

## Cooperation as an Essential Component of European Integrated Border Management (EIBM)

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**Abstract:** *The European Union has given new impetus to the European Pact on Migration and Asylum, making important progress in trying to adapt the European response to the current migratory reality. The COVID-19 pandemic and the crisis generated by the war in Ukraine have, once again, highlighted the significant challenges faced by the European Union. Ongoing migration flows and rapidly evolving security challenges have resulted in a growing common awareness within the EU of the need to jointly address these new geostrategic challenges. In the Pact, the migration issue is addressed from a comprehensive approach, proposing different measures, and highlighting the role of the European Border and Coast Guard Agency (Frontex) in the management of the EU's external borders. Regarding the EU's international cooperation on migration and borders, Frontex emerges as the main player. This paper seeks to elaborate and analyse the legal frameworks enabling the Frontex Agency to implement its external dimension. It also examines the Agency's international cooperation in the light of the new Frontex regulation and from the perspective of an essential component of European integrated border management (EIBM). Frontex can now provide support through joint operations on the territory of any third country, without the limitation of the neighbourhood tie.*

**Keywords:** *European Border and Coast Guard, EU, integrated border management, international cooperation, external dimension.*

### Introduction

The COVID-19 pandemic and the current war crisis in Ukraine have generated great uncertainty about the future of socio-economic and mobility dynamics around the world. These new challenges faced by the European Union (EU), in addition to the exacerbation of the pre-existing vulnerabilities, have laid the groundwork for better coordination among its members and highlighted the important role of borders and people flow management, as one of the measures needed to mitigate the impact of such crises.

In a period marked by the socio-economic impact of the fuel and wheat crisis coupled with mixed migration flows, the effective border management has become a matter of political priority, both globally and in the EU. The states need to continue to rely on flourishing trade and, at the same time, to ensure a comfortable level of security for their citizens. The commonly chosen formula for combining these two objectives is

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the integrated border management, in an approach to reconcile and respond to these concerns.

In the light of different geostrategic challenges, the EU has embarked on a comprehensive reform process aimed at strengthening its external borders. Frontex is now a key player in the Area of Freedom, Security and Justice (AFSJ) and in the development of migration and border control policies (Rojo, 2016). The transformation of Frontex is a step forward in the management of the EU's external borders, which means a greater capacity to react, in part thanks to its *new Standing Corps* and the strengthening of the Agency's international cooperation.

While there is an abundance of scientific literature on the transformation of Frontex into the European Border and Coast Guard Agency (EBCG), there is less academic research exploring the Agency's cooperation with third countries. This is the reason why we approached this novel and highly relevant topic by analysing the Agency's external dimension in the light of EU Regulation 2019/1896.

This research uses specific methods applied in social and legal sciences, as well as in international relations such as document analysis and secondary source literature. The qualitative analysis of current events in the political context, as seen through official EU communiqués, the decision-making process to address the theoretical and practical aspects of the European integrated border management (EIBM) and the institutional-legal analysis of the specific literature available, were used as research methods.

The first part briefly examines the initial deliberations and decisions that led to the creation of Frontex within the evolving framework of European integrated border management and traces the origins of this process. The second part describes and analyses the operational role of the Agency in its external dimension, in a symptomatic way of the path taken in Europe towards full integrated border management. The final part draws conclusions on the impact of this transformation and how these new capabilities represent an opportunity to move towards a centralised model of a fully-fledged European border and coast police force.

The article provides an insight into one of the novelties of the updated Frontex regulation, namely an enhanced mandate for operational cooperation with third countries in the context of the European integrated border management.

### **An approach to the concept of European integrated border management (EIBM)**

To this date, there is no exhaustive conceptual definition of what is known as integrated border management (IBM), despite the fact that the academic literature on this subject is extensive and diverse. Scholars like Marenin (2010: p. 65) or Peers (2011: p. 157) agree that there is currently no concise definition of this concept. Nevertheless, there are several material descriptions, without considering the integration element that seeks to emphasise the role of the different actors involved in the integrated border management (Acosta, 2019).

On the same line, Hokovský (2016: p. 72) concludes that the EU concept of IBM is limited to two aspects: (1) there is no official, comprehensive and up-to-date definition and (2) it is defined differently in distinct EU policy and legal documents. Among the several etymological meanings of the term "*integrated*" we can find: "*to combine two or more things in order to become more effective*".

With the intention of "*bringing the parts together as a whole*", the European

Commission mentions that *“Integrated Border Management is, in its essence – Integrated – at all levels and in all forms of cooperation and information exchange”* (European Commission, 2018: p. 1). The aim of this integration is to seek formulas for cooperation and coordination at different levels, involving the authorities responsible for border management. The purpose is to generate a response to new challenges that cannot be effectively tackled separately.

The first official references to the idea of a long-term European strategy for managing the EU’s external borders, including the creation of a European border police, were discussed in the European Parliament back in 1998<sup>2</sup>. However, the first mention of the IBM concept was introduced in the Conclusions of the European Council in Tampere (European Council, 1999). Subsequently, this subject was again addressed at the Laeken European Council in December 2001, with the aim of achieving better management of the EU’s external borders (European Council, 2001). In the Laeken Conclusions, it was stated the need to move towards a more coherent, efficient, and *“integrated”* external border management in order to tackle terrorism, people smuggling networks and trafficking in human beings. Moreover, an essential element of the IBM concept emerged – *the principle of complementarity* of the different authorities involved in border management.

