



Research Article

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Frontex and challenges for human rights protection

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DOI: <https://doi.org/10.2478/ejels-2025-0010>

Abstract

From its establishment as a European Union agency in the field of border, migration and asylum policies in 2005, Frontex tasked with coordinating the operational management of the European Union's external border through support to the EU's member states, has expanded significantly. Through a series of reforms, most notably in 2007, and 2016 and 2019, the agency has become a crucial actor in what is referred to as 'European Integrated Border Management'. Since the creation of the agency and its first operations, there has been significant concern, both from the European Parliament as well as NGOs and other civil society organizations that the executive mandate of the agency has not been counterbalanced by effective mechanisms for accountability, particularly with respect to fundamental rights.

The article provides an analysis of the European Border and Coast Guard Agency or Frontex, from its establishment to the last legal changes, describing the legal basis on which it is based, and its duties in the management and border coordination. A major concern is how individual ensure legal accountability for fundamental rights violations that occur in the context of its activities. Member States held accountability before their own national courts and before international courts and neither of these options are available in relation to Frontex.

An important part of this analysis are the findings in the final report of LIBE Committee on Civil Liberties, Justice and Home Affairs.

The methodology used for the analysis of this paper includes desk review on existing literature, legal texts, reports from international organizations, legal framework including Human Rights and a case study.

Keywords: Frontex, Libe investigation, EBCG regulation, Charter of Fundamental Rights of the European Union, Human Rights violations.

Introduction

Through a series of reforms, most notably in 2007, and 2016 and 2019, Frontex has become a crucial actor in what is referred to as 'European Integrated Border Management'.

The mandate and powers of Frontex are continuously growing, while the agency has

entered the next phase of its development, that of greater autonomy and operational effectiveness. The broader powers the agency acquired with the 2019 amendment of its Regulation reflect upon the potential for its legal responsibility. One of Frontex' main tasks is the organization and implementation of joint operations. Joint operations are launched in order to support one or more member states in external border management. Assistance may be rendered for purposes of border control (joint border control operations) or the return of third country nationals that have no right to stay (joint return operations) (Abazaj, 2024).

All joint operations have to be implemented in compliance with human rights. This includes, in particular, the human rights obligations contained in the ECHR and the CFR. Both guarantee a broad range of rights relevant to persons that may be affected by Frontex operations, such as the right to life (Article 2 ECHR, Article 2 CFR), the prohibition of torture or inhuman or degrading treatment or punishment (Article 3 ECHR, Article 4 CFR), the prohibition of *refoulement* (in particular Article 3 ECHR, Article 19(2) CFR), the prohibition of collective expulsions (Article 4 Protocol No. 4 ECHR, Article 19(1) CFR), the right to private and family life (Article 8 ECHR, Article 7 CFR), and the right to liberty (Article 5 ECHR, Article 6 CFR). The ECHR is applicable to all contracting parties. This includes all Schengen states that may be involved in Frontex operations.

Since the creation of the agency and its first operations, there has been significant concern, both from the European Parliament as well as NGOs and other civil society organizations that the executive mandate of the agency has not been counterbalanced by effective mechanisms for accountability, particularly with respect to fundamental rights.

This article is aimed to demonstrate that the control of actions coordinated by Frontex is very complex, due to the composite-nature of the operations, as well as their opacity. Member States can be held accountable before their own national courts and before international courts, in particular the European Court of Human Rights (ECtHR). As an EU body, neither of these options are available in relation to Frontex, but it can be brought before the Court of Justice of the European Union to account for the conformity of its conduct with EU law. The agency, seem to be immune to any type of judicial review, and the only available remedies for individuals will be to bring a complaint against a MS before domestic courts and the ECtHR. On 14 July 2021, the Frontex Scrutiny Working Group (FSWG) of the European Parliament's LIBE Committee published its report.¹ On the fact-finding investigation into Frontex's alleged fundamental rights violations, FSWG accuses Frontex of failing to promptly and effectively address and follow up allegations of violations and therefore not contributing to the prevention of violations or reducing the risk of future fundamental rights violations (Kiri, 2023).

