ADMiGOV

Advancing Alternative Migration Governance

Frontex and Exit Governance: Dataveillence, Civil Society and Markets for Border Control

Deliverable 2.3

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Acronyms

A2SISII	Access to SIS II [Schengen Information System II]
AIRE	Advice on Individual Rights Europe
AMIF	Asylum, Migration and Integration Fund
BCP	Border Crossing Point
BMS/sBMS	Biometric Matching System
CCME	Churches' Commission for Migrants in Europe
CEPOL	European Union Agency for Law Enforcement Training
CF	Frontex Consultative Forum on Fundamental Rights
CIR	Common Identity Repository
CLTD	the Interpol information systems Stolen and Lost Documents
COE	Corporate Observatory Europe
CoE	The Council of Europe
CORDIS	Community Research and Development Information Service
DG DIGIT	Directorate General for Informatics
DG HOME	Directorate General for Migration and Home Affairs
EaP	Eastern Partnership
EASO	European Asylum Support Office
EBCGA	European Border and Coast Guard Agency (Frontex)
EC	European Commission
ECRE	European Council for Refugees and Exiles
ECRet	European Centre for Returns
ECRIS	European Criminal Records Information System
ECRIS TCN	European Criminal Records Information System Third Country Nationals
EES	Entry-Exit System
EIGE	European Institute for Gender Equality
EIO	Amnesty International European Institutions Office
ESP	European Search Portal
ETIAS	European Travel Information and Authorisation System
EU	European Union

EU-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
EURCAP	European Readmission Capacity Building Facility
Eurodac	European Asylum Dactyloscopy Database
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Law Enformcement Agency
FADO	False and Authentic Documents Online system
FAR	Frontex Application for Return
FReM I-III	Forced Return Monitoring I-III
FRO	Fundamental Rights Officer
IBM	Integrated Border Management
ICC	International Coordination Centre
ICJ	International Commission of Jurists
ICMPD	International Centre for Migration Policy Development
ICOnet	Information and Coordination Network for Member States' Migration Management Services
ICT	Information and Communications Technology
IO	International Organizaton
IOM	International Organisation for Migration
IPA I-II	Instrument of Pre-Accession I-II
IRMA	Irregular Migration Management Application
JHA	Justice and Home Affairs Council
JORA 2	Joint Operations Reporting Application
JRO/JO	Joint Return Operation
JRS	Jesuit Refugee Service Europe
LCC	Local Coordination Centre
MEP	Member of the European Parliament
MID	Shared multiple-identity detector
MS	Member State [of the EU]
NGO	Non-Governmental Organisation
NRO	National Return Operation
OHCHR	Office of the United Nations High Commissioner for Refugees

OSCE ODIHR   Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights

PRAS   Pre-Return Assistance

PICUM   Platform for International Cooperation on Undocumented Migrants

PoM   Frontex Pool of Monitors

RCUE   Red Cross EU Office

RECAMAS national return case management systems

RIC   Reception and Identification Centre

ROS   Returns Operations Sector

RTP   Registered Traveller Programme

SAS   Statistical Analytical Software

SC   Save the Children

SIS I-II   Schengen Information System I-II

SMEs   small and medium-sized businesses

TDAWN   Travel Documents Associated with Notices

ToR   Terms of Reference

UNHCR   United Nations High Commissioner for Refugees

VIS   Visa Information System

1. Introduction

Whilst exit operations are usually used to describe practices like forced returns or even voluntary or assisted ones, this report will explicate how other practices also need to be examined as exit governance. The report traces exit governance from the way in which the political institutions, and with them Frontex, are seeking to transform not just the operational understanding of exit policies, but also the very knowledge environment through which exit is understood by Member States and non-state actors. As such, it understands exit governance widely, as concerning both the seemingly discrete functioning of large-scale information systems and how they process and store data, over the different kinds of Frontex support and organization of return flights, to the highly controversial pushback practices. As the latter term indicates, this practice means that border authorities, or actors contracted by such authorities, seek to force migrants to exit EU territory. As such this connects to the various internal and external investigations which have faced the Frontex Agency since 2020. Part and parcel of this more expansive understanding of exit governance is also that it is connected to various markets for border control technologies and enforcement, as well as to forums where non-profit actors also seek to impact how people are sent out of EU territory.

This report details the central and rapidly expanding role of the Frontex Agency in the institutional structure and political dynamics underpinning EU exit policies, and how the Agency interacts with a range of non-state actors, ranging from commercial for-profit companies to International Organizatons (IOs) and civil society organizations, such as NGOs.

Frontex was founded in 2004 through Regulation 2007/2004. This Regulation stated that
"*Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice*".
Subsequent extensions of its mandate occurred in 2011, and new and more expansive Regulations were implemented in 2016, Regulation 2016/1624 (European Parliament, 2016) and 2019, Regulation 2019/1896 (European Parliament, 2019) (see below), and a vacancy for a Deputy Director for Returns was issued in 2021. With the 2016 Regulation, the Agency name was officially changed to the European Border and Coast Guard Agency, but for ease, this report will refer to it via the still widely used shorthand Frontex. The remarkable evolution of Frontex when it comes to exit policies can be illustrated by the number of times its Regulations have referred to "return": While the original Regulation 2007/2004 referred to "return" 11 times, the 2011 amendment made 30 such references, Regulation 2016/1624 referenced the term 282 times, and Regulation 2019/1896 does so 360 times.

Regulation 2019/1896 provided the Agency with a "standing corps" in the form of an operational staff of 10,000 officers to be hired by 2027. It is to consist of border guards, return escorts, return specialists, and other relevant staff from the Agency as well as provided by Member States on a mandatory basis through short- and long-term employments.
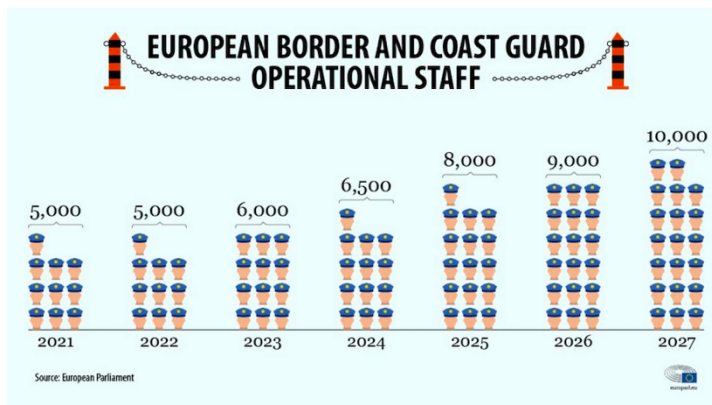
Figure 1:Standing corps hiring plan, 2021-2017. Source: European Parliament.

The 10.000 person standing corps "*should have all the necessary powers to carry out border control and return tasks, including the tasks requiring executive powers*." (European Parliament, 2019, p. 8). According to the Agency, the rules of the 2019 Regulation means that the corps "will be able to support return procedures in member states, for example by identifying irregularly staying non-EU nationals and by assisting national authorities to obtain travel documents"[1]. In the recent 2020 Migration Pact, the Commission has reiterated the view, that such staff expansion is "essential for the necessary capability to react quickly and sufficiently (EC 2020, p.12).

As of April 2021, Frontex is managed by an Executive Director whose functions and powers are defined in Article 68 of Regulation (EU) No 2016/1624. The Executive Director is assisted by a Deputy Executive Director, a Cabinet, and is operating via the Brussels Office, a Registration Office, a Management Board and Cross-Divisional Secretariat, as well as an Inspection and Control Office and the Media and Public Relations Office. The Agency management must also consult with a Consultative Forum on Fundamental Rights, which was set up in 2012 and consists of EU agencies, International Organizations and NGOs (European Parliament, 2016).

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[1] European Parliament, "European Border and Coast Guard: 10 000-strong standing corps by 2027." Available at: https://www.europarl.europa.eu/news/en/press-room/20190410IPR37530/european-border-and-coast-guard-10-000-strong-standing-corps-by-2027.
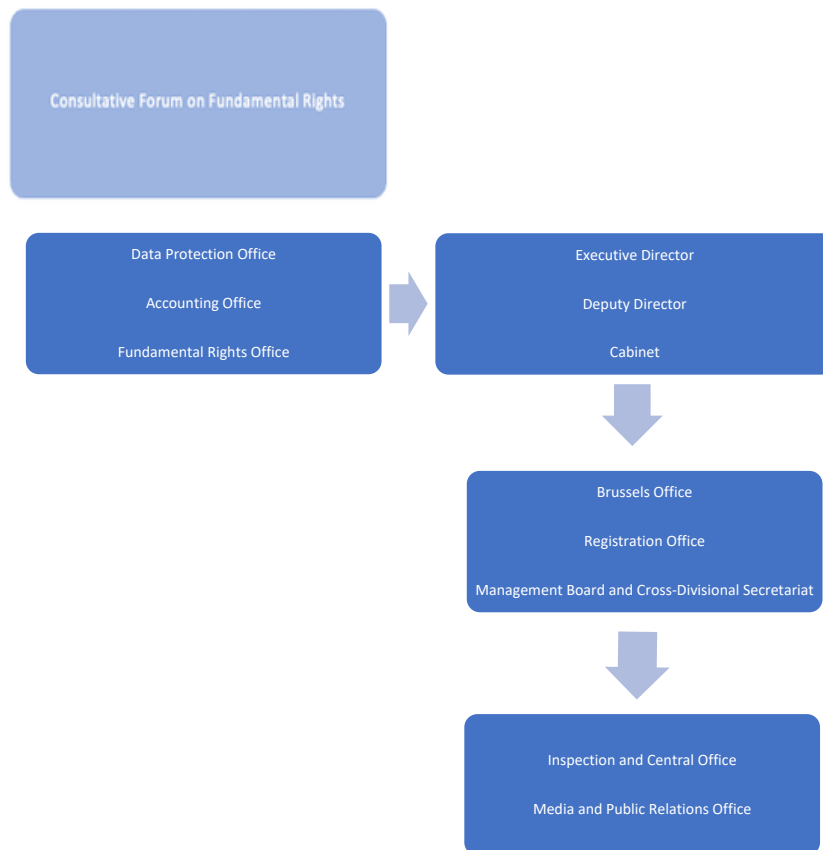
Figure 2 Frontex management structure

The daily work of the Agency is conducted across by five Divisions: The Operational Response
Division; the Situational Awareness and Monitoring Division; the Capacity Building Division; the
Corporate Governance Division; and the International and European Cooperation Division. Each of
these Divisions are then functioning through 54 specialized Centres, Offices, Units and Task Forces.
Moreover, the Fundamental Right Officer is to report to the Management Board and the
Consultative Forum, in order to assist the Executive Director[2].

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[2] Frontex website. Available at: https://frontex.europa.eu/about-frontex/who-we-are/structure/
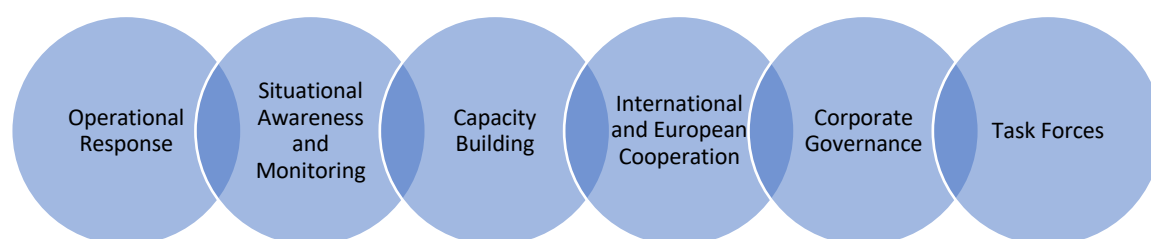
Figure 3: Frontex Divisions

In general, Frontex´s involvement in exit policies cuts across all of its Divisions. Thus, when it comes
to the pooling of resources for return operations, the Pooled Resources Unit of the Capacity Building
Division is involved, and the Field Deployment Unit under the Operational Response Division is
responsible for the recruitment and deployment of officers for return operations. The Agency´s
continuing assessment of Member States capacity and willingness to conduct exit operations resides
under the Vulnerability Assessment Unit under the Division of Situational Awareness and
Monitoring. And when it comes to the many tenders and contractual relations involved in Frontex
charter flights, the Procurement branch from the Legal and Procurement Unit, under the Corporate
Governance Division is responsible. However, some organizational nodes gather and coordinate
these activities; the European Centre for Return (ECRet), its Horizontal Coordination Office, and the
branches for Pre-Return Assistance (PRAS) and the Returns Operations Sector (ROS), each divided
into specialized Teams. Alongside these, three Return Pools (of specialists, escorts and monitors) are
available for operations. A Task Force for ETIAS and Interoperability also intersects with the use of
databases for exit purposes.

2. Methodology

The report provides an in-depth overview of EU exit practices, using a mixed methods approach
involving comprehensive desk research in the form of analysis of policy documents, statistical
analyses on open-source datasets, coupled with semi-structured interviews across supranational,
public, private and organizational actors, interests and levels in EU exit policies.

A substantial part of the research behind this report comes from document research. Here, we have
searched for publicly available policy documents, reports, technical studies and cost assessments
through EU-portals like ec.europa.eu, eur-lex.europa.eu, and the database on Community research

and Development Information Service (CORDIS), the European Commission's primary source of results from the projects funded under EU's framework programmes for research and innovation, such as Framework Programme 7 (FP7) from 2007-2013, and for Horizon 2020 between 2015-2023. This information was used to generate maps, logarithmic scales, bar charts and matrices, and was coupled with searches on webpages of relevant EU agencies and bodies, such as Frontex and EU-Lisa. Moreover, it has also been complemented with policy documents and reports from non-EU stakeholders, such as the UNHCR, the IOM, the ECRE, the ICMPD, and investigative networks such as Statewatch and Corporate Observatory Europe. The projects that have been determined relevant are all found on the Community Research and Development Information Service's (CORDIS) website. CORDIS is the European Commission's primary source of results from the projects funded under EU's framework programmes for research and innovation.

2.1 Constructing a database for EU funds to exit operations and infrastructures

At the initial stage of research, the above information was used to develop a database in cooperation with the Danish investigative media Danwatch with a starting point for analysis set to 2012, capturing the renewed EU efforts of building border control following the so-called Arab Spring, in some of the Union´s neighbouring regions. At a later stage, from this database, data was sequenced in order to construct another database focusing exclusively on the infrastructure of the EUs exit policies. Here, we understand exit regimes as the policies and practices aimed at having irregular migrants leave the territory of Member States of the EU, and from the EU as a whole. As such, exit regimes encompass both legal infrastructures (laws, regulations, directives and readmission agreements) as well as operational ones (state and non-state agencies and organizations with the responsibility for implementing processes such as forced returns, chartering flights, monitoring operational activities) (Oomkens and Kalir 2020, p.7). Exit regimes also include technological infrastructure, which serve to generate information systems, and to these we include the EU's databases connected to entry and exit governance, such as Frontex´s IRMA and FAR systems, JORA 2 as well as the large-scale information systems SIS II, VIS, Eurodac, ETIAS, the EES. Besides Frontex, this infrastructure includes also private and commercial actors, producing the hardware and software for those technological systems. By infrastructure, we mean relational, functional systems, which comprise classifications and social constructions (cf. Bowker and Star 1999).

This categorization of the data facilitated several kinds of analysis. First, it made it possible to quantify the numbers and volume of awarded contracts, to identify recipient companies and relations between subsidiary and parent companies and public agencies and bodies. Second, it made it possible to trace specific companies repeatedly awarded contracts, and to ascertain their relative market positions within the market for EU exit governance. Third, the categories also aided in the construction of a series of tables, figures and visualizations illustrating the complex political economy of EU exit policies, and its actors and dynamics.

FP7 and Horizon 2020 represent important nexus points between actors on the market for EU border control and EU and Member State institutions (cf. Kumar 2017; Baird 2018). Through projects under these programmes, consortiums comprised by members from several national industries and sectors are awarded contracts, partly or fully subsidized by the EU. This holds true also for exit infrastructures, practices and the actors involved. Alongside national or EU institutions, these sectors

include research organisations, think tanks, consultancies, higher or secondary education establishments, ICT companies, security companies, biometrics and defence and aerospace companies to name a few. The information about FP7 and Horizon 2020 projects in the database allows for the creation of visualizations of project consortiums, along the lines of call, topic, funds, coordinators and sectors. Exploring these allows for a fine-granular approximation of the different private and organizational actors involved in the development of EU exit practice and policy. At the same time, information about these funding instruments is also crucial for tracing the confluence characterizing the relation between private and public interests in border control development (Lemberg-Pedersen 2018a; Lemberg-Pedersen et al. 2020; Martin-Mazé and Perret, 2021).

The contracts were selected if they directly related to the development of exit mechanisms and instruments, that is, concerned with the monitoring or control of human mobility connected with the deportation, return and reintegration policies involving EU's institutions or Member States. The database was then built around the following categories: i) Contract reference, ii) Agency, iii) Year, iv) Contract title/subject, v) Contract for return, vi) Contract for border control, vii) Contractor, viii) Consortium, viii) Number of companies, ix) Individual company/organization, x) Group/Parent company, xi) HQ Country, xii) Industry, xiii) Value calculated, xiv) Value per company, xv) Value per company estimated.

This categorization was used to sort data about Frontex, the European Return Fund (2009-2013), the Asylum, Migration and Integration Fund (AMIF) (2015-2018) and EU-Lisa (2013-2019). It yielded an overview of 163 separate contracts enacting aspects of EU exit policies from 2009-2019. These span a wide array of practices and actors, such as the EURODAC Recast (LISA/2013/RP/01) from 2014, worth €7.487.861,65, and involving 3M Belgium BVBA, Bull and Sopra Steria Group; the Forced Return Monitoring II project (HOME/2015/AMIF/AG/FRTM/8890) from 2016, worth €983.312, and involving the ICMPD, the Inspectorate of Security and Justice (Netherlands), the Ministry of Foreign and European Affairs (Lithuania), and the Office of the Public Defender of Rights (Czech Republic); or the Pilot project on returns by scheduled flights supported by Frontex (Frontex/922/2017), worth €1.221.174, and involving Polish company eTravel SA.

The contracts gathered thus span across actors such as companies, ministries and organizations, and while the number of contracts identified cannot be verified as exhaustive, it nonetheless allows for a deep analysis of the political economy underpinning public, private and organizational sector dynamics in EU exit policies, and thereby of the interests co-shaping the multileveled EU exit governance.

2.2 Timelines and geographic maps

This report analyzes a significant dataset on Frontex national and joint return operations between 2016-2018 derived from several publicly available document requests made to Frontex by Helen Darbshire and Estela Casajuna (December 2018), Martina Tombini (August 2019) and Alejandra Finotto (November 2019). These requests were made under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001. Connected to the ongoing discussions about the lack of transparency of Frontex, these requests, made via the AsktheEU.org website were all only partially successful, as the researchers did not receive all of the documentation they requested. They also only managed to get documents after lengthy correspondence with the Agency, who demanded revisions of their requests. This latter course of action is standard from Frontex to all such requests,

but it should be noted that in 2021, the Agency changed their transparency policy, and no longer makes documents requested via AsktheEU.org, publicly available, but sends them instead only to those making requests.[3] Notably, this step on the part of Frontex coincided with the ongoing European Parliament, Ombudsman, Court of Auditors, European Commission and OLAF investigations into Frontex.

As noted by researchers filing requests to the Agency, the format of the released documents have often been unmanageable to the extent of significantly slowing or complicating data analysis. The dataset released to Darbshire and Casajuna, for instance, took the form of a 128 pages long pdf document lacking proper spacing, with disappearing headings and rows of type instead of columns making the text less accessible.[4] For the purpose of this report, we therefore embarked upon converting the information in released documents into more manageable format ourselves. This was done by re-entering all the information via Excel, and creating a single database. In this database, each entry corresponded to a single Frontex operation, with the following information as separate columns: Date, country of destination, organizing member state, participating member states (displayed as three-letter shorthand, e.g. GER for Germany), number of returnees, whether or not there was a monitor on board and their nationality, whether this was a joint return or a national return operation and the operation serial number. This resulted in a comprehensive overview of Frontex's chartered forced return operations over a three-year period (2016, 2017 and 2018). We decided that for most of the available information, a series of timelines would be the best approach to focus and disaggregate the voluminous information in the database. For instance, by assigning the data values for the number of returnees on deportation flight to a y-axis on such timelines, produced visually informative images.

Accordingly, eight timelines of Frontex national and joint return operations were produced (Figures 13-17+18-21). They show the entire dataset color-coded by organizing member state, or by joint vs national return operations. The same colors were used across the full set of visualizations, for ease of comparison. For this set of visualizations, three concepts ('organizing/participating member state', 'joint/national return operation' and 'monitors on board') require explanation. These concepts were derived from analysis of the data, coupled with reports, and interviews with authorities and scholarly experts across the landscape of European forced returns. In creating timelines from this dataset, the volume of the information made it possible to focus on both individual countries and regions involved in Frontex return operations. The timelines become snapshots showing key moments or patterns within the data, rather than a complete overview. At the same time, our categorization of data has been designed to be comparable with structural developments in the exit work of Frontex, as opposed to a complete overview of every single operation involving every single country.

It was also decided to produce a series of geographic maps of several of the deportation corridors observable in the Frontex data, complementing the series of timelines (Figure 17). In order to emphasize the participation of many Member States in the Agency´s return operations, it was decided to include arrows visualizing forced returns from participating member states, rather than

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[3] See AsktheEU.org. Available at: https://www.asktheeu.org/en/body/frontex.

[4] For this released documentation, see: AsktheEU-org. Available at:
https://www.asktheeu.org/fr/request/6169/response/20655/attach/html/3/JRO%20NRO%202016%202018.pdf.html.

just organizing member states. While this visualization therefore does not indicate how many returnees on any given flight came from the organizing member state and how many from the participating member states, it helps creating striking images showing forced returns from many-countries-to-one-region, in contrast to e.g. depicting forced returns from one-country-to-many-regions. The arrows for these visuals were color-coded using the same colors assigned to member states in the series of timelines.

2.3 Semi-structured interviews

The semi-structured interviews involved 12 stakeholders across different institutions occupying various positions and perspectives relative to EU exit policies. Two interviews were conducted in person, while all but one of the remaining interviews were conducted over Video-Chat. The exception was Frontex, who, despite itself occupying a seat on AdMiGov´s stakeholder board, repeatedly refused to take part in the semi-structured interviews, accepted by all other actors. Moreover, individual Frontex officers who had initially accepted such interview requests, recused themselves after learning that the Agency´s Press Office was involved. Having requested all questions in advance, the Press Office informed that it would only be responding to some of them, and only over mail. The resulting five-page document did, however, address some of the questions we intended to ask of the Agency. However, it also left many others unanswered. It was unfortunately also not possible to organize interviews with IOM Europe, ICMPD and EU-Lisa, despite repeated requests.

Several interviews were set up with a number of actors involved in EU exit policies. As this report is designed to build upon and expand the findings and research methodologies of earlier AdMiGov Deliverables, it continues the detailed analysis of multileveled migration governance, by asking actors about relations and dynamics in the field. For this reason, we selected several officials from Member States´ public institutions, as well as national police officers, monitoring bodies, independent return monitors, a private company, as well as from International Organizations (IOs). In combination with the quantitative analysis, this sampling of qualitative interviews is designed to give an unparalleled understanding of EU exit policies. The final list of successful interviews includes:

Interview Number	Organization	Method
1.	Frontex Press Office (Frontex interview)	Mail-response
2.	European Data Protection Supervisor (EDPS interview 1)	Video-Chat
3.	European Data Protection Supervisor (EDPS interview 2)	Video-Chat
4.	Police Superintendent, Danish Return Division (Danish Police interview 1)	In person

5.	Police Superintendent, Danish National Police (Danish Police interview 2)	Video-Chat
6.	Escort police officer (German police interview 3)	Video-Chat
7.	Folketingets Ombudsmand, Denmark, Head of Monitoring Division (Folketingets Ombudsmand Interview 1)	Video-Chat
8.	Folketingets Ombudsmand, Legal officer (Folketingets Ombudsmand Interview 2)	Video-Chat
9.	Accenture, Unique Identity Services	Video-Chat
10.	Independent return monitor from Diakonie (German return monitor interview 1)	Video-Chat
11.	Independent return monitor from Diakonie (German return monitor interview 2)	Video-Chat
12.	Independent return monitor from Diakonie (German return monitor interview 3)	Video-Chat

Figure 4: Matrix showing interview informants for the report

2.4 Delimitations

As the Covid-19 pandemic evolved in the spring 2020, it significantly impacted the research design, making ethnographic field visits and observations, as well as in-person interviews infeasible. And while some institutional actors initially became more accessible for interviews via Video-Chat, the

dynamics of the pandemic and responses to it also meant that several agreed-to interviews were subsequently postponed, or never materialized.

Besides the challenges with Frontex, difficulties also pertained to the IOM Europe and EU-Lisa, both of which, despite receiving all interview questions in advance, did not return to set up an interview. The Frontex refusal to make its staff available for interviews must also be assessed against the European Commission´s clear priority for AdMiGov´s focus on developing indicators for good migration governance. And at a general level, issues of lacking accessibility underscore the point made by Oomkens and Kalir (2021) about the challenges with mapping EU exit regimes, namely that the massive differences in access to information between EU institutions and Member States, as well as between different Member States impede attempts to create overviews. This in turn hampers attempts to develop indicators for good EU migration governance, hereunder, sustainable exit policies.

3. Frontex and exit. Institutional and sectoral developments

The following section examines the institutional sectoral developments which underpin the Frontex Agency´s involvement in EU exit governance. First, by sketching the changing role of exit policies in the Agency´s operational practice from its first to most recent Regulation, then by detailing the institutional setting of the Agency´s European Centre for Returns (ECRet), the allocated budgets and divisions of labour, and then by drawing attention to challenges facing the Agency´s rapidly expanding operational and financial scope.

3.1 Background to the recent evolutions of Frontex

In the first years of Frontex, and in the Agency´s own terminology, return operations were not granted as high a priority as naval operations, such as Hera and Poseidon.[5] In general, the resources allocated to the Agency were significantly smaller than today. On returns, Regulation 2007/2004 noted that "*there is a need for promoting solidarity between Member States*" when it comes to the operational aspects of effective control and surveillance of external borders. According to the Regulation, the "*return of third-country nationals illegally present in the Member States, constitutes an important step in this direction*" (European Council 2004, p.1). As in most Member States, such operational aspects belong to border authorities, and the Regulation called for the "*clear added value*" of organizing "joint return operations" and identify best practices for removal (2). Accordingly, among Frontex´s main tasks was to provide Member States with "*the necessary support in organizing joint return operations*" (Article 2) to which end the Agency may use Community financial means, and identify best removal practices (Article 9.1 and 9.2); and "*offer additional training courses and seminars on subjects related to the control and surveillance of the external borders and return of third country nationals for officers of the competent national services of Member States*" (Article 5). Shortly after Frontex´s inception came the 2008 Return Directive (2008/115/EC), which in its Article 8.6 called for Member States to provide for an "*effective forced-*

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[5] Later sections in this report problematize the idea of a clear-cut distinction between return operations and naval push and pull back operations.

return monitoring system" and in general provided an impetus for the operational expansion of Frontex into exit policies.

From around 2008 and onwards, Frontex has actively tried to co-shape a specific organisational and operational environment among Member States and in the EU institutions that facilitates a focus on increased exit operations. This also means the shaping of a particular knowledge environment. Thus, its Return Operations Sector established a Core Country Group, the Agency tried to proactively impart on Member States the needs, possibilities, destinations, operational aspects and evaluations of JROs. This meant offering seats on JROs to all Member States; searching for partners; encouraging Member States to take leading roles in JROs; spreading information through an early communication platform called ICONet, where a Return Section is one model (Jeandesboz 2017); updating overviews of returnees and escorts; extending "pre-return assistance" to Member States when it came to identification and acquisition of travel documents. However, it is worth noting that according to interviews with several interlocutors from Member State authorities, the reaction to this "added value" of Frontex have often been far from enthusiastic (see also Kalir et al. 2021).

Pilot projects for knowledge-sharing during joint return operations were carried out in Malta in 2006, were Member States collaborated on identifying rejected asylum seekers and testing people´s claimed languages, and in Vietnam in 2008-9, where Member States shared a third country delegation and carried out collective interviews. The Return Operations Sector also organized workshops on so-called problematic third countries, discussing operational return collaboration and recommendations. Another pilot project took place in Greece between October-December 2009, and concerned capacity building for identification, acquisition of travel documents and return activities for illegally present nationals from non-EU countries. To this end a Return Coordination Centre was established in Athens, while national experts and linguistic cultural mediators were deployed from Member States. By 2010, other activities included return operations, task forces with third countries, seminars and possible JRO destinations such as West Africa, Western Balkans, South America and Asia.

YEAR	2006	2007	2008	2009	2010	2011	2012	2013	2014
JROs	1	13	15	32	35	42	39	39	32
Returnees	8	428	801	1622	2038	2059	2110	2152	1629
Co-financed	-	-	5	21	29	37	37	38	32

Figure 5: Frontex JROs 2006-2013. Source: DG Internal Affairs 2011, p.61, Frontex Return Operations Sector, 2014.

While no operations were co-financed in 2006 and 2007, that number rose to one third in 2008, before almost all such operations featured Frontex funding from 2011 and onwards. Among the Agency´s main objectives for return activities in 2010 was to develop procedures for chartering aircrafts by Frontex. At the time, this was formulated as a "new and broader interpretation" of Regulation 2007/2004, so that its Article 9.1´s formulation of "organizing joint return operations of Member States" could be interpreted as granting Frontex the responsibility for the co-financing of aircrafts chartered by Member States and other related costs as a first step, and as a second, the Agency´s wholesale chartering of aircrafts as a long-term perspective. These Agency perspectives reflected the growth of its involvement in JROs from 2006, where Member States like Austria, Spain,

Germany and Italy were among the most frequent JRO organizers, reflected in Figure 5 above. While Member States continue to conduct more return operations bilaterally than through Frontex, the period from 2008-2010 shows the rapidly expanding role of the Agency evidenced by the gradually increasing proportion of co-financed JROs. In the fall of 2018, Frontex celebrated several "milestones" illustrative of the stark upscaling of exit operations for the Agency. It boasted of having completed its 100th readmission operation from the Greek islands to Turkey, its 300th return operation via scheduled commercial airlines, and its 1000th return operation overall.[6]

YEAR	2010	2011	2012	2013	2014	2015	2016	2017	2018
Coordinated/ organized charters	39	42	39	39	45	66	232	341	345
Staff	294	304	304	300	315	309	365	526	6717
Return budget (€mio)	9.3	11.7	10	8,9	8,4	16	39	53	47,9

Figure 6: Frontex coordinated/organized charter flights, staffers and return (cooperation/support) budget 2010-2018. Source: AdMiGov Deliverable 2.1; Frontex Annual Reports 2006-7, Frontex General Reports 2007-2016; Frontex Annual Activity Reports 2016-2019.

In 2011, Regulation 1168/2011 extended Frontex´s powers to organize, coordinate and finance JROs through their own budget, and also codified the Agency´s already expanding role in deportation charter flights. For instance, Article 2(f) was changed from the formulation that the Agency should "*provide Member States with the necessary support in organising joint return operations*" (2007/2004) to "*provide Member States with the necessary support, including upon request, coordination or organisation of joint return operations.*" (1168/2011). The 2011 amendment also radically changed the Agency´s relations with industrial and commercial actors, also in return. Thus, the 2007/2004 Regulation´s Article 6 and 7 said that the Agency should "*follow up on the developments in research relevant for the control and surveillance of external borders and disseminate this information to the Commission and the Member States*" and that the Agency should "*keep centralised records of technical equipment for control and surveillance*" to be made available for Member States upon request following a needs and risk analysis. In Regulation 1168/2011 these formulations were replaced with new Articles 6 and 7 stating that "*The Agency shall proactively monitor and contribute to the developments in research relevant for the control and surveillance of the external borders…*" and that "*The Agency may acquire, itself or in co-ownership with a Member States, or lease technical equipment for external border control to be deployed during joint operations, pilot projects, rapid interventions, joint return operations or technical assistance projects.*"

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[6] "Frontex reaches milestone in return operations," Frontex website. Available at: https://frontex.europa.eu/media-centre/news/news-release/frontex-reaches-milestone-in-return-operations-CHBRdU.

