These included two European agencies, five international organisations (including UNHCR, the International Organisation for Migration, and OHCHR) and seven civil society organisations (including Amnesty International, Save the Children and the Red Cross) (Frontex, 2022f; Ninth Consultative Forum Annual Report 2021: 22). This body can be consulted on any matter related to fundamental rights, "the Consultative Forum shall be consulted on the further development and implementation of the fundamental rights strategy, on the functioning of the Complaints Mechanism, on codes of conduct and on the common core curricula." (Frontex Fundamental Rights Officer, 2021: 33). Its recent interventions notably include Frontex's emergency border intervention monitoring on the border with Belarus in Lithuania, where the Standing Corps used weapons on patrol for the first time. This operation once again questioned Frontex's human rights protection mechanisms, as returns and expulsions featured in Serious Incident Reports (SIRs). The CF was also involved in improving the SIR processing SOP (mentioned above), and in issuing recommendations for improvements to the Monitoring Mechanism procedure, which will be discussed in more detail below (Frontex, 2022f; Ninth Consultative Forum Annual Report, 2021: 14-15).

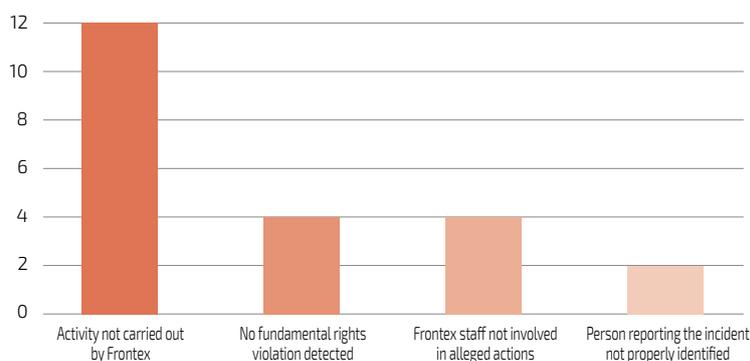
Supervisory Mechanism on the use of force, specifically created to monitor the use of force by Frontex statutory staff (Art. 55. a Regulation 2019/1896). For the first time, the 2019 regulation allowed Frontex's statutory staff to exercise executive powers, includ-

ing force, under the command and control of the host member state or third country (Frontex, 2021e; Fundamental Rights Officer Annual Report 2020: 6). The supervisory mechanism for the use of force procedure did not come in until 2021, after the Fundamental Rights Office, through the Consultative Forum, recommended developing a specific procedure to monitor the use of force (*Management Board decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps*⁸). The application of the supervisory mechanism does not contradict the Serious Incident Report (SIR) procedure, allowing both procedures to operate in parallel (Frontex, 2021f; Management Board decision 7/2021: Art. 3). In other words, although the Consultative Forum monitors Frontex agents' use of force in operations, the agents themselves can also report actions if they deem this appropriate.

The Fundamental Rights Office's role regarding the monitoring mechanism is to ensure that incidents involving the use of force are thoroughly investigated in accordance with Article 109.2 (b) of Regulation 2019/1896 and that the results of such investigations are conveyed to the Executive Director, the Consultative Forum and the Frontex Management Board. Specific information about the results of this mechanism's monitoring are not available at present. Furthermore, as we will see in the following sections, there have been numerous scandals and accusations of human rights violations against displaced persons committed by Frontex agents. Many social organisations have worked to bring these complaints before the courts

8. "Reg. No. 112 MANAGEMENT BOARD DECISION 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps".

Figure 5. Reasons for inadmissibility of individual complaints submitted to the Fundamental Rights Office in 2020



Source: Own calculations based on the 2020 Frontex Fundamental Rights Office Annual Report

and other bodies responsible for holding Frontex to account. However, in view of the results of these proceedings and the high degree of impunity enjoyed, it is questionable whether these mechanisms are really effective at holding an agency whose European foreign policy functions and mandate are increasing, (giving it greater and greater operational autonomy, including in the use of firearms,) to account.

2.2 CONSTRAINTS, IMPUNITY AND COMPLAINTS

The Fundamental Rights Office (FRO) acknowledges the limitations it faces in carrying out its mandate in its annual report. According to the findings presented, there are a number of challenges to monitoring fundamental rights compliance on the ground.

The Office mainly encounters difficulties accessing all areas and activities carried out by Frontex. It also claims to have insufficient access to the agency's operational documents it needs to be able to advise on its activities from a fundamental rights perspective. FRO also states that it has been impossible to meet migrants and Frontex staff in specific operational areas without a national authority presence (Frontex, 2022; Fundamental Rights Officer Annual report 2021: 10). Some shortcomings were also highlighted in enquiries conducted by the European Ombudsman, including the very low number of complaints lodged with the FRO, the lack of transparency, the lack of cooperation between the FRO and member state authorities, and the delay in the recruitment of 40 Fundamental Rights Observers required under Regulation 2019/1896 (European Parliament Scrutiny of Frontex: 3). In this regard, it should be noted that the office had only 20 observers in 2021 (Frontex Fundamental Rights Officer, 2021: 39). In 2021, it recruited only 3 observers to monitor returns operations involving Frontex, and had to supervise 18 such actions (Frontex Fundamental Rights Officer 2021: 19).

The office also recognises Complaints Mechanism shortcomings at some airports, particularly regarding provision of information about its existence and operation. It highlights the lack of visibility and, consequently limited knowledge of the mechanism among citizens who are potential victims of rights violations. It is alarming that the office itself detects procedural deficiencies as basic as dissemination of the Complaints Mechanism, as this denotes a clear lack of transparency that contributes to Frontex's impunity and the lack of migrant protection. The Consultative Forum has also stressed the need to strengthen special care for families with minors to ensure their rights are guaranteed in the minor's best interests (Frontex, 2022f; Ninth Consultative Forum Annual Report 2021: 42). This similarly denotes very significant lack of diligence for vulnerable groups, which could be the basis for systematic human rights violations and discriminatory actions.

We must remember that all these shortcomings affect the functioning of the FRO and, above all, make it even more difficult to ensure human rights are respected during Frontex's activity. Frontex is politically, administratively and legally accountable to various bodies (see Table 3) and can also be held accountable by interest groups, NGOs, citizens, stakeholders and the general public (European Parliament, 2022b: 2).

There have been a number of investigations into Frontex's performance by some of the bodies to which it is accountable in recent years. In 2021, for example, the ECA issued Special Report n°08/2021 entitled *Frontex's support to external border management: not sufficiently effective to date*. However, this document did not address the issue of human rights. The European Parliament Committee on Civil Liberties, Justice and Home Affairs, asked the ECA to conduct a future specific audit aimed at analysing the human rights issue (European Parliament, 2022: 3).

