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The European Border and Coast Guard in the framework of the integrated management of external borders after the migration crisis of 2015: strengths and challenges¹².

Abstract

This article reviews the recent history of the management of the European Union's external borders, focusing on the description and analysis of the scenario that emerged from the migration crisis of 2015 in the management of the European Union's external borders. Thus, the role of the European Border and Coastal Agency is described and analysed: Frontex provides a detailed summary of the main applicable legislation and the strengths and challenges it enjoys and faces.

¹ This article does not represent the official position of any of the institutions for which the authors work and their opinions are solely their own and cannot be attributed to any third party or institution.

² We thank the peer reviewers for their comments which have enriched the quality of this article.

Keywords

European Border and Coast Guard, border management, Frontex, European Union

To quote this article:

DE CASTRO GARCIA, A. “The European Border and Coast Guard in the framework of the integrated management of external borders after the migration crisis of 2015: strengths and challenges”, *Journal of the Spanish Institute for Strategic Studies*. 2020, no. 16, pp. 323-344.

Introduction

Schuman said that Europe would not be made all at once, but would be reached through concrete achievements that would first achieve de facto solidarity between the Member States that make it up. This article focuses on the process of European construction and focuses on the European Agency for Border and Coastal Guards, which was born with the vocation of supporting the Member States in the management of operational cooperation at the external borders, going through different evolutionary stages in a period of some fifteen years that has led it to become the only European Union agency with the vocation of a force and security corps, with its own uniformed corps of border guards, with executive powers in the development of its mission, as well as with shared responsibilities with the Member States for the integrated management of the European Union's external borders.

The origin and historical development of Frontex has been developed by various authors including Acosta Sánchez, Santos Vara³ and Fernández Rojo

This article analyses the challenges that the Agency has had to face in its evolution, especially in difficulties associated with the initial reluctance of the Member States to cede part of their sovereignty, understanding the management of external borders as a component of this; the lack of a budget commensurate with the tasks it was required to carry out at different times in its short history, having to remedy these through modifications introduced once and the problems had already arisen, when that same extended budget could have been allocated initially to prevent the emergence of certain threats to border protection; the solidarity of the Member States in providing human resources for the implementation of joint operations, pilot projects or rapid interventions at the border did not always reach the levels required by the Agency to provide adequate operational support to another Member State or States; or the fact that the regulatory changes of the Agency have been preceded, except for the last one, by a migratory crisis in the European Union as a consequence of a high number of illegal crossings at the external borders.

The strengths of the Union and its Integrated Border Management system are also analysed. In particular, the European Union stands out as a geopolitical entity, as well as its united political and economic status in the world, which provides its Member States with a legal, economic, political and social umbrella that allows them to advance their development. As regards borders themselves, common management makes it possible to strengthen and reinforce surveillance measures at the external borders, while abolishing internal controls, and reducing the large number of risks and threats from outside the European Union to manageable limits.

³ SANTOS VARA, J. “La transformación de Frontex en la Agencia Europea de la Guardia de Fronteras y Costas: ¿hacia una centralización en la gestión de las fronteras?” *Revista de Derecho Comunitario Europeo*, 59, 143-186. 2018.

Schengen area and refugee crisis (2015)

In the context of the Syrian civil war (2011–present) and the framework of permanent instability in Afghanistan, together with the situation in Iraq after the arrival of the DESA in 2014, there was an increase in the number of illegal crossings detected on the external borders of the European Union, becoming the prelude to the refugee crisis in Europe in 2015.

The conflict in Syria meant that millions of internally displaced persons were looking for safer areas in the face of increased tensions in the internal armed conflict. In addition, there was an increase in border crossings to countries in the region, in particular Turkey, where a total of just over 1.8 million Syrian refugees were concentrated⁴ and Iraq, where some two hundred and fifty thousand have been living since 2015⁵.

At the beginning of 2015, a series of shipwrecks of boats carrying immigrants with the intention of reaching European Union territory by crossing the Mediterranean Sea were recorded, resulting in 1,850 deaths or missing persons in the first six months of the year⁶.

The aforementioned situation had a direct effect on the measures that had to be adopted at European level to stop the number of boats that, departing from the coasts of Libya or Turkey mainly, tried to reach the coasts of the countries of the European Union, specifically Italy and Greece, while at the same time managing to rescue the immigrants travelling on board these boats.

To this end, the European Agency for the Management of External Borders (Frontex) saw its budget increase by 300%⁷ with reference to the maritime operations it had in place, both in the central area of the Mediterranean Sea and in the Aegean Sea off the coast of Turkey, with a total budget of 143.3 million euros in 2015, compared to that of 2014 which amounted to 93.4 million, representing an increase of just over 53%⁸.

The accumulation of immigrants in Greece, which registered a total of 885,386 illegal border crossings in 2015, and the lack of resources to enable them to remain in that country under minimum living conditions, led to an increase in the number of these immigrants trying to leave Greece by crossing its external border with Northern Mac-

4 United Nations High Commissioner for Refugees. (2015, 9 July). UNHCR: Total number of Syrian refugees exceeds four million for first time. Retrieved 4 April, 2020, from <https://www.unhcr.org/news/press/2015/7/559d67d46/unhcr-total-number-syrian-refugees-exceeds-four-million-first-time.html>

5 <https://data2.unhcr.org/en/situations/syria/location/5>

6 <https://www.unhcr.org/5592bd059.pdf>

7 <https://www.unhcr.org/5592bd059.pdf>

8 Frontex. (nd). Frontex Annual Report 2015. Retrieved 4 April, 2020, from https://frontex.europa.eu/assets/Key_Documents/Annual_report/2015/General_Report_ES.pdf

edonia with the intention of continuing to cross the Western Balkan countries until they reached the external borders of the European Union again, to countries such as Croatia or Hungary, but with the ultimate aim of reaching Germany or Austria, countries in which they found better living conditions for their situation as refugees, with the vast majority intending to apply for asylum at the very moment they arrived in these countries, renouncing to do so in the Member States with an external border or in those they had crossed, despite the fact that they are countries that comply with the European regulations contained in the Dublin III Regulation which obliges asylum seekers to register their procedure in the country of entry, thus preventing the possibility of them choosing the country on the basis of their preferences or their possibilities of receiving a positive administrative response.

