

## ***Human Rights at the EU Borders: The Role and Responsibility of FRONTEX***

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### **Abstract:**

This paper analyses the concept of the European Union "integrated border management" and the last reform operated in the FRONTEX agency with the creation of the European Border and Coast Guard Agency. We accomplish an exegesis of the legal reform of FRONTEX analysing the new commitments regarding the protection and accountability of human rights. In particular, we examine the new complaints mechanism created for eventual breaches of human rights in the border management activities.

**Keywords:** European Union / Human Rights / FRONTEX / Borders / Refugees.

### **1. Introduction: the balance between security and human rights in the borders monitoring.**

The article 3.2 of the Treaty of the European Union (TEU) affirms: "The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime."<sup>1</sup> The mutual linkage and influence between the internal freedoms and the control of the external borders is stated by the Treaty on the Functioning of the European Union that commits to the "gradual establishment of an integrated management system for external borders".<sup>2</sup> This clause is included into the Title V ("Area of freedom, security and justice"), whose Chapter 2 is dedicated to policies on

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<sup>1</sup> See PEERS, S., "Mission accomplished? EU Justice Home Affairs law after the Treaty of Lisbon", *Common Market Law Review*, 2011 (48), Issue 3, pp.661-693.

<sup>2</sup> See Consolidated version of the treaty on the Functioning of the European Union, Official Journal of the European Union (2012/C 326/01), art.77.2, d): "[...] The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: [...] any measure necessary for the gradual establishment of an integrated management system for external borders."

border checks, asylum and immigration. From a systematic point of view, it is not by chance that it is numbered immediately after the title devoted to the free movement of persons, services and capital.

The protection of these freedoms gave rise to the necessity of protecting the EU's external borders. Indeed, *freedom* and *security* plays in this case a game of mutual and necessary complementarity, and the external border appears like the edge surrounding the two sides of the coin. The third element of this *formula* is the *justice* that will always be related to democracy and the rule of law as the main values of the European Union. Fortunately, the last reforms of the Lisbon treaty have enhanced the role of the European Parliament as well as the new binding effect of the Charter of Fundamental Rights. But all this architecture has an accurate sense only if it takes into consideration the most important element that gives sense to this alchemy: the people. In this paper we show how the people may retrieve the center of the border policy through the adequate human rights instruments.

The current picture of the EU's refugee policy, shown by some Media, is usually swapping between the "drama picture" and the "threat picture". The first one emphasizes the lost of migrant's lives during the crossings and the dangers for their families; the last one put the focus in the warnings for security brought by the illegal migrants and in their possible links with criminal activities. But, fortunately, reality is not just a picture of a two sides coin. Continuing with our simile of the coin, we can affirm that these activities on the external borders are on the edge between the foreign policy of the European Union and the domestic policies of the Member States. They need an external approach to negotiate with third countries but they are affecting to the essence of their sovereign powers. At this point, we should remain the desired coherence (so many times encouraged) for the external and the internal policies of the European Union.<sup>3</sup>

To offer an accurate diagnosis of the EU borders management, we must rise some basic questions like: What is a border? Why do we need borders? Who is the last responsible

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<sup>3</sup> See INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, Geneva, 2010.

of the border? These questions seem too naïf but they are essential to delimitate some competences and responsibilities. According to the Cambridge dictionary, the first meaning of border is "the line that divides one country from another".<sup>4</sup> From the perspective of the International Law, the borders, with the other two elements of the people and the government, embody the essence of the states sovereignty. The principle of territorial jurisdiction, with others like the equal sovereignty and the *uti possidetis iuris*, are considered part of the core of the international legal system. The whole international society has been built up over the *sacrosanct* mutual respect of the territories.

Regarding the question of *Why do we need borders?*<sup>5</sup> The answer should balance between the more radical supporters of the cosmopolitanism<sup>6</sup> and the nationalism doctrines defending more protectionism.<sup>7</sup> The ancient answer to this question was "to protect our people and our territory".<sup>8</sup> Since the transit of the human communities from nomadism to the sedentary societies, the human being needed to delimit the territory in order to protect their possessions and families. Leaving apart the historical origins of the concept, the birth of the nation States consolidated the concept that was actualized by the United Nations with the arrival of the decolonization era. Nevertheless, the end of the XX century brought us the reign of the globalization and the doctrines predicting the erasure of the nation State and the triumph of the cosmopolitanism. Nevertheless, during these years of the XXI century, the States, far from loosing control over their borders, have incorporated new tools for monitoring the borders crossing. Indeed, the process of globalization and the dynamics of internationalization have bore new illegal activities falling under the consideration of risks and threats for the States.

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<sup>4</sup> See <http://dictionary.cambridge.org/>

<sup>5</sup> See KUKATHAS, C., *Why Open Borders?, Ethical Perspectives*, vol.19, 2012, pp.649-675; JUSS, S., "Free Movement and the World Order", *International Journal of Refugee Law*, Vol.16, No. 3, pp: 289-335; CIERCO, T. AND TAVARES DA SILVA, J., "The European Union and the Member States: two different perceptions of border", *Revista Brasileira de Política Internacional*, Nº 59 (1), 2016, p.3: "Borders have not disappeared or become irrelevant; on the contrary, they continue to be extremely important for nationalistic states as a way of safeguarding their security and sovereignty [...] Borders are directly linked to the ideological state apparatus, ideological practices sensationalism, and the material basis of such practices, which manifests itself in territoriality."

<sup>6</sup> See ALLOT, P., "Globalization from above", *Review of International Studies*, Vol.26, Nº5, 2000, p.79; Held, D., *Governing globalization: power, authority and global governance*, Polity Press, London, 2002.

<sup>7</sup> See RUDOLPH, C. "Sovereignty and Territorial Borders in a Global Age", *International Studies Review*, 7, No. 7 (2005): 1-20.

<sup>8</sup> See TRUYOL Y SERRA, A., *Historia de la Filosofía del Derecho y del Estado. 1. De los orígenes a la baja Edad Media*, Alianza, Madrid, 1995.

The new *millennial* generation of the most developed countries conceives the universal technology and the access to goods and services as part of their modern societies, as a "right" acquired by birth. The ancient ideal of universal commerce and cosmopolitanism has become a kind of unidirectional vision from the developed (and not so developed) countries having "right" to travel and to open new markets and "opportunities" all around the world. The universal dream of the ancient *Escuela de Salamanca* has been reinvented and readapted during centuries to the necessities of all the societies. In this context, the borders have never lost their essence and the new tools are helping to monitor the new "necessities". When the international terrorism emerged as a global threat and new international crime activities arise, the border's monitoring assumed new competencies and capacities to the main task of "protection". The ancient idea of safety into the European fortress was under threat.