Table 3. Bodies to which Frontex must report in different areas

Type of liability	Body to which it is answerable
Policy	<ul style="list-style-type: none"> ■ European Parliament ■ EU Member State National parliaments
Administrative	<ul style="list-style-type: none"> ■ EU Parliament and Council (authorise the Frontex budget and approve its implementation) ■ European Court of Auditors (ECA) (audit authority) ■ European Anti-Fraud Office (OLAF) and the European Ombudsman (have powers of control within their respective areas). ■ Frontex Management Board (has disciplinary authority over the Frontex Executive Director)
Legal	<ul style="list-style-type: none"> ■ Courts and tribunals

Source: Own calculations based on *European Parliament Scrutiny of Frontex* (European Parliament, 2022a).

In addition, a number of legal actions have also been initiated against Frontex. Between 2019 and 2021, two communications were submitted to the International Criminal Court asking the prosecutor's office to investigate potential crimes against humanity. The first called for an investigation into alleged systematic attacks on the refugee population, especially towards vulnerable persons, by Greece together with Frontex staff since the 2016 EU-Turkey migration containment agreements, (Syria Justice and Accountability Centre, 2021). The second communication calls for an investigation into Member States' actions under a premeditated policy aimed at curbing migration flows from Africa (European Parliament, 2022: 3). The ICC prosecutor's office is yet to launch investigations into these cases.

In 2021, for the first time in history, two similar actions against Frontex were also brought before the Court of Justice of the European Union (CJEU). The plaintiffs alleged that European migration policies result in a systematic attack on the refugee population. They also denounced the agency's failure to comply with the EU Charter of Fundamental Rights and the violation of their rights due to illegal returns, collective expulsions and the denial of the right to apply for asylum (European Parliament, 2022a: 3-4). In April 2022, the CJEU declared the appeal inadmissible on the grounds that Frontex had acted in accordance with the law and did not see its involvement in the violation of rights alleged by the victims.⁹ Subsequently, two more cases have been brought before the CJEU for malpractice in return operations, and for alleged violations of the EU Charter of Fundamental Rights, among other crimes.¹⁰ Both cases are still pending.

Finally, and in addition to the above, Frontex is not effectively accountable for its violations of fundamental rights, for several reasons. One is that rights are not being placed at the centre of investigations (see ECA special report n°08/2021 mentioned above). An-

9. Case T-282/21 SS and ST v Frontex

10. Case T-600/21 WS and Others v Frontex; Case T-136/22 Hamoudi v Frontex

other is that Frontex's nature as the European Border and Coast Guard Agency raises many legal questions, leading to divided opinion on its responsibility, especially in relation to return operations. Some experts believe that Frontex's composition and structure allows those potentially responsible to blame each other, resulting in no one person being found guilty. In the meantime, victims receive no justice. Other experts believe that Frontex praxis entails 'EU-derived responsibility' and it is therefore the member states or the EU itself who should be liable for the damage caused (European Parliament, 2022a: 4). More specifically, the actors involved in joint operations are subject to the civil and criminal law of the member state hosting the operation (Gkliati 2020: 45). However, Frontex's liability as an agency is much more complicated, as it falls under the sole jurisdiction of the CJEU meaning that national courts cannot rule on its actions (Gkliati 2020: 45). Thus, as Frontex's capacity to intervene and act autonomously has increased significantly in the last four years, so has its negative impact on human rights; while risk prevention and accountability mechanisms are still insufficient, perhaps increasingly so.

In conclusion, Frontex's mandate and competences have expanded considerably, and it has been given greater autonomy to take certain decisions. These prerogatives increase the risk that Frontex will more frequently violate fundamental rights in the course of its activities. The Fundamental Rights Office was created to mitigate this risk, along with a series of mechanisms aimed at assessing, monitoring and addressing potential rights violations during Frontex activity and by its staff. However, the monitoring of such violations is insufficient and ineffective, due to a lack of staff and a lack of budget. Furthermore, individual complaint mechanisms are not very accessible to potential victims, meaning that they are unable to report grievances quickly, which makes it difficult for them to be identified as victims and, therefore, to receive due compensation. The European Council itself has recognised the challenges arising from Frontex's new mandate and the need to create a risk assessment system (European Parliament, 2022a: 3).



3. FRONTEX OPERATIONAL ACTIVITY 2019-2022

3.1 REINFORCEMENT AND EXPANSIONISM IN FRONTEX OPERATIONS

This chapter summarises Frontex's main activities in recent years, following the work started in our 2018 report. Documents published by the agency about its operations have changed significantly since 2018, and the information they provide is now different each year. Nevertheless, we will highlight some of the most noteworthy operations carried out in the last four years.

2019 saw the launch of the first Frontex operation in an extra-EU country: Albania. Third countries had previously participated or collaborated in Frontex operations, but this was the first operation Frontex itself carried out in a third country using EU resources including agents and patrol cars. The aims of the mission were to control cross-border smuggling, weapons and to detect migrants. The mission shows how the European Union is expanding outside its own

borders. This mission also pilot tested *Aeroestat*, an aerial video surveillance system using sensors, thermal cameras and other technologies, deployed in conjunction with Greek law enforcement agencies. In 2019, Frontex operations returned 15,850 people. The published report does not provide details of the reasons for return or the destination(s) to which people were returned (Frontex, 2019b).

In May 2020, Greece requested a rapid intervention to help control migrant arrivals at its borders, and this was approved. The agency also coordinated 232 return operations (Frontex 2020: 31). For the first time, Frontex also supported member states in what are known as 'voluntary returns', (although many are accompanied by an expulsion order from the country in question). This year was also marked by the COVID-19 crisis, during which Frontex created a Covid Crisis Cell to monitor health at the borders (Frontex, 2020).

2021 saw the deployment of two rapid border intervention teams (RABIT). One operation took place in Lithuania and the other in Latvia, following migrant arrivals at the Belarus borders and growing tensions

with this country. According to Frontex data, 2021 saw more arrivals to the Canary Islands than the previous 10 years. Four mobile units were therefore set up on the islands and more than 70 agents deployed, mainly to control migration. A similar situation occurred in Cyprus, where Frontex claims to have doubled its operational support due to migrant arrivals. A total of 18,300 people were returned by Frontex operations in 2021 (Frontex, 2021a).

The partnership agreement with Moldova, another non-EU country, was ratified in 2022. That summer, joint operations were carried out with Moldova, Albania, Serbia and Montenegro to control migration flows. This year was dominated by the emergency measures approved by the European Commission to manage forced displacements resulting from the invasion of Ukraine. These will be examined in more detail below. In 2022, Frontex operations returned 24,850 people (Frontex, 2022b).

