

DIGNITY



EU solidarity and Frontex: fundamental rights challenges



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EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Introduction

Revised Frontex Regulation (2007/2004/EC as amended by Regulation 1168/2011/EU)

Article 1 (Establishment of the Agency)

2. [...] The Agency shall fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union [...]; the relevant international law, including the Convention relating to the Status of Refugees [...]; obligations related to access to international protection, in particular the principle of *non-refoulement*; and fundamental rights [...].

Article 26 a (Fundamental Rights Strategy)

The Agency shall draw up and further develop and implement its Fundamental Rights Strategy. The Agency shall put in place an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.

The majority of irregular arrivals by sea to the European Union (EU) occur in the Mediterranean. Although the phenomenon is not widespread throughout the EU, it affects the EU as a whole. This publication reviews the solidarity measures the EU has established to support those countries most affected by irregular arrivals by sea. It will focus on the fundamental rights challenges raised by such measures but will not discuss whether these measures are sufficient and adequate for genuinely sharing the costs associated with the arrivals. This publication will also touch upon EU funding instruments and intra-EU relocation from Malta and more thoroughly describe the operational cooperation with Frontex.

The United Nations (UN) Smuggling Protocol recognises that effective action to combat the smuggling of migrants requires international cooperation, and therefore the Protocol includes a clear duty for State Parties to cooperate in order to prevent and suppress migrant smuggling by sea (Article 7). The 2011 United Nations Office on Drugs and Crime (UNODC) International Framework for Action to Implement the Smuggling Protocol encourages State Parties to consider strengthening cooperation, joint border patrol teams and training as well as information exchange on best practices.¹ Article 19 of the Protocol requires that actions taken to implement the Protocol be carried out in accordance with international human rights and refugee law.

¹ UNODC (2011), p. 113 and following.

Primary EU law also stresses the need for solidarity in the field of border checks, asylum and immigration. According to Article 80 of the Treaty on the Functioning of the European Union (TFEU): “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.”

1. EU funding instruments and intra-EU relocation

For 2014–2020, the European Commission has proposed an overall home affairs budget of €10.9 billion.² This represents an increase of almost 40 % compared to the total budget for the previous period of 2007–2013. The proposal suggests that the number of home affairs funds and programmes be reduced from six³ to two: the Asylum and Migration Fund (€3.87 million for 2014–2020) and the Internal Security Fund (€4.65 million for 2014–2020).⁴ The Internal Security Fund will include two instruments, one on external borders and visa (€1.13 million) and one on police cooperation (€3.52 million).⁵ The Asylum and Migration Fund and the Internal Security Fund will make funding available under national programmes implemented at the national level, as well as EU actions implemented at the EU level.⁶ EU actions are transnational actions or actions of particular interest to the EU.⁷

In the European Commission proposals, emergency assistance can be made available to address urgent and specific needs. Such needs can be characterised as either large and disproportionate inflows of third-country nationals who cross or are expected to cross the external border of one or more Member States (Article 14 of the Internal Security Fund instrument on external borders and visa), or as migrant flows that are expected to place significant and urgent demands on Member States’ reception and detention facilities, asylum systems and procedures (Article 22 on the Asylum and Migration Fund).⁸ In case of emergencies, additional resources can be

² European Commission (2011a), Section 2.1. This figure includes also the budget for home affairs agencies and existing large-scale IT systems.

³ For more information on the six funds, see http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/index_en.htm.

⁴ European Commission (2011a), Section 2.1.

⁵ European Commission (2011b).

⁶ European Commission (2011c), Art. 20–21; European Commission (2011b), Art. 9, 13.

⁷ European Commission (2011c), Art. 21; European Commission (2011b), Art. 13.

⁸ European Commission (2011d), Art. 8–9.

Table 1: Resettlement from Malta (departures), 2008–2012

	Departures to EU Member States and Schengen associated countries	Departures to the USA	Departures to other countries	Total number of departures
2008	–	175	–	175
2009	106	188	–	294
2010	221	244	–	450
2011	164	176	4	344
2012	105	307	8	420
Total last five years	596	1,090	12	1,698

Source: UNHCR Malta, 2013

made available under the proposed Emergency Aid Reserve.⁹ Emergency actions and ‘EU actions’ will be implemented by a range of actors, such as international organisations and civil society organisations, or by entrusting specific tasks to Frontex, Europol and the European Asylum Support Office (EASO).¹⁰ All actions should be implemented in full respect of the EU Charter for Fundamental Rights in accordance with Recital 13 of the Internal Security Fund instrument on external borders and visa and Recital 24 of the Asylum and Migration Fund.

The Asylum and Migration Fund shall, among others, contribute to strengthening the Common European Asylum System including its external dimension, and enhancing fair and effective return strategies in EU Member States, with emphasis on effective readmission to the countries of origin (Article 3). Possible actions that may be supported include the provision of material aid, social assistance, legal aid and language assistance and actions for persons with specific needs (Article 5).

The Internal Security Fund instrument on external borders and visa shall, on the one hand, contribute to a high level of protection of external borders and, on the other, contribute to the smooth crossing of these in conformity with the Schengen *acquis* (Article 3). The instrument shall also support the establishment of an integrated management system for external borders by funding border crossing infrastructures, buildings, operating equipment, means of transport and surveillance and communication and information technology systems (Article 3), including Eurosur (Article 9). It shall promote uniform application of the Schengen *acquis* (Article 3). The language of the draft Regulations is security oriented. As regards borders, the operational objectives and eligible actions in the European Commission proposal are void of fundamental rights language, with the exception of mentions in

Recital 13. In the draft regulation or the explanatory memorandum, there is no other express reference to the respect of core fundamental rights relevant in the border context,¹¹ such as the principle of *non-refoulement*, the prohibition of unlawful or arbitrary detention and the need for special protection of children, suspected victims of human trafficking or survivors of torture. Nor is there any reference to rescue at sea. The United Nations High Commissioner for Refugees (UNHCR) recommends that the Internal Security Fund objectives be amended to include a reference to ensure that people seeking international protection will be referred to asylum procedures.¹²

The objectives’ achievements shall be measured against indicators. Since the border-related objectives in the Internal Security Fund instrument on borders and visa do not address fundamental rights aspects, the subsequent indicators proposed in Article 3 also do not address fundamental rights. The allocation of funds also appears to be security focused. They will be based on threat levels determined through consultation with Frontex.

In a spirit of EU-wide solidarity, the Asylum and Migration fund will support the relocation of applicants and beneficiaries of international protection from one EU Member State to another (Article 7).¹³ In this context, turning to existing funding, the European Refugee Fund has already taken a specific solidarity action by establishing the EU Pilot Project on Intra-EU relocation from Malta (Eurema). This is a voluntary intra-EU resettlement scheme for beneficiaries of international protection in Malta. As Table 1 shows, however, the number of persons resettled to EU states has been consistently smaller than those resettled from Malta to the United States of America (USA).