The big problem arose when the Western Balkan countries, such as Northern Macedonia, began not only to allow the transit of immigrants leaving Greece through their territory, but even made available means of transport to achieve this objective⁹, which generated a chain effect in all the countries of this region that brought a great migratory pressure at the doors of countries such as Hungary, Austria, the Czech Republic or Germany, which reacted by re-establishing controls at their internal borders to try to block the secondary movements of this flow of immigrants or asylum seekers, putting a palpable pressure on the Schengen area.

The analysis that followed showed that none of the countries affected by this migration crisis had the capacity, on their own, to contain a migratory flow of these characteristics, and that the only solution was a common response at the European level, which led inexorably to the need for a profound reform of Frontex, as one of the stellar measures to avoid the repetition of this type of migration crisis in the future¹⁰.

In the communication issued by the European Commission in May 2015, as a first reaction to the migratory situation that was developing in the European Union, questions were already being addressed regarding the return of illegal immigrants to their countries of origin, the strengthening of cooperation with third countries, the establishment of liaison officers outside the European Union, the reinforcement of Frontex in different areas or the establishment of a European system of border guards; although the most relevant point is represented by the fact that we are already beginning to talk about shared management of European borders, that is, that responsibility is no longer considered to fall solely on the Member State concerned, but on all of them, in addition to Frontex.

“A shared management of the European border: The increase in action in the Mediterranean highlights the reality that the management of exter-

⁹ BERTELSMANN STIFTUNG, *Escaping the escape: Towards solutions to the Humanitarian Migration Crisis*. Berlín, Bertelsmann Stiftung, 2017

¹⁰ DE CASTRO, A. *EUNAVFOR MED: securitization of borders?*. Atenas, Research Institute for European and American Studies (RIEAS): 2015.

nal borders is increasingly a shared responsibility. As well as a European system of border guards, this would cover a new approach to the functions of coast guards in the EU, examining initiatives such as the sharing of confiscated assets, joint exercises and dual use of resources, as well as the possibility of moving towards a European coast guard service”¹¹.

In addition to this, the former President of the European Commission, Jean Paul Juncker, in his State of the Union address went so far as to say: “The Commission said it in May and I said it during my election campaign: Frontex needs to be given a strong push to become a fully operational European Coast and Border Guard system”. All these proposals from the European Commission, as well as other issues that were included in subsequent negotiations, eventually resulted in the adoption of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the 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.

Thus, the name of the new Regulation adopted in 2016 indicates that the Agency will be called the European Agency for Border and Coastal Guards, and the previous name of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union will disappear, although it should be made clear that it will continue to have the same legal personality, and the same abbreviation will continue to be used as for the previous name: Frontex.

The new name of the Agency is one of the changes in its mandate, since it had been indicated for some time that the active participation of national authorities with responsibility for coastal protection, involved in the protection of the EU’s external borders, was missing from Frontex’s activities. It is important to emphasise that a large part of the joint operations, pilot projects and rapid border interventions are carried out in the maritime environment and it therefore makes even more sense for the Agency to have specific coastguard functions. By way of example, the Schengen area is delimited by 42 673 km of maritime borders and 7 721 km of land borders¹², whereas the EU’s external borders are slightly more than 62 000 km long and the land borders are 17 000 km long. We must clarify that the EU’s Border and Coast Guard will be composed not only of the Agency, but also of those authorities in the Member States with responsibilities for border management, including coast guards carrying out tasks related to external border control.

¹¹ European Commission. (2015, 13 May). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Migration Agenda. Retrieved 4 April, 2020, from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2015:0240:FIN:ES:PDF> page 20.

¹² European Commission. (2019). La Europa sin Fronteras. El Espacio Schengen. Retrieved 4 April, 2020, from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr3111126_es.pdf

It will therefore be the Border and Coast Guard that will be responsible for the integrated management of the European Union's borders, which should be understood to include border control in the following areas:

1. Immigration. Regular and irregular.
2. Cross-border crime.
3. Terrorism.
4. Trafficking in human beings or smuggling.
5. Search and rescue operations for persons in distress at sea in the framework of operations implemented and coordinated by the Agency at maritime borders.
6. Risk analysis, both of internal security and of threats that could have an effect on the functioning or security of external borders.
7. Cooperation between Member States, with coordination by the Agency.
8. Cooperation both between the national authorities responsible for protecting the external borders and between these authorities and the institutions, bodies, offices and agencies of the European Union, including the regular exchange of information using existing systems for this purpose, including the European Border Surveillance System (EUROSUR).
9. Cooperation with third countries, focusing on those countries of origin or transit for immigrants arriving in Europe through the different routes.
10. Measures of a technical or operational nature which, within the Schengen area, relate to border control and to combating illegal immigration and cross-border crime.
11. Return of third-country nationals in accordance with the relevant administrative return decision.
12. Use of the most advanced technology in any field that is relevant for better border control.
13. Quality control mechanism, with specific relevance to the Schengen evaluation mechanism, both at national and European level, which help to ensure the correct application of European legislation with regards to border management.
14. And finally, the solidarity mechanisms that exist at European Union level.

The risk analyses carried out until then by the Agency had to be adapted to the new requirements of this Regulation, and had to focus not only on migratory flows, but also on all aspects related to integrated border management. In addition, the Agency will have to carry out assessments of existing vulnerabilities at the external borders of the Member States, evaluating not only their capacity, but also their preparedness to face possible threats at these borders.

The Frontex Risk Analysis Unit was tasked with developing a new methodology for assessing vulnerabilities, which started to be applied in early 2017, by sending Member States a form with a set of questions regarding certain aspects of their capacities in relation to the protection of their external borders, to be answered within a given timeframe and subsequently analysed by the analysts of the Frontex Risk Analysis

Unit, in constant communication with Member States' representatives in order to methodologically refine the data provided and how to interpret it.