JOINT OPERATIONS WITH NATO IN THE MEDITERRANEAN

For decades, the EU has worked with NATO on migration control and surveillance missions, such as Operation Active Endeavour, deployed in the Mediterranean to monitor and control terrorism since 2001. This operation also served to provide the Greek coastguard with information about the mafias operating in the area and migration routes. When migration flows increased in 2016, the objectives of the operation changed to include migration flow control, and it became a broader security operation known as Sea Guardian (NATO, 2022, and Sarantaki, 2019: 14). In the words of then German Defence Minister Ursula von der Leyen, the agreement with Turkey provided for migrants found in Greek waters, including potential asylum seekers, to be transferred to Turkey (Frelick, 2016; Sagener, 2016).

In February 2016, following a request by Germany, Greece and Turkey, assistance for the 'refugee crisis' at the borders of the Alliance's European members was approved. Standing NATO Maritime Group 2 (SNMG2) therefore came to support Frontex operations in the Aegean Sea, in order to reinforce the reconnaissance, control and surveillance of the Aegean Sea and international waters where Frontex and the Turkish and Greek coast guards have no authority to act (NATO, 2023).

This NATO operation involves seven military vessels from different NATO members; FGS KARLSRUHE (Germany); RFA CARDIGAN BAY (UK); TCG BODRUM (Turkey); USNS GRAPPLE (US); HS AITTITOS (Greece); HS KRATEOS (Greece); HS PSARA (Greece) (NATO, 2016). It is impor-

tant to note that while Frontex can only land migrant boats on European shores, NATO operations can leave them in territory belonging to NATO member states, such as Turkey. This is an obvious way of intercepting and diverting migratory flows away from EU countries that do not guarantee migrant protection. When Turkey signed up to the 1951 Refugee Convention, it excluded all non-Europeans from refugee status, which means that it does not guarantee any protection for people fleeing wars such as those in Syria or Iraq.

Analysis of Frontex's main activities allows us to see continuity from previous years. The outsourcing of border management arrangements is not only increasing, Frontex's role in countries outside the EU is also being strengthened. European border management collaborations with NATO are also intensifying, making it harder to guarantee human rights protection. And, as in previous years, rapid intervention operations continue to be approved as a way of managing migratory flows. Frontex's role in return operations is continually being strengthened.

OPERATIONS ON THE SOUTHERN BORDER, THE CASE OF SPAIN

Our last Frontex report (published in 2019) analysed the agency's activities from its creation in 2004 to 2018. At that time, three Frontex operations: Indalo, Heras and Minerva, were jointly carried out with Spanish security forces on the southern border to control the western Mediterranean, and the Canary Islands route. Frontex's latest reports reveal that Spain not only carries out joint actions along the southern border, it also leads Frontex operations in other countries. Spain seems to have strengthened its role in Frontex operations in recent years.

This section analyses the main operations Spain has carried out through Frontex from the most recent year analysed in our previous report to the latest data published at the time of writing.

OPERATION EPN¹¹ INDALO

Operation Indalo featured in our last report as one of the most important operations carried out by Spain in conjunction with Frontex, which finances it. It is now one of Frontex's most important operations (Frontex, 2021b). Active since 2006, it has grown considerably in terms of the number of personnel deployed and type of agents involved. In 2018, Spain deployed 69 Frontex officers under this operation, a figure that increased to 257 in 2021 (Frontex, 2021b). The area of operations covers the Strait of Gibraltar and the Alboran

11. European Patrol Network

Sea (Guardia Civil, 2023). Spain's Guardia Civil (Civil Guard) have led Operation Indalo in coordination with Frontex since it began. The operation involves security forces from several European countries.

On 1 June 2019, Spanish Armed Forces' naval and air assets were included in this mission for the first time (Departamento de Seguridad Nacional, 2019; and Infodefensa, 2019). They mainly carry out surveillance through the deployment of ships, helicopters and troops. The operation involves the Spanish Navy, the Spanish Policía Nacional (National Police), Frontex agents, and security forces from other European countries, as well as other authorities that the Guardia Civil deems necessary. The Royal Danish Air Force is also involved in Indalo air patrol duties (Defensa.com, 2022).

The Spanish Department for National Security (Departamento de Seguridad Nacional) describes the functions of Operation Indalo as follows:

[...] its tasks include combating human trafficking and actions related to the fight against drug trafficking, maritime pollution, illegal fishing and cross-border crime in general (Departamento de Seguridad Nacional, 2019).

There is little transparency on the cost of each Frontex operation. The answer to a question submitted to the European Commission¹² revealed that Indalo cost €18,169,390 euros in 2018, while in 2017 the cost was €8,312,421 (European Commission, 2019). This is an increase of 118.5%. It would be fair to estimate that four years later and with migratory flows on the rise, the budget has also increased considerably.

OPERATION EPN MINERVA

Since 2006, Operation Minerva has provided the Spanish state with reinforced border control through the deployment of Frontex agents, (a total of 125 agents in 2022). The operation mainly takes place in the summer months, from July to September (Frontex, 2018). It is led by Spain's Policía Nacional and coordinated by Frontex, and operates in the ports of Algeciras, Tarifa and Ceuta (Frontex, 2022c). According to the European Commission answer cited in the Indalo operation, Minerva was estimated to cost €990,957 euros in 2019 and €835,340 euros in 2017. This operation does not appear to expand significantly each year.

OPERATION EPN HERA

Since 2006, Operation Hera has been carried out in the Canary Islands and along the West African coast, in Mauritania, Senegal and Cape Verde. It saw sever-

al phases (Hera I, Hera II, Hera III) before becoming consolidated as an annual operation, normally taking place from August to December. According to the Spanish Department for National Security, its main objective is to:

[...] prevent the irregular entry of migrants into the European Union by sea, to protect human life at sea, to identify illegal migrants for repatriation, and to obtain relevant information to combat the networks that promote illegal immigration. It will also pursue other illicit activities, especially those related to international organised crime, drugs, dumping and illegal fishing (Departamento de Seguridad Nacional, 2016).

The same European Commission answer referred to above confirmed that the cost of this operation was €1,278,814 in 2018 and €834,770 in 2017, which represents a budget increase of 153%.

In 2020, the Spanish government and Frontex agreed to jointly reinforce their actions along the Canary Islands route through Operation Hera. The pressure on this route has increased considerably, due to increased Moroccan controls along the western Mediterranean route (Martín, 2020). Operation Hera also works with transit countries, such as Mauritania and Senegal; reinforcing the security forces present in these countries (La Moncloa, Office of the President of the Government of Spain and the Council of Ministers, 2021). Given the prospect of reinforcement along the Canary Islands route and the increase in the known budget between 2017 to 2018, it is possible to consider that this is a growing operation.

