

10,000 border guards for Frontex: Why the EU risks conflated expectations

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“Between now and 2027 we want to produce an additional 10,000 border guards. We are now going to bring that forward to 2020,” Jean-Claude Juncker, the President of the European Commission, told Austrian Chancellor Sebastian Kurz at the start of Austria’s sixth-months presidency of the Council of the European Union (EU) on 1 July 2018.¹ In his State of the European Union (SOTEU) speech on 12 September, the Commission President confirmed this number and provided a blueprint for the future of Frontex.² For the EU, the proposed increase in Frontex’s resources will likely become a key argument to counter criticism from populist parties and demonstrate its determination to manage migration effectively.

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These proposals consolidate Frontex’s position as a central component of the EU response to curb unwanted migration. This policy brief looks at the opportunities and challenges posed by allocating additional resources to Frontex, including an operating staff of 10,000 by 2020. It traces the development and role of this EU border management agency, with a particular focus on the post-2015 migration crisis period. While it finds that this young EU body has already grown significantly in resources and operations, it concludes that there are

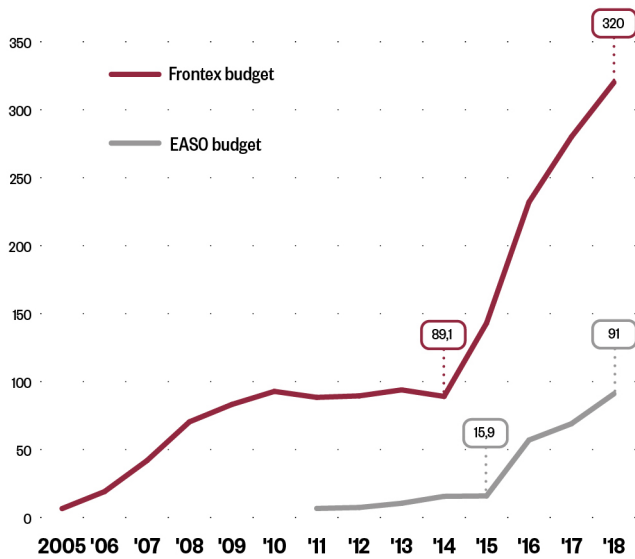
many questions left unaddressed related to its mandate. We argue that focusing solely on the number of border guards at its disposal – and Frontex’s capacities in general – risks creating a “capability-expectation gap”, whereby the public may develop conflated expectations towards Frontex.³ Regulating migratory flows effectively requires a more comprehensive approach than merely strengthening Frontex further.

BACKGROUND – FRONTEX AND EU BORDER MANAGEMENT

Together with the Eurozone, the Schengen area stands out as a quintessential EU project. Its benefits extend not only to the free movement of people but also to economic growth in the Union, with the suspension of Schengen estimated to cost anywhere between EUR 5 and EUR 18 billion per year.⁴ To protect this area, the EU designed a series of measures, including the creation of Frontex, an EU agency responsible for coordinating external border controls among responsible agencies of individual member states. In operation since 1 May 2005, Frontex is one of the fastest growing EU agencies regarding budget and staff. As illustrated in the graph below, its growth is particularly striking when compared to that of the European Asylum Support Office (EASO), the EU agency engaged in the development of a Common European Asylum System.

The original mandate of Frontex was limited in purpose, focusing on the coordination of border control operations, preparing risk assessments and assisting member states with training and return missions. Fairly quickly, the EU border management agency saw an expansion of competences with the creation of Rapid Border Intervention Teams (RABIT) in 2007 to provide rapid operational assistance to member

BUDGET OF FRONTEX AND EASO
in million Euro



Source: Frontex and European Commission official documents

states under exceptional migration pressures. However, Frontex’s most significant boost in competences came in the aftermath of the 2015 migration crisis. After only about a year of negotiations, EU member states turned Frontex into a European Border and Coast Guard Agency (EBCGA). Launched in October 2016, the EBCGA was dubbed “Frontex+” because of its additional resources and competences such as the power to initiate EU return flights for irregular migrants and more responsibilities countering organised crime and smuggling of human beings.