This analysis contains the identification of certain vulnerabilities with regards to each Member State, with the Executive Director of the Agency being responsible for making recommendations to the Member States to remedy these vulnerabilities. This methodology includes other tools such as simulated exercises or the assessment of emerging threats. No further details can be provided in this regard, as the methodology as a whole, the results of the analyses or any of the tools implemented are reserved matters, which can only be communicated to the European Parliament, the Council, the European Commission and the Member State concerned at least once a year.

“This made it possible to facilitate the first assessments in April 2017, exactly one year after the problematic concept of vulnerability assessment was outlined. The 28 baseline assessments were carried out in collaboration with the Member States and resulted in 33 recommendations addressed to 21 Member States”¹³.

The new Regulation brought further innovations and changes affecting Frontex, but in particular the Risk Analysis Unit, with regard to the processing of personal data obtained during joint operations, pilot projects and rapid interventions at the borders. It is empowered to collect, process and analyse such data provided that they concern individuals who can reasonably be expected to have been involved in cross-border criminal activities; relating to persons who have crossed the external borders of the European Union illegally, and collected by the Border and Coast Guard in the course of their duties or as part of immigration management support teams; vehicle registration numbers, other vehicle identification numbers, telephone numbers or boat identifiers, provided that such data is related to one of the persons subject to investigation, with the aim of investigating and analysing both the migratory routes and the modus operandi used by the organised groups engaged in illegal immigration, as well as other criminal activities with a cross-border component.

Within the Frontex Risk Analysis Unit, a team called PeDRA (*Processing Personal Data for Risk Analysis*)¹⁴ was established, responsible for the processing, analysis and distribution of personal data obtained in the course of the Agency's activities, with the main characteristics being the confidentiality of its actions, its permanent contact with the Agency's Data Protection Officer, the sending of packages of personal data to the European Police Office (Europol) and the use of the classified European networks for

¹³ Frontex. (2018). Frontex Annual Report 2017. Retrieved 5 April 2020, from https://frontex.europa.eu/assets/Key_Documents/Annual_report/2017/CAAR_2017_adopted_ES.pdf

¹⁴ Frontex. (2016, 22 November, b). News Release. Frontex to begin collecting personal data in Greece on suspected criminals. Retrieved 5 April, 2020, from <https://frontex.europa.eu/media-centre/news-release/frontex-to-begin-collecting-personal-data-in-greece-on-suspected-criminals-gJzx8D>

the transmission of restricted information, through the use of the SIENA application (*Secure Information Exchange Network Application*).

Although Frontex is based in Warsaw there is a need for a representative presence elsewhere, and this is reflected in the new rules in the form of liaison officers to be deployed by the Agency, not only in third countries, but also in the countries of the European Union. The creation of a Network of Liaison Officers, within the structure of Frontex, was soon proposed and arrived, as soon as the first liaison officers were sent to their new destinations. Liaison officers who are posted in one of the countries of the European Union will also have a relevant role with regards to data exchange in the area of the development of vulnerability assessment exercises, facilitating the exchange of data within the framework of these exercises, as well as permanent and fluid contact between the new Vulnerability Assessment Unit and the Member States.

As a clear extension of the Agency's mandate, it is authorised to implement operations in third countries, with the prior signing of a Memorandum of Understanding, brokered and agreed by the European Commission. The first of these operations started on 21 May 2019, on the Albanian-Greek border, with a total of 50 border guards, 16 patrol vehicles and 1 surveillance vehicle equipped with thermal vision, deployed on Albanian territory to support the authorities in border control and the fight against cross-border crime¹⁵.

Among the novelties introduced by this new regulation is the obligation for Member States to contribute, according to a pre-established quota, to the permanent quota of 1,500 border guards and other competent personnel for deployment in rapid border interventions, constituting what is known as the rapid reaction quota, which will be complemented by additional equipment from the European Border and Coast Guard if necessary. The Agency will also manage a set of technical assets, either owned by the Agency itself or co-owned with one of the Member States, which must always be available for possible deployment in Frontex activities, in support of Member States or operations in third countries, this being the case for the above-mentioned operation in Albania, where the patrol vehicles provided are owned by the Agency¹⁶

From 2006 until the entry into force of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, Frontex cooperated and coordinated return activities to third countries when one or more EU Member States requested it, although it did not have the capacity to organise its own return flights.

The most relevant change with 2008/115/EC was that the Agency has the capacity to carry out its own return interventions, while continuing its coordination and organisational activities in support of Member States. In addition, the Agency should

15 Frontex. (2019, d). *Tu derecho a presentar una queja ante Frontex*. Retrieved 5 April, 2020, from https://frontex.europa.eu/assets/Complaint_mechanism/2020/Complain_Mechanism_Spanish.pdf

16 Frontex (2019, b). News Release. Frontex rolls out its own patrol cars in operations. Retrieved 5 April 2020

establish teams of return monitors, escorts and specialists who will participate in such operations and be included in the European Return Action Teams during this activity.

The area in which the Agency is not involved is the provision of information to Member States for the adoption of return decisions, as these national procedures are harmonised at European level through the provisions of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

All the above led to the establishment, within the structure of Frontex, of the *European Centre for Returns* which not only organises and coordinates return flights but also assists Member States in fully identifying and documenting third-country nationals subject to a return decision, has a database of experts to act as return monitors and IT applications for the management of return activities. It also provides specialised training and coaching to experts from the Member States and facilitates the exchange of information on return issues.

As a sign that respect for fundamental rights in all activities carried out by the Agency is an intrinsic part of integrated border management, the new regulation includes the obligation for the Agency to set up a complaint mechanism¹⁷, in cooperation with the Fundamental Rights Officer, to facilitate the availability of a channel to report any breach of fundamental rights that may have occurred in the framework of one of the operations of the Agency. The official will therefore be responsible for examining these complaints, registering those which they consider admissible and forwarding them to the Executive Director of the Agency, as well as informing the Member States concerned if the complaint concerns one of their members of the teams of border and coastal guards. The fact that a complaint of the above-mentioned nature is presented does not imply, in any way, a limitation for the affected person to initiate any other procedure with the objective of preserving their subjective rights before other instances.