The same question to the European Commission included a request for information about the people detained in the framework of the operations analysed (Indalo, Minerva and Hera) from 2011 to 2019. Although the answer provided is rather confusing, as it establishes a series of very unclear and unexplained categories of detainees,¹³ it can provide an insight into the objectives and results of these operations. According to the data provided in this response, from 2011 to 2019 the largest number of detainees were 'illegal migrants' with a total of 94,106 people in this category. The next biggest category was 'aspiring migrants' at 19,733 detainees, although we do not know exactly what profile this category refers to and how it differs from 'illegal migrant'. And 527 'facilitators' and 1 people smuggler were arrested as part of actions to prosecute mafias (European Commission, 2019).

12. Question E-006193/2018

13. The categories into which the information is distributed are as follows: "Role of the person; person deterred; facilitator (human trafficker); FTF; illegal migrant; facilitated illegal migrant; other; demurrage; potential victim of human trafficking; refusal of entry; smuggler of goods; smuggler of human beings; unaccompanied minor; prospective immigrant.

In addition to its three main Operations (Indalo, Minerva and Hera), Frontex also carries out Operation Focal Points, which is the permanent deployment of border control and surveillance support agents at checkpoints in European member states and third countries (European Commission, 2023a). This operation is also maintained on a stable basis. Our previous report noted that this operation answers the policy of externalising border management.

In conclusion, the main Frontex joint operations have been maintained and strengthened for more than 15 years. Spain has assumed a strong leadership role in these operations, with Frontex providing increased financial and human resources.

THE SPANISH GOVERNMENT'S ROLE IN OUTSOURCING BORDER CONTROL TO THIRD COUNTRIES

Spain applies the policy of outsourcing border management and is also actively committed to this approach. In March 2023, Interior Minister Grande-Marlaska asked the new Frontex Executive Director Hans Leijten to boost cooperation with African countries to control the flow of displaced people (La Moncloa, 2023).

Although the Frontex activity reports are very deficient in terms of the information they provide, as mentioned above, we know that Spain has led Frontex joint operations in third countries. For example, in 2019, Spain led the Joint Action Days¹⁴ Western Balkans and participated in 12 joint operations throughout the year. This number was just behind Italy (14) and France (13) and on a par with Bulgaria, Estonia, Latvia and Portugal, who also took part in 12 operations (Frontex, 2019: 12b).

Spain's Guardia Civil and Policía Nacional have been deployed in Mauritania since 2020. Here, the Guardia Civil deployed one of its Air Service (SAER) planes, with powerful sensors to detect small boats leaving the Mauritanian coast. Frontex also provided two teams of support personnel to end departures from Mauritania to the Canary Islands (Defensa.com, 2023). Following this intervention, the Mauritanian government started negotiating a cooperation agreement directly with Frontex (La Moncloa, 2022). Mauritania already hosts almost 70,000 people who were displaced by violence in Mali, and many others from other African conflicts, such as those in the Central African Republic and the Democratic Republic of the Congo (UNHCR, 2022). According to Human Rights Watch, Mali is home to several rights violations and a place where forms

of slavery still exist, with 2.4% of the population living in this situation despite its abolition. There are also serious shortcomings in the protection of the rights of women, and the LGBTI community are still sentenced to death (Human Rights Watch, 2020). In other words, preventing forcibly displaced people from leaving transit countries may trap them in areas where they continue to experience a cycle of severe violence, with the complicity of European governments.

3.2 UKRAINE: A BIASED BORDER OPERATION

At the time of writing, more than a year has passed since Russia invaded Ukraine, and more than nine years have passed since the outbreak of the conflict, which has increased the number of displaced people worldwide. However, while the average annual growth in this figure was estimated at two million forcibly displaced people, which is already a shocking figure, the number of displaced Ukrainians alone increased by 5.4 million in the first six months of 2022. According to UNHCR data, the number of forcibly displaced people worldwide exceeded 89 million at the end of 2021 (UNHCR, 2023), while its estimates for the first half of 2022 point to 103 million (UNHCR, 2022), i.e. an increase of more than 10 million people in a single year. However, as we shall see, this enormous increase is not only due to the evolution of the conflict in Ukraine, but also to other factors including the strengthening of the Taliban's political power in Afghanistan after 20 years of invasion.

It is therefore interesting to analyse the ways in which EU member states have chosen to respond to the situation, and Frontex's actions in the face of this wave of forcibly displaced people.

Soon after the Russian invasion began, in March 2022, the European Commission approved two emergency measures: reactivation of the *Temporary Protection Directive* 2001/55/EC (European Council, 2001; Official Journal of the European Union, 2022¹⁵) for the specific case of Ukraine; and sending Frontex agents to the Moldovan borders, where most of those displaced by the war fled. The agreement was approved in record time (European Council, 2022). This is an example of how the EU has the means and capacity to approve measures to support forcibly displaced persons at critical moments. Indeed, Commission President Ursula von der Leyen declared:

15. The full English text of "COUNCIL IMPLEMENTING DECISION (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection", is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382>.

14. Joint operations that take place on specific days.

Europe stands by those in need of protection. All those fleeing Putin's bombs are welcome in Europe. We will provide protection to those seeking shelter and we will help those looking for a safe way home. (European Commission, 2022).

In 2001, the ability to reactivate the Temporary Protection Directive was specifically designed to allow the EU to offer displaced people immediate protection by bypassing member states' complicated asylum systems. The directive was reactivated for Ukraine on 4 March 2022, one week after the invasion. It establishes more equitable distribution of displaced people among the member states, along with a 'solidarity platform' coordinated by the Commission, allowing states to exchange information regarding their reception capacity in an agile manner. The measures approved include considerations permitting dignified reception, such as residence rights, access to housing, medical assistance, the right to guardianship for minors, and access to education. In other words, it is a tool that the European Commission could have used for displacements resulting from brutal wars such as those in Afghanistan, Libya or Syria, to name but a few.

The Directive also provides for increased support from other bodies and agencies, such as Frontex. The agency activated a crisis response mechanism and created a dedicated team that works to provide monitoring and information on the status of refugees at border crossings and to ensure and facilitate evacuation corridors 24/7. To this end, Frontex mobilised the 500 agents with these functions already deployed on the Eastern European border, plus an additional 350 to allow it to act in third countries that may receive increased numbers of displaced people, such as Moldova (Frontex, 2022d, 2023c).

Frontex also signed a financial agreement with the Ukrainian State Border Guard Service in January 2023, allocating it a grant of €12 million euros, covering equipment, uniforms, generators, patrol vehicles and other material.