The 2011-amendment thus allowed Frontex to build a permanent pool of equipment itself through purchase or lease, rather than loaning equipment from Member States. Even if this had been an ambition of the Agency itself for some time, it also carried with it clear problematics, since it positioned the agency in a double-role of not only monitoring and industry, and informing the Commission and Member States, but also as a direct end-user of the industry it was now supposed to proactively contribute to. The amendment therefore blurred the boundaries between the Agency and industrial interests, also when it came to exit infrastructures and operations (Lemberg-Pedersen 2013).

In April 2015, the Commission´s ten-point plan stated that Frontex should coordinate a brand-new programme ensuring the "rapid return" of irregular migrants from "frontline Member States"[7]. On September 9, 2015, the Commission responded to the Council´s 25 and 26 June-conclusions with an Action Plan on Return (EC 2015b). Herein, a section was devoted specifically to strengthening and upscaling the role, mandate and practical involvement of Frontex in returns. To accomplish this, the Commission encouraged Member States to more systematically use JROs organized and coordinated by Frontex. On its side, the Agency "*should facilitate contacts and cooperation*" between Member States, and further assist them with chartering aircrafts for return operations, including financing costs of monitors, establishing pools of escorts to be "*swiftly deployed on return flights*" (EC 2015b, p.7).

Under the "Hotspot" approach rolled out after 2015 via screening interviews and biometric registration in "frontline State" camps, such as Moria in Greece, mobile Frontex teams were to be deployed in order to provide "on-the-spot operational and information support on return", helping with the systematic screening and identification of migrants. Also, the Agency should coordinate and co-finance return operations and should "envisage a systematic stop-over of joint return flights from other Member States in the frontline Member States." (EC 2015b, p.8). In the renewed Action Plan on return from 2017, Frontex was required to increase its return support unit staff; put in place a commercial return flight mechanism, step up "pre-return assistance" by organizing "identification missions"; finalize the mapping of Member State capacities and "return needs", step up the training of non-European authorities in collecting return operations; and spend all financial allocations for returns by the end of 2017 (EC 2017, p.11). In 2018, Frontex finished revising its Code of Conduct for Joint Return Operations coordinated by the Agency, consulting the Frontex Consultative Forum and Member States.[8]

In September 2016, following negotiations between the Commission, the Council of Ministers and the European Parliament, the Commission launched Regulation 2016/1624. This was portrayed as transforming Frontex from an intergovernmental coordinating agency to a supranational and common European Border and Coast Guard Agency. The 2011 Regulation granted the Agency the right to organize joint return operations, as part of European integrated border management, but now on its own initiative, instead of upon request by Member States. Its role in acquiring travel documents for returnees was also expanded. Also, it was based on the political desire for an

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[7] EC. 2015. *Joint Foreign and Home Affairs Council: Ten point action plan on migration*. April 20, 2015. Available at: http://europe.eu/rapid/press-release_IP-15-4813_en.htm.

[8]

See:https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf.

"*integrated system of return management*" allowing for "*closing the gap between asylum and return procedures*" (European Parliament 2016) for which end the Regulation continued the rapid upscaling of Frontex´s focus on exit policies.

The 2016 Regulation formulated the tasks of Frontex as "*contributing to an efficient, high and uniform level of border control and return*" (Article 8), including the setting up of "*a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams as well as in return operations and return interventions*" (Article 8h). It framed its return assistance to Member States in terms of the "technical and operational assistance" required for them "*to implement the obligation to return returnees*" (Article 8l). It also established pools of so-called forced-return monitors, forced-return escorts and return specialists made available by Member States (Article 8n), and involved the setting up and deployment of "European return intervention teams" (Article 8o). The ambition of dataveillance in operations was now formulated as the need to develop "*swift and reliable exchanges of information regarding emerging risks in the management of the external borders, illegal immigration and return, in close cooperation with the Commission.*" (Article 8r).

The Regulation granted the Agency the right to organize joint return operations as so-called "urgent actions" (Article 19), as part of European integrated border management. Only now, Frontex could do so on its own initiative, instead of upon request by Member States. Its role in acquiring travel documents for returnees was also expanded. Its Section 4 allows the Agency to set up pools of forced-return monitors, escorts, specialists and return intervention teams (Articles 8n, 8o, 29, 30, 31, 32, 33). It also included the expansion of the reserve to 1500 border policing officers, more cooperation with non-European countries, a mandate to policing and rescue interventions, and more collaboration with Interpol, the European Gendarmes and the EU´s Common Security and Defence Policy.

Figure 7: Key developments in Frontex exit policies, 2004-2020

Article 40 states that members of Frontex teams shall be authorized by hosting Member States to consult the European or national databases necessary to conduct joint operational activities. Article 27 mandated Frontex to "*coordinate the use of relevant IT systems and provide support to the Member States on consular cooperation for the identification of third-country nationals.*" Much like the policy of returns was reformulated as an obligation of Member States, so was the sharing of information, as when its Article 10 ("Obligation to exchange information") requiring national authorities responsible for border management to share information in a timely and accurate manner, a point deepened in Article 11, which required Member States to provide Frontex with all relevant statistical and operational data collected in relation to the Schengen acquis, and to "*take into account*" Agency risk analyses when planning return operations. Article 12h required Immigration Liaison Officers to "*report regularly to the executive director on the situation at the external border and the capacity of the Member State concerned to deal effectively with the situation (…) also on the execution of return operations towards relevant third countries.*" Also, Article 51 (3)(4) introduced "collecting return operations," where means of transport collecting returnees from different locations, as well as the forced-return escorts are provided by the country of return.

On April 17, 2019, the European Parliament adopted yet another, new, Regulation for Frontex, namely 2019/1896 (European Parliament 2019). Despite the successive expansions of Frontex operations and Regulations since 2004, the 2019 Regulation argued that the

Union framework in the areas of external border control, return, combating cross-border crime, and asylum still needed further improvement (EP 2019). Regulation 2019/1896 continued and deepened the expansion of return aspects introduced in the 2011 and 2016 documents. The transformation of Frontex into an Agency focusing more and more on returns is illustrated by the opening paragraph of Article 1 on the Regulation´s subject matter. In it, the 2019 Regulation explicitly introduces "efficient Union return policy", while its 2016-predecessor by comparison does not mention return policy, but talks instead of a more general aim of "managing the crossing of the external borders efficiently". In its entirety, the 2019 Regulation states: "*This Regulation establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing those borders efficiently in full compliance with fundamental rights and to increasing the efficiency of the Union return policy.*"

In the 2019 Regulation, return policies are included under the notion of European integrated border management, and aims at inter-agency cooperation in each Member States as well as between their authorities responsible for return (Article 3e). It asks of Member States that they adopt national capability development plans for border management and return, such as recruitment and training of border guards and return specialists, the acquisition and maintenance of equipment, necessary research and development activities, describing the medium- to long-term evolution of these capabilities (Article 9.4). Frontex shall monitor the operational needs of Member States related to the implementation of returns and monitor compliance with fundamental rights in all its activities (Article 10b and c). It must also set up a technical equipment pool, and a rapid reaction equipment pool, to deploy in joint operations (Article 10k), as well as a pool of forced-return monitors and deploy return teams during return interventions (10o and p).

The 2019 Regulations gives Frontex an increasingly proactive role with regard to JROs. While the agency has been able to request that such operations are initiated since 2016, the new rules of the 2019 Regulation introduce further possibilities. Article 50.1 states that Frontex may "*on its own initiative and with the agreement of the Member State concerned, coordinate or organise return operations,*" and it can also provide technical and operational assistance in "*the collection of information necessary for issuing return decisions, and the identification of individuals subject to return procedures*" (Article 48.1(a)(i)).

As did the 2016 Regulation, its 2019 successor explicates that national authorities responsible for return "*shall be subject to a duty to cooperate in good faith and an obligation*" to exchange necessary information which they shall share in a timely and accurate manner (Articles 11 and 12). Similarly, Immigration Liaison Officers posted in Member States should continue to report on Member States capacity and execution of return operations to the executive director (Article 31i). One of the major differences between the two Regulations, however, is the introduction and specification of information systems and data platforms in the 2019 Regulation. Thus, foreshadowing the IRMA and FAR platforms - then already under development - and illustrating the growing nexus between information systems and exit policies in general, the 2019 Regulation´s Article 49 demands that the Agency operate and further develop "*an integrated return management platform for processing information, including personal data transmitted by the Member States´ return management systems,*" such as biographic or biometric data. To the end, the Agency "*shall develop, deploy and operate information systems and software applications allowing for the exchange of information for the purpose of return*" (article 49.2). The 2016 Regulation, by

comparison, did reference that the Agency should make use of information systems, referring to
these 5 times (e.g. Preamble, Articles 4, 8, 44, 53), and thus provided institutional grounding. But
unlike the 2019 Regulation, the use of these systems was not explicated in terms of returns and exit
policies. Accordingly, comparing the Regulations makes it clear that the Agency´s focus on both exit
policies, but also the use of information systems to process data on these, have been accelerating.

3.2 The evolving role of Frontex in exit policies

Following the chaotic events and repercussions of the dysfunctional EU migration governance in the
years of 2014-2016, the Commission had started voicing new reform ideas about Frontex. The
Consultancy Unisys was contracted by DG Home in order to produce a feasibility study about the
creation of a European System of Border Guards to control the external borders of the Union. It
ended up recommending increased levels of centralization and allocated resources at national levels
for: return operations, training activities, risk analysis and partnerships with third countries (Van De
Poele et al. 2014, p.36). During the consultation process for the production of the report, Unisys
explains that Frontex representatives gave several suggestions for areas of opportunity for boosting
the new Agency´s role in external border control. Here, they specifically mentioned enhancement of
its role in return operations (Van de Poele et al. 2014, p.7), and that the coordination of joint returns
could bring about cost savings. A majority of Member States expressed a particular preference for an
increased Frontex-role in facilitating return operations, supporting readmission agreements and
associated procurement activities (Van De Poele et al. 2014, pp.17-8). While Frontex staffers and
MEPs from the European Parliament favoured a quicker immersion into integrated border
management at the external EU borders, Member States favoured a more careful approach. They
also pointed out the need for activities to be coupled with harmonization of the code of conduct and
common standards if a new Agency was to assume a larger role (Van De Poele et al. 2014, p.11).
However, some of the responses from Member States in the Unisys study can be interpreted as
saying that national authorities tend to perceive the area of return operations as a "safer" and less
controversial area of supranational collaboration. Thus, *Figure 8* illustrates how MS´ preference for
Frontex involvement in return operations could be placed on one extreme end on a continuum
ranging from agreement to disagreement, with the opposite extreme consisting of Frontex´s
assessment of MS´ resources.
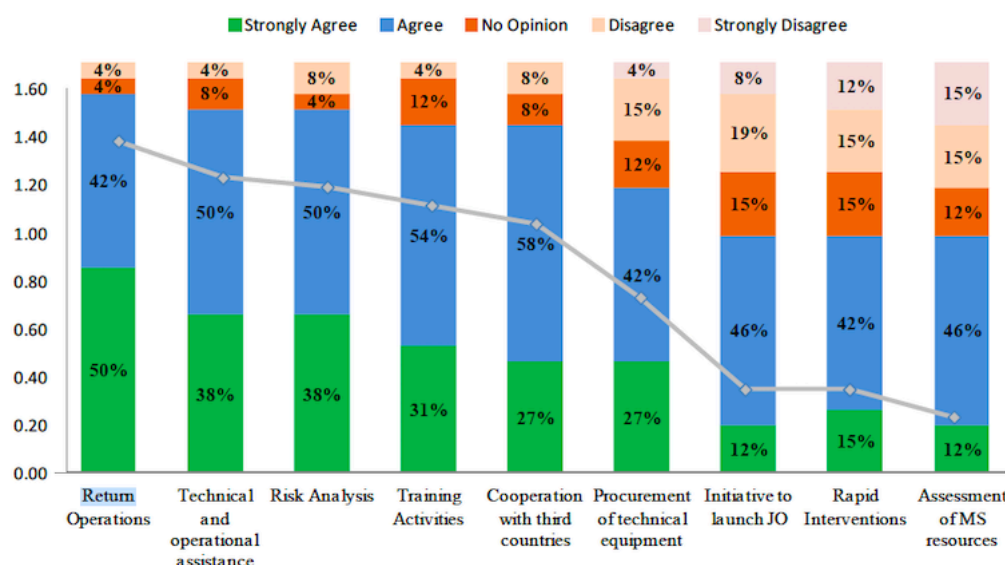
Figure 8: Member State attitude in 2014 towards Frontex´s future role in EU border management. The trend line illustrates the average preferences when attributing a score ranging from -2 to 2 to the activities. Source: Van de Poele et al. 2014.

However, the categorizations in the Unisys study can be challenged. For instance, with respect to the two outliers on the spectre of agreement, respectively return operations and assessment of MS resources, but also the column with "Initiative to launch JO." The interview data informing the current report, collected from national police officers with experience with Frontex exit activities, illustrate that these three categories are at times perceived to be entangled with one another. Put differently, there seems a widespread perception among MS police officers, that the Frontex Agency is actively pressing for joint return operations and Frontex-managed resource allocations, even when some MS's themselves do not find it to be a big priority.

The Council of Ministers met between the 5th and 6th of June 2014 in Luxembourg, and issued conclusions regarding the future of the EU´s return policy, in response to the Commission Communication from March. In these, the Council supported the overall approach of the Commission. Applauding its own Return Directive, the Council voiced agreement with the Commission´s analysis, that the prime reason for "non-return" had to do with lacking cooperation from returnees on their own deportation, and with problems of establishing the identity of returnees, and obtaining adequate documentation.

In June 2015, the Council Conclusions were followed by the Commission´s policy paper *European Agenda on Migration*. In this, return was formulated as a pillar for the future of EU migration policy, alongside "*addressing the root causes*" of irregular and forced displacement and "*the fight against smugglers and traffickers*" (EC 2015a, p.9). Citing that only 39,2% of return decisions were effectuated in 2013, the paper stated that the EU "should be ready to use all leverage and incentives at its disposal to make countries agree to receive returnees, and high hopes were attached to pilot projects in Pakistan and Bangladesh. The transfer of support for capacity building for return and reintegration measures in non-European countries was depicted as onwards strategies (EC 2015, p.10). And while the Union has common rules on return, codified via the Returns Directive and the creation of a Return Handbook, the Commission noted that the effective operational cooperation is

lacking. The ongoing negotiations on the expansion of Frontex was explicitly related to the issue of effective returns:

Frontex is currently offering considerable support to Member States, but its mandate must be reinforced to increase its capacity to provide comprehensive operational assistance. Currently, Frontex can only coordinate return missions but not initiate its own. On the basis of the ongoing evaluation to be concluded this year, the Commission will propose to amend the Frontex legal basis to strengthen its role on return (EC 2015, p.10).

Moreover, as a steppingstone towards the goal of efficient return management, the expansion of Frontex was further linked to making better use of the opportunities offered by IT systems and technologies, namely the Eurodac, VIS and SIS II databases (EC 2015. 11) At the time, this was couched in language aligned with the soon to be dropped Smart Borders package.

The European Centre for Returns (ECRet), which followed the entry into force of Regulation 2016/1624, is responsible for the operational, technical and financial support to Member States for the development, organization and implementation of exit activities. Frontex formulates ECRet´s purpose as providing support and coordination for the harmonization and integration of Member States´ best practices in the field of pre-return and return, thus contributing to the standardization of operational procedures at the EU level[9]. The pool of 40 return specialists was created after Regulation 2016/1624, and these are sent to hotspots and "bottlenecks" in order to deal with "last minute asylum applications", to identify non-EU nationals, and to conduct screening and interpretation in detention centres. In order to further underpin future operational efforts. With the entry into force of 2019 Frontex Regulation came also the progressive expansion of Frontex staff to reach the goal of 10,000 in 2027.

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[9] "European Centre for Returns." Frontex website. Available at: https://frontex.europa.eu/careers/who-we-are/structure/divisions/operatonal-response-division/european-centre-for-returns/.
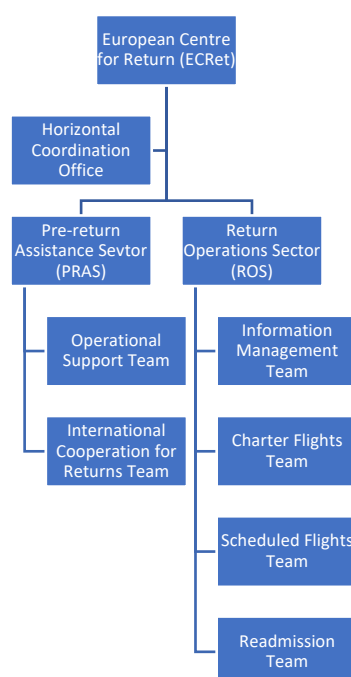
Figure 9:Frontex´s European Centre for Return (ECRet)

ECRet had an annual 2018 budget of €116 million[10], and the ORD in general has been growing its staff from 200 in 2018 in accordance with the Agency´s expansion of joint operations, especially for returns. Frontex Programming Document for 2020-2022 projects funds amounting to the hiring of 71 full-time staffers working on aspects of exit, and a budget of around €60 million. In general, the funds made available for Frontex return operations today far supersedes the entire budget of the Agency in the first years of its existence.

Figure 10: Returnees/Frontex operational expenditures, 2005-2019. Source: AdMiGov Deliverable 2.1, 56.

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[10] Frontex. 2018. *Budget 2019 N5*. December 12, 2018. Available at:
https://frontex.europa.eu/assets/Key_Documents/Budget/Budget_2018_N5.pdf.

Figure 11: Frontex´s European Centre for Return (ECRet). Themes. Source: Frontex.

On March 25, 2021, another institutional development illustrated the growing political push to upscale Frontex´s exit policies, when the Agency posted vacancy notices for the recruitment of three Deputy Directors for, respectively, Returns and Operations, Standing Corps Management and Information Management and Processes. All had application closing dates on April 23, 2021. In the vacancy for a Deputy Director for Returns and Operations, the Agency notes that the new standing corps of 10,000 operational staffers "significantly reinforces the role of the Agency in the area of return of illegally staying third-country nationals, thereby playing a central role in the common EU system for returns announced in the New Pact on Migration and Asylum." (EC 2021a, p.1).

Among the responsibilities of the new Deputy Directors are the oversight and coordination of involved Agency Divisions, to support and assist the Executive Director and the Management Board in strategic development, to implement decisions of the Management Board, the Operational Board and the Director´s briefings. The Deputy Director is also expected to implement multiannual programming and annual work programmes relating to return. This is linked to a general planning, directing and coordination of Agency resources in this area, including steering business planning and performance, in order to increase Agency efficiency. This also includes maintaining strategic links with external partners and stakeholders (EC 2021a, pp.1-2).

Among the assigned areas of responsibility of these Frontex Deputy Directors are to steer, coordinate and supervise work at ECret and its intersections with the Operational Response Division. The Deputy is also to oversee preparation and execution of activities ranging from pre-return operations and post-return, operational activities at the Union´s external borders. The person must also ensure the exchange with Member State authorities on returns and making sure that staff and technical equipment is optimized. Among information systems that the Deputy will coordinate are the False and Authentic Documents Online system (FADO) and the ETIAS (EC 2021, p.3). The vacancy goes on to specify the professional experience and expertise that the Agency is looking for: Specialist skills and experiences such as thorough knowledge and understanding of the Frontex´s mandate,

goals, objectives and tasks; very good knowledge of EU policy and legal framework, including in the area of fundamental rights; a sound understanding of the internal security landscape of the EU; a sound understanding of the maritime dimension of the Frontex mandate; knowledge and practical experience of dealing with financial budgetary and procurement procedures in an EU environment (EC 2021a, p.3).

As remarked above, the development from the 2004 to the 2019-Regulations represents a significant increase in focus on exit policies, and on information systems designed to make such governance as efficient as possible. Here three points are worth making. First, the impetus for this reconfiguration of Frontex does not just come from within the Agency itself, but represents a massive political priority on the part of political European actors, such as Member States, as well as the European Commission. This is also notable in the historic inflation of the Agency´s budget, both in general, but also pertaining to exit policies in particular. Second, this inflation comes with its own set of challenges, a point corroborated in some of our interviews, for instance a Danish police officer commented on the explosive growth of Frontex, but stated that this had happened without the development of a corresponding legal framework, and cited this as a reason for scepticism about Frontex´s ability to deliver on the many political promises about border control and returns made by the Commission in a sustainable way:

> *Frontex is also just an entity working on the operational level. They don't have any political power to do anything Frontex are really trying to – or the mandate they have – is just growing and growing. And they are dealing with all areas now in returns and borders. But maybe they have given the muscles, but they don't have the legislation to […] I don't know how I should put it. I don't think the EU legislation and the arrangements between the EU and 3rd countries, it's not in place. It's not possible to deal with the situation as it is now, they just waste a lot of resources at the moment, EU wants Frontex to do a lot of things now, but they can't. (Danish police interview 2).*

A third point, also communicated in interviews for this report, is that Frontex perhaps also because of its concerted and increasing attempts to create and control a knowledge environment across European national authorities, is also seen as occupying an outsider-role when it comes to Member States policies, and at times, even the increased institutional and financial muscle of the Agency, can be perceived as problematic by national authorities. For instance, an interlocutor from the Danish police reflected upon the accelerated growth of the Frontex Agency, and the challenges this brings for it:

> *[Frontex is] struggling hard because the Commission says what they have to do and also sets some goals for them, how much they should provide, how many effective returns they should have done every year, so of course they are struggling hard to achieve this." According to the officer, Frontex then tries to "put the same hat on every country. [But] the return situation is going to be different in Denmark and in some other countries. And the scale we are working on...Denmark is a very small, tiny little country compared with the big players – Germany for example, or some of the other countries. [Also] we have very small numbers of returns, and most of the returns from Denmark are on a voluntary basis. And until this year here, the voluntary returns was [sic] not included in some of the options that Frontex*

> *provided. That's something quite new, that they're dealing with voluntary*
> *readmission. (Danish police interview 2)*

But with the increased financial and governance tools on offer from Frontex comes also a sense of being overwhelmed by opportunities, and the insistence to upscale exit governance on the part of some national authorities. Thus, the same interlocutor from the Danish police explained that:

> *Because there are so many opportunities in Frontex, then it's difficult for a small*
> *country like Denmark, to have resources enough to go into everything they are*
> *providing in Frontex. Because our organisation is very small. We have, or had,*
> *maybe 100 persons total that were involved in return. And then if 10 or 12 of them*
> *should be involved in the administration of all the opportunities coming from*
> *Frontex – to give answers, to fill in different forms and so on – then you spend a lot*
> *of time just answering Frontex. (Danish police interview 2)*

3.3 Frontex and the datafication of exit governance

A drive towards dataveillance in exit operations was discernible already in the amended 2011 Regulation. Thus, while 2007/2004´s Article 11 stated that "*The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States*," this Article was expanded in the 2016 Regulation with an added call to "*develop and operate an information system capable of exchanging classified information with those actors, including personal data*." This was accompanied by the new Articles 11a, 11b and 11c on "Data protection," "Processing of personal data in the context of joint return operations" and "Processing of personal data collected during joint operations, pilot projects and rapid interventions". These developments illustrate, first, an observably pervasive "data craving" (Lemberg-Pedersen and Haioty 2020) in EU migration politics, here understood as a fundamental desire to extract, store and process evermore data about displaced or mobile populations. Second, they illustrate how such a political tendency also leads to questions of data harms, ethics and protections.

In 2018, the Commission also tabled a recast proposal for the Return Directive (EC 2018). Facing a decrease in the return rate from the EU MS (from 45,8% in 2016 to 36,6% in 2017), the Commission´s recast was framed as necessary to "*reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding.*" (EC 2018a, p.1). During the discussion phase of this proposal, Frontex issued a 2018 non-paper providing input to the recast proposal along the lines of the interests of the Agency and its major stakeholders. Frontex noted that after ten years of implementing the Return Directive, the control over secondary movements within the Schengen area was still hampered by the lack of interoperability between national information systems and the EU´s large-scale databases. A solution, according to the Agency, was an end-to-end digitalisation of the return process linking the national return case management systems (RECAMAS) to information system´s such as the Frontex Application for Return (FAR) and the Integrated Return Management Application (IRMA). This vision of digitizing and datafying the entire return process is of course very much in line with the market analysis pursued by the largest ICT companies, which search for framework contracts to produce and maintain this kind of hardware and softeware. According to Jones, Kilpatrick and Gkliati (2020,

pp.36-7), the 2019 Regulation also tasks Frontex with taking over the operation and development of two databases designed to enhance, respectively, the efficiency of the removal process, as well as the agency's oversight over Member States return gaps.

When it comes to the role of data in EU exit operations, the introductory remarks to the 2019 Frontex formulates an explicit asymmetry between the rights of the Agency to collect, store and transmit data about non-EU nationals, and the rights of individuals´ to know what kind of information Frontex collects, stores and transmits about them:

> *Given the particular policy need for expedient return procedures, it is necessary for the Agency to be able to restrict certain rights of data subjects so as to prevent the abuse of such rights from impeding the proper implementation of return procedures and the successful enforcement of return decisions by the Member States or from preventing the Agency from performing its tasks efficiently […] in some cases, the right of access [to data] by the third-country national could jeopardise a return operation by increasing the risk of absconding should the third-country national learn that the Agency is processing his or her data in the context of a planned return operation* (European Parliament 2019, p.13).

In order to prevent obstacles to return operations, the Agency is therefore allowed to withhold information from the data subjects themselves. In this context it is also allowed to transfer personal data to third countries for the purposes of implementing Union return policy. However, the envisioned interaction with third countries on data exchange is not unproblematic according to an interlocutor from the European Data Protection Supervisor. One reason is that such collaboration leads to the issue of interoperability between information systems. Problems might emerge with several actors, but as it was explained: *"…we might have it with Frontex [in the context of] interoperability because then there is the connection that is foreseen with the Interpol database. And that might rise some concerns, because you know that in Interpol you many, many countries not always […] sharing the same values. So that´s something that should be carefully followed and checked."* (EDPS interview 1). Moreover, the interlocutor distinguished between the roles of EU-Lisa and Frontex:

> *EU-Lisa is very limited because it's only about the technical aspects of the system, so I wouldn't say EU-Lisa has any role in, I mean, as regards migration proposals and so on. Frontex is different. Frontex is getting increasing powers, I would say, in this context. In terms also of resources and so on. It seems to be becoming a key actor at EU level in all this process (EDPS interview 1).*

4. Frontex Joint and National Return Operations

When it comes to its return operations, the Frontex Agency distinguishes between "joint return operations," "national return operations" and "collecting return operations." Joint operations denote activities where two or more Member States jointly return non-EU country nationals, where Frontex provide the means of transportation or providing technical support. National operations denote operations carried out by a single Member State, and co-financed by Frontex and finally, "collecting return operations," where the means of transport and/or escorts are provided by the

destination country, co-financed by Frontex, and which can be implemented both as joint or as national return operations[11].

4.1 Return Operations 2016-2018

Observing the dataset on Frontex joint and national return operations between 2016-2018, it can be seen that German operations account for more than three quarters of all Frontex returnees (Figure 12). This indicates not only that Germany carry out more return flights than other Member States, but also that these tend to be larger ones, i.e. holding more returnees. However, since the data made available by Frontex only shows the number of returnees by organizing Member State, rather than by all participating Member States, the data does not necessarily reflect the exact number people forcibly returned out of these states. Instead it documents the number of people returned on operations organized by them.
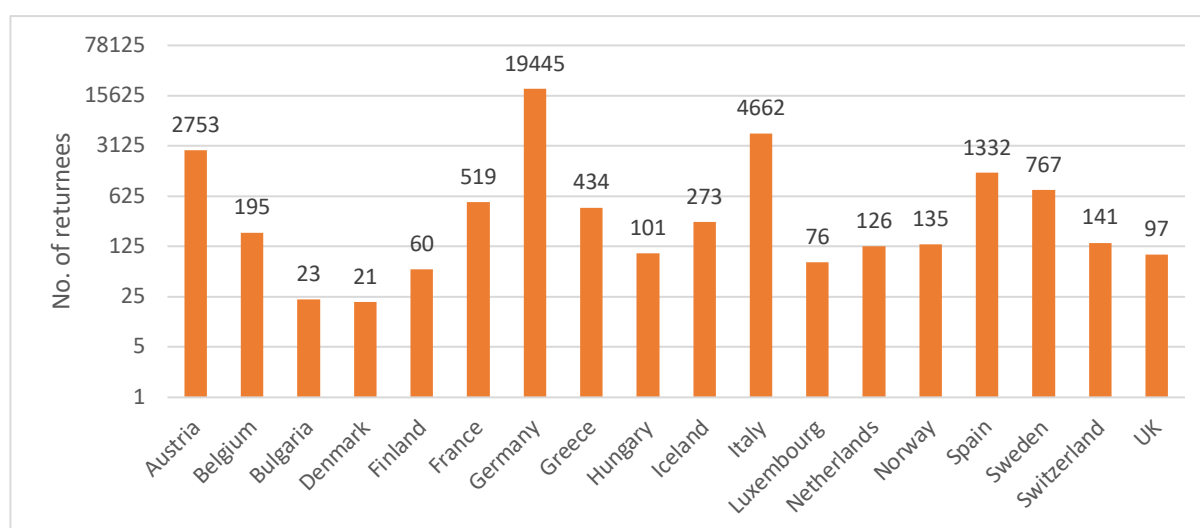
Figure 12: Total number of returnees on Frontex chartered return operations, 2016-2018, by organizing Member State. This bar uses a logarithmic scale (base 5) in order to capture the vast scalar differences between Member State operations.

When comparing the data and number of returnees on Frontex chartered return operations across both unmonitored (Figure 13) and monitored flights (Figure 14), it can be seen that there were significant differences in the dataset. Figure 13 shows that Germany and Italy, followed by France, by far dominate the unmonitored operations. The German operations were the largest in size but became less frequent from late 2016 onwards. The Italian operations – which pertain exclusively to returns to Tunisia – began in mid-2016 and have been maintained consistently from then on.