The question about *who is responsible of the border control* is more complex in the case of the European Union.<sup>9</sup> Since the implementation of the four European freedoms (goods, workers, services and capitals) emerged the necessity of controlling the external border. This requirement became more evident when some States launched the Schengen area. The increasing cooperation backing the freedom of movement on the Schengen space put the focus on the border security and on the reinforcement of the external controls. The old worries of how to promote the "internal market" became the current fears of how to secure the borders versus the migrations flows. Nevertheless, we must not consider those "fears" versus the current "threats" and "risks" of the security as justified worries versus the migrants themselves. The security terminology has incorporated some "open concepts" like *threats* and *risks* that are necessary to comprehend the whole of actions that must be monitored or controlled by the European Union. Thus, the current border control is not limited to the transit of citizens and migrants but is dealing with a much more complex set of activities: prosecution of

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<sup>9</sup> See THYM, D., "Legal Framework for EU Entry and Border Control Policies", *EU Immigration and Asylum Law. Commentary, 2nd edition*, Kay Hailbronner and Daniel Thym (eds.), 2016, p.40: "An interpretation of the term 'external border' in the light of the historic context exhibits that it refers to the Member States participating in the Schengen cooperation not the geographic scope of Union law in accordance with Articles 52 TEU and 355 TFEU."

international serious crimes,<sup>10</sup> analysis and evaluation of threats and risk<sup>11</sup> and other specific actions like fighting illegal immigration and human beings trafficking. From a political point of view, the last months indicate a transit from the *ended* period of globalization to a renew period where the international factor is still guiding foreign relations but the nationalist ideal and the protectionist speeches are becoming stronger. The *Brexit* in the European Union and the triumph of President Trump are the best proofs of this tendency. Under this framework, the commitment of the Union over the human rights is a key tool to implement its treaty obligations regarding the borders management.

## **2. FRONTEX and the concept of the European Integrated Border Management**

Nowadays, the EU has created 41 decentralized agencies helping to implement different policies. They are spread across various member States and they are helping the Union and assisting the member States in fields like environmental protection, Defense, energy, banking, education, etc. In the field border management, besides FRONTEX, there are other agencies working in close cooperation like the European Policy Office (EUROPOL), the European Asylum Support Office (EASO), the European Union's Judicial Cooperation (Eurojust), the European Police College (CEPOL) and the European Union Agency for Fundamental Rights (FRA).<sup>12</sup> Regarding the borders control, it is obvious the necessity of cooperation between the borders agents and other police members, especially when fighting against crimes with international connections. The commitment of the European Union by the agencies was already decided in 2001 in the White Paper of the Commission,<sup>13</sup> and FRONTEX has enlarged its competencies under

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<sup>10</sup> See COUNCIL OF THE EUROPEAN UNION, *Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017*, 26 July 2013.

<sup>11</sup> See the last *European Union (EU) Serious and Organised Crime Threat Assessment 2017 (SOCTA 2017)*: <https://www.europol.europa.eu/socta/2017/index.html>

<sup>12</sup> See Regulation 2016/1624, 14 September 2016, art.52: "The Agency shall cooperate with the Commission, other Union institutions, the European External Action Service, EASO, Europol, the European Union Agency for Fundamental Rights, Eurojust, the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency as well as other Union bodies, offices and agencies in matters covered by this Regulation [...]."

<sup>13</sup> See EUROPEAN COMMISSION, *European Governance - A White Paper*, COM (2001) 428 final, 12 December 2001, p.26: "The increased use of regulatory agencies will ensure better execution and enforcement of policies in specific cases. It will also avoid having to assign Commission resources to too technical tasks."

the legal base of the articles 77 (2,b and d) and 79 (2,c) of the Treaty on the Functioning of the European Union (TFEU).

During the year 2015, the migration pressure over the EU moved the European Council to promote new measures regarding the strengthening of the border management and the enlargement of the existing competencies of FRONTEX.<sup>14</sup> Thanks to the agreement with Turkey and other measures implemented to reinforce the EU external borders, FRONTEX has announced that the migrant pressure decreased notably during the the 2016 year.<sup>15</sup> FRONTEX agency experienced last year an important transformation when changed her name from “European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union” to “European Border and Coast Guard Agency” (Regulation 2016/1624, of 14th September 2016)<sup>16</sup>. The Preamble of the regulation refers to the old perception of protection that every border must safeguard but instead of mentioning the people and the territory, mentions the movement of persons, the necessity of security and the special needs of migration management.<sup>17</sup> However, despite the “expanded”<sup>18</sup> tasks of the Agency, under the "integrated" concept, the States continue preserving the "primary responsibility" for the management of their external borders.<sup>19</sup> This idea must be assumed like an inherent

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<sup>14</sup> See EUROPEAN COUNCIL, *European Council meeting (15 October 2015) Conclusions*, p.4: "[...] enlarge the Frontex mandate on return to include the right to organize joint return operations on its own initiative, and enhance its role regarding the acquisition of travel documents for returnees."

<sup>15</sup> See FRONTEX Press Statement, *Fewer migrants at EU border in 2016*, 6 January 2016: "The total number of migrants reaching Europe by two main sea routes in 2016 fell by nearly two-thirds to 364.000 in comparison with 2015 [...] This was in large part due to the EU/Turkey statement, which came into effect in late March and led to tighter border control by the Turkish authorities and readmission of migrants from the Greek islands to Turkey. The drop was also influenced by tighter border controls in the Western Balkans." <http://frontex.europa.eu/pressroom/news/fewer-migrants-at-eu-borders-in-2016-qpjJXc>

<sup>16</sup> The complete title of the Regulation offers an idea of the progressive transformation of the Agency: Regulation (EU) 2016/1624 of the European Parliament and of the Council 14 September 2016 on the European Border and Coast Guard and 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.

<sup>17</sup> See Regulation 2016/1624, 14 September 2016, Preamble, par. 2: "The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. European integrated border management is central to improving migration management." The paragraph 11<sup>th</sup> of the Regulation's Preamble summarizes as well the expanded tasks of the Agency.

<sup>18</sup> See Regulation 2016/1624, 14th September 2016, Preamble, par. 11.