¹ Final Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, available: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf

1. The European Border and Coast Guard Agency or Frontex

The European Border and Coast Guard Agency was founded in 2004 to assist the Member States of the European Union and the Schengen associated countries in protecting the external borders of the EU free movement area.² Frontex's function is mainly to promote, coordinate and develop the European border management and, to do so, it monitors the situation at the borders and helps border authorities to share information with Member States. The Agency also carries out vulnerability assessments to evaluate the capacity and readiness of each Member State to address the challenges at its external borders, including migratory pressure.

In 2016, in the wake of the migration or refugee 'crisis', a completely revised European Border and Coast Guard Regulation ('EBCG Regulation') was adopted, replacing Frontex' original founding Regulation. The new Regulation significantly increased the agency's powers, human resources and financial means. It afforded in particular the agency a more comprehensive monitoring role, further improved its access to resources to be used in border control and return operations, increased the powers of deployed human resources, and expanded Frontex' role in relation to the return of persons with no right to stay. The new Regulation significantly increased the agency's powers, human resources, and financial means. It afforded in particular the agency a more comprehensive monitoring role, further improved its access to resources to be used in border control and return operations, increased the powers of deployed human resources, and expanded Frontex' role in relation to the return of persons with no right to stay. Reflecting these changes, the new Regulation officially renamed Frontex the 'European Border and Coast Guard Agency', although it continues to be referred to as 'Frontex', and remains the same legal person with full continuity in all activities.³

The 2016 legislation gave Frontex the mandate to "coordinate at a technical and operational level return-related activities of the Member States, including voluntary departures," with the ultimate aim of establishing "an integrated system of return management among competent authorities of the Member States" in which EU states, non-EU states and "other relevant stakeholders" would participate. The 2019

² Frontex was established by the Council Regulation (EC) No 2007/2004 of 26 October 2004 *establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, in OJ L 349, 25.11.2004, p. 1–11. 2004 Regulation was repealed by the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 *on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC*, in OJ L 251, 16-9-2016, p. 1–76. latest modification of Frontex's mandate is to be traced back to the entry into force of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 *on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624*, in OJ L 295, 14-11-2019, p. 1–131.

³ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 *on the European Border and Coast Guard*.

legislation makes more explicit the precise contours of this technical and operational assistance:

- the collection of information necessary for issuing return decisions, the identification of third-country nationals subject to return procedures and other pre-return, return-related and post-arrival and post-return activities of the Member States;
- the acquisition of travel documents, including by means of consular cooperation;
- the organization and coordination of return operations and the provision of assistance in relation to voluntary returns in cooperation with Member States; and
- assisted voluntary returns from the Member States, providing assistance to returnees during the pre-return, return-related and post-arrival and post-return phases (EBCG Regulation, 2019).

In the course of several mandate revisions, each of which conferred more powers to Frontex, the agency's original coordination, training, and assistance mandate has been replaced by a far more comprehensive and operational job description. While the initial mandate counted only six tasks, the current Regulation lists more than thirty. Among those more recent functions are a range of executive tasks, including (joint) return as well as search and rescue operations.

This trend was reinforced by the most recent mandate amendment of 2019 that again supported the competences and expanded the tasks of Frontex despite persisting sovereignty concerns of Member States. Importantly, the agency's powers related to the organization, coordination, and conduct of return operations of irregular migrants were strengthened. Furthermore, the latest reform entails a major increase in the agency's human resources and financial means (Bossong, 2019). The budget of Frontex is planned to triple to reach an annual sum of € 1.3 billion (2021–2027) and its standing corps (including Member State forces) is supposed to rise to a capacity of 10.000 operational staff by 2027, roughly one third of which the agency can recruit itself whereas the biggest share of its personnel will remain seconded officers.

2. The nature of Frontex activity

Frontex organized and coordinated two joint operations by in order to support one or more member states in external border management. Assistance may be rendered for purposes of border control (joint border control operations) or the return of third country nationals that have no right to stay (joint return operations). Both types of operation are characterized by the deployment of additional operational resources that are made available primarily by other member states and operate under a specific 'command regime'. The state that receives the support is commonly referred to as the 'host state', those that contribute operational resources as 'participating states' (EBCG Regulation, 2019). Operations can take place at air (white), land (green), or sea (blue) external borders of Schengen states.