Further, there were two stages in the development of the EIBM concept: the first stage, in which the European Commission, in its Communication to the Council and the European Parliament (2002), makes its first approach to the concept, by mentioning the need *“to bring together different authorities around the same table to coordinate their operational actions in the framework of an integrated strategy that progressively takes into account the plurality of the dimensions of external border management”* (European Commission, 2002: p. 6). Thus, there is a first attempt to “integrate” all functions related to border control.

*“Border police commanders and other border police officers should be made aware that they are now guarding the borders of all EU Member States. Therefore, their activity should be seen as a contribution to the European Border Control and Surveillance Network”* (European Commission, 2002: p. 9).

*“In the Commission’s view, none of the EU member states may be considered as exercising full sovereignty over their own borders, as they are increasingly being asked to manage them by taking into account collectively defined legal standards and policies”.* (Campesi, 2018: p. 198).

Seen for the first time as a *“global approach to migration”* (Carrera, 2007: p. 1), the concept of the EIBM became increasingly anchored in the EU’s external border management policy and turned into a strategic objective. From its genesis and development, Frontex was seen as the Agency responsible for implementing the EIBM (Carrera, 2007). In fact, its guiding principle has always been to respond to all kinds of threats affecting border security (Linbdom and Castrén, 2021). Another defining principle was the call for inter-institutional cooperation (Carrera, 2007: p. 18).

In theory, the EIBM was envisaged to rely on three components: a common

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<sup>2</sup> Resolution on the implications of enlargement of the European Union for cooperation in the field of justice and home affairs. Minutes of the sitting of Friday 3 April 1998. Official Journal of the European Communities, C-138 of 04/05/1998, p. 214, paragraph 19.

legislation, the creation of Frontex, and the principle of solidarity. While the first two components were achieved, the solidarity principle remains a challenge. These conclusions, developed in the historical context of the 9/11 attacks in the United States, represent the embryo of integrated border management in Europe and the beginning of the path for the subsequent creation of Frontex.

The second stage is based on the Council's Conclusions of December 2006, which define the EIBM through its main components:

- Border control (checks and surveillance) according to the Schengen Border Code, risk analysis and exchange of information.
- Investigation of cross-border crime in coordination with law enforcement authorities.
- **The four-tier access-control model** (measures in third countries, cooperation with neighbouring countries, border control at the external border, and control measures within the area of free movement).
- Interinstitutional cooperation and international cooperation (third countries).
- Coordination and coherence of activities between member states and European institutions.

This document sets the first approach to the material concept of the EIBM, subsequently expanded in the update of the Schengen Catalogue on external border control, return and readmission (Council of the European Union, 2009)<sup>3</sup>. The legal and political framework for European integrated border management (EIBM) was set out in various strategic documents adopted by the EU institutions based on Article 77(1) of the Lisbon Treaty, which includes in its paragraph (c) a specific provision regarding the “*gradual introduction of an integrated management system for external borders*” (Consolidated version of the Treaty on the Functioning of the European Union, 2016).

The definition of EIBM is based on three essential dimensions related to *what should be done* (border control, risk analysis and investigation of cross-border crime), *how it should be done* (through coordination, coherence, inter-agency cooperation and international cooperation) and, above all, *where it should be done*. Here, the four-tier access control model, later developed by the EU, was key to the establishment of the EIBM concept. This model essentially attempts to redefine the political geography of border control along different levels of action, involving both national and supranational agencies and institutions (Campesi, 2018).

Finally, we can affirm that the first legal instrument to regulate the EIBM was 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*, which is the previous name of the European Border and Coast Guard Agency (Frontex), underlining its role as *manager of “operational cooperation”*. Within this Regulation, the Commission considered integrated management of external borders as the way to ensure *uniformity* and quality in surveillance and border

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<sup>3</sup> The EU Schengen Catalogue aims to clarify and refine the Schengen acquis through recommendations and best practices to guide states joining the Schengen area, but also for those already fully applying the Schengen acquis. The update of the Catalogue included the functions and cooperation tasks carried out by Frontex in the four-tier access model.

control. Moreover, this *uniform and integrated practice* was considered as a fundamental component of the Area of Freedom, Justice and Security (Council of the European Union, 2004).

As mentioned by Lindblom and Castrén, the subsequent amendments to the original Frontex Regulation were intended to serve more as a technical capacity tool than as a regulatory instrument. In fact, the purpose of these changes to the Regulation was to facilitate cooperation between Frontex and the member states in the operational coordination of joint operations (Linbdom and Castrén, 2021).

However, the first binding document with reference to the EIBM components is the EU Regulation 2016/1624, which establishes Frontex as the European Border and Coast Guard Agency. The Article 4 of the Regulation is entirely dedicated to the European integrated border management, which is complemented with additional components.

The need to move forward on the external dimension of the EIBM was the trigger for the European Council's call on 28 June 2018, to further strengthen the supporting role of Frontex, in international cooperation (European Council, 2018b). To this end, the European Border and Coast Guard Agency (Frontex) was strengthened by enhancing its mandate through the new EU regulation 2019/1896.

The components of the EIBM are now focused on the Agency's tasks. Its mandate is extended to cover the whole scope described in the four-tier access control model<sup>4</sup>. Within the new mandate, the international cooperation is extended to non-EU third countries without a neighbourhood nexus (the countries of origin or transit of illegal immigration). It can therefore be seen that, in practice, the EIBM has reaffirmed the need for a *European way* of managing borders. The concept seeks to *avoid duplication* of tasks within the European border management, to address the problem of coordination between agencies, and the *ambiguity of responsibilities* at the national and European levels.

In addition, the EIBM is underpinned by a huge technical structure with the aim of facilitating information exchange, promoting interoperability, and modernising European surveillance and border controls. For an effective implementation of the EIBM concept, the above-mentioned four-level access control model was developed, in which international cooperation plays a key role.

