

**Frontex leading returns:  
Human rights responsibility for the  
long arm of EU migration policy**

Mariana Gkliati

Leiden University, University of London

# Towards 'operational effectiveness'



EUROPEAN BORDER AND COAST GUARD: | 2019  
COUNCIL CONFIRMS AGREEMENT ON  
STRONGER MANDATE

*Stronger external border protection is essential for a safer Schengen area and a more efficient management of migration. The new rules will allow Frontex to provide faster, more efficient support to member states on a number of tasks, including border controls and returning those without a right to stay.*

Carmen Daniela Dan, Romanian minister of internal affairs

#RO2019EU

# The next phase of the EBCG

---



- ☞ Constantly growing mandate (2004-2019) towards a European Border Police Corps

## **EBCG Regulation 2019**

- ☞ **An operational arm of 10.000 border guards with broad executive powers and their own equipment.**

# The next phase of the EBCG



- ❧ **Broad powers in returns**  
(voluntary returns and deportations) – own escorts, fundamental rights return monitors, preparing the return decisions



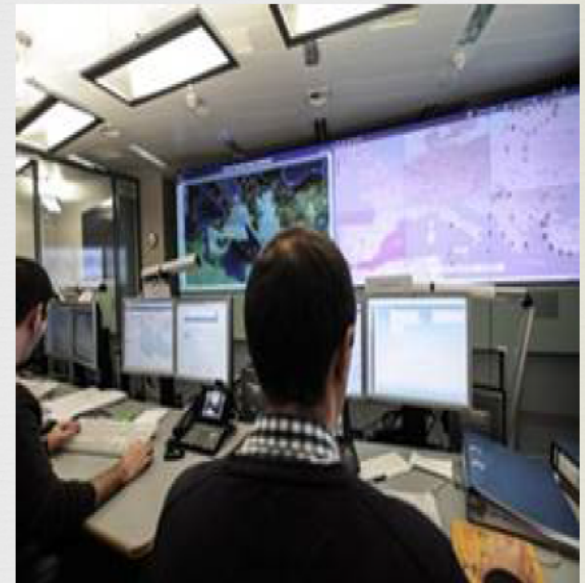
# The next phase of the EBCG

---

## Extensive data

sharing - centralized return

management platform for automated  
information processing,  
information exchange,  
incl. personal and other sensitive data  
(asylum interview)



# The next phase of the EBCG

---

## 🌀 Budgetary increase

Total EU budget 2020-2021:  
doubling of funds for migration and border management  
(€ 22 billion)

\*Discussions on the budget of both the EU and Frontex are currently ongoing. The information can change. The 'headline' figures for the budget have been finalised

p.7-8, <https://data.consilium.europa.eu/doc/document/ST-13891-2020-ADD-2/en/pdf>

p.2, <https://data.consilium.europa.eu/doc/document/ST-9970-2020-INIT/en/pdf>

# The next phase of the EBCG

Frontex (2005-2017)	Budget (million €)	Budget increase	Total staff	Staff increase
2005	<u>6</u>		<u>45</u>	
2006	<u>19</u>	<u>217%</u>	<u>70</u>	<u>56%</u>
2007	<u>42</u>	<u>121%</u>	<u>128</u>	<u>83%</u>
2008	<u>70</u>	<u>67%</u>	<u>181</u>	<u>41%</u>
2009	<u>88</u>	<u>26%</u>	<u>226</u>	<u>25%</u>
2010	<u>93</u>	<u>6%</u>	<u>294</u>	<u>30%</u>
2011	<u>118</u>	<u>27%</u>	<u>304</u>	<u>3%</u>
2012	<u>90</u>	<u>-24%</u>	<u>303</u>	<u>-0,3%</u>
2013	<u>94</u>	<u>4%</u>	<u>302</u>	<u>-0,3%</u>
2014	<u>93</u>	<u>-1%</u>	<u>311</u>	<u>3%</u>
2015	<u>143</u>	<u>54%</u>	<u>309</u>	<u>-0.6</u>
2016	<u>254</u>	<u>78%</u>	<u>370</u>	<u>20%</u>
2017	<u>302</u>	<u>19%</u>	<u>531</u>	<u>44%</u>
2018	<u>320</u>	<u>6%</u>	<u>643</u>	<u>21%</u>
2019 - 2020	<u>1,300 (1.3 billion)</u>	<u>306%</u>	<u>1,000</u>	<u>56%</u>

# The next phase of the EBCG

---

## ⌘ Budgetary increase in Frontex returns

€ 1,8 billion

300% increase

excluding budget for aircrafts and vessels (€2,2 billion)

Goal to facilitate the return of 50.000 people per year.



# Frontex in Hungary



- ❧ Hungarian law 2015: applicants from safe countries, including Serbia rejected, no safeguards
- ❧ Collective expulsions to Serbia, summary dismissals of claims, refoulement to Afghanistan
- ❧ Advice to withdraw

The image is a screenshot of a UNHCR article. At the top left is the UNHCR logo with the text 'UNHCR The UN Refugee Agency'. To the right is a hamburger menu icon. Below the logo are two buttons: a yellow 'DONATE' button and a blue 'DO YOU NEED HELP?' button. The main headline reads 'Hungary's coerced removal of Afghan families deeply shocking'. Below the headline is the date '08 May 2019' and language options 'Español | Français'. The article image shows a barbed wire fence with a gap, and a person is visible in the distance. At the bottom of the image, there is a caption 'Hungarian police guard a gap in a fence' and a share icon.

# Frontex responsibility



- ❧ Ultimate responsibility with MS even after 2019  
Preparing return decisions without entering into the merits
- ❧ Still responsible for compliance with non-refoulement within its operations
- ❧ Taking appropriate action to prevent, incl. suspension

# Frontex responsibility



- ❧ Cannot review asylum applications.
- ❧ No disciplinary power, criminal, or civil jurisdiction over border guards.
- ❧ Does not have full control over the operation.
- ❧ training of border guards
- ❧ instructions of Frontex Coordinating Officer
- ❧ reporting and accountability mechanisms
- ❧ terminating and suspending an operation (persistent & systemic violations)

# Responsibility after 2019



✧ Increased possibility after 2019 with own aircrafts and own escorts

**Before 2019:** room for responsibility

Aid and Assistance (complicity)

- actively (e.g. technical and financial support)
- by omission (e.g. failing to suspend or terminate)

**After 2019:** shift of focus from complicity, to direct responsibility

# Accountability - implementation

---

## Recommendations - Frontex:

- strategic decisions on engagement – advice of FRO and CF
- appropriately follow up on complaints and SIRs
- empower the FRO
- immediately deploy the HR monitors
- allow more transparency

# Accountability – amendments

---

## Recommendations – legislature

- external follow-up of the complaints mechanism by the European Ombudsman
- review of complaints by the CJEU
- robust system of external monitoring of return operations (Committee for the Prevention of Torture, NHRIs, Ombudspersons)



Many Thanks!

[m.gkliati@law.leidenuniv.nl](mailto:m.gkliati@law.leidenuniv.nl)



@MarianaGkliati