Frontex, as an EU agency, has various task listed within its founding Regulation,

Frontex operations have two defining characteristics that will preclude the effective control of these operations: the 'composite' aspect and the opacity of the operations and their decision-making procedures. The Regulation shows that Member State and Frontex are cooperating together in initiating Join Operation and RABITs. Both of these operations need to be requested by a Member State. Their operational plans will be designed and agreed to by the Member State, Frontex, and in some cases even by other participating Member States.

At all types of border joint operations may take the form of 'standard operations' or 'rapid interventions. Standard operations may be implemented at any time to address challenges at the external border, such as irregular immigration or cross-border crime. Both standard and rapid operations are as a rule launched upon the request and with the consent of the host member state, be it on the basis of the host state's own initiative or a recommendation by the Executive Director. Requests are evaluated, approved, and coordinated by the Executive Director. The decision on which joint operations to launch depends on the specific situation at the respective stretches of the external border in question as well as the availability of resources.

3. Fundamental rights and Frontex activity

As an EU body, Frontex is bound by the EU Charter of Fundamental Rights⁴ which *inter alia* guarantees a right to asylum and protects individuals from collective expulsions and *refoulement*. As clearly stated in recital 103 of Regulation (EU) 2019/1996 (the Frontex Regulation), the agency has to respect the fundamental rights and values established in Articles 2 and 6 of the Treaty on European Union⁵ and in the Charter of Fundamental Rights of the EU⁶ (CFR). These include respect for human dignity (Article 1), the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the prohibition of trafficking in human beings (Article 5), the right to asylum (Article 18), the protection against removal and expulsion (Article 19), the right to non-discrimination (Article 21) and the right of the child (Article 24). From the other side, Frontex is not allowed to conduct a push back itself, to actively help in one, or watch one happen without doing anything about it. Frontex's founding regulation more specifically places it under an obligation to monitor human rights compliance during all its operations and to suspend or terminate any (funding of) activities when serious or persisting violations occur (Fink, 2020).

All joint operations have to be implemented in compliance with human rights. This includes, in particular, the human rights obligations contained in the ECHR and the Charter of Fundamental Rights. Both guarantee a broad range of rights relevant to persons that may be affected by Frontex operations, such as the right to life,

⁴ Charter of Fundamental Rights of the European Union, 2012/C 326/02; <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex:12012P/TXT>.

⁵ Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01.

⁶ Charter of Fundamental Rights of the European Union 2012/c 326/02.

the prohibition of torture or inhuman or degrading treatment or punishment, the prohibition of *refoulement* (in particular Article 3 ECHR, the prohibition of collective expulsions, Article 4 Protocol No. 4 ECHR, the right to private and family life in Article 8 ECHR, and the right to liberty in Article 5 ECHR. The ECHR is applicable to all contracting parties. This includes all Schengen states that may be involved in Frontex operations. On the other hand, article 80 EBCG Regulation, guarantees that fundamental rights, including the principle of *non-refoulement*, are complied with. Frontex thus has to take measures to ensure that all participants— not just its own staff—act in conformity with fundamental rights. Moreover, the EBCG Regulation actually obliges Frontex to oversee and ensure the correct implementation of the operation, including in relation to fundamental rights (EBCG Regulation, 2019). Since positive obligations arise not only when an authority actively knows of a human rights violation, but also when it *should have* such knowledge, Frontex cannot rely on the failure of these mechanisms to avoid the obligation under the Charter to take reasonable measures (Fink, 2020). Also article 46 of the EBCG Regulation regulates the suspension, termination and withdrawal of financial support of activities by the Agency. In addition, paragraph 3 of Article 46 allows (not requires) the Executive Director to withdraw the financing of an activity or suspend or terminate it if the operational plan is not respected by the host Member State. Last but not least there are various actors playing a role in the operations and their decision-makings and in practice, it will be difficult to determine which actor took the decision or action that affected the rights of an individual. Another significant characteristic of Frontex operations is their opaqueness (Mungianu, 2016). The lack of transparency has been subject of debate for a long time. In fact, very little information is given in the annual reports or news reports, on the past and ongoing operations, and actions carried out by the agency. No data exists, for example, on where the individuals were diverted to, nor on who requested international protection (Poméon, 2017). Since the creation of the agency and its first operations, there has been significant concern, both from the European Parliament as well as NGOs and other civil society organizations that the executive mandate of the agency has not been counterbalanced by effective mechanisms for accountability, particularly with respect to fundamental rights.