### **The four-tier access control model**

Based on the need for both inter-institutional and international cooperation, the four-tier access control model is at the core of integrated border management of the Schengen area (Council of the European Union, 2009). According to the European Commission, the EIBM is “comprised of four complementary levels” (EU Schengen Catalogue, Council of the European Union, 2002: p. 12). This model was developed as part of the EU Schengen Catalogue in 2002 (Lanfermann, 2014), and includes 1) measures in third countries, 2) measures with neighbouring third countries, 3) external border control measures, 4) measures taken within the Schengen area and on return. Complementary measures are also foreseen at different levels.

The first filtering measures are taken in third countries. Basically, this involves international cooperation through bilateral relations with liaison officers or technical assistance for capacity building of local officials. This type of cooperation at source is

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<sup>4</sup> It is defined as a major component in the integrated border management in the Council's conclusions of December 2006.

essential, especially in countries of origin and transit of irregular migration. Capacity building activities for local officials and the improvement of their technical equipment enhance border control at source.

The second filter measures include cooperation with neighbouring third countries (European Commission, 2010). The bilateral cooperation between neighbouring countries or *cross-border cooperation* brings an added value in terms of fluid communication channels, contact points at different levels and the exchange of information. This would cover, for example, police cooperation centres (PCC) between two neighbouring countries.

The third filter measures cover the core area of the overall border strategy, which involves checks and surveillance at the external borders of the EU. At this level, it is important to emphasise the essential role of member states to protect the borders both in their own interest and in the interest of the EU. Therefore, one of the main challenges of the EIBM is to ensure this shared responsibility, by trying to properly allocate material and human resources. The most recent example is the joint operations coordinated by Frontex at the Romanian borders with the Republic of Moldova and Ukraine<sup>5</sup>.

The fourth filter contains measures taken within the Schengen area. These would be measures of last resort, aimed at detecting cross-border crime, or even the application of administrative measures in cases of irregular stays or returns, in accordance with the respective national legislation.

In conclusion, this model envisages *actions implemented from outside the EU* (cooperation with third countries) *to the inside* (measures within the territory of EU member states), thus redefining the political geography of borders. Therefore, the EIBM seeks to implement proactive migration management, which includes necessary actions pursued in third countries in coherence with other major policy objectives.

### **The cooperation frameworks in the new EBCG Regulation**

The new EU Pact on Migration and Asylum, which is the European Commission's policy agenda for establishing a Common European Framework for Migration and Asylum Management during the current 9<sup>th</sup> EU legislature (Geddes y Maru, 2021), reaffirms the need for further engagement with third countries to strengthen the cooperation. It is noted that Frontex has a crucial role to play in providing operational support to the member states for the practical implementation of the initiatives proposed in the Pact.

The Agency's new regulation extends the territorial scope of its operational activities outside the EU. The gradual increase of the Agency's mandate since its creation and especially the fact that its external dimension has been at the core of the successive revisions of its regulations (Coman-Kund, 2019), is an example of the actions taken in the EU towards fully integrated border management, in which international cooperation is one of the essential components.

Broadly understood, Frontex's external dimension revolves mainly around three interrelated axes: (1) Frontex's cooperation with third countries; (2) support for

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<sup>5</sup> Frontex sent about 150 officers, along with 45 patrol cars and other equipment to Romania's border with the Republic of Moldova and Ukraine to support Romania in its efforts to help the Ukrainian population fleeing the violence in their home country. Frontex standing corps officers assist Romanian authorities in processing the massive number of people crossing the border from Ukraine and perform other border control-related tasks. They include border control officers and document experts. Press release available at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-to-send-additional-officers-to-romania-B4Nl2h> (Accessed: 2 March 2022).



cooperation between member states and third countries; (3) the implementation of EU policies in the field of migration and border management. These three premises served as a reference when designing the geographical outreach of the Agency's operational activities outside the EU.

The analysis of the new Regulation 2019/1896 shows that it essentially maintains the international cooperation framework of the previous Frontex Regulation (2016) and it confirms the instrumental nature of the Agency's international cooperation and its obligation to act within the legal and political framework of the EU, in the field of the Union's external relations. The novelty is that of a reinforcement of Frontex compliance within the cooperation with third countries and the extended geographical scope of the Agency's cooperation.

The key points of cooperation with third countries are set out in section 11, Articles 71 – 78. Frontex is currently the European Agency with the largest international dimension, being the only one with an extensive network of liaison officers in third countries and with the capacity to carry out joint operations with the deployment of the *European Border and Coast Guard Standing Corps* (Frontex, 2021a), outside of the EU, where such support is necessary to protect the external borders in accordance with the Union's migration policy.

The creation of the 10,000 *European Border and Coast Guard Standing Corps* is the main novelty introduced by the new Regulation. The Standing Corps concept enables the Agency to deploy its own operational staff at the external borders when needed and thus enhance the Agency's capacity to support member states in controlling the EU's external borders. In addition, the Standing Corps are granted "executive powers" when deployed on the territory of the member states, allowing them to carry out border checks (verification of identity and nationality), authorising the entry or refusal of entry at the border, stamping of passports, as well as the registration of fingerprints, according to Article 55(7) of the Regulation.

Some authors (Wagner, 2021; Vara, 2020) have questioned the arguments underpinning the Agency's "executive powers" from two perspectives: the primary responsibility of member states for the control of the external borders, and secondly, the legal basis for this prerogative.

In relation to the first aspect, we understand that the Frontex Regulation itself refers to the EIBM as a "shared responsibility" (Art. 7) of the Agency and of the member states, although the latter are primarily responsible for the management of their external border. This would therefore imply that the members of the deployed teams may exercise these executive powers under the command and control of the host member state or in certain cases and with their authorisation, act on its behalf.