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[11] Frontex. 2018. *Frontex Evaluation Report. Return Operations*, 1st Semester 2019. Warsaw. Available at: https://frontex.europa.eu/assets/Key_Documents/Frontex_Evaluations_Reports/Return/2018/Return_Operations_First_Semester_2018.pdf.
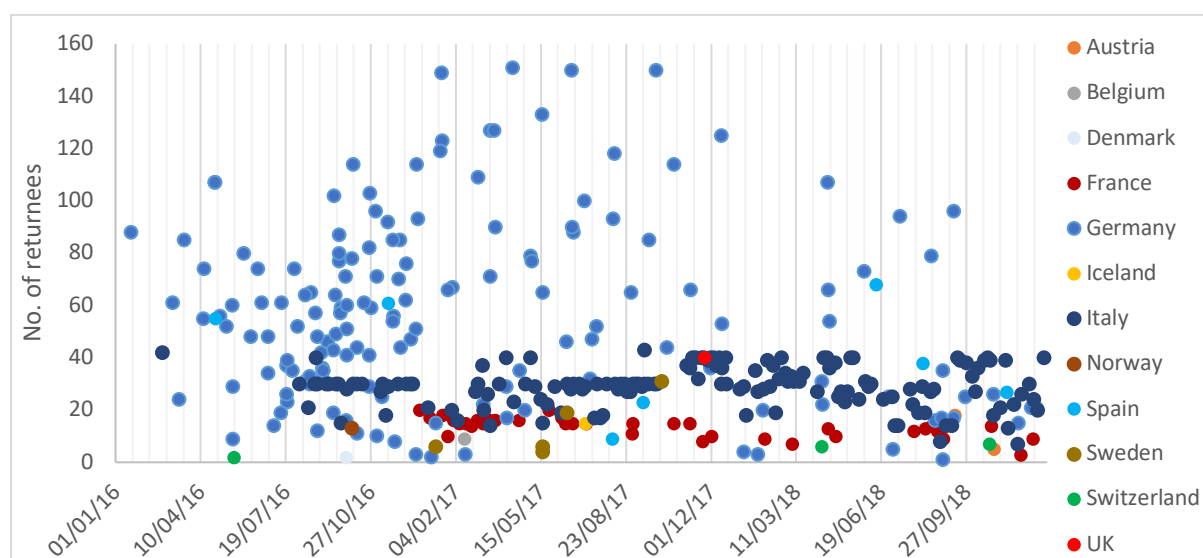
Figure 13: Timeline of Frontex return operations with chartered unmonitored return operations from EU Member States, 2016-2018
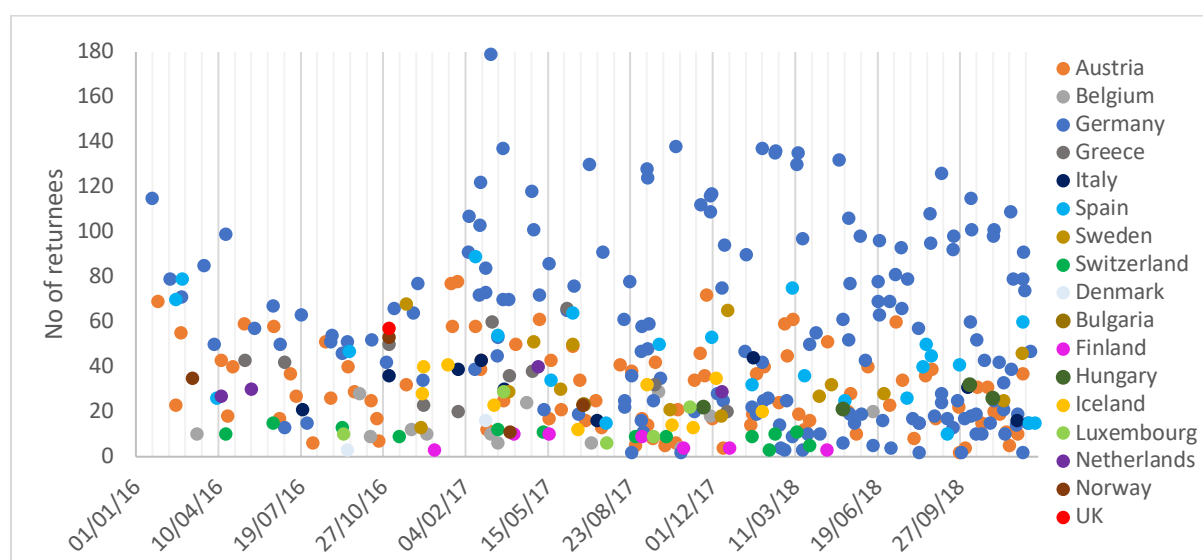
Figure 14: Timeline of Frontex return operations with chartered monitored return operations from EU Member States.

Although Germany did continue with large-scale unmonitored return operations after 2018, the shift in the frequency of these operations can at least be partly explained by the country´s involvement and support for the shift towards Frontex-monitors that gained pace between 2016-17 (see Figure 16 below) It is noticeable, though, that Italy continued with unmonitored operations to the end of the data set, opting to participate only in relatively few monitored Frontex return operations. By comparison, Frontex chartered monitored return operations (Figure 14) exhibit a far greater balance between participating Member States. The exception to this is once more the German operations, which are again much larger in size than those of any other Member States, and which also become the most frequent Member State operator from early 2017 onwards. As regards the volume of returnees, Austrian and Spanish operations follow after the German. Austria is also one of the most frequent organizers of monitored Frontex return operations.

Representing these statistics differently, in order to capture the contrast between the total number
of unmonitored/monitored joint and national return flights, Figures 15 and 16 illustrate that while
about half of the former were unmonitored through 2016 and the start of 2017, monitoring began
to be more strictly implemented from mid-2017.
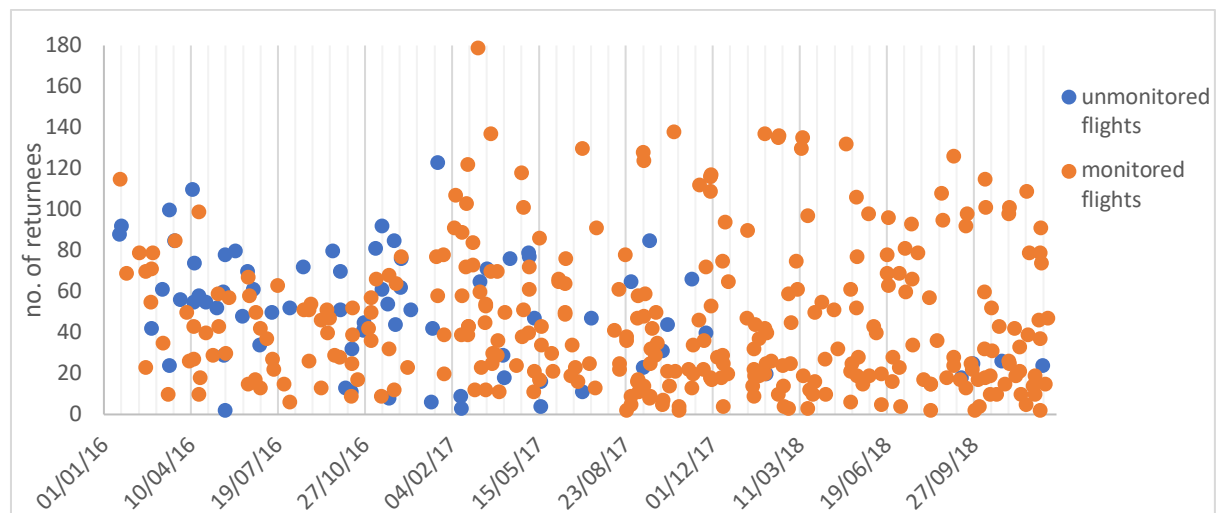
Figure 15: Timeline showing unmonitored/monitored joint return operations from Member States chartered by Frontex,
2016-2018.
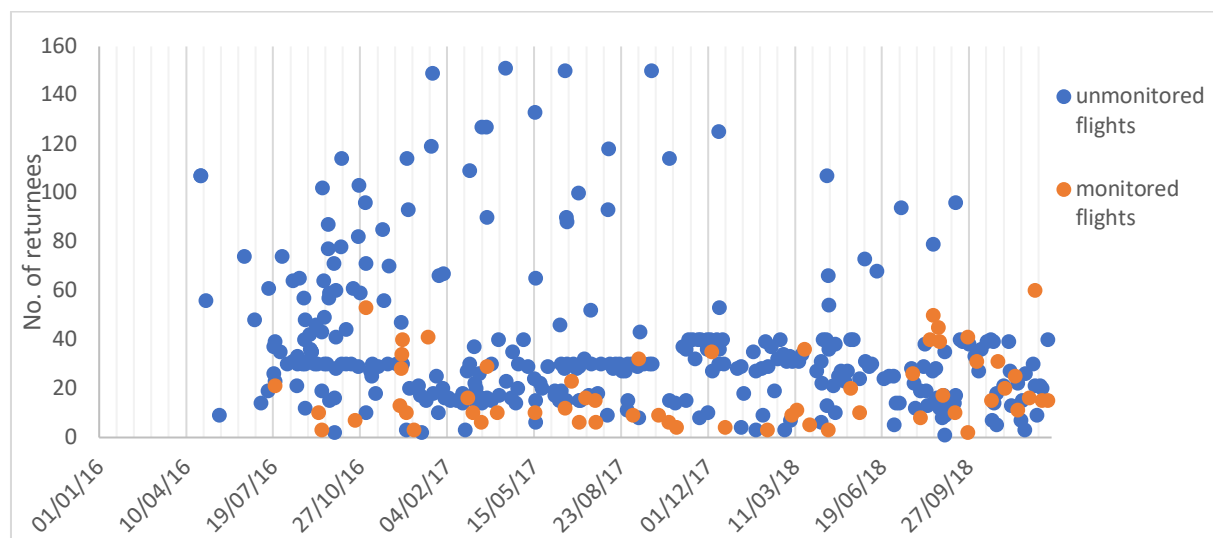
Figure 16: Timeline showing unmonitored/monitored national return operations from Member States chartered by Frontex,
2016-2018

Save for a few exceptions, unmonitored joint return operations phased out by the start of 2018. By
comparison, the majority of national return operations have been unmonitored. Notably, this
includes all larger operations with over 60 returnees, as well as all operations with more than 100

returnees. To some extent, this can be explained by the concerted funding being directed towards establishing forced return monitors and making them operational at a common-European level. Here, the ICMPD-organized FReM I-III projects, in which Frontex participated, led to the establishment of the Frontex Pool of Monitors (see Section 8.1). Yet considering that the first FReM project was launched in 2013, this explanatory model still lacks some power to account for a shift which seems to set in only from the beginning of 2018.

Figure 17 below illustrates some of the dominant deportation corridors observable in the Frontex data set on joint and national return operations between 2016-2018, namely to Afghanistan, Pakistan, Nigeria, Colombia, Tunisia and the Balkans. It transpires that some Member States have a preference for using certain countries as return destinations, such as Italy to Tunisia, or Spain to Colombia. It also transpires that certain countries and regions, such as Nigeria, Pakistan and the Balkans, and to some extent also Afghanistan, are used as return zones for Frontex chartered return flights from virtually all Member States.

Although the bulk of the operations were organized by Germany and Finland, many other states participated including Sweden, Denmark, Belgium, Austria, Hungary, Bulgaria and Greece. Moreover, Member States participating in Frontex return operations to Pakistan between 2016-2018 included Sweden, Finland, Germany, Belgium, Poland, Lithuania, Austria, Hungary, France, Italy, Romania Bulgaria and Greece. By comparison, nearly every state in the Union participated in the Frontex forced return flights to Nigeria. Up to seven sending countries would be represented on any given flight. States participating in the return operations were Norway, Sweden, Finland, Denmark, Iceland, Germany, Netherlands, Luxembourg, Belgium, Poland, Lithuania, Czech Republic, Slovakia, Slovenia, Austria, Hungary, France, Italy, Switzerland, Spain, Portugal, Bulgaria and Greece. With regards to Colombia, while all flights were from Spain, Germany and Greece participated in some of these. All flights were moreover two-stop, including an onward journey to either Peru or the Dominican Republic.

When it comes to the Balkans, Albania was the most represented return destination, with Kosovo, FYROM and Serbia also receiving a large amount of flight traffic. Montenegro and Bosnia were also represented to a smaller extent. Moldova is included in the dataset for the Balkans because it frequently featured as a stop on these operations. In general, the Balkans return route included a high proportion of two- and three stop operations. Germany organized by far the greatest share of operations; however, other participating member states on this set of forced returns included Iceland, Sweden, Denmark, Finland, UK, France, Spain, Portugal, Netherlands, Belgium, Luxembourg, Switzerland, Poland, Austria, Hungary and Bulgaria. However, some countries make considerably less use of such operations than others.

Looking at the patterns of Frontex joint and national return operations from 2016-2018, several observations can be made: First, the post-2018 shift away from unmonitored joint return operations chartered by Frontex, and which is observable in the data, does not necessarily say much about the *quality* of the monitoring undertaken. And second, even if the attempts to institutionalize forced return monitoring have led to this shift, the existence of monitors, on the one hand, may legitimize and thus accelerate the political imposed agenda of enforcing returns. On the other hand, there are clearly also some Member States resisting this kind of Frontex organized oversight by some Member States. This latter point was also communicated in interviews with Danish police officers, who

expressed the general view that Frontex operations often did not make as much sense, as did bilateral arrangements:

> *[…] my problem is that in regards to [capital of country x], the Generals say that you can take a chartered air flight but you can only come with eight or ten persons. If I want to use Frontex, they are saying, yeah but, we will pay it but then you have to ask if Sweden or Finland or Norway want to be part of it too. And the Norwegians will say, oh we have five and that's not really the deal with [capital of country x] if we can only come with eight. So they're not leaving very much room for us to go with Frontex […] seeing this strictly from a Danish point of view, it´s just much more practical using our bilateral agreement and fly out there. (Danish police interview 1)*

Moreover, because of the rapidly inflated budgets of the border control agency, there was a clear impression that this upscaling led to unnecessarily wasted money:

> *…if I have two who´s going to Nigeria, I can charter a flight, [Frontex] would pay it, 400,000 kroner to get to Austria to Vienna, to hook up on a Frontex flight from Vienna. It's all paid! But these two guys, I can send them on a flight for 20,000 kroner […] In a Danish perspective, it is a waste of money. Even though we are paid, it is a lot of money, a lot of effort. We also have to use a lot of resources from here if we want to go to a Frontex flight somewhere in Europe to hook up there, you have to use a lot of these guys to do that. It's expensive to do that. Again, Frontex is paying, but not their salary, and you have to go to, when they arrive afterwards, they have to be home for a long time because they have made too many work hours…So seeing this strictly from my perspective, Frontex is just not desirable. (Danish police interview 1)*

4.2 Monitoring in Joint and National Return Operations

While analyzing the data released by Frontex on joint and national return operations according to sending countries offers insights into the actors, interests and operations in the Agency´s involvement in exit policies, other insights are found when disaggregating the data according to the routes and destination countries of these operations.
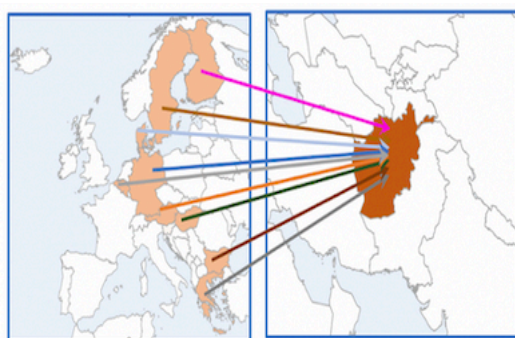
EU-Afghanistan
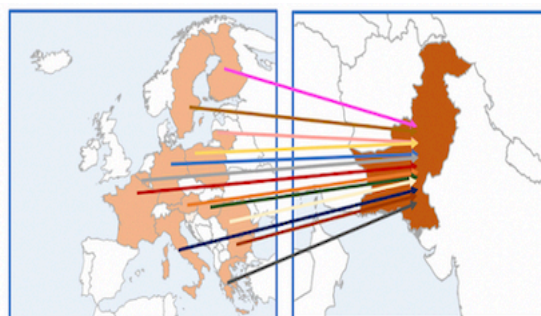
EU-Pakistan
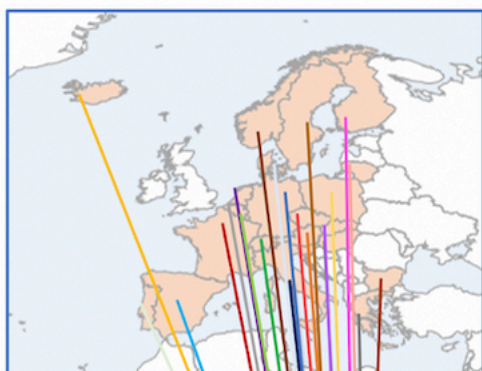
EU-Nigeria
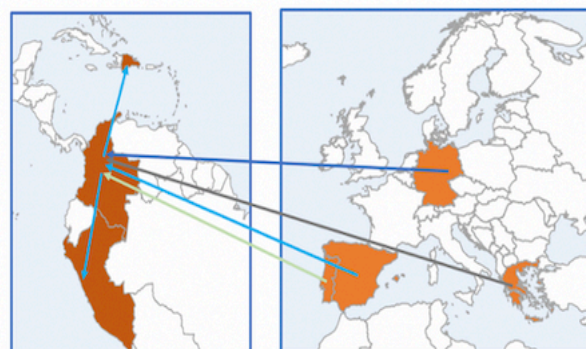
EU-Colombia
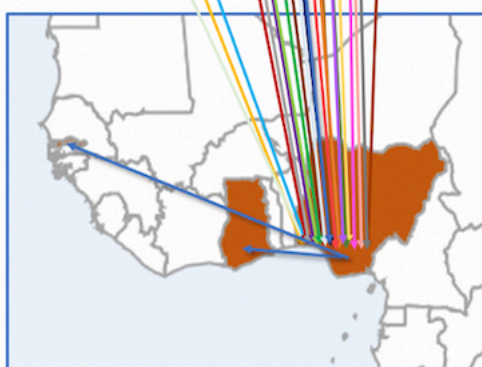
Italy-Tunisia

EU-Balkans

- Austria
- Belgium
- Germany
- Greece
- Italy
- Spain
- Sweden
- Switzerland
- Denmark
- Bulgaria
- Finland
- Hungary
- Iceland
- Luxembourg
- Netherlands
- Norway
- UK

Figure 17: Frontex return flights to selected countries/region by organizing Member States, 2016-2018.

When observing the dataset from this perspective, it is seen that half of the returns to Afghanistan were monitored, with most flights having 10-30 returnees on board, though some had five or fewer. From the summer of 2018, the pattern changed starkly with all flights being monitored but also a significant increase in the size of the return operations – up to 70 returnees on board. This corresponds to a general political tendency in circles of the EU over the last decade to accelerate returns to Afghanistan, including when it comes to unaccompanied minors (see Lemberg-Pedersen 2020; 2018b; Lemberg-Pedersen and Chatty 2015; Lemberg-Pedersen 2015). Throughout the period, all flights were single stop operations. A similar pattern is observable for Pakistan, where the proportion of unmonitored and monitored flights was even, and a cluster of return operations occurred at the of 2017 and start of 2018. Most operations ranged from between 20 to 70 returnees. All of these flights too were single stop operations.
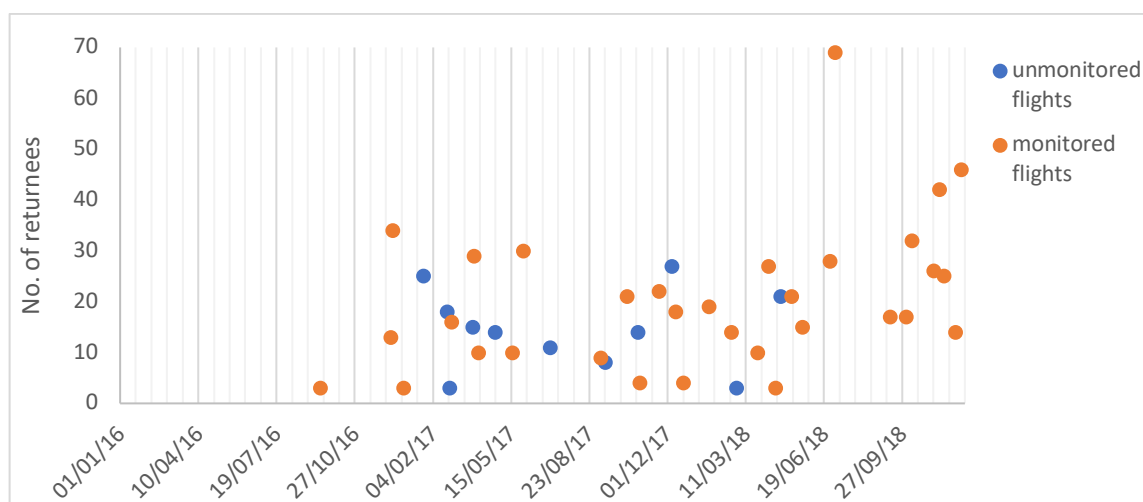
Figure 18: Timeline over Frontex joint/national return operations from the EU to Afghanistan, with no. of returnees, and unmonitored/monitored operations, 2016-2018.

When it came to Frontex chartered return operations to Colombia, all flights were organized by Spain, but included participation from Portugal, Germany and Greece. All flights in this series were two-stop, including an onward journey to either Peru or the Dominican Republic. For Nigeria, the majority of flights are monitored, but unmonitored flights became more commonplace towards the end of this period. Most operations had 20-50 returnees on board, with numbers peaking in the middle of 2017 and declining thereafter. Most of the flights from mid-2018 had 10-30 returnees on board. From late in 2017, two-stop flights emerged as a strategy and came to virtually replace single stop flights. These generally incorporated a stop in either Gambia or Ghana. Although one of these operations had over 70 returnees on board, the majority had about the same number as earlier single stop flights, or fewer.
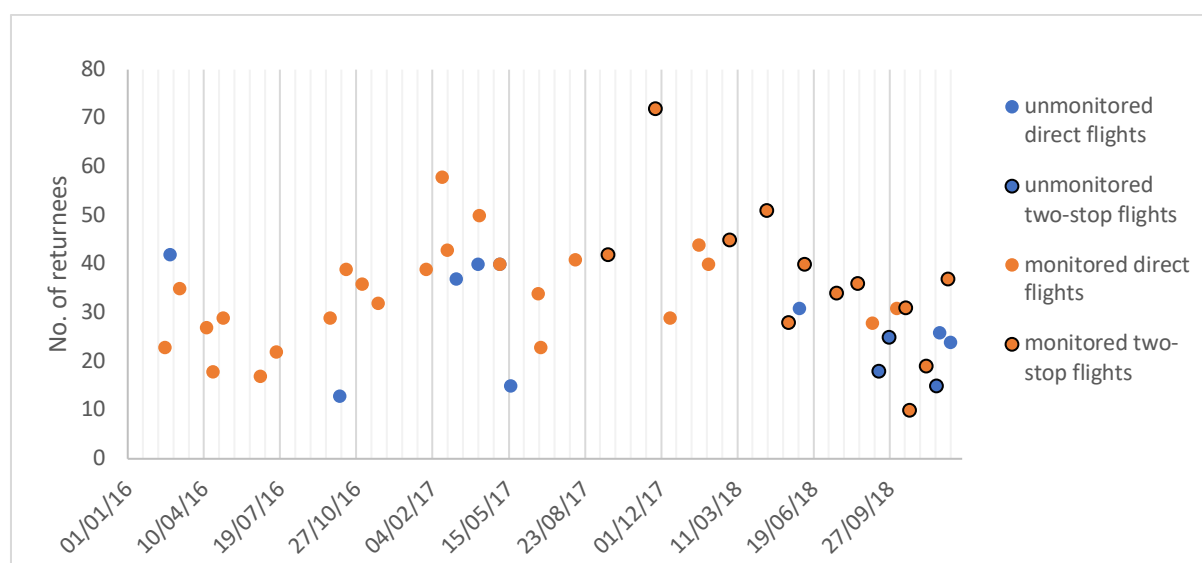
Figure 19: Timeline over Frontex joint/national return operations from the EU to Nigeria, with no. of returnees, and unmonitored/monitored operations, 2016-2018.

Italian relations to Tunisia represents a remarkable outlier in the dataset, and is therefore the focus of Figure 20. Italy dominates Frontex chartered national return operation to Tunisia, although Germany also organized a number of operations to the country between 2016-2018, including some joint returns. But from the second half of 2016, a two-stage development is observable. First that Italian return operations to Tunisia began to take place with a higher frequency, typically one to two times per week. From mid-2016 to mid-2017, these generally had 30 returnees on board, though sometimes the number was as low as 15. In the autumn of 2017, the operations entered a second stage, where the number of returnees jumped to 40, although several operations also included down to 10 or below returnees. Another noteworthy aspect compared to the return operations from and to other countries was that these operations were almost exclusively unmonitored. Only two of the roughly 150 operations having monitors on board. Moreover, in both of these cases, the monitors were Italian, indicating a lack of transparent international oversight into this series of return operations. Throughout the period, all flights were single stop operations.
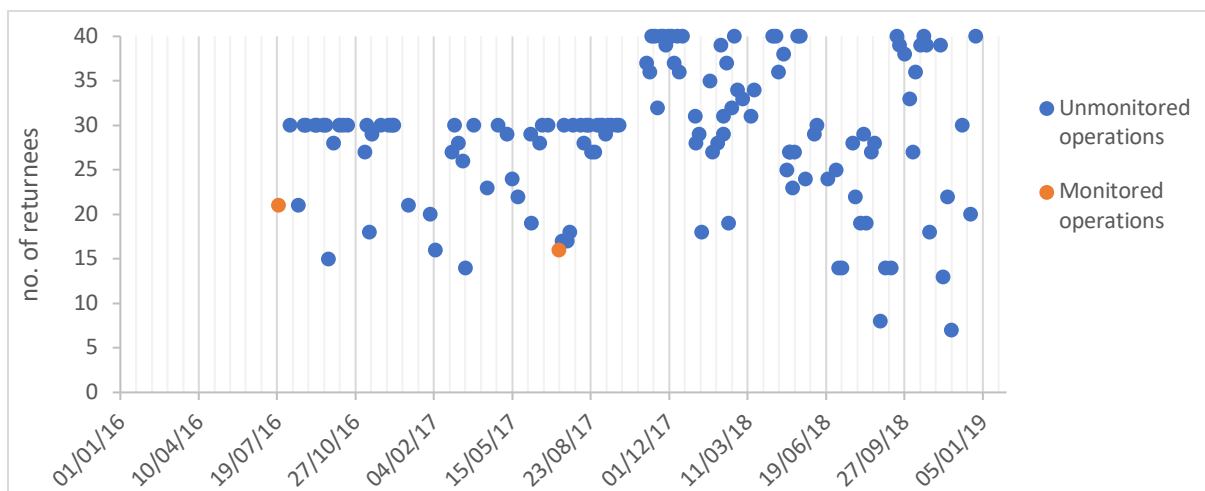
*Figure 20: : Timeline over Frontex national return operations from Italy to Tunisia, no. of returnees, and
unmonitored/monitored operations, 2016-2018*

Observing the data on Frontex chartered return operations to the Balkans (Figure 21 below) and
comparing it to the other exit routes from the EU, the most striking feature is the sheer number of
operations – about half of the total number were directed to this region.
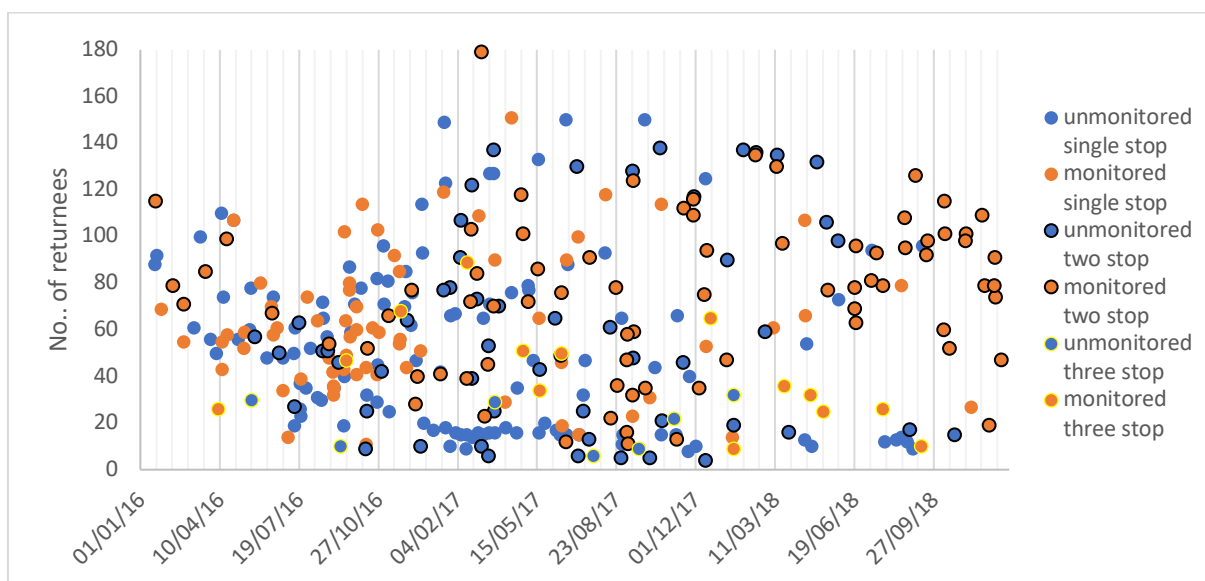
*Figure 21: Timeline over Frontex joint/national return operations from the EU to the Balkans with, no. of returnees,
prevalence of single/two/three-stop flights, and unmonitored/monitored operations, 2016-2018*

Adding to this, the number of returnees on operations was often significantly larger than operations
to other parts of the world. Many flights had 100+ returnees on board, though many others had 20
or fewer. In the period from 2016-2018, an increase in the use of monitors is observable, with a
majority of flights being unmonitored in 2016, and shift setting from early 2017 and onwards.
Although two- and even three-stop flights were established from the start of the period, they started
to become commonplace from late in 2016, virtually replacing single stop flights by the summer of

2017. However, multistop flights tended to have larger numbers of returnees on board. Two and three stop flights appear to be roughly evenly dispersed.

On the Balkan return route, several Member States organize larger numbers of operations. Once again, the operations from Germany returned significantly more people per flight than other countries. Germany also appears to be leading the way with two- and three-stop returns; other states, including Austria, Sweden, Luxembourg, Iceland and Switzerland can be seen to phase out their single stop flights and replace them with multistop operations. This takes place in the early months of 2017, and after Germany has been first mover in this transition. For Germany, this coincides with, or perhaps produces, a significant increase in the number of returnees per operation; for other states numbers remain approximately consistent with single-stop operations.

A systematic conversion and disaggregation of the inaccessible data on joint and national return operations released by Frontex, allow for a more fine-granular look into the sending and destination countries, the prevalence of monitoring, and the operational, geographic and temporal scales of these operations. The particular and different approaches to Frontex returns by Member States like Germany, France and Italy are noteworthy, as are focus on destination countries like Tunisia, Nigeria and the Balkan region. Indeed, the centrality of the Balkan region for Frontex return operation is a striking finding, but although this must be seen in context with the post-2015 political rhetoric on the "Balkan Route", later sections will also document how there has been a concerted focus on returning the region predating 2015, for instance through the Eastern Partnership (EaP).

4.3 Frontex 2020-2021 pushback scandals

Another form of border control is the controversial practice known as "pushback." Whilst exit operations are usually used to describe practices like forced returns or even voluntary or assisted ones, the fact that pushbacks, as the term indicates, means that border authorities, or actors contracted by such authorities, seek to force migrants to exit EU territory means that the practice has to be included under the category of exit operations. The practice of pushbacks has been documented as a long-standing practice of certain EU Member States, and can occur both at sea and land borders. Cases include the border control measures under the Italian-Libyan Friendship Treaty from 2008, which was found unlawful by the 2012 ECtHR-verdict on *Hirsi Jamaa and others v Italy* (Lemberg-Pedersen 2019; Moreno-Lax and Lemberg-Pedersen 2019)[12], the denial of access to asylum at the Polish land border (Matusz and Avialiotou 2020, p.122) as well as chain-pushbacks to and within the Balkan region. From 2018 on onwards, however, NGOs and media reports have increasingly accused Frontex of playing a part in such operations. In October 2020, an international consortium of media outlets launched claims that Frontex was complicit in a Greek campaign for refugee pushbacks[13].