Several controversial EBCGA proposals were watered down or left unaddressed as a result of the negotiations. The first of them referred to the EBCGA’s ‘right to intervene’ without explicit permission in a member state unable to cope in a crisis because of systemic flaws in managing its borders. In effect, this would have meant a considerable shift of sovereignty in the name of a more functional and centralised EU border control regime. Several member states, notably those at the EU’s external borders such as Greece and Italy, found the measure too far-reaching. The final compromise allows the EU to re-introduce internal border controls for those member states unwilling to cooperate with Frontex in a migration crisis.⁵ A second controversial proposal involved Frontex’s ‘right to return irregular migrants even before they enter the EU which raised complicated questions about chains of responsibility and human rights implications.

Despite its rapid growth, Frontex’s efficiency in carrying out its operations remains dependent on voluntary contributions from EU member states. According to its latest governance report of 2017, the agency employed more than 1,700 officers from member states in its operations⁶, and could count on a rapid reaction pool of 1,500 officers, along with additional ships, aircraft and equipment. Its staff grew by a third, to 488, in 2017 alone, the first year of the new EBCG regulation, with the objective to double it in 2018.⁷ A similar boost is

expected for the agency’s budget, which totalled EUR 302 million in 2017. Ongoing negotiations for the EU’s future Multi-annual Financial Framework (MFF) for 2021-2027 have placed migration control as a top priority⁸, with the EC proposing a total of EUR 11.3 billion or an average of EUR 1.6 billion annually.⁹

STATE OF PLAY – A NEW MOMENTUM FOR STRENGTHENING FRONTEX¹⁰

The rise of populist parties in several member states and the upcoming European Parliament elections in May 2019 have added new momentum to debates about how to strengthen EU external border controls. In the words of German Chancellor Angela Merkel, the fate of the EU may depend on its ability to face the “make or break” migration challenge.¹¹

Consequently, migration was at the top of an ambitious agenda for the June 2018 European Council and featured prominently in the SOTEU speech in September. After intense discussions, European heads of state and government agreed on a few new measures such as ‘disembarkation centres’ on the territories of third countries for migrants rescued at high sea. More ambitious proposals including reforming the Dublin asylum system with a compulsory relocation system did not materialise. These outcomes show that the EU tends to agree primarily on more stringent external border controls and the externalisation of these prerogatives to third countries. The EU’s externalisation agenda, however, depends on the cooperation of countries of origin and transit – a hurdle that has often proven difficult to surmount. It leaves the EU with the option of focusing on strengthening its own external borders, with Frontex as a principal actor in that regard.

In his SOTEU speech on 12 September, Jean-Claude Juncker provided a blueprint for the reform of Frontex. Its goal is to provide the agency with a “standing corps of 10,000 operational EU staff with executive power and their own equipment” to permit the EU to “intervene wherever and whenever needed.”¹² Out of the EUR 11.3 billion total Frontex budget proposed for the 2021-2027 period, the Commission foresees a total of EUR 2.2 billion alone for purchasing necessary equipment. Under the Commission’s proposal, the agency’s standing corps would not station at the Frontex headquarters in Warsaw. Instead, there would be 7,000 staff from member states available for short- or long-term deployments by 2020, with the agency responsible for deployment costs. As shown in the chart below, this staff will gradually decrease in favour of statutory staff at the agency or long-term secondment from member states.

To function effectively, Frontex would need not only more money and staff but also an increased willingness from member states to share their sovereignty. Whether there is sufficient political will today to give Frontex the power to intervene in the absence of the permission of a host country remains unclear. President Juncker approached this issue carefully. On the one hand, he emphasised the role of member states, stressing that

even after the reforms Frontex would “not take over the national responsibility to protect the Union’s external borders,” a competency that “is and will remain a Member State prerogative”.¹³ In other words, operations would remain under the control and command of the host member state. On the other hand, Frontex would get special powers in emergency situations, and it would be up to the Commission (and no longer the Council!) to decide whether Frontex has the right to intervene.