In the second case, Article 77(d) 2 TFEU provides a sufficient legal basis in conjunction with the principle of subsidiarity of Article 5 (3) TEU, which mentions that "*Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action..., be better achieved at Union level*", hence legitimising the integrated management of the Union's external borders. It should not be forgotten that the Treaty itself considers the whole of the Area of Freedom, Security and Justice (AFSJ) as a shared competence<sup>6</sup>. In addition, the EBCG Regulation, as a legal act of the Union is, according to Article 288 TFEU,

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<sup>6</sup> Art. 4.2 j) TFUE.

general in scope, binding in its entirety, and directly applicable to the member states.

However, another matter is the deployment of the members of the Standing Corps outside the territory of the EU, where the legal framework is different and is determined by the conclusion of specific agreements, which may or may not include “executive powers” for the Agency. The new regulation distinguishes between two types of agreement: (1) Status Agreements and (2) Working Arrangements.

### ***Status agreements***<sup>7</sup>

Until 2016, before the adoption of EU Regulation 2016/1624, now repealed, the Agency did not have the power to conduct joint operations on the territory of third countries. As of 2016, Frontex was empowered to deploy teams with executive powers in third countries neighbouring the EU, subject to the conclusion of a status agreement between the EU and the third country concerned. Legally, the status agreement is an international treaty negotiated, signed, and concluded under Article 218 of the Treaty on the Functioning of the European Union (European Commission, 2021a). Therefore, it follows the procedure foreseen for the negotiation and conclusion of international agreements between the Union and third countries.

Due to the ambiguity of the formula “neighbouring third countries”, more clarifications were needed. This aspect was clarified by the wording of the new EBCG Regulation (Regulation (EU) 2019/1896), which explicitly allows the Agency to carry out operations on the territory of any third country (Article 74). This extends the geographical scope of operations and the possibility of signing such agreements with any non-EU country. This has required the European Commission to update the predefined model agreements (European Commission, 2021).

The new model of the status agreement is adapted to the new features introduced by Regulation (EU) 2019/1896. It strengthens, for example, the requirements related to compliance with the protection of personal data and fundamental rights. Following the conclusion of such an agreement, the Agency is enabled to deploy team members of the new Standing Corps<sup>8</sup> on the territory of a non-EU country, with the necessary “*executive powers*”, in the framework of joint operations and rapid border interventions (European Parliament, 2019).

It is important to stress that the status agreement represents just the legal framework for such cooperation. Therefore, the precise tasks to be carried out will have to be clearly defined in a predetermined operational plan between the Agency and the third country concerned once the agreement has been concluded. Additionally, *the operational plan* sets out the general principles governing the duties of the team members: (1) comply with the third country laws, and (2) act under the instructions and in the presence of the competent authority of the third country. Exceptionally, the competent authority of the third country may authorise members of the team to act on its behalf.

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<sup>7</sup> Art. 73.3. Frontex regulation 2019/1896.

<sup>8</sup> The Standing Corps shall be composed of the following four categories of operational staff: (1) Frontex statutory staff deployed as members of the teams in operational areas; (2) staff seconded from member states to the Agency for a long term as part of the Standing Corps; (3) staff from member states who is ready to be allocated to the Agency for a short-term deployment as part of the Standing Corps; (4) the reserve for rapid reaction consisting of staff from the member states who is ready to be deployed (Article 54(1) of Regulation). For the purposes of the model status agreement, staff in the first category is described as members of the teams who are Frontex statutory staff, while the staff in the remaining three categories is described as members of the teams who are not Frontex statutory staff.



Such agreements are initiated and negotiated directly by the European Commission, after prior authorisation by the EU Council and consent of the European Parliament. The Commission must assess the situation of fundamental rights in the third country concerned and inform the European Parliament accordingly.

Frontex operations on the territory of a third country shall be included in the annual work programme adopted by the Management Board of the Agency<sup>9</sup> (Frontex, 2021c), and shall be carried out based on the operational plan agreed between Frontex and the relevant authorities of the third country in consultation with the participating member states<sup>10</sup>.

Furthermore, in those cases where a member state neighbours the third country or borders the operational area, the operational plan and any amendments thereto shall be subject to the agreement of that member state, or of those member state(s) concerned. These actions are done in the framework of the shared responsibility of the Agency and the member states for the management of the EU's external borders<sup>11</sup>. The Regulation also provides the possibility for the creation of Frontex delegations or “antenna offices” in third countries, as operational structures to facilitate and improve the coordination of operational activity in the context of joint operations, as set out in Article 60.

As for the criminal liability of team members operating on the territory of a third country, the status agreement itself contains a provision of immunity from criminal and civil jurisdiction in the host country when carrying out their official duties. However, it does not exempt them from the jurisdiction of the home member state. This immunity is based on Protocol No. 7 on the privileges and immunities of the European Union annexed to the Treaty on European Union (TEU) and the TFEU, which applies to the Agency and its statutory staff as well<sup>12</sup>. It basically provides the standard legal protection available to officials travelling abroad in the exercise of their duties, according to Vienna Convention on Diplomatic Relations of 1961.

However, the Agency's activities are not exempt from liability, as its actions can be brought before the Court of Justice of the European Union under the procedure of Art. 98 of the Regulation (European Parliament, 2019) in conjunction with Art. 263(5) TFEU.

In Albania, for example, a country with which the EU concluded a status agreement in October 2018<sup>13</sup>, Frontex launched its first joint operation outside the EU (May 2019). Under this Agreement, team members deployed by Frontex have “executive powers”, i.e., all the powers necessary to perform surveillance and border control carried out on the territory of Albania. Frontex officers perform their duties in the presence of an Albanian official, namely under Albanian instructions.

