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EVALUATION

Accompanying the document

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the evaluation of Regulation (EU) 2019/1896 on the European Border and Coast
Guard, including a review of the Standing Corps**

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Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
ALDO	Advanced Level Document Officer
BMVI	Border Management and Visa Policy Instrument
CEPOL	European Union Agency for Law Enforcement Training
CF	Frontex's Consultative Forum on Fundamental Rights Matters
CIRAM	Common Integrated Risk Analysis Model
CSDP	Common Security and Defence Policy
CVAM	Common Vulnerability Assessment Methodology
DCAF	Geneva Centre for Security Sector Governance
DPO	Data Protection Officer
EBCG	European Border and Coast Guard
ECA	European Court of Auditors
ECRIS-TCN	European Criminal Records Information System – Third Country National
ED	Executive Director
EDPS	European Data Protection Supervisor
EEAS	European External Action Service
EES	Entry/Exit System
EFCA	European Fisheries Control Agency
EIBM	European Integrated Border Management
EMSA	European Maritime Safety Agency
EP	European Parliament
EPPO	European Public Prosecutor's Office
ETIAS	European Travel Information and Authorisation System
EUAA	European Union Agency for Asylum
Eu-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom

	Security and Justice
EURLO	European Return Liaison Officer
Eurodac	European Dactyloscopy database
EUROPOL	European Union Agency for Law Enforcement Cooperation
FADO	False and Authentic Documents Online
FAR	Frontex Application for Return
FRESO	Frontex Return Escort and Support Officer
FRA	Fundamental Rights Agency
FRM	Fundamental Rights Monitor
FRO	Fundamental Rights Officer
FSWG	Frontex Scrutiny Working Group
IAC	Internal Audit Capability
ICF study	Study to support the evaluation of the EBCG Regulation and review of the Standing Corps – Final report (2023)
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organisation
IPCR	Integrated Political Crisis Response
IRMA	Integrated Return Management Application
ISAA	Integrated Situation Awareness and Analysis on the Migration Refugee Situation
ISF	Internal Security Fund
ISG	Inter-Service Group
JO	Joint Operation
JRO	Joint Return Operation
JRS	Joint Integration Services
KPI	Key Performance Indicator
LIBE	European Parliament's Committee on Civil Liberties, Justice and Home Affairs

MARCOM	Allied Maritime Command
MB	Management Board
MFF	Multiannual Financial Framework
MS	Member State
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OLAF	European Anti-Fraud Office
RBI	Rapid Border Intervention
RCC	Rescue Coordination Centre
RECAMAS	Return Case Management System
SAC	Schengen Associated Countries
SAR	Search and Rescue
SatCen	EU Satellite Centre
SC	Standing Corps
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SCO	Standing Corps Officer
SIR	Serious Incident Report
SIS	Schengen Information System
SOP	Standard Operation Procedure
SPD	Single Programming Document
SRA	Strategic Risk Analysis
TEP	Technical Equipment Pool
TFEU	Treaty on the Functioning of the European Union
TO-EIBM	Technical and Operational Strategy on European Integrated Border Management
ToR	Terms of Reference
VIS	Visa Information System

WCO	World Customs Organisation
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1. INTRODUCTION

Purpose and scope of the evaluation

In late June 2022, the European Commission launched the evaluation of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard (EBCG Regulation)¹ to analyse its implementation according to the specific criteria set out in the Commission's Better Regulation Guidelines, namely effectiveness, efficiency, coherence, relevance and EU added value.² The evaluation also analyses the scope and content of the EBCG Regulation and the state of implementation of the Regulation's provisions. Beside the specific criteria listed above, the evaluation is subdivided in the following main thematic areas: coherence, governance and organisational structure, operations, return, situational awareness, capability development, cooperation with EU institutions, agencies, international organisations and third countries, fundamental rights, use of human and financial resources, costs and benefits generated by the EBCG Regulation, and the Standing Corps. The evaluation was in part informed by an external study³.

Article 121 of the EBCG Regulation requires the Commission to carry out an evaluation of the Regulation by 5 December 2023 and every four years thereafter. The Commission is also required to report to the European Parliament (EP), the Council and the Management Board (MB) of the European Border and Coast Guard Agency ('Frontex' or 'Agency') on the findings of the evaluation. Article 121 sets the scope of the evaluation⁴.

The EBCG Regulation also calls on the Commission to carry out a review of the Standing Corps (SC) created by the 2019 EBCG Regulation. The results of the review should be presented to the EP and to the Council by 31 December 2023. Article 59 sets the scope of the review⁵.

¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

² SWD(2021) 305.

³ ICF (2023). Evaluation of Regulation 2019/1896 on the EBCG, Final report.

⁴ Namely to assess, in particular: a) the results achieved by the Agency, having regard to its objectives, mandate, resources and tasks, b) the impact, effectiveness and efficiency of the Agency's performance and its working practices in relation to its objectives, mandate and tasks, c) inter-agency cooperation at EU level, including the implementation of European cooperation on coast guard functions, d) the possible need to modify the mandate of the Agency, e) the financial implications of any such modification, f) the functioning of the standing corps, g) the level of training, specialised expertise and professionalism of the standing corps.

⁵ The review should assess: a) the overall number and composition of the standing corps, b) the size of individual Member States' contributions to the standing corps, c) the expertise and professionalism of the standing corps and of the training it receives, and d) the necessity to maintain the reserve for rapid reaction as part of the standing corps.

The findings of the review are also included in this staff working document, as the SC forms an integral part of the EBCG.

The evaluation covers the implementation of the EBCG Regulation from its entry into force in December 2019 to October 2023⁶. A wide range of stakeholders were consulted as part of the evaluation both directly by the Commission⁷ and by the external contractor (ICF Consulting Services Limited – (ICF)) that carried out the study, including Member States, the EP, the European External Action Service (EEAS) and relevant EU agencies. A detailed description of the stakeholder consultation is presented in Annex I and in Annex V. In line with the Better Regulation Guidelines, an Inter-Service Group (ISG) was set up within the Commission to accompany the evaluation process.

The evaluation analyses whether the EBCG Regulation was successful in applying the effectiveness, efficiency, and coherence criteria. This part includes an analysis of the legal coherence and policy framework governing Frontex and the EBCG. The findings on effectiveness are divided into the key thematic areas.

Furthermore, the evaluation analyses the relevance and EU added value criteria, by assessing to what extent the new mandate of the Agency, introduced in 2019, has contributed to achieving the objectives of the EBCG as a whole, and to what extent it has supported Member States in implementing effective border management in full respect of fundamental rights and contributed to increase the efficiency of the Union's return policy. Additionally, this section evaluates whether the objectives of the EBCG could have been achieved sufficiently by Member States acting alone.

Finally, the evaluation looks at the relevance of the EBCG Regulation in the context of current and emerging needs and challenges at EU external borders. This includes assessing the relevance of the EBCG Regulation in terms of its overall scope and objectives, as well as the relevance of Frontex's tasks prescribed in the Regulation.

The external study was conducted through a mixed methods approach⁸ and was informed by the triangulation of a variety of sources. A range of methodological tools and techniques were used. For more details on the methodology please see Annex II.

The evaluation takes stock of the state of play in the implementation of the EBCG Regulation and identifies any inconsistencies in the legislative framework or gaps in the implementation, to feed into the future work of the Commission, Frontex, and Member States.

The limitation of this evaluation and of the review of the SC is that the implementation of the EBCG Regulation is still ongoing and will only be completed in 2027. Accordingly, the implementation of a number of key elements of the Regulation (e.g. integrated

⁶ It is to note that the external study covers the evaluation period from December 2019 to January 2023.

⁷ As required by Article 121(3) of the EBCG Regulation.

⁸ Data used for the study included information gathered via surveys, interviews and field visits which gives more usable and reliable information and a solid foundation to inform the study.

capability planning, the setting-up of the SC, European integrated border management (EIBM)) is a work in progress. While this situation does not call into question the validity of the findings presented in the document, it sets a clear limitation to the conclusions that can be drawn with respect to the need to propose changes to the legislation.

Finally, as the vast majority of the provisions of the EBCG Regulation regulate Frontex, this evaluation primarily focuses on analysing the functioning of, and the results achieved by, the Agency, including its objectives, mandate, resources, and tasks. At the same time, the evaluation also considers the EBCG as a whole, in particular in the context of EIBM and the cooperation between Member States and the Agency.

2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?

2.1 Description of the intervention and its objectives

Established by Council Regulation (EC) 2007/2004⁹, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – as it was called at the time - took up its responsibilities on 1 May 2005. The Agency was established to improve the integrated management of the external borders by facilitating and rendering more effective the application of existing and future Community measures relating to the management of external borders. The Regulation was amended in 2007 and in 2011. The 2016 EBCG Regulation¹⁰ repealed the 2007 Frontex Regulation. Two years after the entry into force of the 2016 Regulation, the Commission proposed a new Regulation to reinforce the Agency, which came into force on 4 December 2019 (current EBCG Regulation). It was adopted without conducting a prior impact assessment, largely due to the political expectation to prepare and adopt the proposal within a very short timeframe. The 2019 EBCG Regulation repealed the 2016 Regulation. Overall, the Agency progressively moved away from coordination and adopted a more operational role, eventually incorporating the EU's first uniformed service with executive powers, the Standing Corps.

The EBCG is composed of the Agency and of the national authorities of the Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as national authorities responsible for return. Member States have the primary responsibility for managing their sections of the external border and are responsible for issuing return decisions, while the Agency should

⁹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

¹⁰ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

support the Member States in applying EU measures relating to the management of the external borders and returns¹¹.

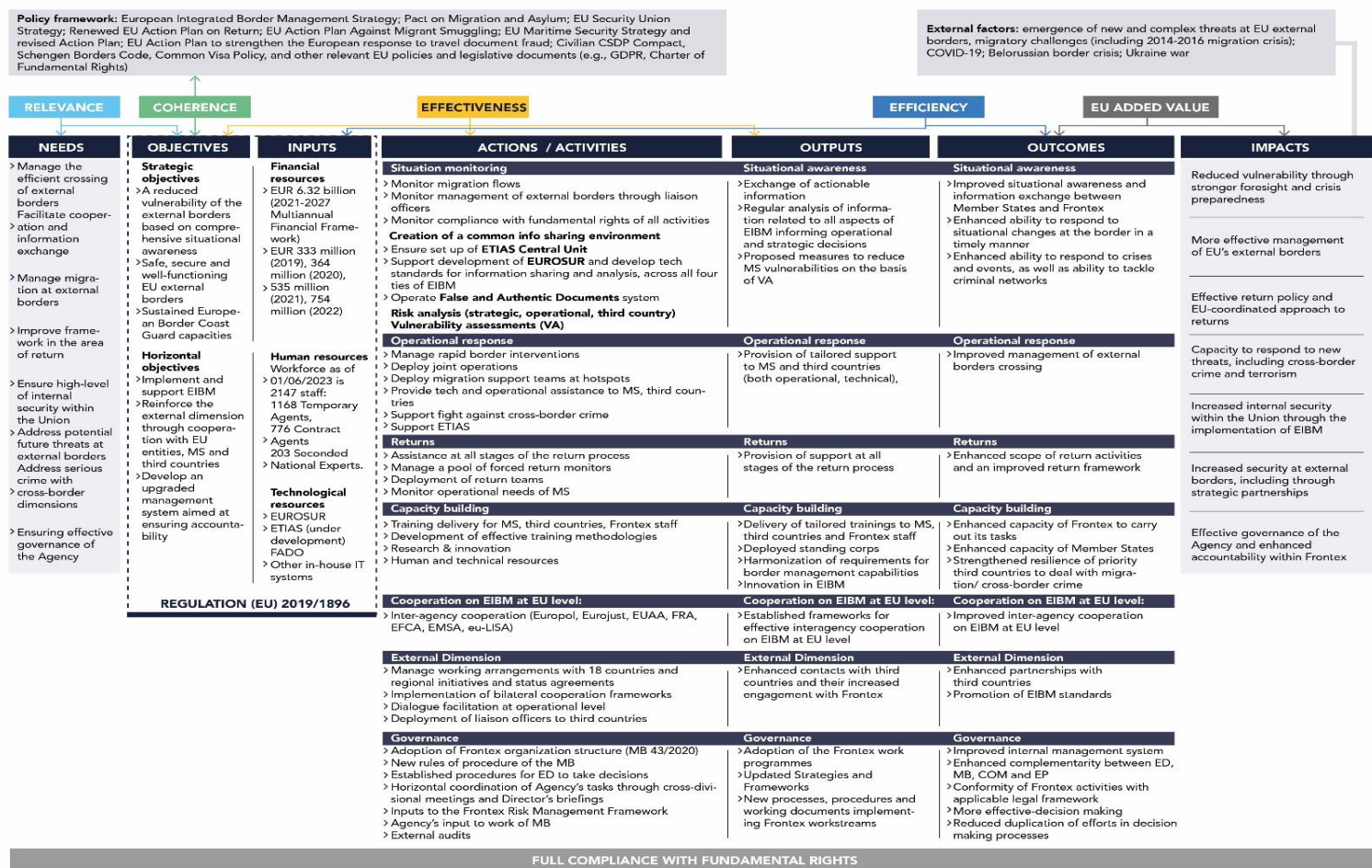
The EBCG Regulation's general objective was to address the need for a permanent and reliable solution, by providing the Agency with the necessary capabilities to support Member States in addressing migratory challenges and potential future threats at the EU's external borders and efficiently managing those borders, as well as to support returns in an effective manner. The Regulation significantly expanded the Agency's mandate, including by:

- Setting up the EBCG SC, comprising 10 000 staff, which is to be fully operational by 2027;
- Significantly increasing the Agency's budget to acquire, maintain and operate technical equipment (e.g. patrol cars, vessels);
- Laying down the basis for improved coordination processes and mechanisms between the Agency and national authorities;
- Scaling up the Agency's support in all phases of return procedures (pre-return, i.e. identification and acquisition of travel documents, return operations, voluntary returns, post-arrival and reintegration); and
- Strengthening cooperation with third countries, including through the deployment of the SC, exchange of information and facilitation in the field of returns;

The intervention logic below serves to depict the chain of expected effects associated with the EBCG Regulation, by identifying needs and objectives of the EBCG as well as input and actions to achieve the outputs, outcomes and impacts in line with the five evaluation criteria (relevance, coherence, effectiveness, efficiency and EU added value).

¹¹ Article 7 of the EBCG Regulation.

Figure 1: Intervention logic of the EBCG Regulation¹²



¹² ICF study (2023). Final report, p. 7.

2.2 Points of comparison

The 2016 EBCG Regulation was put in place in record time after the 2015 migration crisis. Yet, more remained to be done to ensure the effective control of the EU's external borders and the effective return of third-country nationals with no right to stay in the EU, as part of a comprehensive approach to migration. Therefore, it was imperative that the EBCG could fully respond to the level of ambition and needs of the EU to effectively protect the external borders and meet future challenges.

In its June 2018 conclusions¹³, the European Council confirmed the need for a more effective control of the EU's external borders by further strengthening the supporting role of Frontex, including its cooperation with third countries, through increased resources and an enhanced mandate.

Moreover, the EP's resolution of 30 May 2018 on the annual report on the functioning of the Schengen area¹⁴ insisted on the need for a prompt introduction of the fully fledged EIBM strategy, a technical and operational strategy by the Agency, and subsequently also national strategies by the Member States.

Responding to these calls, the Commission's 2018 proposal for a new EBCG Regulation promoted substantial changes to the EBCG, in particular to provide the Agency with its own operational arm: a EBCG SC of 10 000 operational staff with executive powers to effectively support Member States on the ground.

Consequently, the functioning of the EBCG and, more importantly, the way strategic priorities for the EIBM were set, needed to be adapted. The proposed EBCG Regulation introduced a new political steering of European integrated border management by establishing a multiannual policy cycle, bringing together European and national integrated border management strategies.

Furthermore, the proposal also aimed to improve the capability to exchange information and support Member States in the area of return to increase the efficiency of returns and achieve a more effective and coherent European return policy. In September 2018, the Commission adopted a legislative proposal for a targeted review of the Return Directive, which aims at reducing the obstacles to return and making return procedures more effective, while respecting the rights of the irregular migrants. In this context, the proposed changes to the EBCG Regulation further expanded the scope of operational assistance to be provided by the Agency to the Member States.

¹³ <https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/>

¹⁴ European Parliament resolution of 30 May 2018 on the annual report on the functioning of the Schengen area (OJ C 76, 9.3.2020, p. 106).

Cooperation with third countries is another key element of EIBM. The 2018 proposal aimed to reinforce the cooperation of the Agency with third countries, with the aim of promoting EIBM and return standards, to exchange information and risk analysis, to facilitate the implementation of returns with a view to increasing return efficiency, and to support third countries in the area of border management and migration.

The above-mentioned elements all aimed to reinforce EIBM, so as to enable the EBCG to act as a genuine border authority to ensure the protection of EU external borders, to effectively manage migratory flows, as well as to contribute to guarantee a high level of security within the Union - a key condition to preserve the Schengen area¹⁵.

3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?

Current state of play

The 2019 Regulation introduced major changes, including giving significant new tasks to the Agency. To steer the implementation and the rapid operationalisation of the Regulation, the Agency and the Commission developed an implementation roadmap to better monitor progress. In November 2022, a new version of the roadmap was presented to the MB of Frontex. It aims to track the progress of implementation in the coming years.

Nevertheless, in December 2023, the implementation of the Regulation is still work in progress.

While the setting up of the Standing Corps was always meant to be completed only in 2027, a number of external and internal factors have impacted also other parts of the implementation of the Regulation during the evaluation period:

External factors: The Covid-19 pandemic in 2020-2021 led to restrictions on global travel and resulted in delays in the recruitment of SC staff, as well as cancellations or delays of Frontex activities in 2020 and 2021. At the same time, the closure of international borders and travel restrictions as a result of the pandemic resulted in a reduced pressure from irregular migration at the external borders, which eventually resulted in a reduced need for Frontex support to Member States.

In 2020 and 2021, certain third countries engaged in attempts to instrumentalise migration for political purposes, creating a new demand for increased deployments at the EU's Eastern land borders. The pressure on the Eastern borders grew with the full-scale aggression of the Russian Federation towards Ukraine in 2022, which created an unprecedented mass influx of people fleeing the war into the EU¹⁶.

¹⁵ COM(2018) 631 final, p. 1.

¹⁶ Between 24 February 2022 and 3 September 2023, over 25.6 million entries were recorded from Ukraine and Moldova into the EU, including nearly 22.2 million entries by Ukrainian nationals. The number of exits by Ukrainian nationals (including exits to Moldova) was nearly 19.4 million. As of 5 September, the estimate number of active registrations for temporary protection in Member States is

In 2022 and 2023, an increase of irregular border crossings towards the EU increased again via the Western Balkan states as well as throughout the Mediterranean region¹⁷.

Further, the implementation of the Regulation is taking place in an evolving policy and legal environment, with the ongoing reform of the Schengen Borders Code¹⁸, changes to (or developments of) new border information technology systems such as the Schengen Information System (SIS), the European Travel Information and Authorisation System (ETIAS)¹⁹, the Entry/Exit System (EES)²⁰, and interoperability between the different EU systems²¹. Frontex has an important role to play in the implementation and/or use of these systems.

Finally, media scrutiny and criticism from civil society intensified during the evaluation period which made the Agency take a more open and transparent approach in its communication towards the public.

Internal factors: The evaluation period was also marked by significant turmoil for the Agency itself, with an investigation by the European Anti-Fraud Office (OLAF) that led to the resignation of the Agency's former Executive Director (ED) in 2022. The Agency was under interim management until the appointment of the new ED, who took office on 1 March 2023. During the interim period, the MB met every month to advise, facilitate and monitor the work of the Agency's senior management.

4 005 711, according to the data uploaded on the Temporary Protection Platform and channeled via the Blueprint Network. *(Please, note that the figures on entries and exits refer to the number of cross-border movements and not single individuals. One person could enter and exit the EU several times. The number of active Temporary Protection registrations is a good proxy indicator of the influx of people fleeing the war in Ukraine into the EU so far).*

¹⁷ In 2022, there were 331 433 illegal border crossings registered, and in 2023 the number is 175 623 as of July 2023.

¹⁸ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

¹⁹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

²⁰ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 20 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

²¹ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, EU 2018/1240, (EU) 2018/1726 and EU 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p 27) and Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

Currently, the state of play of the implementation of key areas of the EBCG Regulation is the following:

Governance and organisational structure the Agency

In 2022, the Agency adopted a revised, expanded organisational structure (nine Divisions) to take account of its enhanced mandate²². In November 2023, after intensive discussions, the new organisational structure was approved by the Management Board to better reflect the core mandate and needs of the Agency, especially in the management of the SC.

In line with the EBCG Regulation, in 2021, the management structure of the Agency was expanded from one to three Deputy Executive Directors, with specific thematic portfolios. The new ED of Frontex was appointed by the MB on 20 December 2022 and took office on 1 March 2023.

Operations

As part of its main mandate under the Regulation, during the evaluation period, Frontex carried out joint operations and rapid border interventions, providing continuous technical and operational assistance to Member States²³. Overall, 15 joint operations took place in 2020, 19 in 2021 and 20 in 2022, with the majority being maritime joint operations²⁴. In 2023, the Agency has launched 24 joint operations. Based on the results of the stakeholder consultation conducted by ICF, the evaluation found that the Agency's extensive support enabled Member States and partner third countries (under status agreements) to draw on additional human resources and technical equipment when needed. Frontex has also a role in the development of European standards related to technical and operational aspects of border management and return, for example especially in terms of border surveillance. A concrete example of promoting the harmonisation is development of handbooks²⁵.

Return

Frontex is tasked by the EBCG Regulation with assisting Member States in implementing return of third-country nationals with no legal right to stay in the EU. Frontex offers support to Member States in all phases of the return process and coordinates return operations at a technical and operational level, including voluntary returns. The Agency has further developed its capacity to organise Frontex-led return operations to further relieve the Member States from some of the organisational burden.

²² Management Board Decision 46/2022 of 13 August 2022 amending Management Board Decision 43/2020 on the Agency's amended organisational structure.

²³ Articles 37-38 of the EBCG Regulation.

²⁴ Frontex (2020-2022). 'Consolidated Annual Activity Reports'.

²⁵ For example, VEGA-Handbooks provide guidelines on how to deal with children as a vulnerable group at border crossing points.

The EBCG Regulation reinforced cooperation with third countries through exchange of information and facilitation of returns.

In 2022, for the first time, the Agency carried out two end-to-end return operations to Albania and Nigeria entirely organised by Frontex, using charter flights. A third operation was organised in March 2023 to Bangladesh. In 2022, Frontex recorded a 36% increase in the total number of people returned, compared to 2021, including a steadily increasing share of voluntary returns.

IT tools have been developed to enhance cooperation and coordination between national return-enforcing authorities, such as the Integrated Return Management Application (IRMA) for return-related operational data collection and Frontex Application for Return (FAR) a tool that allows the Agency and Member States to organise and coordinate forced return operations (scheduled and chartered), as well as a platform where Member States can request technical assistance for voluntary returns/departures. To build capacity in Member States for an end-to-end digitalisation of the return process, the Agency developed RECAMAS, a reference model for an IT return case management system to be used by Member States to align their national IT systems.

European Integrated Border Management

The multiannual strategic policy cycle for EIBM²⁶ was finalised with the adoption of the Commission's Communication of 14 March 2023²⁷. On that basis, Frontex, in close cooperation with the Member States and Commission, prepared the new Technical and Operational Strategy for EIBM (TO-EIBM) that was adopted by the MB on 20 September 2023²⁸.

In parallel, Member States are working on aligning their national strategies for EIBM, to implement the multiannual strategic policy. Member States have until the end of the first quarter of 2024 to align their national EIBM strategies with the European framework. The national strategies and the actual implementation will be evaluated by the Schengen evaluation and monitoring mechanism. The Commission is required to evaluate the implementation of the EIBM multiannual strategic policy four years after its adoption.

Capability development

The Agency expanded its capability development activities, with respect to human and technical resources, over the course of 2020-2023. Most targets for training activities were met across 2020-2023.

²⁶ Article 8 of the EBCG Regulation.