On December 17, 2020, the Court of Justice of the European Union (CJEU) issued a verdict in the case Commission v Hungary (C-808/18) from December 17, 2020. In it, the Court treated five

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[12] European Court of Human Rights 2012 "Hirsi Jamaa and others v Italy." Available at: https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-109231%22]}

[13] Christides, G., Freudenthal, E, S., and Popp, M. 23.10.2020. EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign. Der Spiegel. Available at: https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7.

complaints about Hungarian practices up February 2018. In the fourth of these, it declared Hungary´s removal all third-country nationals staying illegally in Hungary, save for some exceptions, to be incompatible with procedures in the Return Directive. It also found the right to remain in Hungarian territory up to a time limit, after a rejected application, to have been violated[14]. This verdict was the direct reason why Frontex in late January 2021, for the first time in its history decided to suspend its operational activities – in Hungary - due to criticism of potential complicity in unlawful practices.

This Frontex decision must be seen in the context of the Agency´s continuing collaboration with EU and Balkan states on exit operations. This is because several of the non-EU states that the Agency has collaborated with about exits, such as Greece, Italy, Hungary, Serbia, Bosnia and Hercegovina, Kosovo, Albania and North Macedonia, have also been accused on singular and chain pushbacks. Thus, in 2021, several NGO and IO reports have documented severe abuse and torture-like conditions during migrant pushbacks from EU countries to countries bordering, or situated along, the so-called Balkans (Cf. Protecting Rights at Borders. 2021; Border Violence Monitoring Network. 2021). These reports allege systematic chain pushbacks whereby state authorities pushbacks migrants in collaboration with other national authorities. Here, Frontex collaboration and support of the same national border authorities directly accused of denying access to asylum procedures, and of perpetrating abuse of migrants through pushback practices, appears problematic. Worse still, in several witness accounts in media reports, migrants experiencing such pushbacks, have reported that those involved have had Frontex insignia on their armbands.[15]

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[14] CJEU. 2020. Available at:
https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4908551

[15] Deutsche Welle. 8.1.2021. Is Frontex involved in illegal "puschbacks" in the Balkans? Available at:
https://www.dw.com/en/is-frontex-involved-in-illegal-pushbacks-in-the-balkans/a-56141370.

Figure 22: Frontex Serious Incident Report. Source: Fraagdenstaat.de.

Figure 23: Frontex Serious Incident Report. Source: Fraagdenstaat.de.

Focusing on pushbacks in the Aegean Sea, the accusations included Frontex complicity in the Greek coast guard´s systematic interdiction of migrant boats, destruction of engines, and forcibly pulling them to Turkish waters, thus barring their rights to apply for asylum. Other allegations include a by-standing role while Greek boats sail dangerously close to migrant boats, putting them in jeopardy of capsizing. For instance, on April 28-29. 2020, migrants were allegedly pulled from Samos and out to sea, with a Frontex plane overflying the incident twice. On June 4-5, 2020, a Portuguese vessel under Frontex auspices circled ongoing pushback operations within few kilometres radius. On June 8, 2020, a Romanian vessel blocked a rubber boat with migrants; and on August 19, a Portuguese vessel circled few kilometres from another pushback event. These controversial exit operations were then examined through a series of Serious Incident Reports obtained by the German NGO FraagdenStaat.

4.4 The 2020-2021 investigations into Frontex

The allegations of wrongdoing have thrown the Agency into a prolonged, and at this moment in time, still ongoing period of scandals and multiple investigations. On November 10, 2020, the Frontex Management Board convened for an extraordinary meeting discussing the pushback situation in the Aegean Sea as reported in the media, and the fundamental rights issues arisen from it. The meeting was also attended by the Agency´s Fundamental Rights Officer ad interim, the executive director and an expert representing the European Parliament´s LIBE Committee.[16] On November 26, 2020, the Agency established its own Working Group "on Fundamental Rights and Legal and Operational Aspects of Operations" to conduct inquiries in relation to the allegations of pushbacks

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[16] EC. November 11, 2020. Extraordinary meeting of Frontex Management Board on the alleged pushbacks on 10 November 2020. Available at: https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-alleged-push-backs-10-november-2020_en.

in the Eastern Mediterranean in 2020.[17] The Agency´s formation of this internal investigation can be seen as an attempt to pre-empt the power to define the scope and volume of challenges facing the Agency by a number of other investigations announced shortly thereafter. Thus, on December 7, 2020, the EU´s anti-fraud institution, OLAF, raided the Warsaw-offices of Frontex Executive Director, Fabrice Leggeri, and his Head of Cabinet, Thibauld de La Haye Jousselin. This was part of a larger investigation of allegations of harassment, possible financial irregularities relating to contracts to a service provider, and unlawful pushback operations. This followed media claims that Leggeri deprioritized and "actively resisted" the recruitment of 40 fundamental rights officers, otherwise required by Regulation 2019/1896.[18]

In early 2021, several journalists requested Frontex information about the locations of the Agency´s vessels in the Aegean, in order to determine any involvement with pushback operations. This could not be ascertained since crews allegedly turned off the vessels´ Automatic Identification System (AIS) during controversial joint operations. The AIS is a radio transmission system required by the International Maritime Organization (IMO) since 2000, where ships send coded messages about vessels´ identities (name, ship type, size, call sign) via satellites and land-based receivers. This includes a Maritime Mobile Service Identity supposedly unique for each vessel. However, since it is up to crews themselves to manually enter their AIS codes, there is room for human error, and misuse. Entering wrong numbers is known as "AIS spoofing", which can be used to give many vessels the same code, and thereby obfuscate any subsequent attempt to determine individual vessels.[19] Captains may also decide to turn the AIS completely off. For Frontex operations, whether the AIS on turned on or off will usually be indicated in the particular Operation Plan (OPLAN), and is, if not indicated, left to the discretion of the vessel´s captain.

During Frontex´s Operation Poseidon, Greek liaison officers have been able to request that the AIS be turned off, for instance in order to approach boats unseen, while other considerations, such as maritime safety against collisions speak for it being turned on. More ambiguous cases include regions where maritime territory is a matter of contested sovereignties. This is the case in the Greek-Turkish borderlands, where the two countries operate with different definitions of their maritime boundaries, since Greece claim to be entitled to a 12-mile territorial water limit for its mainland and islands, while the international community operates with a 6-mile limit. Although the EU-Turkey border control deal has led to certain compromises between the two countries, instances of territorial controversies have also risen, and in 2020, Turkey also concluded a Maritime Boundary Treaty with the Libyan Government of National Accord (GNA), which led to dramatic protests from Greece. But the question of maritime territory is also of crucial importance when it comes to investigation of Frontex complicity in pushback operations.

These changes are also logged in the vessel´s journal. However, for the purposes of accountability of vessels under border operations, and in particular concerning controversies about complicity in

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[17] Frontex Management Board Decision 39/2020 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations. Available at: https://www.statewatch.org/media/1703/eu-frontex-mb-decision-wg-fundamental-rights-26-11-20.pdf.

[18] Palaiologos, Y. 14.1.2021. OLAF raided EU Border chief´s office over migrant pushback claims. Available at: https://www.ekathimerini.com/news/261205/olaf-raided-eu-border-chiefs-office-over-migrant-pushback-claims/.

[19] Global Fishing Watch, "Spoofing: One Idenitity Shared by Multiple Vessels." Available at: https://globalfishingwatch.org/data/spoofing-one-identity-shared-by-multiple-vessels/.

pushback operations where it is crucial to identify the vessels involved and their routes, this use of the AIS technology clearly presents a set of problems. Frontex initially replied by denying the journalists access to its AIS information, claiming that it amounted to personal data and sensitive information that could be used by huma smugglers. In a second reply, on January 27, 2021, the Agency shifted its justification to the claim that such documentation either did not exit, or was not accessible. Amidst mounting reports of rights violations in the Aegean, legal protection organizations argued that the Agency had failed to act in violation of its own mandate, and in February 2021, the European Ombudsman opened an investigation into Frontex´s denial of releasing information to journalists.

On January 21, 2021, an internal review conducted by the Agency´s own Management Board Working Group on Fundamental Rights and Legal Operational Aspects of Operations, could "*on the basis of the information provided*" at this stage "*not establish evidence of fundamental rights violations*" during alleged pushback operations. However, it also noted that it had only examined five out of 13 incidents, while the rest needed further clarifications. The Working Group also stated that it was "very concerned" that the Agency did not provide information on three incidents in time, preventing the Group from including them in its examination. In response to the Working Group´s preliminary report, the Management Board invited the Agency´s executive director to immediately provide the missing information, and also agreed with the WG that serious incident reports should not automatically be categorized as "restricted." (Frontex Management Board 2021).

Among its further recommendations were: That the Agency should "apply" and "revise" its current reporting system so as to make it more efficient and allowing the Fundamental Rights Officer and the Management Board to "*fully exercise their duties*"; setting minimum qualification requirements for experts in the Frontex Situation Centre; making sure that serious incident reports are always reported to the Fundamental Rights Officer; ensuring transparent reporting mechanism in every Operational Plan, including that participating Member States involve all assets in such transparency; to establish a systematic monitoring of the reporting mechanism; ensuring protection of identity of whistleblowers during serious incident reports. The Working Group also recommended the immediate recruitment of 40 Fundamental Rights Monitors, which should already have been in place by December 5, 2020 (Frontex Management Board 2021). These issues were reiterated in the final March 5-version of the investigation. As the Management Board neared the closure of its investigation, a new one commenced on February 23, 2021, from the European Parliament Scrutiny Working Group on Frontex. It was tasked with monitoring all aspects of Frontex focusing on its compliance with fundamental rights, reporting and complaints procedures, transparency and the Agency´s accountability *vis a vis* the European Parliament.

On March 1, 2021, after reviewing five cases of alleged pushbacks based on the data compiled in Serious Incident Reports (respectively, SIR 11860/2020, SIR 11934/2020, SIR 12604/2020 and SIR 12790/2020), as well as another case from April 2020, the Working Group´s Final Report issued its conclusions recommendation. Overall, the Management Board´s Working Group emphasized that, along the Member States, "*Frontex constitutes the main guarantor for strong and protected European external borders while upholding fundamental rights and international protection obligations.*" However, the Agency´s own Working Group stated that "*it has not been possible to completely resolve the incidents beyond any reasonable doubt.*" Faced with the lacking information about the conditions of those migrants pushed back to Turkey, it added to this the interpretation of

this data gap to mean that "*continued efforts (…) could not substantiate that the Turkish Authorities did not take over responsibility for the safe return of the migrants…*" (Frontex Management Board Working Group 2021, p. 15). Still, the Working Group concluded that the right of access to asylum must be guaranteed regardless of the circumstances. It echoed two aspects stressed in (confidential) letters from the Consultative Forum to the Working Group and the Chair of the Management Board, namely that boats must not be left adrift unable to navigate regardless of other vessels in the vicinity, that "*any interference to the sea-worthiness to vessels at sea*" must be prevented. It continued that any incident implying possible violations of fundamental rights must be categorized in SIR category 4, and that "*Any retrograde interference to adjust operational data shall be avoided*". This latter point was emphasized, by the additional statement that "*Necessary measures by all parties shall be taken into consideration to prevent even the slightest indication of such behavior in the future.*" (Frontex Management Board Working Group 2021, p. 16). It restated the acknowledgement of the "*deficits and the need for improvement of the reporting and monitoring system*", and thus of flawed operational data systems, voiced in its February-report, and directly explained the lacking ability to clarify and resolve contradictions in the five further examined incidents of pushbacks. It also noted that the fact that four out of the five incidents were still under examination by the Agency at the time of the Final Report, which gave "*reason to re-evaluate the Agency´s internal proceedings in cases of suspected fundamental rights violations*" (Frontex Management Board Working Group 2021, p. 17).

The criticism surrounding Frontex involvement in alleged pushback operations at the EU´s external borders illustrate how any notion of exit governance must take into account not just practices such as Frontex organization of chartered flights, joint and national return operations but also the Agency´s guidelines and reporting mechanisms when it comes to collaboration with Member States on highly controversial and violent practices, such as pushbacks in national waters. The controversies facing the Agency now, reflect a changing, and worrying landscape of EU border control policies. And the Agency´s investigation of itself which leads to questions about whether, given the political preference after 2015 to rapidly expand its financial and organizational, it is able to navigate between border control priorities and the upholding of fundamental rights.

4.5 Frontex information systems for EU exit governance

As discussed, Frontex has increasingly attempted to create a fundamental shift in the knowledge environment surrounding the institutional, organizational and operational matters relating to border control, and exit policies more specifically. This has partly been driven by the repeated political desire to construct large-scale information systems, databases and platforms to address perceived gaps between asylum and return systems. Frontex is an exemplary case of this development, illustrated by the centrality of several data systems for its work. When it comes to exit operational matters, these are: The Integrated Return Management Application (IRMA), and a module under it, namely the Frontex Application for Return (FAR). Moreover, there is the Joint Operations Reporting Application (JORA 2), Statistical Analytical Software (SAS) and the Schengen Information System (SIS II). The technological infrastructures underpinning each of these data systems are based on that system's type and function, e.g. while the IRMA is an information exchange system, the JORA is based on the data reporting structure (Frontex interview).

4.5.1   The Irregular Migration Management Application (IRMA)

In the last decade, Frontex´s exit governance has been thoroughly imbricated in the increasing political preference for data collection and information systems for border and migration enforcement. According to Frontex, the main data systems used for Frontex operational involvement in exit policies are: The Irregular Migration Management Application (IRMA), Frontex Application for Return (FAR), JORA 2, Statistical Analytical Software (SAS) and the Schengen Information System (SIS II) (Frontex interview).

The creation of the Irregular Migration Management Application (IRMA) arose from the aforementioned political desire for an "integrated system of return management" allowing for "closing the gap between asylum and return procedures." (European Parliament 2016). Also, guiding its development was the increasing political preference for linking exit and data systems in Commission Communications, as well as its 2018 proposal for a new Return Directive. These processes influenced Frontex´s 2016 and 2019 Regulations, which, although not referring directly to IRMA, does refer to coordination of relevant IT systems, including a national IT return case management system, as well assisting national authorities in developing their own systems along certain technological standards. IRMA was originally developed and hosted by the European Commission as a restricted data system in 2017, and then transferred to Frontex in the beginning of 2019 (Frontex interview). It is now hosted by the Directorate General for Informatics (DG DIGIT), which is the Commission department responsible for providing digital services supporting EU institutions in their daily work, and facilitating EU Member State collaboration.

IRMA was designed to provide a secure information exchange platform connecting EU Member States to EU-level actors, such as the European Commission, Frontex as well as EU funded programmes. The main purpose is to facilitate the planning, organization and implementation of return and readmission-related information. The aim is to make return procedures more effective.[20] IRMA was implemented on September 1st 2017 under the name "Return Management Application", later changed to "Irregular Migration Management Application" although the acronym of IRMA remained. It holds data on practices and guidelines of non-EU countries, such as legislations, return programmes and operational data. It is designed to allow Frontex to assume a more proactive role in joint return operations.[21]

The purpose of the IRMA is stated as building synergies and guidelines for best practices on exit, between the EU and third countries, as well as the collection of operational data on return operations and statistics, thereby facilitating a more pro-active role for Frontex when it comes to planning joint return operations (EC 2020a). The Application is described by the European Commission as a "*A restricted and secure information exchange platform*," which facilitates the planning, organisation and implementation of return and readmission activities with the objective of making return procedures more effective (EC 2020a). The construction of IRMA was aligned with one of the goals stated in the 2016/1624 Regulation that granted more powers to, and transformed, the

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[20] European Commission (2020) "Irregular Migration Management Application" available online at: https://ec.europa.eu/home-affairs/content/irregular-migration-management-application-irma_en

[21] Cf. Statewatch (2020) '"Regaining Control" new powers for Frontex" available online at: https://www.statewatch.org/deportation-union-rights-accountability-and-the-eu-s-push-to-increase-forced-removals/frontex-the-eu-s-deportation-machine/regaining-control-new-powers-for-frontex/#_ftn14, accessed 2/11/2020

Agency, through the establishment of an integrated system of return management, "*closing the gap between asylum and return procedures*" (European Parliament 2016).

In the Frontex Work Programme for 2017-2019, the objectives listed for "return support activities" included the finalization of the Share Point web-based application on return, dubbed the "Frontex Application for Return" (FAR). This was then to be interconnected with the IRMA, developed by the Commission. The dual aim with this objective was, first, described as making it possible for Member States to request assistance for returns, and coordinate the organization and implementation of return operations (Frontex 2016, 22). Second, this functionality was also to position the Agency "as an EU hub for exchanging operational experience and knowledge in return matters," developing also its role as "operational coordinator of the EU funded networks and programs on return" and to "create synergies and coherent system of return management at technical and operational level." (Frontex 2016, p.58). In its Work Programme for 2018-2020, the Agency reiterated these ambitions and objectives, and listed under "expected results" the "Inclusion of Irregular Migration Management System (IRMA) functionalities" under Frontex capacity for an "EU holistic approach towards return management." (Frontex 2017, 24). This also included further return-related plans for the organization of workshops on topics, such as monitoring and challenges in non-European countries, as well as the training of return escorts and fundamental rights.

4.5.2   *Frontex Application for Return (FAR) and the Joint Operations Reporting Application (JORA 2)*

When it comes to the FAR, the Agency itself describes it as an "in-house web application" used to organise, coordinate and support both voluntary and forced returns by Member States and Schengen Associated Countries. It consists of two modules, namely FAR Charter Flights, which was created in October 2016, and has been updated regularly since then, and FAR Scheduled flights, which was first put into use in December 2017, and since then has been extensively redeveloped (Frontex interview). A new version, FAR Scheduled Flights 2.0 was released in October 2020. According to Frontex, the FAR module can assist Member States in organising and implementing returns more easily, in accordance with their changing needs. Recently the Agency has also updated the Application with a view for it to be used to support voluntary returns, and it aims at integrating both FAR modules into the IRMA system, thereby enhancing their interoperability (Frontex interview).

The Joint Operations Reporting Application (JORA 2) is a data reporting structure, among other things organizing the creation and transmittance of "serious incident reports" in the areas of joint operations. Together with internal reports and data from national authorities, JORA data is used to compile Frontex reports. This makes it an integral part of exit operations, and thus also of the 2020-2021 controversies surrounding the accusations of pushbacks in the Aegean Sea and Balkan region, and calls for improved reporting structures. JORA 2 processes operational information through a series of instances. For instance, in the case of alleged pushbacks around the Greek island of Kos, a serious incident report is filed at the Border Crossing Point (BCP), transmitted to the Local Coordination Centre (LCC), then to the International Coordination Centre (ICC) and finally Frontex Situational Centre in Warsaw, which produces a final report.

5. The reconfiguration of EU information systems towards exits

Frontex´s role in EU exit governance is integrally tied to large-scale information and data processing systems (see also Jeandesboz 2018) underpinning EU asylum, visa and Schengen policies. The political processes reconfiguring these therefore have direct implications for the foundation of the Agency´s operations. The levels of Frontex access and use to the different systems are, however, not easy to ascertain, because they are part of dynamic and changing processes. This is, first, because the Agency´s has varied access and use of the systems, but secondly, also because that access and use is being extended to new systems. Thirdly, in line with the political ambition of interconnectivity and interoperability between various information systems, their function, purposes and imbrications, illustrated by several recast proposals between 2016-2018, can undergo changes with direct impact for Frontex exit operations.

The drive towards an accelerated datafication of Frontex exit operations is linked to longer-spanning political processes. In February 2013, the Commission announced a "Smart Borders"-package[22], consisting of a Registered Traveller Programme (RTP), allowing certain groups of frequent travellers from third countries to enter the EU using simplified border checks, and an Entry/Exit System (EES) designed to record time and place of entry/exit of third country nationals travelling to the EU. After the launch of the Smart Borders package, a Pilot and study led to the publication of a 2015 report. At the same time, the European Commission contracted the consultancy company Price Waterhouse Coopers to undertake a cost analysis of the Technical Study on Smart Borders (Price Waterhouse Coopers, 2014). The pilot tested and researched 18 air, sea and land borders crossing points in 12 Member States, involving 58.000 travellers and around 350 border guards. Biometrics such as fingerprints, facial images and iris scans were rolled out in Automated Border Gates and kiosks (EU-Lisa, 2015). Massive problems faced the upgrading process from the SIS system (Parkin 2011), as well as with the Registered Traveller Programme, and the discrepancies between political visions and technological developments, meant that the Smart Borders- package was taken off the table. Accordingly, the RTP was dropped and the EES proposal distilled into its own regulation, projecting the roll-out of the system in 2020.[23]

In March 2014, the Commission issued a Communication on the *EU´s Return Policy*. Herein, the VIS and SIS databases, and their Regulations, were portrayed as "flanking" legal instruments. The Commission voiced expectation that the VIS would become a significant tool for identification and documentation of returnees (4), while the SIS was said to have already proved helpful in detecting and thus enforcing entry bans issued under the Returns Directive, with an approximate average of 700.000 entry bans stored in the system between 2008-2013. These databases were underpinned by financial support channelled to MS´s via the Return Fund (distributing €674 million between 2008-2013) (EC 2014, p.4). Similarly, the Commission claimed to have financed over 40 projects with a strong focus on capacity building for return and reintegration with more than €70m channelled through EU development cooperation instruments (EC 2014, p.5). It also noted that NGOs had

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[22] European Commission (2013) "Smart borders": enhancing mobility and security" [online] available at: https://ec.europa.eu/home-affairs/what-isnew/news/news/2013/20130228_01_en, accessed 24/01/2020

[23] This timeline has, however, been delayed significantly due to a combination of the covid-19 pandemic, and the lacking infrastructure across all the MS.

played an important role in carrying out a number of projects, as they were able to establish trust and better cooperation between authorities and migrants.

The Commission expected the new Asylum, Migration and Integration Fund (AMIF) to build on the Return Fund´s experiences with financing EU return policy development. The Commission also emphasized the role of Frontex, as having coordinated 209 Joint Return Operations (JROs) returning 10.855 people between 2006 and 2013. It also noted that in 2012, a Fundamental Rights Officer (FRO) was created and appointed, whose role, among other things, was to monitor, assess and make recommendations also relating to JROs. Also, a Frontex Code of Conduct for such operations was adopted October 7, 2013 (EC 2014, p.5-6). Regarding future developments, the Commission asked for a comprehensive approach with increased cooperation with non-EU countries, increased practical cooperation between MS´s and with Frontex and international organizations and NGOs, fight against trafficking and smuggling and linkages to the EUs external relations. And again, the Commission brought forward an emphasis on return-related statistical information, information exchange between national forced return monitoring bodies, and especially highlighted that the "*potential of VIS and SIS in the field of return policy should be further enhanced*" in order to "*improve consistency between the return policy and SIS II and to suggest introducing an obligation on Member States to enter a refusal of entry alert in SIS II for entry bans issued under the Return Directive.*" (EC 2014, p.10). In June 2015, the European Council responded to the Commission´s ten-point plan by calling for a European Return Programme (European Council 2015) [24], which on September 9, 2015 led the Commission to propose an EU Action Plan on Return with 36 steps to be taken, alongside a "Return Handbook" (EC 2015b). And already in March 2017, another renewed Action Plan followed, which assessed and accelerated the key tenets of the 2015 plan.

Together, these 2015-2017 Action Plans illustrate the heavy focus of the Commission on the area of exit governance, and particularly return. But according to an EDPS interlocutor, the visions of drastic recasts is not a completely new phenomenon, and often face problems sidestepped by political announcements:

> *I have to say that, I think – and this is my personal view – that this is happening for the last maybe 20 years. Because what you saw also with the first big system SIS, that it's already there. It took 8 years or something like this, to deploy the second generation of the system, even though it was planned for like two years or something [...] And you know, this is something we cannot exclude with the new systems that are built right now. That one thing is to have legal basis, but it will only become operational when all member states are ready and currently we cannot tell you if they will be ready in time or not. They all have to invest and also EU-Lisa has to be part of the system. Also other circumstances like Covid can slow down this progress (EDPS interview 2)*

The 2015 Action Plan reiterated the longstanding European focus on enhancing the efficiency of exit procedures, noting that less than 40% of those ordered to leave the EU, were actually returned. Accordingly, the Commission launched the Action Plan as defining the immediate and mid-term measures to remedy this perceived "inefficiency." Another argument repeated by the Commission was that only by enforcing, and indeed upscaling, deportations, would the "public trust" in the EU´s

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[24] European Council meeting (25 and 26 June 2015) – Conclusions, EUCO 22/15, 26 June 2015.

asylum system not suffer irreparable damage. It also noted that among the immediate measures was also the new AMIF instrument and the earmarking for return more than €800m of its resources in the national programme for 2014-2020 (EC 2015, p. 2-3). The Commission called for stronger enforcement of EU rules, including the rights of returnees, but also noting that Member States should use detention in order to avoid that irregular migrants abscond or their secondary movement, as well as the placement of migrants under electronic surveillance or in semi-closed facilities (EC 2015, p.4).

As regards the EU information and data processing systems for border control, the 2015 Action Plan called for enhanced information sharing to enforce returns. It lamented the lack of systematic information on return decisions between Member States. The Commission therefore proposed reforming the SIS so that it would be compulsory for Member States to introduce all entry bans, including those under the Return Directive, into the system (EC 2015, p.6). Adding to this, it proposed a central Automated Fingerprint Identification System for SIS "*to help establish the identity of persons without confirmed identity, including irregular migrants*." (EC 2015, p.6). The Commission also stated that it would evaluate the VIS, and on Eurodac voiced an intention to "*explore the possible extension of the scope and purpose of the Eurodac Regulation, to enable the use of data for return purposes*." (EC 2015, p.6) All of these measures were framed as aligned with the planned 2016 Smart Borders proposal revision, which allegedly would also enhance return rates "*by creating a record of all cross-border movements by third country nationals [which would] allow tracing persons who over-stay as well as facilitating the identification of those who have destroyed their identity documents*." (EC 2015, p.6).

Taken together, the Action Plan composed an ambition to accelerate Union return policy along multiple axis. Among the immediate actions were the monitoring of disparities between Member States; evaluating Member States´ implementation of the Return Directive; Schengen evaluations on return policy; evaluation of the SIS; a national contact point network communicating withdrawals of residence permits; and more systematic use of Frontex-coordinated JROs; Frontex-training of escort leaders and escorts; creating an integrated system of return management; defining priorities and tasks for European Migration Liaison Officers; generating a roadmap for statistical data on returns; organizing bilateral readmission and negotiations meetings with Sub-Saharan and other African countries, starting with Nigeria and Senegal; defining a list of priority countries and time-tables for high-level dialogues; setting up a dedicated Readmission Capacity Building Facility; supporting voluntary return programmes from the Western Balkans; introducing a "more-for-more" principle of leveraging non-EU countries to sign return and readmission agreements. Among the mid-term measures were: The promotion of best practices on voluntary return and reintegration; support for joint reintegration programmes; mapping of best practices and obstacles to return; integration of information on assisted voluntary return in asylum processes; legislative reform of SIS; a possible extension of Eurodac; evaluation of VIS and the revised Smart Borders proposal; and a legislative reform of Frontex´s mandate on returns; deploying European Migration Liaison Officers in non-EU countries; launching new readmission agreements with key countries of origin; carrying out high-level dialogues; structural support to the reintegration of returnees under the EU Emergency Trust Fund for Africa (EC 2015b).

In 2017, the renewed Action Plan on Return reproached the implementation of its 2015 predecessor as "*remaining limited*" which illustrated the need for "*more resolute action to bring measurable*

results in returning irregular migrants" (EC 2017, p.2). The Commission said that Member States
"*may have more than 1 million people to return once their asylum applications have been
processed*," but that the return rates from the Union had not improved, since the rate of effective
returns to third countries dropped from 36,6% to 36,4%, and to 27% if disregarding the Western
Balkans, which by then had evolved to be the biggest deportation zone for the EU by far. The 2017
Action Plan was adopted at the same time as the second European Border and Coast Guard Report,
as well as a Recommendation on making returns more effective when implementing the Return
Directive. In 2017, then, the Commission´s focus had moved on from the 2015 discussions of
relocation and resettlement of migrants arriving in Europe, to accelerating the return measures and
infrastructures targeting them.

5.1 The recast proposals for the Eurodac, the Visa Information System and the Schengen Information System

Whilst the operation of large-scale information systems is linked to multiple EU institutions, the Union
Agency responsible for financing, developing, implementing and the operational management of them
is EU-Lisa, established in 2011 through EU Regulation No 1077/2011, which is based in Talinn, Estonia
and also has an operational office in Strasbourg, France. Under the Agency´s purview are databases
connected to migration governance, such as the Visa Information System (VIS), the Schengen
Information System (SIS II), the European Dactyloscopy Database (Eurodac), and the European Travel
and Information and Authorisation System (ETIAS) which is soon to be transfered to Frontex (see also
Glouftsios 2020). EU-Lisa has also been scheduling the roll-out of the European Criminal Records
Information System for Third Country Nationals (ECRIS-TCN) and the Entry-Exit System (EES). It
receives funding through a mixture of EU grants and direct contributions from member states. Its
revenue has been growing in recent years, from 2017, towards 2021, as seen in Table X below.

YEAR	2017	2018	2019	2020	(2021)
EU-Lisa Budget	70 mio.	97 mio.	140 mio.	237 mio.	221 mio.

Figure 24: Budget of EU-Lisa, 2017-2021 (projected). Source: EU-Lisa 2021.[25]

EU-Lisa cooperates in particular with agencies from the sphere of justice and home affairs (JHA);
CEPOL, EASO, EIGE; Eurojust, Europol, FRA and Frontex, and has quickly established close relations to
commercial actors in the EU borders. This is exemplified by the flurry of interaction taking place
through a series of Roundtables, workshops, and tenders for framework contracts for maintenance,
upgrades and evolutions. This illustrates the co-constitutive relation between policy-making and
technological development and reconfiguration (see also Section 7).

The databases managed by EU-Lisa collect alphanumeric (e.g. name, gender, age, occupation)
and/or biometric information (e.g. fingerprints, iris scans, palm prints, facial recognition, DNA). For
instance, EU-Lisa manages data via its Biometric Matching System (BMS), which is a search engine

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[25] "EU-LISA: FINAL STATEMENT OF REVENUE AND EXPENDITURE FOR FINANCIAL YEAR 2019 (EURO)" [online] available at:
https://www.eulisa.europa.eu/AboutUs/Documents/MB%20Decissions/2020-397_Annex_I_2021_Budget.pdf.

that systematizes biometric data through technologies measuring, analyzing and processing digital representations of unique biological data traits for the purposes of identification and verification. Biometrics can be described as the datafication of existence through mathematically-based archival sorting. It is both an old technology traceable back to 19th century technologies of colonial contexts (cf. Maguire 2012; Breckenridge 2014, p.14), but also one that is currently being used in conjunction with other platforms to translate information about life into measurable and manipulable bits and bytes of computerized data. In the case of the EU´s information systems making use of biometrics for the purpose of exit governance, the manipulation of data is done according to criteria and sorting practices derived from Union Regulations and policies for exit. In general, biometric data is used for identification and verification purposes. The former denotes that a biometric recording is checked against a larger database of recordings, while the latter denotes that a live recording is checked against a biometric images and files used to derive mathematical models. Identification therefore establishes the identity of a person (one-to-many comparisons), while verification proves that the person is who the person claims to be, that is, an identity already known in the database (one-to-one authentication). Especially the former purpose is a key feature of the EU border databases, where stored biometric data is used to identify persons without any ID or travel documents, or if EU authorities do not believe that the documentation they present is authentic. As such, biometric technologies can force the body to communicate its validity independent of its proprietor´s willingness to do so (cf. Aas 2006). According to an interlocutor from the EDPS, this posits the security of such systems as a central concern:

> there are plenty of new legislative proposals… And this is also the moment that
> EDPS has the possibility to affect shape and the future in this area. So probably
> you saw, in the past all the opinions of the EPDS on interoperability of every new
> system – ETIAS, entry-exit, and in there is always a lot of points concerning
> fundamental rights of individuals but also the security of the systems and risks
> that are embedded in such large IT systems (EDPS interview 2).