There is the question whether the activities of the deployed members could be affected by the fact that they act under the instructions from a third state, as they are

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<sup>9</sup> Frontex's Management Board is tasked with efficiently controlling the functions of the agency. It is composed of representatives of the heads of the border authorities of all EU member states and non-EU Schengen associated countries, plus two members of the European Commission. Frontex website (Accessed: 12 July 2022).

<sup>10</sup> Article 74(3). Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

<sup>11</sup> *Ibid.*

<sup>12</sup> Art. 96 Frontex regulation 2019/1896.

<sup>13</sup> Joint operation conducted at the land border between Albania and Greece. Available at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-first-operation-in-western-balkans-znTNWM>, (Accessed: 20 May 2022).

not bound by EU rules. It is our understanding that the very legal nature of the status agreement as an international treaty with binding force only regulates the obligations of each party vis-à-vis the other and should not be interpreted as an interference with their own obligations under the relevant legislation, in particular the European Border and Coast Guard Regulation.

So far, the EU has concluded three status agreements: with Albania (2018), Montenegro and Serbia (2019) (European Council, 2018a; 2020a; 2020b). Negotiations for similar agreements have also been initiated with North Macedonia and Bosnia and Herzegovina, which are pending finalisation (Council of the European Union, 2019). These status agreements enabled Frontex to launch joint operations with executive powers outside the EU. In addition to Albania, a joint operation in Montenegro (2020) and a third operation in Serbia (2021) have been launched (Frontex, 2021d).

A status agreement has just reinforced the existing cooperation between Frontex and the Republic of Moldova, which is based on a *Working Arrangement* concluded in 2008 (European Commission, 2022). In March 2022, the European Parliament, in an urgent procedure, gave its consent for the signing of a status agreement with the Republic of Moldova. Frontex was able to start operating immediately based on a provisional application of the Council's decision, until the European Parliament gives its consent to the agreement. This allowed the deployment of Frontex teams to support Moldovan border guards to effectively manage the humanitarian crisis generated by the situation at the border with Ukraine (European Parliament, 2022). Specifically, the teams perform screening, registration and identity checks of persons crossing the border, as well as border surveillance tasks. The Frontex *Joint Operation Moldova* could contribute to supporting the transfer of persons to EU member states in the context of the Solidarity Platform<sup>14</sup>.

The agreements with the Western Balkan region and Eastern Europe inaugurate a new phase of the EIBM, through the territorial expansion of Frontex-coordinated operations to third country territories, setting an important precedent for cooperation in countries of origin and transit of irregular migration. We consider these developments to be significant from the EU's level perspective, as the long-standing and traditional bilateral cooperation between EU member states and third countries is being complemented and reinforced by the Agency's increasingly leading role in border management, now in the interest of the Union as a whole.

### ***Working arrangements***

The working arrangements are legal instruments used by the Agency to regulate its external relations in a structured manner. Unlike the status agreements, the working arrangements with third countries include a standard provision explicitly stating that they are “*not considered an international treaty or a document having effect in international law*” (Coman-Kund, 2019: p. 42), and are therefore non-binding for the parties. Moreover, as some authors point out, Frontex lacks international personality; therefore, these working arrangements cannot be qualified as international treaties, notwithstanding the fact that

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<sup>14</sup> European Commission, “EU signs agreement with Moldova on Frontex cooperation”, 17 March 2022. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_1844](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1844) (Accessed: 25 June 2022).

they are part of the EU's external action activities (Soler, 2017, Santos Vara, 2015)<sup>15</sup>. Article 73(4) specifies that cooperation with third countries shall take the form of so-called working arrangements concluded within the framework of the Union's external action policy.

Frontex can directly negotiate working arrangements with third countries within the scope of the powers conferred to the Agency. These agreements represent a very important instrument for implementing and developing the Agency's operational cooperation.

The European Commission, through its Communication (COM/2021/830 final) has recently published the updated model of working arrangement, which incorporates the features introduced by Regulation (EU) 2019/1896 (European Commission, 2019), once again giving great importance to the compliance with fundamental rights. Thus, the Agency must ensure that all its working arrangements contain provisions on fundamental rights. This is ensured by the consultation of its Fundamental Rights Officer (FRO) (Frontex, 2021e), which will issue an opinion during the negotiations of such an arrangement and before the Frontex Management Board approves its signing.

There are currently eighteen working arrangements in force with border management authorities of third countries<sup>16</sup> (European Commission, 2019). To conclude these working arrangements and before their signature, Frontex must receive the prior approval of both its Management Board and the European Commission<sup>17</sup>. In addition, prior to the conclusion of such an arrangement, the Agency shall inform the European Parliament and provide it with detailed information on the provisions of the working arrangement and its envisaged content<sup>18</sup>. This consultation is part of the democratic scrutiny of the Frontex activities, which has been substantially strengthened since the previous Regulation of 2016. In addition, the Agency must include an assessment of its cooperation with third countries within its annual reports to European Parliament<sup>19</sup>.

The main difference between the two types of agreements is that joint operations in the territories of third countries can be carried out in two ways: *with executive powers*, in case a status agreement has been concluded; or *without executive powers*, by means of

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<sup>15</sup> On the role of Agencies in action see, among others, Billet, C. 2013. "Managing the external relations of AFSJ agencies after Lisbon", in Flaesch-Mougin, C. & Serena Rossi, L. (editors.), *La dimension extérieure de l'espace de liberté, de sécurité et de justice après le Traité de Lisbonne [The external dimension of the area of freedom, security and justice of the European Union after Lisbon]*, Bruylant: Brussels, 95-129; Ott, A. "EU Regulatory Agencies in EU External Relations: Trapped in a Legal Minefield Between European and International Law", *European Foreign Affairs Review*. vol. 12, 2008, 515-540.