²⁷ European Commission (2023). 'Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final.

²⁸ Management Board Decision 30/2023 of 20 September 2023 adopting the Technical and Operational Strategy for European Integrated Border Management 2023-2027.

The Technical Equipment Pool (TEP)²⁹ grew from 1 245 items in 2020 to 3 623 items in July 2023. Frontex also deployed major, light, and portable equipment to existing joint operations, including in response to the full-scale invasion of Ukraine by the Russian Federation.

On research and innovation, technical standards for maritime, aerial, land border surveillance, and document inspection equipment were adopted³⁰.

In the context of integrated planning³¹, by October 2023, all but one of the Member States and Schengen Associated Countries submitted their national capability development plans to Frontex³². The multiannual plan for profiles of the SC was adopted in 2023 by the MB³³. The multiannual acquisition strategy and its implementation plan were adopted in September 2023³⁴.

Based on these elements, Frontex is yet to develop the capability roadmap that is to provide a sound foundation for the Agency to guide the development of the EBCG's capabilities.

Situational awareness

The Agency conducted its regular situational awareness activities³⁵, including providing regular risk analysis products, carrying out vulnerability assessments, and facilitating information exchange in the framework of EUROSUR. In April 2021, the European Commission adopted an Implementing Regulation on the situational pictures of EUROSUR³⁶.

The Agency has been working closely with the Member State authorities and with third countries in relation to risk analysis. It also contributed to EU mechanisms such as the Migration Preparedness and Crisis Blueprint and the Integrated Political Crisis Response.

In line with the EBCG Regulation, Frontex developed two Strategic Risk Analyses (SRA) in 2020 and 2022. The 2022 SRA³⁷ provided the basis for the Commission Communication on the multiannual strategic policy for EIBM. Frontex and the European

²⁹ Article 64 of the EBCG Regulation.

³⁰ Management Board Decision 51/2021 of 21 September 2021 adopting technical standards for the equipment to be deployed in Frontex activities, and Management Board Decision 36/2022 of 28 June 2022 adopting the methodology for development of technical standards for the equipment to be deployed in Frontex activities.

³¹ Article 9 of the EBCG Regulation.

³² Following Management Board Decision 2/2021 of 15 January 2021 adopting the methodology and the procedure for establishing the national capability development plans.

³³ Management Board Decision 11/2023 of 22 March 2023 adopting the European Border and Coast Guard Standing Corps annual planning for 2024 and indicative multiannual planning of profiles.

³⁴ Management Board Decision 28/2023 of 15 September 2023 adopting the Multiannual Strategy for the Acquisition and Management of the Agency's Equipment.

³⁵ Articles 24 to 29 of the EBCG Regulation.

³⁶ Commission Implementing Regulation (EU) 2021/581 of 9 April 2021 on the situational pictures of the European Border Surveillance System (EUROSUR) (C/2021/2361, OJ L 124, 12.4.2021, p. 3).

³⁷ Frontex (2022). 'Strategic Risk Analysis 2022-2032'.

Cooperation

The Commission also adopted a model for Frontex working arrangements in December 2021⁴⁵. However, the Commission is in consultation with the European Data Protection Supervisor (EDPS) on revising the data protection modalities of the model working arrangement, which will allow Frontex to conclude new working arrangements with third countries. Until this consultation is finalised, Frontex continues to cooperate with third countries under existing working arrangements (aligned with the 2016 EBCG Regulation).

Fundamental rights

³⁸ Article 33 of the EBCG Regulation.

39 Article 73 of the EBCG Regulation.

⁴⁰ European Commission (2021). ‘Communication from the Commission to the European Parliament and the Council on the model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624’. COM(2021) 829 final.

⁴¹ Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia (OJ L 61, 27.2.2023, p. 3).

⁴² Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova (OJ L 91, 18.3.2022, p. 4)

⁴³ Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro (OJ L 140, 30.5.2023, p. 4)

⁴⁴ Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania. Available at: [GEN \(europa.eu\)](http://europa.eu)

⁴⁵ European Commission (2021). ‘Communication from the Commission to the European Parliament and the Council: Model working arrangement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624’. COM(2021) 830 final.

46 Article 68 of the EBCG Regulation.

⁴⁷ Article 3(2) of the EBCG Regulation.

impact on fundamental rights, including on absolute rights such as the right to life, the prohibition of torture and other forms of ill-treatment, and the principle of *non-refoulement*. The fundamental rights safeguards included in the EBCG Regulation and, more generally, in applicable EU law relating to border management aim to ensure that all activities are performed with respect to fundamental rights, in conformity with the EU Charter on Fundamental Rights. Furthermore, Frontex is also tasked with promoting the application of the Union *acquis* in the area of border management, including the respect for fundamental rights⁴⁸.

The EBCG Regulation strengthened fundamental rights safeguards in the EBCG. In particular, the tasks of the FRO were extended, and FRMs were introduced to provide a continuous assessments of the Agency's fundamental rights compliance in operational activities. To implement the legislative framework, in 2021 the Agency updated the Fundamental Rights Strategy⁴⁹ and adopted the Action Plan for its implementation⁵⁰. To enhance the position of the FRO, MB Decision 6/2021⁵¹ was adopted on the independence of the FRO, as well as MB Decision 43/2022⁵², which lays down the procedures and timelines for the ED and MB to act on the recommendations of the FRO and CF.

The EBCG Regulation provides for the recruitment of at least 40 FRMs by December 2020. After initial delays, the Agency completed the recruitment of in total 46 FRMs in 2022. To guarantee effective monitoring, the ED adopted the Standard Operating Procedure (SOP) for FRMs⁵³ in 2023. The SOP aims to clarify the scope of monitoring and reinforces the FRMs' right to access all areas of operational activity of the Agency, including land and sea patrolling, as well as to participate in debriefing interviews with migrants. The Agency also increased the monitoring of forced-return operations through the pool of forced-return monitors, which includes a number of the FRMs.

The Agency has also adopted implementing rules and procedures to enhance the functioning of its reporting mechanisms (Serious Incident Report (SIR) mechanism⁵⁴, complaints mechanism⁵⁵, and supervisory mechanism on the use of force⁵⁶).

⁴⁸ Article 10(1)(af) of the EBCG Regulation.

⁴⁹ Frontex (2021). 'Fundamental Rights Strategy'.

⁵⁰ Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

⁵¹ Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff.

⁵² Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

⁵³ Frontex (2023). 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FRMs) in Frontex operational activities'. Internal document.

⁵⁴ Frontex (2021). Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

⁵⁵ Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

⁵⁶ Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border

Finally, the Agency has worked to increase the transparency of the procedure to trigger Article 46 of the EBCG Regulation, which concerns the decision to withdraw financing, or not to launch, suspend or terminate the Agency's activities in a host country. To this end, the Agency has adopted the Standard Operating Procedures (SOP)⁵⁷ to clarify roles and responsibilities within the Agency to support the decision-making process of the ED in such cases.

Data protection

On data protection, to implement the requirements of the EBCG Regulation and of Regulation 2018/1725 (EU DPR), the MB adopted MB Decision 68/2021⁵⁸, and MB Decision 69/2021⁵⁹. However, these were under revision to respond to the critical opinions issued by the EDPS. Following the approval by the MB of the revised decisions, the Agency will need to implement them fully across all its operations and activities.

Standing Corps

One of the most important innovations introduced by the 2019 EBCG Regulation was the establishment of the EBCG SC⁶⁰. The SC was established to improve the integrated management of the EU's external borders. It incorporates four categories of staff⁶¹.

During the evaluation period, the Agency was operationalising the SC in line with the ambitious timeframe set by the co-legislators, despite an initial delay caused in part by the Covid-19 pandemic and its impact on recruitments and training. Nevertheless, Frontex has progressed with the establishment of the SC and has by now almost caught up with the delay incurred.

Thus, Category 1 staff increased from 495 in 2021 to 970 as of beginning of September 2023, and Category 2 from 347 in 2021 to 450 as of beginning of September 2023^{62,63}. Most of the Categories 2 and 3 of the SC are, respectively, seconded or nominated by

and Coast Guard Standing Corps, 2021; Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps.

⁵⁷ Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.

⁵⁷ Decision of the Executive Director – Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not to launch Frontex activities.

⁵⁸ Management Board Decision 68/2021 of 21 December 2021 adopting the rules on processing personal data by the Agency.

⁵⁹ Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

⁶⁰ Articles 54 to 58 of the EBCG Regulation.

⁶¹ Category 1: statutory staff of Frontex deployed as members of the teams, Category 2: staff seconded from Member States to the Agency for long-term deployment, Category 3: staff from Member States who are ready to be provided to the Agency for short-term deployment, Category 4: the reserve for rapid reaction consisting of staff from Member States.

⁶² The required capacity of the SC per year and category is set in Annex I of the EBCG Regulation. It has to reach its full capacity by 2027.

⁶³ Data from Frontex report on capabilities to the Management Board, 5.9.2023.

national authorities with law enforcement and border management tasks or with immigration and return duties.

4. EVALUATION FINDINGS (ANALYTICAL PART)

4.1. To what extent was the intervention successful and why?

Due to the vast amount of data collected and analysed, the different criteria are elaborated separately below.

4.1.1. Coherence

The coherence assessment focuses on the internal and external coherence of the EBCG Regulation. It also considers the Regulation's coherence with the relevant policy framework⁶⁴.

Internal coherence

Key evaluation findings

Overall, the provisions of the EBCG Regulation are coherent with one another. However, the following weaknesses affect the Regulation's internal coherence and could be improved:

- The lack of a clear definition of the objectives of the Regulation;*
- In the context of shared responsibility, uncertainties as regards the allocation of responsibility between Frontex and national authorities during joint operations;*
- the vagueness of certain provisions on the use of force and personal data protection, and*
- the lack of clarity and uniform application of definitions on various return related concepts and activities, such as voluntary return and voluntary departure.*

The **objectives** of the Regulation are broadly defined in recital 120 and Article 1. However, the Regulation does not create a clear link between its objectives and the activities of the Agency, nor does it clearly define the objectives of the SC^{65,66}.

Article 4 of the EBCG Regulation defines the EBCG as a body comprising both the relevant Member States' authorities responsible for border management, including coast guards to the extent they carry out border control tasks, national authorities responsible for return and Frontex. However, the regulatory provisions focus primarily on Frontex. Frontex is to implement EIBM as a **shared responsibility** with national authorities⁶⁷, in practice shared responsibility makes it difficult to establish accountability in situations

⁶⁴ The detailed findings are presented in section 4 (evaluation questions (EQ) 24-28) of Annex IIIa.

⁶⁵ Articles 5 and 54 of the EBCG Regulation.

⁶⁶ ICF study (2023), p. 15.

⁶⁷ Article 7 of the EBCG Regulation.

where both Frontex and national authorities are involved in an operation⁶⁸, including in third countries. In addition, during joint operations, various local authorities may be present in areas where Frontex operations take place, being subject to different jurisdictions and obligations. Frontex's operational staff is under the tactical command and control of the host State, yet both Frontex and national operational staff are also responsible under EU law and international law, including on fundamental rights⁶⁹.

The regulation of the **use of force** is not sufficiently clear in Article 82 and Annex V of the EBCG Regulation. In defining 'force', the provisions do not clarify the meaning of 'the use of any instruments' when resorting to force⁷⁰. Annex V provides general principles governing the 'use of force and weapons and general practical rules on the 'use of force, weapons, ammunition and equipment' during operations and related activities. However, it is not clear whether the principles of using force, control, and authorisation are applicable to all means of force. The use of force and the circumstances in which it is allowed also depend on the national law of the host Member State and are further defined in the relevant operational plans⁷¹.

On **personal data protection**, while the Agency is bound by Regulation (EU) 2018/1725 (EU DPR)⁷², Articles 86 to 91 of the EBCG Regulation set specific rules applicable to the EBCG. The analysis found that the EBCG Regulation is not always sufficiently detailed, including on the allocation of responsibilities between the Agency and Member States. Moreover, it leaves a wide margin of interpretation of some provisions (e.g. risk analysis, EUROSUR). Furthermore, while Frontex deems some of these constraints on processing the operational personal data in the EBCG Regulation too restrictive, the limitations have a clear purpose to ensure that data is processed only within the Agency's legal mandate⁷³. In 2021, the Agency adopted implementing rules⁷⁴ on the data protection provision of the EBCG Regulation. However, the EDPS issued opinions on both sets of rules, which was the reason for the Agency to revise them. On the basis of the drafts provided by the Frontex DPO, the Management Board adopted the two decisions in early 2024. With the

⁶⁸ Gkliati, M. (2022). 'The next phase of the European Border and Coast Guard: responsibility for returns and push-backs in Hungary and Greece'. European Papers; Fink, M. (2020). 'Frontex: Human rights responsibility and access to justice'. Karamanidou, L. and Kasperek, B. (2020). 'Fundamental rights, accountability and transparency in European Governance of Migration: the case of the European Border and Coast Guard Agency'. Working Papers.

⁶⁹ ICF study (2023), p. 15.

⁷⁰ Annex V to the EBCG Regulation: 'For the purposes of this Regulation, 'use of force' refers to recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment [...]'.
⁷¹ The detailed findings are presented in section 4 (EQ 27) of Annex IIIa.

⁷² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁷³ The detailed findings are presented in section 4 (EQ 27) of Annex IIIa.

⁷⁴ Management Board Decision 68/2021 of 21 December 2021 adopting the rules on the processing of personal data by Frontex and Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

recent adoption of the two revised MB decisions⁷⁵, as well as their subsequent implementation by the Agency, any further assessment of the need to modify the data protection provisions of the EBCG Regulation would be premature.

On the definition of return-related activities, while the definition of return in the EBCG Regulation is broad and refers to the entire return process, a clearer definition of relevant ‘return’-related concepts (e.g. ‘voluntary return’ and ‘voluntary departure’) would help facilitate implementation and operational application of the mandate on return.

According to Article 10(ac) of the Regulation, Frontex is to provide the necessary assistance for the deployment of a common information-sharing environment, including interoperability of systems, as appropriate. However, in the course of developing prototypes of IT tools to assist Member States in border management activities, it has been noted that the legal framework does not enable the Agency to maintain such information-sharing environments once they have been developed.

External coherence

Key evaluation findings

The EBCG Regulation is coherent with other EU-level legislative instruments.⁷⁶ However, the analysis revealed that:

- pre-existing legal instruments (such as Regulation 656/2014⁷⁷) do not entirely reflect Frontex’s extended mandate on search and rescue (SAR), and clearer definitions on various return related concepts and activities, such as voluntary return and voluntary departure, beyond the definition of return in Article 3(3) of the Return Directive would facilitate the operational application of the mandate in the area of return.*
- certain provisions of the EU Staff Regulations⁷⁸ are not suited to the statutory staff (Category 1) of the SC that carries out an operational, uniformed service with executive powers.*

Regulation 656/2014, as it was adopted before the EBCG Regulation, does not capture Frontex’s expanded mandate in SAR under the current EBCG Regulation. Article 10(i) requires Frontex to provide technical and operational assistance to Member States and third countries [...], in support of SAR operations for persons in distress at sea, which may arise during border surveillance operations at sea. However, Frontex cannot conduct

⁷⁵ ICF study (2023), pp. 24 to 28.

⁷⁶ For further detail, please see also section 4.1.2.6.

⁷⁷ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

⁷⁸ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385).

SAR operations independently or without the coordination of a national Rescue Coordination Centre (RCC). This gap has an impact on the ability to delineate accountability between Frontex and Member States (see also ‘internal coherence’), in particular in any case where the national RCC may decide not to initiate SAR.

While there is no incoherence between the EBCG Regulation and the **Return Directive**, the term ‘assisted voluntary return’ was introduced in the EBCG Regulation without being defined⁷⁹. The implementation of Frontex’s mandate on return could be facilitated by some additional clarity in this respect.

The **Schengen Borders Code**⁸⁰ and the reformed **Schengen Evaluation Regulation**⁸¹ were found to be coherent with the EBCG Regulation.

The EBCG Regulation and the internal framework set by MB Decision 25/2016 are in line with **Regulation (EC) 1049/2001 on public access to documents**⁸² although the European Ombudsman reported that in several cases the Agency did not follow up on some of the requirements, somewhat limiting transparency and access to documents⁸³.

Three **large-scale IT systems** are in place to manage external borders, the SIS, Eurodac, and the VIS, while three other systems are under development – the EES, ETIAS, and the European Criminal Records Information System (ECRIS-TCN). Furthermore, EUROSUR provides a framework for information exchange and cooperation between Member States and Frontex to improve situational awareness and increase reaction capability at the external borders⁸⁴. While there is no inconsistency within the legislative framework, during the consultations, it was highlighted that access to the information systems is usually provided in the national language of the Member States, adding a practical obstacle for the SC members (including those from other Member States) to access the systems in the host Member State. Frontex is developing its own access to SIS, and, in the case of ETIAS, the Agency will have its own case management system.

According to Articles 2(15) and 54 of the EBCG Regulation, the Agency’s statutory staff, including Category 1 SC staff, is subject to the **EU Staff Regulations**. SC staff seconded by Member States (Categories 2 and 3) are typically subject to a specific legal

⁷⁹ The need to have a clear definition of voluntary return as also highlighted by FRA in its contribution to the Commissions evaluation of the EBCG Regulation, p. 19.

⁸⁰ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (OJ L 77, 23.3.2016, p. 1).

⁸¹ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).

⁸² Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁸³ European Ombudsman (2021). ‘Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities’.

⁸⁴ Article 10(1)(ab) of the EBCG Regulation states that Frontex establishes, develops and operates information systems that enable swift and reliable exchanges of information on emerging risks in the management of the external borders, illegal immigration and return.

regime created for law enforcement authorities. For Category 1 staff, however, some aspects of working conditions, such as working time, shift work and stand-by patterns, and related allowance entitlements, ranks and reclassification, specific deployment rules, disciplinary measures, (early) retirement, are governed by the Staff Regulations and the Conditions of Employment of Other Servants, or their implementing rules, which are not adjusted to or do not necessarily take sufficiently into account the specific nature of duties and operational activities performed by the SC.

While the application of the EU Staff Regulations to Category 1 SC staff is indeed not entirely adequate for staff carrying out border guards tasks, the evaluation finds that the majority of those challenges, with the most relevant exception of the possibility of early retirement, e.g. allowing shift work or stand-by, issues related to sick leave, specific deployment rules, could be resolved with the adoption of new or amendment of existing implementing rules by the Commission and/or by the MB, in line with Article 110 of the Staff Regulations.

In addition, while Category 1 staff should be able to carry out the same tasks as national border guards, including the use of firearms, this aspect of the Regulation does not appear to be properly implemented in some Member States that have not aligned the rights of Category 1 staff to those of their national border guards. However, this issue does not derive from EU legislation but from the incomplete implementation of the Regulation by those Member States.

Finally, The EBCG Regulation is coherent⁸⁵ with the **Common Approach to Decentralised Agencies**⁸⁶.

4.1.2. Effectiveness

4.1.2.1 Governance and organisational structure of Frontex

Key evaluation findings

Frontex's governance as defined in the legislation is effective, the roles of the MB and of the ED are clearly differentiated. However, return is not yet fully integrated into the current MB structure, with limited representation of return authorities.

Oversight by the Commission and EP are adequate, but the Parliament could make use of Article 112 and engage national parliaments.

Internal oversight structures have sufficient independence (Fundamental Rights Office, Data Protection Office, Internal Audit Capability (IAC)) but still need time to build their capacity and powers to exercise their roles in full.

⁸⁵ The only notable divergence is that the Common Approach provides that the management boards of decentralised agencies should include 'where appropriate', a member designated by the EP, which is not provided in Article 101 of the EBCG Regulation. However, a representative of the EP is invited to every MB meeting (Article 104 of the EBCG Regulation).

⁸⁶ Council of the EU (2012). 'Joint Statement of the European Parliament, the Council of the EU and the European Commission on Decentralised Agencies and Common Approach on Decentralised Agencies. The Joint Statement and the Common Approach on Decentralised Agencies has legally non-binding character'. Available at: <https://data.consilium.europa.eu/doc/document/ST-11450-2012-INIT/EN/pdf>.

Frontex's organisational structure has expanded to incorporate the Agency's new responsibilities, but does not adequately cover its new mandate and the management of the SC. The Agency is in the process of developing a new structure.

Governance

The governance structure established by the EBCG Regulation, which focuses on Frontex, supports the performance of the Agency's tasks. The **Management Board** is the main governing body of Frontex and is responsible for the Agency's strategic decisions⁸⁷. It comprises representatives of the heads of the border authorities of the 26 EU Member States signatories to the Schengen *acquis*⁸⁸ and two representatives from the European Commission. The role of the MB is appropriately defined. However, the expanding mandate of Frontex has led to an expanding workload for the MB. Hence there is a need to **make strategic decision-making and oversight more efficient**. According to a small minority of Member States, the workload often leads to discussions of very technical issues that are not a priority for all⁸⁹ and leave limited time for high-level strategic discussions (including on key documents, like the Single Programming Document (SPD))⁹⁰. It is to note that after the resignation of the Agency's former ED in 2022, the MB stepped up and extensively supported the work of the interim senior management until the new ED took office in March 2023.

One concern that was identified in relation to the composition of the MB is that the members of the MB appointed by most Member States **do not represent national authorities responsible for return**. This impacts the effectiveness of the MB's strategic-level governance on return policies.

The **European Commission** oversees the work of EU decentralised agencies and is represented in the MB. The EBCG Regulation confers several wide-ranging powers on the Commission, which allow for political oversight of key Frontex activities (including externally). Overall, the stakeholders interviewed considered that **the Commission's powers were well defined**⁹¹. At the same time, these powers are, to a great extent,

⁸⁷ Functions of the MB are outlined in Article 100 of the EBCG Regulation: the MB establishes the organisational structure of Frontex, adopts the budget and multiannual/annual work programmes, appoints the Executive Director and Deputy Executive Directors, and ensures adequate follow-up to findings and recommendations deriving from evaluations and audits.

⁸⁸ Frontex (n.d). Representatives from IE are also invited to participate in MB meetings, in line with Article 104(4) of the EBCG Regulation. SACs (CH, IS, LI, NO) also participate in the Agency's MB meetings, in line with Article 101(3) of the EBCG Regulation. Each sends one representative to the MB but retains limited voting rights.

⁸⁹ ICF interviews with MS/SAC authorities (6/27).

⁹⁰ ICF interviews with MB and Frontex.

⁹¹ ICF interviews with MB (5/5, with one MS questioning whether the Commission needs two MB representatives) and Frontex.

exercised via a high number of formalised procedures, in particular opinions, decisions and approvals⁹², that create significant workload for the European Commission.

The **European Parliament** provides political scrutiny and budgetary oversight of the Agency. The EBCG Regulation foresees that an expert of the EP *may* be invited to MB meetings (Article 104(7)), but in practice a permanent observer from the EP's LIBE Committee Secretariat is participating in MB meetings, with reporting function.

The political scrutiny and budgetary oversight of the EP appears largely effective according to stakeholders, with the EP having enhanced its oversight following intense media pressure on Frontex. In January 2021, it created a Frontex Scrutiny Working Group (FSWG) to monitor the Agency's compliance with fundamental rights⁹³. A report of the FSWG on its investigation was presented in July 2021⁹⁴. The report noted that parliamentary oversight could be strengthened in relation to the role of national parliaments holding their own national governments accountable⁹⁵. This has **highlighted the need to use Article 112 of the EBCG Regulation**, which allows cooperation between the EP and national parliaments to exercise scrutiny more effectively, in light of the shared responsibility of Frontex and national authorities for border management and return. Some external stakeholders believe that a permanent EP representative on the MB would enhance oversight⁹⁶. However, most interviewees from the EP did not favour this option, given the need for the Parliament to retain independence⁹⁷.

Overall, stakeholders considered the powers of the **Executive Director** to be well defined⁹⁸. in Article 106 of the EBCG Regulation. The decision to expand the management structure of the Agency to include three Deputy Executive Directors with well-defined portfolios added efficiency in light of the Agency's expanded mandate, as will moving towards delegated decision-making rather than relying on an overly centralised model, which was the past practice at the Agency⁹⁹.