In the following, several of the central systems, and Frontex´s interactions with them will be examined.

5.1.1   Schengen Information System (SIS II)

The SIS was the first large-scale IT system designed to provide data-based flanking measures for the abolition of internal border controls in the Schengen Area. It was to facilitate the free movement of people within the Schengen Area (EC 2016a) by security-focused information gathering. Founded via the 1990 Schengen Convention, it was operational by 1995 in the Member States Germany, France, Netherlands, Belgium, Luxembourg, Portugal and Spain. Successive expansions of its use included in particular after 2001, where four Nordic countries were included and the system was framed as an efficient tool in the fight against illegal immigration (Broeders, 2007). SIS II was then established in 2006 by Regulation (EC) 1987/2006 of the European Parliament and of the Council, but the following seven years saw this process greatly delayed due to budget overruns, design disagreements and controversies between Member States and the companies and national economies these represented (Parkin, 2011; Lemberg-Pedersen et al. 2020, pp.56-57). In 2007, SIS II was expanded again to nine eastern European countries which recently joined the EU, and in 2013 the launch of the SIS II system finally took place. SIS II operates through a central database physically located in Strasbourg; national systems located in each member state, linked to the central database; and a

built-in communication infrastructure making it possible for Member State authorities to enter, delete and search for data via their national systems. Searches take place on the basis of both alphanumeric data (for instance name, sex, birth, nationality) but also via biometric data. The database does not only contain data on those registered, but also instructions for competent authorities on what to do with the person or object once found (EC 2016a). Moreover, the use of SIS II data is wider than border and migration enforcement. Thus, the information and data processing system is also meant to support law enforcement and judicial cooperation in criminal matters and counterterrorism. Of relevance here are the alerts related to refusal of entry and stay concerning third-country nationals. These are known as Article 24 alerts, referring to Article 24 of Regulation 2018/1861 which concerns the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks.

In 2016, the Commission concluded a review of the SIS II by calling the second-generation database a "*genuine operational success*." (EC 2016a). As documentation for this success, the Commission did not, however, reference any larger political developments towards good migration governance, or solutions to the long-standing systemic conflicts between Union Member States about solidarity and responsibility for asylum seekers. Instead, it simply listed the drastically upscaled volume of data retained by the SIS II system. Thus, it described how, in 2015; "*national competent authorities checked persons and objects against data held in SIS on nearly 2.9 billion occasions and exchanged over 1.8 million pieces of supplementary information*" (EC 2016a). That same year, the Commission also set up a High Level Expert Group on Information Systems and Interoperability which included as members the Fundamental Rights Agency, Frontex, EU-Lisa, EASO, the European Data Protection Supervisor, Europol and the Union´s Counter-Terrorism Coordinator. The Group was to support the reviewing of existing information architectures "*to identify information gaps and blind spots that result from shortcomings in the functionalities of existing systems, as well as from fragmentation in the EU's overall architecture of data management*." (European Commission 2016a, 2). The following overview is partly based on the findings of AdMiGov Deliverable 1.3.

Despite the alleged success of SIS II, in December 2016, the Commission tabled three legislative proposals recasting the database´s functions and purposes, concerning the use of SIS for the return of migrants (European Commission 2016b), the establishment, operation and use of SIS for border checks (European Commission 2016a) and police and judicial cooperation on criminal matters (European Commission, 2016c). Part of the reason for the recast was to convert the pre-Lisbon Treaty SIS II legal infrastructure into one that was compatible with the Treaty. The three legislative proposals, on border checks, police cooperation, and returns also consolidated some of the evolutions and modifications of the system that had been enacted in the intervening period. Of novelties in these recasts, besdes the shift towards returns, they also established that Frontex has access to the system, adding new categories of data (e.g. palm prints in the field of biometrics), and aligned the systems with the interoperability framework. The 2016 Recast proposals for the database included Commission-arguments that deepened police and juridical cooperation between Member States was urgently needed (European Commission 2016a, 2). In the second of the three SIS-proposal, the Commission wrote that "*An effective EU returns policy contributing to and enhancing the EU system to detect and prevent the re-entry of third-country nationals following their return. This proposal would help reducing incentives to irregular migration to the EU, one of the main objectives of the European Agenda on Migration*" (EC 2016a). The uses of the database for increased border management; increased police and juridical cooperation; and increased returns of TCNs from

EU territory, required expanded interoperability and standardization.[26] The enforcement of return decisions issued to irregularly staying immigrants was to be improved by "*introducing a new alert category for return decisions […] and functions for creating, updating and deleting alerts on return,*" a step that was framed as contributing to the implementation and monitoring of the Returns Directive (2008/115/EC) (European Commission 2016b, p.11).

The new purpose of categorization was pursued through the differentiation into alerts facilitating returns, and an alert in relation to return decisions issued to illegally staying third-country nationals.[27] Then-Commissioner for Migration, Home Affairs and Citizenships, Dimitris Avramopoulos, justified the measures as necessary in order to "close information gaps," and "improve information exchange" so that in the future "*no critical information should ever be lost on potential terrorist suspects or irregular migrants crossing our external borders*" (European Commission 2016d). Accordingly, larger swathes of data should be collected and more searches would be made mandatory. Moreover, the biometric data should also be made multi-modal, that is, based on diverse data categories, such as fingerprints, facial images, photographs and palm prints. Crucially, by making it mandatory to enter alerts on non-compliance on return decisions and entry bans, and the storing and sharing of this information in the new SIS III, the ambition was to evolve the SIS system into an instrument for monitoring non-Europeans subject to return decisions (European Parliament, 2018b). This dataveillance dimension is a concern for the EDPS, according to two interlocutors:

> *As a general trend, what we see in and stress in the EDPS opinions about all these new legislative proposals is that we see that there is an increasing trend in mixing police cooperation purpose and migration purpose and we have seen it in the setting of new data of all the databases. Because originally they were built for one specific purpose (EDPS interview 1)*

> *Yeah, and also about the mixing of these purposes – that there were several IT systems that collected the data of these people that were not suspected of anything. You know, there was no unlawful conduct and at some point the law enforcement agencies started to get access to this data, so this is also the consequence of mixing these purposes. And also, the number of data that we have in the system and also the different nature of this data, so at the beginning it was rather alphanumeric data and recently we see this trend to add more biometric data to each database. And those are the sensitive data (EDPS interview 2).*

According to Frontex, a currently ongoing project exists exploring ways to connect Frontex to the SIS II, in line with the 2018 SIS II Regulation´s Article 36, on border checks, which established that

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[26] European Parliament (2017) "Interoperability between EU Information Systems for Border and Security" [online] available at: http://www.europarl.europa.eu/legislative-train/theme-area-ofjustice-and-fundamentalrights/file-interoperability-between-eu-information-systems-forborders-and-security, accessed 24/05/2019

[27] Council of the EU (2018) Schengen Information System: Council adopts new rules to strengthen security in the EU, [online] available at: https://www.consilium.europa.eu/en/press/press-releases/2018/11/19/schengen-information-system-council-adopts-new-rules-to-strengthen-security-in-the-eu/, accessed 12.02.2020

Frontex should have access to the system, as well as the Frontex 2019 Regulation. This is the 2019 project Access to SIS II (A2SISII) project, which has been issued as a tender for a Framework Contract. To date no information has yet been attained as to whether a company or consortium has been awarded this contract. The Frontex priorities with A2SISII is to "deliver effective ICT solution that will enable European Border and Coast Guard Agency teams to access to Schengen Information System." Concretely, the subject of the Agency´s Framework Contract is therefore the development of ICT software solutions enable Frontex teams to access SIS II (and later SIS III). The deliverables of the contract therefore concern the design, development, testing, deployment and training for users and administrators of A2SISII. The Framework Contract is also foreseen to provide products and services to support and maintain the A2SISII System as well as changes to its functionalities and underlying technical infrastructure if the legal, political, organizational or technical environments change.[28]

5.1.2 Eurodac

Eurodac was the EU´s first attempt to apply biometrics for database purposes, and was established via Council Regulation 2725/2000. The intersection of Frontex with this information system concerns how the Agency´s fingerprinting and registration experts are responsible for logging fingerprints in Eurodac, which underpin the Union´s Dublin system determining which Member State is responsible for examining peoples´ asylum application. It was designed to be an information system processing the fingerprints of asylum seekers in order to determine the Member State responsible for accepting asylum applications. This was in line with the Dublin system´s rule about first country of arrival, which effectively barred people from seeking protection in more than one Member State. Eurodac was revised in 2013, in order to enable the access of also national law enforcement agencies and Europol (Orav and D'Alfonso, 2017). The 2013 Regulation also expanded the purpose of the system by demanding fingerprints from all persons over the age of 14. These were further divided into three categories of people already present in the original Eurodac Regulation: Asylum seekers (category 1), persons who cross European borders in irregular manners (category 2) and people found to be staying irregularly on EU territory (category 3) (European Commission, 2016f). Category 3 data is, for the time being, only processed and not stored in the system. Additionally, Eurodac also stored information about the member state of origin, place and date of application of asylum, fingerprint data, gender, reference number used by the member state of origin, the date on which the fingerprints were taken and the date on which the data was transmitted to the central unit. In 2014, the central unit of Eurodac was moved from Luxembourg to EU-Lisa's data centres in Strasbourg.

In 2016, the European Commission made a new proposal to change Eurodac. It contained 17 measures widening the kinds, categories and storage of data in the system, including expanding the scope of Eurodac to include return purposes. This means that Member States should no longer simply process category 3 data, but also be able to search for, store, transmit and compare data belonging to "illegally staying" third-country nationals or stateless persons, who were not applicants for international protection making them identifiable for return operations (EC 2016f, p.12). As this measure transformed the database´s original functionality of a repository for fingerprints of asylum

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[28] Tenders electronic daily "Poland-Warsaw: Framework Contract for the Development of ICT Software Solution for EBCG Members Access to Schengen Information System (A2SISII) 2020/S 032-074107. Available at: https://ted.europa.eu/udl?uri=TED:NOTICE:074107-2020:TEXT:EN:HTML.

seekers, it effectively expanded the purpose of Eurodac, so that it no longer served the purpose of ensuring Member States´ effective implementation of the Dublin III Regulation (EC 2016e, p.11). The Recast proposal also introduced more biometric identifiers into the system, reconfiguring the database from one solely using fingerprint data to one including also facial mages (EC 2016e, pp.12-13).

The Commission justified this expansion of the data collected as reducing the complexity of communication between Member States, and also noted that the changes would facilitate interoperability with new surveillance technologies, such as facial recognition to be integrated in a centralized system underpinning the governance of migrants across a series of EU databases: *"collection of facial images will be the pre-cursor to introducing facial recognition software in the future and will bring Eurodac in line with the other systems such as the Entry/Exit System."* (EC 2016a, p.4). The Commission also called on EU-Lisa to conduct a study on facial recognition software so as to evaluate the accuracy and reliability of the technology, prior to this software being added to the envisioned Central System. (EC 2016e, p.4).

In the 2016 Recast proposal, the data retention period was extended from 18 months to five years; the age of registration was lowered significantly from fourteen to six years; and the use of facial recognition technology was introduced. Moreover, it opened up for the possibility that also third country authorities could access Eurodac in order to transfer personal data for such purposes. The Commission portrays such exchanges of highly sensitive biometric data as solving a problem of asylum applicants refusing to have their fingerprints taken, and such identification processes are seen as crucial for the EU´s stated goal of drastically upscaling returns from the Union. However, this argument confuses the issue of enforceability of data systems, with the widening of parameters identifying the population to be registered. And it does not address the potential data harms arising from EU interoperability with third countries, nor the ethical dimension of registering younger children, and rolling out more technologies for such purposes.

The 2016 Recast proposal was in 2020 followed by the Commission´s Migration Pact, which included an amended proposal for the Eurodac Regulation, expanding the purpose and function of the database along the lines of dataveillance and return already introduced by the 2016 Recast proposal. Thus, the 2020 Pact amendment geared the database towards identification functions, such as counting applicants for international protection, rather than applications. It enabled EU-LISA to collect statistical data from across information systems, and to share it with Frontex and other agencies. It created a new category for those people disembarked after Search and Rescue operations, and also introduced new categories of personal data. The latter included notifications when persons are deemed threats to internal security, when applications have been rejected, thereby linking asylum and return processes, as well as when support for voluntary returns have been given (Vavoula 2020, 23-5).

The aim of interoperability brought out in the 2016 Recast proposal was reiterated, specifically with reference to the VIS and ETIAS databases. Regarding Frontex, the 2020 Migration Pact also called for a "much deeper involvement" of EU agencies in the support and operationalization of new partnerships with third countries (EC 2020, p. 20). Also highlighted was increased Frontex focus on return work from its territories, and with national border guards and authorities of countries the Western Balkans (EC 2020, p. 21).

5.1.3 Visa Information System (VIS)

The VIS was created via Council Decision 2004/512/EC after the 2002 Seville Council had called for a common identification system for visa data in order to "combat illegal immigration". Border guards and other staffers deployed during Frontex operations can be authorized by the hosting Member State to consult VIS, in order to verify information and conduct security checks. The main legal basis came with Regulation 767/2008 concerning the VIS and the exchange of data between Member States on short-stay visas, as well as the Justice and Home Affairs (JHA) Decision 2008/633/JHA. VIS became operational in 2011 and allowed Member States to identify those migrants who travel legally to the EU, but overstay the period of their visa stay. This system is used by member states to facilitate short-stay visa procedures, while at the same time helping border, asylum and migration authorities to check the necessary information on TCNs, who need to travel to the EU.[29] At the infrastructural level, VIS consists of a central IT system physically located together with the SIS, in Strasbourg, and a communication link-up that connects the central system to national ones. It contains data on visas requested, issued, refused, annulled, revoked or extended; and on fingerprints, photographs, and links to other visa applications. VIS also store details about the person, company or family members which issue an invitation or is liable for the cost of living during the stay. This can then be used to hold those accountable for people overstaying their visas.

The Commission´s 2018 Recast proposal to the VIS regulation was framed as making the system more capable of "*preventing security risks and the risk of irregular migration to the EU*" on account of the Commission's perception that Union-wide visa policies had changed "drastically" due to "migration and security challenges" (European Commission, 2018b). According to the Commission, making VIS interoperable with the other large-scale systems through a European Search Portal (ESP) and EU-Lisa´s Biometric Matching System (BMS) would address this issue. The vision of the policy makers was that the Portal would make it possible for border guards to scan the Union´s many databases through one single search, thus trawling both the VIS, Eurodac, SIS II, EES, Interpol System, European Travel Information and Authorization System (ETIAS), and the European Criminal Records Information System (ECRIS and ECRIS-TCN) all at once.[30] This interoperability was to make it easier to transfer categories of data. For instance, the Commission suggested to store also information collected via the above-mentioned lowering of the fingerprinting age (from 14 years to 6 years), and on longer stay visas and residence permits issued by Member States. If realized, this would add an additional 22 million entries to VIS´s current 52 million visa applicants.[31] However,

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[29] European Commission, (2018) "A stronger, more efficient and secure EU visa policy – an upgraded Visa Information System" at The European Commission, Migration and HomeAffairs" [online] available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we do/policies/european-agenda-security/20180516_visainformation-system_en.pdf., accessed 24/01/2020

[30] European Parliament (2017) "Interoperability between EU Information Systems for Border and Security" [online] available at: http://www.europarl.europa.eu/legislative-train/theme-area-ofjustice- and-fundamentalrights/file-interoperability-between-eu-information-systems-forborders-and-security, accessed 24/05/2019

[31] Statewatch (2018) "Visa Information System: Commission proposals sneak in mandatory biometrics for long-stay visas" [online] available at: https://www.statewatch.org/news/2018/aug/vis-fingerprints-long-stay-visas.htm, accessed 24/01/2020

according to the interlocutors from the EDPS, there can be issues with such large-scale ambitions, namely the quality of biometric data collected in the EU or outside the Union:

> *For biometric data, for example in the visa information system, there is also an issue with the quality of data that is stored in the system, because I know, if you have to take the fingerprints in any – each consulate of the world, this might also lead to some technical issues which ensure the data is of high quality (EDPS interview 1)*

Worth noting in this context is also that the 2018 recast proposal also adds another feature to the VIS, namely profiling through automated screening of applicant data against certain "risk indicators", a development also foreshadowed in the VIS Regulation´s Article 3(4). Thus, the recast states, that in order to improve "risk assessment": "*visa processing will benefit from specific risk indicators. The indicators will contain data analytics rules, as well as specific values provided by Member States and statistics generated from other relevant border management and security databases.*" (European Commission, 2018b, p.9).

5.1.4   The Entry/Exit System (EES)

The EES came about following a feasibility study for the Commission by the consultancy company Unisys in 2008 (Unisys, 2008). The EES was then announced by the Commission in 2013[32] and further developed in a communication to the Parliament and Council (European Commission, 2016e), and established in 2017 via Regulation 2017/2226, as part of the package of legislative proposals on so-called "Smart Borders". It was framed as modernizing the Schengen Area's external borders, and was expected to be rolled out in 2020, but have faced significant delays, in part due to the Covid-19 pandemic, but also due to slow expansion of the necessary infrastructure among many Member States. In connection with the EES, Frontex issued a tender for an Entry/Exit pilot project in the fall of 2020, stating to be "*looking for industry solutions for the testing and implementation of EES-compliant equipment, including complete technological solutions, hardware and software, development and integration services with national systems*."[33] The aim was also explained as being able to advise EU Member States on the appropriate technology to be used at national border crossing points.

The original EES-package proposed to record the time/place of entry and exit for TCNs entering the Schengen Area, information that none of the other databases record. In registering and tracking people's travel histories, the EES was also envisioned as complementing alerts already recorded in SIS. Moreover, a Registered Traveller Programme (RTP) was to allow pre-screened third-country nationals to benefit from facilitated border checks at the EU's external borders. The EES is to be applied to TCNs who are admitted for a short stay visa to the territory of the Schengen member states or whose entry for a short stay has been refused. The explicit aim is to facilitate the mobility of visa-holding travellers, while intensifying the identification of TCNs not fulfilling their visa requirements.

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[32] European Commission (2013) "Smart borders": enhancing mobility and security" [online] available at: https://ec.europa.eu/home-affairs/what-isnew/news/news/2013/20130228_01_en, accessed 24/01/2020

[33] Frontex website. 2020. "Entry-Exit System pilot project at land borders" May 8, 2020. Available at: https://frontex.europa.eu/media-centre/news/news-release/entry-exit-system-pilot-project-at-land-borders-CAby43.

In the system envisioned, all member states will have National Uniform Interfaces on their territory. Also, the EES is to be interconnected and interoperable with the VIS, as well as the other information systems described via a Secure Communication Channel established between them, as well as between the EES Central System and the national interfaces.[34] The plans also include the development of a web service through which maritime transport carriers and airplane companies can determine whether TCNs holding a Schengen short-stay visa have already used the number of authorized entries. As a result of this, private companies too will be tasked with the daily management of EU exit infrastructure. This represents a further extension of carriers´ liability (see also discussion on air entry and operational practices in (Jeandesboz 2020, pp.84-86). However, only the EES component was adopted, while the RTP and thus far the smart borders-terminology was dropped. In June 2021, it was announced that Frontex had awarded the pilot contract to a consortium led by the company Vision Box, and its Orchestra Identity & Border Management Platform, and including also Price Waterhouse Coopers Luxembourg and Bulgarian Global Sat, would launch the pilot project at two land borders in Bulgaria. These were the entry of coaches, cars and pedestrians at the Kapitan Andreeevo border, and the exit point to Serbia, at Kalotina. In collaboration with the country´s Ministry of Interior and border police, the aim was to reconfigure the border technologies into interoperable digital data processing and automated biometric data collection sometime in 2022. This is to be done via a Self-Service Enrolment System through which travellers can self-collect travel document data, biometric data, including facial recognition, and questionnaires on entry conditions.[35]

5.1.5   A Common Identity Repository (CIR)

Some of the EU border databases have been developed as multi-modal from the beginning, while others were built with more specific purposes in mind. Originally, they also varied according to which types of individuals are registered, and which information about them, was entered into the databases; Irregular migrants found in member states could be registered into SIS II, asylum seekers could be registered in Eurodac and those entering on a legal visa could be registered in VIS. Here, a crucial point is that these targets and their scope have changed drastically in recent years, wherefore also the EU databases for border management have undergone similar changes. Thus, the SIS II has developed into an infrastructure supporting returns, and the Eurodac recast Regulation positions that system as more than its original purpose of supporting asylum procedures, namely a system for border and migration enforcement as well as for returns. These are two examples showing how systems have been reconfigured to implement, upscale and accelerate the return procedures enacted upon non-EU nationals. In effect, and as noted by Jones, Kilpatrick, and Gkliati (2020), this

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[34] EU-Lisa (2017) "Executive Summary, Annex I. Call for Tender. Framework contract for the implementation and maintenance in working order of the Entry and Exit System (EES). LISA/2017/RP/03. (Restricted Procedure – Article 104 (1) (b) Financial Regulation, Article 127 (2) paragraph 2 Rules of Application)" [online] available at: https://www.eulisa.europa.eu/Procurement/Tenders/LISA2017RP03/Annex%20I%20Executive% 20summary.pdf, accessed 24/01/2020

[35] AviationPros. 2021. Vision-Box and Partners Deliver Frontex Innovative Entry/Exit System Pilot at the Largest EU Land Border in Bulgaria. Available at: https://www.aviationpros.com/aviation-security/access-control/press-release/21227952/visionbox-visionbox-and-partners-deliver-frontex-innovative-entryexit-system-pilot-at-the-largest-eu-land-border-in-bulgaria.

has the effect that the EU datafication policies aim at ensuring that almost all non-EU nationals within the Schengen area will be biometrically enrolled in one of a rising number of databases.

In 2016, formulated as part of a Communication on "Stronger and Smarter Information Systems for Borders and Security," the Commission proposed that "*The most ambitious long-term approach to interoperability would be a common repository of data at EU level for different information systems*" which would "*create a modular and integrated identity management for borders and security*" and "*overcome the current fragmentation in the EU´s architecture of data management for border control and security.*" (EC 2016d). What was dubbed the Common Identity Repository (CIR) was then envisioned by the Commission as a centralization of searches for identity data for non-EU citizens, which would be stored so as to make possible the linking of all identities for people stored across all the EU databases, namely the EES, the VIS, the European Travel Information and Authorisation System (ETIAS), the Eurodac, the SIS, and the ECRIS-TCN, as well as the Interpol information systems Stolen and Lost Documents (SLTD) and Travel Documents Associated with Notices (TDAWN). According to a 2017 Feasibility Study for the CIR, which the Commission contracted the global consultancy firm Price Waterhouse Cooper to conduct, this framework would include a European search portal (ESP); a shared biometric matching service (sBMS and a multiple-identity detector (MID) (Price Waterhouse Cooper 2017, p.1).

The proliferation of Commission recasts, of SIS II and Eurodac in 2016, and of VIS in 2018, and the formation of ECRIS-TCN and the Entry/Exit System coincided with tense political debates about the increase in migration to the Union since 2015, and the political responses to it. After an initial focus on relocation and resettlement, from the fall of 2015, the Commission turned towards perceiving the development as a "migration crisis" characterized by migrant invisibility for Member States authorities, which were therefore unable to identify and detain them for return (European Commission, 2016c). In line with the already existing drive towards interoperability, it proposed as a remedy the upgrading and expansion of "information exchange"-infrastructures allowing collaboration between Member States on the identification and return of migrants (cf. European Parliament, 2018a). This illustrates how the Commission´s recast discourses surrounding the Union´s use of databases for exit control are thoroughly embedded in discourses of data gaps and fragmentation. But according to the EDPS interlocutor, there is a need to address not just data gaps and fragmentation, but also know as well as emerging risks follow with such an expansion of the data collected:

> *Already biometric data are defined in the GDPR but also in the European regulation and also several other legal places – as a sensitive data. So it means that they have to be particularly protected and also they cannot be used for every purpose. So at the beginning we had alphanumeric data, so we had for example, names, last names and the number of the passport. And now we have facial recognition, dactyloscopic data and in some databases to some limited extent, even DNA data. And on this basis you can also search people, match people and also some other technical issues currently with interoperability that you have this biometric data in different databases and there are some risks of mismatching as well, or false positives – false negative hits. So those are new risks that were not here before the introduction of the biometric data in those systems (EDPS interview 2)*

The implementation of the political demands from the Commission and Council communications and plans for information systems in the EUs return policy in the three Eurodac, SIS and VIS-recasts as well as the envisioned CIR and EES systems necessitate radical expansions in the form of technological upgrades required to realize the political priorities. This accelerated evolution towards interoperable EU border and exit systems has also made the upgrades of these an ongoing priority in EU policy-making. The flux of new systems and upgrades also leads to a corresponding flux of contracts. A tendency is observable across the many policy documents pertaining to this development, whereby the mere existence of some databases making use of certain types of data, is used as justification to expand such uses, and to certify the need to create more and, more centralizing, databases (cf. Data Protection Working Party 2018, p.6; Jeandesboz, 2016). In other words: each system seems to be used to justify the continuous evolution of others, which amounts to a circular arguments for evermore dataveillance of non-EU nationals for return (and other) purposes., and evermore contracts for these purposes.

Agency	Year	Contract title	Contractor	Sector	Value of contract (€)
eu-LISA	2018	Framework Contract for the Maintenance in Working Order Visa Information System and BMS	Bridge³ Consortium: Accenture, Atos og Safran	Biometrics	54.783.467,78
eu-LISA	2017	Framework Contract for the Maintenance in Working Order Visa Information System and BMS	Bridge³ Consortium: Accenture, Atos og Safran	Biometrics	51.912.634,95
eu-LISA	2014	Framework Contract for the Maintenance in Working Order of the Visa Information System	Bridge³ Consortium: Accenture NV/SA (leader), Morpho Limited Company (member) and Hewlett-Packard Belgium BVBA/SPRL (member)	Biometrics	27.568.971,18
eu-LISA	2014	The new second generation Schengen Information System (SIS II) MWO	Consortium: ATOS Belgium SA/NV (leader), Accenture NV/SA (member), and Hewlett Packard Belgium BVBA/SPRL (member)	Biometrics	24.999.750,76
eu-LISA	2015	Framework Contract for the Maintenance in Working Order of the Visa Information System	Bridge³ Consortium: Accenture NV/SA (leader), Morpho Limited Company (member) and Hewlett-Packard Belgium BVBA/SPRL (member)	Biometrics	23.627.826,23

Figure 25: Top recipients of contracts awarded by EU-Lisa, 2013-2018. Source: AdMiGov Deliverable 1.3.

Despite the troubles of the SIS upgrade, and the withdrawal of parts of the Smart Border package, the techno-optimistic ambition of an interoperable dataveillance system for the EUs entry and exit governance remains. This is illustrated by events, such as the October 2016 EU-Lisa Roundtable "Interoperable IT systems for Europe: Towards greater standardisation and better efficiency", where Frontex attended presentations by industry representatives from SAP on "Next Generation Data Governance and Integration Platforms", from Safran on "Biometrics Ready Interoperable IT systems for Europe" (EU-Lisa 2016). Similarly, the October 2018 joint EU-Lisa/Frontex conference "EU Borders – Getting Smart through Technology", held in Tallin, also continued the policy drive. Here, again, the Agency´s executive director, Fabrice Leggeri, brought forth the agenda for digitizing the return process, stating that the development of RECAMAS would address challenges of the many different return systems of the Member States, and highlighted that the system should provide more efficient return case management, harmonized individual systems, application of common EU standards in case management, improved data quality, and swifter and more accurate statistical reporting. He concluded by urging designs to make systems speak to each other along the lines of interoperability to fill "insecurity gaps" via "reliable identification." (EU-Lisa and Frontex 2018, pp.9-10). According to the interlocutor from Accenture the biggest risks are privacy and abuse in a context where the number unique identities stored is expected to increase dramatically in a short time: "*especially with facial recognition being part of this, and especially with entry-exit system,*

*because as soon as EES goes live, now it's dealing with, I think in VIS there's 20m unique identities.
Now, there's 200m third country nationals a year before Covid [laughs], so we expect that EES
database to very rapidly get up to 200m folks*". (Accenture interview).

Recently, in June 2020, EU-Lisa awarded a consortium consisting of Idemia and Sopra Steria a €302,6
million contract of four-year duration, for the development, delivery and maintenance of a new
shared biometric matching system (sBMS) to serve as a key infrastructure for the EES.[36] The plan is
to integrate the fingerprints and facial images of more than 400 million non-EU citizens by the year
2022, allowing national authorities to cross-reference biometric information. The SIS, the VIS, the
Eurodac, and the future ECRIS-TCN databases will make use of the sBMS functionality, and the
contract thereby serves as a step towards the envisioned CIR, scheduled to be completed by 2023,
through a contract of about €225 million.[37] These massive new contracts, and the general
development of the CIR can be seen as an evolution in the EUs attitude towards large-scale
dataveillance projects, from an earlier sceptic approach, to a bigger embrace of the technologies,
although discussions still go on:

> *there's a lot of tension. It used to be they didn't want any of this centralised.
> Let's keep it less Big Brother, less Fortress Europe, but because of those attacks
> and things like that, they've revisited some of that. They still don't want to be
> Fortress Europe, but they're putting some things into place, like interoperability,
> to get access to all these silos without making it so that a single person has
> access to all that information. It knows that interoperability gives Frontex, not
> more power, but more insight you could say. Because they were totally out of the
> grid, off the grid. Now they are, or will have, plumbing so they can do certain
> searches, all well as other policing service in Europe (Accenture interview)*

6. Frontex, civil society and exit governance

When it comes to Frontex´s relations to civil society widely understood, these have developed in
several ways since the inception of the Agency in 2004. As detailed, the Agency´s operations and
modes of governance have been expanded through its successive Regulations. Importantly, this
report distinguishes between civil society actors, such as NGOs, grassroots, independent agencies
and international organizations on the one hand, and private companies and multinational
conglomerates active on the markets for EU exit governance, on the other.

Frontex has signed Working Arrangements with several civil society organizations, such as the
UNHCR, the IOM and the ICMPD (in 2008, 2008 and 2009, respectively). In its exchange of letters
with the ICMPD, several general objectives are stated as being pursued, such as close collaboration
and consultations on all matters of common interest, to maximize synergies in integrated border

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[36] Tenders electronic daily (2020) "Estonia-Tallinn: Framework Contract for Implementation and Maintenance in Working
Order of the Biometrics Part of the Entry Exit System and Future Shared Biometrics Matching System 2020/S 085-20083.
Available at: https://ted.europa.eu/udl?uri=TED:NOTICE:200083-2020:TEXT:EN:HTML.

[37] Pivcevic, K. 29.12.2020. EU border agency says biometrics interoperability framework includes robust safeguards.
Biometricupdate.com. Available at: https://www.biometricupdate.com/202012/eu-border-agency-says-biometrics-
interoperability-framework-includes-robust-safeguards.

management, by requesting cooperation when common interest so dictate and by entering into special arrangements where required for implementing the cooperation of special activities or projects (Frontex 2009). In the Agency´s arrangement with the UNHCR, the main objective is stated as establishing a framework for cooperation between the two organizations "*with a view to contributing to an efficient border management system fully compliant with Member States´ international protection obligations and, in particular, with respect to the principle of non-refoulement*". To achieve that objective, the two organizations committed themselves to regular consultations and meetings, exchange of information, expertise and experiences on mixed migratory movements towards EU Member States, preparation of general and specific training material and tools in particular on international human rights and refugee law, sharing information after Frontex joint operations and conferences and seminars (Frontex 2008a). When it comes to the IOM, the working arrangement states as its objective "*To enhance the cooperation between Frontex and the IOM with regard to the exchange of information and expertise, reciprocal assistance and development of best practices in the fields of migration and border management*." That objective is then to be pursued by close consultations, coordinating activities related to border management of Frontex and migration management of the IOM, requests for cooperation when interests are found to call for that (Frontex 2008b).