<sup>19</sup> See *Ibid*, Preamble, par. 6: "While Member States retain the primary responsibility for the management of their external borders in their interest and in the interest of all Member States, the Agency should support the application of Union measures relating to the management of the external borders by reinforcing, assessing and coordinating the actions of Member States which implement those measures."

and sovereign right of the States to control their borders that cannot be impaired in situations others than those related to basic family unity and refugees rights.<sup>20</sup>

The new concept of European integrated border management is described in article 4 of the Regulation. This article, in a non exhaustive enumeration about border control activities, includes components like measures related to the prevention and detection of cross-border crime, analysis of risks and threats, rescue operations, cooperation activities in various fields of action, technical assistance and other operations like return of third-country nationals. The concept of "integrated management" of art 77 TFEU covers a wide range of activities like legislative harmonisation, financial solidarity and other transnational cooperation activities. But the materialization of the concept it embodied in the FRONTEX activities developed in mutual cooperation between the Agency and the Member States that was initiated with the Rapid Border Intervention Teams (RABITs). For instance, last 28 September 2016, the European Parliament asked FRONTEX about the current agreements with third states and about the number of experts and other officials sent to other countries. The answer shows the increasing collaborations of this kind of mutual collaboration and co-team working among different countries.<sup>21</sup> It is obvious that the progresses done in the last reform of the Agency is reinforcing its visibility and capacities but it is still far from becoming a kind of "federal European border guard" that would need a Treaty reform. Certainly, the current reading of article 77 TFEU must be considered as a shared competence and it must be conceived without prejudice to the competences of Member States to negotiate or conclude agreements with third countries.<sup>22</sup>

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<sup>20</sup> See THYM, D., "Legal Framework for EU Entry and Border Control Policies", *EU Immigration and Asylum Law. Commentary*, 2nd edition, Kay Hailbronner and Daniel Thym (eds.), 2016, p.48: "International human rights law confirms the principled freedom of states to control their borders and to regulate the entry and stay of foreigners [...] Neither treaty obligations nor customary international law have so far brought about an authoritative basis for a generic human right to enter other states or not to be refused entry arbitrarily in situations others than those related to family unity and refugee protection."

<sup>21</sup> In 2016, sixty-eight experts from eighteen member States (and other Schengen Associated countries) were deployed to countries like Albania, Montenegro and Serbia. The document can be found in: [http://www.europarl.europa.eu/RegistreWeb/search/getDocument.htm?reference=P8\\_RE\(2016\)007159&fragment=ANN&language=XL](http://www.europarl.europa.eu/RegistreWeb/search/getDocument.htm?reference=P8_RE(2016)007159&fragment=ANN&language=XL)

<sup>22</sup> See THYM, D., "Legal Framework for EU Entry and Border Control Policies", *EU Immigration and Asylum Law. Commentary*, 2nd edition, Kay Hailbronner and Daniel Thym (eds.), 2016, p.42.

In summary, we can affirm that the "integrated concept" has allowed the Agency to launch the last transformations which concurred with the reduction of the migrants flows pressure and with the necessary political support from the Member States.<sup>23</sup> From an operational point of view this approach to the border management has facilitated the set up of instruments like the *European Border Surveillance System* (EUROSUR), the Rapid Reaction Pool and the spread of the *National Referral Mechanism* (NRM) that are extremely important for the borders monitoring. Simultaneously, as we explain next, this reform has facilitated the assumption of some of the requirements done from other institutions face to the FRONTEX responsibilities within the human rights legal framework.

### **3. FRONTEX and Human Rights in borders management.**

The Preamble of the FRONTEX Regulation announced clearly: "The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability."<sup>24</sup> This objective is the consequence of the general challenge of ensuring the rule of law and respect for fundamental freedoms while guaranteeing borders control and security in Europe. Besides, this Regulation states, as a general obligation to the overall of the activities, the accountability of the Agency versus the European Parliament and to the Council.<sup>25</sup> The Council promoted the new roles of the Agency in an era of mistrust and suspicion over the management of the refugee crisis by the European Union. Indeed, during the years 2014-15 the Union afforded the worst situation in terms of casualties in the Mediterranean, displaced people, refugees and other cruel consequences of the migrant flows. Face to this situation, the EU and the Member States received lots of critics coming from de civil society and from other regional and international forums. There are some key questions to answer regarding the main theme of this paper like: Can the EU or the member States be sued before any instance in case of violations of human rights? What is the legal

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<sup>23</sup> See EUROPEAN COMMISSION, *Report on the operationalisation of the European Border and Coast Guard*, COM(2017) 42 final, 25 January 2017; European Commission, *Second Report on the operationalisation of the European Border and Coast Guard*, COM(2017) 201 final, 25 March 2017.

<sup>24</sup> See Regulation 2016/1624, 14 September 2016, Preamble, par. 14.

<sup>25</sup> See *Ibid*, art.7.

degree of responsibility of FRONTEX? What is doing the Agency to guarantee the respect of human rights and its accountability?

- *Can the EU or the member States be sued before any instance in case of violations of human rights?*

In the last years, there were numerous from civil society and other international agencies claiming violation of human rights at the EU borders in Member states activities and in other FRONTEX activities (like the return operations). Among them, we can mention the reports coming from Human Rights Watch and from the UNHCR.<sup>26</sup> The question of the responsibility of the international organizations under the international law is not new.<sup>27</sup> Some of the European institutions, like the European Ombudsman European<sup>28</sup> and the European Parliament<sup>29</sup> and others like the Council of Europe<sup>30</sup>, opened enquiries for further information on these activities. In the general framework of human rights violations, the EU Law and the European Charter of Fundamental Rights make possible the access to justice through domestic remedies; in the case of responsibility of the Member States with relation to the EU Law<sup>31</sup> there are other

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<sup>26</sup> See. UNHCR, Note *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016; Human Rights Watch, *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, September 2011; Parliamentary Assembly of the Council of Europe [PACE] 'The interception and rescue at sea of asylum seekers, refugees and irregular migrants' PACE Resolution 1821 (2011), par. 5.4, holding that "there are inadequate guarantees of respect for human rights and obligations [...] in the context of the joint operations it [Frontex] co-ordinates"; Human Rights Council, Mission to Greece Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, March 4, 2011, A/HRW/16/52/Add.4; Human Rights Watch, *Pushed back, pushed around: Italy's Forced return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers* (September 2009).

<sup>27</sup> See INTERNATIONAL LAW COMMISSION, *Articles on Responsibility of International Organizations*, Doc. A/66/10, 2011; EAGLETON, C., "International Organization and the law of Responsibility", *Recueils de Cours*, 1950, I; EVANS, M. AND KOUTRAKOS (Eds.), *The International Responsibility of the European Union: European and International Perspectives*, Hart Publishing, 2013.

<sup>28</sup> See EUROPEAN OMBUDSMAN, *Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex*, 12 November 2013.

<sup>29</sup> EUROPEAN PARLIAMENT, *Report on the Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex* (2014/2215(INI)), A8-0343/2015, 26 September 2015.

<sup>30</sup> See PARLIAMENTARY ASSEMBLY (COUNCIL OF EUROPE), *Resolution 1932 (2013)*, "Frontex. Human Rights Responsibilities", 25 April 2013

<sup>31</sup> Regarding the role of the ECJ, see, among others: ECJ, *Commission vs Spain*, C 503/03, EU:C:2006:74; and ECJ, *MRAX*, C 459/99, EU:C:2002:461.