The **Fundamental Rights Officer** is responsible for monitoring Frontex's implementation of its fundamental rights obligations and reports directly to the MB. Certain oversight limitations have been identified in the FRO's role (see section 4.1.9 on

⁹² Selected examples requiring adoption by the College of Commissioners: Commission prior approval to every deployment of liaison officers to third countries (Art. 76(5) of the EBCG Regulation); Commission opinion on the compliance of Frontex rules on the use of force to the Staff Regulations and Conditions of Employment (Art. 55(5)), Commission opinion to the multiannual strategy on the Agency's own technical capabilities (Art. 63(2)); Commission approval to Frontex security rules (Art. 92), Commission prior approval to every draft working arrangement between Frontex and a third country (Art. 76(4)) or between Frontex and an EU bodies, offices or agencies, or international organisations (Art. 68(2)).

⁹³ European Parliament (2022). 'Scrutiny of Frontex'. Briefing.

⁹⁴ European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee.

⁹⁵ Strik, T. (2022). 'European oversight on Frontex'.

⁹⁶ European Council on Refugees and Exiles (ECRE) (2021). 'Holding Frontex to account: ECRE's proposal for strengthening non-judicial mechanisms for scrutiny of Frontex'. Policy paper.

⁹⁷ ICF interviews with MEPs (3/4).

⁹⁸ Article 106 of the EBCG Regulation.

⁹⁹ ICF interviews with Frontex and the European Commission.

fundamental rights). Efforts including the 2022 MB decision on the follow-up to the FRO's recommendations¹⁰⁰ have served to further strengthen the efficiency and effectiveness of the FRO.

The tasks, duties and powers of the **Data Protection Officer** are specified in a MB Decision adopted in 2021¹⁰¹. The DPO is independent in the performance of their duties, and reports directly to the MB¹⁰² as well as to the ED. A major ongoing challenge for the DPO is its low number of staff, which makes it difficult to manage the high workload associated with the expanding Agency¹⁰³.

An **Internal Audit Capability** (IAC) was established under Article 80 of the Frontex Financial Regulation¹⁰⁴, through the adoption of MB Decision 43/2020, to create an internal auditing function within Frontex¹⁰⁵. The IAC is functionally independent and reports to the MB and the ED¹⁰⁶. As a recent initiative, there is insufficient time to evaluate its contribution to enhancing the effectiveness of internal governance, but it is likely to support internal decision-making and improved governance in the future. The Head of IAC considers that there are sufficient human resources to carry out their function¹⁰⁷.

Organisational structure

The organisational structure of the Agency is not sufficiently aligned with its new mandate and further changes are needed. Comparing the 2018 structure of the Agency (when it was a traditional EU decentralised agency) with its current structure shows that despite its expansion in size, it has failed to adequately accommodate the necessary operational management for the SC, consisting (primarily) of law enforcement officers and specialised equipment and assets. The split of competences across a number of divisions is unclear, leading to a lack of ownership or clear processes¹⁰⁸. The

¹⁰⁰ Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

¹⁰¹ Management Board Decision 56/2021 of 15 October 2021 adopting implementing rules on the application of Regulation (EU) 2018/1725 concerning the tasks, duties and powers of the Data Protection Officer as well as rules concerning Designated Controllers in Frontex. It should be noted that Management Board Decision 9/2023 of 18 March 2023 repealed and replaced Management Board Decision 56/2021.

¹⁰² Including on serious breaches of the data protection regulatory framework OR issues which may have direct impact on data processing activities conducted jointly by Frontex and Member States.

¹⁰³ ICF interview with Frontex.

¹⁰⁴ Management Board Decision 19/2019 of 23 July 2019 adopting the Frontex Financial Regulation.

¹⁰⁵ The IAC aims to 'support Frontex to accomplish its objectives by applying a systematic approach to evaluate and make evidence-based and realistic recommendations for improving the effectiveness of governance, risk management and control processes' (Management Board Decision 56/2022 of 22 September 2022).

¹⁰⁶ Management Board Decision 56/2022 of 22 September 2022 approving the Frontex Internal Audit Charter.

¹⁰⁷ ICF study (2023), p. 34 to 38.

¹⁰⁸ Examples include the split management of the SC across a number of divisions; the split of the corporate governance division into two (creating a fragmented approach and inconsistencies, with one division responsible for ICT, finance and other for human resources, legal and procurement).

Management Board adopted the Agency's new organisational structure in November 2023, which the Agency will start to implement in January 2024. **On the operational level, the current structure results in multiple reporting channels.** Frontex is currently developing new operational and chain of command (FC2)¹⁰⁹ concepts which are likely to result in changes to how the SC are structured and establish clearer reporting lines.

Overall, **the Agency has a clear planning process, with the programming process substantiated by a clear legal basis**¹¹⁰. The Agency's programming documents are sent to the Commission, the EP and the Council, and are endorsed by the MB¹¹¹. In consultation with the European Commission and the MB, Frontex developed a Roadmap for the implementation of the EBCG Regulation. Structured according to sections of the Regulation, the Roadmap is continuously updated, most recently in 2023¹¹², and helps to inform the MB on the implementation of its mandate¹¹³.

4.1.2.2 Operations

Key evaluation findings

Overall, Frontex's operational support is valued by Member States and has contributed to achieving the objectives of the EBCG. Frontex brings added value through human resources and technical means sent to Member States and third countries facing challenges related to heightened migratory flows, as well as standardising procedures and harmonising operational implementation of good practices at EU level.

Some factors, mainly stemming from implementation-related issues and not the Regulation itself, limit the effectiveness of Frontex's operational response, such as

- *needs assessment and proactive planning of operations,*
- *resource planning for operations,*
- *availability of certain profiles,*
- *different work rules and practices of SC staff compared to Member States¹¹⁴,*
- *access to information and relevant databases, and*
- *yet to be streamlined command-and-control structures¹¹⁵.*

During the evaluation period, Frontex provided extensive technical and operational assistance to Member States through joint operations (JOs) and rapid border

Moreover, one unit has responsibility for procurement, while another oversees budget, with two directors holding decision-making power.

¹⁰⁹ Pilot project in Romania (2023).

¹¹⁰ Including: EBCG Regulation; Management Board Decision 19/2019; European Commission communication C(2020) 2297; Executive Director Decision 2021-130.

¹¹¹ Articles 106(2)(c) and 115 of the EBCG Regulation.

¹¹² Frontex (2022). 'Roadmap: Implementation of Regulation 2019/1896'. EMB/ESO/November/2022.

¹¹³ The detailed findings are presented in section 3 (EQ 22) of Annex IIIa.

¹¹⁴ See under coherence in section 4.1.1. The detailed findings are presented in section on the Review of the Standing Corps (review question (RQ) 7) Annex IIIb and in section 4 (EQ 27) of Annex IIIa.

¹¹⁵ See under 'organisational structure' in section 4.1.2.1. The detailed findings are presented in section 3 (EQ 22) of Annex IIIa.

interventions (RBIs), including technical and operational assistance in SAR operations. Frontex's operational support was mainly in terms of border surveillance and border checks activities via JOs at the external borders. The majority of JOs and RBIs focused on the land and sea external borders under significant migratory pressure. Other types of operational activities are carried out through focal points established at key border crossing points.

Table 1: Frontex joint operations carried out in the period 2020-2023

Operation	2020	2021	2022	2023¹¹⁶
Total number of joint operations	15 operations	19 operations	20 operations	24 operations
<i>Air, land and maritime operations</i>	1 operation	1 operation	1 operation	1 operation
<i>Land joint operations</i>	3 operations	5 operations	5 operations	9 operations
<i>Maritime joint operations</i>	8 operations	11 operations	13 operations	13 operations
<i>Air joint operations</i>	1 operation	1 operation	1 operation	1 operation
Total number of rapid border interventions	2 (Greece-Turkey)	1 (Lithuania – Belarus)	-	-

Source: Frontex CAARs (2020-2022)

Overall, **Frontex's operational support is valued by Member States** and has contributed to managing the migratory pressures and protecting and managing EU external borders. The core added value of Frontex is to allocate operational resources, such as personnel and equipment to support Member States in terms of border management and return.

Additionally, Frontex has a role to develop European technical and operational standards and harmonise practices among Member States. Frontex has developed together with Member States several operational guidelines and handbooks that support this objective¹¹⁷.

Frontex JOs are planned and implemented on the basis of the standard operational cycle, comprising of initiation, planning, implementation, and evaluation. Eleven Member States surveyed experienced no issues with the joint planning of operations, while ten experienced some issues, such as the operational planning of a JO being cumbersome or that the information provided by Frontex is less up-to-date than national operational awareness.

¹¹⁶ Number of operations for 2023 cover the period from 1 January 2023 to 12 September 2023.

¹¹⁷ For example, Handbook to the operational plan, VEGA Handbook (Children at airports, Children at land borders, Children at sea, Countermeasures at airports), Handbook on Firearms for Border Guards and Customs Officers, Handbook on Risk Profiles on Trafficking in Human Beings, Boarding in Frontex-coordinated Joint maritime Operations: Best Practices & Guidelines.

The Agency has recently started to develop a **four-category concept to prioritise the needs** of various countries/border sections which is expected to have a positive impact on the planning of the deployment of SC staff and equipment.

The **availability of certain categories of SC profiles** do not fully correlate with the overall needs. While the situation has improved over time, specific profiles are in high demand and Frontex reports up to 65% gaps for certain profiles¹¹⁸.

The EBCG Regulation¹¹⁹ refers to the use of databases, but Frontex's access to national databases depends on the agreement of the host Member State. **Challenges in sharing and accessing information** were reported by nine Member States¹²⁰. Only four countries facilitate some form of access (CZ, FR, PT and IS). Other Member States currently do not allow Frontex staff to consult relevant databases, including national databases for border checks. However, where such access is provided, the information is often available only in the national language, which is an obstacle for SC staff.

Frontex has not yet finalised the technical implementation of access to SIS. The current lack of access to relevant European databases (such as VIS, SIS), which is due to delays and implementation issues, further **limits the support the Agency can provide for border checks**.

4.1.2.3. Return

Key evaluation findings

The Agency's extensive support in the area of return is highly valued and Member States see the added value of Frontex's coordinating role and their 'catalogue of services' offered to Member States. The share of Frontex voluntary returns is increasing, while the Agency is still developing its service and expertise under its new mandate.

The digitalisation of the return process is a priority for Frontex and successfully supports coordination with Member States.

There is however room for improvement in the following areas:

- *Certain concepts in the area of return (such as voluntary returns, voluntary departures, reintegration, post-arrival assistance) are not defined in the EBCG Regulation, causing ambiguity in the implementation of the Agency's tasks¹²¹;*
- *The lack of strategic steer by the MB in the absence of the representation of national authorities responsible for return¹²²;*
- *The EBCG Regulation does not provide for vulnerability assessment to cover the*

¹¹⁸ Frontex reports up to 65% shortages for certain profiles, such as dog handlers, a 47% for return specialists, and a 33% shortage for advanced level document officers. Frontex report on capabilities 5./9.2023.

¹¹⁹ Articles 32 and 82(10) of the EBCG Regulation.

¹²⁰ ICF interviews with MS/SAC authorities (9/27).

¹²¹ See under coherence in section 4.1.1. The detailed findings are presented section 4 (EQ 27) of Annex IIIa.

¹²² See in section 4.1.2.1 on governance.

area of return, only limited risk analyses are carried out¹²³.

Frontex has become an essential actor in the common EU system for return, taking on new responsibilities related to return of people who have no legal right to stay in the EU. Frontex has effectively supported Member States through all phases of return procedures. Stakeholders at EU and national level value Frontex's operational and technical assistance in return, particularly in organising joint return operations (JROs), but also in other return-related support.

Table 2: Key results of Frontex return operations

Operation	2019	2020	2021	2022	2023 ¹²⁴
Total number of persons returned	15,850	12,072	18,301	24,850	25,283
<i>Of which voluntary returns</i>	1%	18%	26%	39%	53%
<i>Number of people returned via charter flights</i>	10,903 on 330 operations to 40 third countries of return	7,952	10,193 persons on 337 operations to 33 countries of return	9,919 persons to 32 countries of return	7,210 on 189 return operations to 27 third countries of return
<i>Number of people returned via scheduled flights</i>	4,776 to 81 destinations	3,981	8,108 persons 107 countries of return	14,937 persons to 116 countries of return	18,073 to 109 third countries of return

Source: Frontex Consolidated Annual Activity Reports (2019-2022).

Most Member States surveyed did not encounter any challenges when cooperating with Frontex in the different stages of the return process. The majority reported positive cooperation with Frontex in the field of return and also noted indirect benefits, such as reducing secondary movements. Some Member States¹²⁵ particularly valued Frontex's assistance with organising charter flights, which are considered a safer option to return violent and difficult cases. Efforts were made to use scheduled flights for cases that could reasonably be returned that way. Challenges included last-minute cancellations of JROs, which typically reflected problems of cooperation between the organising Member State and the third country of destination.

¹²³ See in section 4.1.2.4 on situational awareness.

¹²⁴ Numbers from 2023 cover the period from 1 January 2023 to 10 September 2023.

¹²⁵ ICF survey of MS/SAC authorities: 3/27.

The EBCG Regulation extended the Agency's mandate to include the possibility to provide **assistance to voluntary returns**. Since then, the Agency has enhanced its tailored support for this type of return, the support with return counselling also increased.

Pre-return assistance was valued by Member States, with reports of good experiences with European Return Liaison Officers (EURLOs), who helped with acquisition of travel documents and facilitated return operations.

The value of the **deployment of Frontex Return Escort and Support Officers (FRESOs)** was also underlined by several countries¹²⁶.

The Agency is further developing its own capacity to organise Frontex-led return operations, which is aimed at further relieving the Member States from some organisational burden.

Post-arrival support and reintegration are a relatively new area for the Agency ¹²⁷. The lack of clear definitions creates some practical difficulties in implementation. However, the Agency has developed 'working definitions' to overcome these obstacles. As regards **return-related digitalisation by the Agency**, most Member States reported that IRMA and FAR are convenient and user-friendly, and the availability of useful source material and information in one place is useful. To build capacity in Member States for an end-to-end digitalisation of the return process, the Agency developed RECAMAS, a reference model for an IT return case management system to be used by Member States to align their national IT systems. The Agency is able to provide both technical and financial assistance to Member States in building such systems.

4.1.2.4. Situational awareness

Key evaluation findings

Situational awareness:

Frontex has made progress towards being able to produce fully up-to-date, reliable, and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance¹²⁸. However, some implementation gaps exist that limit its full potential, such as

- the lack of access to data contributing to the pre-frontier situational picture, lack of access to intelligence sources and lack of access to sufficient data on events related to irregular migration outside border areas;*
- divergent practices among national coordination centres;*

¹²⁶ FRESO return team members escort individuals who have received a return decision from national authorities, provide ground support in returns, and identify and assist vulnerable groups or families with children.

¹²⁷ Article 48(1) of the EBCG Regulation.

¹²⁸ Articles 24-28 of the EBCG Regulation.

- insufficient implementation of operational and analysis layers.

EUROSUR¹²⁹ supports the provision of a European situational picture but does not provide complete and up-to-date situational awareness at the EU's external borders.

The upgrade of the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL classification level has not been implemented.

The Agency has provided valuable contribution to EU mechanisms such as the Migration Preparedness and Crisis Blueprint and the Integrated Situation Awareness and Analysis on the Migration and Refugee Situation (ISAA reports) prepared by the Commission in the framework of the Integrated Political Crisis Response (IPCR) mechanism.

Risk analysis:

Risk analysis¹³⁰ is one of Frontex's activities that are highest valued by the Member States. Member States view Frontex products as highly informative, and these products also help inform Frontex operational activities. However, some legal and implementation issues persist as

- *Frontex products are not sufficiently tailored to Member States' operational needs and do not contain actionable information; and*
- *the risk analysis is incomplete when considering the full scope of EIBM, as pre-frontier and third-country analyses is insufficient and return-related risk analysis is lacking;*
- *the EBCG Regulation limits the processing of personal data by Frontex for risk analysis purposes¹³¹.*

Vulnerability assessment:

Vulnerability assessments¹³² allow Frontex to effectively monitor potential vulnerabilities at the EU external borders and to work with Member States to reduce those vulnerabilities. The following legislative and implementation gaps limit the effectiveness of the instrument:

- *the methodologies of risk analysis (CIRAM) and vulnerability assessments (CVAM) are not fully coherent with each other, and as such risk analysis cannot fully benefit from potential synergies with vulnerability assessments; and*
- *lack of effective mechanism to enforce the implementation of the vulnerability assessment recommendations.*

Situational awareness

Frontex has been able to contribute to improved situational awareness at external borders through its products (including risk analysis, vulnerability assessments and 24/7 situational monitoring). Nevertheless, several elements impact its ability to provide up-to-date and comprehensive situational monitoring. This stems in part from limitations in

¹²⁹ Articles 18-23 of the EBCG Regulation.

¹³⁰ Article 29 of the EBCG Regulation.

¹³¹ See under 'internal coherence' in section 4.1.1.

¹³² Article 32 of the EBCG Regulation.

the EBCG Regulation relating to processing of personal data, (see section 4.1.1.). A number of implementation issues also persist, including incomplete reporting by Member States in the context of EUROSUR and delays by Frontex in providing risk analysis products in all four-tiers of EIBM, due to methodological and data issues (especially in relation to return and third-country data).

The situational picture at the EU external borders that EUROSUR provides can thus only be partially accurate, complete, and up-to date. A majority of Member State respondents to the survey agreed that the implementation of the EUROSUR framework is effective in terms of information exchange to improve situational awareness¹³³. However, only a minority agreed that it has been effective in terms of information exchange to increase the reaction capabilities among the relevant stakeholders¹³⁴ or sufficient to improve detection, prevention and combating of irregular migration and cross-border crime.¹³⁵

While **input of data by Member States remains a challenge**, in particular when it comes to possible double reporting of similar information in JORA and EUROSUR, there have been significant improvements in data quality, flow, and speed of reporting. One of the most notable achievements is the marked increase in data quality, with a decrease in re-entry rates¹³⁶. Frontex suggested that adding a tool to monitor the quality of data reports by Member States could be helpful, with data quality reports potentially feeding into existing quality control mechanisms (vulnerability assessments, Schengen evaluations, etc.), which would issue recommendations where needed¹³⁷.

Although the Regulation foresees an **upgrade of the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL**, this **has not been implemented**. The reasons are two-fold: firstly, Frontex's current facilities do not meet the requirements for such an upgrade. Secondly, the upgrade has considerable costs, with little added value in terms of the additional information that could be shared via EUROSUR, most of which does not require CONFIDENTIEL UE/EU CONFIDENTIAL classification level.¹³⁸ This view was also supported by around half of the Member States¹³⁹. A minority of Member States see a potential advantage in upgrading the communication network, as this could help to improve information sharing¹⁴⁰ and the European situational picture.¹⁴¹ However, the only type of information identified, which is classified and would add value to the situational picture, is the location of military

¹³³ ICF survey of MS/SAC: 17/27.

¹³⁴ ICF survey of MS/SAC: 13/27.

¹³⁵ ICF survey of MS/SAC: 6/27.

¹³⁶ Frontex. 'Report to the European Parliament and the Council on the functioning of EUROSUR Article 121(5) of Regulation (EU) No 2019/1896'.

¹³⁷ Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document, p. 9.

¹³⁸ ICF scoping interview; interview with Frontex.

¹³⁹ ICF survey of MS/SAC authorities: 13/27.

¹⁴⁰ ICF survey of MS/SAC authorities, 2/27.

¹⁴¹ ICF survey of MS/SAC authorities, 3/27.

assets involved in operations, such as in the Aegean or Central Mediterranean¹⁴². One of the issues that require further clarification is the accreditation of the classified network and the entity that should take responsibility for this process (EUROSUR Security Accreditation Board or Frontex Security Accreditation Authority).

In its report of 1 July 2022 on the functioning of EUROSUR prepared in accordance with Article 121(5) of Regulation (EU) 2019/1896¹⁴³, Frontex presented the results of the implementation process carried out so far. It shares the observations outlined above, such as EUROSUR contribution to the improvement of the situational awareness, the need for timeliness and quality of reporting as well as significant investments that would need to be undertaken to establish a network enabling the exchange of classified information up to CONFIDENTIEL UE/EU CONFIDENTIAL level¹⁴⁴.

Risk analysis

The EBCG Regulation ‘reinforces significantly the analytical products focusing more than ever on prediction and prevention’¹⁴⁵, **The risk analysis products generated by Frontex generally perform well** across a number of key qualitative metrics. Its products are well received at strategic level, but **lack of access to intelligence information** limits their use at operational level¹⁴⁶. Another shortcoming identified by a minority of Member States was the **lack of regional or locally specific analysis**¹⁴⁷. Others found the strategic analysis helpful but felt there was not sufficient analysis linked to the joint operations¹⁴⁸.

Frontex’s operational activities are generally based on up-to-date risk analysis and are well received by key stakeholders. It produces a wide range of risk analysis products specifically on its joint operations.

Some weaknesses were identified through consultation with Member States and Frontex. For example, the risk analysis produced by Frontex does not adequately cover all four tiers of EIBM¹⁴⁹. The **key elements of EIBM missing** from Frontex risk analysis products **are returns and third-country information**, while EBCG Regulation stipulates that Frontex’s mandate on risk analysis is to ‘monitor migratory flows toward the Union, and within the union in terms of migratory trends, volume and routes, and other trends or possible challenges at the external borders and with regard to return’¹⁵⁰.

¹⁴² ICF interview with Frontex; ICF interview – site visit to one MS; survey of MS/SAC authorities: 7/27 shared a positive opinion.

¹⁴³ ‘Report to the European Parliament and the Council on the functioning of EUROSUR. Article 121(5) of Regulation (EU) No 2019/1896’.

¹⁴⁴ In accordance with Article 121(5) of Regulation (EU) 2019/1896, a report is to be prepared by Frontex and provided to the European Council and the EP on regular basis, every two years. The next edition will be presented in the end of 2023.

¹⁴⁵ Frontex (2022). ‘Single Programming Document 2022-2024’, p. 18.

¹⁴⁶ ICF interviews during site visits to two MS.

¹⁴⁷ ICF interviews with MS national authorities: 5/27.

¹⁴⁸ ICF interviews during site visits to two MS.

¹⁴⁹ Article 29(3) of the EBCG Regulation.

¹⁵⁰ Article 29 of the EBCG Regulation.

Vulnerability assessment

Vulnerability assessments allow Frontex to monitor potential vulnerabilities at EU's external borders, and to work with Member States to reduce those vulnerabilities. Most Member State respondents believe that Frontex's vulnerability assessment activities help to assess Member States' readiness and capacity to face challenges at external borders and are conducive to better preparedness¹⁵¹. The assessments are also seen as helpful in the context of the Schengen evaluations¹⁵². **The European Commission and Frontex have worked together to ensure better synergies between the two mechanisms.** Nevertheless, some Member States still see these mechanisms as overlapping¹⁵³.

However, some Member States expressed concern that vulnerability assessment data collection places a heavy administrative burden on their authorities¹⁵⁴. This administrative pressure is compounded by a 'highly inefficient IT platform', reducing the added value of the annual baseline vulnerability assessment. Nevertheless, Member States recognise the relative recency of the vulnerability assessment system, and Frontex has reported **an ongoing upgrade to the Vulnerability Assessment Platform (VAP)** to deal with this problem¹⁵⁵.

The analysis also found that, while the data collections for risk analysis and vulnerability assessment should be coherent with one another, the processes within Frontex are not sufficiently interlinked. One issue is that **vulnerability assessment data are not fully used in risk analysis products**. This discrepancy is due to a certain level of conceptual misalignment between methodologies. The core of the problem, as identified by Frontex and Member States, is that the definition of vulnerability in the common integrated risk analysis model (CIRAM) does not match the definition of vulnerability in the common vulnerability assessment methodology (CVAM)¹⁵⁶. For Member States, vulnerability assessments are a concrete, quantitative and capacity-based system with measurable outcomes. Conversely, the conceptualisation of vulnerability in CIRAM includes 'pull factors', reflecting broader factors influencing the arrival of migratory flows from outside the EU¹⁵⁷.