⁹ European Commission (2011e).

¹⁰ European Commission (2011a), Section 3.1.2.

¹¹ In the visa context, there is a reference to “equal treatment of third-country nationals”.

¹² UNHCR (2012), pp. 16–17. ECRE (2012a), pp. 4, 17–18.

¹³ European Commission (2011c).

2. Operational support through Frontex

EU Regulation 2007/2004 established Frontex, or the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, to assist EU Member States with effectively implementing the operational aspects of managing external EU borders.¹⁴ Frontex is tasked with carrying out risk analysis through collecting and analysing intelligence, assisting Member States with training, participating in research development and coordinating operational cooperation. Such coordinated joint operations can take place at different types of external borders (air, land and/or sea), but also encompass joint return operations.

Joint operations are carried out under the command of the host state. Other EU and Schengen-associated countries provide human and material resources, which they deploy to the operational area. Officers deployed to a joint operation are under the authority of the host state, except with regards to disciplinary measures, which remain with the sending state. Officers must respect the laws of both the host and sending state, such as laws on use of force or restraint measures. During deployment, EU law also requires officers to fully respect fundamental rights, the principle of non-discrimination and to use their powers in a manner proportionate to the aim to be achieved.¹⁵ As of 2011, officers deployed in a joint operation must be part of the European Border Guard Teams, which are comprised of national border guards.¹⁶

The role of Frontex in joint operations has a strategic, organisational and quality-assuring nature.

Based on an analysis of risks at the external border, Frontex suggests where to carry out joint operations as well as proposes timing and scope. Coordination mechanisms with EU Member States have been created to make full use of their intelligence and ensure a certain degree of predictability. During the operation itself, Frontex collects and analyses relevant data, including data on incidents reported from the operational area. These are shared with the host Member State to assist it in steering the operation. At the end of a joint operation, Frontex

is tasked with preparing an evaluation report that is presented to its Management Board.¹⁷

Once Frontex and the EU Member States agree upon implementing a joint operation, Frontex is charged with all the organisational work related to facilitating the deployment of the necessary human and technical resources to the operational area. Frontex drafts the operational plan, which is agreed on by all participating parties and contains binding instructions for the operation. Depending on the type of operation, coordination centres are established at a central and/or local level. Frontex covers deployment costs, while the sending state continues to pay the salaries of its staff and provides equipment for use in the joint operation.

Frontex has developed a number of tools and general and operation-specific guidance documents on a range of issues, from the use of dogs by border guards to trafficking in human beings. These are made available to staff deployed in an operation. While these tools are not standard setting, they do help border guard from different countries foster a common understanding of how to approach a particular issue that may emerge on a joint operation. Frontex is also under an obligation to ensure that, before being deployed, members of European Border Guard Teams “have received training in relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities”.¹⁸

While command and control of officers and equipment deployed to a joint operation formally remains with the host state(s), the role of Frontex in shaping a joint operation is nevertheless substantial. This has raised questions about accountability for any human rights violations during an operation. The Parliamentary Assembly of the Council of Europe, for example, adopted a resolution on 21 June 2011 expressing concerns about these joint operations, identifying a lack of clarity regarding EU Member States and Frontex responsibilities and the absence of adequate guarantees for the respect of fundamental rights and international standards. The Assembly is currently preparing a report on this issue.¹⁹ In 2011, during negotiations on a new Frontex mandate, the Green faction of the European Parliament commissioned a study on Frontex’s compatibility with human rights.²⁰ The European Ombudsman has also

¹⁴ References to ‘Frontex Regulation’ in this publication refer to the consolidated text following the 2011 amendments: The Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union has been amended in 2011 by Regulation 1168/2011/EU, 25 October 2011.

¹⁵ Frontex Regulation, Art. 3 b (4).

¹⁶ *Ibid.*, Art. 1 a(a)-2 (1) (ea).

¹⁷ *Ibid.*, Art. 3 (4).

¹⁸ *Ibid.*, Art. 5.

¹⁹ Council of Europe, PACE (2011).

²⁰ Keller, S. et. al. (2011).

initiated an inquiry concerning Frontex's respect of fundamental rights.²¹

Given that Frontex's operational activities can substantially affect EU Member States' law enforcement actions at external borders, and thus impact fundamental rights, the EU legislator has made efforts to ensure that Frontex, as an EU agency, respects fundamental rights. At the institutional level, these efforts include creating a Fundamental Rights Officer position within Frontex; establishing a Consultative Forum through which external partners can assist Frontex on fundamental rights questions; developing a Fundamental Rights Strategy, which was endorsed by Frontex's Management Board on 31 March 2011;²² and developing a Code of Conduct.²³ Furthermore, Frontex must put in place an effective mechanism to monitor respect for fundamental rights in all its activities.²⁴ There is an express duty that Frontex activities respect the principle of *non-refoulement* (Article 2 (1) b) and also address the special needs of vulnerable persons, including children, victims of trafficking, persons in need of medical assistance and persons in need of international protection.

At a more operational level, fundamental rights must be incorporated in training activities which Frontex develops or coordinates.²⁵ Operational plans need to contain detailed provisions on how to report incidents.²⁶ In case of serious violations of fundamental rights, Frontex can take a decision on a possible suspension or termination of an operation.²⁷ Frontex's role is to promote, coordinate and develop European border management in line with fundamental rights, according to its website. In sum, Frontex staff are expected not only to respect but also to promote fundamental rights.²⁸

3. Frontex operations at sea

An important part of Frontex operations are those carried out at sea. With the exception of Minerva, Focal Points Sea and Poseidon Sea that also cover checks at border crossing points, the focus of these operations is essentially on border surveillance. Joint sea operations have primarily taken place in the Mediterranean and in the eastern Atlantic off the

west African coast. Since Frontex became operational on 3 October 2005, it has coordinated almost 50 large joint operations at sea.

Since 2009, nearly all maritime operations have been organised under the European Patrols Network (EPN) programme, which supports the coordination of national surveillance measures such as patrols for the EU's southern maritime borders and their integration into joint European activities. The joint operation Poseidon Sea in Greece is an exception as it is part of the Poseidon Regional Programme, which also covers the land border with Turkey and activities relating to return (Attica project).