<sup>16</sup> Border Guard Service of the Federal Security Service of Russia, State Border Guard Service of Ukraine, Border Guard Service of Moldova, Ministry of Internal Affairs of Georgia, Ministry of the Interior of Serbia, Ministry of Interior of Albania, Ministry of Security of Bosnia and Herzegovina, United States Department of Homeland Security, Police Directorate of Montenegro, State Border Committee of Belarus, Canada Border Services Agency, National Police of Cape Verde, Nigerian Immigration Service, National Security Council of Armenia, Ministry of Foreign Affairs of Turkey, State Border Service of Azerbaijan, Ministry of Internal Affairs of Kosovo and Ministry of Internal Affairs of North Macedonia.

<sup>17</sup> Although the Agency's internal procedures already included this step, this provision formally aligns the Agency with the Common Approach on EU Agencies in this respect.

Council of the European Union. "Evaluation of European Union Agencies – Endorsement of the Joint Statement and Common Approach" 11450/12 (18 June 2012), p. 25.

<sup>18</sup> Art. 76.4, Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on a European Border and Coast Guard.

<sup>19</sup> Art. 73.8, Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

a working arrangement concluded with the Agency. The two types of agreements are not mutually exclusive, given their different legal nature.

According to Frontex Regulation, the terminology “executive powers” refers to all those functions carried out by the Agency’s Standing Corps for border management. That is, assisting the third country’s officers in border checks, border surveillance, supporting migration management and combating cross-border crime (Frontex, 2021f). It is our understanding that the deployment of team members in third countries in the framework of a working arrangement must be in the capacity of “observers”, meaning an activity which does not entail “executive powers”.

However, other activities in the framework of returns should be excluded, as the Regulation does not foresee the operational deployment of teams other than border management teams in third countries<sup>20</sup>, nor the exercise of executive powers in the framework of return. A status agreement would therefore not be the appropriate instrument to organise return operations<sup>21</sup>.

Finally, it should be noted that, in addition to formalising its external dimension through this legal framework, Frontex’s cooperation with third countries can also take place informally, i.e., without working arrangements, by implementing the so-called technical assistance. The Frontex Regulation itself provides a legal basis for this kind of assistance through the implementation of capacity building projects with third countries as beneficiaries<sup>22</sup>.

## Conclusions

The current European Border and Coast Guard Regulation requires future status agreements and working arrangements concluded with third countries, based on the new models adopted by the Commission. In line with the approach set out in the New Pact on Migration and Asylum, strong, comprehensive, mutually beneficial, and tailor-made partnerships contribute to strengthened border management cooperation, an essential component of European integrated border management.

The new Regulation also expands the international dimension of the agency in the field of operational cooperation to **all third countries**, regardless of their geographical proximity to the European Union. Frontex can now carry out operations on the territory of any third country, without the limitation of the neighbourhood tie, as required by the previous regulation. This undoubtedly provides the Agency with the capacity to strengthen operational cooperation with countries of origin and transit of irregular

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<sup>20</sup> Article 10(1)(u). Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

<sup>21</sup> Specifically, the Regulation states that “*contacts with third countries with a view to identifying third-country nationals and obtaining travel documents for third-country nationals subject to return measures*” and “*escorting third-country nationals subject to a forced return procedure*” are permissible tasks requiring executive powers; however, neither of them would be carried out on the territory of the third country. Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

<sup>22</sup> Art. 73.6, Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

The Agency may receive Union funding in accordance with the provisions of the relevant instruments for support to and activities relating to third countries. It may initiate and finance technical assistance projects in third countries on matters covered by this Regulation and in accordance with the financial rules applicable to the Agency. These projects shall be included in the Single Programming Document referred to in Article 102.

migration. It also provides an opportunity for the EU to play a greater role in engaging with non-EU countries on border management matters.

A deeper, single-voice engagement between the EU and third countries could be a key way to better addressing the new EU-wide strategic initiatives in the framework of the European integrated border management. Although Articles 4.2 TEU and 72 TFEU are clear in terms of the national sovereignty of member states and shared responsibility in this area, we believe that consistent border management requires further progress towards a supranational model. However, to do so, there is a need for clarification of the EU's respective institutional competences vis-à-vis the member states. We consider that this change in the currently shared responsibility framework for the management of external borders would undoubtedly require amendments to the TFEU.

## References

- Acosta Sánchez, Miguel Ángel, “On the concept of Integrated Management of European External Borders”, *Working Papers on European Migration Law*, No. 8, December 2019. (online) <http://immigrazione.jus.unipi.it/wp-content/uploads/2019/12/Acosta-IBM.pdf> (Accessed: 16 February 2022).
- Campesi, Giuseppe. “Crisis, migration and the consolidation of the EU border control regime”. *International Journal of Migration and Border Studies*, vol. 4, no 3, 2018: 196-221. (online) [https://www.eu-hub.eu/sites/default/files/2019-12/Crisis\\_Migration\\_and\\_the\\_Consolidation\\_of%20Border%20control.pdf](https://www.eu-hub.eu/sites/default/files/2019-12/Crisis_Migration_and_the_Consolidation_of%20Border%20control.pdf) (Accessed: 8 March 2022).
- Carrera, S. “The EU border management strategy: FRONTEX and the challenges of irregular immigration in the Canary Islands” (No. 261). CEPS. 2007. (online) <https://www.ceps.eu/ceps-publications/eu-border-management-strategy-frontex-and-challenges-irregular-immigration-canary/> (Accessed: 7 December 2021).
- Coman-Kund, Florin. “The cooperation between the European Border and Coast Guard Agency and third countries according to the new Frontex Regulation: legal and practical implications” in Hofmann, Herwig C.H., Vos, Ellen and Chamon, Merijn (eds.) *The External Dimension of EU Agencies and Bodies. Law and Policy*. 1 October 2019: 34-58. (online) DOI: <https://doi.org/10.4337/9781788973755.00009> (Accessed: 15 November 2021).
- Council of the European Union. “EU Schengen Catalogue: External borders control Return and readmission. Recommendations and best practices”. February 2002. (online) <https://www.consilium.europa.eu/media/45862/eu-schengen-catalogue-en.pdf> (Accessed: 14 December 2021).
- Council of the European Union. “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” OJEU-L-2004-82705. 26 October 2004. (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R2007> (Accessed: 11 January 2022).
- Council of the European Union. “Press release 2768<sup>th</sup> Justice and Home