In addition, the level of confidentiality of vulnerability assessment data means that it is harder to access this information for risk analysis. While the purpose of vulnerability assessments is to allow Member States to address their own specific weaknesses, risk analysis can take a more overarching and EU-wide approach, with an associated lower level of sensitivity. **Frontex also has separate systems for producing risk analyses and vulnerability assessments, which impacts their coherence.**

¹⁵¹ ICF survey of MS/SAC: 14/27.

¹⁵² ICF interviews with DG HOME and Frontex.

¹⁵³ ICF interviews with MS/SAC: 8/27; survey of MS/SAC: 4/27.

¹⁵⁴ ICF interviews with MS/SAC: 6/27; Survey of MS/SAC: 3/27.

¹⁵⁵ Frontex (2022). 'Single Programming Document 2023-2025', p. 41.

¹⁵⁶ ICF interview with Frontex.

¹⁵⁷ ICF interview with one MS.

Finally, a weakness of vulnerability assessments, that significantly limits their effectiveness, is the **lengthy and indirect enforcement system** established by the EBCG Regulation. The ‘escalation procedure’ in Article 32(9)-(10) does not appear commensurate with the gravity of the vulnerabilities identified by the Agency at the EU’s external borders. The analysis also found that in cases, where a Member State fail to implement a recommendation and the ED then decides in accordance with Article 32(10) to escalate a case to the MB, the MB decision is not taken as resolute as intended in the EBCG Regulation. There seem to be a reluctance to take these decisions, despite the impact that these vulnerabilities might have on all Member States.

4.1.2.5. Capability development¹⁵⁸

Key evaluation findings

Capability development:

Despite the legal framework in place, the implementation of capability development planning has suffered significant delays.

Training:

Frontex has a strong role in the training of the European Border and Coast Guard; an overall training concept is, however, still under development.

Technical equipment:

On technical resources progress has been made, although there are significant challenges implementation of the Regulation. The challenges are related to the wider legislative framework, implementation and technical practicalities.

Research and innovation:

Frontex was able to progress in this area and adopted flexible solutions to promote implementation of technical standards and methodology for defining these standards, and the establishment of minimum standards for border surveillance. Nevertheless, especially in terms of technical standardisation, there is still work to do.

Capability development

The overarching capability development planning is still under implementation. The requirement of the Regulation is to have a Capability Roadmap that defines long term plans for recruitment, training, acquisition of technical equipment and research and innovation, both for the Agency and Member States.

The process has been launched by collecting existing plans of the Member States as the baseline. All but one Member State sent their national capability development plans to Frontex by October 2023. In parallel, the Agency presented the Capability Roadmap methodology to the MB in September 2023.

¹⁵⁸ This section concerns mainly the development of technical capabilities. The development of human resources is further discussed in section 4.1.4.

After adoption of the TO-EIBM, the Capability Roadmap is to be attached to the Strategy as an annex. The Roadmap is still in the making. Due to lack of this document, four years after the entry into force of the 2019 Regulation, there is a lack of strategic direction for the long-term development of the capabilities of Frontex.

In parallel, Frontex has developed its multiannual acquisition strategy, which is to document short, medium, and long-term needs. The European Commission adopted its opinion in May 2023 on the Agency's multiannual acquisition strategy for technical equipment and its implementation plan. The strategy was only adopted by the Agency's MB in September 2023¹⁵⁹. Only the multiannual plan for the SC personnel profiles¹⁶⁰ was already adopted in 2022.

As a result, integrated planning¹⁶¹ could not be fully implemented yet. There is not any well-defined understanding yet of the acquisition needs within Frontex or the whole European Border and Coast Guard. Furthermore, it is also important to note that there is only four years left to spend the significant financial resources allocated in the current MFF to technical equipment.

Training

An essential part of capacity development planning is training. Frontex has implemented a range of training activities for Member States and third countries and met most internal training targets. Frontex has been updating and maintaining training standards within the European Border and Coast Guard, including Standards for European Common Core Curriculum for border guards and several specialised trainings for Member States¹⁶².

The Regulation specifies that an “Agency training centre” should be established¹⁶³. Such decision has not been taken in the period under evaluation. There are no long-term sustainability assessments or comparable analysis on financial efficiency how to organise the training. A Frontex training centre, further utilisation Partnership Academies in Member States, externalising some parts of the training by tendering are possible options, as well as a hybrid solution of the options.

At the same time, a majority of Member States agreed or strongly agreed that, in the spirit of shared responsibility, the division of competence between Member States and Frontex, as set out in the Regulation, is sufficiently clear and adequate to meet the objectives on education and training of border and coast guards¹⁶⁴.

Technical equipment

¹⁵⁹ Management Board Decision 28/2023 of 15 September 2023 adopting the Multiannual Strategy for the Acquisition and Management of the Agency's Equipment.

¹⁶⁰ Article 54(4) of the EBCG Regulation.

¹⁶¹ Article 9 of the EBCG Regulation.

¹⁶² Frontex organises a wide variety of trainings, for example trainings for risk analysis specialists, EUROSUR operators and Schengen evaluators.

¹⁶³ Article 62(3) of the EBCG Regulation.

¹⁶⁴ ICF survey of MS/SAC authorities: 14/27 agreed, 4/27 strongly agreed.

The equipment of the Agency and equipment of Member States form a technical equipment pool that is to be gradually developed and deployed to the JOs. Frontex is managing and coordinating the pool and liaising with Member States in several working groups in this regard. Additionally, Frontex acquires and coordinates the development of other equipment, which is used by European Border and Coast Guard, including the SC.

None of the targets in terms of development of technical equipment were fully met. The development was slowed down due to above-mentioned delays in the strategic planning. The fact that the multiannual acquisition strategy was missing until recently was a specific challenge.

Lack of vision for the long-term development of the capabilities of the Agency impacted the efficiency of acquisition within Frontex. For example, the acquisition of various items was delayed, forcing the Agency to rely on options that proved inefficient, at least initially, such as renting vehicles (and subsequent issues with modifying vehicles to its specific needs and replace unsuitable vehicles that had deteriorated faster than anticipated vehicles)¹⁶⁵. Given that the EBCG Regulation has as an objective to establish Frontex's technical equipment as the backbone of EU's border management¹⁶⁶, the shortcomings in the acquisition present a significant problem in the implementation of the Regulation¹⁶⁷.

Firstly, the Agency was not able to acquire in a timely manner all the equipment that was necessary. This had an impact on equipping the SC with personal equipment. Even further, this also impacted the acquisition of heavy equipment for the Agency to be deployed to the joint operations as the core equipment of SC.

There are several reasons for the delays. The definition of the operational requirements and development of the technical standards has been taking time. At the same time, procurement has been cumbersome, for example for the tendering challenges. Additionally, the budgetary rules are rather strict, and synchronising the budgeting, planning and actual procurement is complex.

Frontex has suffered from bottlenecks in terms of logistics, operators of the equipment, and premises to dock, store and maintain the equipment. This goes especially for the heavy equipment. The resource issue has not been so far taken sufficiently into account while developing SC and Frontex headquarters staffing plans.

Member States have faced challenges as well. Member States have not contributed enough technical equipment to the pool, compared to the operational needs. This is mostly because the national technical equipment pool has been developed historically in line with the national needs and national budget constraints. Even so, certain types of technical equipment in the Member States and SAC are only available at very limited numbers, which poses challenges in covering the national needs, let alone contributing to

¹⁶⁵ ICF field visit to Frontex headquarters; interview with Frontex; survey of MS/SAC authorities: 1/27.

¹⁶⁶ Recital 71 of the EBCG Regulation.

¹⁶⁷ See the full overview in section 2 (EQ 6) of Annex IIIa.

cover EBCG needs. Even if there has been European funding available for some time, the large-extend utilisation of funds has kicked off only recently. Getting technical equipment from the procurement planning all the way to be deployed and operational typically takes several years. Additionally, some Member States have been discouraged to fully utilise European funds because of the requirements to allocate it annually to the European Border and Coast Guard Technical Pool in line with the requirements under ISF/BMVI¹⁶⁸. Finally, there has not been strong oversight nor guidance to ensure that Member States would fulfil their obligations to deploy equipment to the joint operations.

Lastly, there are a number of administrative and practical issues that make European-wide operating of certain equipment very cumbersome. An important element here is that although technical equipment exists at national level and can be made available, there is not enough crew to operate it. In accordance with the EBCG Regulation, the Member State needs to provide the major equipment together with its crew. The crew will be part of that Member State's contribution to the Standing Corps. In addition, Member States are facing issues with the maintenance of the technical equipment. Other issues are about registrations, transport, insurances and similar issues. Itemising and solving these practical issues will greatly promote development and utilisation of the technical equipment.

Frontex and Member States can improve the situation considerably by making use of EU Financial Instruments (such as BMVI) to purchase additional technical equipment (Member States), training crews for operating technical equipment (Frontex and Member States), providing support in logistics and maintenance (Frontex), and Frontex increasing its own pool of technical equipment.

The overall gaps in the technical equipment caused that joint operations have had annually shortages of essential equipment, compared to operational needs. Light equipment (such as hand-held sensors) has been well available, but heavy equipment (such as maritime vessels) not so much.

Research and innovation

2020 – 2023 Frontex has been supporting European capability building with research and innovation in line with its mandate. Frontex has been promoting standardisation and harmonisation of border management capabilities. Additionally, Frontex has been promoting and enhancing innovation, and additionally executing and supporting research¹⁶⁹. The multiannual programming documents define the expected results and indicators.

¹⁶⁸ See Article 7(1) of Regulation (EU) No 515/2014 (ISF) and Article 13(14)(b) of Regulation (EU) 2021/1148 (BMVI).

¹⁶⁹ Frontex (2023). 'Research and Innovation'.

Frontex has a mandate to develop standards in several areas¹⁷⁰, including standards for border surveillance¹⁷¹ but the standardisation work has still work ahead.

4.1.2.6. Cooperation with EU institutions, agencies and third countries

Key evaluation findings

Frontex activities are aligned with the activities of other EU stakeholders, and cooperation with EU agencies and the European Commission has been effective.

Frontex's cooperation with third countries is viewed positively by key stakeholders. The new model status agreement¹⁷² provides a good basis for enhanced cooperation with third countries. At the same time, the Agency could not conclude any working arrangement based on the new model¹⁷³ during the evaluation period, as its provisions on personal data protection must be revised due to concerns expressed by the EDPS. The revision is ongoing with close contacts between the Commission and the EDPS.

Frontex's cooperation with international organisations is effective, however Article 68 of the Regulation contains an exhaustive list of organisations that the Agency can cooperate with. This limits cooperation with some relevant regional organisations or other international partners with which Frontex has cooperated or has an ongoing cooperation based on the 2016 EBCG Regulation.

Cooperation with EU institutions, bodies, offices and agencies

Frontex has well-established cooperation with the **European Commission** to ensure coherence between policy priorities and the Agency's operations in border management and return. Frontex participates in the EU mechanism for preparedness and management of crises related to migration (Migration Preparedness and Crisis Blueprint)¹⁷⁴ that brings together Member States, the Council, the Commission, EEAS, EUAA, Frontex, Europol, eu-LISA and FRA, to work together on migration preparedness and crisis management. Frontex provides ad hoc analytical contributions to support the **Council**, including inputs to the Council's Integrated Political Crises Response (IPCR) as well as Integrated Situational Awareness and Analysis Reports (ISAA)¹⁷⁵. The Agency regularly reports to the **EP** on the progress of implementation of its recommendations.

¹⁷⁰ Articles 16 and 64(5) of the EBCG Regulation.

¹⁷¹ A task of the Agency as per Article 10(1)(z) of the EBCG Regulation.

¹⁷² European Commission (2021). Communication from the Commission to the European Parliament and the Council: Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624. COM(2021) 829 final.

¹⁷³ European Commission (2021). Annex to the Communication from the Commission to the European Parliament and the Council: Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624. COM(2021) 830 final.

¹⁷⁴ European Commission Recommendation (EU) 2020/1366 of 23 September 2020.

¹⁷⁵ Frontex (2021). 'Programming Document 2019-2021', p. 39.

Frontex has well-established cooperation with **EU JHA agencies** on the basis of working arrangements¹⁷⁶ (EUROPOL, eu-LISA, EUAA, CEPOL, FRA etc.). Overall, Frontex's activities are coherent with the activities of other agencies. However, potential overlaps in mandates require close coordination and clarifications.

Cooperation with **Europol** is rated positively, although a minority of Member States stressed the importance of ensuring complementarity and avoiding overlaps, in view of Frontex tasks in the area of cross-border crime¹⁷⁷. Overall cooperation is rated as good, with regular contact between the two agencies¹⁷⁸. At the same time, the cooperation arrangement between the two agencies dates back to 2015 and needs to be updated in accordance with the requirements of the EBCG Regulation on working arrangements¹⁷⁹.

Some Frontex stakeholders noted that the EBCG Regulation does not sufficiently specify the Agency's role, limitations, and procedures in its tasks to support Europol, Eurojust and national law enforcement authorities¹⁸⁰ or that its mandate in this area is too narrow. Yet the importance of avoiding overlaps in mandates of Frontex and Europol has been highlighted by the Commission and some Member States, which explains the perceived narrow interpretation of Frontex's mandate in this field¹⁸¹. Moreover, the majority of Member States agreed that the cooperation with Europol and Eurojust was already well defined¹⁸², and did not suggest further expanding the mandate of Frontex in this field. At the same time, the exchange of information between the agencies has been hampered in the past, following two opinions of the EDPS issued on 7 June 2022. These opinions, notably, had an effect on Frontex's "Processing of Personal Data for Risk Analysis (PeDRA)" which includes the forwarding of information on potential human smugglers or traffickers to Europol. These problems should be remedied with the implementation of the new data protection framework in Frontex (see section 4.1.1 above), and through the negotiation of a new working arrangement with Europol, based on the new mandates of both agencies.

The Agency has been playing an active role in European cooperation on coast guard functions, notably through inter-agency cooperation with the European Fisheries Control Agency (EFCA) and the European maritime Safety Agency (EMSA) in the framework of a tripartite working arrangement. The three agencies work jointly on multipurpose operations, where they undertake activities to support various coast guard functions falling under their respective remit. Overall, cooperation is rated positively among the agencies, and the legal base for their cooperation is sound.

¹⁷⁶ Article 73(4) of the EBCG Regulation.

¹⁷⁷ ICF interviews with MS/SAC authorities: 9/27.

¹⁷⁸ ICF interviews with Frontex and Europol; survey of MS/SAC authorities: 14/27 agreed; 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

¹⁷⁹ Article 68(2) and (5) of the EBCG Regulation.

¹⁸⁰ ICF interviews with EDPS and Frontex.

¹⁸¹ ICF interviews with MS/SAC authorities: 4/27.

¹⁸² ICF survey of MS/SAC authorities: 14/27 agreed and 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

Frontex has successfully enhanced its cooperation with **CSDP missions and operations**. In 2022, it signed a working arrangement with the European Union Capacity Building Mission in Niger (EUCAP Sahel Niger) and in 2023 it agreed on the text of a working arrangement with the European Union Advisory Mission Ukraine (EUAM Ukraine), which is expected to be signed by the end of this year. The ramifications of the Russian aggression against Ukraine showed that the overarching mechanism for cooperation with CSDP missions, including those not considered as priority, could provide the necessary flexibility for Frontex at the operational level¹⁸³. EUAM Ukraine is supporting the development, updating and implementing the Ukrainian National Integrated Border Management Strategy. The cooperation between Frontex and EUAM Ukraine will support this effort by providing EUAM Ukraine with the expertise of the Agency in the area of Integrated Border Management, standards and good practices.

Cooperation with third countries

Frontex can cooperate with third countries via status agreements, working arrangements, or through non-operational cooperation, in line with EU foreign policy objectives and its International Cooperation Strategy¹⁸⁴. The EBCG Regulation¹⁸⁵ brought new opportunities for cooperation with third countries, including the ability for Frontex to conduct joint operational activities with executive powers anywhere on the territory of a third country, subject to a **status agreement** and an operational plan negotiated and concluded with the relevant third country. It also allows for the exchange of information with third countries in the framework of EUROSUR¹⁸⁶ through the inclusion of EUROSUR provisions in an operational plan based on a status agreement or a working arrangement. Furthermore, the EBCG Regulation added new fundamental rights and data protection safeguards, to accommodate the evolving EU legal framework, extending the regulatory framework for cooperation with third countries. In line with Article 76(1) of the EBCG Regulation, a model status agreement was adopted by the European Commission in December 2021¹⁸⁷. During the evaluation period, the EU signed and concluded status agreements with Moldova, North Macedonia, Montenegro, and Albania; negotiations with other third countries are currently ongoing.

The Commission also adopted a model **working arrangement** on 21 December 2021. Frontex finalised negotiations of a number of working arrangements based on this new model. The first such text, negotiated with Niger, received a negative opinion from

¹⁸³ Further details on cooperation with other EU institutions, bodies, offices, and agencies can be found in section 4 (EQ 26) of Annex IIIa.

¹⁸⁴ Non-operational cooperation (such as implementation of EU-funded capacity-building projects to build administrative capacity, transmit know-how or enhance situational awareness of border management) also contribute to developing new partnerships that can lead to more formalised forms of cooperation at a later stage.

¹⁸⁵ Article 73 of the EBCG Regulation.

¹⁸⁶ Article 75 of the EBCG Regulation.

¹⁸⁷ European Commission (2021). 'Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624'. COM(2021) 829 final.

EDPS, which found the arrangement's data protection provisions insufficient for international data transfers to Niger. Due to the fact that these provisions are broadly based on the model working arrangement, the Commission is currently working with Frontex and the EDPS to amend the model's personal data protection provisions. Once a text has been agreed with EDPS, the finalisation of the negotiations of these new generation working arrangements can take place. Frontex currently has close to twenty working arrangements with third country authorities in place, all based on earlier iterations of the EBCG Regulation.

The vast majority of Member States agreed that cooperation with third countries is clearly defined in the EBCG Regulation and is conducive to addressing specific needs and challenges at external borders¹⁸⁸. Overall, Frontex's activities in the external dimension are well regarded by key stakeholders and have a clear legal basis. New joint operations to third countries have been successfully deployed on the basis of new status agreements in Moldova, North Macedonia and Montenegro.

Two own-initiative reports have been prepared by the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) in the context of status agreements: the Report on the negotiations on a status agreement on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in Senegal (2023/2086(INI)) and the Report on negotiations on a status agreement on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in Mauritania (2023/2087(INI)).

One legal inconsistency has been identified in the EBCG Regulation in relation to working arrangements with third countries (and international organisations). Article 117(5) requires the Agency to include 'provisions expressly empowering ECA, OLAF and EPPO to conduct [...] audits and investigations. However, working arrangements are legally non-binding documents. While Frontex is able to include such provisions in its working arrangements, legally speaking those cannot 'empower' the ECA, OLAF and the EPPO¹⁸⁹.

Cooperation with international organisations

Cooperation with international organisations under working arrangements is limited by specific provisions in Article 68 of the EBCG Regulation, which sets out an exhaustive list of organisations¹⁹⁰ with which Frontex may cooperate. The justification for, or added value of, setting such limits in the Regulation itself is unclear, as it limits the ability of the Agency to develop more structured cooperation with relevant partners, including some organisations with which it has established useful cooperation in the past (e.g.

¹⁸⁸ ICF survey of MS/SAC authorities: 20/27 agreed, 1/27 strongly agreed.

¹⁸⁹ ICF interviews with Frontex and DG HOME.

¹⁹⁰ United Nations (UN), International Criminal Police Organisation (Interpol), Organisation for Security and Cooperation in Europe (OSCE), Council of Europe (COE) and Maritima Analysis and Operations Centre – Narcotics (MAOC-N).

International Centre for Migration Policy Development (ICMPD), NATO, World Customs Organization).

In practice, Frontex has working arrangements with eight international organisations and international think tanks. This includes two that are not listed in the EBCG Regulation (DCAF, ICMPD), although all of these working arrangements pre-date the Regulation. Similarly, there is no reference in the EBCG Regulation to the Agency's cooperation with non-State actors, although Frontex is also involved in post-return and post-arrival activities alongside non-State actors, such as non-governmental organisations (NGOs)¹⁹¹.

The Agency's external engagements are coordinated with the support of the Commission, and in cooperation with the EEAS if necessary. Any new working arrangements are subject to a Commission approval and must also be approved by the MB of the Agency. This suggests sufficient guarantees being in place that makes the added value of an exhaustive list of organisations in the EBCG Regulation unclear.

Frontex is able to maintain less formal cooperation with organisations outside of working arrangements. With such organisations Frontex aims to promote dialogue and coordination in areas of mutual interest, including cooperation with the World Customs Organization, ICMPD, Allied Maritime Command (MARCOM) of NATO and the International Labour Organization (ILO)^{192,193}. However, in particular in the case of NATO, informal avenues do not allow the cooperation to reach its full potential.

4.1.2.7. Fundamental Rights

Key evaluation findings

The EBCG Regulation, together with a number of safeguards introduced by the Agency through the implementation of new rules and procedures, has established a robust foundation for the respect, protection and promotion of fundamental rights in the Agency's activities.

The fundamental rights framework in place contributed to ensuring that the Agency's staff fully respects fundamental rights in its support to Member States.

However, questions remain as regards the effect of the host Member States' compliance with fundamental rights on the Agency, in the framework of their common activities.

The Serious Incident Reports (SIRs) mechanism remains an important instrument for the Fundamental Rights Officer (FRO) to map and indicate when fundamental rights challenges occur and monitor the Agency's compliance with fundamental rights.

However, a number of factors have been identified that limit the effectiveness of this reporting tool, such as the limited cooperation of and follow-up by national authorities.

On the decisions to suspend, terminate or not launch Frontex activities (Article 46), the evaluation found that the Regulation was overall balanced. Some stakeholders consider that the decision-making process should have a political layer, while others oppose this

¹⁹¹ Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document.

¹⁹² Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 35.

¹⁹³ ICF study (2023), pp. 77-84.

idea. Also, some have suggested to give the FRO more powers. Furthermore, some considered that the procedure to trigger Article 46 should be modified to include some intermediate steps before a decision to suspend or terminate an operation is taken. This would ensure the continued presence of Frontex in the host country with a view to monitoring and improving the situation.

The EBCG Regulation aims to establish a comprehensive fundamental rights framework, including horizontal safeguards, roles, procedures, and instruments (to be set up and/or implemented by the Agency) to ensure the protection of fundamental rights in the implementation of the Agency's mandate¹⁹⁴.

During the evaluation period, Frontex put in place a number of measures to ensure and promote the respect of fundamental rights, including by adopting and/or implementing rules and procedures. This includes the **Fundamental Rights Strategy** and its **implementing Action Plan**¹⁹⁵, rules on the FRO's activities (including contributing to a wide range of Agency tools and procedures, such as operational plans), the continuous deployment of FRMs to all Agency activities and operations, MB Decisions (on the complaints mechanism, SIRs, supervisory mechanism on the use of force, etc.), data protection safeguards and rules allowing the DPO to carry out his/her tasks effectively, as well as embedding fundamental rights components within Frontex trainings and other longer-term efforts to promote a fundamental rights culture within the Agency.

Although the obligation to fully comply with fundamental rights applies to the entire EBCG, and therefore also to the Member States, and not only to Frontex, the regulatory provisions are focused on the Agency and not on national authorities. However, many concerns about fundamental rights reported to the FRO do not relate to Frontex's staff or assets, but, rather, to alleged violations by staff of the Member States during operational activities jointly undertaken by the Agency and Member States. In such cases, the powers of the FRO are limited, as they do not include monitoring the national authorities' activities, which are instead covered by national monitoring mechanisms (such as the national ombuds institutions) to the extent that such institutions exist¹⁹⁶.

While Frontex has a duty to constantly assess the fundamental rights compliance of all its operational activities through the work of its FRMs, under EU law there is no similar obligation for Member States¹⁹⁷, although the Commission strongly encourages the development of similar mechanisms at national level¹⁹⁸ and is offering financial support

¹⁹⁴ This section only addresses the main issues in relation to the EBCG's compliance with fundamental rights. Further details can be found in section 2 (EQ 14) of Annex IIIa.

¹⁹⁵ Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

¹⁹⁶ FRA (2023) contribution to the Commission's evaluation, p. 5.