The following section details three expansions of the Agency activities involving civil society relations, namely the Frontex Pool of Monitors (PoM), Frontex´s involvement in exit governance through the Eastern Partnership (EaP), and the Frontex Consultative Forum on Fundamental Rights (CF).

6.1 The Frontex Pool of Monitors (PoM)

While Regulation 2007/2004 did not refer to return monitoring, the amendment from 2011 did specify that the Agency´s Code of Conduct should "pay attention" to the Return Directive´s requirement that an "effective forced-return monitoring system" should be set up. But it was not until Regulation 2016/1624 and its Article 29 (Article 51 in Regulation 2019/1896) that Frontex was specifically mandated to establish a pool of forced return monitors with organizations conducting forced return monitoring activities. Under this plan, Member States annually plan their contributions after consultation with organizations and bilateral negotiations with the Agency. But during return operations and interventions the monitors remain subject to disciplinary measures of their home Member States. Under this scheme, Frontex publishes a list of planned return operations, whereafter organizations and institutions from across Europe and the world, can express an interest to the Agency in participating. Discretion resides with Frontex, though, who will select the organizations. From the selected organization, the staffer in charge is then responsible for contacting the escort leader and get more specific details including the number of returnees. And once the operation is over, a report will be sent to Frontex´s Fundamental Rights Officer.

The PoM has been developed through the Forced-return Monitors (FReM) projects I-III. These had the International Centre for Migration Policy Development (ICMPD) as implementing partner. For FreM I, the European Commission´s Return Fund – Community Actions, provided 90% of the funding and ministries from Member States the remaining 10%. These were from Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland. Under FreM II, the funding came from the Asylum, Migration and Integration Fund (AMIF), and some Member States were added to the

project, namely the Czech Republic, Finland, Germany, Latvia and the Netherlands. For FreM III, yet other Member States were added, namely Belgium, Italy, Norway, Poland and Slovakia. FreM I lasted from 2013-2015 (with a budget of €537,652), FreM II from 2016-2018 (with a budget of €1,1 million), and FreM III was set to run between 2018-2021 (with a budget of €2 million). Frontex and the Fundamental Rights Agency (FRA) were included as formal project partners in the project description, different from the FreM I-II project descriptions.[38]

The FreM I objectives were to design a framework for a European pool of forced return monitors, including terms of reference, modalities, participants and mandate, as well as elaborating a set of guidelines for all monitors, selecting a group of monitors, elaborate a FreM Training Manual, implementing a pilot project and introducing the project results to all EU Member States and associated Schengen states (ICMPD 2012). FreM II had as overall object to

> "*contribute to a functioning EU Return System*" by "*protecting the fundamental
> rights of returnees through independent and transparent forced-return
> monitoring based on a common European approach and harmonized
> procedures.*" (ICMPD 2016). The second generation of the project also had as
> objectives to "*enlarge and institutionalise*" the PoM, and to further harmonize
> rules of the EU level and support Member States in improving their national exit
> monitoring systems (IMCPD 2016. FreM III continued with the same overall
> objective, and noted as specific objectives to "*increase the operational and
> procedural effectiveness of the Frontex pool of forced-return monitors and to
> hand over the full management and implementation of all activities*"

related to the PoM to Frontex (ICMPD 2018).

As such, the FreM projects systematized exit operations through the use of forced return monitors, involving hands-on training, knowledge- and practice sharing and policy lessons in order to effective return operations. Explaining the increase in monitoring observable in our data on Frontex joint and national return operations, in 2017, 188 out of 341 exit operations were monitored by 94 monitors from the PoM, representing an increase of 41% from the year before. However, the general asymmetry between monitoring of joint or collecting return operations and national ones also evident in our data, is corroborated by the fact that only 20 out of 150 national return operations were monitored.

We conducted an interview with the Danish Ombudsman, where staffers explained how their interaction with Frontex through the PoM worked. They observed different standards from the Danish exit policies, explaining that when drawn from Frontex´s PoM, they would often only be on the plane for the entirety of the operation for about half of the flights they monitored. For the remaining half of the flights, the returnees were just accompanied to the door of the aircraft (Danish Ombudsmand interview, 2020). NGO-based monitors in Germany also expressed concern during our interviews, that Frontex PoM-monitors often seemed very passive in the face of evident police brutality, and that Frontex appeared to have been rather arbitrary and biased in their selection process for creating the pool (Independent Return Monitor interview 1+2, 2020). Doubt has also

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[38] Although the FReM III project description states that Frontex and FRA were part of the FReM I-II partnerships.

been cast on the reliability and independence of Frontex's independent monitors by journalists (see f.i. EU Observer, 2019). According to the Danish Ombudsman:

> The terms of participation were not very clear. So, the Ombudsman sent a letter to the Frontex and asked for clarification on various points and before we received that clarification, we didn't actually participate in any of the operations. And we did receive a clarification, and I think the impression was that they did clarify in some ways in some areas, but in other areas the clarification was not as great as you could have hoped for. (Folketingets Ombudsman interview 1)

It seems likely that there is a tension between states and Frontex at a couple of levels in this procedure. Although exceptions exist for specific Member States, still, given that joint operations were statistically far more likely to be monitored than national operations, some Member States may have had incentives for resisting Frontex´s desire to make operations joint. Moreover, an interlocutor from the Danish police indicated that smaller Member States who have a different scale of operation size to larger states, may find that the Frontex requirements to make operations joint compromise such states´ ability to use their political connections effectively in organizing return operations (Danish police super intendent interview, 2020). This might help to explain why many member states known to carry out chartered return operations, including Denmark and Germany, is under-represented in the dataset.

A German escort officer explained of experiences with Frontex education of escort leaders, and attempts to harmonize a very varied landscape of training and education across Europe:

> [We collaborate with Frontex] concerning courses, for instance, the escort leaders are educated by Frontex…It is a one-week course, and they come from all over Europe, I mean, all Schengen-associated countries get the same knowledge and the same skills to carry out those operations. And yeah, the education in Europe is totally different, so for instance, in Germany it is a three-week course [while] other countries, smaller countries, they have just three days, or what? That is not sustainable. (Escort officer interview).

The Escort officer moreover explained about the FReM projects that monitors:

> …are educated by the IMCPD, this organization in Vienna. And they get a 5-day course, they get introduction about return operations…because the monitor is not only there for the persons who will be returned, but also for the escort officers in case the person makes an announcement, saying the local immigration officers, for instance, they punish me, they torture me – in a language we don't know, then the monitor can say ok stop, I'm a monitor here, and that isn't on my list…So the monitor is for both sides and for me that's a great instrument. Very important, to make it very transparent, because the monitors come NGOs always and you have to work well because if you don't work good you get a report – and no country wants to have a report on it (Escort officer interview)

From the perspective of independent monitors within the German exit system, there are differences between their mode of operation and that of the Frontex PoM:

*The biggest difference between us and them on an operational level, is that they
have the possibility to accompany the flights. They observe the entire operation,
from the handover in the airport of the deportees, to the arrival in the
destination in the country of destination. And I mean, we are claiming to be
independent, but those monitors… they are, I means they are paid by Frontex,
they are observing for Frontex, they are reporting to Frontex – so the way they
observe is a different way. They also, I think they report the single cases and the
problematic cases – I guess they report them to Frontex, but they look more on
the operational level – to see where you could improve the procedure.
(Independent return monitor 1 interview)*

6.2 The Eastern Partnership and exit

Since 2015, Frontex and EU Member States have been particularly focused on exit policies involving
the Balkans and Caucasus. This is corroborated by our analysis and visualizations of Frontex joint and
national return operations for 2016-2018. Hence, a combination of the closer geographical proximity
to the Union external borders[39], as well as the so-called Balkan route, means that the Union has
responded to the mass migration around 2015, by developing stronger political ties to the states in
this region in order to conclude agreements involving readmission, reintegration, but also detention,
country information programmes and other aspects of countries exit programmes.

An important aspect of this is the role of two political partnerships created between the EU and the
states to the East and South East of the block; The Eastern Partnership (EaP) and Instrument of Pre-
Accession (IPA I and II). The former is a partnership developed between the EU and Armenia
Azerbaijan, Belarus, Georgia, Moldova and Ukraine, with frequent meetings where the topics
discussed often include the facilitation of returns from the EU, alongside various funding and
investment opportunities offered by the bloc.[40] The latter is a funding programme, ostensibly for
helping the Balkan states of Albania, Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia
and Serbia in preparation of achieving EU status.[41]

Turkey also continues to receive funding from IPA, but only through limited and highly specific
channels. IPA I, which ran from 2007-2013 had a budget of €11.5bn. Even if the accession of Balkan
states to the EU was seen as unlikely in the general public, the program was renewed with a further
€11.7bn of grants to be awarded from 2014-2020. IPA III is expected to be rolled out later this year.
Over the course of IPA I and II, grants for more than €280m have been awarded, which directly
pertain to the exit of migrants, either from the EU to the Balkans or when Balkans states intercept
third country migrants transiting through en route to Europe.

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[39] Statewatch (2020) *"Types of expulsion operation."* Available at: https://www.statewatch.org/deportation-union-rights-
accountability-and-the-eu-s-push-to-increase-forced-removals/frontex-the-eu-s-deportation-machine/types-of-expulsion-
operation/.

[40] Eastern Partnership (EaP) (2020) *"About Us."* Available at: https://eapmigrationpanel8.idudka.com/en/about-us.

[41] European Commission (2020) *"Overview" [online] available at:* https://ec.europa.eu/neighbourhood-
enlargement/instruments/overview_en, accessed 25/02/2021

The EaP is managed and supported by the Frontex Risk Analysis Unit. All participants in EaP and IPA have signed readmission agreements with the EU, smoothing the way for returns to be conducted. The strong EU focus on integrating Eastern countries into the EU´s integrated border management, and thus also its exit policies is evidenced in Frontex´s 2019 report on cooperation with third countries, which stated: *"To use the momentum and to bring the Western Balkan authorities ever closer to the European border and coast guard family, in June the Agency for the first time organised a high-level meeting between the Frontex Management Board and the Chiefs of Western Balkan border authorities."* (Frontex, 2020, p.5). The report also stated that the report states, *"As part of the project, the Agency provides support in the establishment of National Coordination Centres in the Western Balkans, and supports the development of national registration systems with the view to facilitate in the future their eventual interoperability with EURODAC in the context of the EU accession."* (Frontex, 2020, p.18).
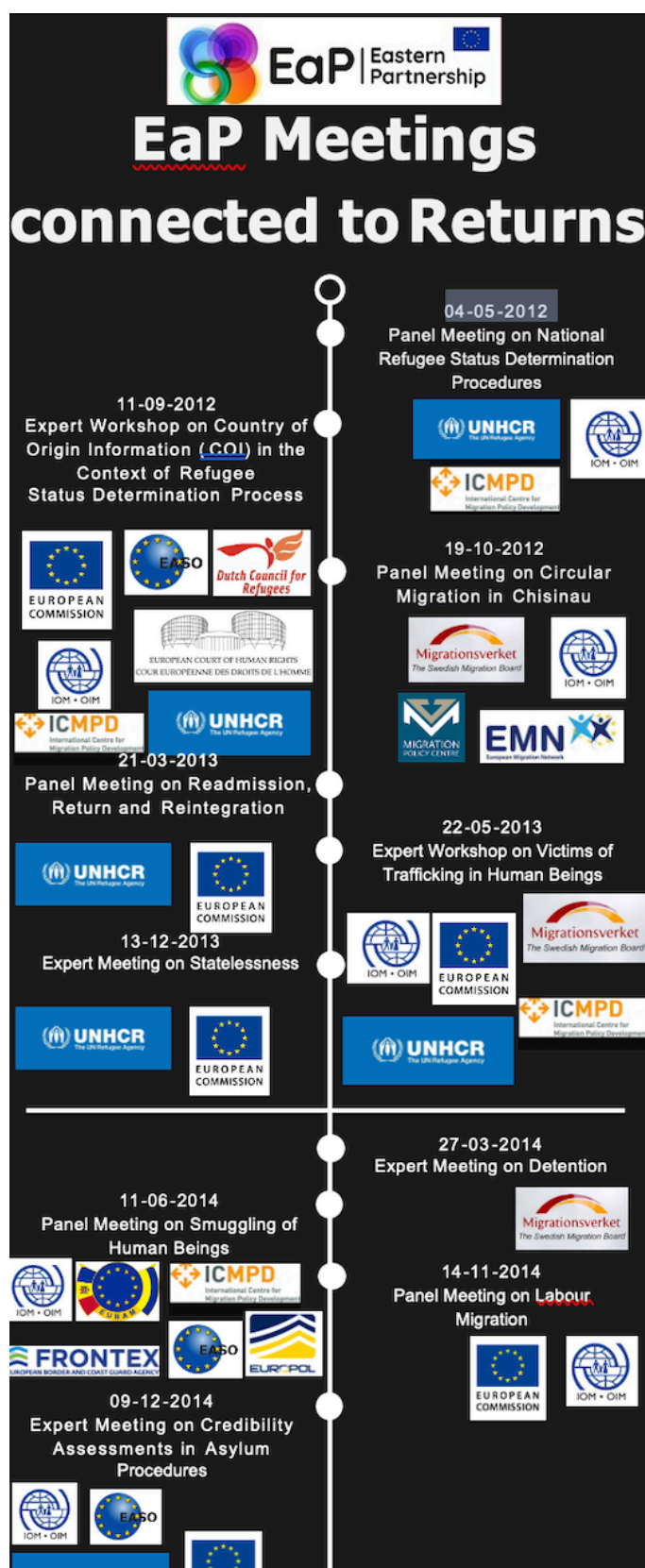
Figure 26: Examples of participants in EaP meetings involving exit discussions, 2012-2014

These policy aims have been assembled over a string of meetings under the Eastern Partnership programme. While most have not concerned exit explicitly, many have dealt with aspects of exit policy, also predating the European political discussions concerning reception of refugees from the mid-2010s and onwards. Observing the multiple Panel and Expert Meetings during the EaP also illustrate the multifaceted nature and number of public and civil society actors involved in EU exit governance. As can be seen in the Figure, it is first in 2014 that Frontex is recognized as a regular stakeholder in these processes.

For instance, during the May 4 2012 Panel meeting, discussions included looking at the use and implementation of the Prague Process, which explicitly invokes exit and reintegration strategies. The September 11, 2012 Expert Workshop on Country of Origin (COI) Information similarly related to Member States´ exit and readmission agreement practices. The March 21, 2012-Panel Meeting on Readmission, Return and Reintegration gathered representatives from all EaP countries as well as international organizations, civil society and academia

Figure 27: Examples of participants in EaP meetings involving exit discussions, 2015-2019
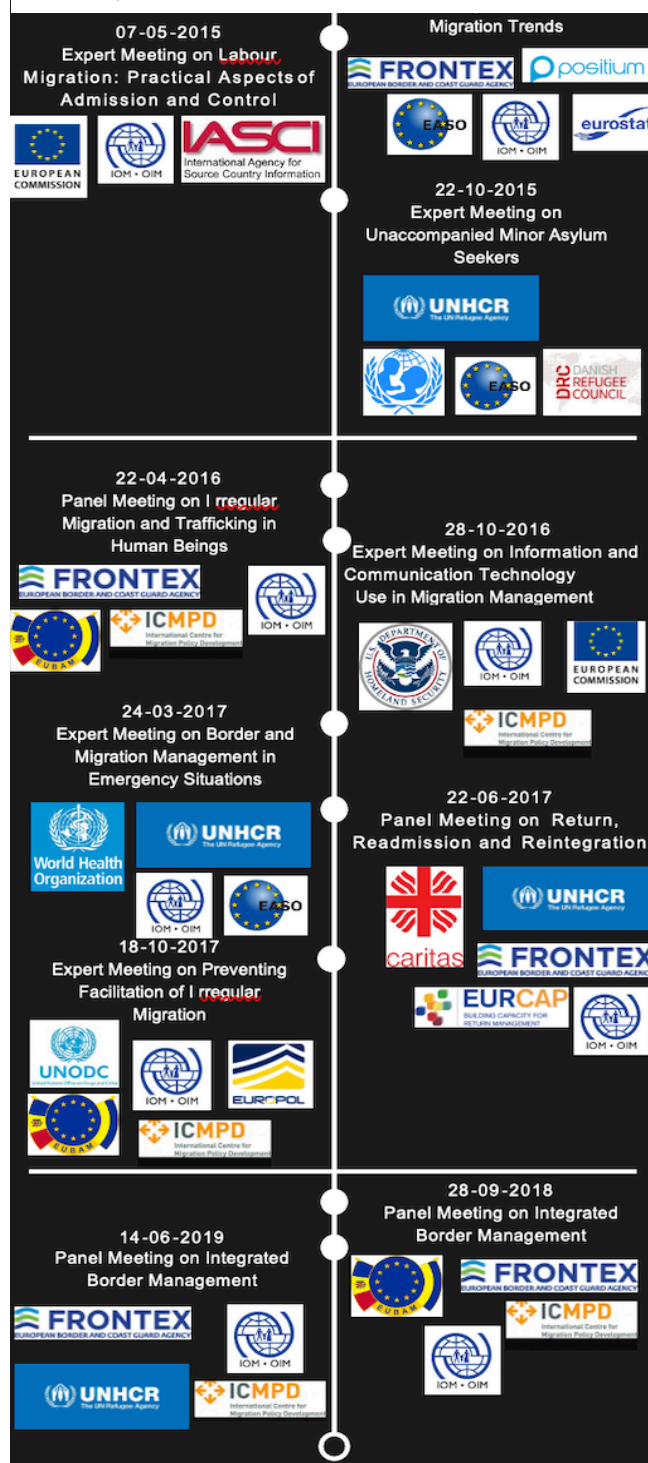
in order to discuss "*all the relevant aspects of the return process: readmission, return and re-integration*".[42] The March 26, 2014 Expert Meeting on Detention included discussions about how "*the drastic decision to place a migrant in detention should not only be based on a careful assessment of the individual situation of the migrant and the perspectives to organize his/her return.*"[43] Panel Meetings on smuggling, irregular migration and trafficking provided had participation from Frontex, which, in 2016, when it comes to the latter two themes, described the Agency´s linking to exit governance in the following manner: "*National policies, legal norms and practices of Finland, Hungary, Poland and Ukraine were offered to the attention of the participants and predominantly related to protection of and support to victims, prevention of their*

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[42] Eastern Partnership (EaP). 2013. Panel meeting on Readmission, Return and Reintegration. Available at: https://eapmigrationpanel8.idudka.com/en/meetings/panel-meeting-readmission-return-and-reintegration.

[43] Eastern Partnership (EaP). 2014. *Expert Meeting on Detention*. Available at: https://eapmigrationpanel8.idudka.com/en/meetings/expert-meeting-detention.

potential re-trafficking, assistance in their dignified repatriation."[44]

For the 22 June 2017 Panel Meeting on Return, Readmission and Reintegration in Armenia, presentations included IOM Ukraine concerning national experiences of EaP and EU countries, the current activities of Frontex, and information about the European Readmission Capacity Building Facility (EURCAP). Two Panels on Integrated Border Management (IBM), in Ukraine (2018) and Belarus (2019) concerned, first, the challenges of rolling out the EU´s IBM-approach in EaP states and exchanging best practices of cooperation including on exit governance. Second, how Frontex´s role in the European IBM strategy requires EU support to cross-border cooperation in the EaP region.

But the pursuit of exit policies towards the Union´s neighbouring regions to the East has not only been pursued through readmission agreements with state authorities. Frontex is also deliberately pursuing a strategy of establishing itself as a partner in humanitarian projects with bordering implications for regions in the Balkans. For instance, the Agency received €3,4m under the project "Regional Support to Protection–Sensitive Migration Management in the Western Balkans and Turkey - Phase II". This was under the IPA II funding programme, and in partnership with EASO, the IOM and UNHCR, as well as North Macedonia, Bosnia-Hercegovina, Kosovo, Serbia, Montenegro, Turkey, and Albania. The aim of the project is linked also to exit practices, since it strives for improving these state apparatuses´ capacity for "early identification, registration and proper referral of irregular migrants and asylum-seekers… [and] support target countries in bringing identification and screening procedures into their national systems."[45]

In general, IPA contracts have varied in from one country to another. For instance, specific projects were far more sparsely covered for Albania compared to the other Balkan states, and there were also large differences when it comes to the availability of funds between countries; The share of IPA II grants for Serbia purposes was over €1.5bn compared to €279m for Montenegro.

The Balkans´ position as an ex-conflict zone neighboring the EU means that the countries of the region function as both senders and receivers of returnees, but also that they can experience volumes of migrants transiting through, as in 2013-2016. On top of this, they also experience intra-regional migration. This of course complicates attempts to distinguish entry, exit, development and protection policies, but a point of interest is that many projects have focused on resettlement of intra-regional refugees following the Balkans conflicts, with particular attention given to ethnic minorities, especially Roma people, which in many cases have been returned from Europe.

The EU funding to Balkan states' border security often concern two stated purposes. Firstly, to increase national security for the states, an outcome often linked discursively to enhance the potential for future EU integration and possible membership. Secondly, the Balkan states are portrayed as useful buffer zones where irregular migrants can be intercepted and returned before they enter the Schengen space. In many projects, this functional interest is often made notwithstanding the fact that in order to arrive at the Balkan states, many migrants would have already traveled through Greece or Bulgaria, themselves Schengen states. Social development also

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[44] Eastern Partnership (EaP). 2016. *Panel Meeting on irregular Migration and Trafficking in Human Beings*. Available at: https://eapmigrationpanel8.idudka.com/en/meetings/panel-meeting-irregular-migration-and-trafficking-human-beings.

[45] Frontex (2019) *Regional Support to Protection–Sensitive Migration Management in the Western Balkans and Turkey - Phase II*. Available at: https://frontex.europa.eu/assets/Partners/Third_countries/IPA_II_Phase_II.pdf, accessed 5/11/2020

features in many IPA projects, but often, these also contained important elements focusing on creating opportunities and integration for people returned from the EU. In general project values tended to be significantly higher for projects which contained border control components. Since 2015, Bosnia received more than €30m for border control projects with exit components. In the same period, Kosovo received more than €44m, North Macedonia more than €39m, and Serbia more than €46m.

Country	Year	Contract Title	Contractor	Value
Serbia	2016	sector reform contract for IBM	EU Delegation to Serbia	€28,000,000.00
Montenegro	2015	Support to implementation of IBM strategy	EU Delegation to Montenegro	€20,000,000.00
North Macedonia	2020	EU for rule of law	EU Delegation to North Macedonia	€19,300,000.00
Kosovo	2010	Strengthening the rule of law	EC Liaison Office to Kosovo	€15,552,000.00
Bosnia	2018	EU support to home affairs to combat illegal acts	EU delegation to Bosnia	€13,500,000.00
Albania	2012	Support to the Albanian state police	EU delegation to Albania	€10,162,715.00

Figure 28: Examples of exit contracts with exit control components for each IPA state

The majority of contracts were made with either an EU or EC delegation to the respective country, occasionally in consortium with an IO, most frequently UNICEF or the IOM. A smaller proportion were received by a government ministry of the country. Overall, this meant that most of the money received for the development of the Balkans region was actually redistributed in Brussels or, secondarily, Geneva, Paris or New York. Only a fraction was received directly by projects based in the Balkans, and these were almost exclusively operated by government departments.

6.3 The Frontex Consultative Forum on Fundamental Rights

In 2011, Frontex was mandated to create a so-called Consultative Forum (CF) to bring "together key European institutions, international and civil society organisations to give advice on rights issues." On its webpage, Frontex describes its working relations to the CF as one where the Agency shall provide the CF with timely and effective access to information concerning the respect for fundamental rights, including by allowing visits to its operations. It notes that it "should consult" the

CF on the fundamental rights strategy, the functioning of the complaints mechanism, codes of conduct and the common training curricula for border guards, among other issues.[46]

The Frontex Consultative Forum on Fundamental Rights can be seen as an example of the expansion of activities of both the Agency and of several civil society organizations. From the perspective of the organizations, this has been justified as a way to increase presence and the impact of advocacy in the EU institutions (Giannetto 2020). From the perspective of Frontex, and alongside its appointment since 2012 of a Fundamental Rights Officer, the interaction with civil society actors is being portrayed as a way to legitimize the accordance of its operations with the respect for fundamental rights.

In 2021, the thirteen participating members were:

- European Asylum Support Office (EASO)
- European Union Agency for Fundamental Rights (FRA)
- United Nations High Commissioner for Refugees (UNHCR)
- The Council of Europe (CoE),
- International Organization for Migration (IOM)
- Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE ODIHR)
- Office for the High Commissioner for Human Rights (UN Human Rights)
- Amnesty International European Institutions Office (EIO)
- Churches' Commission for Migrants in Europe (CCME)
- International Commission of Jurists (ICJ)
- Jesuit Refugee Service Europe (JRS)
- Red Cross EU Office (RCEU)
- Save the Children (SC)

The above list represents the Frontex Management Board selections spanning a three-year period from January 1, 2020 to December 31, 2022. The composition of the CF is, as noted by Giannetto,[47] unusual compared with other EU consultative bodies, due to its smaller size and the limited inclusion of civil society organizations. Of these there were six in 2021 (Amnesty International European Institutions Office, Churches´ Commission for Migrants in Europe, International Commission of Jurists, Jesuit Refugee Service Europe, PICUM, Red Cross EU Office and Save the Children). These sit next to four international organizations (OHCHR, OSCE ODIHR, IOM, UNHCR) and two other EU agencies (FRA, EASO) as well as the CoE. Most of the non-EU agency members have Brussels or Strasbourg-based EU offices with a small contingent of staffers pursuing their strategy of advocacy.

According to Article 108 of Regulation 2019/1896 as well as the CF´s stated work methods, its task is to assist the Agency by providing independent strategic advice on how Frontex can "structurally

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[46] Frontex website. 2021. "Consultative Forum". Available at: https://frontex.europa.eu/accountability/fundamental-rights/consultative-forum/general/.

[47] Giannetto, L. October 28, 2020. *Frontex, Civil Society Organsations, and Human Rights at EU Borders: A Complex Relationship*. Border Criminologies. Available at: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/10/frontex-civil.

improve the respect, protection and fulfilment of fundamental rights in its activities."[48] The CF´s
Work Programmes is set up after consultation with Frontex Management Board and the Executive
Director. A Forum Secretariat embedded in the Fundamental Rights Office is responsible for
administration and coordination. In 2019 and 2020 that took the form of one staff member paid by
Frontex. Moreover, a Steering Group consists of two Forum Chairs, each elected for a two-year
period, as well as interested members, Agency senior staff and the Fundamental Rights Officer. In
2018, 2019 and 2020 the CF was chaired by the UNHCR and the Jesuit Refugee Service. Frontex
allocates an annual budget for the CF activities. However, while the 1168/2011 amendment to the
Frontex Regulation required both cooperation and reports from the FRO to the CF, the 2016/1624
Regulation dropped the latter requirement. Article 109,4 of the 2019/1896 Frontex Regulation
retained this formulation, stating a clear asymmetry of accountability between the Agency´s
management and the CF, namely that the "fundamental rights officer shall report directly to the
management board and shall cooperate with the consultative forum". As such the CF was not
mandated to supervise the activities of the Fundamental Rights Office and its communication with
the management.

The CF is to meet with the Agency´s Executive Director and/or Deputy Director of the Management
Board at least three times a year, convened by the Forum Chairs. Thematic rapporteurs may be
appointed on subjects of particular importance, after a consensus-based nomination process, and
may also call for meetings. When the CF requests information from Frontex it is to receive a
response in "a timely and effective manner" no later than 15 working days after the request. The CF
may also request on-the-spot field visits to operational sites, and if the host state, be it European or
non-European disagrees, the Agency must be provided with "duly justified reasons in writing."[49] The
CF´s general principles include provisions on confidentiality, and an "obligation of professional
secrecy" was added to the membership selection criteria in 2015 (Karamanidou and Kasparek 2020,
29), with the potential of triggering criminal liability if the CF members share "sensitive or non-public
information."[50] Thus, information provided by Frontex to the CF is to be kept confidential.
Regulation 1168/2011 also stated that in order for CF documents to be made public, Frontex´s
Management Board and Executive Direction has to give their approval (Giannetto 2020, p. 511).

Regarding exit policy, the CF´s 2021 Work Programme lists as a priority to gain an overview of the
fundamental rights implications of Frontex operational and return activities is listed as a priority.
This year, the CF´s Working Group on Return lists three outputs: First, it requests - "*If the situation
allows*" - a visit to a Frontex operational activity to be followed by a focus group discussion with
Frontex and Management Board Representatives. Second, it lists ongoing advice and focus groups
with the European Centre for Returns (ECRET) to discuss the CF´s recommendations. Third, it lists
advice given to the Fundamental Rights Office and ECRET regarding the governance of the pool of
forced return monitors, moving from the ICMPD to Frontex (Frontex Consultative Forum on

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[48] Frontex Consultative Forum. 2021. *Working Methods of the Frontex Consultative Forum on fundamental rights.* Available
at:
https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_on_Fundamental_Righ
ts_2021.pdf.

[49] Ibid.

[50] Holding Frontex to Account. ECRE´s proposals for strengthening non-judicial mechanisms for scrutiny of Frontex. Policy
Paper 7. May 2021. Available at: https://www.ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf.

Fundamental Rights 2021, p.6). From the years from 2017 to 2020, the Work Programme priorities have also included Frontex´s collaboration with cultural mediators and interpreters during return operations (2020); its activities in the pre-return phase (2019); its engagement and operational activities in third countries (2017, 2019); the implementation of the Frontex Code of Conduct for Return Operations and Return Interventions and advice on the implementation of a guide for joint return operations by air coordinated by the Agency (2017, 2018); and contributing to evaluation of Frontex training materials and methodologies related to rights issues, as well as on-going analysis and consultation with stakeholders other than Frontex (2017).

6.3.1   Focus in the Consultative Forum

The CF established a Working Group on return operations in 2013, and, besides its Work Programmes, it engages with exit policies also in its Annual Reports through several handfuls on-the-spot visits to return operations as well as focus group meetings with Agency officers and Management Board representatives. Through its Annual Reports, the CF has pointed towards several problems in its annual reports on Frontex. At the outset it has explicated that it does not have the mandate or capacity to monitor or systematically assess the fundamental rights compliance of Frontex operations and activities. Therefore, its work should only be seen as complementary to, and not preclude, the necessary oversight mechanisms of relevant stakeholders. In its Fifth Annual Report from 2017, the CF moreover raised concerns about the reluctance to adequately staff the Fundamental Rights Office and limitations in providing the CF with access to "timely, complete, and comprehensive information in a manner that allows the Consultative Forum to effectively exercise its mandate is crucial." The CF noted that it "continues to face serious and further limitations particularly in relation to relevant operational reference and guiding documents" and that by the of 2017, it had still to receive a final response or constructive proposal from Frontex (Frontex Consultative Forum on Fundamental Rights 2017b, p.17).

In November 2016, it recommended that Frontex suspended operational activities at the Hungarian-Serbian border due to pushbacks and human rights violations. This recommendation was refused by the Agency´s Executive Director, who argued that Frontex presence would secure such rights. Subsequent Hungarian legislation to the opposite effect led to the European Commission launching infringement procedures against the government. Both Frontex and the CF maintained their opposed positions (Frontex Consultative Forum on Fundamental Rights 2017b, pp.29-30). In its 2019 Annual Report, connected to pushback practices, the CF reiterated its long-held view of remaining "highly concerned about the functioning of the Frontex Serious Incident Reporting mechanism" through JORA 2 (Frontex Consultative Forum on Fundamental Rights 2019b, p.20).