Affairs Council meeting in Brussels, 4-5 December 2006". 5 December 2006. (online) <https://data.consilium.europa.eu/doc/document/ST%2015801%202006%20INIT/EN/pdf> (Accessed: 14 October 2021).

- Council of the European Union. "Updated EU Schengen Catalogue on External borders control Return and readmission. Recommendations and best practices". 19 March 2009. (online) <https://data.consilium.europa.eu/doc/document/ST-7864-2009-INIT/en/pdf> (Accessed: 1 April 2022).
- Council of the European Union. "Border management: EU signs agreement with Serbia on European Border and Coast Guard cooperation". 19 November 2019. (online) <https://www.consilium.europa.eu/en/press/press-releases/2019/11/19/border-management-eu-signs-agreement-with-serbia-on-european-border-and-coast-guard-cooperation/> (Accessed: 12 April 2022).
- European Commission (a). "Communication from the Commission to the Council and the European Parliament - towards integrated border management at the external borders of the member states of the European Union" COM (2002) 233 final. 7 May 2002. (online) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52002DC0233> (Accessed: 1 April 2022).
- European Commission (b). "[Guidelines for Integrated Border Management in European Commission External Cooperation](#)". November 2010. (online) (Accessed: 24 February 2022).
- European Commission. "Report from The Commission. Fourth Report from The Commission to The European Parliament, The European Council and The Council, on the operationalisation of the European Border and Coast Guard" COM (2017) 325 final. 13 June 2017. (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0325&from=EN> (Accessed: 19 January 2022).
- European Commission. "Annex to the Communication from the Commission to the European Parliament, the European Council and the Council. Progress report on the Implementation of the European Agenda on Migration". COM (2018) 250 final. 14 March 2018. (online) [https://ec.europa.eu/home-affairs/system/files/2018-03/20180314\\_annex-6-progress-report-european-agenda-migration\\_en.pdf](https://ec.europa.eu/home-affairs/system/files/2018-03/20180314_annex-6-progress-report-european-agenda-migration_en.pdf) (Accessed: 29 January 2022).
- European Commission. "New Pact on Migration and Asylum". 2019. (online) [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en) (Accessed: 1 April 2022).
- European Commission. "Communication from the Commission to the European Parliament and the Council. Model status agreement as referred to in 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" COM (2021) 829 final. 21 December 2021. (online) <https://eur-lex.europa.eu/resource.html?uri=cellar:1a9e6fd7-6271-11ec-a033-01aa75ed71a1.0001.02/>



[DOC\\_1&format=PDF](#) (Accessed: 10 April 2022).

- European Commission. “Communication from the Commission to the European Parliament and The Council. Model working arrangement as referred to in 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” COM (2021) 830 final. 21 December 2021. (online) [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2021\)830&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2021)830&lang=en) (Accessed: 10 April 2022).
- European Commission. “Ukraine: Commission proposes further Frontex support for migration management in Moldova” Directorate-General for Neighbourhood and Enlargement Negotiations. 10 March 2022. (online) [https://ec.europa.eu/neighbourhood-enlargement/news/ukraine-commission-proposes-further-frontex-support-migration-management-moldova-2022-03-10\\_en](https://ec.europa.eu/neighbourhood-enlargement/news/ukraine-commission-proposes-further-frontex-support-migration-management-moldova-2022-03-10_en) (Accessed 21 April 2022).
- European Council. “Conclusions of the Tampere European Council”. 15-16 October 1999. (online) [https://www.cvce.eu/en/obj/conclusions\\_of\\_the\\_tampere\\_european\\_council\\_15\\_and\\_16\\_october\\_1999-en-32135242-b375-47fe-adb4-e02ab2432945.html](https://www.cvce.eu/en/obj/conclusions_of_the_tampere_european_council_15_and_16_october_1999-en-32135242-b375-47fe-adb4-e02ab2432945.html) (Accessed: 12 December 2021).
- European Council. “Presidency Conclusions of the European Council meeting in Laeken”. 14 and 15 December 2001. (online) <https://www.consilium.europa.eu/media/20950/68827.pdf> (Accessed: 2 February 2022).
- European Council (a). “European Council meeting (28 June 2018) – Conclusions”. 28 June 2018. (online) <https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf> (Accessed: 21 April 2022).
- European Council (b). “Council Decision (EU) 2018/1031 of 13 July 2018 on the signing, on behalf of the Union, of the Status Agreement between the European Union and the Republic of Albania with regard to the actions carried out by the European Border and Coast Guard Agency in the Republic of Albania”. 13 July 2018. (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018D1031> (Accessed: 10 February 2022).
- European Council (a). “Council Decision (EU) 2020/865 of 26 May 2020 on the conclusion of the Status Agreement between the European Union and the Republic of Serbia with regard to the actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia”. 26 May 2020. (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020D0865> (Accessed: 1 March 2022).
- European Council (b). “Council Decision (EU) 2020/729 of 26 May 2020 on the conclusion of the Agreement on the status between the European Union and Montenegro with regard to the actions carried out by the European Border and Coast Guard Agency in Montenegro”. 26 May 2020. (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020D0729> (Accessed: 3 March 2022).
- European Parliament. “Regulation (EU) 2016/1624 of the European

Parliament and of the Council of 14 September 2016 on a European Border and Coast Guard, 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”. 16 September 2016. (online) <https://www.boe.es/doue/2016/251/L00001-00076.pdf> (Accessed: 3 March 2022).