¹⁹⁷ FRA (2023) contribution to the Commission's evaluation, p. 5.

¹⁹⁸ European Commission (2023). Annexes to the Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border management. COM(2023) 146 final.

for setting up such mechanisms at the national level¹⁹⁹. The Fundamental Rights Office's monitoring of Member States' staff involved in operational activities has at times created tensions with some Member States, whose authorities question the scope of the Office's activities and suggest that it is overstepping its mandate²⁰⁰.

The limitations of the Fundamental Rights Office's mandate can also negatively impact at times the ability of the FRMs to conduct their activities, as well as call into question their right to access operational areas. Some clarifications were brought about by the **2023 Standard Operating Procedures (SOP) for FRMs**²⁰¹. Although the scope of the FRMs' monitoring activities is limited to the areas within which the Agency operates, FRMs may collect relevant information and assess the fundamental rights situation, with regard to border and migration management, in the Member States and third countries in which the Agency conducts operational activities. This therefore also includes the relevant activities of national authorities. However, the objective is not to evaluate the conduct of national authorities but, rather, to evaluate the situation insofar as it may have an impact on Frontex's activities, the Agency's reputation, and above all its staff's ability to operate in a way that fully complies with fundamental rights obligations.

Fundamental Rights Officer (FRO)

The role of the FRO is crucial in ensuring the Agency's respect for, and compliance with, fundamental rights, as well as the effectiveness of the internal fundamental rights monitoring and accountability mechanisms. The FRO is responsible for monitoring the Agency's implementation of its fundamental rights obligations and for advising (including on his/her own initiative) the Agency on fundamental rights-related issues²⁰². As highlighted during the stakeholders' consultation²⁰³, the initial absence of obligations on the MB and ED had de-prioritised the need to follow-up to FRO recommendations. In the case of Hungary, for example, the suspension of the Agency's support for border management took place five years after the first recommendation of the FRO²⁰⁴. This situation was remedied by the adoption of **MB Decision 43/2022 on actions to be taken as a follow-up to the FRO's recommendations**²⁰⁵, which stipulates clear timelines and procedures for the follow-up to recommendations by the FRO and Consultative Forum.

¹⁹⁹ HOME-Funds/2023/39: Call for expression of interest BMVI SA for MS national strategies for a European integrated border management - BMVI/2023/SA/1.2.3.

²⁰⁰ ICF interviews with the Fundamental Rights Office (1/5).

²⁰¹ Frontex (2023). 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities. Internal document.

²⁰² Article 109 of the EBCG Regulation.

²⁰³ ICF interviews with a civil society organisation/member of the CF (1/5), and a civil society organisation/non-member of the CF (1/4).

²⁰⁴ European Parliament Frontex Scrutiny Working Group (FSWG) (2021). Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations.

²⁰⁵ Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

Other challenges to the work of the FRO derived from the lack of sufficient and adequate **human and financial resources** provided to the FRO to fulfil his or her tasks. Despite the requirement in the EBCG Regulation to provide the Office with sufficient human and financial resources²⁰⁶, the resources of the Fundamental Rights Office were insufficient for quite some time and were increased considerably only from 2021-2022, following a recommendation from the Agency's MB²⁰⁷.

Fundamental Rights Monitors (FRMs)

The EBCG Regulation introduced the role of **FRMs**, who have the pivotal task to '[...] assess fundamental rights compliance in operational activity, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of EIBM'²⁰⁸.

To facilitate effective monitoring, the EBCG Regulation requires that FRMs have access to all areas in which the operational activities of the Agency take place and to all documents relevant to the implementation of those activities. However, differences in interpretation on the scope of the FRMs' mandate/monitoring and access to operational areas and documents (including databases) have hindered the effectiveness of the monitoring activities. In addition, limitations imposed by some national authorities to the FRMs' ability to monitor certain activities, such as not allowing their participation in (land and sea) patrolling and/or debriefing interviews, further constrained FRMs' effectiveness in fulfilling their monitoring capabilities. To guarantee effective monitoring, the ED adopted the SOP for the FRMs in March 2023²⁰⁹, which also reiterates the access rights of FRMs in line with the EBCG Regulation.

Consultative Forum (CF)

Unlike the FRO and FRMs, the CF does not have the mandate to monitor Frontex's activities. Rather, it assists the Agency by providing independent advice on fundamental rights matters. The ED and the MB, in coordination with the FRO, may consult the CF on any matter related to fundamental rights²¹⁰.

Although the CF may carry out on-the-spot visits to the Agency's operations (in its headquarters and in host Member States), these visits are not aimed at fundamental rights monitoring. Rather, their objective is to collect information, which may be used to inform the CF's work to advise the Agency. Despite the adoption of MB Decision 43/2022, which also aimed to improve cooperation between the Agency and the CF, including by setting clearer procedures and timelines regarding the response to CF recommendations, the Forum has argued that there are several challenges stemming from the Regulation or

²⁰⁶ Article 109(5) of the EBCG Regulation.

²⁰⁷ Conclusion of the Management Board of 5 March 2021.

²⁰⁸ Article 109(3) and Article 110(1) of the EBCG Regulation.

²⁰⁹ Frontex (2023). 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities'. Internal document.

²¹⁰ Article 108(1) of the EBCG Regulation.

its implementation that risk limiting the impact of their work. These include insufficient access to information, lack of request for consultations from the Agency or insufficient time to reply to requests, and limited follow-up to the CF's recommendations. Several stakeholders also highlighted the difficulties for civil society organisations to continue contributing to the work of the CF on a voluntary basis, given their limited resources and staff²¹¹.

Decisions to suspend, terminate or not launch activities (Article 46)

Article 46 provides another important fundamental rights safeguard of the EBCG Regulation. It establishes the obligation of the ED to suspend, terminate or not launch any activity of the Agency if the conditions to conduct such activities are not (or no longer) fulfilled, including in cases of serious or persistent fundamental rights violations²¹². Various stakeholders highlighted that the EBCG Regulation leaves considerable discretion to the ED in this regard²¹³.

To fill this gap and to strengthen the functioning of Article 46, in 2022 the Agency adopted a **Standard Operating Procedure (SOP) on establishing the roles and responsibilities within the Agency to support the decision-making process of the ED**.²¹⁴ The SOP also aims to clarify the applicable criteria for decisions, setting out a gradual approach and relying on the principle of proportionality when deciding actions to be taken under Article 46. Whenever appropriate, mitigating/corrective measures should be put in place to improve and resolve the situation without triggering Article 46.

Stakeholders' views diverge on the design and application of Article 46. As withdrawing Frontex staff from a host country limits or eliminates the FRO's ability to monitor and report on possible fundamental rights violations at that country's borders, and the Agency's ability to contribute to improving the situation, some stakeholders even suggest a 'reverse Article 46', which could entail additional safeguards and/or an enhanced presence of the Agency in response to fundamental rights violations at the borders of the host Member State²¹⁵.

Stakeholders' views similarly diverge on the authority adopting the decision referred to in Article 46. The EBCG Regulation puts this responsibility on the ED of the Agency. Some consider that this provision has the potential to place excessive public and political pressure on the ED alone, without involving other relevant actors (such as the MB,

²¹¹ ICF interviews with civil society organisations/members of the CF (3, 4, 7).

²¹² Article 25 of the Regulation (EU) 2016/1624 (no longer in force) referred to the suspension or termination of activities only, without including the preventive component (i.e. not launching the activities).

²¹³ Based on interviews with civil society organisations/non-members of CF (2/4) and civil society organisations/members of CF (3/5) and international organisation/member of CF (1/3).

²¹⁴ Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.

²¹⁵ ISF interview with Frontex and FRO (1/5).

European Commission, or the Council)²¹⁶. On the contrary, others argue that the potential involvement of such actors could lead to the politicisation of the process (with the risk of having political actors blocking in practice the possibility of triggering Article 46)²¹⁷.

Serious Incident Reporting (SIR) mechanism

The SIR mechanism is one of the main reporting mechanisms of the Agency and is used to promptly inform the Agency's management and relevant stakeholders²¹⁸ of a serious incident (SI). This section focuses on the SIRs related to fundamental rights violations (so-called SIR category 1).

The EBCG Regulation only mentions this mechanism once in Article 46, without however establishing any rules on the mechanism itself. Therefore, the Agency adopted a revised and enhanced SOP on the SIR procedure in a 2021 Decision of the ED, which repealed and replaced the original 2014 SOP on the mechanism²¹⁹. The adoption of the SOP on SIRs is relatively recent and further monitoring is needed to assess its functioning²²⁰.

The SIR mechanism provides important information for the FRO to monitor the Agency's compliance with its obligations to respect fundamental rights. The shortcomings of the previous SIR mechanism, in particular following the investigations into allegations of Frontex's involvement in pushbacks in 2020 and 2021, prompted the Agency to improve the mechanism. The revised SOP enhances the role of the FRO by allowing the direct reporting of situations that potentially violate fundamental rights, as well as automatically assigning the FRO as case-handler for all incidents concerning alleged violations of fundamental rights.²²¹ However, according to the CF, the mechanism may still require further improvements to be effective. For example, in the Forum's view the FRO should be involved in all steps of the process, i.e. identification, categorisation and handling of cases, and the FRO should have the possibility to challenge previously made decisions on the categorisation of incidents²²².

Overall, the external study identified some factors that may continue to limit the mechanism's effectiveness. Some of these factors have largely already been addressed,

²¹⁶ View expressed by seven MS as a follow-up to discussion in the Council's Frontiers Working Party on 26 May 2023.

²¹⁷ View expressed by three MS as a follow-up to discussion in the Council's Frontiers Working Party on 26 May 2023.

²¹⁸ SIR mechanism primarily informs Frontex Executive and Senior Management, the FRO, Member States and third countries (where appropriate and in accordance with the relevant status agreement and operational plan), the MB, and other relevant stakeholders.

²¹⁹ Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

²²⁰ ICF survey of MS/SAC authorities: 1/27.

²²¹ Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

²²² Consultative Forum's contribution to the Commission's evaluation of the EBCG Regulation, p. 12.

chiefly by the introduction of the 2021 SOP on the SIR mechanism, such as the perceived insufficient involvement of the FRO in handling reports. Other issues persist, such as limited sources of information, a problem that may be exacerbated by insufficient cooperation from national authorities during investigations and follow-up. Additionally, serious incident files remain “open” for long periods of time, although this is also due to the FRO being reluctant to close incidents if the feedback received by national authorities is deemed insufficient. Other overarching issues may include difficulties in ensuring that any established wrongdoings are adequately remedied, particularly as the responsibility with regard to following up on SIRs concerning category 1 SC falls on the national authorities of Member States, as well as an overall lack of transparency (SIRs are restricted documents), and the fact that the mechanism does not feature avenues for redress for any established injured parties – although any victims can pursue redress through other mechanism including legal action against the Agency. An overall lack of incentives for deployed staff to submit SIRs was also noted. The Agency has already started to take measures to address this issue. Thus, the FRO has been working to increase Agency staff awareness of the SIR mechanism and the revised SOP, through training and briefing activities, as well as better advertising the obligation to report serious incidents, the existing mechanisms to protect whistle-blowers and anyone reporting incidents, and the potential consequences for not reporting violations of fundamental rights. Moreover, the presence of FRMs on the ground contributes to a broader utilisation of the SIRs mechanism: FRMs inform deployed staff on the SIRs mechanism and encourage them to submit SIRs where appropriate and may also submit SIRs themselves. In addition, the FRO has created a dedicated SIR team within the Fundamental Rights Office. The capacity of the SIR team will however need to increase, given the growing number of SC officers and new deployment activities²²³.

Complaints mechanism

Introduced in 2016, the complaints mechanism is an important component of the Agency’s fundamental rights protection framework. Despite being one of the main reporting mechanisms, over the years various stakeholders have raised concerns about its set up and implementation, suggesting that these may have limited its capacity to provide an effective and accessible tool for reporting, investigating, and remedying alleged breaches of fundamental rights²²⁴. More specifically, these concerns relate to the access, scope, independence, and transparency of the mechanism, the limited role of the DPO in the process, issues with lack of adequate follow-up to complaints, and absence of options for remedy and appeal.

In particular, the complaints mechanism does not provide access to those who have not been affected ‘directly’ by actions or omissions²²⁵, nor does it allow the possibility to

²²³ ICF interview with the Fundamental Rights Office (1/5).

²²⁴ Consultative Forum’s contribution to the Commission’s evaluation of the EBCG Regulation, p. 8.

²²⁵ European Council on Refugees and Exile (ECRE) (2021). ‘Holding Frontex to account. ECRE’s proposals for strengthening non-judicial mechanisms for scrutiny of Frontex’.

initiate a complaint *ex officio*²²⁶, nor to submit anonymous complaints²²⁷. This restricted access might be a contributing factor to the low number of complaints submitted via this mechanism. On the other hand, allowing broader access to the mechanism may lead to the submission of frivolous complaints. Additionally, EU regulations already impose the obligation to report wrongdoing noticed in the exercise of their duties²²⁸. Any staff witnessing wrongdoings but not directly employed by the Agency, moreover, since 2021 has access to the Agency's whistle-blower mechanism. The EP²²⁹ and the European Ombudsman²³⁰ have called into question the **independence of the complaints mechanism**, given the role of the FRO and ED, respectively, in assessing and deciding on the complaints. Although the FRO recommends appropriate follow-up, the decision on the merits of the complaint lies with the ED, who should ensure proper follow-up and report back to the FRO. For complaints concerning national staff, the merits of the complaints are assessed by the national authorities, as the FRO forwards those complaints to the relevant Member State and sends a copy to the Member State's national human rights institution or ombuds institution, as applicable, for further action.

Where a complaint relates to data protection issues, the ED consults the DPO before taking a decision²³¹. During the consultation, it was reported that the work of the DPO in this area has been very limited so far²³².

Furthermore, the EBCG Regulation does not provide for the possibility of appeal within the complaints mechanism. The European Ombudsman found that the mechanism lacks scrutiny and indicated that decisions by the ED on complaints forwarded by the FRO may be challenged before the European Ombudsman²³³.

Return monitoring and fundamental rights

In line with the EBCG Regulation²³⁴, the Agency adopted a code of conduct for return operations and return interventions, which reinforces the respect for fundamental rights

²²⁶ FRA (2018). 'The revised European Border and Coast Guard Regulation and its fundamental rights implications. Opinion of the European Union Agency for Fundamental Rights'. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-opinion-ebcg-05-2018_en.pdf

²²⁷ ICF interviews with the European Ombudsman, an EU agency (FRA), a civil society organisation/member of the CF (5) and a civil society organisation/ non-member of the CF (9); European Ombudsman (2020). 'Decision in OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer'.

²²⁸ Article 21a of the EU Staff Regulations.

²²⁹ FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

²³⁰ European Ombudsman (2020). 'Decision in Case OI/5/2020/MHZ, Functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer'.

²³¹ Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism, Article 10.

²³² ICF interview with Frontex.

²³³ ICF interview with the European Ombudsman.

²³⁴ Article 81(2) of the EBCG Regulation.

when carrying out these activities²³⁵, through a number of obligations and good practices to be observed/ implemented.

The monitoring of forced-return operations is carried out by the pool of forced-return monitors. The pool is set up by the Agency from monitors of competent bodies of the Member State. The Agency also contributes FRMs to the pool²³⁶. The FRA raised questions about the governance of the pool as the management of the pool of forced-return monitors is currently assigned to the FRO (independent but not external to the Agency). The FRA considers that handing over this responsibility to a fully external entity could enhance the independence of the pool²³⁷. Before 2021, the pool solely comprised monitors from Member States, while the Fundamental Rights Office worked to train and then appoint FRMs as forced-return monitors²³⁸.

Issues were reported in relation to the limited number of experts made available to the pool by Member States, which might limit the capacity to meet monitoring needs for all relevant operations²³⁹. In 2021, the FRO recruited three FRMs to act as forced-return monitors, and in 2022, six FRMs acted as forced-return monitors to ensure adequate capacity to return monitoring operations. Additional FRMs are consistently trained as forced-return monitors to ensure that the available monitoring capacity reflects the needs of Agency and Member States^{240, 241}.

4.1.3. Efficiency

4.1.3.1. Use of human and financial resources by Frontex

Key evaluation findings

Both the planned and actual allocation of human resources at the Agency are broadly in line with the tasks assigned by the EBCG Regulation. Apart from the large increase in the number of SC Category 1 recruits, the distribution of staff between activities and divisions has not changed substantially since the Regulation was introduced.

Both the planned and actual allocation of financial resources at the Agency reflect the implementation of the EBCG Regulation. In 2020, the recruitment and training of the SC attracted a larger share of funding. Since 2021, operations and technical equipment have accounted for a larger share of the budget.

Frontex has faced significant challenges in implementing its increasing financial resources, but it has largely been able to adapt its budgetary management to its new mandate and to the expected operational results.

²³⁵ Frontex (n.d.). ‘Code of conduct for return operations and return interventions coordinated and organised by Frontex’.

²³⁶ Article 51 of the EBCG Regulation.

²³⁷ ICF interview with FRA.

²³⁸ ICF interview with the Fundamental Rights Office (1/5).

²³⁹ ICF interview with DG HOME.

²⁴⁰ ICF interview with the Fundamental Rights Office (1/5).

²⁴¹ ICF study (2023), pp. 84-101.

The EBCG Regulation significantly increased Frontex's resources, with its budget more than doubling and staff almost tripling between 2019 and 2022. This trend is set to continue, as the EU contributions will steadily increase under the remainder of the 2021-2027 MFF. Frontex, in turn, is expected to meet the increasing budgetary targets each year and to translate these resources into effective and efficient implementation of the Regulation. Figure 2 shows the magnitude of this increase.

Figure 2 EU contribution to Frontex (2016-2027)



Source: ICF, based EU budget data from MFF 2014-2020 and MFF 2021-27.

The adoption of the EBCG Regulation also led to a significant increase in human resources dedicated to operational response, including the SC. This sharp increase in its budget, in combination with its expanded mandate, created significant implementation challenges for the Agency, which are expected to be mitigated over time. Besides the general MFF 2021-2027 reduction in the Agency's budget (40%), further reductions were applied by the budgetary authority to the annual budget for Frontex in 2021, 2022 and 2023. The Agency's budget in those years was reduced by EUR 61 million²⁴², by EUR 65 million and EUR 50 million respectively. Despite the reductions from their initial budget, the Agency recently released EUR 15 million of its EU contributions for 2023, EUR 57.2 million in 2022 and EUR 14.6 million in 2021. Moreover, in the years 2019 and 2020, the Agency also released respectively 22.3 million and 98.9 million. The largest budget adjustment in 2020 was mainly due to the challenging and changing circumstances caused by the pandemic situation which triggered the Agency to scale down its activities in the area of return, joint operations and onboarding of the SC as well as that many activities, in particular trainings, meetings and recruitments, have been performed remotely. Based on the executed budget, implementation of the appropriations

²⁴² The EUR 61 million is backloaded to 2025, 2026 and 2027 (EUR 61m/3).

is sound, confirming that the Agency is still quite effective in forecasting its short-term budget implementation.

Overall, the allocation of human and financial resources in Frontex's strategic planning has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation as well as with its strategic and horizontal objectives set in the SPD. Since 2021, staff has shifted towards strategic objectives related to operational activities rather than horizontal objectives, such as internal management and cooperation. The SC development drove the financial resources allocation in 2020, while resource planning from 2021 onwards has been stable, prioritising operational support, returns, and horizontal management. Resource allocation appeared adequate to some extent for developing and managing human resources and TEPs.

In adapting its budgetary management to the new mandate and expected operational results, some areas of expenditure, generally related to the implementation of the EBCG Regulation, have proved particularly problematic for the Agency from a budgetary and financial management perspective. Moreover, the efficiency of the Agency's financial resources allocations has varied during the years. For instance, Frontex's ability to spend its voted budget for infrastructure and operating expenditure decreased in 2020 and 2021 in comparison to 2019, while 'staff expenditure' remained within targets. This is indicative of the difficulties in implementing the significantly growing budget lines related to joint operations, deployment of team members and equipment.

Moreover, Frontex has generally been able to spend the amounts carried over from the previous year, with no significant difference between the three years considered. For example, EUR 159.4 million were carried forward from 2020 to 2021 (43.6 %) compared to EUR 102 million from 2019 to 2020 (32%). Out of this amount carried forward EUR 20.3 million were cancelled, representing 12.8% of the total appropriations carried forward. For comparison, EUR 9.4 million (9%) had to be cancelled in 2020.

EUR 240.4 million were carried forward from 2021 to 2022 (47%) which is a higher level compared to EUR 159.4 million from the previous year. Out of the amount carried forwards EUR 39.4 million were cancelled, representing 16%.

Approximately 90% of the amounts carried forward under 'Infrastructure and operating expenditure' and 'operational expenditure' are paid within the year following the initial commitment, while a greater proportion (50%) of those recorded under 'Staff expenditure' is returned each year, although this is small in absolute terms.

The most problematic carried over budget items under 'operational expenditure' are 'Agency equipment' and 'strengthening capacities', which includes training and research and innovation. In 2021, under the 'Agency equipment' budget item, 78% of funds were automatically carried over (EUR 20.4 million) and 22% of funds were cancelled,

corresponding to EUR 5.9 million²⁴³. These amounts have further increased in 2022, with respectively 85% of funds carried over and 15% cancellations, amounting to EUR 13.4 million²⁴⁴. A key challenge in this regard has been the insufficient clarity on the acquisition strategy and the logistics concept, linked to the delays in the adoption of the multi-annual acquisition strategy²⁴⁵.

4.1.3.2. Costs and benefits generated by the EBCG Regulation

Key evaluation findings

As regards costs, while the Regulation is largely implemented via the budget allocated to Frontex, there are also substantial additional investments via 2014-2020 ISF and 2021-2027 BMVI, co-financed by the EU and the Member States, as well as national funds for IT-related activities and EUROSUR upgrades.

In terms of benefits, the vast majority of Member States see the operational support provided by the Agency as positive, both as concerns support with SC staff and with technical equipment. Member States having a small territory and those with borders facing migration routes expressed greater satisfaction with the support received from Frontex, particularly in terms of risk analysis, returns, and deployment of resources.

Frontex's activities in the area of return are recognised by Member States as providing benefits in time and administrative burden savings, financial savings, and the availability of additional resources.

In terms of implementation, the following inefficiencies have been identified:

- *The strategic and operational planning process imposed on Member States by the EBCG Regulation has proved burdensome and somewhat inefficient;*
- *Operational and contingency plans have posed challenges due to overlaps with situational awareness, and*
- *The development of the capability roadmap by Frontex was impacted by delays in the finalisation of national capability plans and the absence of the Agency's acquisition strategy, causing further delays at both EU and national level²⁴⁶.*

As regards the SC,

- *the reimbursement of Categories 2 and 3 SC officers is burdensome for Member States, it often does not cover the full costs and may also be insufficient to motivate experienced officers to be deployed, and*
- *Member States consider the financial support provided under Article 61 to be cumbersome and inadequate, making it challenging for them to maintain staffing levels and meet national needs.*

²⁴³ The most important specific problems, such as the 'principle of annuality' in the acquisition of large-scale equipment (e.g. vessels), and the absence of an acquisition strategy were presented in section 4.1.2.5 and explained in section 2 (EQ 6.2) of Annex IIIa.

²⁴⁴ Budget implementation reports for the implementation period 1 January until 31 December 2021 and for the implementation period 1 January until 31 December 2022.

²⁴⁵ The multiannual strategy for acquisition and management of the Agency's equipment was adopted on 15 September 2023 with Management Board decision 28/2023.

²⁴⁶ See section 4.1.2.5.

Member States have benefitted from EU funds²⁴⁷ to implement the EBCG Regulation and manage borders and migration. Under 2014-2020 ISF-Borders and Visa instrument, within the framework of targeted specific actions (up to 90% EU co-financing rate, the difference being covered by the Member States' national budget), an additional EU funding of EUR 336.8 million was supporting the Member States with the purchase of border surveillance equipment (such as coastal and off-shore patrol vessels, thermo-vision vehicles, fixed wing airplanes) to be put at the disposal of Frontex.