In the CF´s Fifth Annual Report from 2017, it is noted that Frontex´s Regulation 2016/1624 expanded the Agency´s return mandate considerably, leading to a 47% increase to a total of 341 operations. These included 150 national forced return operations, 153 joint forced return operations and 38 collecting return operations. The CF noted its view that *"`traditional´ joint forced return operations have partly changed profile and turned into de facto Frontex-coordinated-and-financed national forced return operations.*" (Frontex Consultative Forum on Fundamental Rights 2017b, p. 34). The new practices also entailed increasing cooperation with third countries of return, such as Albania, the establishment of a pool of monitors, and the coordination of readmission operations from Greece to Turkey. Similarly, and only three years later, Regulation 2019/1896 further accelerated the wide expansion of the Agency´s tasks relating to exits, such as assisted voluntary returns, technical

and operational assistance, post-return, and setting up an integrated return management platform as noted in the CF´s 2019 Annual Report. This listed 25 recommendations across themes such as recruitment and training, management of return support to Member States, return operations and the monitoring of forced returns (European Parliament 2019).

When it comes to the management of returns, the CF´s Seventh Annual Report noted that the introduction of IRMA and FAR information systems entailed increased awareness of the duty to respect fundamental rights. In particular that this necessitates strict data protection standards given that the establishing and operating of a database and information exchange system for return management, such as IRMA, relies on transmitting personal data to national databases. The CF recommended that the efforts to increase synergies and interoperability should not undermine the confidentiality of asylum information, applicants´ biographical information, and that such information is only made available to so-called third countries, after guarantees of fair procedures. It stated that "*Sensitive data, including information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, data concerning health or data concerning a person´s sex life or sexual orientation should be protected at all time*. (Frontex Consultative Forum on Fundamental Rights 2019*b*, p.61). People in exit systems should also be adequately informed before meeting representatives of their (presumed) countries of origin. Long statelessness determination procedures should not result in prolonged detention, and alternatives to this should be in place.

Regarding return operations, the 2019 Seventh Annual Report noted "recurrent fundamental rights challenges" (Frontex Consultative Forum on Fundamental Rghts 2019*b*) identified through forced return monitoring, and presented 14 recommendations. These spanned the non-inclusion of unaccompanied minors in forced return operations; that Agency standards for joint and collecting return operations should also apply to national operations financed by Frontex. The CF also stated that readmissions from Greece to Turkey should be regulated by the same standards as return operations, which was a reiteration of the recommendation from its Fifth Annual Report in 2017, that Frontex "*handle readmissions as return operations*." (Frontex Consultative Forum on Fundamental Rights 2017b, p. 39). Moreover, the Seventh Annual Report from 2019 also recommended that all returnees and involved return staffers should be informed of the complaints mechanism; to ensure respect for non-refoulement during return operations, implying the suspension of activities if this is breached seriously and persistently; that Frontex should not plan return operations from Member States with serious deficiencies in national asylum and exit systems; sufficient time granted to families during returns, as well as their non-separation; respectful inspections of luggage; that the Agency should require Member States to provide the necessary medical staff, trained interpreters and cultural mediators (Frontex Consultative Forum on Fundamental Rights 2019*b*, p.61-65).

As to the monitoring of forced return operations, the 2019 Seventh Annual Report expressed worries about "discrepancies emerging between well-developed tools, such as the code of conduct and guidelines and their actual implementation during return operations. Referencing the expected expansion of Agency return activities in the coming years, the CF formulated four recommendations: That Frontex should assess, alongside the FRO and the CF, how to strengthen the effectiveness and independence of the pool of forced return monitors, and as part of that increase the monitoring of national return operations, to ensure transparency; ensure cooperation with the Committee for the

Prevention of Torture to monitor return operations; increasing the FROs own return monitoring, which should be reported not just to the Management Board and the Executive Director, but also to the CF, and, finally; creating incentives for Member States to set up monitoring mechanisms (Frontex Consultative Forum on Fundamental Rights 2019*b*, p.66).

6.3.2   Forum membership and criticism

Frontex´s management board is responsible for inviting intergovernmental organizations to join the CF, and it selects civil society organizations through an application process based on proposals from the Executive Director and the Fundamental Rights Officer. In its 2019 open call for membership applications, Frontex added several new criteria to be fulfilled, such as "degree of recognition" of would-be members by "relevant actors", even outside the CF, past or present involvement in EU projects, and, remarkably, "neutrality, impartiality and abstention from any political affiliation" (Karamanidou and Kasparek 2020, 29). In 2019, the civil society organization SeaWatch had its application rejected, as the Executive Director and the management board found its operational focus did not match the Agency´s need for expert advice.

Dear Mr Bayer,

On behalf of Frontex and its Management Board, we would like to thank you for your organisation's application to become a member of the Frontex Consultative Forum on Fundamental Rights (CF).

We would like to inform you with regret that your organisation has not been selected to become a member of the Frontex Consultative Forum on Fundamental Rights. We considered that your organisation's strong operational focus does not match the Agency's need for expert and targeted advice on fundamental rights issues from across the Agency's enlarged mandate. It was assessed that the criteria on knowledge and expertise in the areas relevant to the Consultative Forum as advisory body, is not met.

Nevertheless, Frontex acknowledges the important work of your organisation. We would therefore like to propose other forms of dialogue between the Agency and Sea-Watch e.V. at the initiative of our Executive Management and internal operational entities, where deemed appropriate.

Yours sincerely,

Fabrice Leggeri

Marko Gašperlin

Figure 29: Frontex letter of rejection to SeaWatch for a Consultative Forum membership, 2019. Source: @seawatch_intl, Twitter-account.

Compared with its earlier iterations, several organizations have resigned or no longer have seats on it. These include Advice on Individual Rights Europe (AIRE) Centre, Caritas Europa, ECRE and PICUM. Moreover, while Frontex selected nine civil society organizations in 2015, only six were selected in 2020. The choices made by civil society organizations to join, leave or remain in the CF depends on their varying members, positionality, resources and strategies. Several, like PICUM and ECRE are

umbrella organizations representing a large number of smaller national actors, while others, such as Churches´ Commission for Migrants in Europe, or Jesuit Refugee Service are faith-based and Christian. While some organizations focus on litigation, others focus on behind-the-scenes influence-building, and others again on advocacy and media.

While Management Board Decisions on the mandates of the CF are published regularly, the actual reasons for the chosen size, composition and particular members remains obscure. A Management Board Decision 29/2019 of December 2 2019 simply states that "*In the event that a civil society organisation decides to withdraw from the Forum during its mandate, the Management Board shall decide on a proposal by the Executive Director whether to launch an open call to fill in the vacancy.*"[51] Only two months later, Management Board Decision 4/2020 expressed it as "*opportune to additionally invite the Office of the UN High Commissioner for Human Rights Regional Office for Europe to the Forum*". This effectively meant that the UNHCR was now represented with two seats. Yet, in these decisions or elsewhere, no reflections are offered about the Executive Director´s or management board´s selection or refusals of organizations for the CF. Caritas Europe, the European Council for Refugees and Exiles (ECRE) and the Platform for International Cooperation on Undocumented Migrants (PICUM) left the CF in, respectively, 2017, 2019 and 2020. They all voiced critique of the institutional set-up of the CF, access to information, and its possibilities for influencing the Agency´s management.

The lack of access to information has also been documented by Karamanidou and Kasparek (2020, p.47) who conducted interviews with several CF members reporting several problems with access to data. These included that the definition of relevant information was too vague, ultimately leaving it to the Agency´s management to define and decide on documents´ relevance for the CF. Also, CF members told that Frontex does not proactively share information, but that CF members have to request it themselves, which can be difficult if they do not know what to ask for. This criticism was also levelled by ECRE in its 2021 Policy Paper on Frontex and accountability (ECRE 2021). Another problem reported is the prolonged time it takes to get a hold of the information asked for; that CF document access was less than that granted via Freedom of Information-requests; the release of certain documents in redacted or incomplete form, despite the fact that the CF members are bound by confidentiality. The paucity of released information was also described as directly opposite to the massive amounts of information to be worked through regarding the working methods and arrangements of the CF itself (Karamanidou and Kasparek 2020, p.48). As noted in the Methodology-section, the experiences of AdMiGov-researchers in producing this as well as other Deliverable have also been one of centralized information, and great difficulties in getting research access, including a denial to conduct interviews with staffers from the organization.

In its 2018-comments to the Proposal for the European Border and Coast Guard Regulation, ECRE noted several issues of concern. These included, first, the CF´s placement as part the Agency´s administrative and management structure created tension with its supposed role as an expert body providing independent advice. Second, the fact that the CF´s role is limited to assist the Agency´s Director and Management Board means that it cannot formally engage with Frontex´s different

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[51] Frontex. 2019. Management Board Decision 29/2019 2 December 2019 on the composition of the Consultative Forum on Fundamental Rights. Reg. No 13193. Available at:
https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2019/MB_Decision_29_2019_on_the_composition_of_the_Consultative_Forum_on_Fundamental_Rights.pdf.

departments without the permission of the Executive Director. Third, ECRE argued that constraints on the resources allocated to the CF creates a gap "*between what is required under its mandate and what it can deliver.*" Thus, it said, that "*no substantive support is provided on legal analysis, screening of EBCG Agency documents or field visits conducted by the CF members.*" This gap, it continued, "*will be significantly increased in light of the proposed expansion of the Agency´s mandate, resources and operational activities*" (ECRE 2018).

The 2019/1896 Regulation did not resolve many of these issues. While it did add an obligation of the Agency to inform the CF about the follow-up on its recommendations, the CF is still referred to as part of, rather than independent of, the Agency´s administration. Also, Article 108 of the Regulation define the relation between the CF and the Executive Director as one where the latter, the management board "may consult" the CF, so that there is still no requirement that its advice is followed. Also, the 2019 Regulation´s Article 109h does not provide any guarantees of increased support to the FRO-placed secretariat (European Parliament 2019). According to PICUM, who announced its resignation from the CF some time earlier, in early 2021:

> *…our ability to provide inputs within the Forum was strongly limited by a very strict confidentiality clause, which entailed risks of criminal liability if we shared sensitive or non-public information with our members…In some cases, the Consultative Forum was not consulted on human rights related matters, or was consulted only after key decisions were taken. We were often not given enough time to review and process information from the agency in a meaningful wat. And Frontex often failed to acknowledge or consider the Consultative Forum´s comments…As the new EU Migration Pact foresees that Frontex will play a key central role in stepping up returns, we fear that Frontex will engage in more activities which could lead to human rights violations at our borders in the coming years…We are concerned by the approach taken by Frontex to the role of civil society…and no longer see a role for our organisation in the Consultative Forum, from which we have formally withdrawn our membership.*[52]

PICUM also notes that there have been no CF discussions of the Agency´s close relations with the ICT, defence and security industry and the associated lobbyism dynamics (COE 2021). This is confirmed by analysis of the CF´s Programmes of Work and Annual Reports between 2017-2021, which mirror this lacking focus on such relations.[53] While several of the Programmes do talk of stakeholders, this refers to CF-outputs to certain actors through shared analyses and consultations. And when nuanced, the notion of stakeholder is explicitly used to refer to international organisations and civil society, but never to ICT, defence, security or air and land transportation companies (c.f. Frontex Consultative Forum 2018, p.4). The references to stakeholders also no longer

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[52] PICUM website. 2021. "PICUM is no longer part of the Frontex Consultative Forum." Available at: https://picum.org/picum-is-no-longer-part-of-the-frontex-consultative-forum/.

[53] Searches were conducted through the CF´s Programmes of Work 2017-2021 as well as Annual Reports for the same time period with the following words: "tenders", "market", "commercial", "procurement", "industry", "public-private", "partnership", "contract", "lobby" and "interest groups". This yielded no results except for the following exceptions: The 2017 Annual Report referenced partnership, but only in relations to the Eastern Partnership Risk Analysis Network. The 2018 Annual Report referenced commercial actors, but only in relation to their incentives for and against search and rescue activities in the Mediterranean. The 2019 Annual Report which did reference interest groups, but only as a reference to the members of the Forum itself.

feature in the Programmes of Work from 2020 and 2021. Similarly, the issue of Frontex transparency regarding its relations to industrial actors from markets for EU border control do not feature in the CF´s Programmes of Work. In fact, the only reference made to the issue of transparency is when the participating organisations describe the pillars of their *own* work in the CF, and thus reflecting the general principles of the CF itself, rather than Frontex relations to industrial sectors (Frontex Consultative Forum 2020, 2). While some members of the CF have focused on security and defence industry in their own work, there seems not to have been a systematic focus in the CF´s work on the political economy of Frontex involvement with stakeholders and interest groups representing the growing market for border control. This again underlines the problem of the CF´s role and impact. Because, in fact, the Agency has widened and deepened its relations to actors from the ICT, security and defence sectors significantly, also when it comes to exit governance.

7. Frontex and Markets for Exit Contracts

The following section details some of the ways in which the expanding role of Frontex in EU exit governance have implications both in terms of varied contracts awarded to different commercial actors for the organization and operation of exit policies, and in terms of multiple positionalities of Frontex itself. This takes place through a series of networking events, such as Industry Days and Workshops, consulting, but also via political priorities, which most recently have been formulated in the Terms of References with DG Home for involvement in border technology research. These manoeuvres must be seen in the context with the role of information systems built by commercial actors, detailed in Section 5.1 and the section rounds off by mapping contracts for airline, passenger ferries and busses awarded in order to effectuate the exit policies under the EU-Turkey statement since 2016.

7.1 Background for commercial interests in Frontex exit governance

Commercial non-state actors play a crucial part in the multi-levelled EU governance of migration policies. This is increasingly also the case for exit policies, although this development has so far only featured very sparsely in systematic academic inquiries into return policies. According the Frontex itself; "*All contracts and tendering in the area of return/data systems (as for all other systems) are subject to public procurement in line with the relevant procedures.*" Notably, in our interview, it also stated that "*Frontex has no intention to outsource the activity of border control to private companies.*" (Frontex interview).

Commercial companies seek to influence EU policy through strategies of public-private partnerships, lobbyism, private rule- and standard-setting and of framing their input as expert knowledge (cf. Lemberg-Pedersen 2013; Baird 2018; Lemberg-Pedersen et al. 2020). These strategies are pursued in different ways, and interest groups reflecting both commercial, public institutional and international and civil society interests actively target different parts of Frontex´s institutional make-up. Even if the level of access and influence diverge between these sectors, they all utilize consultative processes, scheduled meetings, but also conferences and social events, such as formal and informal gatherings (cf. Coen and Richardson, 2009; Bouwen, 2004). For instance, while CEOs from commercial providers of border control technology have often been invited by the European Commission, Frontex or EU-Lisa to participate in official expert groups, this takes place to a

significantly smaller degree when it comes to NGOs focusing on human rights or data privacy. And conversely, companies may organize conferences in order to attract policy-makers to meet industry. The interlocutor from Accenture explained how this works: "*so all these people we invite, we set up the content, the agenda the programme – they're aligned to where we think industry is heading. Putting topics that would be interesting to DG Home and that's not just one on one with Accenture, that's us influencing industry to get the governments talking to industry. That benefits everybody, not just Accenture.*" (Accenture interview). The market for border contracts is driven by the EU institutions:

> *I mean, the market is there. The border market is there. So impact on the market, every time they legislate new policies and then, from that legislation that the EU Commission lays out, then EU-Lisa is responsible for IT systems that respond to that. So they drive the market basically, in both those ways. By changing legislation and saying, we will now have third country nationals submit information before they travel – that's the market change […] with the primary actors being the Commission, DG Home I guess, EU-Lisa, Frontex and to a certain extent, some of the big member states. Yeah, and not just us but a handful of companies that are big influencers. Some of the SI [system integration] companies, the likes of us and other systems integrators, consultancies. Then there's the big infrastructural players like HP, you know, as more things move to the Cloud (Accenture interview)*

From the perspective of transparency over the processes through which Agencies like EU-Lisa interact with commercial actors, the prime focus of the EDPS concerns access to the data produced by the systems:

> *We are in direct contact with EU-Lisa and if we, you know, we could feel that something is suspicious or we get some information, then we can inspect the EU-Lisa, also with this private providers. So you know, we have supervisor powers over EU-Lisa and in that sense we can check what's going on (EDPS interview 2).*

With Regulation 2007/2004, Frontex´s R&D Unit was set up to facilitate information exchange on the surveillance of the EU's external borders between Member States' border guard authorities and research institutes, universities and industry. Frontex therefore participated in fairs, conferences, workshops and luncheons as well as several EU expert forums alongside representatives from commercial companies and other industry representatives. But since Regulation 1168/2011, which amended the Frontex mandate, the Agency has increasingly been transformed into an actor of multiple and overlapping positionalities in relation to commercial actors. Thus, Regulation 2007/2004´s Articles 6 and 7 stated that the Agency should "*follow up on the developments in research relevant for the control and surveillance of external borders and disseminate this information to the Commission and the Member States*" and that the Agency should "*keep centralised records of technical equipment for control and surveillance*" to be made available for Member States upon request following a needs and risk analysis.

While the centralized records have remained throughout the subsequent Regulations, in Regulation 1168/2011 the "follow up" formulation was replaced with new Articles 6 and 7 stating that "*The Agency shall proactively monitor and contribute to the developments in research relevant for the control and surveillance of the external borders*…". In Regulation 2016/1624 this had further

developed into Article 37 stating that "*The Agency shall proactively monitor and contribute to research and innovation activities relevant for European integrated border management including the use of advanced surveillance technology*" (European Parliament, 2016). In Regulation 2019/1896 a further sentence was added to this, namely "taking into account the capability roadmap referred to in Article 9(8)" (European Parliament 2019), which refers to the Agency assessing lacks in Member States´ border control and assisting them with identifying which research they should focus on.

Similarly, Article 8 of Regulation 2007/2004 stated that "*The Agency may acquire technical equipment for control and surveillance of external borders to be used by its experts for the duration of the deployment in the Member State(s)*" referring to the practice whereby Member States loaned equipment to the Agency. Regulation 1168/2011 expands on this by stating that "*The Agency may acquire, itself or in co-ownership with a Member States, or lease technical equipment for external border control to be deployed during joint operations, pilot projects, rapid interventions, joint return operations or technical assistance projects.*" Regulation 2016/1624 further clarified Frontex procurement through Article 38.2 on acquisition or leasing of technical equipment that "*The Agency may acquire technical equipment by decision of the executive director in consultation with the management board*" (European Parliament, 2016). With Regulation 2019/1896 came then Article 63.2 which stated that the management board "*shall adopt a comprehensive multiannual strategy on how the Agency's own technical capabilities are to be developed taking into account the multiannual strategic policy cycle for European integrated border management*" (European Parliament 2019). And Article 63.3, stating that the multiannual strategy is to be "*accompanied by a detailed implementation plan specifying the timeline for acquisition or leasing, procurement planning and risk mitigation.*"

Accordingly, and in parallel with the massive increase of the Agency´s budget, these successive changes have granted the Agency a much more proactive role in building its own pools of equipment through purchase and lease, in line with multiannual strategies, policy cycles and detailed implementation plans. Through an increasing number of Agency tenders and contracts facilitated by a massive growth of its budget, the Agency has now grown into a powerful end-user of border control technologies itself. Technologies provided by the industries the research of which it is both supposed to oversee, steer and coordinate, and also guide Member States to invest in. Frontex is also tasked with monitoring, steering and coordinating research into borders and migration, including ensuring that certain kinds of research can be supported to, and after, leading to commercial market uptakes. Worth noticing in this complex development is the increasing power granted to the Agency over Member States discretion when it comes to research and purchase of border control equipment, for instance by requiring from them regular reports on needs and vulnerabilities.

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021
€ million	94	98	142	254	302	320	333	460	544

Figure 30: Total Frontex budgets 2013-2021. Source: Frontex Annual Budgets 2012-2020.

According to Corporate Observatory Europe (COE)[54] who filed Freedom of Information requests in order to gain access to 130 documents, Frontex met with at least 108 companies between 2017-2019, discussing various security, weapons and border control technologies. While many of these companies provide other services than return, several of them occupy key roles in the political economy of exit governance. Thus, Gemalto, which provides databases used in the exit system met at least four times with Agency representatives in this period, while its mother company, French Thales, had three such meetings. Other ICT and security companies providing infrastructures for databases Atos, Idemia, Jenetric, Secunet and Vision-box each had three meetings with the Agency. Another meeting was held with the European Association for Biometrics, while also non-European companies like Canadian Face4Systems and Israeli Elbit, Shilat Optronics and Seraphim Optronics met with Frontex representatives. The interlocutor from Accenture explained the company rationale for such meetings, using EU-Lisa as an example:

> *[Most] is free consulting [laughs] oftentimes we do that in hopes of winning work, hopes of becoming trusted with that client – that we have value, you know, like any other system integrator. We don't have product, but we have expertise and experience integrating products to meet challenges. So if we can demonstrate that we understand their challenges, that we can bring the right partners together to deal with those – that's why we do that kind of thing […] You get kudos from your clients, but what counts at a corporate level, is you do all this free work to ultimately get some sort of contract in the future. One thing that we've been advising, several years ago, one of the things we learned at US VISIT, that we were advising EU-Lisa on, they call it 'match your marketplace' […] You have to be able to support your competition's algorithms […] Now we look at the latest thing from EU-Lisa, guess what? They have a match your marketplace […] Now did Accenture make any money on that? No. We gave the advice to them – now the hope was, we did it because it's a) the right thing to do and b) we're going to bid on that and because of our experience we hope we have a higher win probability. (Accenture interview)*

7.2 Frontex Workshops, Industry Days and involvement in border research

According to the Agency, "[When it comes to] the contacts made by Frontex Research and innovation with commercial actors in the framework of EU funded border security projects both in the past and at present, follow a standardised approach in accordance with international and external rules, with full respect to principles of transparency and equal opportunity, when accepting and seeking contacts." Past and present collaborations "happened in all fields of border control research, including border surveillance and border checks, and within these Entry and Exit related research can be included." (Frontex interview).

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[54] Corporate Observatory Europe. 2021. *Lobbying Fortress Europe. The making of a border-industrial complex.* Available at: https://corporateeurope.org/en/lobbying-fortress-europe.
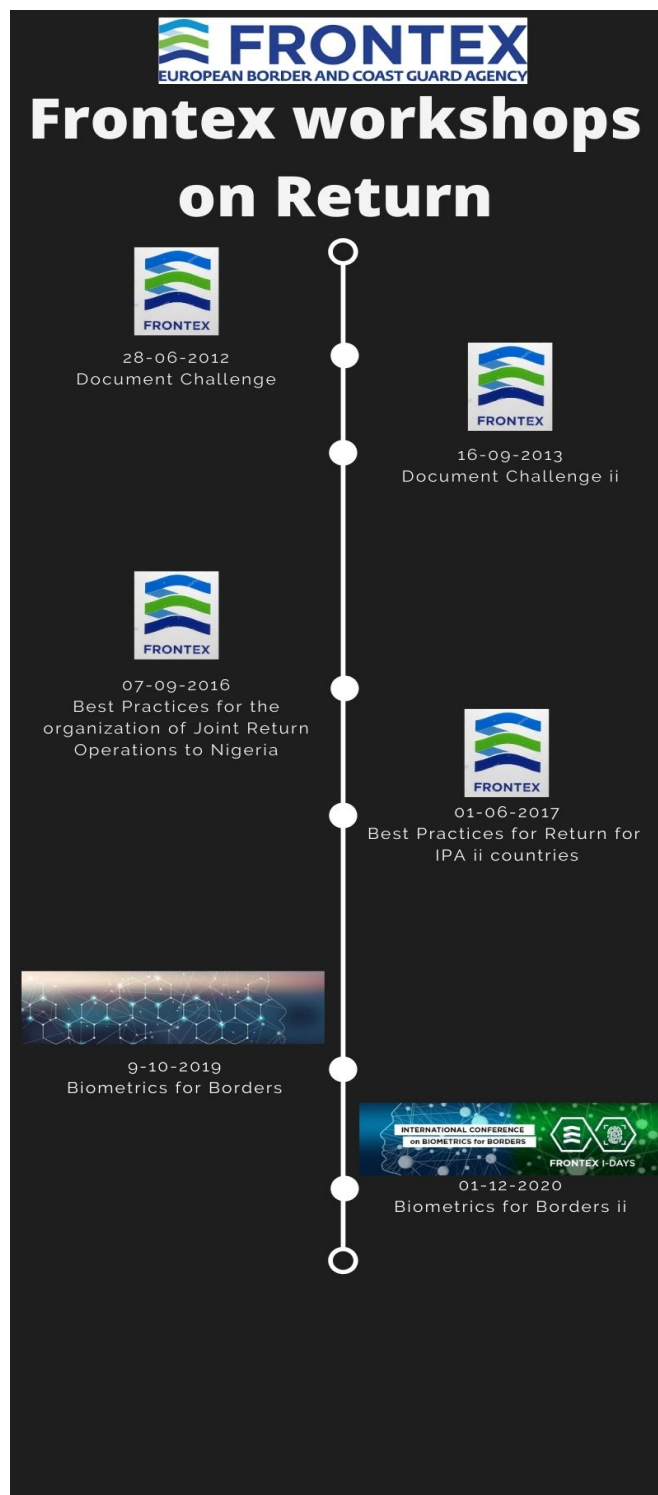
Figure 31: Examples of Frontex Workshops on exit.

Observing the development and decisions on EU research programmes like Horizon 2020, their funding streams, and the strategic priorities for EU border control, the Agency "*continuously seeks to engage with cross-sectorial partners responsible for the management, implementation and coordination of the projects so its research and innovation activities are able to transform operational requirements into innovative operational solutions*" and considers investments made in border security research as of "*high importance to ensure Frontex can fulfil its strategic objectives.*" (Frontex interview). Part of the Agency´s engagement with market actors thus takes place through Industry Days, but also targeted Frontex Workshops. According to Frontex, Industry Days are organized "*on a regular basis where the interested market operators can present their products where the principles of equal treatment and transparency are followed. No individual contacts on separate basis between certain companies and Frontex are allowed*" (Frontex interview).

From the perspective of a company like Accenture, Industry Days are useful venues: "I guess Frontex play more and more of a role with the Commission, with EU-Lisa (…) Frontex does industry days where they have some topics they want to discuss and they ask industries to explain why they should be selected […] they were interested in our lessons learned from BIMS – Biometric Identity Management System that we do for UNHCR. At the height of the Refugee Crisis, the Illegal Migration Crisis, where folks were coming […] Frontex was trying to look for those mobile kits, looking for the best ways to get that information, you know, process these people at these hot zones. And yes, so there's a lot of ways to enhance that, including lobbying UNHCR to process some of these folks and share information and some of it is with, well if it's with member states you can

use EURODAC or its successor" (Accenture interview) In general, the companies interact with actors like Frontex,

> *[…] through consultations, where they invite, sometimes EU-Lisa, the Commission, invite industry to Industry Days. And Frontex does this as well. On specific topic areas, right? And so we collaborate that way, through industry days (…) because Accenture, with over half a million people in so many countries, they're interested to hear from us. And sure it's not just us, other companies as well, but again because we have such a broad, deep footprint, they're interested in that. And whether it's just because big IT systems dealing with nation scale, cloud systems – they're interested in that, not just biometrics. Border related stuff, large IT systems. (Accenture interview)*
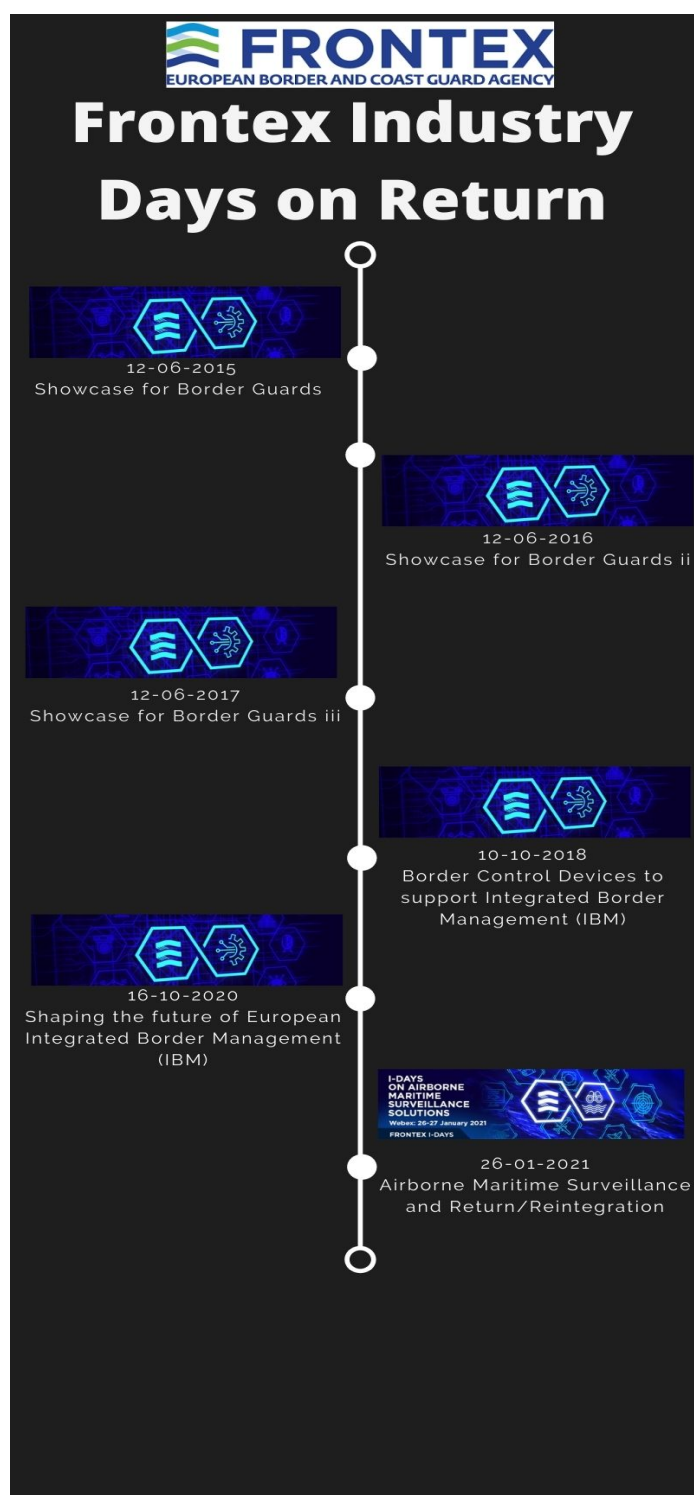
Figure 32: Examples of Frontex Industry Days related to exit

Horizon 2020 has been a key site of Frontex influence on research and development. As reported in AdMiGov Deliverable 1.3, Horizon 2020 has been the biggest EU R&D Innovation programme, totaling around €80bn of funding between 2014-2020. It was conceived in 2011 as increasing EU spending on R&D to 3% by 2020 and received over 115,000 proposals in the first 3 years, of which about 1 in 8 were successful. Out of the successful proposals, 60% came from the UK, Germany, France, Spain and Italy, and out of the grants awarded beyond Europe's borders, by far the most went to the USA, with the next largest numbers going to China, Canada, Australia, South Africa, Brazil and Japan. Applications from entities in Belgium, France, the Netherlands, Luxembourg and Austria were the most successful, with more than one out of six applications being successful, while applications from entities in Bulgaria, Slovenia, Hungary, Croatia and Latvia were less successful; Bulgarian proposals were successful less than one time in ten (Ibid.). Hence, the Horizon 2020-funding has clustered in locations traditionally associated with economic power in Europe (Lemberg-Pedersen et al. 2020, p.19). The participants of such projects testify to the fact that this research and development happens in close collaboration between actors such as security and defence companies, research organizations, consultancy firms and universities.