Under the Commission proposal, Frontex would acquire some of the same competences as those currently carried out by national border guards, such as performing identity checks, authorising or refusing entry at border crossing points, stamping travel documents, patrolling borders, and intercepting persons who have crossed the border irregularly. While the Commission notes these activities would take place under the “authority and control of the host Member State”, it is likely that Frontex would develop a high degree of autonomy in these matters, including practical return procedures.

EU member states – as well as the European Parliament – are still in the process of analysing the Commission proposal presented during the SOTEU. It seems that their near unanimous support for stronger EU external border controls will not translate, at the end of the day, into their endorsement of an additional transfer of sovereignty to Brussels. The ‘right to intervene’ in the absence of a member state approval may prove too intrusive for many governments to accept. The populist parties currently in power in Italy, Hungary and some other member states prize ‘sovereignty’ and ‘national borders’ above all other matters.

The creation of such a large pool of border guards will also bring up a range of practical questions. Training is one of them. The Commission suggests that the corps shall receive “common training” without specifying what it implies in practice. Will a reformed European border guard supersede the need for national border and coast guard forces and academies? Should the European Commission support common EU border guard academies instead?

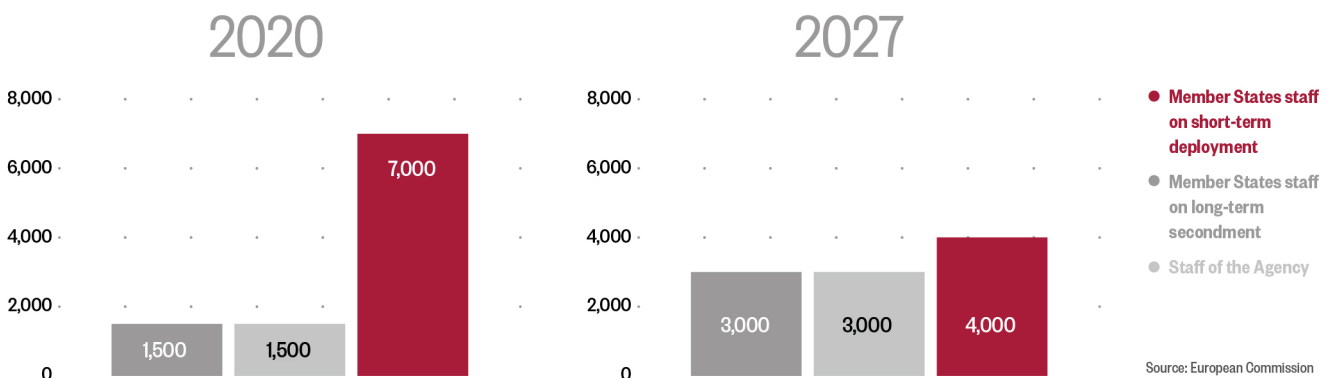
PROSPECTS – FRONTEX SHOULD NOT BE THE SOLE SOLUTION TO A MULTIFACETED ISSUE

If approved, the proposal will constitute a big step for a more efficient Frontex. While it falls short of a one-time ‘big bang’ towards more ‘supranationalisation’ and centralisation, it would extend the autonomy and capacity of the agency. There seems to be a momentum in the EU to grant more competences, staff and funds to the agency.

As the EU moves forward with its proposals to reform Frontex, a few practical and political considerations should be taken into account:

- From a governance perspective, Juncker’s approach seeks to strike a delicate balance between a functional need for a more centralised EU border control regime and national prerogatives for sovereignty. The proposal may, however, tilt the scale in favour of the Commission, whose proposal limits the extent to which member states could control Frontex compared to the current situation. Frontex would acquire more staff, equipment and resources, and some member states may even face national shortages of their border guards because of their commitments to the Frontex pool. Closer coordination between individual member states and Frontex would also be critical for the success of the agency’s operations. A recent Migration Policy Institute report on the EU response to the 2015 migration crisis noted that there is limited intra-agency communication, as well as challenging exchanges of information and coordination between member states, particularly in crises.¹⁴ Consequently, more efforts are required to streamline the exchange of information between Frontex, other EU institutions, and member states – as well as third countries.
- In terms of accountability, Frontex already operates in a field with high stakes concerning human rights and civil liberties. Any additional transfer of powers to this EU agency could raise concerns about