The narrative is a very important aspect to consider when analysing the EU's border securitisation process. In this regard, although it goes beyond the objectives of this report, it is worth noting the different language used in different cases. For example, a European Council press release dated close to the invasion of Ukraine entitled *Border Management: EU concludes agreement with North Macedonia on Frontex cooperation* (European Council, 2023) sets out the nature of this cooperation and uses the following terms to refer to border management:

Frontex will be able to assist North Macedonia in its efforts to manage migratory flows, counter illegal immigration, and

tackle cross-border crime. Reinforcing controls along North Macedonia's borders will contribute to further enhancing security at the EU's external borders. (European Council, 2023).

It uses terms such as 'migration flows', 'illegal immigration', 'cross-border crime' and 'security'. Note that Macedonia is part of the 'Balkan route', which is one of those most used by people fleeing wars such as those in Afghanistan, Iraq and Syria, who are therefore entitled to be recognised as refugees and given asylum.

If we look at another communication from around the same time, such as a news item about Ukraine on the Frontex website, we will find that terms such as 'Frontex stands Ukraine', 'refugee flows', 'facilitation of border crossings and evacuation corridors' are used (Frontex, 2023c).

Such use of language is not impartial and answers certain objectives. Of course, the language welcoming people fleeing Ukraine is appropriate. This is precisely why the securitarian language used for all other people fleeing other wars and seeking to reach the EU is so reprehensible. This matter is of the utmost importance if the European Union is to commit to actually protecting life beyond its comforting declarations. The International Organization for Migration has detected over 29,000 deaths on migration routes to the EU since 2014 alone, with Syrian nationals accounting for 35% of the country's total displaced population, being the biggest victims (UNHCR, 2022; IOM, 2022). Over 250 people were also killed during alleged forced expulsions by European authorities in 2021 and 2022. These figures are estimates, as many people perish invisibly on their way to the EU, which prevents us from knowing the real scale of the situation.

Of course, the case of Ukraine is an example of good EU practice. In fact, beyond good practice, such actions comply with its obligations under the Refugee Convention and other international and national directives¹⁶. However, the observed biases regarding measures to receive people fleeing different wars are serious, and a warning about the methods member states and the European Commission are using to manage migration flows. The response to the war in Ukraine proves that, eight years after the largest border walling ever carried out by EU member states (6 walls built in one year for migration purposes), it was, and indeed is possible to welcome people fleeing war when there is a political will to do so.

16. All EU Member States are party to both the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.



4. FRONTEx RIGHTS VIOLATIONS AND IMPUNITY

4.1 MORE VIOLATIONS, MORE IMPUNITY

As a European Union agency, Frontex must conduct all its operations in accordance with the Charter of Fundamental Rights, the European Convention on Human Rights and international treaties on the protection of migrant and refugee rights.¹⁷ Under the human rights charter, Frontex cannot, either directly or indirectly, expose anyone to human rights abuses, and must take the measures necessary to protect people from ill-treatment. Frontex's own mandate, derived from the regulation establishing the agency, requires all staff deployed in its operations to respect fundamental rights (Frontex, 2019a).

Frontex's main objective or task is to prevent irregular external border crossings. At the same time, its mandate clearly states that it must fully respect fundamental rights (Frontex, 2019a). Like other European agencies, Frontex should restrict itself to providing

technical support for cooperation between member states, yet in practice, it has a very wide margin for manoeuvre in both decision-making and operational interventions (Migreurop, 2012: 52-55). The room for manoeuvre and lack of transparency, noted by Statewatch (2022) and other organisations has serious human rights consequences, such as cooperation agreements with countries where rights violations are documented, such as Belarus, training Libyan coastguards, the forced fingerprinting of exiles deprived of their liberty in settlements, and advising the Greek authorities on deportations to Turkey. The lack of transparency and legal accountability have always been blind spots in Frontex's mandate (Amnesty International, 2021a).

Frontex uses military and technological means to 'protect' the European Union from 'illegal' migration and has been shaping EU migration policies in this way for years. Drones, helicopters, satellites, watchtowers, thermal cameras, CO₂ probes, heart rate detectors, geo-radars, and biometric data (Migreurop, 2021: 2), are all being used to drive unarmed civilians exercising their right to mobility away.

17. Preamble Frontex Fundamental Rights

The war the EU and Frontex have declared on migrants is not limited to the above techniques, it also makes use of facial recognition, 'smart' document authentication and cognitive robotics. In an article by Human Rights Watch (2022), the NGO has shown how this use of intrusive and state-of-the-art technologies for repressive purposes contributes to the dehumanisation of and violence against people on the move, and especially to the violation of refugees' rights. Such actions also violate the principle of transparency and individuals' right to access the documents of EU bodies laid down in Article 15 of the Treaty on the Functioning of the European Union and Article 42 of the Charter of Fundamental Rights of the European Union.

In addition to what can be considered an abusive use of technology, as we shall see in more detail below, Frontex missions are often reported as having carried out collective expulsions, which are prohibited by Article 4 of Protocol 4 of the European Convention on Human Rights. Collective expulsion is only possible after an individual examination of each asylum application has been carried out. It is impossible to reconcile respect for the right to asylum and the principle of non-refoulement, with collective expulsion operations. This shows that Frontex's objectives are contrary to the right to asylum and all that it entails, such as the right to an effective appeal, to a hearing and to an interpreter.

Aerial surveillance has become one of the central pillars of Frontex strategy, especially in the central Mediterranean, as a way of preventing migrants and asylum seekers from reaching Europe by boat. This is despite knowledge that such operations result in the return of migrants, who subsequently face systematic and widespread abuse in detention by authorities and militias, as for example in Libya. As we have seen, these return operations have grown in number, and accounted for 21% of Frontex's total 2020 budget. Frontex has also acquired a mandate to carry out its own return operations.

Through Frontex and with this strategy, the EU is trying to absolve itself of its legal responsibilities. However, by providing information to the Libyan and other authorities, allowing them to intercept people fleeing the abuses they suffer in their countries of origin or transit, it is becoming complicit in those abuses. All this is happening in the knowledge that migrants who are caught will be returned to Libya, where they may face arbitrary detention, violence and exploitation. A Human Rights Watch study analysed the relationship between interceptions by the Libyan coastguard and the presence of Frontex in the central Mediterranean (Human Rights Watch, 2019a). Frontex has repeated-

ly claimed that aerial surveillance saves lives at sea (European Council, 2022a). This claim contrasts with data showing that there is no correlation between the mortality rate and Frontex agents' flight time (Human Rights Watch, 2022). If the intention was really to save lives at sea or protect people in distress, Frontex would notify rescue organisations of vessels in distress and issue Mayday alerts to all vessels in the area. It does not do so. However, almost a third of the 32,400 people caught at sea and forced to return to Libya by Libyan forces in 2021 were intercepted thanks to information gathered by Frontex aerial surveillance (Der Spiegel, 2021). This demonstrates the correlation between Frontex's aerial presence and Libyan Coast Guard interceptions.