4. Challenges for the protection of human rights violation by Frontex

Every action by public authorities that affects the right of an individual needs to be subject to judicial review in order to offer individuals an adequate judicial protection. When an individual wants to raise a complaint against an action of Frontex, an EU agency, it will fall under the competence of the Court of Justice of the European Union (CJEU), the treaty of Lisbon explicitly recognized the jurisdiction of the CJEU to review agencies' acts. It can now review actions of EU agencies, such as Frontex, through different means: an action for annulment, an action for failure to act and an action for extra-contractual liability and damages (Venxha, 2024).

In the case *WS and others v Frontex*⁷ which concerns Syrian nationals, who arrived in Milos, Greece, in 2016, and after being transferred to the Greek island of Leros declared their wish to apply for international protection. However, 6 days following said declaration, the applicants were returned to Türkiye, following a joint return operation carried out by Frontex and Greece. With this case, the applicants – all of whom are Syrian nationals in pursuit of international protection in the EU – sought compensation for the damage flowing from Frontex’s failure to comply with its human rights obligations under the 2016 Frontex Regulation, its Standard Operating Procedure, and its Code of Conduct. The Applicants claimed that through its supporting role in the execution of the joint return operation, Frontex violated the *non-refoulement* principle (Art. 19 CFR), the right to asylum (Art. 18 CFR), the prohibition of collective expulsion (Art. 19 CFR), the rights of the child (Art. 24 CFR), the prohibition of degrading treatment (Art. 4 CFR), the right to good administration (Art. 41 CFR) and the right to an effective remedy (Art. 47 CFR). The General Court starts its analysis by recalling that for non-contractual liability to arise under EU law, a number of cumulative conditions must be met. There must be actual damage, stemming from unlawful conduct, and there must be a causal link between the alleged conduct and the damage (para. 52 – 53). Focusing first on causality, the Court then proceeds to recall that the damage ‘*must be a sufficiently direct consequence of the conduct...which must be the determining cause of the damage*’ (para. 56).⁸

The Court reasoned that the applicants wrongly based their claims on the assumption that if Frontex had complied with its fundamental rights obligations, they would have been accorded international protection in the EU rather than having been expelled from its territory. Immediately thereafter, the Court contends that while Frontex is bound by fundamental rights obligations in the execution of its tasks, its tasks within the context of return operations are limited to providing technical and operational support and do not permit interference with the decision to grant international protection, or a return decision – both which lie in the purview of Member State competence.

Mindful thereof, the Court concludes that as Frontex has no competence concerning the merits of such underlying decisions, the causal link between the damage and the conduct (namely, the decision not to grant international protection and the return decision), cannot be established and the action is dismissed, relieving Frontex from any responsibility. To fortify its findings, the Court emphasizes that the causality requirement entails that the damage must flow directly from the alleged illegality and may not be the product of the applicant’s reaction to the illegality. In paragraph 62 of the judgment, the Court points out that the Applicants incorrectly conclude that if Frontex had complied with its fundamental rights obligations (the ‘but-for test’), they would have been accorded international protection and not have been subject

⁷ *Ws and others v Frontex*, available at: https://curia.europa.eu/juris/document/document.jsf?text=&do_cid=250302&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&id=70522.

⁸ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=277021&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3760048>

to return proceedings. The Court is – of course – right in this observation, as Frontex does not have the competence to rule on the merits of a request for international protection, or on the merits of a return decision. The Court appears to suggest that the applicants take issue with the underlying decision to refuse international protection and the subsequent return decision and somehow connect these decisions to Frontex. Yet – without being privy to the applicant's arguments in detail – it seems more likely that the applicants object to the complicity of Frontex in the execution of these decisions – which is an altogether different question. In other words, there are three questionable but separable elements in the present case: the refusal of international protection (1), the return decision (2) and the execution of the return decision (3). The current phrasing suggests that the applicants are contesting Frontex's role in the former two, whereas it is far more likely that the applicants are, in fact, contesting Frontex's role in the third, namely, its role in the execution of those decisions (para. 6 and 15) (De Coninck, 2023). The General Court thus framed the whole issue as one of causation – admittedly out of judicial economy. Issues of attribution of conduct or that of responsibility did not come up in the Court's reasoning.