The origins of EPN, a permanent regional border security concept, date back to the Presidency Conclusions of 15–16 December 2006 when the Council of the European Union called upon Frontex to launch a feasibility study on reinforcing monitoring and surveillance of the EU's southern maritime border, and on a Mediterranean Coastal Patrols Network involving EU Member States and north African countries. The Council also asked for an exploration of the technical feasibility of establishing a surveillance system for the EU's southern maritime borders.²⁹ In a follow-up to the conclusions, Frontex prepared a study in July 2006³⁰ that suggests ways for EU Member States to exchange information to better coordinate operational activities. A second study, the BORTEC study,³¹ deals with a surveillance system covering the southern maritime borders of the EU as well as the open sea. The studies, neither of which is publicly available, served as a starting point for establishing the EPN.

Together with Frontex, EPN identifies the priorities for joint operations. The EPN meets on a regular basis and all EU Member States and Schengen-associated countries are invited. Table 2 provides a list of the maritime operations Frontex has implemented so far either under the EPN or not.

Four EU Member States in southern Europe have primarily hosted these operations. All EU Member States except Ireland have contributed to Frontex sea operations in the past, according to information provided by Frontex.

As Figure 1 illustrates, Frontex-coordinated operations at sea consume an important share of the overall Frontex budget for operations. In 2011, for example, 59 % of the total budget spent on joint operations went to sea borders, which corresponds

²¹ European Ombudsman (2012).

²² Frontex (2011a).

²³ Frontex Regulation, Art. 26a.

²⁴ *Ibid.*, Art. 26a.

²⁵ *Ibid.*, Art. 5.

²⁶ *Ibid.*, Art. 8 (1) (h).

²⁷ *Ibid.*, Art. 3 (1) (a).

²⁸ Answer by the Frontex Executive Director, Ilkka Laitinen, to the European Ombudsman's enquiry related to the integration of respect of fundamental rights into the performance of its tasks, 22 May 2012.

²⁹ Council of the European Union (2007), p. 10.

³⁰ Frontex (2006), 'MEDSEA feasibility study of 14 July 2006 on the Mediterranean Coastal Patrols Network', EU Restricted.

³¹ Frontex (2007).

Table 2: Frontex-coordinated joint maritime operations, 2006–2012

	Operation	Host EU Member State(s)	Operational area	No. of contributing states	Date
2006	Hera I	Spain	Canary Islands, Senegal, Mauritania	6 EU MS + 1 SAC	July–October
	Hera II	Spain	Canary Islands, Senegal, Mauritania	3 EU MS	August–December
	Nautilus	Italy, Malta	Central Mediterranean Sea, (Malta, Lampedusa)	5 EU MS	October
	Gate of Africa	Spain	Tarifa, Algeciras, Almería, Alicante	5 EU MS	July–September
	Agios	Spain	Senegal, Morocco	5 EU MS	July–September
	Poseidon	Greece	Eastern Mediterranean	5 EU MS	June–July
2007	Poseidon	Greece	Eastern Mediterranean	12 EU MS	May–October
	Hermes	Italy, Spain	Central Mediterranean	8 EU MS	September–October
	Zeus	Germany	EU sea and air borders and specifically regarding seamen in transit.	13 EU MS	October
	Hera III	Spain	Canary Islands, Senegal, Mauritania	6 EU MS	February–April
	Hera	Spain	Canary Islands, Senegal, Mauritania	8 EU MS	April–December
	Nautilus	Italy, Malta	Central Mediterranean	7 EU MS	June–October
	Indalo	Spain	Western Mediterranean	7 EU MS	October–November
	Minerva*	Spain	Southern Spain	11 EU MS	August–September
	Nautilus	Italy, Malta	Central Mediterranean	10 EU MS	May–October
2008	Hera	Spain	Canary Islands, Senegal, Mauritania	6 EU MS	February–December
	Poseidon (sea part)	Bulgaria, Greece	Eastern Mediterranean	16 EU MS	May–December
	Minerva*	Spain	Southern Spain	9 EU MS	August–September
	EPN Indalo	Spain	Western Mediterranean	6 EU MS	October–November
	Poseidon	Greece	Eastern Mediterranean	21 EU MS	March–December
2009	EPN Zeus	Germany	To enhance the cooperation with the Baltic Sea Region Border Control Cooperation	16 EU MS + 1 SAC	April–May
	EPN Nautilus	Italy, Malta	Central Mediterranean	11 EU MS	April–October
	EPN Hera	Spain	Canary Islands, Senegal, Mauritania	6 EU MS	March–December
	EPN Hermes	Italy	Central Mediterranean	6 EU MS + 1 SAC	April–October
	EPN Indalo	Spain	Western Mediterranean	6 EU MS	September–October
	EPN Minerva	Spain	Southern Spain	10 EU MS	August–September
	EPN Focal Points Sea*	Bulgaria Cyprus France Portugal Romania Spain	Border crossing points at the sea ports of the Host Member States	6 EU MS	September–December
	Poseidon 2009 (extension)	Greece	Eastern Mediterranean	3 EU MS	January–March
2010	Poseidon Sea	Greece	Eastern Mediterranean	21 EU MS + 2 SAC	April–December
	EPN Hera 2009 (extension)	Spain	Canary Islands, Senegal, Mauritania	1 EU MS	January–March
	EPN Hera	Spain	Canary Islands, Senegal, Mauritania	6 EU MS + 1 SAC	April–December
	EPN Hermes	Italy	Central Mediterranean	7 EU MS	June–October
	EPN Indalo	Spain	Western Mediterranean	10 EU MS + 1 SAC	May–October
	EPN Minerva	Spain	Southern Spain	11 EU MS + 1 SAC	August–September

	Operation	Host EU Member State(s)	Operational area	No. of contributing states	Date
2011	EPN Hera	Spain	Canary Islands, Senegal, Mauritania	3 EU MS + 1 SAC	April–December
	EPN Aeneas	Italy	Central Mediterranean	12 EU MS + 1 SAC	April–December
	EPN Hermes	Italy	Central Mediterranean	14 EUMS + 1 SAC	February–December
	EPN Minerva*	Spain	Southern Spain	14 EUMS + 2 SAC	July–September
	EPN Indalo	Spain	Western Mediterranean	10 EU MS + 1 SAC	May–December
	Poseidon Sea	Greece	Eastern Mediterranean	18 EU MS + 2 SAC	April–December
	Focal Points Sea*	Lithuania, Romania	Border crossing points at the sea ports of the Host Member States	4 EU MS	August–September
2012	EPN Minerva*	Spain	Southern Spain	19 EU MS	July–September
	EPN Indalo	Spain	Western Mediterranean	8 EU MS	May–October
	Poseidon Sea	Greece	Eastern Mediterranean	18 EU MS + 2 SAC	April–ongoing
	Focal Points Sea*	Bulgaria, Lithuania, Romania, Spain	Border crossing points at the sea ports of the Host Member States	7 EU MS	May–ongoing
	EPN Hera	Spain	Canary Islands, Senegal, Mauritania	2 EU MS	July–ongoing
	EPN Aeneas	Italy	Central Mediterranean	11 EU MS + 1 SAC	July–ongoing
	EPN Hermes	Italy	Central Mediterranean	11 EU MS + 1 SAC	July–ongoing

Note: Operations marked with *primarily focus on border checks at border crossing points in ports, not on border surveillance. EU MS stands for EU Member State(s), SAC stands for Schengen-associated country/ies and EPN for European Patrol Network.