Human rights organisations such as the United Nations High Commissioner for Human Rights, Amnesty International and Human Rights Watch have expressed deep concern about the use of this type of aerial surveillance, and about the lack of transparency and accountability regarding the fundamental rights obligations of the member states that authorised Frontex to provide these services. Over many years, aerial surveillance activities at EU external borders carried out by Frontex have continuously given rise to documented allegations of violent expulsions, including at the Croatian-Bosnian border, in the Aegean Sea and in the central Mediterranean (porCausa, 2021: 17).

When analysing human rights violations in Frontex actions, it is essential to mention the agency's activity in Greece, its largest area of activity with almost 600 officers conducting border surveillance and assisting in the identification and registration of migrants. Frontex officers have worked at the Evros land border with Turkey since 2010, and in the Aegean Sea as part of Operation Poseidon since 2006. Frontex then deployed two additional Rapid Border Intervention Teams (RABIT) in March 2020 following the arrival of tens of thousands of migrants at the Evros border after Turkey declared it would no longer prevent refugees from crossing into the EU (Le Monde, 2020). In response, the Greek authorities openly implemented abusive measures against potential asylum seekers. These included the temporary suspension of access to asylum, prosecuting asylum seekers for irregular entry, forcing them to cross back into Turkey, preventing them from docking, and pushing them into Turkish waters in inflatable rafts, endangering their lives. Despite all this, Frontex continued its operation. Following Frontex' RABIT deployment, the Consultative Forum on fundamental rights asked the agency for information, as it considered that the Greek authorities' suspension of asylum seeker registrations and unregistered returns, could give rise to Frontex complicity in fundamental rights violations. Several

members of the Consultative Forum and other organisations denounced human rights violations by Greek forces against asylum seekers and migrants attempting to cross the border, including excessive use of force, beatings, illegal detentions and systematic returns to Turkey (forum refugiés, 2022).

Instead of condemning and taking action against this violation of refugee rights on Europe's doorstep, European Union leaders applauded the events, with the President of the European Council praising Greek efforts to "protect Europe's borders", while European Commission President Von der Leyen called Greece a "European shield" (Euronews, 2020). Frontex issued a statement in March 2021 reporting that Greece and Frontex committed no crime (Mediapart, 2022), despite clear evidence to the contrary. Nor did it investigate other abuses committed by Greek authorities in areas where Frontex operates, including violent refoulements at the Greek-Turkish land border. Furthermore, during Frontex-coordinated Operation Poseidon in Greece, the commander of a Danish patrol boat reported that, after his crew rescued 33 people from a boat, Operation headquarters ordered them to put them back in the boat and "tow it out of Greek waters" (Laurie Tritschler, 2020). A *Der Spiegel* report showing that Frontex's own human rights watchdog considered investigations into the Aegean pushbacks by a German media consortium including *Der Spiegel*, to be "based on solid evidence" (Giorgos Christides & Stefan Ludke, 2022). Despite the seriousness of the incident, Frontex never filed a serious incident report.

The above-mentioned pushbacks in the Aegean Sea are not isolated cases. The Consultative Forum expressed concern about continuous reports of pushbacks from Croatia to Bosnia and Herzegovina, most of which were accompanied by reports of violence and intimidation by the Croatian police. These practices increased especially during the COVID-19 pandemic, despite the emergency measures imposed by the authorities throughout the region. Here too, the Consultative Forum denounced Frontex involvement in aerial surveillance activities leading to the detection and interception of migrants (Statewatch, 2022a).

Human Rights Watch has also documented summary collective expulsions of asylum seekers at the Croatian border, where, since 2016, border officials have used force and violence, beating people with their fists and kicking them (Human Rights Watch, 2020). The Croatian authorities have denied allegations of violent returns and failed to take credible steps to stop the practice, including failing to set up the independent border monitoring mechanism requested by the European Commission (Amnesty International, 2021). Following a Human Rights Watch request, the Frontex

Director confirmed the agency had an aerial surveillance system at the border between Croatia and Bosnia and Herzegovina since July 2018, yet maintained that Frontex had not detected any human rights violations, including refugee returns to Bosnia (Human Rights Watch, 2019b). Despite persistent reports of fundamental rights violations and Frontex's obligation under Article 46 to suspend or terminate operations when such violations are of a serious nature or likely to persist (Frontex, 2021c: 6), Frontex continues to operate in Croatia.

As explained above, the new 2019 regulation strengthened Frontex's mandate and increased its operational autonomy from member states, to the extent that some observers have drawn attention to the risk of Frontex executing a parallel foreign policy (Bautista, 2021a). The agency has been replacing search and rescue operations at sea with unmanned aerial observation missions, in breach of the humanitarian obligations established in maritime law (porCausa, 2021: 17). Furthermore, in January 2021, the permanent deployment of Frontex agents at the border and their ability to use firearms for the first time in the agency's history was jointly authorised by the Lithuanian government and the Frontex Executive Director. This decision increased the militarisation of the EU's external borders and the risk of violations of migrants' rights and indeed their right to life, and dispersed responsibility for any rights violations (porCausa, 2021: 25). The lack of agency control and supervision mechanisms prevents us gaining a true picture of what is happening on the ground; as a reference, between 2009 and 2019 Frontex returned 60,135 people through 1,437 operations (porCausa, 2021: 1-2). Meanwhile, in 2021 the European Court of Auditors warned that Frontex is incapable of managing its dizzying growth (European Court of Auditors, 2021). The agency established an audit system through the Fundamental Rights Office, as discussed above, to cover its own back. However, as this report explains, the FRO's budget is insufficient to establish the necessary human rights controls, quite apart from the questionable fact that it is the agency itself that audits its own rights compliance.

As we can see, numerous scandals, allegations and accusations of human rights violations against migrants and refugees at Europe's borders by Frontex agents have occurred and eventually led to the resignation of its Executive Director Fabrice Leggeri in April 2022. His resignation followed the European Anti-Fraud Office (OLAF) investigation analysing several reports of Frontex complicity in illegal expulsions of refugees in the Aegean Sea. This is a clear indication of Frontex's responsibility for the degradation of the rights of refugees arriving at Europe's borders.

4.2 RIGHTS VIOLATIONS AT THE SOUTHERN BORDER: THE CASE OF SPAIN

Remembering the above discussion of the general case of the European Union, we now turn to examine rights violations at the Southern Border, i.e. the case of Spain and her government's relationship with Frontex. As in other European countries, irregular migration became a security issue in the late 1990s in Spain, when crossings by sea and land began to intensify at the southern border. Thus, over the last thirty years, Spain's various governments have framed migration from Africa as a major threat and controlling migratory flows has become one of their priorities. However, Spanish migration control policy on the southern border cannot be understood without examining the implementation of European border control policy, in which Spain has been a laboratory and a paradigm for the deployment of new border control approaches used subsequently in other geographical areas.