In May 2021, for the first time ever, two applicants brought an action *SS and ST v Frontex*⁹ against Frontex before the European Court of Justice (CJEU), on the grounds that the agency had 'failed to act' in accordance with Article 265 TFEU. Their action was supported by three pleas in law and concerned 'serious or persisting violations of fundamental rights and international protection obligations in the Aegean Sea Region', the agency's failure to fulfil 'its positive obligations under the Charter of Fundamental Rights' or take any action to prevent fundamental rights violations in the context of its operation, as well as 'unlawful *refoulement*, collective expulsion, and prevention of access to asylum'. In April 2022, the Court dismissed the action as inadmissible.

As we can see even where convincing evidence is presented, it is notoriously difficult to hold Frontex to account for failures to meet these obligations. When human rights violations occur in the context of Frontex' activities, there are a number of factors that are typically of relevance for the determination of responsibility: authority (Who determined, commanded, controlled, or otherwise decided on the course of conduct that resulted in a breach?), knowledge (Who knew, or should have known, about the violation?), and the possibility to prevent (Who was competent and actually in a position to prevent the violation?). Answering these questions in the case of Frontex joint operations are unnecessarily difficult. One reason is the fragmentation of the applicable legal framework. The rules setting out the role and powers of all actors are dispersed in a broad range of documents—the European Border and Coast Guard and repealing Regulations, the Operational Plans that detail the practical aspects for each joint operation, Handbook to the Operation Plans,¹⁰ and a multitude of Annexes

⁹ *SS and ST v Frontex*, (Case T-282/21); https://curia.europa.eu/juris/document/document.jsf?text=&docid=24_4444_&page_Index=0&d_oclang=en&mode=lst&dir=&occ=first&part=1&c_id=8995094

¹⁰ Frontex, Handbook to the Operation Plans 13.02.2014, <http://www.statewatch.org/media/documents/news/2017/feb/eu-frontex-handbook-joint-maritime-operations-censored.pdf>

of the Operational Plans.¹¹ On their own, none of these describe the roles and authority of all actors in sufficient detail to get a complete picture of their authority over deployed resources. But the major obstacle is that essential documents are not publicly accessible. This concerns in particular key parts of the Operational Plans that contain the most detailed description of the specific authority and decision-making powers of the actors involved (Fink, 2020).

It is thus essential that allegations of human rights violations can be brought to an independent and impartial body who can assess and to remedy them. While other accountability mechanisms exist, including especially the European Ombudsman, but on the other hand these cannot be a substitute for individuals making use of their right to an effective remedy by claiming their rights in court. Other simple measures that can go a long way in removing obstacles for individuals to hold Frontex to account is without doubt transparency from all the participants in the operation and especially Frontex.

5. Committee on civil liberties, justice and home affairs, Libe investigation

On 14 July 2021, the Frontex Scrutiny Working Group (FSWG) of the European Parliament's LIBE Committee published its report.¹² On the fact-finding investigation into Frontex's alleged fundamental rights violations, the FSWG accuses Frontex of failing to promptly and effectively address and follow up allegations of violations and therefore not contributing to the prevention of violations or reducing the risk of future fundamental rights violations. Frontex Scrutiny Working Group (FSWG) of the European Parliament's LIBE Committee criticizes following:

- The delay in the recruitment of fundamental rights monitors;
- The lack of cooperation on the part of the executive director in ensuring compliance with several provisions of the Frontex Regulation;
- The passive role of the management board in acknowledging the serious risk of fundamental rights violations and its lack of action to ensure that Frontex fulfils its fundamental rights obligations as enshrined in the Frontex Regulation.

In the report it is emphasized that joint investigation by Bellingcat, Lighthouse Reports, Der Spiegel, ARD and TV Asahi (after: the Bellingcat report) stated that Frontex planes were in the vicinity of the maritime Greek-Turkish border where alleged pushback operations were ongoing (Bellincat et al., 2020). The reporters claimed to have found evidence that Frontex had knowledge of the pushbacks, did nothing to ensure compliance with legal obligations, and in some cases even cooperated with the authorities carrying out the illegal pushbacks and collective expulsions. The Frontex Scrutiny Working Group concludes that several reliable actors, such as national- and international human rights bodies and organizations, consistently reported about

¹¹ Annexes of the Operational Plans, <http://www.statewatch.org/media/documents/news/2017/feb/eu-frontex-operation-hera-2014-annexes-censored.pdf>

¹² Final Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FS_WG_en.pdf

fundamental rights violations at the border in a number of Member States, but that Frontex generally disregarded these reports.