European remedies like action for annulment (very limited for the individuals)<sup>32</sup> and the failure to act procedure.<sup>33</sup>

Although it is not the object of this paper, we have to mention as well the debate about the lack of access to sue the EU itself before the jurisdiction of the European Court of Human Rights (ECtHR) and the lack of access of the Union to this jurisdiction.<sup>34</sup> In this framework, we must denounce the recent position of the European Union Court of Justice (EUCJ) rejecting its competence and stating its lack of jurisdiction over the actions brought by asylum seekers against the EU-Turkey "statement". The Court has denied the existence of such "legal agreement" qualifying it as a mere joint "statement" and affirming that, even if we consider it as an "agreement", it would have been concluded by the State Members of the EU and the Turkish Prime Minister but not by the Union as such.<sup>35</sup> On the other hand, it is true that in the last years there have been some judgments of the ECtHR reproving the Member States migration actions in fields like: activities on the Mediterranean Sea,<sup>36</sup> participation in some Joint Operations,<sup>37</sup> deportation activities<sup>38</sup> and, generally speaking, other sovereignty decisions related to asylum procedures.<sup>39</sup>

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<sup>32</sup> See BANK, R., "The Potential and Limitations of the Court of Justice of the European Union in Shaping International Refugee Law", *International Journal of Refugee Law*, 2015, Vol. 27, No. 2, p.242: "The partial strengthening of the legal framework for refugee protection through the jurisprudence of the Court does not rest on an application and interpretation of international law but on European secondary law. At the same time, a critical review of provisions of European secondary law for their conformity with international refugee law as called for by the TFEU is absent to a large extent."

<sup>33</sup> See CARRERA, S., DE SOMER, M. AND PETKOVA B., "The Court of Justice of the European Union as a Fundamental Rights Tribunal Challenges for the Effective Delivery of Fundamental Rights in the Area of Freedom, Security and Justice", *CEPS Papers in Liberty and Security in Europe*, N<sup>o</sup>. 49, August 2012.

<sup>34</sup> See EUROPEAN UNION COURT OF JUSTICE, *Opinion 2/13 of the Court (Full Court)*, 18 December 2014, par.258: "[...] The agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms."

<sup>35</sup> See GENERAL COURT OF THE EUROPEAN UNION, *Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16 (NF, NG and NM Vs European Council)*, 28 February 2017.

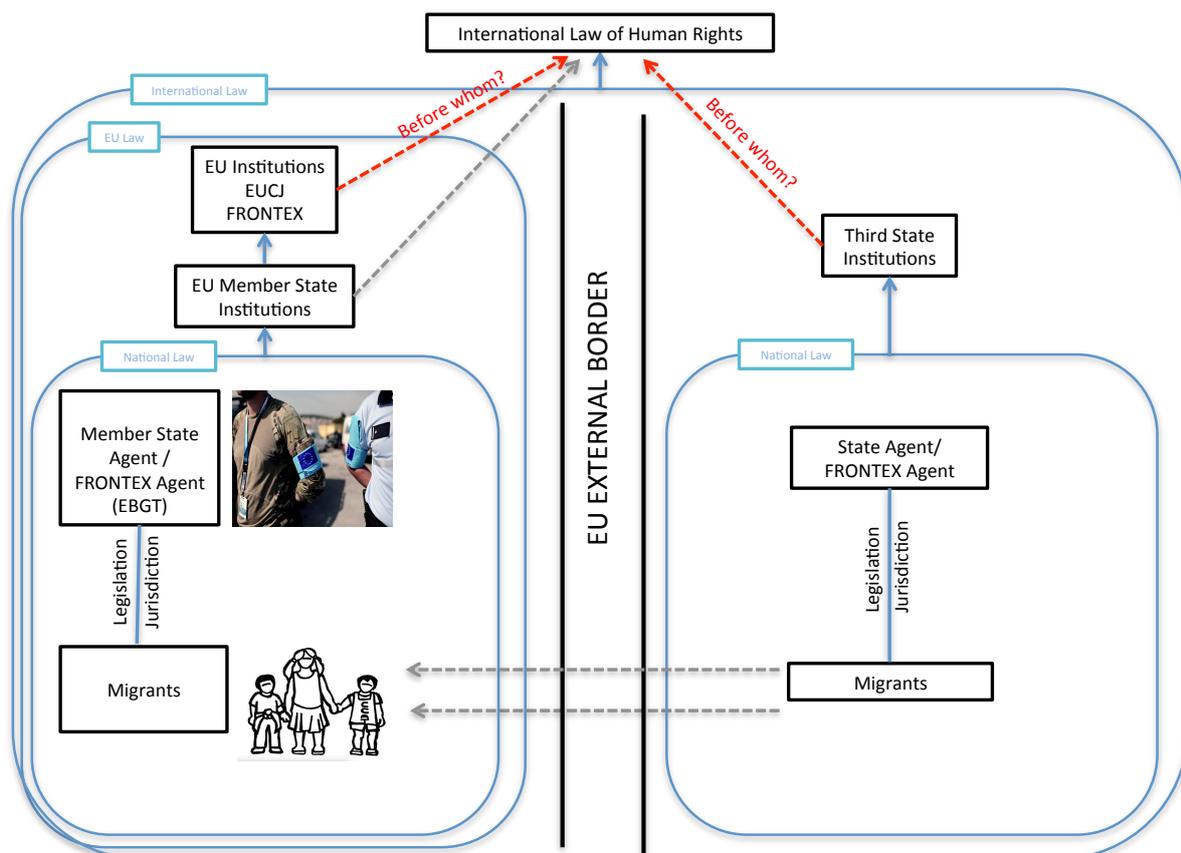
<sup>36</sup> See *Hirsi Jamaa and Others v. Italy*, 27765/09, GC, 23 February 2012.

<sup>37</sup> See *Sharifi and Others v. Italy and Greece*, 16643/09, 21 October 2014

<sup>38</sup> See *M.S.S v. Belgium and Greece*, 30696/09, GC, 21 January 2011.

<sup>39</sup> See MORGADES-GIL, S., *The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?*, *International Journal of Refugee Law*, 2015, Vol. 27, No. 3, 433–456.