In 2016 we witnessed a further increase in the Agency's budget, which reached a total of 232.2 million euros, of which more than 70% was devoted to the implementation of operational activities in support of the Member States. With regards to the Agency's personnel resources, for the period from 2016 to 2019, the extension to a total of 1 000 employees has been approved, although as of June 2020, the number of employees based at the Agency's headquarters in Warsaw has not yet reached 800. This is largely due to the difficulty of managing a large number of selection processes in a short space of time, in addition to the specific nature of the jobs being called for, which makes it difficult to achieve a high number of candidates who meet the requirements for certain posts.

17 Frontex. (2019, d). *Tu derecho a presentar una queja ante Frontex*. Retrieved 5 April, 2020, from https://frontex.europa.eu/assets/Complaint_mechanism/2020/Complain_Mechanism_Spanish.pdf

The European Border and Coast Guard Agency. First European Agency conferred as a Security Force and Corps

As stated by Fernandez-Rojo¹⁸, the new regulation “confers for the first time executive and coercive powers on the statutory body of the European Border and Coast Guard”.

The conclusions agreed by the European Council on 20 June 2019 adopt the new Strategic Agenda of the European Union for the period 2019-2024, focusing its objectives on four priorities:

1. Protecting citizens and freedoms.
2. The development of a solid and dynamic economic base.
3. Achieving the construction of a climate-neutral Europe, i.e. more ecological, fair and social.
4. Promotion of European interests and values at international level.

Within the first of the objectives set by this agenda, a declaration of intent is made which, in turn, marks the destiny of the new European Agency for Border and Coastal Guards, Frontex, going so far as to say that

“We must guarantee the integrity of our territory. We need to know who is accessing EU territory and we need to decide on that access. Effective control of the external borders is a prerequisite for ensuring security, maintaining public order and ensuring the proper functioning of EU policies, in line with our principles and values”¹⁹.

The European Council continues with the evolution of this idea, providing some main features that we will see have been developed in the new Frontex regulations, while there is total determination with respect to the development of an effective global migratory policy, highlighting the need to continue along the path of cooperation with the countries not only of origin but also of transit of immigrants arriving at the external borders of the European Union, in order to combat irregular immigration and human trafficking, while reinforcing effective returns; all the foregoing complemented by the fight against terrorism and cross-border crime, the adoption of appropriate measures to ensure the proper functioning of the Schengen area or a consensus on the reform of the Dublin Regulation (Regulation (EU) No. 604/2013), among other issues.

18 FERNÁNDEZ-ROJO, D. “Los poderes ejecutivos de la Guardia Europea de Fronteras y Costas: del Reglamento 2016/1624 al Reglamento 2019/1896”. *Revista Catalana de Dret Public* 60, 181-185. 2020. <https://doi.org/10.2436/rmdp.160.2020.3385>. p. 193.

19 European Council. (20 June 2019). *Conclusiones adoptadas por el Consejo Europeo en la Reunión del Consejo Europeo de 20 de junio de 2019*. Retrieved 2 May 2020, from <https://data.consilium.europa.eu/doc/document/ST-9-2019-INIT/es/pdf> Page 8

The structure of Frontex, established after the entry into force of Regulation (EU) 2016/1624 was not consolidated and the objectives set out in that regulation were not achieved, nor was the Coast Guard factor adequately developed as developed by Juan Santos Vara, which highlights that although elements of SARs have been included and were not developed, security circumstances may make this inevitable.

Following the above, on 13 November 2019 Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard was approved, repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624. It is important to note that the approval of this regulation was not a direct consequence of a serious migratory crisis immediately preceding it, but rather a natural evolution of the previous regulation of 2016, and this as a reaction to the main difficulties encountered in its complete implementation, in an agile and effective manner, in a short period of time.

The articles of the new Regulation (EU) 2019/1896²⁰ begin with the reference that the European Border and Coast Guard is created with a clear objective, which is to guarantee an integrated European management of the European Union's external borders (*IBM - Integrated Border Management*). In order to achieve this ambitious objective, this new regulation establishes that this concept should include elements such as border control, in all its extension, from measures for legal crossing, prevention measures, detection of cross-border crime, or identification of vulnerable persons or persons in need of international protection; search and rescue operations (SAR); risk analysis, both as regards internal security and the security of external borders; cooperation and exchange of information between the various authorities in each Member State with responsibility for the protection and control of external borders, in addition to those whose tasks include the return of foreign nationals to their countries of origin; cooperation and exchange of information, within the scope of the Regulation, not only between Member States but also between Member States and the European Border and Coast Guard Agency; cooperation at European Union level between the bodies, agencies and institutions with competence in the areas covered by the Regulation; cooperation with both the countries of origin and the countries of transit of illegal immigrants arriving in the European Union; adoption of measures within the Schengen area aimed at strengthening border control and combating cross-border crime; return of third-country nationals who have been the subject of a return decision; use of the latest technology; ensuring the correct application of Union law with regard to border management, through the use of a quality mechanism, particularly the Schengen evaluation system, the assessment of vulnerabilities or even national mechanisms; all of this complemented by solidarity mechanisms, with a particular impact on those for financing the European Union.

²⁰ Regulation 2019/1896/EU of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations 2013/1052/EU and 2017/1624/EU, OJ L 295, 14.11.2019 (hereinafter the Frontex Regulation), accessible at: <https://eur-lex.europa.eu/legal-content/ES/TXT/?qid=1574327664954&uri=CELEX:32019R1896>

This extensive description of the content of European integrated border management is complemented by the general elements of its implementation, which turn out to be fundamental rights, education, training and research and innovation.

The European Border and Coast Guard Agency had in recent years encountered real obstacles in increasing the number of its staff, the main problems being identified for new recruitment with unattractive conditions, particularly for candidates from EU countries with a higher standard of living, which have made it very difficult to maintain a balance between the nationalities of these employees.