Source: Frontex, 2012

to 28 % of the overall Frontex budget.³² These costs are primarily a result of deploying expensive aerial and naval surveillance equipment.

Guest officers deployed to Frontex maritime surveillance operations have to deal with migrants arriving at sea, a significant number of whom come to Europe to seek protection. Depending on host state policies and practices relating to maritime surveillance, Frontex-deployed assets or staff may be involved in sensitive interception operations. These can give rise to allegations of human rights violations. Human Rights Watch reported that in June 2009 the Italian Coast Guard, with support from a German helicopter operating as part of Operation Nautilus, intercepted a boat off Lampedusa carrying 75 migrants and handed the migrants over to a Libyan naval patrol.³³ In another case, German media reported allegations of Frontex denying drinking

water to rescued persons.³⁴ Regardless of whether these allegations are correct, they illustrate the risks of Frontex becoming involved in activities that are in breach of the principle of *non-refoulement* or do not respect human dignity. Considering the impact of Frontex operations in the field, in 2007, UNHCR appointed a liaison officer to Frontex, and in May 2010, Frontex signed a cooperation arrangement with the FRA.³⁵ In September 2012, Frontex concluded a working arrangement with EASO, which among other things, covers operational cooperation and therefore the reception of migrants at the EU external borders and the identification of those in need of international protection.

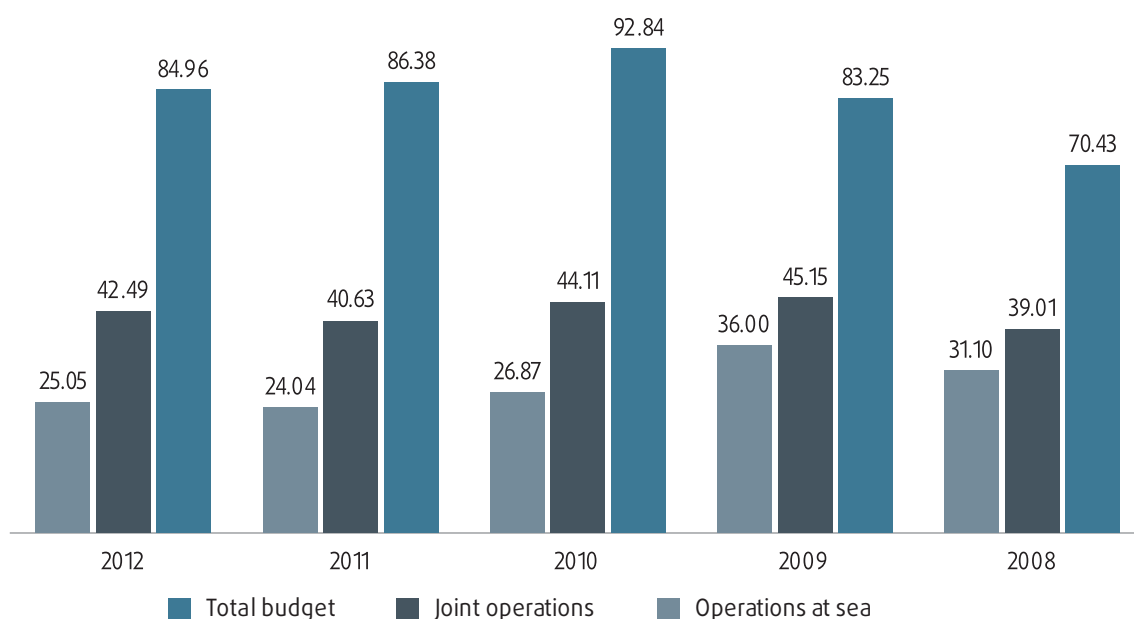
³² Frontex (2011b).

³³ HRW (2009), p. 98.

³⁴ Keller, S. et. al. 2011).

³⁵ Cooperation agreement between FRA and Frontex, 26 May 2010.

Figure 1: Share of sea operations within Frontex budget, 2008–2012



Source: Frontex budgets: Frontex (2012); Frontex (2011b); Frontex (2010); Frontex (2009); Frontex (2008)

3.1. Guidelines for Frontex sea operations

Civil society and international organisations have criticised Frontex operations and raised open questions regarding search and rescue situations during them. In response, the Council of the European Union adopted Decision 2010/252/EU to provide guidance on the surveillance of sea borders in the context of joint Frontex operations.³⁶ This decision, which supplemented the Schengen Borders Code, contained binding rules for sea border operations (Annex 1) and non-binding guidelines for search and rescue situations and for disembarkation of rescued or intercepted persons (Annex 2). According to the binding rules, surveillance operations must be conducted in accordance with fundamental rights and need to respect the principle of *non-refoulement*.³⁷

The non-binding guidelines touch upon the thorny issue of disembarking rescued migrants, the specific dispositions of which must be spelled out in the operational plan “in accordance with international law and any applicable bilateral agreements”. The guidelines also stated that “priority should be given to disembarkation in the third country from where the ship carrying the persons departed or through the territorial waters or search and rescue region of

which that ship transited and if this is not possible, priority should be given to disembarkation in the host Member State unless it is necessary to act otherwise to ensure the safety of these persons.” The coordination centre should receive information on the presence of the rescued migrants and “should convey that information to the relevant authorities of the host Member States”.

Malta objected to these guidelines as it disagreed that intercepted or rescued migrants should be disembarked in the state hosting the operation rather than taken to the nearest safe port. As a result, Malta has since declined to host Frontex sea operations.³⁸

The European Parliament called on the Court of Justice of the European Union (CJEU) to pronounce itself on the legality of Council Decision 2010/252/EU.³⁹ The decision was adopted under the so-called comitology procedure regulated in Decision 1999/468/EC (Article 5a), in other words without full parliamentary involvement. The CJEU annulled the contested decision in its entirety, although it said that the guidelines should remain in force until replaced. It

³⁶ Council Decision 2010/252/EU, OJ 2010 L 111/20.

³⁷ Council Decision 2010/252/EU, OJ 2010 L 111/20, Annex, part 1, para. 1.2.

³⁸ CJEU, C-355/10, Opinion of Mr Advocate General Mengozzi, *European Parliament v. Council of the European Union*, 17 April 2012, para. 82; The Ministry of Justice and Home Affairs informed the FRA in November 2012 that Malta’s objections remain in force until the guidelines are applied.