7.3 The Frontex-DG Home Terms of Reference for research involvement

Frontex and the DG HOME co-signed a Terms of Reference (ToR) consolidating a partnership for
"maximizing joint goal-oriented efforts" in February 2020.[55] The ToR casts Frontex as having a "*key
understanding of an expertise on the standards, requirements and capability needs of the European
border and coast guard community*" and notes that "*effective and efficient border management*"
should be based on the identification, development and deployment of certain capabilities. The ToR
itself was intended to strengthen the cooperation between DG Home and Frontex, render the
implementation of EU Framework Programmes, such as Horizon, "more effective" (EC and Frontex
2020). The ToR designates the Agency a coordinating role for the European border guards and
national authorities, and in fact even states that it should "*provide orientation and steer research*" in
seven steps, including monitoring research outcomes, and assessments of whether research result
holds operational relevance. as well as "*disseminating and exploiting successful results, thus
facilitating their market uptake and deployment.*" (EC and Frontex 2020, p.3).

The relations between the border control agency and commercial actors on markets for border
control are opaque. The concept of a market for border control can be used to describe different
markets for migration control, that is, both those pertaining to the enforcement of certain practices,
such as deportations, as well as those markets pertaining to the infrastructures making possible such
practices, such as databases or airlines (Lemberg-Pedersen et al. 2020). As such, Frontex´s
involvement in EU exit policies, can be said to span both of these markets, and is in fact extremely
multifaceted. This is to say that the companies interacting with Frontex operate across a wide range
of sectors, and across a wide range of scales. Thus, companies come from sectors such as aerospace,
defence, biometrics and security, but our searches through the EU repositories also illustrate that
other layers of businesses derived from Frontex exit policies involve a plethora of small and medium-
sized businesses (SMEs) who also reap smaller contracts concerning IT, housing, interpretation,
health, cleaning, layout/design, software, conference and meetings, consultancies, maritime or
aviation services, office supplies or transportation. This also reflects the overlaps between and
intersecting scales of entry and exit policies, and the infrastructures underpinning them.

7.4 Frontex airline return contracts

According to Frontex, the Agency does not hold any documents concerning tender contracts
between Frontex and airlines for Joint Return Operations.[56] This is a surprising reply, given the
massive documentation elsewhere of its economic relations to airlines and other commercial
companies relating to return practices. Indeed, complex contractual, multileveled public-private
relations can be seen as at the core of several Frontex operations when it comes to exit policies. The
following sketches how this area of activities has developed in recent years.

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[55] Frontex website: https://frontex.europa.eu/future-of-border-control/eu-research/introduction/

[56] See Frontex-reply to Peter Teunissen-request via AsktheEU.org, January 23, 2020. Available at:
https://www.asktheeu.org/en/request/7523/response/24752/attach/2/Teunissen%20Peter%20CMS%202019%2000012%
201178%2023%20Jan%202020.pdf?cookie_passthrough=1.
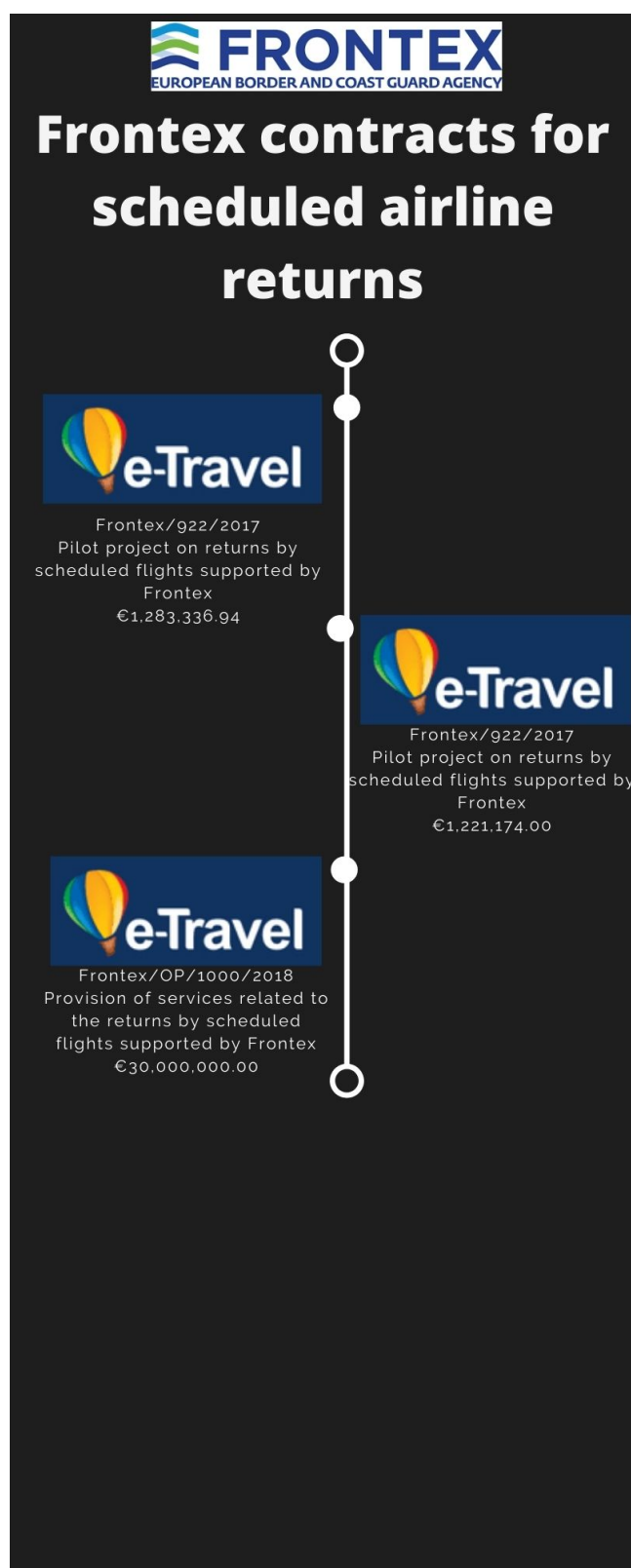
Figure 33: Frontex contracts for scheduled airline return

Frontex coordinated the chartering of aircraft by Member States in order to support the organisation of their return and readmission operations. In 2017, parallel to this, and following the Commission´s call in the renewed 2017 Action Plan on Return, Frontex set up a pilot project organizing returns by scheduling commercial flights, signing a contract (Frontex/922/2017) with the Polish company eTravel SA, worth €1,2 million, for a Pilot project launched December 8, 2017 on returns by scheduled commercial flights supported by Frontex. According to the Agency, 290 people were returned to Algeria, Morocco, Bosnia and Herzegovina, North Macedonia, Kosovo, Serbia and Albania, with Belgium and Germany being the most active organizers of the EU Member States (Frontex 2018, p.7). Following the pilot project, eTravel was then contracted for a two-year contract worth €30 million for the booking and ticketing services for Member States organizing returns through scheduled flights. According to research done by Statewatch, eTravel was the only bidder for the contract, which also tripled in size compared with the €10 million foreseen in the Frontex Programming Document (Jones, Kilpatrick, and Gkliati, 2020).

The Frontex charter flights also illustrate how Frontex tendering processes work. Thus, in June 2017, the Agency sent out Invitation Letters, Tender Specifications and Terms of Reference (ToR) for a Framework Contract "for the chartering of aircraft and related services for return operations." It was split into two different parts, namely Lot 1, which concerned "Planned missions", which covered the provision of fully fledged services return operation(s). Lot 2, concerned "Short notice missions", which covered the provision of a number of flight hours for carrying out one or more "emergency Return Operations" (Frontex 2017b, p.6).

Under the ToR, the Agency required that the chartered aircraft be "for the exclusive use of Frontex in terms of passengers and cargo [so that] is unacceptable to offer seats on scheduled commercial flights," and the Agency must configure the seat assignment "in order to fulfil security requirements." Moreover, the routing of the plane was placed at the discretion of the contractor "in close consultation" with Frontex, and the contractor was also responsible for obtaining all flight licences, over-flight clearances and landing permits (Frontex 2017b, p.12). Frontex then obligated itself to provide contractors with information such as departure dates and types of services; departing and destination airports for the collection and disembarkation of returnees; stops in intermediary airports for the collection or disembarking of returnees; the number of "beneficiary side passengers" (meaning returnees, security staff and other staff); as well as special requirements for the internal layout of the aircraft and for in-flight services (Frontex 2017b, p.16).

Following the tender and negotiations in late 2017, the Agency started 2018 by signing a Framework Contract for Lot 1 (€18 million) and Lot 2 (€2 million, increased to €3 million in 2019) (Frontex/OP/343/2017) for "Chartering aircraft and related services for return operations" with two companies. Leading the consortium was the company AS Aircontact, followed by the other consortium member, British company Air Charter Service Limited. The Norwegian Aircontact is fully owned by the Aircontact Group AS, which is privately owned by the Stenersen family, and has its company HQ in Oslo, Norway, with offices in Stavanger and Stockholm, and describes itself as Scandinavia´s leading air broker, covering all segments of air operations.[57] The British Air Charter Service Limited has its HQ in Surrey, United Kingdom, with offices across North and South America, Europe, Africa, the Middle East and Asia. The contracts were to last a year, and could be renewed with a year up to four times.[58] In 2018, the first instalments of the contract began to paid out, as the two companies began to fly return missions. Thus, under Lot 1, AS Aircontact received a contract worth €681,545, alongside another contract under Lot 2 worth €1.412,500, whilst Air Charter Service was awarded a contract worth €452,480. In 2019, Aircontact was awarded another contract worth €598,000 under Lot 1, and Air Charter Service a contract worth €373,000 under the same Lot. And under Lot 2, Aircontact was furthermore awarded a contract worth €593,496.

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[57] Aircontact website. Available at: https://www.aircontact.com/about-aircontact.423081-373889.html.

[58] In 2019, the Lot 2 contract increased to €3 million, making the Framework contract worth a total of €21 million.

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Frontex contracts for chartered airline returns: Frontex/OP/343/2017/JL/AG Lot 1 (€18,000,000) + Lot 2 (€3,000,000)

Aircontact
Frontex/OP/343/2017/JL/AG Lot 1
Chartering aircraft and related services
for return operations
€681,545

Aircontact
Frontex/OP/343/2017/JL/AG Lot 2
Chartering aircraft and related services
for return operations
€1,412,500

AIR CHARTER SERVICE
Frontex/OP/343/2017/JL/AG Lot 2
Chartering aircraft and related services
for return operations
€452,480

Aircontact
Frontex/OP/343/2017/JL/AG Lot 1
Chartering aircraft and related services
for return operations
€598,000

AIR CHARTER SERVICE
Frontex/OP/343/2017/JL/AG Lot 1
Chartering aircraft and related services
for return operations
€373,000

Aircontact
Frontex/OP/343/2017/JL/AG Lot 2
Chartering aircraft and related services
for return operations
€593,496

Figure 34: Frontex charter return contracts

7.5 Frontex and EU-Turkey exit contracts

After the March 2016 EU-Turkey agreement on border control cooperation (controversially issued only as a European Council press statement, and thus found by the European Court of Justice to not be EU policy), Frontex was given the responsibility for managing exit operations across the Aegean Sea, from Greece to Turkey. This placed the Agency in a highly volatile political context. The European Commission had introduced the relocation scheme in September 2015, where so-called hotspots were to function as reception centres quickly processing people through identification, reception, asylum procedure in Europe, or to be returned. Hotspot Registration and Identification Centres (RICs) were created at Lesvos, Chios, Samos, Leros and Kos from October 2015 to June 2016. But the relocation scheme was superseded before its start by the EU-Turkey deal, which transformed the hotspots into closed detention centres. At the same time, pre-removal detention centres had been officially established in January 2015. A Joint Ministerial Decision has thus far prolonged their existence to 31 December 2022. Out of these nine were active at the start of 2020, with a total capacity of 4983 places and an overall

budget being €80.799.488.[59] Besides detention in pre-removal facilities, criticism led to the abandonment of indiscriminate detention practice in RICs after 2016, according to the Greek Council for Refugees, and it was therefore for a time replaced by a mobility regime of geographic restrictions, also imposed indiscriminately by the Head of the RIC, Police Directorate and the Greek asylum service. Official data from 2019 indicated a capacity of 6178 places and significantly overcrowded conditions.[60] Between April 2016 and 31 December 2019, 2001 individuals were returned from Greece to Turkey under the EU-Turkey deal. In general, the scale of the exit operations fell massively short of the envisioned 1-1 readmission and resettlement system that was promulgated up to and shortly after the agreement by a number of European think tanks, national politicians as well as the EU Commission. This was in part because this exit vision was successfully challenged by local Greek courts disagreeing with the EU´s shift in practice towards labelling Turkey a safe third country for returnees. Accordingly, very low numbers were returned from Greece to Turkey, and the border control agreement instead shifted towards practices blurring the line between exit and pre-emptive prevention of entry. This also had implications for some of the Framework Contracts for exit practices through passenger ferries and busses, which was to run through Frontex.

YEAR	2016	2017	2018	2019
RETURNEES	801	683	322	195

Figure 35: : Returnees from Greece under the EU-Turkey deal 2016-2019. Source: Greek Council for Refugees.

Concretely, those arriving on Greek islands are placed under restriction of freedom of movement decided the Head of the RIC during the registration phase, which lasts some days. After registration, the decision is revoked, but immediately replaced by a removal decision coupled with a pre-removal order issued by the Police Directorate. Both are then suspended by a postponement of deportation decision by the General Regional Police Director, who in turn orders individuals not to leave the island until the asylum procedure is finished. It is these successive mobility restrictions, which are imposed for reasons of imminent enforceability of exit, that the living conditions on the Greek islands have deteriorated (Greek Council for Refugees 2020; see also Pitsikos and Pallister-Wilkins 2020). From the beginning of 2020, the Greek authorities reimposed immediate detention in pre-removal detention facilities, except for unaccompanied minors. The further restrictions imposed during 2020 with reference to the covid-19 pandemic sparked desperation and the Moria camp was burned down, leading to massive re-displacement on the island of Lesvos. This once more revealed unsustainable conditions regarding food, water and sanitation, already pointed out by the Fundamental Rights Agency the year before (FRA 2019, p.7). Soon thereafter, a new Moria camp was erected.

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[59] The pre-removal facilities include: Amygdaleza (Attica), Tavros (Attica), Corinth (Peloponnese), Paranesti (Thrace), Xanthi (Thrace), Lesvos (Eastern Agean), Kos (Dodecanese), Samos (Eastern Agean). See Greek Council for Refugees. 2020. "Place of detention." Asylum in Europe. Available at: https://asylumineurope.org/reports/country/greece/detention-asylum-seekers/detention-conditions/place-detention/.

[60] Greek Council for Refugees. 2020. Reception and identification procedure. Greece. Asylum in Europe. Available at: https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/.

Migrants processed for exit operations from Greece are often collected from pre-removal facilities the day before the expulsion, and are transported on buses to the local police station and put into custody. Thereafter, people are brought to the airport for flight bound for Adana, or to the Mytilini Port, for ferry transport to Dikili in Turkey. Lesvos has functioned as a central transit node in the Greek exit system, as returnees are ferried to the island from other islands such as Chios, Kos, Leros, Samos or the Greek mainland, before onwards exit operations to Turkey. They are escorted on ferries or planes by Frontex Forced-Return Escorts and Greek police, and then handed over to Turkish officials (Greek Council for Refugees 2020).

The EU-Turkey border control deal has thus given rise to a fast-growing market for EU migration control such as identification, registration, detention, and return practices. Frontex contracts for exit operations played a key role in this partly marketized system. Our research shows that this happens in several ways.

First, the Agency issues tenders and contracts for the control equipment required to register migrants in the fast-track return system from the Greek hotspot facilities and to Turkey. For instance, in January 2016, Panou Electric Telecommunications Defence Equipment and Security was awarded a Frontex-contract of €56.500 for finger and palm print scanners. These facilitate Greek authorities ensuring that the biometric registration of the mixed migration flows, so that people´s information is entered into the Eurodac database. As Eurodac has been reconfigured towards exit purposes, thereby fusing entry and exit rationales, this illustrates how certain contracts in the EU migration governance cut across the distinction between entry and exit, constituting instead a continuum of migration control.

Second, besides contracts for such border control equipment, the Agency also receives donations for the material infrastructure from Member States, such as the Dutch Ministry of Justice and Safety which supplied the Hellenic Police and Coast Guard with six employees and two prisoner support busses on Lesvos in 2017.[61] Third, Frontex also systematically outsources transportation and deportation through buses and ferries to the local tourism sector. According to Deportation Monitoring Aegean, who requested documents via AsktheEU.org, Frontex chartered 77 ferries, 33 flights and 115 buses between 2016 and mid-2018, in order to conduct deportations from the Greek islands to Turkey.[62]

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[61] "Infrastructures of Deportations." Deportation Monitoring Aegean website. Available at: https://dm-aegean.bordermonitoring.eu/infrastructure-of-deportation/.

[62] "Deportation as a Business Model." Deportation Monitoring Aegean website. Available at: https://dm-aegean.bordermonitoring.eu/2018/10/20/deportation-as-a-business-model/.

Figure 36: Frontex exit contracts for passenger ferries, EU-Turkey returns

Some companies appear to have used this to position themselves to receive more such contracts. For example, Pan Tours was awarded €16.100 for "transportation services" from Kos on July 12, 2016 by buses and ferries. Four months later, the same company was awarded €620.000 for "temporary provision of transfer services by land and sea," and towards the end of the year Pan Tours, alongside Samwell Ltd and Sunrise Lines E.P.E. (Ltd) were on the receiving end of a three-lot Framework Contract (Frontex/OP/979/2016) for boat deportations from Lesvos, Chios and Kos,

worth €4.000.000.[63] Over the following years, the companies received several instalments covering the provision of local passenger ferries transporting people to Turkey. One of the contractors, Samwell Ltd. described a December 2018-operation in the following way: "*Our company has successfully transported refugees back to Turkey. With M/V Asim Kaptan we repatriated a number of refugees which were refused Political Asylum or they requested voluntariily to be repatriated. Operation was supervised by Frontex and Greek Police.*"[64]

Figure 37: photo of a 2018 ferry deportation via Asim Kaptan. Source: Samwell.com

Part of the contractual regimes underpinning Frontex´s involvement in the EU-Turkish exit operations was also the provision of busses to transport the returnees. Examples of these included, in 2016, three contracts each worth €150.000 for buses on Lesvos, Chios and Kos to the company Lesvorama. The following year, Frontex concluded similar contracts for bus transport of returnees on on islands like Leros and Lesvos, with local Greek companies, such as Primioum, Asvestas and Piccolo Shipping, who were paid a combined fee close to €170.000. As the range of actors came to include companies from the tourism sector, these Frontex contracts for ferry and bus transportation have therefore imbricated a series of local companies in the exit operations, but also imbricated Frontex in local Greek economies of migration control.

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[63] https://ted.europa.eu/udl?uri=TED:NOTICE:265067-2017:TEXT:EN:HTML&tabId=1

[64] Samwell Ltd. Website "News & Operations." Available at: https://www.samwell.com.cy/news-operations.
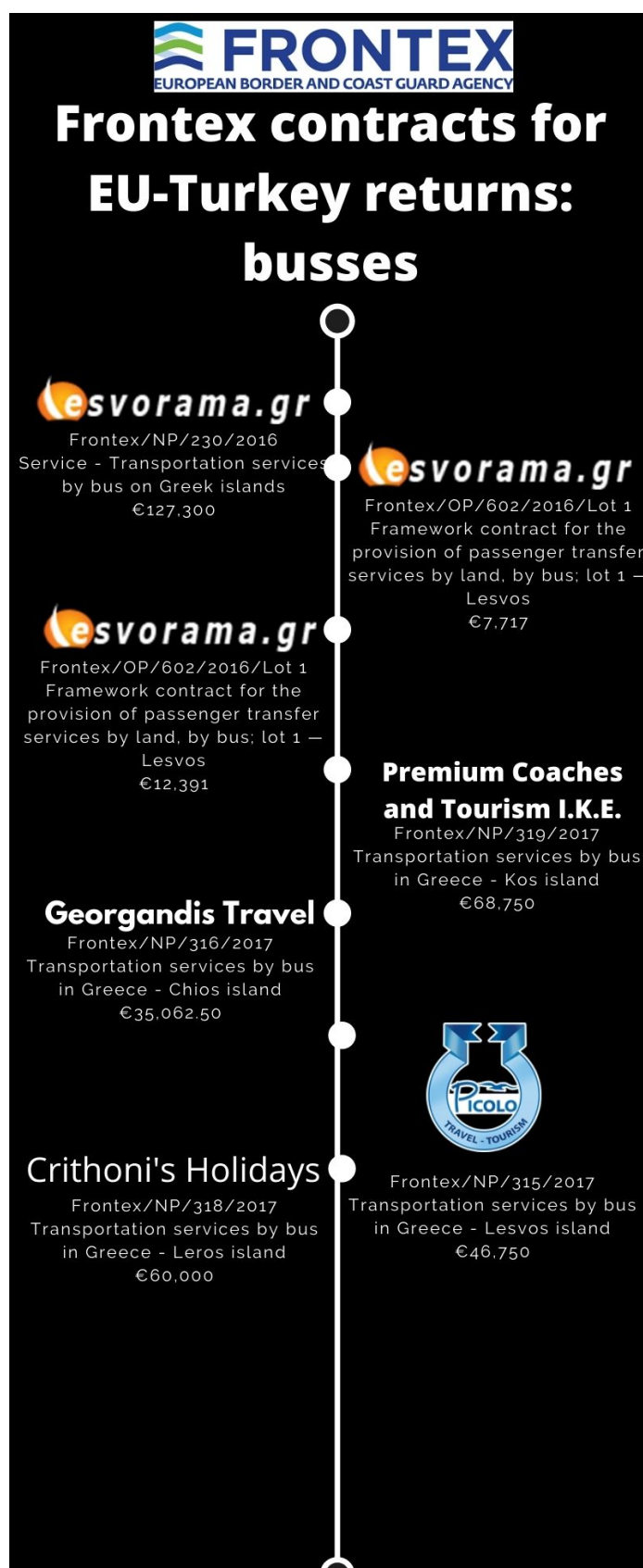
Figure 38: Frontex exit contracts for bus companies, EU-Turkey returns

The Greek exit control practices, which are part of the EU-Turkey deal have been financed via several EU instruments. The many Frontex contracts for exit control are therefore part of a larger policy drive that spans across the categorizations of entry and exit. From 2015-2020, the EU channelled €3,15 billion to migration management purposes in Greece, including €2,06 billion from the Asylum, Migration and Integration Fund (AMIF), €450 million from the Internal Security Fund (ISF) and €643,6 million from the Emergency Support Instrument (ESI). This included several projects from 2015-2018 also facilitated the upscaled exit structure on the Greek islands. Notably, out of the short-term funding, the vast majority was channelled to International Organizations (IOs) (AMIF: €1,18 billion and ISF: €17,5 million), instead of Greek national authorities (AMIF: €550,1 million and ISF €112,5 million) (European Commission 2021b).

For instance, in January 2016, the UNHCR was granted €75 million from AMIF, and €5 million from the ISF, for the project "Support to Greece for the development of the hotspot/relocation scheme, as well as for developing national asylum and reception capacities. The month after, EASO was awarded €1,12 million for the project "EASO emergency support in the Greek hotspots to strengthen fingerprinting capacity," while both the IOM (€1,5 million), and the Hellenic Police (€2,54 million) were granted AMIF funds for projects enacting the "Return of Third-country Nationals to their country of origin." Another AMIF project (HOME/2016/AMIF/AG/EMAS/0037) was awarded to EASO in May 2016. Worth €25 million, it was portrayed as

strengthening the Common European Asylum System and offering safe pathways, while also ensuring the "acceleration of the implementation of relocation to alleviate the heavy burden that presently weighs on Greece, in the context of fast-track returns to Turkey" (European Commission 2021b).

In general, the fusion of EU entry/exit governance observable in the Greek asylum system means that the exit regime co-shaped by Frontex suffers from systemic challenges with large effects for those residing in the system. Among these are "systemic delays" and "structural problems" in the Greek asylum system caused by, among other things, "a combination of insufficient planning, limited administrative capacity, coordination difficulties and procurement weaknesses" which result in "delays, which significantly affect the daily life of asylum applicants accommodated in the hotspots causing fundamental rights violations on a daily basis." (FRA 2019, p.7).

The Frontex involvement with commercial actors sketched above can be characterized as multisectoral markets for various technologies and enforcement activities related to exit governance. Due to this market´s multisectoral character, the contracts vary greatly in character and complexity when it comes to services supplied, their material scope, the companies involved as well as the political contexts, wherein these contracts are awarded and pursued. Some of these contracts also pertain to the information systems producing the categories and alerts, which feed into operational enforcement of exit policies. Moreover, as noted above, the line between entry and exit governance becomes decidedly blurred as the political economy of the market for both kinds of governance includes many of the same commercial actors, and technologies. Still, a specific focus on exit contracts is relevant, because it allows for analyses to detail how the both political and commercial interests intersect with highly controversial issues, such as pushback practices, the denial of access to asylum, and human rights violations, around which the multiple investigations of Frontex since 2020 revolve.

8. Conclusion

The AdMiGov-project is striving to help develop policy-oriented frameworks in the field of migration governance for the EU, and in Work Package 2, for exit policies. The normative and instrumental values underpinning this exercise include frameworks such as the 2015 Sustainable Development Goals, the 2016 New York Declaration, and the 2018 Global Compacts on, respectively, Migration and Refugees. Synthesizing these frameworks can be seen as leading towards a series of cross-cutting goals, or indicators, for successful migration governance. In this report, these have been seen as the fundamental rights and freedoms of migrants, and solutions which span both a short-, medium- and a long-term capacity to protect. This report is based on the assumption that the alignment of policy with indicators fulfilling such protection, requires awareness of the many different actors involved in Frontex exit governance, including commercial and civil society actors.

This report has therefore provided a detailed mapping of the multi-levelled governance dynamics through which the Frontex Agency interacts with non-state actors, ranging from commercial for-profit companies, over International Organizations and to NGOs, when it comes to EU exit policies. It is based on a methodology spanning document research, the construction of a database of the contractual relations and semi-structured interviews with actors involved in this landscape.

The Agency´s development from the 2004 to the 2019-Regulations represents a significant increase in the focus on exit policies, and on information systems designed to make such governance as efficient as possible. The funds made available for Frontex return operations today far supersedes the entire budget of the Agency in the first years of its existence. While the European Centre for Returns (ECRet) and its work on the operational, technical and financial support to Member States for the implementation of exit activities is lauded by Frontex itself, some national authorities report being overwhelmed by the insistence of Frontex upscale exit governance on the part of some national authorities, and seek to resist the similarly upscaled oversight and vulnerability assessment increasingly featuring in the Agency´s mandate.

When it comes to the Agency´s joint and national return operations from 2016-2018, a post-2018 shift away from unmonitored joint return operations is observable, although this should not be equated with an unproblematic *quality* of the resulting monitoring activities. Moreover, the existence of monitors drafted from the Pool of Monitors, even these come from state institutions as well as non-state actors, must also be seen as legitimizing the acceleration of a the politically dictated agenda of increasing the enforcement of returns. When it comes to the operational, geographic and temporal scales of these operations, distinct differences are observable between Member States, such as Germany, France and Italy, both pertaining to the presence of monitors, the volume of return flights. This holds also for the preferred destinations for return flights, where the Balkan region as a whole has emerged as the biggest recipient of exited people, after 2015. However, the process of the Eastern Partnership, in which Frontex is also gaining a more prominent role, shows how the push for accelerating exits towards the east, predates the long summer of migration in 2015.

Exit operations at land and sea borders in the Eastern Mediterranean, Balkans and Eastern Europe has led to controversy and criticism alleging Frontex involvement in pushback practices, and prompted a historic number of both internal and external investigations in the Frontex Agency, including from the Court of Auditors, the Ombudsman, the anti-corruption OLAF Agency, the European Parliament and the European Commission. As noted by the Frontex Consultative Forum on Fundamental Rights, this warrants examination of pushback practices as a form of return operations, and, more worryingly, asks questions about the extent to which Frontex is able to balance the political impetus for increased, and harsher, border control measures against the monitoring and reporting of the humanitarian consequences of these operations. While the political ambitions for Frontex data systems facilitating return have led to the creation of the Integrated Return Management Application (IRMA), the Frontex Application for Return (FAR) and the Joint Operations Reporting Application (JORA 2), these controversies illustrate how such systems cannot be assumed to safeguard the respect for fundamental human rights measured up against the desire for efficient exit policies.

The implementation of the political demands from the Commission to use the extraction, storage and processing of evermore disaggregated data about displaced populations in order to close the perceived gap between asylum and exit policies has many implications. Several interviewed interlocutors point out that the interconnectivity between a rising number of information systems leads to challenges regarding interoperability and data ethics. This is also illustrated by the recast proposals for the Eurodac, Schengen Information System and the Visa Information System as well as the envisioned Entry/Exit System and Common Identity Repository systems. Yet, the massive

expansion of data stored about non-European nationals does not seem to be accompanied by a similar attention to individuals´ privacy, and, as noted by the European Data Protection Supervisor, it is currently premised on a conflation of phenomena like migration management, internal security and the fight against terrorism. In this landscape of rapidly accelerating datafication of EU exit governance, it is noticeable that Frontex is gaining a more prominent role with respect to formulating and operationalizing EU visions of datafied migration control. This links to the ongoing repurposing of information systems towards exit. Moreover, underpinning this development is an observable tendency across many policy documents, whereby the existence of some databases, which make use of certain types of data, is used to justify the expansion of such uses to new systems, as well as a centralizaton of information flow. This amounts to a dangerously circular argumentation for evermore dataveillance of non-EU nationals for the purpose of return.

Like the Frontex Pool of Monitors, which was facilitated by the FreM I-III projects, and the Eastern Partnership, the creation and functioning of the Frontex Consultative Forum on Fundamental Rights demonstrates how the interactions of civil society organizations with Frontex must also be considered part of the multileveled EU exit governance. Yet, while the Agency itself is prone to highlight this relation as a deep-seated influence on its border work, several members of the Forum have been decidedly more critical, pointing to not being granted institutional gravity and voice, lacking transparency as well as an insufficiently funded Secretariat, which makes it difficult if not impossible for Members to fulfil the Forum´s stated mandate. If the small amount of released information is inversely proportional to the vast amount of information to be worked through regarding the working methods of the CF itself, this clearly hampers the necessary oversight of the Agency.

The rising Frontex involvement in the creation of various markets for exit operations can be traced from networking events, such as Industry Days and Workshops relating to exit technologies and practices, but also the Terms of Reference for research on border control technologies agreed upon in 2020 between Frontex and DG Home. Mapping the levels of state and non-state governance of EU exit policies shows a growing market European-wide contracts for scheduled and chartered airline returns. The series of Framework Contracts through which the exit provisions of the controversial EU-Turkey statement is being effectuated via local companies operating passenger ferries and busses is a recent and underexamined result of this tendency. Moreover, these must be seen in connection with the billions of euro channelled from EU financial instruments, such as the Asylum, Migration and Integration Fund, the Internal Security Fund and the Emergency Support Instrument.

From a vantage-point wherein a sustainable governance of exit from the EU is to be aligned with the respect of fundamental right, privacy, institutional oversight and transparency, the findings of this Deliverable illustrate how such an ambition faces considerable barriers. This includes the troubling pace with which the Frontex Agency has expanded in terms of budgets and operational capacity, since this has not been accompanied by sufficient monitoring and reporting capacities, or preferences for such. Moreover, the expansion of markets for entry and exit control illustrates how exit governance is increasingly guided by economic incentives to develop and receive contracts without similar resources being devoted to supervisory oversight, hampering the Union´s stated ambition of forward-looking and rights-respecting policies in this area.

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or a stateless person], for identifying an illegally staying third-country national or stateless
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