Other relevant factors have been added to the above, such as the speed with which the Agency wanted to increase the number of its employees, which resulted in difficulties for the human resources unit, which did not have enough people to effectively manage all the selective processes that were set in motion in short periods of time, with the consequent delays in the resolutions of these selective processes. These delays meant that some of the candidates, who had been selected with such difficulty, opted to try to get jobs in other European agencies with which there is a strong overlap in candidate profiles, such as Europol or the European Asylum Support Office (EASO).

Another difficult procedure for the Agency is to get Member States themselves to authorise the secondment of Seconded National Experts (SNE) and, if they do so, to ensure that they are retained for a long period of time, as SNEs continue to be paid by their Member State and only receive the corresponding accommodation and subsistence allowance from Frontex.

All the foregoing appears to have motivated the legislator to approve a permanent corps (Standing Corps) of the European Border and Coast Guard that will have a capacity of up to 10,000 operational personnel, and whose staffing will have to be completed in the period from 2020 to 2027.

But this permanent corps of border guards will not only consist of staff directly recruited by the Agency, including temporary agents, contract agents and national experts seconded to Frontex headquarters in Warsaw, but Member States will also be obliged to provide a certain number of experts in three other ways. The first of these is as long-term seconded personnel, up to a maximum of 4 years, as well as experts for short-term deployments, which will not extend beyond a period of 4 months within a calendar year, the third category being that of experts who will be part of the rapid reaction reserve.

Another relevant issue with regards to short-term experts is that all such experts provided by Member States must be identified and registered in the OPERA database, and linked to one or more job profiles, and may also be interviewed to verify their eligibility to participate in Frontex operational deployments.

With regards to long-term secondment experts, the same procedure will continue, i.e. candidates proposed by Member States will have to undergo a selection process consisting of at least one competition phase and one competition phase, in

which they will have to take a theoretical and practical test in addition to a personal interview.

The first selective process for the permanent corps of the European Border and Coast Guard is underway to cover a total of 700 temporary and contract agent positions that should be deployed in the different operational activities of the Agency by January 2021²¹ although the COVID-19 pandemic has altered the timing of the process and there may be some delay in its final incorporation.

In any event, this does not mean that the Agency will directly recruit 10,000 border guards, but rather that this number must be broken down in accordance with the annexes to the regulation, from which we can infer that by 2027, the Member States must be providing a total of up to 1,500 experts on long-term secondment, 5,500 for short-term deployments, in addition to another 1,500 experts who will form part of the rapid reaction reserve, and who must be made available from the outset.

It is expected that these figures may undergo some modification in the coming years, in order to adapt the structure of the Agency to the reality of each moment, and as a result of the review procedure provided for in the regulation, which will take place by 31 December 2023 at the latest.

It has become clear that the new European Border and Coast Guard is conceived as a security force and corps, whose members will carry out their duties wearing the Agency's own uniform, or that of its Member States in cases of long or short-term secondment, but with the addition of a badge identifying them as part of the Frontex deployment. In fact, as of November 2020 there are already officials in training at three academies in two member countries, in uniform and receiving their own border guard training.

In addition, most services in which they wear uniforms will carry their statutory firearms and it is therefore that the new regulation has expressly regulated the use of force and weapons by their statutory personnel, dedicating the entirety of Annex V to it, detailing legal concepts such as the principle of necessity, the principle of proportionality, or the so-called duty of care.

Although Frontex already had a research and innovation unit in its structure, the new regulation provides that it will have the duty to implement those sections of the European Union's Research and Innovation Framework Programme that are linked to border security. The current programme is known as Horizon 2020, and its basic pillars are: "Excellent Science", "Industrial Leadership" and "Challenges to Society". This specific funding instrument will allow the brightest ideas to reach the market faster and to be implemented in cities, hospitals, factories, shops and homes as soon as possible.

The Agency's responsibility will be to manage certain stages of the implementation phase of certain programmes, as well as certain phases of the life cycle of specific

²¹ Frontex. (2019, e). News Release. *We are recruiting Frontex border guards*. Retrieved 3 May 2020, from <https://frontex.europa.eu/media-centre/news-release/we-are-recruiting-frontex-border-guards-qd1BSA>

projects, as approved by the Commission; it will also have to adopt budgetary and operational implementation instruments necessary for managing the programme; in addition, it will provide support in the implementation of programmes, and may carry out its own pilot research projects related to its mandate, and in accordance with this regulation, it must publish detailed information on them. In fact, on Frontex's own website you can find innovation and development projects carried out before the entry into force of this new regulation, although using different funds, either belonging to the Agency or linked to European Union projects, such as the *Copernicus* programme, in which the Agency has been collaborating since 2014.

The Agency will have to ensure that the central unit SEIAV (European Travel Information and Authorisation System), as provided for in Article 7 of Regulation (EU) 2018/1240, is set up and becomes operational; as a novelty, it will also be responsible for operating the False and Authentic Documents Online (FADO) system, which was established under Joint Action 98/700/JHA. With regards to the SEIAV, the Agency plans to have its structure incorporated into Frontex's own, with a total of 250 employees, and a team dedicated to its development and implementation. With regards to the FADO system, Regulation (EU) 2020/493 has just repealed Joint Action 98/700/JHA, stating in Article 3 that it is the Border and Coast Guard Agency that will ensure the proper functioning of the system, its functions being to feed the system with contributions made by the various Member States or other authorised users.

The new regulation also provides that a secure network should be set up for the exchange of information not only between the national authorities of the Member States, but also between the Member States and the Agency, as well as to serve as a tool for operational cooperation between all of them. This new secure network will also be used for the exchange of information with authorities in third countries where Frontex is active, although it will be partially limited in terms of the type of data and the extent to which it can be shared.