EU migration policy has been characterised by externalisation, communitarisation and technification, with borders taking on new functions. Externalisation has meant the partial transfer of migration control to countries of origin and transit, as seen in bilateral cooperation agreements with several African countries and the New Pact on Migration and Asylum. Communitarisation has meant the joint legal and operational design and implementation of migration policies by various member states. Frontex has played an important role in the deployment of joint operations in Spain, as we have already seen (Hera, Indalo, Minerva) (Lopez-Sala and Godenau, 2016: 83-4). Finally, technification has meant an increase in the number of information technologies (biometrics, drones, radars, etc.) deployed to increase the capacity to control displaced persons at the southern border, such as the SIVE radar system or the Seahorse regional satellite network (European Commission, 2023b).

The following section focuses on the communitarisation of border control, i.e. the conduct of joint operations through Frontex and the human rights violations resulting from these operations. Multiple research reports have drawn attention to Frontex' budgetary and political expansion, securitarian approach and opaque management in recent years. Access to information about the agency is irregular, does not follow clear guidelines and is missing much information of public interest. In addition, some of the reports analysed previously are no longer available on its website.

The synergies between Frontex and the Spanish government are clear. Since 2004, the experience Spain gained in joint maritime surveillance operations, such as Operation Noble Sentinel, Guanarteme and the At-

lantis Project, became key to the implementation of Frontex joint operations after 2006 (Lopez-Sala and Godenau, 2016: 92). As a porCausa report explains, "For Spain, Frontex is an institutional and operational support and an invaluable source of staff, equipment and financial resources" (porCausa 2021: 25). Operations Hera (2006-2018, relaunched in November 2020), Indalo (2007+) and Minerva (2006+) stood out in recent decades. Frontex has a total of 257 officers deployed in Spain, and exchanges information with the Spanish security forces through Coordination Points and Focal Points in the framework of integrated border management (porCausa, 2021: 26). Nevertheless, the relationship between the two has not always been positive, as Spain has been reluctant to cede operational control to the agency, partly for reasons of strategic power (Bautista and Rojas, 2021). That said, Spain's Interior Minister Fernando Grande-Marlaska was the first high-level politician to visit the new Frontex Executive Director, Hans Leijtens, at the end of February 2023. At their meeting, the minister urged Frontex to play "a more relevant role" in preventing irregular migration in the Mediterranean and the Atlantic (Ministerio del Interior, 2023). The Spanish government made clear that it intended to strengthen Frontex when it assumed the six-month EU presidency (La Moncloa, 2023).

Rights violations have been constant at the southern border over the past decade, including flashpoints such as the 2014 Tarajal tragedy, the overcrowding of some 2,600 people at the Arguineguín dock in 2020 (Allan, 2021), the collective pushbacks from 17-19 May 2021 in Ceuta (Border Violence Monitoring Network, 2021: 13-16) and most recently, the death of at least 37 people at the Melilla border on 24 June 2022 (CEAR, 2022). Indeed, after the events of May 2021, and under pressure from the EU, the Spanish government confirmed that the Policía Nacional would launch a joint operation with Frontex in the Port of Ceuta as part of Operation Minerva, including a new deployment of agents to "address the challenges of migration and policing at the borders in the ports of Algeciras, Ceuta and Tarifa" (Ministerio del Interior ((Spain's Home Office)), 2022). In 2022, the joint operation deployed 125 Frontex agents to help Spanish law enforcement agencies control irregular migration flows in Algeciras, Tarifa and Ceuta (Schengenvisa, 2022). The port of Ceuta is a hotspot for migrant rights violations: there is constant violence against migrants attempting to cross to the mainland, and those who risk hiding on the ferries face hypervigilance and violent assault by security forces in the port. Furthermore, activists on the ground have received reports that Frontex agents entered the Ceuta CETI (centre for temporary immigrant accommodation) in plain clothes. Inside, they spoke to residents and asked them about their

background and plans, without revealing their identities or true intentions (Border Violence Monitoring Network, 2021: 27).

Cova Bachiller López and Fran Morenilla (Bachiller López, Cova and Morenilla, Fran 2022) investigated the interviews Frontex conducted under Joint Operation Indalo and their impact on criminal prosecutions and migrants' rights. Frontex has interviewed migrants since its foundation in 2005, and feeds the results into its 'risk analysis' process to produce 'strategic foresight' (Frontex, 2022e). Due to the agency's securitarian approach, these interviews have become interrogations to 'combat organised crime'. They take place in a context where people are detained and at risk of deportation, in the presence of police officers, without the presence of a lawyer and sometimes without an interpreter. It is therefore questionable whether informed consent is obtained and the migrant's rights respected. Detainees thus become evidence, incriminating others, and even themselves, in alleged human trafficking offences arising out of manning the boats, operating the GPS or overseeing the petrol. Unlike police investigations, which are regulated, the legal nature of Frontex interviews is ambiguous.¹⁸ The case of Helena Maleno shows how these interviews can be geared towards obtaining incriminating evidence (Maleno Garzón, 2020).

Although it has a considerable presence on the Iberian coast and in the autonomous cities of Ceuta and Melilla, it is in the Canary Islands that Frontex has played a more relevant role. The first major Frontex Joint Maritime Operation (Hera, since 2006) took place in the islands, in collaboration with Mauritania, Senegal and Cape Verde. This operation was subdivided into a mission to collect data and interview migrants (Hera I) and a mission of sea patrols to monitor boats leaving West Africa and return them to third countries before they reached Spanish waters (Hera II) (Carrera, 2007: 20-23). Frontex has reported that this operation reduced migrant arrivals in the Canary Islands by a third (Yarza Jordano, 2018: 27-28). Frontex border agents have the power to refuse entry, so their actions can have a significant impact on migrants' fundamental rights, especially if pushbacks are carried out without prior assessment of the individual case, or guaranteeing the right to seek asylum. Although the Frontex Code of Conduct (2016) explicitly mentions the right of non-refoulement, human rights organisations have reported that in practice, this right is not guaranteed. In the last five years, an estimated 7,692 people have lost their lives on the Canary route, mak-

ing it the deadliest way into the EU: an estimated 3 out of every 10 people perish on the crossing (Caminando Fronteras, 2023).