³⁹ CJEU, C-355/10 [2012], *European Parliament v. Council of the European Union*, 5 September 2012, paras. 63-85.

pointed out that the adopted rules contained essential elements of external maritime border surveillance, thus entailing political choices that must be reached through the ordinary legislative procedure with the Parliament as co-legislator. The CJEU also noted that the new measures contained in the contested decision were likely to affect individuals' personal freedoms and fundamental rights and therefore again required the ordinary procedure. Although the provisions contained in Part II to the Annex were referred to as 'guidelines' and were declared 'non-binding' in Article 1, that did not affect their classification as essential rules, the CJEU said.

3.2. Frontex operational plans

Joint operations at sea are implemented on the basis of an operational plan, as is the case with any other Frontex-coordinated joint operation. The revised Frontex Regulation requires that operational plans for sea operations specifically include "references to international and Union law regarding interception, rescue at sea and disembarkation" (Article 8e). The recently annulled Council Decision 2010/252/EU also required the operational plan to specify the modalities for the disembarkation of persons intercepted or rescued, in accordance with international law and any applicable bilateral agreements (2.1).⁴⁰ To implement these requirements, Frontex has provided more guidance on search and rescue as well as included references to UN Conventions in more recent operation plans, such as the UN Conventions on the Law of the Sea and on Maritime Search and Rescue (SAR), as well as the International Convention for the Safety of Life at Sea (Solas), the 1951 Refugee Convention and the International Convention on Transnational Organised Crimes and its Protocols.

The revised Frontex Regulation contains provisions relating to fundamental rights that are specific to maritime operations. First, it clarifies that according to international and EU law, no person "shall be disembarked in, or otherwise handed over to the authorities of a country in contravention to the principle of *non-refoulement*". Second, it tasks Frontex with assisting states in situations that may involve humanitarian emergencies and rescue at sea (Article 2(1)da), thus codifying what is already a reality in practice. Provided by Frontex, Table 4 illustrates that the proportion of search and rescue events in Frontex coordinated joint operations in 2011 was rather substantial.

The increased attention to fundamental rights in Frontex operations is mirrored in operational plans governing operations. The first operational plans

did not contain any specific language regarding fundamental rights. As of 2010, the operational plans include a general statement on fundamental rights during the operation. These provisions were strengthened in subsequent years as shown in Table 3, which compares extracts from the three latest operational plans for the Poseidon Sea operation in Greece.

As a first step, the general paragraph on fundamental rights and ethical conduct was complemented by a reference to the Frontex Code of Conduct adopted by the Frontex Management Board on 22 March 2011 and annexed to all operational plans. It makes express reference to the principle of *non-refoulement* and to the specific needs of minors, victims of trafficking, persons in need of urgent medical care and other persons in a vulnerable situation.

In 2012, following the adoption of the revised Frontex Regulation, further changes were introduced to the general parts of operational plans. These included references to the possibility of suspending or terminating an operation in case of serious or persistent fundamental rights violations. Host Member States are under an obligation to provide for "appropriate disciplinary or other measures" in case of violations of fundamental rights or international protection obligations. The obligations of Frontex and all persons involved in Frontex activities were more explicitly set out. The operational plan contains a clear duty to report "all observations regarding violations of fundamental rights via the appropriate chain of command". A standardised form to use and procedure to follow to report incidents is included in one of the annexes to the operational plan. Such annex explicitly mentions fundamental rights incidents, although only limited explanation is given to clarify what this would cover.

3.3. Evaluation reports

For each operation, Frontex is required to undertake an evaluation report, which is presented to the Management Board. With the amended Frontex Regulation, the evaluation report should be accompanied by the observations of the Fundamental Rights Officer (Article 3(4)). In practice, this means fundamental rights aspects of the operation will also be evaluated. This may be challenging, however, since the evaluation forms distributed to participating officers at the end of a mission do not include any specific questions on fundamental rights.

The FRA was given the opportunity to read the full evaluation reports of four maritime operations. Three of them concerned operations carried out in 2011, EPN Indalo, EPN Hermes, Poseidon sea, and one related to an evaluation of a 2009 operation, EPN Indalo. The FRA read these four reports through

⁴⁰ Council Decision 2010/252/EU, OJ 2010 L 111/20.

Table 3: Excerpts from the Poseidon Sea operational plans, 2010–2012

Operational plan Poseidon Sea, April 2010
<p>“Border control must be carried out in a way that fully respects human dignity. Law enforcement personnel, including border guards, maintain the highest standards of ethical conduct, professionalism and respect to fundamental human rights. They act responsibly and proportionately to the objectives pursued. While carrying out border control, border guards must not discriminate persons on grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation. Border guards are expected to treat every person with courtesy, respect and due consideration for the nature of any legitimate activity in which they are engaged.”</p>
Operational plan Poseidon Sea, 2011
<p>“Border control must be carried out in a way that fully respects human dignity in compliance with international protection obligations. No person shall be handed over to the authorities of a country in contravention of the principle of <i>non-refoulement</i>, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of minors, victims of trafficking, persons in need of urgent medical assistance and other persons in a particularly vulnerable situation shall be considered.”</p> <p>Ethics</p> <p>“All people involved in Frontex operational activities maintain the highest standards of ethical conduct, professionalism and respect for fundamental rights. They are expected to meet obligations imposed upon them by the provisions stated in the Operational Plan, the Code of Conduct (Annex B1) and shall comply with the rules of their mandates. While taking part in Frontex operational activities personnel shall respect the International law, the European law and the national law of the Member State. They shall maintain the highest standards of integrity and conduct. They are to act responsibly and proportionately to current objectives. While performing their duties they not discriminate persons on grounds of sex, race or ethnic origin, religion, belief, age or sexual orientation. Personnel are expected to treat every person with courtesy, respect and due consideration for the nature of any legitimate activity in which they are engaged.”</p>
Operational plan Poseidon Sea, 2012
<p>Fundamental rights in Frontex activities</p> <p>– <i>Obligations of Frontex</i></p> <p>“Frontex is obliged to fulfil its tasks in full compliance with the relevant EU law, including the Charter of Fundamental Rights; the relevant international law, including the Convention relating to the Status of Refugees, obligations related to access to international protection, in particular the principle of <i>non-refoulement</i>, and fundamental rights.”</p> <p>“The Frontex Regulation requires Frontex to put in place an effective mechanism to monitor the respect for fundamental rights in all its activities. One of the steps to fulfil this task was to develop a Frontex Code of Conduct applicable to all Frontex activities (attached to the present Operational Plan). The Frontex Code of Conduct lays down procedures intended to guarantee the principles of the rule of law and the respect for fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as on persons seeking international protection, and it is applicable to all persons participating in the activities of Frontex. As regards training activities, Frontex is obliged to take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the European Border Guard Teams, as well as Frontex staff members, have received, prior to their participation in operational activities, a training in relevant EU and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.</p> <p>Furthermore and pursuant to the provisions of the Frontex Regulation, Frontex has an obligation to suspend or terminate its operational activity in a case of serious or persistent violations of fundamental rights or international protection obligations. ”</p> <p>– <i>Obligations of all persons involved in Frontex activities</i></p> <p>“All persons involved in Frontex activities are obliged to maintain the highest standards of integrity, ethical conduct, professionalism and respect for fundamental rights. They are expected to meet obligations imposed upon them by the provisions stated in the present Operational Plan and are obliged to comply with the rules of their mandates. While taking part in Frontex activities they are obliged to comply with the European law, international law, fundamental rights and national law of the host Member State. Furthermore, the home Member State of each border guard shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of an operational activity.”</p> <p>“All persons involved in Frontex activities are to act responsibly and proportionately to the current objectives. While performing their duties they shall not discriminate persons on grounds of sex, race or ethnic origin, religion, belief, age or sexual orientation. They are expected to treat every person with courtesy, respect and due consideration for the nature of any legitimate activity in which they are engaged. They are obliged to report all observations regarding violations of fundamental rights via the appropriate chain of command. Prior to their deployment they have an obligation to participate in the training activities including fundamental rights issues.”</p>