This secure network, referred to in the new regulation, will be based on the European Border Surveillance System (EUROSUR), thus repealing Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing a European Border Surveillance System (Eurosur). The new EUROSUR is established as

“...an integrated framework for the exchange of information and for operational cooperation within the European Border and Coast Guard to improve situational awareness and enhance operational capabilities for the purpose of border management, in particular to detect, prevent and combat illegal immigration and cross-border crime, and to help ensure that the lives of migrants are protected and saved”. (Regulation (EU) 2019/1896, p.29)²².

22 European Union. (13 November 2019). Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624 Official Journal of the European Union L 295, 13 November 2019

Although the responsibility for this new secure communication network lies with the Agency, it will be the Commission, in close cooperation with Frontex, that will adopt and provide a practical guide for the proper implementation and management of EUROSUR, whose limited cooperation is highlighted by Acosta in one of his contributions ²³.

In order to have a proper understanding of the situation, the national situation maps will have different levels of information, namely one concerning events related to unauthorised border crossing incidents and cross-border crime; an operational level containing all information related to the operations of the Agency, as contained in the operational plans; an analytical level reflecting the different impact levels assigned to each of the areas of the external borders of the European Union, furthermore containing analytical reports provided not only by Frontex but also by the Member States, as well as any other information that could be of support.

The national situation maps will be the basis for the preparation of the European situation map, to which will be added information gathered by the liaison officers of the Agency, the delegations, operations and missions of the European Union, authorities of third countries in the context of bilateral or multilateral agreements, other bodies and agencies of the European Union, international organisations competent according to this regulation, as well as other sources, such as open sources.

Within the EUROSUR regulation we find the EUROSUR Merger Services, through which the Agency will provide support to the Member States, the Commission, or for itself, by providing relevant information on the situation at the external borders, the pre-frontier area or on third countries.

These services use state-of-the-art technology to make it possible to obtain data relating to ships or other vessels that could be used to facilitate illegal immigration or to commit crimes of a cross-border nature; selective monitoring of ports and coastal areas of third countries considered to be of origin or transit for illegal immigrants arriving in the European Union; monitoring and analysis of designated areas at air, sea or land borders; environmental assessment of maritime areas, as well as at land borders; monitoring of the media, public information and analysis of Internet activities, it seems that here the regulations could be referring to the implementation of an open-source intelligence service; in addition to the analysis of information obtained from large-scale information systems for the detection of routes and *modus operandi* for the facilitation of illegal immigration.

²³ ACOSTA SANCHEZ, M.A. “El sistema europeo de vigilancia de fronteras (EUROSUR): a vueltas con la participación de Reino Unido en Schengen - Sentencia del Tribunal de Justicia de la UE, de 8 de septiembre de 2015, España C. Parlamento y Consejo”. *Revista General de Derecho Europeo* 39 (2016).

Strengths and challenges

In terms of strengths, the current European Borders and Coasts Agency has, since its inception, been the mainstay of the viability of maintaining the Schengen area: the European Union's area of freedom, security and justice. In view of the development of the Agency in a relatively short space of time, taking into account the pace of the European machinery, the continuous strengthening of its mandate and competences in the management of external borders, the clear link between the changes undergone by the Agency and the moments of migratory crisis faced by the European Union, as well as the undeniable fact that the Agency has been the remedy for the maintenance of the Schengen area, with the abolition of internal borders and the strengthening of external borders, it seems that we are in an advantageous position to be able to state that, if it continues to grow and evolve hand in hand with the European institutions, it could even become a solution for the maintenance of the Schengen area as we know it today although, for this, it still has to go through new stages of maturity, perhaps to the point where the European Agency for Border and Coastal Guards is completely self-sufficient. It is evident that in order to arrive at this last paradigm we must speak of the future need for more far-reaching legislative reforms that would even affect the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

The European Border and Coast Guard Agency, in its continuous evolution, seems to have become aware of the problems of the past, and taking some advantage of the privileged position it currently holds, mainly due to the European Union's Strategic Agenda for the next institutional cycle, it does not maintain a static position waiting for the European Commission to promote future changes in its regulation, but, without even having achieved the objectives set by the most recent regulation, Regulation (EU) 2019/1896, it already seems to be focusing on new challenges or, at least that is what can be extrapolated from the statements of its Executive Director included in the 2019 report, in which we can read the three strategic objectives for the future.

“We need to know so that we can assist Member States at the borders and, on the basis of that knowledge, build capacities to adapt our operational response”.

This sentence, which is *a priori* simple, seems to be a real statement of intent for the future that the Agency wishes to pursue, and we will try to break it down below.

With reference to “knowledge” we can sense that the Agency, although it can be in some sense satisfied with the current mechanisms in place, seeks access with fewer limitations to certain data with regards to the situation at the external borders of the various Member States; in addition to the collection of data and information concerning incidents related to illegal border crossings and cross-border crime, it would be desirable to amend the rules on the collection, management and retention of personal data obtained not only in the course of the Agency's activities, but from any available source, which would enhance the position of the Agency as a law enforcement agency; it is clear that access by the Agency's experts, those who need it for the performance

of their tasks, to databases such as the Schengen Information System II, the national databases of the Member States where they are deployed, the SEIAV database or even international databases such as Interpol, would make the Agency's border guards a real added value for the country where they are deployed.

We appreciate that the word “assist” implies that the Agency should be in a position to provide assistance to the Member States that need it, which implies having full executive capacities that would allow the Agency to provide such assistance even when the Member States have not requested it, i.e. the decision to implement an activity of the Agency could, in the future, not be completely left to the decision of the Member State concerned, but could be proposed on the Agency's own initiative and imposed, if deemed appropriate, by the European Commission, reaching this conclusion not through mere speculation, but because this system was already proposed by the Commission, although amended by the European Parliament in recital 32 of the report on that proposal²⁴, which included that such an initiative of the Agency could be given but that it should have the approval of the Member State concerned.

And if, on the basis of all this new knowledge, the Agency intends to “create” capabilities in order to adapt its operational response, we would like to see the idea of going somewhat beyond the current mandate, with the creation of new capabilities which, since they cannot be addressed individually by each of the Member States owing to their imbalance between cost and efficiency, would make the Agency indispensable to sustaining the integrated European management of the external borders. In this regard, we can think of questions relating to new technologies for the control of external borders, for example, biometric recognition of persons, or the application of artificial intelligence for the handling of large amounts of data generated at European level, among many other advances on which the Agency can work, as it has a European budget for this purpose.