As in Ceuta, Frontex agents have also been reported to have carried out interrogations without the presence of a lawyer in the Canary Islands Centres for Temporary Migrant Accommodation (CATE), in violation of Article 17.3 of the Spanish Constitution, which guarantees the right to a lawyer in police and judicial proceedings, given that these migrants are *de facto* in police custody, and also in violation of Article 24, which establishes the right to legal defence and assistance (Irdia, 2023a). Faced with a spike in arrivals to the Canary Islands since 2020, especially to the Arguineguín dock (Gran Canaria) between August and November 2020, the Policía Nacional requested Frontex intervention. The agency sent seven agents to the area to investigate people smuggling networks (Martín, 2020a). This purely securitarian approach has led to an exponential increase in imprisonments for people smuggling (202 people in 2021), with defendants remanded in custody for 1- 4 years. It has also been reported that some public lawyers advise their clients to sign plea bargains to reduce their sentences without first exhausting all avenues of defence (Irdia, 2023: 64). Meanwhile, the Spanish Ombudsman (2021: 34-35) reported that none of the 3,200 people who passed through the migrant reception centre in Tenerife applied for asylum, noting:

It is absolutely essential that the information [on international protection] is understandable for all individuals and government agencies have been reminded of this on numerous occasions. Access to the information must be guaranteed at all times and it must be understandable.

Likewise, from 2020 onwards, the number of cases in which migrants were prevented from travelling to the peninsula multiplied, contravening up to six Supreme Court rulings that state that the police do not have the authority to prevent such travel if they have the proper documentation (Allan, 2021). African migrants therefore suffer a very precarious legal situation, in which they are not considered worthy of the same rights as Spanish nationals, while the EU promotes 'extraterritorial processing centres' in the Canary Islands where the legal system is suspended and creates zones in which migrants' rights and protection are severely limited (Campesi, 2020).

Some observers fear that the islands will become integrated borders or hotspots like Lampedusa or Moira (Bautista, 2021b), while Statewatch warns that the islands have become 'makeshift deportation waiting rooms' and 'a black hole for human rights' (Allan,

18. For more information on Frontex activity in maritime arrivals in particular in relation to interrogations, see Irdia 'Llegadas marítimas a Canarias: excepcionalidad y racismo': <https://iridia.cat/publicacions/informe-llegadas-maritimas-a-canarias-excepcionalidad-y-racismo/>

2021). CEAR refers to the 'cage island model' based on containment, deportation and fortification (CEAR, 2021: 13). The Spanish government launched the Canary Islands Plan in response to the 2020 crisis. It was designed without consultation with the main actors involved and converted 7,000 places created following the 2020 arrivals into stable accommodation, relying on the policy of interception and returns (CEAR, 2021: 18; Irídia, 2023a). However, 2021 arrivals exceeded the 2020 numbers. Associate Director of Human Rights Watch Judith Sunderland warns that 'Spain's approach, like that of the EU, remains focused on preventing arrivals, rather than opening safe and orderly migration channels' (Martín, 2021). The chronification of migrant holding camps in the Canary Islands increases the dehumanisation of migrants, while fostering hate speech in the host society.

The national and international legitimisation of violent border practices, together with the increase in 'security' infrastructure, proves that government bodies continue to prioritise 'border protection' over mobility and human life. The violation of migrants'

rights begins with the violation of their right to life and continues with the violation of fundamental rights through actions such as pushbacks, deportations, detention, racially biased raids and other strategies. In 2018, none of the 19 Frontex joint operations had a specific mandate to rescue people, nor did they include a civilian fleet in their actions (Ruiz Benedicto, 2019: 6). The recent European Council conclusions on the war in Ukraine, the economy and migration declare full support for Frontex's core mission and call for the swift conclusion of negotiations between Frontex and third countries (Statewatch, 2023). This is how a militarised and securitarian approach to migration management has been consolidated, leaving human rights to fall by the wayside. Frontex has played a relevant role in the deployment of joint operations in Spain, coinciding with its budgetary and political expansion and its lack of adequate control and supervision mechanisms. Frontex has a symbiotic relationship with Spain's national security forces, and its securitarian approach has only aggravated the human rights violations happening on the southern border since the early 2000s.



CONCLUSIONS

The purpose of Frontex operations has not changed since our last report; the agency remains focused on combating cross-border crime, including, to use its own terminology, 'trafficking in human beings'. Underlying this is one of the big migration flow management issues that requires serious reflection. Firstly, Frontex activity is helping to reinforce rather than combat mafias, resulting in the collateral damage of forcibly displaced persons having to pay more for their journeys and run even greater risks. It is worth noting that irregular migration is the only route possible for the vast majority of people who cannot access visas, either because of high-income requirements, or due visa limits for their country, the cost of visa processing, or because their country's administrative structures have collapsed due to war or corruption. Mafias have therefore simply opened a market that EU border management policies are strengthening. Frontex itself acknowledges that, while the cost of crossing from Morocco to Spain was €500 euros in 2016, in 2017 the price had already doubled. Nor is European Union migration policy achieving the objective of preventing people from moving from their

countries of origin to other countries. On the contrary, these policies are producing more violence and more risks for the people on the move. More than 100 million people have already been forcibly displaced. UNHCR notes that, although there has been a slight decrease in attempted crossings, the Mediterranean is home to more deaths than ever, with over 3,200 deaths registered in 2020.

It is important to reflect on the growing securitarian nature and militarisation of border management with respect to migratory flows. Although the Guardia Civil can perform police and military functions, the deployment of the army to domestic policy functions in Spain and other countries shows the ways in which the borders between internal and external security and between police and military functions are being blurred. This dynamic is increasing, as our other reports have shown, and is typical of the increasing global security process.

Unfortunately, a systematic violation of rights is also happening, with the necessary collaboration of the European Commission and EU member states, none of whom raise their voices in the face of this flagrant

situation. Frontex's efforts to create mechanisms to guarantee rights are very deficient, to say the least. On the one hand, and as we have seen, this is due to a lack of resources preventing this from being done effectively, and on the other, because of the obvious questions raised by the agency's self-regulation.

In short, Frontex, the European Border and Coast Guard Agency is expanding unstoppably in parallel with the securitisation of European and global borders and is making one model of migration flow management hegemonic. This results in ever-increasing, dangerous and alarming militarisation.

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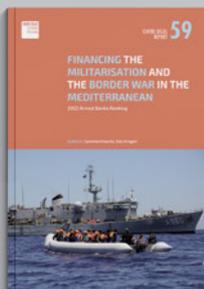
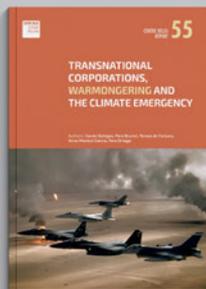
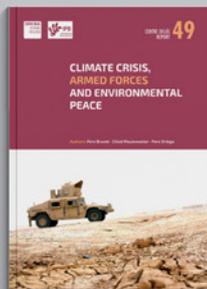
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