COMPOSITION OF THE EBCG STANDING CORPS OF 10,000 OPERATIONAL STAFF



potential breaches of human rights. Accountability would become even more important if Frontex were granted a greater role in the creation and management of the ‘disembarkation centres’ in third countries. In that regard, on the day before the European Council, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) – both of which are expected to have a role to play in this proposal – sent a joint letter to the EU stressing that their participation was conditional upon reception centres providing “adequate, safe and dignified reception conditions”.¹⁵

A more powerful Frontex agency will not be the catch-all solution to reduce migratory pressures.

- On the political front, calls for more stringent border controls are often a way of expressing a preference for fewer migrant arrivals in the EU, including from asylum seekers. However, a more powerful Frontex agency will not be the catch-all solution to reduce migratory pressures. If the EU wants to regain credibility in the migration field, it needs to adopt a strategy that combines strong borders and a strengthened Frontex with proactive support for states with migratory pressures and large refugee populations inside and outside the EU. Within the EU, such an approach would imply the reform of the Dublin system towards a fairer distribution of asylum seekers. Outside the EU, the Union needs to continue to employ its tools in the areas of trade, foreign policy and development in order to help countries with large refugee populations and strong migratory pressures.

All in all, the proposal for 10,000 new border guards for Frontex has sparked intense discussions about what kind of border management the EU and its member states want. However, no one should fall in the trap of thinking that pouring more resources into Frontex will automatically result in (i) the end of the polarisation of the migration debate in Europe, and (ii) fewer asylum seekers and irregular migrants. Indeed, the current heated and polarised debate is convenient for populist parties who use it to mobilise voters. In the ‘post-truth’ public debates they direct, actual numbers and

developments do not have the importance they once used to have. While tempting to look at border control as the low hanging fruit that populists have also been focusing on, the EU would be better served if it refused to view migration solely through the prism of border control. A functioning asylum policy with a clear idea of how to distribute asylum seekers within Europe and contribute to international burden sharing will be an equally important element.

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¹ ‘Brussels readies new border enforcement plan’, Politico, 7 July 2018

² State of the Union 2018 – The Hour of European Sovereignty, Strasbourg, 12 September 2018

³ The ‘capabilities-expectations gap’ is a concept first coined by Christopher Hill with regard to EU foreign policy-making in 1993.

⁴ ‘The Economic Impact of Suspending Schengen’, European Parliamentary Research Service, March 2016

⁵ ‘European Border Guard project fails to secure right to intervene’, Financial Times, 22 June 2016

⁶ General Secretariat of the Council, ‘Frontex Annual Activity Report 2017’, 27 June 2018, FRONT 199, COMIX 352

⁷ See Frontex (2017). A year in review. First 12 months of the European Border and Coast Guard Agency, Warsaw, at p. 3

⁸ ‘Migrant smuggling tops EU crime priorities’, EUObserver, 10 October 2017

⁹ European Commission, ‘Press Release: State of the Union 2018 – Commission proposes last elements needed for compromise on migration and border reform’, Strasbourg, 12 September 2018

¹⁰ This section builds on discussions at the EPC/EUISS workshop ‘All Things to All Men – Geopolitics and Competing Priorities at the External Borders’ held on 4 July 2018 in Brussels.

¹¹ ‘Migration challenge is make-or-break for EU, says passionate Merkel’, Reuters, 28 June 2018

¹² European Commission (2018). State of the Union 2018. A fully equipped European Border and Coast Guard – Questions and Answers. Strasbourg, 12 September 2018.

¹³ Ibid.

¹⁴ Elizabeth Collett and Camille Le Coz, ‘After the Storm: Learning from the EU Response to the Migration Crisis’, Migration Policy Institute, June 2018

¹⁵ ‘UN sets conditions for EU disembarkation platforms’, EUObserver, 28 June 2018

¹⁶ Marie De Somer, ‘Dublin and Schengen: A tale of two cities’, EPC Discussion Paper, 15 June 2018