Focusing the object of this paper, the problem to analyze is the liability of FRONTEX as an autonomous agency that has been partly studied by the doctrine.<sup>40</sup> The problem is the liability of this Agency (as an inter-governmental agency created by the EU) for eventual human rights violations resulting from its border control activities. Regarding the FRONTEX participation or "collaboration" in the borders management activities and its accountability, we can show the general framework with this scheme:



- *What is the legal degree of responsibility of FRONTEX?*

The simple answer to this question should be that the member States and the FRONTEX agency, both, have a "shared" responsibility regarding some of the activities of

<sup>40</sup> See, among others, MUNGIANU, R., *Frontex and Non-refoulement: The International Responsibility of the European Union*, Cambridge University Press, 2016; MAJCHER, I., " Human Rights Violations During EU Border Surveillance and Return Operations: Frontex's Shared Responsibility or Complicity?", *Silesian Journal of Legal Studies*, issue: 7 / 2015, pages: 45-78; BROOKS, TEQUILA J., *Can Frontex Be Held Liable for Human Rights Violations? Potential Application of Recent European Case Law to the Activities of an Inter-Governmental Agency* (June 20, 2012).

FRONTEX agents. But the practice is more complex<sup>41</sup> and it is necessary to clarify it precisely, in a case-by-case basis, to avoid ambiguous situations. First, we have to underline that, apart some of the personnel directly contracted by the Agency, most of the agents who are working on the field in the name of FRONTEX are member States agents (usually as *seconded* temporarily to the Agency programs). Moreover, we must analyze some characteristics of the own FRONTEX's activities to assess them properly:

- The *nature* and the extent of the activities developed by the Agency can help to delimitate the exact degree of responsibility. From the FRONTEX government bodies, they insist on their restricted role to "coordinate" and to "cooperate" with the member States authorities that are, at the final stage, the last responsible institutions of the activities. From the reading of the mandate of FRONTEX, we can conclude that the nature of their main task is "operational"<sup>42</sup> and not executive. The original task of the Agency was assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, risk analysis, information exchange, relations with third countries and the return of returnees.<sup>43</sup> For instance, regarding asylum requests, the legal framework guaranties the full respect of member States sovereignty and the respect of the States obligations under International Law (in particular, *vis-à-vis* the principle of *non refoulement*).<sup>44</sup>
- The *functional* approach to delimitate "who does what" in each operation will help to precise accurately the real involvement of the Agency regarding eventual violation of the migrants human rights. IN this point, the "operational autonomy" is very important to determining the degree of responsibility of the Agency.

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<sup>41</sup> See KLABERS, J., "The EJIL Foreword: The Transformation of International Organizations Law", *The European Journal of International Law*, Vol. 26, No. 1, p. 34: " If the organization would act in violation of international law, it could only do so because its member states had told it to do so – hence, member state responsibility would arise. And if the organization would act *ultra vires*, the member states could be blamed for failing to exercise proper control. Either way, the behavior of the organization was traceable to member state failure, and, thus, there was no need to speak of control of international organizations in their own right."

<sup>42</sup> See MARIN, L., "Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border", *Journal of Contemporary European Research*, Volume 7, Issue 4, 2011, pp.7-8.

<sup>43</sup> See Regulation 2016/1624, 14 September 2016, Preamble, par. 9.

<sup>44</sup> See *Ibid*, Preamble, par. 36, 46, 47 and 49.

- The *territorial* element plays an important role to establish an accurate degree of responsibility. Certainly, when the Agency is facing an operation in one of the external borders of the Union, the host Member State where the border is will have a very significant responsibility. Conversely, in the operations in the territory of a third State or in the high seas, the role of FRONTEX instructions and the relevance of the operational plan acquire critical importance.
- From a strict legal point of view, to determine the degree of responsibility it is very important the *formal competence* of the Agency over the acts under scrutiny. This is a key issue since the Agency, at least formally, still have an important lack of executive powers what makes difficult to attribute it the responsibility of any eventual violation of human rights. Furthermore, it should be proved the "effective control" of the Agency over those acts and this is always very difficult when dealing with activities that are coordinated by the Agency or implemented in cooperation with the Member States.

As we affirmed, it is obvious that the activities must be analysed in a case by case basis, although, in general terms, the subject matter of FRONTEX is conceived "to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it."<sup>45</sup> However, the reading of the article 8 ("Tasks") of the FRONTEX regulation confirms that the majority of the duties and responsibilities are related to technical and operational assistance, activities developed "in cooperation" with Member States or with third countries, risk analysis, training and others means of support and assistance to the Member States. Under this framework, we can conclude that, in terms of legal responsibility derived from executive powers or from independent actions of FRONTEX on the external borders, it would be very difficult to "impeach" or "accuse" FRONTEX for eventual actions violating migrant's human rights. In the eventual case of violation of human rights, apart from the problems to find the appropriate body to put the claim or the difficulties to find the

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<sup>45</sup> See *Ibid*, Preamble, art.1: "Subject matter".

adequate procedure (mentioned before), the premise lacking will always be the absence of "direct attribution" to the Agency of the actions under scrutiny.<sup>46</sup>

- *What is the Agency doing to guarantee the respect of human rights and to foster its accountability?*

The previous analysis portrays a certain ambiguity or a kind of "grey area" where the legal responsibility of FRONTEX could be spread or avoided due to the "primary responsibility" of the Member States. It is certain that compared to the Member States (direct) actions in the borders, the legal character itself (or nature) of the Agency and the "designing" of its functions and responsibilities narrow the margin of action of the eventual accountable mechanisms and of the legally binding procedures. This scenario could not be maintained into the UE while assuring the primacy of the human rights and the rule of law as main values of the European Treaties; even more after the Lisbon reform with the inclusion of the European Charter of Fundamental Rights. The last reform of the FRONTEX regulation, in the chapters related to human rights, is a consequence of the pressure put by other institutions like the European Parliament and the European Ombudsman in order to generally improve the accountability procedures. We have divided the analysis of the human rights reforms introduced in the last reorganization of the Agency in three different groups corresponding to the three moments of *before*, *during* and *after* the actions developed on the field: (a) preventive initiatives, (b) monitoring activities and (c) accountability claims and procedures.

- a) *Preventive initiatives.* The section 2 (articles 9-13) of the Regulation is conceived as a "set of actions" producing *a kind of* "preventive strategy" that helps, among others, to evaluate risks, to prevent cross-border criminal activities and to generate an accurate vulnerability assessment of the EU borders. The best example is the "common integrated risk analysis model".<sup>47</sup> From the human rights approach, apart from the numerous mentions to the human rights obligations of the Agency,<sup>48</sup> the best initiative to prevent misconducts of the

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<sup>46</sup> See Annex to this paper, point 2 of the complaint form: "information on the potential violation(s) of fundamental rights."

<sup>47</sup> See Regulation 2016/1624, 14 September 2016, art.11.1 and 11.7.