Source: Frontex, 2012



Table 4: Proportion of search and rescue events during Frontex operations, 2011

Joint operations in 2011	Total number of incidents	Total number of migrants	Total number of search and rescue cases	Total number of migrants rescued
Poseidon Sea	91	1,077	7	492
EPN Aeneas	101	5,078	12	651
EPN Hermes	505	51,205	144	20,012
EPN Indalo	140	2,782	78	2,037
EPN Hera	48	470	6	62
Total	885	60,612	247	23,254

Source: Frontex, 2012

a fundamental rights lens. All three evaluations from 2011 contained a reference to the FRA project at the external EU borders, the same project on which this publication is based.

Evaluation reports examine the extent to which the objectives set forth in the operational plans have been achieved. In broad terms, the operational plans of the evaluations reviewed focus on fighting irregular entry and cross-border crime. Therefore fundamental rights considerations may only indirectly emerge in the evaluation reports. All in all, the evaluation reports the FRA reviewed give little attention to the fundamental rights challenges of an operation, with the possible exception of EPN Indalo, which discusses trafficking in human beings.

While each of the four reports contain a reference to all operation activities being carried out in conformity with applicable national, EU and international law and safeguarding individuals' fundamental rights, the reports are generally missing a discussion of the core fundamental rights issues which are part of the operational environment. As an illustration, the Poseidon Sea operation report notes the gaps and difficulties regarding the return and removal process in Greece, but it does not mention the well-known fact that access difficulties and delays also exist with the Greek asylum system. The EPN Indalo 2009 report recommends further strengthening collaboration with Morocco and Algeria but does not examine the question on how this could be done without violating the principle of *non-refoulement*. The three 2011 evaluation reports reviewed thoroughly describe the backgrounds and profiles of the newly arrived migrants. The reports stress whether migrants have documents, indicate which migrants tend to present false nationality information and mentions that certain groups reported having left the country for economic reasons. The reports, however, do not note which profiles are likely to have left as a result of risk of persecution or serious harm.

Fundamental rights issues are not totally absent from the evaluation reports. The EPN Indalo 2011 report, for example, describes in detail the abuse

and exploitation women and girls are subjected to in Morocco, confirming the findings described in Section 1.4.⁴¹ It also notes that two suspected victims of human trafficking were identified during the operation. Similarly, the Hermes 2011 report describes trafficking patterns of Nigerian and Niger women and their sexual exploitation for prostitution purposes also after arrival in the EU. The Indalo 2011 operation concludes that victims of trafficking in human beings are rarely identified. The report suggests distributing the Frontex 2011 Handbook on Risk Profiles on Trafficking in Human Beings and offer training to deployed officers, as well as tailoring the reporting template to collect information on trafficking victims. On another subject, the Hermes 2011 report stresses that pre-deployment briefings provided knowledge on Frontex Code of Conduct and fundamental rights.

The 2010 Council Decision on Frontex operations at sea appears to have had a positive impact on the respect of the principle of *non-refoulement* in Frontex sea operations. The 2011 evaluation reports reviewed do not contain information that may lead to the conclusion that push backs or returns to persecution or serious harm may have occurred as part of the joint operations. In the case of boats detected in third-country search and rescue areas, the national authorities of the third country receive this information with the request to start a rescue operation. In some cases, but not always, the third country initiates a rescue operation; according to the three 2011 evaluation reports relating respectively to Hermes, Indalo, and Poseidon sea, this was reported to be the case for 16 boats rescued by Tunisia (a total of 1,029 persons), four boats rescued by Algeria (70 persons) and five boats rescued by Moroccan authorities (167 persons). In one instance, it was reported that 52 migrants were rescued by Moroccan authorities in their territorial waters, when the rubber boat they were using had partially sunk. Where a third country does not launch a

⁴¹ See: FRA (2013), Section 1.4.

rescue operation, migrants are rescued and brought to Europe.

3.4. Observation of Frontex patrols

In late August 2011, FRA was allowed to observe maritime patrols carried out in Greece and Spain in the context of two joint Frontex operations, Poseidon Sea and EPN Indalo. A third mission to Italy was cancelled as Italian authorities did not give FRA access to patrol boats. In Greece and Spain, Frontex staff accompanied FRA. In addition, the researchers contracted by FRA to collect data also observed a national patrol by the Hellenic Coast Guards. The following paragraphs are based on the observation of these two missions. FRA presence was announced in advance, as host and sending EU Member States had to give FRA permission to board the vessels. The decision on which vessel to board and when to do so was taken on the spot.

During its visit to Lesbos in Greece and Almería/Motril in Spain, the FRA was given access to all facilities and equipment. In Greece, FRA observed night patrols carried out by Finnish and Romanian vessels in the eastern Aegean, and held discussions with the Hellenic Coast Guards and Hellenic police. In Spain, FRA observed patrols by the Spanish public security corps which also exercises coast guard functions (*Guardia Civil*), visited a Portuguese patrol vessel and observed the disembarkation of about 40 migrants rescued by the Maritime Rescue (*Salvamento Marítimo*) in Motril. FRA also met with Frontex debriefing staff, the Spanish Red Cross and visited the external surveillance centre (*Sistema Integrado de Vigilancia Exterior*, SIVE). In Greece, no migrants arrived by sea during the FRA visit, whereas in Spain one boat with approximately 40 Sub-Saharan migrants was rescued. During the two visits, FRA focused on procedures applied in implementing the joint operations.