On the other side Frontex, investigated the specific allegations raised by the investigation of the journalists regarding alleged involvement of Frontex with pushbacks in the Eastern Mediterranean. In its final report of 1 March 2021, based on the preliminary report of 21 January 2021, the Management Board concluded that out of the 13 incidents put forward by the Bellingcat report, eight cases had not caused a violation of the Frontex Regulation, five examined incidents were not yet, or could not yet be clarified. The Management Board adopted a range of recommendations specifically aiming at improving the reporting mechanisms, the possibility to monitor follow up actions by national border guards, the implementation of Article 46 and the human rights sensitivity of the Agency. The Frontex Scrutiny Working Group, (FSWG) did not find conclusive evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined by the FSWG.

However, the Frontex Scrutiny Working Group concludes that the Agency found evidence in support of allegations of fundamental rights violations in Member States with which it had a joint operation, but failed to address and follow-up on these violations promptly, vigilantly and effectively. As a result, Frontex did not prevent these violations, nor reduced the risk of future fundamental rights violations. Finally, the FSWG highlights the responsibility of the Member States and the Commission, outside their role in the Management Board as well. They should step up their involvement and actions to ensure that Frontex's support of border surveillance goes hand in hand with adequately preventing and combating fundamental rights violations.

The report specifically focused on the implementation by the agency of its mandate and legal obligations, the functioning of its supervisory, monitoring and accountability mechanisms, the obligation of the Executive Director to suspend, terminate or not launch operations, and the role of the agency's Management Board. The findings and conclusions were accompanied by an extensive list of concrete recommendations to ensure that the agency can effectively abide by its positive obligations and avoid the risk of complicity in the future.

In October 2023, the LIBE committee adopted a draft resolution,¹³ wrapping up the fact-finding investigation by the Frontex Scrutiny Working Group, MEPs recognized the efforts made to implement 36 out of 42 recommendations made by the FSWG and recommended specific further actions, in particular a more proactive approach to protecting EU principles and values. Members of the European Parliament also insisted that Frontex should scale down its operations to mere monitoring and presence on the ground in cases where a Member State is unable to respect EU principles and values; such a scaling down of operations has not happened in the

¹³ European Parliament resolution of the draft motion for a resolution on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny, https://www.europarl.europa.eu/doceo/document/LIBE-RD-751782_EN.pdf

case of Greece so far. They also called on the new Frontex leadership to undertake the deep reforms that are needed and called on the management board to evaluate how it can step up its involvement and scrutiny of the way in which the agency is run.

6. Conclusion

Border management is a fundamental rights sensitive activity. Inevitably, there will be, and have been, situations in which Frontex's compliance with fundamental rights will be called into question. With an extensive new legal mandate and a significant budget increase in the works, the EU's border agency is in many ways in a very strong position than ever.

As it seeks to implement that mandate, new forms of scrutiny, critique and challenge will be needed to ensure that the EU's border and migration policies, and the agency charged with implementing them, uphold human rights. The greater operational effectiveness and autonomy of the agency call for a more robust system of judicial and administrative accountability than ever. This article aimed to demonstrate that the control of actions coordinated by Frontex is very complex, due to the composite-nature of the operations, as well as their opacity. On the judicial level, neither the CJEU, nor the domestic and international courts can ensure an effective control of the actions of Frontex. The agency, seems to be immune to any type of judicial review, and the only available remedies for individuals will be to bring a complaint against a Member State before domestic courts and the ECtHR.

There is, at the moment, a striking lack of mechanism for individuals affected by Frontex's activities to hold the agency to account. The action for damages may fill this gap, but only if a fundamental rights-friendly approach to liability is adopted.

Amending new fundamental rights accountability mechanisms requires broad consensus among the Member States, which is difficult to reach in the current political climate. In the long term, this requires decisive action by the EU legislator. But until then, it is up to Frontex to make a significant contribution towards reaching this goal by acknowledging its responsibility and ensuring transparency for every action.

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