Furthermore, the 2021-2027 Border Management and Visa Policy Instrument (BMVI), which is part of the EU Integrated Border Management Fund prioritised and will continue to support the operationalisation of the EBCG. Thus, following a BMVI Specific Action launched in October 2022, a total EU contribution of EUR 201.1 million is added to Member States BMVI programmes to purchase technical equipment (such as coastal and offshore patrol vessels, patrol cars, fixed wing aircraft, vertical take-off and landing remotely piloted aircraft, etc.), to register it in the Technical Equipment Pool and put it at the disposal of Frontex to increase its operational capacity, in accordance with Article 64(14) of the Regulation (EU) 2019/1896. A similar BMVI Specific Action will be launched in 2024.

This additional EU funding represents a major and targeted support to Member States to deliver on the operationalisation of the EBCG.

In addition, BMVI operating support is funding certain costs of Member States to the extent that they are not covered by the Frontex in the context of its operational activities (such as staff costs, including training, maintenance or repair of equipment and infrastructure, etc.). It can also cover entirely (100% EU funding rate) the running costs incurred by the host Member State when participating, for example, to a joint operation or a rapid border intervention, a return operation or a return intervention takes place.

A significant proportion of resources from national budgets is allocated to IT-related activities, particularly for EUROSUR upgrades. The amount of **IT-related funds** for Member States is consistent with the increasing investments of Frontex in IT systems for situational awareness, information exchanges and security, and these activities are expected to increase in the coming years, based on the Frontex Information Management Framework. While Frontex handles a considerable portion of IT investments, Member States are responsible for developing national modules to connect with EU systems and facilitate information exchange.

The quantification of the **inefficiencies** arising from the Regulation and its implementation is difficult, and Frontex itself has not carried out detailed estimates, but the main identified issues related to the structure and deployment of the SC, the lack of

²⁴⁷ Internal Security Fund (ISF) – Borders and visa (2014-2020); Integrated Border Management Fund (Border Management and Visa Policy Instrument (BMVI) (2021-2027); Asylum, Migration and Integration fund (AMIF) (2014-2020); Asylum, Migration and Integration fund (AMIF) (2021-2027).

clearly developed logistics concepts, the lack of an acquisition strategy, and delays in developing a clear vision for the deployment of the SC²⁴⁸.

One key issue is the administrative burden Member States face in relation to the **reimbursement of Category 2 and Category 3 officers**, including travel costs and other expenses, which are often insufficient to cover the full costs or to motivate experienced officers to be deployed. Recent changes in reimbursement reporting requirements for Member State staff have reportedly increased the administrative burden on Member States²⁴⁹.

Member States have pointed out to similar issues with regard to the financial support under Article 61 (Category 2 officers seconded to the SC), considering the system as cumbersome and the level of financial support as inadequate to maintain staffing levels and meet national needs. The administrative workload leads to a mobilisation of resources that could be used more effectively by Member States. Moreover, the correction coefficient for reimbursement under Article 61²⁵⁰ does not adequately account for changes in the costs of living. This issue does not derive from the Regulation *per se* but affects the efficiency of its implementation.

In terms of possible actions to achieve **simplification and cost reduction**, the following issues could be addressed:

- the streamlining and simplification of obligations on Member States relating to the multiannual strategic planning process of Frontex, and in particular of the operational plans;
- possible simplification of the financial support and reimbursement schemes for the preparation and deployment of Category 2 and Category 3 officers²⁵¹, as well as for the financial support linked to Article 61.

4.1.4. Standing Corps

This section presents the evaluation findings related to the Standing Corps (SC). These findings support and contribute to the review of the SC, in particular the review of the overall number and composition of the SC, including the size of individual Member State contributions, expertise, professionalism and training of the SC, as well as of the necessity to maintain the reserve for rapid reaction²⁵².

Key evaluation findings

*SC has been mostly **relevant to supporting Member States** in the external border management and returns. The deployments are predominantly in line with the*

²⁴⁸ Further details can be found in section 2 (EQ 6.2) of Annex IIIa.

²⁴⁹ Interviews in a case study.

²⁵⁰ As for Article 61(2) of the Regulation, the financial support for the SC is calculated using as a reference amount the annual salary of contractual agents in function group III, grade 8, step 1 of the institutions of the Union, adjusted by a corrective coefficient per Member State.

²⁵¹ ICF survey of MS: 14/27.

²⁵² Article 59 of the EBCG Regulation.

operational needs.

*Nevertheless, there are several **factors hindering** the SC ability to fully support Member States. These challenges to overcome are of a practical, organisational and legal nature.*

The Agency initially faced delays in the recruitment of SC Category 1 (statutory staff recruited by Frontex). Moreover, it continues to be difficult to ensure a national balance of Category 1 staff. There are also gaps in certain specialised profiles of staff.

The Agency initially faced delays in the recruitment of SC Category 1 staff (statutory staff recruited by Frontex), in part due to the COVID-19 pandemic. Moreover, it continues to be difficult to ensure a geographical balance of Category 1 staff.

While Categories 2 (long-term secondments from Member States) and 3 (short-term deployments from Member States) SC are found to be experienced officers of the Member States, the background and training of Category 1 is not always found to be adequate to providing effective support to Member States, though feedback from various Member States differs. Overall, the training for Category 1 staff has been found to be relevant to their tasks, but there is room for improvement to ensure the necessary amount and quality of the training for all the SC, especially Category 1.

Category 4 (a reserve of the Member States for rapid border interventions) has not been deployed during the evaluation period. In the event of needs for additional resource, other categories have been sufficient. This supports phasing out of Category 4, as planned.

The size of individual Member States' contributions to the SC appears largely adequate to meet the objectives of the EBCG Regulation. Though Member States have kept a good level of compliance with national contributions, they face several challenges in nominating and seconding SC to the Agency and might encounter further challenges to do so in the future. Some challenges are due to the conditions for financial reimbursement of the Agency to the Member States and, more broadly, to the working conditions of the SC.

Deployments of SC

The establishment of the SC has been one of the most essential novelties of the EBCG Regulation with its main objective to support Member States in the management of the Union external borders, migration management, and returns.

SC is a new concept. It is growing into a total of 10 000 fully equipped operational staff by 2027, thus ensuring constant and timely availability of the resources. The objective of the SC is to remedy the shortcomings of the previous pooling mechanism of the resources of the Member States. The contributions of each Member State to Categories 2 and 3 are gradually increasing from 2021 to 2027. The number of SC Category 1, which is recruited by the Agency is increasing in parallel.

Member States consider the deployment of the SC to be relevant in terms of needs. This is primarily because SC offers additional resources, when needed.

The deployments correspond mostly to the operational needs. Recently, the deployments have increased proportionally most in Central and Western Mediterranean, Eastern land

borders and Western Balkans and the operational area of the Eastern Mediterranean migratory route has also seen an increase in deployments. Additionally, SC has provided significant and welcome support to the return operations.

Number and composition of the SC

Beyond the Agency, the EBCG includes the national authorities responsible for border management, including coast guards where relevant, and the national authorities responsible for returns.

Three main groups of national authorities contribute to the SC: law enforcement and border management authorities, defence authorities, and authorities with other duties. Most of the SC (97%) are seconded (Category 2) or nominated (Category 3) by national authorities with law enforcement and border management duties. These include police forces, border and coast guards, as well as entities with mandates concerning migration, integration, return management, and customs. A minority of the SC is nominated or seconded by defence authorities (1.8%).

The overall number of the SC meets the operational needs in the foreseeable future.

The building up of the SC is evolving gradually until 2027. So far, there has not been any evidence of factors that would impact the objective set in the Regulation. There are no changes in the operational environment either that would change the planning parameters to alter the objective of 10 000.

The decision on the size of the SC was based on the operational needs analysis and actual deployments at the time of the preparations of the Regulation. At the time, Member States had in the pool for deployments of the joint operations 7 000 individuals. Additionally, the number of border guards nominated for the rapid reaction pool was 1 500 and the number within three return pools was 1 500. That was the number of personnel considered to cover the foreseen operational needs. In line with this total number, by 2027, SC will include²⁵³ 3000 statutory staff of Frontex in Category 1 and 7000 from the Member States in Categories 2 and 3.

Even if there were delays in setting up the Category 1, the recruitment, training, equipping and deployment have been catching up. The recruitment of Category 1 staff was significantly delayed by the COVID-19 pandemic. Nevertheless, significant progress has been made. In 2021 Agency counted 495 deployable team members. In 2022 the number was already 678, reaching 970 SC Category 1 staff as of September 2023.

²⁵³ The number of SC Category 1 staff as indicated in Annex I of the EBCG Regulation includes statutory staff deployed as members of the team in operational areas, staff responsible for the functioning of the European Travel Information and Authorisation System (ETIAS) and the ‘up to 4% support staff’ in line with Articles 54(7) and 54(8) of the EBCG Regulation.

In 2023, the size of the SC is planned to reach 7 500 members.²⁵⁴ The overall situation of SC staffing as of September 2023 counts 970 employed Category 1, 450 seconded Category 2 and 3899 nominated Category 3²⁵⁵.

However, when it comes to **the composition of the SC**, even if Member States consider the profile categories²⁵⁶ to be adequately defined in terms of their roles and responsibilities, there are gaps in the availability of certain specialised experts. This is especially the case in respect of certain profiles such as dog handlers and advanced level document officers (ALDOs). The gaps in the composition of the SC can be fixed with the long-term recruitment and training plans on European level, as a part of better strategic planning.

The geographical composition of Category 1 does not represent an EU-wide border uniformed service, nor does it reflect the diverse national backgrounds and working cultures of all Member States in a representative way. This is mainly due to different working conditions and pays in the Member States²⁵⁷.

Effectiveness of deployment of SC

Overall, the effectiveness of the deployment of SC has been satisfactory. Even if the deployment of Category 1 staff has been effective to some extent, there are still several factors that limit this effectiveness²⁵⁸.

The **deployment of Categories 2²⁵⁹ and 3²⁶⁰** appear to be more effective. SC staff of Categories 2 and 3 have received very positive feedback from Member States. National authorities value their background, professionalism, and operational support.

For Category 2, the length of deployment is particularly valued by the national authorities who receive them, however it creates difficulties in recruitment for Member States who second Category 2 staff to the Agency. For Category 3, Member States consider these officers useful to fill gaps in busy or intense periods, such as holidays. Shorter length of deployment was noted as an issue in the context of participation in joint operations as by the time an officer becomes familiar with the host State's procedures, they must leave, making the deployment less efficient.

²⁵⁴ Category 1 – 1500, Category 2 – 500, Category 3 – 4000, Category 4 – 1500. Annex I of the EBCG Regulation.

²⁵⁵ Data from Frontex report on capabilities to the Management Board 5.9.2023.

²⁵⁶ Profiles are describing the expertise, equipping and role of the individual SC staff member. They are for example Dog Handlers, Coast Guard Function Officers and Return Specialists.

²⁵⁷ SC staff from Greece, Romania, Portugal, Spain and Poland account for approximately 74% of all staff (ICF study).

²⁵⁸ See detailed analysis in Annex III.B.

²⁵⁹ Operational staff seconded from MSs to the Agency for a longer-term period of 24 months – Article 56 of the EBCG Regulation.

²⁶⁰ Operational staff for short-term deployments (up to 4 months per year) - Article 57 of the EBCG Regulation.

The Agency recognises that the current deployment system is not efficient and is considering improvements, such as deploying teams rather than individuals. This will be developed as part of the work on the definition of chain-of-command structures. In 2023, Frontex has been piloting a new chain of command structure, with a view of deploying teams rather than individuals. This is also linked to the restructuring Frontex headquarters, to ensure lean and effective business processes. Proposal in this regard has been discussed with the Frontex MB at the end of 2023.

At the same time, integrated planning is under development. This will have an impact on the operational, contingency, and capacity development plans. There is still room for improvement to ensure that all the necessary plans are coordinated on European level and that the plans of Frontex and Member States are synchronised²⁶¹.

The Regulation²⁶² requires that the deployment of the SC focuses on operational tasks at the operational areas. This provision puts a limit to the possible deployment of SC to the **Agency's headquarters**. At the same time, it seems that the Agency lacks certain staff at the Frontex headquarters that would facilitate the overall management of the SC and related support functions. In Frontex's view, only 4% statutory staff for supportive or monitoring functions are insufficient²⁶³. Others suggest that the revision of the internal processes and procedures of the Agency, including the development of clear concepts and business processes in terms of the present and future needs for general administrative support, operational support, and size of operational activities could significantly increase the effectiveness of the Agency's headquarters. A clear overview is likely to emerge as a result of the ongoing development of a new command structure of the SC and the upcoming wider re-organisation of the Agency to align its structure better with its mandate (see section 4.1.2.1). In the meantime, the deployment of some operational staff of the SC to the Agency's headquarters can only be justified for certain narrowly defined profiles²⁶⁴.

The **reserve for rapid reaction** (SC Category 4) has not been relevant to supporting Member States with border management tasks, as no Category 4 staff were deployed in 2021, 2022 or 2023 so far. Annex I to the EBCG Regulation foresees phasing out this reserve, with Category 4 no longer containing any SC staff from 2025. Category 4 has been a temporary bridging solution, while the SC in the Categories 1 – 3 has been increasing to become large enough to address any unforeseen needs. During the evaluation period, in cases where rapid border interventions were needed, resources from other categories (especially Category 3) were available and sufficient to cover the needs.

The size of individual Member States' contribution

²⁶¹ There are a number of practical issues affecting the effectiveness of deployments that are explored below.

²⁶² Article 54(2) of the EBCG Regulation.

²⁶³ Article 54(7) of the EBCG Regulation; interviews with Frontex.

²⁶⁴ Management Board Decision 15/2023 of 31 March 2023 amending Management Board Decision 5/2023 adopting the profiles to be made available to the European Border and Coast Guard standing corps for 2024.

The size of individual Member States' contributions to the SC **appears largely adequate** to meet the objectives of the Regulation. The Agency has been able to answer all the requests for assistance by Member States. Where needs have not been met, this is due to the type (i.e. profiles), rather than the size, of the contributions. The latter should be tailored and adapted to deployment needs during implementation. The non-activation of the Category 4 to date also indicates that the available resources in Categories 1, 2 and 3 have been sufficient to meet the needs.

Member States' obligations to contribute to the Standing Corps, including the individual Member States contributions, are based on the distribution key agreed for the rapid reserve pool established by the previous EBCG Regulation (Regulation (EU) 2016/1624). The Commission's proposal for that Regulation based the distribution on at least 3% of a border guard force of a Member State without land or sea external borders, and at least 2% for Member States with land or sea external borders. This proposal could not gather support in the Council negotiations. Instead, intensive negotiations within the Council led to a distribution key that is applied to the current distribution in annexes II-IV of the Regulation. As regards the **proportionality of national contributions to the SC**, the current distribution of the contribution requirements is taking into account the size of the Member States, population, resources and national capabilities to contribute. When looking at only the national territory and share of EU population, the analysis found that most Member State contribute a fair share to the SC, while five Member States contribute more (HR, DK, HU, LV, RO) and two Member States contribute less (FR and ES). However, the analysis also found that the size of the national contributions is proportionate to national capabilities, with a span of individual contributions varying from a minimum of 0.14% to a maximum 1.5 % of the national law enforcement capacities²⁶⁵.

Expertise, professionalism and training of the SC

Frontex implemented a range of training activities for Member States and third countries and met most internal training targets. Although Frontex successfully delivered assistance (including by establishing common training standards), almost half of the Member States noted the lack of **training for Categories 2 and 3 staff**, or for Member States' own staff. The effectiveness of the implementation of training activities was hindered by implementation issues, as well as by some legislative issues. The biggest training-specific issues were: (1) insufficient capacity within Frontex to deliver all training activities, (2) the lack of high-quality trainers (partly due to the lack of a trainer profile in the SC and to inadequate compensation for trainers), and (3) difficulties in finding and managing host training centres.

Following their recruitment, **Category 1 staff** must undergo necessary border guard- or return-related training, taking into account their previous qualifications and professional experience. The training is mandatory before deployment.

²⁶⁵ See the detailed analysis in section on review of the SC (RQ 9) of Annex IIIb.

The majority of Category 1 staff reported that the training was effective in preparing them to perform specific tasks, such as border checks and border surveillance-related tasks, including refusal of entry, authorisation of entry, and patrolling. However, several national authorities reported that SC Category 1 staff are not sufficiently experienced at the time of their deployment²⁶⁶. They noted that Category 1 staff needs additional training, particularly those without a law enforcement background. This means that the training requirements and training curricula need further improvement.

As explained above, national authorities value the **expertise, professionalism** and operational support provided by deployed Categories 2 and 3 staff. As regards Category 1 staff, a number of implementation issues seem to impact the effectiveness of their deployment.

Firstly, there are some inefficiencies in the selection of the Category 1 staff to be deployed by the Agency, as well as some concerns about their background skills and competences. According to several Category 1 SC officers interviewed and representatives of Member States, the statutory staff deployed often have different skills from those needed in the field.

Another limiting factor is that Category 1 staff is unable to perform certain tasks; e.g. the EBCG Regulation does not contain detailed rules on obligations related to executive powers, use of lethal force and carrying firearms. Different Member States have different legislation dealing with the powers and treatment of officers/vehicles with law enforcement status and not all have adjusted their legislation to enable the full implementation of the Regulation. In such cases Category 1 staff may only be able to provide limited support to the local authorities.

The limited English-speaking staff at local level in Member States means that deployed SCOs cannot effectively carry out their duties unless paired with English-speaking local officers. In some contexts, such as the Eastern border, knowledge of Russian or Ukrainian is a useful skill; however, the deployment does not systematically reflect the staff's language skills.

Finally, logistical concerns were reported as obstacles in the efficient implementation of duties, including carrying weapons and appropriate winter uniforms. E.g. in the absence of logistical hubs in the Member States, Category 1 staff must collect their weapons at the Frontex headquarters in Warsaw and then can travel only on the day of deployment, and not the day before. Moreover, all Category 1 staff received full-service uniforms, and 250 were also equipped with protective glasses, flashlights, tactical belts, gloves and multitool kits as well as with bulletproof vests and helmets where needed²⁶⁷. The gaps with the personal equipment have been gradually closing.

²⁶⁶ ICF field visits to two MS; interviews with MS national authorities: 7/27; ICF survey of MS/SAC national authorities: 3/27.

²⁶⁷ Frontex (2023). 'Consolidated Annual Activity Report 2022'.

4.2. How did the EU intervention make a difference and to whom?

Key evaluation findings

Frontex's new mandate contributed to achieving the objectives of the EBCG as a whole.

The objectives of the EBCG could not have been achieved sufficiently by Member States acting alone.

The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union.²⁶⁸ Frontex's new mandate, as introduced by the EBCG Regulation, contributes to achieving the objectives of the EBCG as a whole, as it supports Member States to implement effective border management. In addition, the establishment of the EIBM multiannual strategic policy cycle by the Regulation contributes to reaching the objective of 'the gradual establishment of an integrated management system for external borders', defined by Article 77(2)(d) of the TFEU.

Frontex's mandate has been designed in the framework of **shared responsibility**, with Frontex's tasks designed to ensure support to Member States in the effective management of the external borders and returns. To date, the key areas of support from Frontex to Member States have been deployments of the SC, operational support, situational awareness, return, capacity-building, deployment of technical equipment, and international cooperation.

For a great majority of Member States, the areas of Frontex's mandate considered most conducive to addressing the specific needs and challenges at the external borders include: 1) situational awareness (especially monitoring migratory flows and carrying out risk analysis²⁶⁹, as well as supporting the development and operation of EUROSUR²⁷⁰); 2) return²⁷¹; and 3) joint operations²⁷². A majority of Member States also highlighted: 4) international cooperation (with third countries)²⁷³; capacity-building (training²⁷⁴ and technical assistance)²⁷⁵, as well as the management of the False and Authentic Documents Online (FADO) system²⁷⁶.

The ability of the Agency to provide **situational awareness products** is viewed positively by the Member States and perceived to provide added value. **EUROSUR situational awareness products**, which serve various stakeholders, and EUROSUR

²⁶⁸ Recital 1 of the EBCG Regulation.

²⁶⁹ ICF survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

²⁷⁰ ICF survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

²⁷¹ ICF survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

²⁷² ICF survey of MS/SAC authorities: 22/27 agreed or strongly agreed.

²⁷³ ICF survey of MS/SAC authorities: 21/27 agreed or strongly agreed.

²⁷⁴ ICF survey of MS/SAC authorities: 20/27 agreed or strongly agreed.

²⁷⁵ ICF survey of MS/SAC authorities: 20/27 agreed or strongly agreed.

²⁷⁶ ICF survey of MS/SAC authorities: 18/27 agreed or strongly agreed.

Fusion Services products (including maritime and aerial surveillance), add significant operational value to Member States lacking such capabilities, as well as Member States requiring additional capacity for these analyses. **Risk analysis products** provide wide coverage across thematic and geographical areas and provide Member States with a comprehensive view of risks at all EU borders.

The emphasis of the EBCG Regulation on **fundamental rights** has enabled the Agency to develop and implement a robust framework for continuous monitoring of the Agency's compliance with EU and international law, and in particular with all relevant fundamental rights obligations. This framework includes the role of the FRMs, the independent office of the FRO, but also mechanisms such as the SIRs and complaints mechanism, all of which have been discussed in greater detail above. These contribute to ensuring that the Agency can uphold EU values in its activities and operations, and may be replicated at national level by Member States, particularly in the context of implementing the EBCG-wide overarching components of the Fundamental Rights Action Plan or the development of national EIBM strategies, which should feature the respect for fundamental rights as an overarching component. Additionally, Frontex has contributed significantly to the development of an EBCG-wide **culture of respect for fundamental rights in border management**. This ongoing objective is being pursued through several avenues, including chiefly the advisory role of the FRMs, who make themselves available to Agency and Member States staff on matters concerning fundamental rights compliance, and the contribution by the Agency to Member States' trainings and training programmes: fundamental rights components and considerations are embedded throughout all Frontex training curricula, in a way that is practical and operationally relevant.

Frontex's enhanced mandate in **return** has been positively received and the Agency has become an essential actor in the common EU system for returns, taking on new responsibilities in relation to the return of with no legal right to stay in the EU. In addition to assisting with returns, including voluntary returns, the Agency also contributed to harmonisation and capacity-building of national IT return case management systems and their digitalisation and modernisation in line with the RECAMAS model. Post-return reintegration activities also provide significant EU added value, especially as some Member States may lack presence to support reintegration in certain third countries.

As a result of the ongoing establishment of the SC, the Agency is able to deploy staff and equipment in response to needs identified by Member States through **joint operations** and rapid border interventions. Frontex brings EU added value to the Member States by providing additional human resources and equipment, as well as coordinating joint operations and other operational activities. At an EU strategic level, the EBCG Regulation provides for a mechanism to allocate or relocate resources (assets or personnel) to the sections where irregular migration flows are of greatest concern. Even though this process is not entirely running smoothly yet, and the scale of support will

continue to grow, past and ongoing joint operations or RBIs have supported Member States effectively.

The **implementation of EIBM** requires collective actions by both national authorities and the EU. It should be developed at EU *and* national level, in the context of shared responsibility between Frontex and Member States' national authorities²⁷⁷. As the Commission Communication on the EIBM and the TO-EIBM are yet to be translated into the Member States' national EIBM strategies, the assessment of EU added value is not possible at this stage. The Commission will carry out an evaluation of the multiannual policy cycle four years after its adoption²⁷⁸.

The development of **integrated capability planning** (national capability development plans, Agency's multiannual acquisition strategy and other multiannual plans, and capability roadmap) should lead to more effective development of capabilities across Member States. However, this is still work in progress, no definite conclusion can be drawn on its added value.

Member States consider that the **training of the EBCG**, in particular the common training standards provided by Frontex, have contributed to improving the training of national border guards²⁷⁹, developing and strengthening border management capabilities in their Member State²⁸⁰, facilitating cooperation among Member States' border and coast guards' training institutions²⁸¹, mainstreaming fundamental rights in national training programmes²⁸², and ensuring a harmonised and common approach to EU border and coast guard training in the Member States.