<sup>48</sup> See *Ibid*, Preamble, par. 47.

agents is the training and other awareness-raising activities. With this aim, the Regulation states the necessity of specific training in the general field of human rights in article 36<sup>49</sup> and in other specific subjects like: applications for international protection;<sup>50</sup> child protection;<sup>51</sup> relevant Union, international law and fundamental rights;<sup>52</sup> and other like return common training standards.<sup>53</sup> We must emphasize the commitment of article 36 in view of the multiple actions contemplated in the eight paragraphs of this article and in view of the resources and means put by the Agency for this aim.

b) *Monitoring activities.* In this section we refer to the Agency activities oriented to control and monitor the fulfillment of the human rights requirements during the FRONTEX operations (starting from the initial activities of planning). The best improvement of the Agency has been setting up a "fundamental rights strategy" in accordance with all the obligations of the EU and FRONTEX, from the international law of human rights to the Charter and other specific requirements like the principle of *non-refoulement*.<sup>54</sup> The general commitment with the respect of fundamental rights enabled the constitution of the Consultative Forum<sup>55</sup> since 2012 to advise the Agency in human rights matters.<sup>56</sup> For instance, it assists the Agency on the implementation of the human rights strategy and on designing the codes of conduct. Under this framework, the Agency has elaborated a general *Code of conduct for all persons participating in FRONTEX activities* and other specific documents like the *Code of conduct for joint return operations coordinated*

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<sup>49</sup> See *Ibid*, art.36: " The Agency shall, in cooperation with the appropriate training entities of the Member States, and, where appropriate, EASO and the European Union Agency for Fundamental Rights, develop specific training tools, including specific training in the protection of children and other persons in a vulnerable situation. It shall provide border guards and other relevant staff who are members of the European Border and Coast Guard teams with advanced training relevant to their tasks and powers."

<sup>50</sup> See *Ibid*, Preamble, par.26

<sup>51</sup> See *Ibid*, Preamble, par.37 and 40.

<sup>52</sup> See *Ibid*, Preamble, par. 40.

<sup>53</sup> See *Ibid*, Art. 8.1, p).

<sup>54</sup> See *Ibid*, Art. 34. 1-2. Regarding this issue, see the recent report of EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Scope of the principle of non-refoulement in contemporary border management: evolving areas of law*, 2016.

<sup>55</sup> See Regulation 2016/1624, 14 September 2016, Art. 70.

<sup>56</sup> This Forum is comprised by 15 members with various international and European institutions (like the UNHCR and the Fundamental Rights Agency) and other civil society organizations involved with refugees, migrants and other border related issues.

<http://frontex.europa.eu/partners/consultative-forum/general-information/>

by FRONTEX<sup>57</sup> and the VEGA Handbook: children at airports,<sup>58</sup> conceived as an important guide for borders guards over the children at risk on the move. In this section of human rights obligations, among others, we can summarize the different actions included into the Regulation in the following engagements: the operational plan<sup>59</sup> must include a description of responsibilities with regard to the respect for fundamental rights<sup>60</sup> and the procedures to assist the persons in need of international protection and the vulnerable groups (like unaccompanied minors);<sup>61</sup> the assistance provided in the case of exceptional situations caused by disproportionate migratory challenges must include tools and training to guarantee full respect for fundamental rights;<sup>62</sup> the members of the European Border and Coast Guard Teams shall fully respect fundamental rights, including access to asylum procedures, and human dignity;<sup>63</sup> the return operations will in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights;<sup>64</sup> and the "forced-return operations" will incorporate monitors specific expertise in child protections;<sup>65</sup>

c) *Accountability claims and procedures.* The autonomy of the Agency and the necessity of establishing accountability procedures facilitated the appointment of the Fundamental Rights Officer.<sup>66</sup> One of the main tasks of this Officer and of the Executive Director was to set up a complaints mechanism, which was approved some weeks after the entry into force of the Regulation.<sup>67</sup> This mechanism allows any persons who is directly affected by the actions of the Agency staff who "due

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<sup>57</sup> See [frontex.europa.eu/assets/Publications/General/Code\\_of\\_Conduct\\_for\\_Joint\\_Return\\_Operations.pdf](http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf)

<sup>58</sup> See [frontex.europa.eu/assets/Publications/Training/VEGA\\_Children\\_Handbook.pdf](http://frontex.europa.eu/assets/Publications/Training/VEGA_Children_Handbook.pdf)

<sup>59</sup> It must be underlined that the obligations and the necessity of the operational plan are required too in the procedures for launching rapid border interventions (art.17 of the Regulation) and the exceptional situations requiring urgent action (art.19)

<sup>60</sup> See Regulation 2016/1624, o14 September 2016, Art. 16.2, d).

<sup>61</sup> See *Ibid*, Art. 16.2, j).

<sup>62</sup> See *Ibid*, Art. 18.4, a).

<sup>63</sup> See *Ibid*, Art. 21.4.

<sup>64</sup> See *Ibid*, Art. 27.1.

<sup>65</sup> See *Ibid*, Art. 29.

<sup>66</sup> See *Ibid*, Art. 71.

<sup>67</sup> See FRONTEX, Decision of the Executive Director (No R-ED-2016-106) on the Complaints Mechanism, 6 October 2016. The Annex 1 of this decision contains "The Agency's rules on the complaints mechanism" and the Annex 2 encloses the "Complaints form for potential violations of fundamental rights".  
<http://frontex.europa.eu/complaints>

to those actions, who considers him or herself to have been the subject of a breach of his or her fundamental rights" to " may submit a complaint in writing to the Agency".<sup>68</sup> The procedure deserves a detailed analysis trying to highlight the main points:

- *Non-anonymous claims.* The procedure was foreseen for persons "directly affected"<sup>69</sup> and was completed with the good administration principle.<sup>70</sup> The complaint, free of charge, must be in writing on the official complaint form with all the personal and factual details of the incident and must be made within one year from the date of the facts alleged.<sup>71</sup>
- *Non-abusive claims.* The Regulation referred to "substantiated" <sup>72</sup> complaints, which pursue the same purpose of well-founded claims. The complain rules require as well to be "involving concrete fundamental rights" and no to be "manifestly excessive, repetitive, frivolous or malicious".<sup>73</sup>
- *Non-Exhaustion of domestic remedies.* The Preamble of the Regulation established clearly that "The complaints mechanism should be without prejudice to access to administrative and judicial remedies and not constitute a requirement for seeking such remedies. Criminal investigations should be conducted by the Member States." <sup>74</sup> This complementary conception of the Agency role was confirmed in the complaint mechanism that allows a parallel domestic action and does not require the exhaustion of the national remedies.<sup>75</sup> Furthermore, it could even be used in case of a claim already closed or sentenced (in favor or against the allegation) in a domestic or in an international body.

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<sup>68</sup> See Regulation 2016/1624, 14 September 2016, Art. 72.