In terms of challenges, during this article we have detailed a large number of legal and operational innovations that will make it possible to ensure better integrated border management processes. However, the correct implementation of all these new developments introduced by the new regulation of the Border and Coast Guard Agency will require an extension of the annual budget of the Agency.

While the budget of the European Union²⁵ increased by 0.6% for 2020, the one approved for Frontex increased by 32.4% compared to 2019, or 101.4 million euros, mainly for the development and implementation of a permanent corps of border guards.

24 European Parliament. (12 February 2019). *Report on the proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council (COM(2018)0631 – C8-0406/2018 – 2018/0330(COD))* Retrieved 10 May, 2020, from https://www.europarl.europa.eu/doceo/document/A-8-2019-0076_EN.html

25 Council of the European Union. (10 July 2019). 2020 EU budget: Council agrees its position Retrieved 3 May 2020, from <https://www.consilium.europa.eu/en/press/press-releases/2019/07/10/2020-eu-budget-council-agrees-its-position/>

Once again, the Member States have agreed to give a major boost to the Agency, which is a clear sign of the importance it has gained in the European Union, becoming a benchmark for the protection of the European Union's external borders, as well as the main guarantor of the continuity and strengthening of the Schengen area.

What is most worrying, and what seems to have driven the various regulations of the Agency, is the fact that in the face of a migratory crisis the reality has become that the Member States, individually, do not have sufficient resources to carry out integrated management of their external borders, which in turn means that the viability of the Schengen area, which must compensate for the risk of abolishing internal borders with control measures at its external borders, is being called into question.

This has been developed by Fernandez-Rojo²⁶ who states that it is “difficult [...] to achieve a balance between the design of an effective integrated strategy for border management and the reluctance of Member States to confer operational powers directly linked to their core sovereignty” in what is perhaps the greatest difficulty for the efficiency of the project.

The way in which the EU institutions have found to alleviate these shortcomings at the external borders is by extending the mandate and responsibilities of the European Border and Coast Guard Agency, enhancing its structures and mechanisms so that it can be in a position to provide those resources that Member States may lack in the face of migratory crisis situations. However, it does not appear that the Agency has yet reached this stage of maturity, although the latest regulations can be considered promising in this respect, taking into account the creation of a permanent corps of border guards, the co-responsibility for integrated European management of external borders, the promotion of cooperation with third countries and international institutions, or the creation of the European Travel Information and Authorisation System (SEIAV) in its structure.

Conclusions

The European Union's border management, through *Integrated Border Management*, is one of the key elements of the Area of Freedom, Security and Justice whereby most attention is devoted to external borders after having removed internal border controls.

This shows high levels of trust, and therefore solidarity, between the countries of the Schengen Area but, at the same time, a need to have an institution like Frontex that can identify and monitor the needs for the correct protection of the external bor-

26 FERNÁNDEZ-ROJO, D. “Los poderes ejecutivos de la Guardia Europea de Fronteras y Costas: del Reglamento 2016/1624 al Reglamento 2019/1896”. *Revista Catalana de Dret Public* 60, 181-185. 2020. <https://doi.org/10.2436/rcdp.i60.2020.3385>. page 193

ders, and even, increasingly, take on responsibilities that were traditionally reserved for the Member States alone.

This article has focused on strengths for the European model, in particular the importance of achieving common objectives through the solidarity efforts of the Member States, since, as has been seen during the management of major migratory crises in the past, none of the Member States has the capacity to carry out such comprehensive management of the external borders individually, requiring assistance that has materialised through Frontex.

As for the challenges, most of them are being met, increasing Frontex's funding and reducing suspicions about the loss of sovereignty -border control being a basic element of it- on the basis of several historical facts, most notably the refugee crisis of 2015.

The new *Standing Corps* will be a firm and decisive step, which will be followed by a number of steps to keep the area of freedom, security and justice in full shape.

Bibliography

- ACOSTA SANCHEZ, M.A. "El sistema europeo de vigilancia de fronteras (EURO-SUR): a vueltas con la participación de Reino Unido en Schengen - Sentencia del Tribunal de Justicia de la UE, de 8 de septiembre de 2015, España C. Parlamento y Consejo". *Revista General de Derecho Europeo* 39 (2016)
- ACOSTA SANCHEZ, M.A. *Reglamento 2019/1896/UE sobre la guardia europea de fronteras y costas: ¿Frontex 3.0? Documento de Opinión III/2019*. Instituto Español de estudios estratégicos. 2019.
- BERTELSMANN STIFTUNG, *Escaping the escape: Towards solutions to the Humanitarian Migration Crisis*. Berlín, Bertelsmann Stiftung, 2017
- DE CASTRO, A. *EUNAVFOR MED: securitization of borders?* Atenas, Research Institute for European and American Studies (RIEAS): 2015.
- DE CASTRO, A., & MATEI C. (2016). *Las fronteras exteriores de la Unión Europea. Crisis de los refugiados y Brexit: Schengen ante la encrucijada*. *Revista Temática - CAEN* (Centro de Altos Estudios Nacionales – Escuela de Posgrado), (2), 185–204.
- COMISION EUROPEA. (2014). Horizonte 2020. *Programa Marco de Investigación e Innovación. Recuperado 2 mayo, 2020*, de https://ec.europa.eu/programmes/horizon2020/sites/horizon2020/files/H2020_ES_KI0213413ESN.pdf
- COMISION EUROPEA. (2015, 13 mayo). *Comunicación de la Comisión al Parlamento Europeo, al Consejo, al Comité Económico y Social Europeo y al Comité de las Regiones con respecto a Una Agenda Europea de Migración*. Re-

cuperado 4 abril, 2020, de <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2015:0240:FIN:ES:PDF> página 20.