As the implementation of EIBM as the shared responsibility of national authorities and Frontex²⁸³, there is overall consensus among Member States that **the objectives of the EBCG Regulation could not be achieved sufficiently by Member States alone**. The majority of Member State respondents felt that this was particularly true in the areas of: 1) returns²⁸⁴; 2) risk analysis contributing to a comprehensive situational awareness²⁸⁵, and 3) border control measures at the external borders²⁸⁶. Some Member States highlighted that measures within the Schengen area remain primarily the competence of

²⁷⁷ European Commission (2018). 'Progress Report on the implementation of the European Agenda on Migration. Annex 6: The main elements for developing the European Integrated Border Management Strategy'.

²⁷⁸ In 2027, in accordance with Article 8(7) of the EBCG Regulation.

²⁷⁹ Survey of MS/SAC authorities: 18/27 agreed, 4/27 strongly agreed.

²⁸⁰ Survey of MS/SAC authorities: 16/27 agreed.

²⁸¹ Survey of MS/SAC authorities: 13/27 agreed, 3/27 strongly agreed.

²⁸² Survey of MS/SAC authorities: 16/27 agreed, 2/27 strongly agreed.

²⁸³ Article 1 of the EBCG Regulation.

²⁸⁴ ICF survey of MS/SAC authorities: 2/27 strongly disagreed; 20/27 disagreed.

²⁸⁵ ICF survey of MS/SAC authorities: 4/27 strongly disagreed; 16/27 disagreed.

²⁸⁶ ICF survey of MS/SAC authorities: 17/27 disagreed.

Member States²⁸⁷. The activities of the Agency at the external border and in return should always complement the efforts of Member States^{288,289}.

4.3. Is the intervention still relevant?

Key evaluation findings

The EBCG Regulation remains relevant to addressing the current needs and challenges at external borders, although a minority of Member States believe that certain aspects could be better addressed in the Regulation (such as hybrid threats, secondary movements, returns from third countries to other third countries).

In terms of scope, the EBCG Regulation largely cover the activities of Frontex rather than the whole EBCG. This somewhat limits the scope of the governance and fundamental rights mechanisms introduced.

The scope of responsibility of the Agency in respect of cross-border crime is limited but also leaves room for interpretation on the boundaries of Frontex's supporting role.

Overall, Frontex activities remain relevant to support Member States, including via joint operations, return, situational awareness, capacity-building, and cooperation with third countries.

The continued migratory pressure and outlook for the next decade indicate that the Regulation will remain relevant²⁹⁰. While the absence of clearly defined objectives in the Regulation makes the comparison between the original objectives and the future needs less straight-forward, trends in threats and risks of irregular migration and cross-border criminal activities have remained high since 2019 and are likely to continue, making it highly probable that **the EBCG Regulation remains relevant to the current and emerging needs and challenges in external border management**. Member State authorities largely agreed with this, highlighting in particular the tasks that are seen as part of the core Frontex mandate, i.e. external border management and return. However, it is difficult to fully assess the extent to which the EBCG Regulation addresses needs and challenges in external border management, due to its ongoing implementation.

The main underlying objective of the Regulation can be interpreted as **the implementation of EIBM at national and Union level**. By defining the key components of EIBM, the Regulation sets the objectives of and the scope for the Agency's activities in support of the implementation of EIBM as a whole. The strategic guidance for the EBCG comes from the EIBM multiannual strategic policy cycle; however, the Commission's Communication was finalised only in March 2023, the TO-EIBM adopted in September 2023, and they are in the process of being translated into the

²⁸⁷ ICF survey of MS/SAC authorities: 10/27 neither agreed nor disagreed; 6/27 agreed. 1/27 strongly agreed.

²⁸⁸ Recital 12 of the EBCG Regulation

²⁸⁹ ICF study (2023), pp. 111-114.

²⁹⁰ Frontex (2022). 'Strategic Risk Analysis', p. 38.

national strategies by the Member States²⁹¹. Therefore, its relevance and impact cannot be evaluated yet.

The EIBM multiannual strategic policy cycle also only serves to further emphasise the continued relevance of the Agency's work on **compliance with fundamental rights**, as the respect for fundamental rights is an overarching component of EIBM. Despite some setbacks and delays, overall, since the entry into force of the EBCG Regulation, Frontex has made significant progress in the implementation of all aspects of its multifaceted framework for good governance and compliance with fundamental rights, as exemplified by the successful – albeit delayed – recruitment of 46 FRMs, six more than are requested by the EBCG Regulation. At EBCG level, the Agency has a key role to play in encouraging the development of a culture of respect for fundamental rights in all components of the EBCG, including the national authorities of the Member States. Ongoing processes involving the Member States, such as the implementation of the overarching components of the Fundamental Rights Action Plan, as well as the development of the national EIBM strategies, assures the continued relevance and need for the Agency's work and assistance in this realm.

Frontex's activities themselves also remain relevant in addressing the needs and challenges present at the EU external borders, although there is room for improvement to increase effectiveness in some aspects of their operations²⁹². As explained in section 4.2, Member States consider that the most relevant activities of the Agency are in the areas of **situational awareness, returns and joint operations**.

In addition, the majority of Member States agreed that the implementation of the **EUROSUR** framework has been effective in terms of information exchange to improve situational awareness²⁹³, but less so in better detecting, preventing, and countering irregular immigration, or contributing to the protection and saving lives of migrants²⁹⁴.

In addition, Frontex's work in the **external dimension** (including working arrangements and deployments on the basis of status agreements) is relevant in helping to implement measures in third countries, especially countries of origin and transit of irregular migration, and measures in neighbouring countries. Frontex has also continued to build partnerships and synergies with relevant international organisations.

One specific area where it is difficult to assess the relevance of the Agency's activities is their contribution to **fight against cross-border crime**. While the TFEU and the EBCG Regulation limit the Agency's mandate in this respect, the lack of a definition of the possible 'operational assistance' that the Agency can provide in the detection, prevention, and combating of cross-border crime leaves the exact interpretation open. However, the applicable legislation is clear that the Agency's mandate does not include 'investigations'

²⁹¹ To be finalised by the end of the first quarter of 2024.

²⁹² See details in section 1 (EQ 2 and EQ 3) of Annex IIIa and section 4.1.2.9 above.

²⁹³ ICF survey of MS/SAC authorities: 17/27.

²⁹⁴ ICF survey of MS/SAC authorities: 6/27.

or ‘support to investigations of crime’, which clearly fall within the remit of Europol and Eurojust.

Overall, Frontex has undertaken significant effort to provide human and technical resources to enhance the Member States’ ability to tackle migratory challenges or challenges related to cross-border crime. This stage of the implementation of the Regulation allows a preliminary assessment of their relevance but a full assessment will only be possible once the Agency’s mandate is fully implemented.

5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?

CONCLUSIONS AND LESSONS LEARNED

Overall, the EBCG Regulation remains **relevant** to addressing current and future emergencies at EU external borders. Irregular migration continues to be a major challenge and is at the top of EU’s policy and political agenda, requiring a common and coordinated response by all Member States. The Regulation contributed to the effective development and implementation of all components of EIBM and, despite the short timeframe so far, has resulted in the establishment and deployment of the first-ever EU uniformed service – the EBCG Standing Corps.

Stakeholders agreed that the objectives of the EBCG Regulation could not have been achieved sufficiently by Member States acting alone. Frontex’s new mandate, as introduced by the EBCG Regulation, contributes to achieving the objectives of the EBCG as a whole, as it supports Member States to implement effective border management, in the context of their shared responsibility. As such, the evaluation confirms the **EU added value** of the Regulation.

The EBCG Regulation is to a large extent legally **coherent** internally and externally, however, the evaluation identified some smaller inconsistencies in both respects.

The **effectiveness** of the Regulation and Frontex’s activities across various thematic areas was impacted by a number of external (e.g. the Covid pandemic) and internal factors. Some of those stems from the Regulation itself, such as a lack of sufficient legal clarity or gaps, while others are the product of organisational, technical, logistical, and operational shortcomings in the implementation of the Regulation by Frontex and to some extent by the Member States. Effective implementation was also impacted by some wider legal limitations identified in national and broader EU legislation.

Overall, the fact that the implementation of the EBCG Regulation has a significantly longer timeframe than this evaluation can cover, creates an **important limitation to the conclusiveness of the assessment of the Regulation under the evaluation criteria**.

Scope and objectives of the EBCG Regulation

While the **scope of the Regulation** covers the entire EBCG, the governance framework and fundamental rights safeguards contained in the EBCG Regulation apply largely only to Frontex. The EIBM multiannual policy cycle aims to improve integrated border

managements in the EU, however its implementation has just started, therefore its impact cannot be assessed yet.

The EBCG Regulation does not have clearly defined **objectives** (beyond its recitals) which makes the achievement of those objective less measurable.

However, the evaluation found that the Agency's operational activities provide significant support in the management of external borders and returns that is appreciated by Member States. The same applies to the Agency's activities in third countries based on status agreements and working arrangements.

The area where the achievement of the objectives of the Regulation appear hindered to some extent is related to the **status of the SC, in particular Category 1**. While the Regulation has never intended to, nor can it, provide Frontex with a law enforcement mandate²⁹⁵, the SC works together with national authorities that do have law enforcement powers, and are subject to specific national frameworks regulating in particular their working conditions and the use of force. The **application of the EU Staff Regulations** to the Category 1 SC staff presents challenges, as the Staff Regulations were not intended to meet the needs of an operational service with executive powers, resulting in inconsistencies in areas such as working conditions, selection procedures, deployment locations, leave entitlements, disciplinary measures, etc. It appears however that the Staff Regulations provide possibilities to address the majority of the identified problems without the need for changes in legislation (e.g., Commission decisions and/or MB decisions).

The absence of a law enforcement mandate and a corresponding legal base have also generated various interpretations of the exact boundaries of **Frontex's tasks in contributing to the prevention, detection and countering cross-border crime**. While more nuanced provisions in the Regulation could facilitate its application, the 'Schengen' legal bases in the TFEU provide a clear answer to the question while only migrant smuggling, trafficking in human beings and terrorism are mentioned among the tasks of the Agency in the Regulation, and no other forms of crime²⁹⁶.

Governance and organisational structure of Frontex

²⁹⁵ The legal bases of the EBCG Regulation, namely Article 77(2)(b) and (d) and Article 79(2)(c) of the TFEU, pertain to border checks, asylum, and immigration policies (Title V, Chapter 2 TFEU) and not police cooperation (Chapter 5 TFEU).

²⁹⁶ Cf. also Recital 41 of the Regulation stating: *Given its activities at the external borders, the Agency should contribute to preventing and detecting cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, where it is appropriate for it to act and where it has obtained relevant information through its activities. It should coordinate its activities with Europol, which is the agency responsible for supporting and strengthening Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States. The cross-border dimension is characterised by crimes that are directly linked to unauthorised crossings of the external borders, including trafficking in human beings or smuggling of migrants.*"

The **governance structure** of Frontex is well-established within the EBCG Regulation. It includes clear tasks for the MB, ED, and oversight by the European Commission, EP, and the Council, in line with the Common Approach on Decentralised Agencies. Additional processes have been put in place to ensure improved follow-up to FRO's recommendations by the MB and ED. However, the fact that the primary responsibility of external border management is preserved by Member States also means the existing governance framework covers only Frontex and not the EBCG as a whole.

Some problems have been identified in relation to the implementation of the Regulation. Firstly, **return authorities are not sufficiently represented in the MB** as Member States' delegates typically come from border management authorities, which are not necessarily responsible for returns. In addition, the **agenda of the MB** is overburdened which leaves little room to provide the Agency with strategic guidance.

The **European Parliament is yet to make use of Article 112**, which provides for cooperation with national parliaments that would significantly increase the scrutiny of the EBCG as a whole, including national authorities.

Finally, Frontex is currently working on a **new organisational structure** that is more closely aligned with its new mandate, since the current structure proved to be partly inadequate to support the effective deployment of the SC. The ongoing development of operational command-and-control processes, if integrated and aligned with operational and administrative support divisions and units, as well as with the executive leadership, should lead to more effective and efficient coordination and use of resources.

Operations

The **operational support** provided by Frontex is valued by Member States and has contributed to achieving the objectives of the EBCG. Frontex provides added value by offering additional human resources and technical equipment to Member States and third countries facing migratory challenges, as well as through the standardisation of procedures and harmonisation of operational good practices at EU level.

However, a range of legal and practical factors limits the effectiveness of Frontex's operational response.

Firstly, as explained under *scope and objectives*, the treatment of Category 1 SC staff as regular staff subject to the EU Staff Regulations is perceived as operationally disruptive and limiting the overall added value of the SC.

Secondly, the **lack of a clear command-and-control structure** for the SC hampers operational effectiveness. Multiple reporting channels, including the functional line of reporting and the Coordinating Officer, create inconsistencies. Frontex is currently developing a pilot for a new command-and-control structure to increase effectiveness.

Thirdly, while the situation has improved during the evaluation period, the **availability of different profiles** does not fully correlate with the needs of the Agency and of Member States. Frontex reports major gaps for certain profiles (e.g. dog handlers, ALDO).

Fourthly, several **organisational issues** limit the operational effectiveness of Frontex, including practical issues with weapons transportation and the lack of equipment, uniforms and advanced logistical support during deployments. In addition, deployments to Member States are also made more problematic by **language barriers**.

Finally, the effectiveness and efficiency of Frontex operations at border crossing points is impacted by the **limited access to key databases** by the SC, including SIS and national databases. This is only partially a language limitation; it is rather due to the fact that **only four Member States adapted legally and technically their systems** and procedures to allow SC staff to effectively conduct border checks and query the necessary databases.

Return

Frontex has become an **essential actor in the common EU system for return**, taking on new responsibilities and tools related to return of people who have no legal right to stay in the EU. Frontex has effectively supported Member States through all phases of return procedures. Stakeholders at EU and national level value Frontex's operational and technical assistance on return, particularly organising JROs and providing other return-related support. For Member States, Frontex support in return is also believed to bring time savings and reduced administrative burden, as well as financial savings.

While there is no incoherence between the EBCG Regulation and the **Return Directive**, the term 'assisted was voluntary return' was introduced in the EBCG Regulation without being defined. The implementation of Frontex's mandate on return could be facilitated by some additional clarity in this respect.

The EBCG Regulation does not provide separately for the **processing of personal data** in the context of return activities, despite the expanded mandate of the Agency. While Chapter V of the EU DPR provides a derogation for 'important reasons of public interest' for the transfer of personal data to third countries, that the Agency currently relies on, Frontex would need to negotiate arrangements with third countries should there be regular or structural data transfer in the future.

As far as **implementation** is concerned, return is not fully embedded yet in some of Agency's key activities, such as vulnerability assessments and risk analysis.

Situational awareness

Situational awareness tasks of Frontex remain **one of the highest EU added value activities** of the EBCG Regulation. Frontex produces multiple risk analysis products, and is progressing towards providing a fully up-to-date, reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance. Lack of access

to intelligence data from Member States (as well as EU sources, such as the EEAS Intelligence Centre) and limitations on collection of open-source intelligence and certain categories of data (such as on incidents linked to secondary movements, especially outside border areas) restrict the level of situational awareness at the EU borders. Frontex is, and should remain, an important contributor to EU-level situational awareness related to regular and irregular migration towards and within the European Union.

EUROSUR has contributed to establishing a European situational picture, providing a common framework for information exchange, improving situational awareness and increasing reaction capabilities. The volume, quality, flow, and speed of the data exchanged has increased in recent years. However, EUROSUR is impacted by inconsistent national implementation, as not all Member States report border events with the same completeness or regularity. NCC practices differ in incident formats and timing, leading to lower quality data.

Stakeholders question the added value of upgrading the EUROSUR communication network to **CONFIDENTIEL UE/EU CONFIDENTIAL** classification level, due to very limited categories of information requiring such level and the high implementation costs.

There is a lack of clarity as to the **type of personal data** that EUROSUR can process, as Articles 28 and 89 of the EBCG Regulation are not fully aligned. This leaves room for various interpretations. The EDPS is currently working on an opinion on EUROSUR. It is yet to be seen if the implementation of the new MB decisions on the Agency's data processing activities will sufficiently address this issue.

Vulnerability assessment is valuable, allowing Frontex to monitor vulnerabilities in Member States' border management capabilities and follow up with a coherent reporting system. The complementarity between vulnerability assessments and Schengen evaluations has been broadly achieved, although a few Member States point to some overlaps in data collection.

The **enforcement of the outcome of the vulnerability assessment** process needs to be strengthened to ensure that recommendations are followed up and acted upon, and their implementation is reported by Member States.

Finally, inconsistency of definitions between the **methodologies** underpinning risk assessments (CIRAM) and vulnerability assessments (CVAM) limits the contribution of vulnerability assessments to risk analysis.

Capability development

Capability-building is a key activity of the Agency both in terms of human resources and technical equipment²⁹⁷.

The EBCG's **integrated capability development planning** is not sufficiently advanced. Many Member States submitted their national capability development plans with significant delay, the Agency's multiannual acquisition strategy was adopted and being implemented with significant delay, therefore the capability roadmap for the EBCG could not be developed yet. Accordingly, it is too early to evaluate and draw conclusions on the process established by the Regulation.

The EBCG Regulation does not go into details on the strategic direction of capability planning. Overall, building up the Agency's own capabilities in terms of **technical equipment** is rather difficult due to a lack of understanding of the capability needs of the EBCG, delays in capability planning and the lack of a strategic direction and vision for the long-term development of capabilities at the Agency. In addition, there are some legal requirements (outside of the EBCG Regulation) that create major difficulties for the Agency with the purchase of **highly specialised equipment** requiring multiannual delivery, such as the annuality principle and the staff hiring matrix that does not enable the Agency to hire highly specialised staff. Finally, current **implementation problems** include the lack of sufficient integration between acquisition and logistics; lack of logistical infrastructure for new equipment; issues with customs and transportation, with the recognition of equipment across Member States' jurisdictions and issues with the registration and maintenance of vehicles in the Member States.

Frontex supported capability development in **research and innovation** by promoting and delivering standardisation and harmonisation of border management capabilities, promoting, and delivering innovation in border management capabilities, and executing and supporting research.

Cooperation with EU institutions, bodies, offices, agencies and third countries

Frontex's cooperation with EU institutions works well. The Agency has negotiated numerous working arrangements with other EU agencies (e.g. EFCA, EMSA) and conduct effective cooperation on that basis. Inter-agency cooperation with other Union agencies, notably with the EU Agency for Asylum and with Europol and with the Commission in the context of implementing the relevant provisions of the Regulation on migration management support teams, as well as with other Union Agencies implementing EU policies in the justice and home affairs area (FRA, eu-LISA, EUAA, EMCDDA, CEPOL and Eurojust) should be further strengthened. Such cooperation should be aimed at gaining efficiency both in administrative and operational terms. In particular, strengthening the cooperation with FRA should be prioritised in order to reinforce the fundamental rights culture in all activities of the Agency. Furthermore, a

²⁹⁷ The issues related to the Standing Corps are addressed in the relevant sections.

new working arrangement should be signed with Europol to enhance the Agencies' ability to work better together in countering cross-border crime, in particular migrant smuggling and trafficking in human beings.

The work of Frontex in the area of **external cooperation** is viewed positively by Member States and is seen as effective and efficient. Frontex's work is coordinated with the Commission and relevant EU agencies to ensure that it contributes to the wider objectives of EU external action. Nevertheless, some implementation challenges have been identified, as well as limitations on cooperation set by the EBCG Regulation itself.

Frontex has faced delays in the conclusion of new **working arrangements** with third countries, in line with the EBCG Regulation. While the new model working arrangement was adopted by the Commission in 2021, its revision is pending due to ongoing discussions between the Commission and the EDPS on provisions regarding the protection of personal data. The new model **status agreement** was adopted by the Commission in 2021 as well, enabling the EU to sign new status agreements, and Frontex to launch joint operations to North Macedonia and Moldova. A new status agreement was signed with Montenegro and Albania, with negotiations currently ongoing with Serbia.

The **exhaustive list of international organisations** set by the EBCG Regulation may have somewhat limits Frontex's ability to develop new partnerships in response to emerging needs.

Fundamental rights

In implementing the EBCG Regulation, **Frontex established numerous safeguards** to protect and promote the respect of fundamental rights, by adopting and/or implementing rules and procedures. The main conditions set by the Agency include the Fundamental Rights Strategy and implementing Action Plan, the activities of the Fundamental Rights Office (including contributing to a wide range of Agency tools and procedures such as operational plans, the work of the FRMs, as well as relevant MB Decisions on the complaints mechanism, SIR mechanism, supervisory mechanism on the use of force, independence of the FRO, etc.), data protection safeguards, and DPO activities.

The analysis highlighted the EBCG Regulation's **lack of clear delineation between the responsibilities of Frontex and the Member States**, and the respective obligations in the area of compliance with fundamental rights. Should such precise delineation be possible to define in the context of shared responsibility, it would bring more clarity on the scope of the mandate of the FRO and for the FRMs' monitoring activities. Some clarification was brought by the SOP on FRMs in 2023, although its effect is still to be seen.

Article 46 of the EBCG Regulation leaves discretion to the ED's decision. The adoption of the 2022 SOP on Article 46 provided clarity on the steps and the information that the ED has to take into account before taking a decision. The solution established in the

Regulation, as complemented by the SOP, appears overall balanced. Stakeholder views vary whether the decision-making power outlined in Article 46 should be with the ED alone or assigned to, or otherwise involve, other actors (e.g. MB, Commission or Council). On the one hand, by assigning the decision to trigger Article 46 to the ED, the EBCG Regulation may risk placing excessive public and political pressure on the ED alone. On the other hand, the potential involvement of political actors could lead to the further politicisation of the process (with the risk of having actors in practice blocking the possibility of triggering Article 46 altogether).

The mechanism for **serious incident reporting** is not regulated in the Regulation. The Agency successfully developed this mechanism (SOP in 2021) that is an important instrument in the toolbox of the FRO to map and indicate challenges and monitor the Agency's compliance with fundamental rights. There are some factors, however, that limit the effectiveness of the SIR mechanism, such as the limited sources of information, limited cooperation and follow-up from national authorities, lack of redress opportunities).

Data protection framework

The evaluation found that initially, the Agency, had a broader interpretation of its scope of personal data processing activities than it was intended by the EBCG Regulation. However, the origin of this interpretation cannot generally be attributed to gaps in the rules on processing of personal data. However, one difficulty in implementation may derive from the allocation of responsibilities between the Agency and the Member States, because the EBCG Regulation (Article 88) requires the Agency and the host Member State to determine in a transparent manner the responsibilities for compliance with data protection obligations before each joint operation, return operation, return intervention, pilot project, rapid border intervention or migration management support team deployment. The MB decisions on personal data processing were revised by the Agency, following strong criticism by the EDPS. The **new MB decisions** aim to address the data protection aspects of the Agency's operational activities. However, as these were only adopted in early 2024, their impact cannot be assessed yet.

Stakeholders pointed to interpretation issues in relation to Frontex's limited supporting role in the **fight against cross-border crime** and on the purpose (and limits) of processing operational personal data. The explicitly narrowed possibilities for Frontex to process operational personal data frame its role and scope of responsibilities in this area.

Use of resources

The allocation of **human and financial resources** to Frontex has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation and with its strategic and horizontal objectives, although Frontex has faced a significant challenge in implementing its increasing financial resources. Despite reductions from its initial annual budgets, the Agency has released different amounts of its EU contributions each year. At the same time, the Agency has largely been able to adapt its budgetary management to the new

mandate and the expected operational results over time. Moreover, it has been mostly able to spend the amounts carried over from the previous year, although some problems persist with the management of the budget assigned to 'Agency equipment' and 'strengthening capacities'.

Costs and benefits generated by the EBCG Regulation

The potential **costs for Member State** linked to the implementation of the EBCG Regulation appear to be in the form of increased funding to certain activities, such as the upgrade of IT systems, and compliance with the multiannual strategic planning process of Frontex, including developing operational, contingency and capability plans.

Member States can benefit from **EU funds**, especially the Internal Security Fund – Borders and Visa (ISF-B) for and the most recent funding for border management, the Border Management and Visa Policy Instrument (BMVI), for the development of the European integrated border management. The availability of these funds is of direct benefit to Member State, enabling them to acquire assets and undertake activities that they would not otherwise have had access to.