Except for persons in charge of coordination, in broad terms, staff deployed to joint maritime surveillance operations are either deployed to perform surveillance tasks, to patrol the sea or are used to interview newly arrived migrants. The sending state usually deploys the guest officers involved in surveillance and patrolling with naval equipment such as offshore and coastal patrol vessels, aerial patrolling equipment such as helicopters and fixed wing aircrafts or mobile surveillance units on land. The sending state maintains command over the vessel, but a host state officer on board the vessel carries out any law enforcement actions required. In cases where operations are carried out near third-country coasts, as in the Hera operation, third-country officers, such as those from Mauritania in the Hera operation, are taken on board for these law enforcement purposes.

Debriefing teams are tasked with interviewing newly arrived migrants, primarily to collect information on migratory patterns and other details concerning smugglers' *modus operandi*. The information collected remains anonymous. It serves to enhance surveillance activities as well as to improve intelligence to fight organised crime. To do this police officers are usually deployed. Their interview is separate from the one national police conduct in order to take a decision on what to do with an individual. Not every migrant is interviewed by officers deployed under Frontex coordination. Children are not interviewed. The collected information is shared with Frontex headquarters that use it for risk analysis purposes. The interview findings also flow into the final evaluation of the operation. In addition to debriefing officers, screening officers are deployed in some operations, primarily to assist the host state with identifying the nationality of newly arrived migrants.

Although its presence on the ground was limited in time as well as geographically, the FRA noted that procedures were clear and generally well known by all deployed staff to whom it spoke. The operational plans of the two operations incorporated the guidelines for Frontex operations at sea set forth in Council Decision 2010/252/EU. Neither in Greece nor in Spain did the FRA find any hints of pushback efforts or intentions, although the Spanish operation, EPN Indalo, had prevention of irregular entry as one of its core objectives. When a boat in distress at sea is identified within their search and rescue zone, *Salvamento Marítimo* normally forwards a request to Moroccan or Algerian authorities for rescue at sea interventions, which often, however, do not take action. The EPN Indalo evaluation report confirms the limited number of rescue operations undertaken by Algeria (four) and Morocco (five) during the operation. In most cases, the Spanish authorities launch a rescue operation when the boat is within the Spanish rescue zone, unless search and rescue obligations require otherwise.

Staff deployed from host and sending states to whom the FRA spoke were aware of key fundamental rights relevant to their work, although there was not necessarily always a common understanding of the meaning of fundamental rights in practice. Operational pre-deployment briefings only marginally cover fundamental rights and are too short to bridge differences in handling particular situations. Moreover, given that not all persons are deployed at the beginning of the operation, but may travel to the operational area at a later stage, these briefings do not reach all deployed staff, and there is only a limited opportunity, if any at all, to cover fundamental rights issues during on the spot briefings provided upon arrival.

An illustration of such different understandings is the debriefing officers' different attitudes on how to deal with asylum-relevant information that emerges during Frontex interviews with migrants. The debriefing interviews serve to collect intelligence and are not intended to deal with the migrant's individual situation, as the national police or immigration authorities of the host country handle this issue. The migrant may, however, directly or indirectly express the wish to seek asylum by making it clear that he or she would fear serious harm if returned. In the absence of operational plan guidance on how to deal with this situation, in practice it is up to the debriefing officer, or, if consulted, the team leader, to decide whether to forward this information to the national police or immigration authorities. During the interview with Frontex officers after disembarkation, requests for asylum may be made, but neither the operational plan itself nor the annexed guidelines for debriefing officers contain a clear duty to pass this information on to the competent national authorities. In the FRA view, covering this issue in operational briefings is insufficient.

Another point is that patrol missions can easily result in a rescue operation. It is therefore essential that deployed officers have experience in rescuing migrants at sea, or have received adequate training in handling dangerous rescue operations in a manner that keeps the risks of fatalities as low as possible. Overloaded boats present different challenges than rescue operations in other contexts, such as fishing or tourist vessels in distress.⁴² At the beginning of each deployment, the national rescue service should give the crews a specific briefing on how to approach a concrete situation. This is particularly important if deployed crews do not have past experience in rescue operations with overcrowded and unseaworthy migrant boats. Frontex should encourage operation-specific trainings, and the operational plans could make it compulsory to provide training to each new crew member that is deployed to the operational area.

A last point concerns the patrol vessels' equipment for addressing the immediate needs of rescued migrants who are taken on board. Patrol vessels sent to the area of operation are equipped with first aid kits and other emergency relief items according to the sending Member State's national rules and practices. Medical kits are not standardised; their content depends on the sending country. Equipment may not necessarily correspond to what is actually needed in the area of operation. For example, FRA observed that one patrol vessel had no blankets on board although the vessel was operating in an

area likely to experience rescue operations.⁴³ While the issue was easily resolved with the help of the Spanish Red Cross, it would be advisable to address this in a more systematic way, possibly involving humanitarian organisations with whom the host Member State cooperates.

4. Frontex cooperation with third countries

In the implementation of its mandate, Frontex may cooperate with third-country authorities in charge of border management (Article 14 (2) of the Frontex Regulation). For this purpose, Frontex can conclude operational working arrangements. The European Commission needs to provide an opinion prior to its conclusion and the European Parliament should be informed as soon as possible (Article 14 (8)). Some observers have noted that given the possible practical impact on fundamental rights of such operational agreements, they should be subject to more scrutiny.⁴⁴

As of the end of 2012, Frontex has concluded 18 working arrangements with third countries or regional organisations.⁴⁵ Under Article 14 (1) of the revised Frontex Regulation, a standard clause on fundamental rights has been included in arrangements concluded in 2012, which notes that: "In the implementation of the cooperation arrangement, Frontex and [...] shall afford full respect for human rights." The Regulation namely requires that the cooperation with third countries serves "to promote European border management standards, also covering respect for fundamental rights and human dignity" (Article 14 (1)).

The existence of a written working arrangement is not a pre-condition for Frontex to initiate cooperation with third countries. Observers from third countries may be invited to participate in joint operations, provided the host Member State agrees

⁴³ See: FRA (2013), Section 5.4. and 5.7.

⁴⁴ Keller, S. *et. al.* (2011) pp. 31-32; European Parliament (2010), para. 36.

⁴⁵ Frontex has concluded working arrangements with the following third countries: Albania, Azerbaijan (text endorsed by Frontex Management Board at the end of 2012 but not yet signed), Armenia, Belarus, Bosnia and Herzegovina, Canada, Cape Verde, Croatia, the Former Yugoslav Republic of Macedonia, Georgia, Moldova, Montenegro, Nigeria, the Russian Federation, Serbia, Ukraine, and the United States, as well as with the CIS Border Troop Commanders Council and the MARRI Regional Centre in the western Balkans. Finally, cooperation exists also with EU Missions, for example, EULEX in Kosovo, supporting law enforcement authorities in their efforts towards effective border management.