<sup>69</sup> See *Ibid*, Art. 72.2.

<sup>70</sup> See *Ibid*, Art. 72.5.

<sup>71</sup> See FRONTEX, "The Agency's rules on the complaints mechanism", Art 5 and 8.

<sup>72</sup> See Regulation 2016/1624, 14 September 2016, Art.72.3.

<sup>73</sup> See FRONTEX, "The Agency's rules on the complaints mechanism", Art.8.

<sup>74</sup> Regulation 2016/1624, 14 September 2016, Preamble, par.50.

<sup>75</sup> See FRONTEX, "The Agency's rules on the complaints mechanism", Art.5.5 and 9.3.

- *Cooperation with Member States.* Article 72.4 of the Regulation established the obligation of informing the relevant authority in the Member States (of which the responsible agents are nationals) in the case of human rights breaches caused by national agents or seconded agents. The Agency should "register and ensure the follow-up by the Agency or that Member State."<sup>76</sup> Regarding the Member States' staff, the complaints rules state the Agency obligation to follow up the matter and, as a last resort, it "may request the Member State to remove her/him from the Agency activity or the rapid reaction pool."<sup>77</sup> Although, as an extraordinary recourse, it can take "immediate action" when facing an "imminent risk or irreparable harm".<sup>78</sup> This method of cooperation shows the confidence of the Agency upon the domestic measures of the Member States but, furthermore, confirms the last responsibility of them on deciding the reparation measures to adopt.
  
- *Internal measures of the Agency.* In the case of complaints against the Agency's staff, the rules apply to Seconded National Experts and to Agency staff directly contracted; both of them, after the examination and follow-up of the pertinent complaint, could be object of "administrative and disciplinary measures" by the Agency.<sup>79</sup> In this case the Agency will follow the general procedure for officials of the EU<sup>80</sup> since this staff would be sanctioned as officers belonging to the EU institutional structure, which is thoroughly different from the national agents deployed at the EU Member States borders. Furthermore, the "complaint form for potential violations of fundamental rights" elaborated by the Agency refers to "other persons" such as interpreters, drivers or persons wearing national uniforms.

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<sup>76</sup> See Regulation 2016/1624, 14 September 2016, Art.72.4.

<sup>77</sup> See FRONTEX, "The Agency's rules on the complaints mechanism", Art 11.

<sup>78</sup> See *Ibid*, Art 12.

<sup>79</sup> See *Ibid*, Art 10.5.

<sup>80</sup> See *Ibid*, Art 10.5: "[...] the applicable procedure is the laid down in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, and its implementing rules."

## 5. Conclusions.

- The security situation external to the EU in the XXI century inevitably moved the Member States to fortress their external borders. The appearance of new forms of transnational crimes and other international criminal activities encouraged the assumption of new competencies and roles into the borders management responsibilities. The intensification of the international terrorism encouraged this phenomenon.

- The advances in the field of European Justice and Home Affairs cooperation, accompanied by the entry into force of the Schengen area, helped the Members States cooperation in border management. The utilization of autonomous European agencies like FRONTEX and EUROPOL has proven to be a good mechanism being versatile and flexible enough to control the dynamic border threats. These agencies have notably improved the training, technical resources and good practices of the participant border guards.

- The perseverance of the civil society and the pressure of the international organizations dealing with human rights have made possible the inclusion of fundamental rights accountability procedures into the FRONTEX mandate. The current *complaints mechanism* is not really an external control over FRONTEX, but an additional and internal accountability procedure under the responsibility of the Fundamental Rights Officer. The sum of the national constitutional remedies for breaches of human rights, the influence of the incorporation of the European Charter of Fundamental Rights, the (limited) legal remedies available for individuals before the EUCJ offer and the addition of this complaint mechanism (which does not even need the exhaustion of domestic remedies) conform an overall scenario quite fairness with the right to effective judicial protection. Furthermore, in the short term, we cannot envisage a better scheme of protection in view of the current state of the EU in relation to the ECtHR and due its reluctance to be subject to other jurisdictions.

- In any case, border management will always be part of the essence of the Member States sovereignty. The reading of the EU Treaties compels to respect their last

responsibility in case of exceptional circumstances or regarding the particular agreements with third countries. The inter-governmental method and the shared competences are still reigning in the most important decision procedures. In terms of accountability, we have proved the difficulties to prove some concepts like the "effective control" and the "direct attribution" to the Agency of the eventual breaches of human rights obligation during FRONTEX operations. This does not mean that FRONTEX and the Members States are operating in *grey areas* dominated by the impunity. On the contrary, thanks to the effective cooperation and thanks the incorporation of additional measures (like the complaints mechanism) the activities on the States borders are more accountable and are under more scrutiny than ever. Face to some of the political voices reluctant with the EU integration process, we firmly conclude that the European cooperation in the field border management has proved good results in terms of effectiveness and good practices. Furthermore, it is a good path to continue advancing with coherence towards the due balance between security and human rights in the borders control.

# ANNEX



## COMPLAINT FORM

### for potential violations of fundamental rights

#### General guidance

##### Who can submit a complaint?

1. You, or a person or party acting on your behalf, may submit a complaint to Frontex, if you believe that you are directly affected by the actions of staff involved in a Frontex activity<sup>1</sup>, and you consider that one or more of your fundamental rights have been violated due to those actions. *For a list of fundamental rights as per EU Charter see Appendix I.*
2. You can be represented by any party (e.g. another person, lawyer, organisations, family member, legal guardian, etc.). Any of these parties may file a complaint on your behalf.
3. Cases involving multiple complainants can also be submitted.

##### How do I submit a complaint?

4. Your complaint must be submitted **in writing**. Your complaint will be handled by the Frontex Fundamental Rights Officer (FRO), an independent expert who monitors and promotes fundamental rights within Frontex. Using this complaint form will help the FRO to process your complaint more efficiently, but you can submit a complaint by other written means of your choice. At any stage of the procedure, the FRO may request you to submit additional information, documentation or clarification to your complaint. For this reason, it is important you add your contact details.
5. Complaints may be submitted in any EU language, and also in Arabic, Pashto, Urdu and Tigrinya. Complaint forms are available in these languages.
6. There is no maximum length for your complaint, but it is preferable that all the information is contained in **no more than 15 pages**.
7. You should submit your complaint within a year from the date on which the alleged violation of your fundamental rights occurred or you were informed or learnt about it or otherwise were able to submit the complaint.

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<sup>1</sup> Frontex activity means a: (i) Joint operation; (ii) pilot project; (iii) rapid border intervention, (iv) migration management support team deployment; (v) return operation or return intervention. For definitions of these activities please consult the Regulation (EU) 2016/1624 of 14 September 2016, on the European and Coast Guard Agency.