- European Parliament. “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”. 14 November 2019. (online) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019R1896> (Accessed: 3 March 2022).
- European Parliament. “MEPs greenlight the deployment of Frontex in the Republic of Moldova”. *Press Releases*. 24 March 2022. (online) <https://www.europarl.europa.eu/news/en/press-room/20220323IPR26106/meps-greenlight-the-deployment-of-frontex-in-the-republic-of-moldova> (Accessed: 1 April 2022).
- European Union. “Consolidated version of the Treaty on the Functioning of the European Union”, C 202/75. 7 June 2016 (online) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E077> (Accessed: 14 October 2022).
- Frontex. “What happens outside the European Union often has a direct impact on our safety and security. As part of our effort to prepare the #Frontex international cooperation strategy for the next three years, we met with experts from nearly all EU MS and Schengen Associated Countries”. 16 July 2020, 12:59 p.m. <https://twitter.com/Frontex/status/1283717907600543745> (Accessed: 9 March 2022).
- Frontex (a). “Frontex to recruit new standing corps officers” *News*. 3 August 2021. (online) <https://frontex.europa.eu/media-centre/news/news-release/frontex-to-recruit-new-standing-corps-officers-Zvz12o> (Accessed: 1 April 2022).
- Frontex (b). “Other Partners and Projects” *Non-EU Countries* 2021. (online) <https://frontex.europa.eu/we-build/other-partners-and-projects/non-eu-countries/> (Accessed: 28 March 2022).
- Frontex (c). “Management Board”. 2021. (online) <https://frontex.europa.eu/about-frontex/who-we-are/management-board/> (Accessed 3 April 2022).
- Frontex (d). “Frontex expands presence in Western Balkans with operation in Serbia” *News*. 16 June 2021. (online) <https://frontex.europa.eu/media-centre/news/news-release/frontex-expands-presence-in-western-balkans-with-operation-in-serbia-9WRMiW> (Accessed: 14 April 2022).
- Frontex (e). “Fundamental Rights Office”. *Careers*. 2021. (online) <https://frontex.europa.eu/careers/who-we-are/structure/specific-functions/fundamental-rights-office/> (Accessed 02 April 2022).
- Frontex (f). “We support» *Standing corps*”. 2021. (online) <https://frontex>.

- [europa.eu/we-support/standing-corps/](http://europa.eu/we-support/standing-corps/) (Accessed: 11 April 2022).
- Geddes, Andrew, Maru, Mehari Taddele. “The new pact on migration and asylum and African-European migration diplomacy”, in Sergio Carrera and Andrew Geddes (eds.), *The EU pact on migration and asylum in light of the United Nations global compact on refugees: international experiences on containment and mobility and their impacts on trust and rights*, Florence: European University Institute. 2021: 282-290. DOI: <https://hdl.handle.net/1814/73120> (online) (Accessed 3 February 2022).
  - Hobbing, Peter. “Integrated border management at the EU level”, in Thierry Balzacq, Sergio Carrera (eds.). *Security Versus Freedom?*. Routledge, 2016: 169-196.
  - Hokovský, Radko. “The Concept of Border Security in the Schengen Area”. *Central European Journal of International & Security Studies*, vol. 10, no 2, 2016: 72-93. (online) [https://www.cejiss.org/images/4\\_article.pdf](https://www.cejiss.org/images/4_article.pdf) (Accessed: 1 March 2022)
  - Lanfermann, Friederike. “The European Union’s Border Management. A study about the coordination in its horizontal and vertical dimension”. PhD Thesis, Lund University, Department of Political Science. 2014. (online) <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOID=4448151&fileOID=4457532> (Accessed: 26 February 2022).
  - Lindblom, Sari, Castrén, Joonas. “Implementation of European Union security strategies” in Laine, Jussi; Liikanen, Ilkka and Scott, James (eds.) *Remapping Security on Europe’s Northern Borders*. New York: Routledge. 2021: 85-99.
  - Rudolph, Christopher. “Sovereignty and territorial borders in a global age”. *International studies review*, vol. 7, no 1, March 2005: 1-20. (online) DOI: <https://doi.org/10.1111/j.1521-9488.2005.00455.x> (Accessed: 10 April 2022).
  - Santos Vara, Juan. “The External Activities of AFSJ Agencies: The Weakness of Democratic and Judicial Controls”, *European Foreign Affairs Review*, vol. 20, no. 1. 2015: 118-136 (online) <https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/20.1/EERR2015008> (Accessed: 8 April 2022).
  - Soler García, Carolina. “The European Border and Coast Guard: an evolution compared to Frontex? A provisional assessment”. *Revista Electrónica de Estudios Internacionales*, no. 34, December 2017: 44. (online) DOI: [doi.org/10.17103/reei.34.05](https://doi.org/10.17103/reei.34.05) (Accessed 14 April 2022).