COMISION EUROPEA. (2019). *La Europa sin Fronteras. El Espacio Schengen. Recuperado 4 abril, 2020*, de https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr311126_es.pdf

CONSEJO DE LA UNIÓN EUROPEA. (2019, 10 de julio). *Presupuesto de la UE para 2020: el Consejo acuerda su posición*. Recuperado 3 de mayo de 2020, de <https://www.consilium.europa.eu/es/press/press-releases/2019/07/10/2020-eu-budget-council-agrees-its-position/>

CONSEJO EUROPEO. (2019, 20 de junio). *Conclusiones adoptadas por el Consejo Europeo en la Reunión del Consejo Europeo de 20 de junio de 2019*. Recuperado 2 mayo, 2020, de <https://data.consilium.europa.eu/doc/document/ST-9-2019-INIT/es/pdf> Página 8

EUROPOL. (2019). *Secure Information Exchange Network Application (SIENA)*. Recuperado 5 abril, 2020, de <https://www.europol.europa.eu/activities-services/services-support/information-exchange/secure-information-exchange-network-application-siena>

FERNÁNDEZ-ROJO, D. *The introduction of an individual complaint mechanism within FRONTEX: two steps forward, one step back*. Wolters Kluwer. 2016

FERNÁNDEZ-ROJO, D. *Los poderes ejecutivos de la Guardia Europea de Fronteras y Costas: del Reglamento 2016/1624 al Reglamento 2019/1896*. Revista Catalana de Dret Public 60, 181-185. 2020. <https://doi.org/10.2436/rcdp.i60.2020.3385>.

FRONTEX. (2015a). *Presupuesto de Frontex*. Recuperado el 6 de junio de 2020, de: https://frontex.europa.eu/assets/Key_Documents/Budget/Budget_2015_N3.pdf

FRONTEX. (2015b). *Informe Anual de Frontex 2015*. Recuperado 4 abril, 2020, de https://frontex.europa.eu/assets/Key_Documents/Annual_report/2015/General_Report_ES.pdf

FRONTEX. (2016, 22 noviembre, b). *News Release. Frontex to begin collecting personal data in Greece on suspected criminals*. Recuperado 5 abril, 2020, de <https://frontex.europa.eu/media-centre/news-release/frontex-to-begin-collecting-personal-data-in-greece-on-suspected-criminals-gJzx8D>

FRONTEX. (2018). *Informe Anual de Frontex 2017*. Recuperado 5 abril, 2020, de https://frontex.europa.eu/assets/Key_Documents/Annual_report/2017/CAAR_2017_adopted_ES.pdf

FRONTEX (2019, a). *News Release. Frontex rolls out its own patrol cars in operations*. Recuperado 5 abril, 2020, de

FRONTEX (2019, b). *European Centre for Returns in Brief*. Recuperado 5 abril, 2020, de https://frontex.europa.eu/assets/Publications/General/EU_Centre_For>Returns_2019.pdf

- FRONTEX. (2019, c). *Tu derecho a presentar una queja ante Frontex*. Recuperado 5 abril, 2020, de https://frontex.europa.eu/assets/Complaint_mechanism/2020/Complain_Mechanism_Spanish.pdf
- FRONTEX. (2019, d). *News Release. We are recruiting Frontex border guards*. Recuperado 3 de mayo de 2020, de <https://frontex.europa.eu/media-centre/news-release/we-are-recruiting-frontex-border-guards-qdIBSA>
- JUNCKER, J. (2015, 9 septiembre). *Estado de la Unión 2015: La hora de la sinceridad, la unidad y la solidaridad*. Recuperado 4 abril, 2020, de https://ec.europa.eu/commission/presscorner/detail/es/SPEECH_15_5614
- Parlamento Europeo. (2019, 12 febrero). *Informe sobre la propuesta de Reglamento del Parlamento Europeo y del Consejo sobre la Guardia Europea de Fronteras y Costas y por el que se derogan la Acción Común nº 98/700/JAI del Consejo, el Reglamento (UE) nº 1052/2013 del Parlamento Europeo y del Consejo y el Reglamento (UE) 2016/1624 del Parlamento Europeo y del Consejo (COM (2018)0631 – C8-0406/2018 – 2018/0330(COD))*. Recuperado 10 mayo, 2020, de https://www.europarl.europa.eu/doceo/document/A-8-2019-0076_ES.html
- SANTOS VARA, J. “The EU’s agencies. Ever more important for the governance of the Area of Freedom, Security and Justice”, in F. Trauner and Ripoll Servent (Eds.) Routledge *Handbook of Justice and Home Affairs Research*, Routledge, 2018, pp. 445-455.
- SANTOS VARA, J. “La transformación de Frontex en la Agencia Europea de la Guardia de Fronteras y Costas: ¿hacia una centralización en la gestión de las fronteras?” *Revista de Derecho Comunitario Europeo*, 59, 143-186. 2018.
- SANTOS VARA, J. “The European Coast Guard in the new Frontex regulation: a grandiloquent concept”. En C. Chevalier Govers (Ed.) *De Frontex à Frontex: vers l’émergence d’un service européen des gardes-côtes et gardes-frontières*. Bruylant. 2019.
- UNION EUROPEA. (s. f.). Página de inicio | Copernicus. Recuperado 2 de mayo de 2020, de <https://www.copernicus.eu/es>
- Unión Europea. (2019, 13 noviembre). Reglamento (UE) 2019/1896 del Parlamento Europeo y del Consejo sobre la Guardia Europea de Fronteras y Costas y por el que se derogan los Reglamentos (UE) nº 1052/2013 y (UE) 2016/1624. Diario Oficial de la Unión Europea L 295, 13 de noviembre de 2019.
- UNHCR. (2015, 1 julio). *UNHCR: Total number of Syrian refugees exceeds four million for first time*. Recuperado 4 abril, 2020, de <https://www.unhcr.org/news/press/2015/7/559d67d46/unhcr-total-number-syrian-refugees-exceeds-four-million-first-time.html>

Submitted: 1 July 2020.

Accepted: 23 November 2020.