⁴² For a description of the risks as well as good practices in rescue operations involving migrants in overloaded boats, see: FRA (2013), Section 2.3.

(Article 14 (6)). Such was the case for example in 2009 when, according to the Indalo 2009 evaluation report, a Moroccan officer visited the Indalo coordination centre in 2009. Cooperation with west African countries also takes place in the context of the Hera operation, which includes patrolling third-country territorial waters.

Among the countries with boat departures, Frontex has only concluded a cooperation arrangement with Turkey containing very general statements.⁴⁶ No agreement has been signed with north or west African countries. The Council of the European Union and the European Parliament have, nevertheless, tasked Frontex with improving cooperation with transit countries.⁴⁷ It can therefore be expected that Frontex will make efforts to increase cooperation with north and west African transit countries. Most of these countries do not have adequate mechanisms to deal with asylum seekers in accordance with international refugee law.⁴⁸ Conditions in immigration detention facilities may be inhuman, and in several of these countries, instances of *refoulement* have been recorded.

The Frontex Regulation requires that when cooperation takes place in a third country, the “Agency and the Member States shall comply with the norms and standards at least equivalent to those set by the EU legislation” (Article 14 (1)). This requires, for example, that training or other capacity building activities not only focus on enforcement measures, but also deal with the relevant human rights issues, providing third-country officials with adequate guidance on how to act. The third-country authorities bear primary responsibility for any human rights violation resulting from their activities.

The situation is, however, more complex in cases of operational cooperation where both Frontex assets and staff as well as third-country resources are used in the same operation. In this case, it may not always be possible to clearly attribute an action to a particular officer or team. It is necessary to ensure that third-country officers respect not only the third country’s human rights obligations but also operate in accordance with those duties that deployed EU officers have under EU law and the European Convention on Human Rights. Otherwise, EU staff deployed in third countries may find themselves associated with fundamental rights violations.

Conclusions

The EU has established some solidarity measures to support EU Member States most affected by arrivals. These include EU funding, which is currently being revisited with the proposal to create two new funds: the Asylum and Migration Fund and the Internal Security Fund (in particular its instrument on borders and visas). The language of the instrument on borders and visas contains few references to fundamental rights. Fundamental rights are not addressed among the instrument’s objectives and are therefore not part of the indicators proposed to measure achievements. The allocation of funds appears to be security focused and based on threat levels determined through consultation with Frontex.

Another solidarity tool is Frontex operational support. Considerable resources are devoted to Frontex-coordinated operations at sea. Such sea operations have primarily taken place in the Mediterranean and in the eastern Atlantic off the west African coast, with some 50 carried out by the end of 2012. Most Frontex maritime operations are organised under the EPN framework, a permanent regional border security network for the southern maritime borders of the EU.

Frontex-coordinated operations at sea have raised considerable fundamental rights concerns. In response to these, Frontex has taken significant steps to enhance fundamental rights compliance, by: spelling out specific duties in documents governing an operation; featuring fundamental rights more prominently in training activities; and setting up a clear duty for guest officers deployed through Frontex to report fundamental rights violations. Nevertheless, there are still aspects that remain to be addressed.

⁴⁶ ECRE (2012b).

⁴⁷ Council of the European Union (2010), measure 4; European Parliament (2010), para. 4.

⁴⁸ See: FRA (2013), Section 3.5.



FRA opinion

As regards future home affairs funds, practical steps should be taken to ensure that all EU measures to be funded under the Internal Security Fund instrument for borders and visa and the Asylum and Migration Fund are compatible with fundamental rights. This could be done by ensuring that independent fundamental rights expertise is sought at key stages of programming, project implementation and evaluation. Moreover, express reference to fundamental rights should be made in the operative part of the proposed Internal Security Fund instrument for borders and visa.

Concerning Frontex-coordinated sea operations, operational plans should continue to reflect the content of the guidance included in Council Decision 2010/252/EC, until it is replaced by a new instrument. Evaluation reports of Frontex operations should also discuss the challenges, incidents and promising practices related to fundamental rights in an operation.

Frontex operational plans should contain clear instructions and procedures for debriefing officers on referring, with the interviewee's consent, asylum requests as well as other important protection-relevant information received during the debriefing interview to the national asylum or other competent authority. If present in the operational area, EASO should provide training and guidance to debriefing officers to enable them to recognise asylum requests and to refer these to the appropriate authority.

EU Member States hosting Frontex-coordinated operations should ensure that practical guidance on the fundamental rights issues related to a specific operation is provided to guest officers, and, where possible, involve the international organisations, humanitarian or other actors dealing with the relevant fundamental rights issue at a Member State level. Frontex should encourage this guidance and involvement.

Frontex and the EU Member States hosting Frontex-coordinated operations should define a standardised kit of emergency relief items for all vessels deployed to the operational area that may have to take migrants on board. Emergency kits should be defined according to the specific needs of that operational area. Where appropriate, support from humanitarian organisations should be sought in determining the content of these emergency kits.

The European Patrol Network is encouraged to regularly discuss the fundamental rights challenges relating to maritime surveillance and to promote good practices in this regard.

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EU solidarity and Frontex: fundamental rights challenges

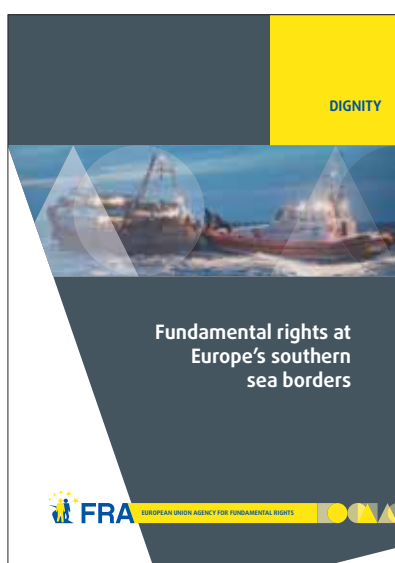
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For the full FRA report – *Fundamental rights at Europe's southern sea borders* – see:
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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The majority of irregular migrant arrivals by sea to the European Union (EU) take place in the Mediterranean. This FRA publication reviews EU solidarity measures, both financial and operational, to help the most affected EU Member States – Cyprus, Greece, Italy, Malta and Spain – handle such irregular arrivals, examining them in light of their compliance with fundamental rights obligations. It focuses on EU funding, which is currently under review, as well as operational support by the EU borders agency Frontex. The report documents the strides made in protecting and promoting the fundamental rights of such migrants as well as the challenges that lie ahead.



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