8. Your complaint can only refer to facts that occurred or whose effects continued after 6 October 2016<sup>2</sup>, otherwise it will be inadmissible.
9. You do not need to go through national procedures before submitting your complaint.
10. If you submit a complaint to Frontex, this does not prevent you from accessing other forms of complaint, such as national or European courts.
11. You should explain the **detailed facts** of your complaint, **identifying the impact** of those actions had on your fundamental rights (see Appendix I), to the extent possible.
12. Filing a complaint is **free of charge**.

**What happens after I submit my complaint?**

13. Frontex and the FRO will treat all complaints as **confidential** unless you explicitly waive your right to confidentiality in this form or in any other written manner.
14. If your complaint refers to actions performed by a border guard participating or deployed in a Frontex activity, your complaint will be referred by the FRO to national authorities who handle individual complaints and to national fundamental rights institutions. The FRO will inform you about which authority(ies) have received your complaint and provide you with their contact details. You need to specifically consent in order for the FRO to forward your personal data to the relevant authorities (see Section 5 in the complaint form).
15. If your complaint is declared inadmissible, the FRO will inform you in writing about the reasons for the inadmissibility and, if possible, provide you with further options for addressing your concerns.
16. Any change of address, email or other contact details of the complainant should be notified as soon as possible to the FRO.

Further information on the rules of the Frontex complaint mechanism can be found in the Agency's webpage: [www.frontex.europa.eu/complaints](http://www.frontex.europa.eu/complaints)

**1. Information on the complainant(s)**

*You are submitting the complaint as:  
(please tick as appropriate)*

Directly affected person(s)

Party representing affected person(s)

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<sup>2</sup> *Date of the entry into force of the Regulation (EU) 2016/1624 on the European Border and Coast Guard.*

**DIRECTLY AFFECTED PERSON(S):**

Last name(s): .....  
First name(s): .....  
Age over 18 years old:           YES            NO   
Nationality(ies) (if known): .....  
If stateless, please specify the last place of residence: .....  
Address for correspondence: .....  
Postcode: .....  
City: .....  
Country: .....  
E-mail: .....  
Tel (please indicate country and area code): .....  
Fax: .....  
Other relevant information: .....

**Note: You must sign at the end of the complaint form.**

*For cases that involve more than one complainant, please add personal data for each individual.*

**ANY PARTY REPRESENTATIVE:**

Last name(s): .....  
First name(s): .....  
Relationship to the complainant: .....  
Name of the Organisation, where applicable: .....  
Address for correspondence: .....  
Postcode: .....  
City: .....  
Country: .....  
E-mail: .....  
Tel (please indicate country and area code): .....  
Fax: .....  
Other relevant information: .....

**Note: The affected person must sign at the end of the complaint form to demonstrate her/his consent to being represented.**

**If the complainant is unable to sign the complaint form due to justified reasons (e.g., deceased, missing, detention incommunicado, health reasons, illiteracy, etc.) or there are other compelling reasons for the complainant not to give a written authorization for your representation, please explain the reasons:**

.....  
.....

**2. Information on the potential violation(s) of fundamental rights**

Please provide information on the potential violation(s) of fundamental rights including dates, places, a description of the action(s) or failures to act and staff involved. Please explain how you believe these actions affect your fundamental rights or those of the person(s) you are representing:

- a) Approximate date and time of the event(s):.....
- b) Location/country:.....

In case the exact location is unknown, please provide a detailed description of the location where the event took place:

.....  
.....

- c) Detailed description of the person(s) you are complaining against. Describe, to the best of your knowledge, whether the complaint refers to actions performed by (tick all that apply):
  - a. Person(s) with a light blue Frontex armband
  - b. Person(s) with Frontex identification cards
  - c. Person(s) wearing national uniforms of the location where the activity takes place
  - d. Other persons, such as interpreters, drivers, etc

Provide information about the person(s) involved (e.g., name, clothing description, language spoken, physical appearance, what job or functions she/he was doing, etc.):  
.....  
.....  
.....  
.....

d) Detailed description of the event, in a chronological order if possible (attach additional pages if necessary). If the potential violation is still ongoing, please specify:

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.....  
.....

e) Detailed description of how the event described above has affected you and how you consider that it violates your fundamental rights (*for a list of fundamental rights see Appendix 1*):

.....  
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.....  
.....  
.....  
.....  
.....

**3. Submission of your complaint to other authorities**

**Note: You do not need to complete national procedures of any kind before submitting your complaint to Frontex.**

1) Have you already submitted your complaint to any court (e.g., national, European, etc.)? Please specify which court, the current status and the outcome of the procedure, if known:

.....  
.....  
.....

2) Have you submitted your complaint to any other institution (e.g., a national ombudsman, a national human rights institution, etc.)? Please specify which institution, the current status and the outcome of the procedure, if known:

.....  
.....  
.....

**4. Copies of supporting documents**

1) Please provide **copies** of all available supporting documents related to your complaint. **Examples** of these documents could be:

- a copy of your ID, passport or other form of identification;
- copies of any documentation, pictures, videos, reports, certificates, witness statements or other supporting documents relevant to your complaint;
- if you have submitted your complaint to other courts or institutions (see Section 3), copies of complaint forms, pleadings, or decisions related to these procedures.

2) If you cannot provide supporting documentation, please explain:

.....  
.....  
.....

**Note: Please do not submit originals as they will not be returned to you**

**5. Confidentiality and personal data**

By submitting this complaint, you consent to the processing of your personal data by Frontex and FRO<sup>3</sup>. Further information on processing of personal data is defined in the respective privacy statement.

Complaints are dealt with confidentially by Frontex and the FRO. If your complaint is declared admissible, it will be referred to national authorities for follow up, including those competent to deal with violations of fundamental rights. Please confirm that **you explicitly authorise the FRO to disclose your identity and personal data included in Section 1 with the relevant national authorities and fundamental rights institutions.** If you decide not to share your personal data, the complaint might be rejected by the competent national authorities and human rights institutions.

*I hereby consent to the sending of my personal data to the national authorities, including those competent for fundamental rights in the relevant authorities of the State concerned (please tick):*

\_\_\_\_\_

<sup>3</sup> Within the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001

Yes

No

**6. Redress**

If your complaint is substantiated, what in your view could Frontex or other institutions do to address the harm caused?

.....  
.....  
.....

**7. Submission of your complaint**

You can submit your complaint and the necessary attachments via email (complaints@frontex.europa.eu); the Frontex website; directly to Frontex staff where the activity takes places; or by post:

Frontex Fundamental Rights Officer, Complaints  
Frontex  
Plac Europejski 6  
00-844 Warsaw  
Poland

Date: .....

Signature of the complainant

Date: .....

Signature of any party representative, where applicable