Potential benefits for businesses and citizens are difficult to measure, with evidence remaining limited and, as some are indirect effects, hard to quantify.

The **benefits** of the EBCG Regulation for Member States can only be expressed in operational terms (explained in the previous sections). Both Frontex and EIBM delivers significant contribution to the management of the EU's external border and in return operations, which leads to results that Member State could not have achieved on their own.

Standing Corps

The conclusions and lessons learnt are explained in the Commission Report to the EP and to the Council on the evaluation of the EBCG Regulation, including a review of the SC²⁹⁸ and in Annex IIIb.

²⁹⁸ [TO COMPLEMENT WITH REFERENCE AFTER ADOPTION]

ANNEX I: PROCEDURAL INFORMATION

1. Lead DG, Decide reference, Work Programme reference

DG Migration and Home Affairs (DG HOME) is the lead DG. The agenda planning (Decide) reference assigned to the evaluation and the review is PLAN/2022/1328. There is no reference to the evaluation and the review in the Commission Work Programme 2023.

2. Derogations granted and justification

In conducting the evaluation and the review, no exceptions from the usual procedural requirements described in the Better Regulation Guidelines were required. Public consultation did not take place as the evaluation and the review of the Standing Corps focused on structural and operational matters of the European Border and Coast Guard (EBCG) and it was concluded that a public consultation would not bring specific added value. However, as part of the evaluation and the review, the public was given the possibility to respond to the call for evidence. Furthermore, extensive targeted consultation of relevant stakeholders was planned and took place during the evaluation process.

3. Organisation and timing

The call for evidence for the initiative was published on the Commission's 'Have Your Say' webpage²⁹⁹ and was open between 5 September and 3 October 2022. The Terms of Reference (ToR) for engaging an external contractor to carry out the study to support the evaluation of the European Border and Coast Guard Regulation and the review of the Standing Corps were drawn up in July of the same year. A request for service was issued on 1 September 2022, and a contractor selected by an evaluation committee consisting of staff from DG HOME in November 2022³⁰⁰. The kick-off meeting for the study took place on 14 December 2022 and the final report was submitted, after one-month extension, on 25 July 2023.

²⁹⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13557-European-Border-and-Coast-Guard-Frontex-standing-corps-review-and-evaluation-of-Regulation_en

³⁰⁰ The call for service was issued via framework contract HOME/2018/ISFB/PR/EVAL/0017 Lot 1 Migration. Two contractors submitted a bid to carry out the

In line with the Better Regulation Guidelines, an Inter-Service Group (ISG) was set up within the Commission to accompany the evaluation process. Several Directorates-General (DGs) within the Commission and the European External Action Service (EEAS) were invited to nominate representatives to the ISG³⁰¹.

DG HOME chaired the ISG meetings. The ISG was regularly consulted over the course of the evaluation process, typically in conjunction with the submission of specific draft reports by the contractor responsible for carrying out the external study. These consultations took place both in regular meetings, and via written consultations. The following list provides an overview of the ISG's work over the course of the evaluation and review process:

- The ISG was convened for the first time on 12 July 2022 in order to receive a presentation of the evaluation of the EBCG Regulation and the review of the standing corps and to discuss and provide feedback on the draft ToR prepared for the external contractor. The meeting also served as an opportunity to discuss and comment on the call for evidence and the draft consultation strategy, which e.g. described how the external contractor should carry out targeted consultations with relevant stakeholders in the context of the study, in cooperation with and under the supervision of DG HOME and the ISG. The participants were invited to provide additional written feedback after the meeting;
- On 23 December 2022, the ISG received the draft Inception Report for written comments and subsequent approval. As per annex 3 to the draft Inception Report, the minutes of the kick-off meeting between the external contractor and DG HOME that took

study. The evaluation committee considered a number of criteria, namely: compliance with the technical specifications described in the Terms of Reference; demonstrated understanding of the objectives and the context of the request, appropriateness of the expected results, the quality of preliminary assessment of difficulties, mitigation and control measures; clarity, suitability and efficiency of the proposed methodology; and the quality of the project management, team organisation and structure. The Commission awarded the contract to ICF.

³⁰¹ The DGs invited to participate in the ISG included: the Secretariat-General of the Commission (SG); Legal Service (LS); Budget (BUDG); Defence Industry and Space (DEFIS); Human Resources and Security (HR); Justice and Consumers (JUST); Taxation and Customs Union (TAXUD), Statistical Authority of the European Union (ESTAT); European Neighbourhood Policy and Enlargement Negotiations (NEAR); Maritime Affairs and Fisheries (MARE); Mobility and Transport (MOVE); International Partnerships (INTPA); Internal Audit Service (IAS); European Anti-Fraud Service (OLAF); Joint Research Centre (JRC).

place on 14 December 2022 were shared with the members of the ISG. On the basis of the ISG's written feedback, the draft Inception Report was further revised by the external contractor;

- On 18 January 2023, a revised draft of the Inception Report was circulated by email to the members of the ISG for additional comments, and was subsequently accepted in February 2023 after revisions were made to reflect the additional comments of the ISG;
- The ISG received the draft Interim Report on 22 March 2023 with the possibility to provide written feedback. Furthermore, the ISG was convened on 29 March 2023 to receive a presentation by the contractor of this draft Interim Report and to flag potential issues;
- In March 2023, at the request of the contractor, DG HOME agreed to extend the deadline of the submission of the Final Report by four weeks, due to the delayed response of some stakeholders to the contractor's surveys;
- On 26 April 2023, a revised draft Interim Report was submitted to the ISG for possible additional comments. On 3 May 2023, following the consultation with the ISG, the revised Interim Report was accepted by the Commission, under the condition that the comments of the ISG to the revised Interim Report are subsequently taken into account in the draft Final Report;
- On 31 May 2023, the draft Final Report was submitted by the contractor to DG HOME and was circulated by e-mail to the members of the ISG for final review with subsequent feedback provided by DG HOME for the finalisation of the report;
- The ISG held a meeting on the draft Final Report on 19 June 2023. This consultation was followed by a final discussion on the comments to the draft Final Report between the study team and DG HOME on 22 June 2023;
- On 30 June 2023, the external contractor re-submitted draft Final Report to DG HOME for the final round of comments. Following the submission of comments, the final version of the study for the acceptance by the Commission was received on 25 July 2023;
- The Commission accepted the Final Report on 26 July 2023;
- The ISG was consulted during the drafting of this Staff Working Document.

4. Consultation of the Regulatory Scrutiny Board

Not applicable; the evaluation and the review were not subject to consultation and scrutiny of the Regulatory Scrutiny Board.

5. Evidence used together with sources and any issues regarding its quality

The evaluation and the review primarily drew on the supporting study entitled “Study to support the evaluation of the European Border and Coast Guard Agency (Frontex) and review of the Standing Corps”³⁰², commissioned by DG HOME in 2022 and carried-out by the external contractor (ICF). The objectives of the study were to provide the necessary data, analysis and assessment for the Commission’s evaluation of the EBCG Regulation, to identify the EU legislation, including the fundamental rights framework, applicable to Frontex, to assess the coherence of the legal framework applicable to the EBCG and particularly to Frontex, and to assess the compliance of the Agency with the objectives and provisions of the Common Approach on Decentralised Agencies. The study assessed the relevance, effectiveness, efficiency, coherence, and EU added value of the EBCG Regulation, and supported the review of the Standing Corps (SC), including the functioning, composition, size of Member States’ contributions, number of the staff members, level of training, expertise, and professionalism.

The study was guided by an evaluation framework setting out the guidelines and principles for the analysis. Beside an in-depth review of relevant documentation, including legal documents, policy and strategic documents, programming and internal business documents, Agency’s outputs and publications, financial and other documents. the study also relied on extensive targeted consultations in the form of surveys and interviews with relevant stakeholders, as well as on field visits to Frontex operations. More specifically, the external contractor conducted three surveys targeting Member States, Frontex SC staff, and Fundamental Rights Monitors (FRMs). ICF also conducted 149 interviews with stakeholders, five field visits (to Bulgaria, Finland, Greece, Italy, and Romania) to Frontex’s operations, and a visit to Frontex’s headquarters in Warsaw.

³⁰² [\[Insert link to the study when published\]](#).

During the process, the Commission provided updates and consulted Member States in the Frontiers Working Party of the Council on 2 February, 12 April, 26 May and 13 July 2023, with Member States having the possibility to provide comments, including written comments, and exchange views. Furthermore, Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) provided input to the evaluation at its informal meeting on 13 July 2023.

The Commission also provided an update to and received comments from the Frontex Scrutiny Working Group (FSWG) of the LIBE Committee of the European Parliament (EP) on 27 April 2023.

With regard to quality assurance, the wide scope of the study posed certain challenges, particularly during the analysis phase of the study. However, close consultations with DG HOME and the ISG and identification of key priority areas, helped the analysis to remain focused throughout the process. The complexity and the technical nature of some of the evidence collected was resolved by involvement of external panel of experts with appropriate knowledge (e.g., on fundamental rights and data privacy, migration and security, border management and EUROSUR), to guide the analysis. Internal quality assurance by the project director and QA managers with relevant thematic and methodological expertise was also provided by ICF.

The fact that the implementation of the Regulation is still on-going created constraints for a full analysis and for the conclusiveness of the findings. This limitation is however acknowledged across the reporting areas examined in the evaluation and in the review.

6. Use of external expertise

Apart from the study carried out by the external contractor, the Commission Expert Group on the implementation of the European Border and Coast Guard Regulation was consulted twice. On 6 April 2022, the Group discussed the upcoming review of the SC and the evaluation of the EBCG Regulation. The Commission presented the legal framework and provided an overview of the process including the involvement of the Member States and the Agency. A follow-up meeting of the EBCG Expert Group was organised on 17 January 2023. The purpose of the meeting was to present the external contractor and assure the engagement of Member States in the evaluation process.

On the request of the Commission³⁰³, the Fundamental Rights Agency (FRA) and Frontex's Consultative Forum on Fundamental Rights Matters (CF) submitted their contribution on the Regulation's impact on fundamental rights and freedoms. In its contribution of 15 May 2023, the FRA highlighted six priority areas relating to fundamental rights which may require legislative adjustments and assessed that the evaluation and review offer an opportunity to reflect on how best to improve the fundamental rights situation at the external borders of the EU. The contribution of the CF, submitted on 2 June 2023, outlined their main observations with regards to enhanced implementation of the fundamental rights safeguards of the Regulation. It concluded that enhanced implementation or potential amendments should lead to eliminating gaps in responsibility and accountability.

Additional information on the stakeholder consultation is provided in Annex V.

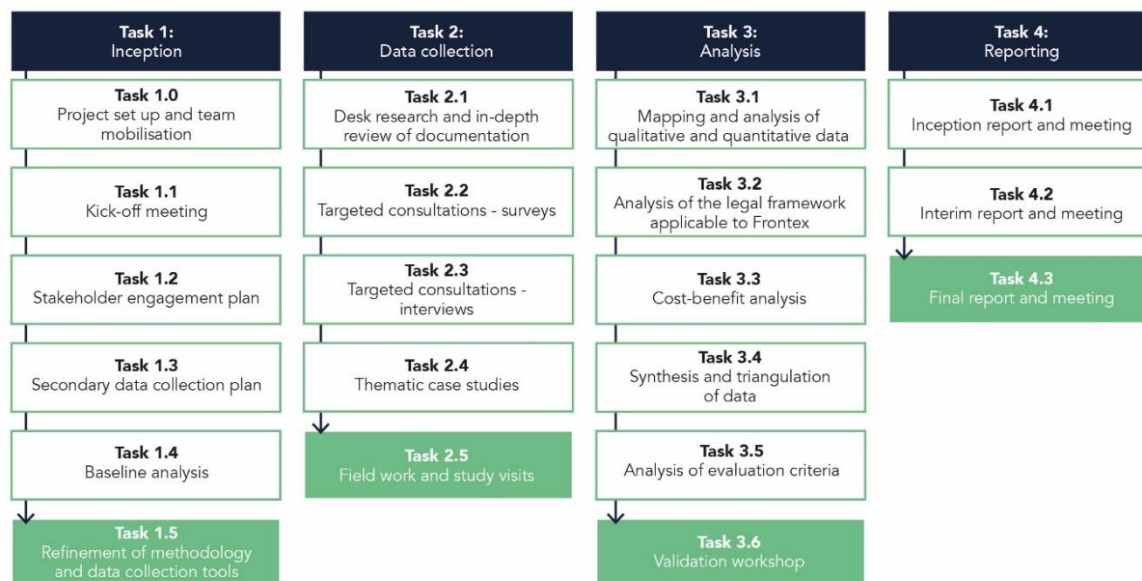
³⁰³ In line with Article 121(3) of the EBCG Regulation.

ANNEX II. METHODOLOGY AND ANALYTICAL MODELS USED

1. Methodology and analytical model

The supporting study, conducted by the external contractor was guided by a methodological approach, which was divided into four tasks, in line with the original ToR: 1) Inception; 2) Data collection; 3) Analysis; 4) Reporting.

Figure 1: Overview of the methodological approach



Source: ICF elaboration

The inception task started with the project set up and contractor's team mobilisation to establish project processes and protocols. This included setting-up communication with the external panel experts, who advised the study team across key tasks of the study. The expert panel was composed of experts in 1) fundamental rights and data privacy; 2) migration and security; 3) border management, and 4) EUROSUR.

A kick-off meeting of the external contractor with DG HOME was held on 14 December 2022 to ensure a common understanding of the objectives of the study. Seven scoping interviews were carried out with the European Commission, as well as with key stakeholders within Frontex.

The study team also conducted a preliminary assessment of available sources and prepared a secondary data collection plan, including reviewing secondary sources and developing a list of internal Frontex documents and data required to answer some of the evaluation questions.

The preparatory work helped in the development of a baseline analysis, an overview of the situation prior to the adoption of the EBCG Regulation. It also led to the revision of the original intervention logic, refinement of the evaluation framework and of the methodology. In the process, the study team also refined its stakeholder engagement plan, reprioritising certain stakeholders and redesigned some of the initial data collection tools to engage different groups of stakeholders, and adjusted certain analysis tools.

The inception task was finalised with the submission and acceptance of the Inception Report by the Commission in February 2023.

The data collection task started with desk research and an in-depth review of relevant documentation, including legal documents, policy and strategic documents, Frontex programming and internal business documents, Agency's outputs and publications, financial documents, etc., relevant for the main thematic areas of Frontex's mandate (e.g. returns, operations, fundamental rights, capacity-building, cooperation, situational awareness, SC). The study team used desk research to map available data sources and evidence against the evaluation questions and to identify key data gaps. In interviews with Frontex divisions and units, the study team explored the availability of additional data to address these gaps. This process continued throughout the study. Identification of information gaps consequently informed stakeholder consultation and the need to request additional statistics and data from other stakeholders.

Beside the review of the relevant documents the study also relied on the extensive targeted consultations in the form of surveys and semi-structured interviews with relevant stakeholders, as part of the next step in the data collection exercise. These surveys targeted three stakeholder groups, namely Member State authorities, including Schengen Associated Countries (SACs), SC staff, and FRMs. The surveys collected factual information about the implementation of specific activities and results of the EBCG, as well as opinions

and views on the five evaluation criteria and key evaluation questions. National authorities were asked to consult all relevant internal departments and authorities to ensure that they could provide comprehensive answers to the different elements of the evaluation and present a consolidated national response. Interviews targeted Frontex staff, Member State authorities, EU-level stakeholders (including the Commission, EP, EU agencies), civil society and international organisations, and third countries' authorities.

Both, surveys and the interview questionnaires were developed and refined by the external contractor in consultation with DG HOME and the ISG to ensure that the questions were fine-tuned to the needs of the study and captured all relevant elements. The interview questionnaires were further fine-tuned in line with emerging evidence (including after the submission of the Interim Report, to address outstanding data gaps). In both cases, the external panel of experts also provided feedback.

In addition, six thematic case studies were conducted by the team and with the support of relevant external experts. Thematic case studies focused on deployment, capacity-building, return, EUROSUR, fundamental rights and governance, thus supporting an in-depth assessment of the main pertinent themes of the evaluation. Building on the data collection activities, the study team analysed Frontex activities along these thematic areas, identifying possible challenges, and their possible links to the EBCG Regulation and/or its implementation. The results of the case studies fed into the corresponding evaluation questions.

The data collection task concluded with five field visits to Frontex operations, as well as a sixth final visit to Frontex headquarters in Warsaw. Several of the external panel experts with previous border management expertise took part in the field visits. The final visit to Frontex headquarters was the closing step of data collection phase. Among others, the visit allowed the team to address final data gaps.

The analytical task included several steps. Firstly, the data collected was systematically mapped against the evaluation (sub-) questions, judgement criteria and indicators in the evaluation framework. This allowed the study team to reflect on the quality of the data collected and identify potential gaps that needed to be filled to provide robust answers to the evaluation questions. This information was then filled in by targeted search in the collected documentation or by requested follow-up information.

The evidence gathered was analysed by qualitative analysis of information and stakeholder feedback and quantitative analysis of the survey results, data and statistics.

Subsequently, the study team synthesised and triangulated all data collected. These triangulation methods reduced systematic bias and distortion during data analysis thereby improving the credibility of the findings. The triangulation of data set the stage for analysis of evaluation criteria. The study team worked to provide answers to all the evaluation questions in the evaluation framework. All drafters started by structuring their responses along the evaluation questions, although the questions were grouped thematically (and not by evaluation criterion).

In the final, reporting stage, the study team submitted three reports to the Commission. The reports were reviewed by the external panel of experts assembled to support the study team, as well as by the project director and quality assurance managers before submission. Furthermore, each report underwent review by the ISG before finalisation. The three deliverables are: 1) Inception report; 2) Interim report; 3) draft Final Report.

Initially validation workshop was foreseen, however a formal meeting between the study team and DG HOME was subsequently organised on 22 June 2023, to discuss emerging findings and conclusions and to fine-tune the conclusions and recommendations. This was preceded by an ISG consultation of the draft Final Report on 19 June 2023, which allowed for a wider discussion on comments provided to the draft Final Report.

2. Limitations

In the initial phases of the study, the limitations were mostly related to timing issues as both inception and data collection tasks coincided with holidays period, which led to potential delays. Furthermore, initial response rate to survey from certain stakeholders was low, and submission of some key data delayed. This resulted in delaying certain activities, such as field visits. Nevertheless, the quick mobilisation of the team at inception, swift organisation of the kick-off meeting as well as responsiveness by the ISG in providing the necessary feedback allowed to close the inception stage relatively quickly.

Repeated reminders to the stakeholders to provide responses and to follow-up on missing data together with the extension of the deadline for survey submission ensured that sufficient data was finally collected during data collection phase. In addition, during the field visit to the Frontex headquarters the study team had the possibility to address any remaining data gaps.

The tight timeline of the study and delays in earlier phases of the process left the contractor with shorter time to conduct the analysis. Nevertheless, the consequent extension of the study by one month allowed for sufficient time to finalise not only data collection but also the analysis.

In addition to the limited time, the wide scope of the study (including large scope of Frontex mandate, wide external legal framework, etc.) posed a challenge for the contractor, particularly during the analysis phase. Close consultations with DG HOME and identification of key priority areas, helped the analysis to remain focused throughout the process.

Another issue linked with data referred to the difficulties in quantifying most of the financial and human resources received by Member States and to consequently do a full analysis of costs and benefits generated by the EBCG Regulation. To mitigate this

limitation, it was agreed to re-focus on costs incurred by Frontex and the use of relevant EU funds by the Member States and the qualitative evidence was used to identify costs and benefits for Member States.

Divergent opinions of key stakeholders were addressed by the triangulation of evidence and balancing out different opinions during consultation process with the expert panel. The complexity and the technical nature of some of the evidence collected was resolved by involvement of external panel of experts with appropriate knowledge to guide this kind of analysis. Internal quality assurance by the project director and QA managers with relevant thematic and methodological expertise was also provided by ICF throughout analysis and reporting phase.

The fact that the implementation of the Regulation is still on-going created constrains for a full analysis, however, this limitation is acknowledged across the reporting areas that are still being implemented.

ANNEX III. EVALUATION MATRIX AND, WHERE RELEVANT, DETAILS ON ANSWERS TO THE EVALUATION QUESTIONS (BY CRITERION)

EVALUATION FRAMEWORK			
	Judgement criteria	Indicators (non-exhaustive list)	Data sources and methods
Relevance	EQ1. Relevance of scope and objectives: To what extent did the scope and objectives of the EBCG Regulation remain relevant to current and emerging needs and challenges over the implementation period?		
	EQ1.1. To what extent are the scope and objectives of EBCG Regulation aligned with <u>current</u> needs and challenges in external border management and in implementing the EU return policy?		
	EQ1.2. To what extent are the scope and objectives of EBCG Regulation adept to addresses <u>emerging</u> and potential <u>future</u> challenges and threats at the external borders and in the field of return?		
	EQ1.3. Are there any gaps , in terms of remaining needs or challenges, which should be addressed/remain unaddressed by the EBCG Regulation?		
	The changes introduced by EBCG Regulation [were / were not/partially] suitable to address other problems and challenges identified. The scope of the EBCG Regulation [are/are not/partially] relevant to the current needs over the implementation period. The objectives of the Agency are relevant to the current needs over the implementation period. The objective related to protection of external borders [is/is not/partially] relevant to the current needs over the implementation period.	Qualitative indicators: Mapping and typology of current needs and challenges by stakeholder type and by policy area. Mapping and typology of emerging needs and potential future challenges by stakeholder type and by policy area. Degree of alignment between the objectives of the EBCG Regulation and the problems and challenges identified. Suitability of the EBCG Regulation to support the objectives of European integrated border management. Degree to which the current problems identified had been reported / reflected in evaluations and studies prior to and after 2019. Degree of importance of the identified gaps, in terms of their potential impact on the objectives of the EBCG Regulation	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits Legal analysis

The objective of implementation of European integrated border management [is/is not/partially] relevant to the current needs over the implementation period. The objective related to return policy [is/is not/partially] relevant to the current needs over the implementation period. The objective related to migration management [is/is not/partially] relevant to the current needs over the implementation period. The objective related to internal security [is/is not/partially] relevant to the current needs over the implementation period. The objectives [could / could not] be better addressed by adopting other regulatory / non-regulatory measures. The challenges, needs and priorities [have / have not] evolved since 2019. The EBCG Regulation addresses current and emerging as well as potential future needs and developments, which are relevant for the different stakeholder types identified. Some of the problems identified were not captured by the EBCG Regulation. The EBCG Regulation [is / is not] a suitable tool to address the new challenges or elements identified.	Suitability of the EBCG Regulation to cover any identified, unaddressed problems. Opinion-based indicators: Perceptions/views from stakeholders and experts considering that the changes introduced by EBCG Regulation [were / were not/partially] suitable to address other problems and challenges identified. Stakeholders' and experts' views on the suitability of EBCG Regulation to address emerging and potential future needs and challenges. Stakeholder and expert perception on whether there was room for further alignment between the objectives and scope of the EBCG Regulation and the current and emerging needs and challenges. Quantitative indicators: Number of current or emerging needs or problems that are not addressed by the current Regulation. Number of activities (e.g., operations, trainings, publications etc.) covering EBCG Regulation objectives. Annual allocation of resources to thematic areas identified as objectives in the EBCG Regulation. Budget utilisation – Actual money spending on areas identified as priorities, as well as spending rate, i.e., percentage of actual money spending compared to resources allocated. Frontex Risk Analysis Network (FRAN) Indicators: 1)Detections of illegal border-crossing between Border Crossing Points (BCPs) 2)Detections of illegal border-crossing at BCPs 3)Detections of suspected facilitators 4)Detections of illegal stay 5)Refusals of entry 6)Asylum applications 7)Detections of false documents 8)Return decisions for illegally staying third-country nationals	
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EQ2. To what extent have the EBCG and in particular Frontex activities (Art. 10 of the EBCG Regulation) been relevant in addressing the needs/challenges presented at the EU external borders? Are they still relevant in view of current needs and challenges and have the needs and challenges evolved over time?

EQ2.1. To what extent have the EBCG and in particular Frontex activities been relevant in addressing the needs/challenges presented at the EU external borders and in the field of return?

EQ2.2. Are the activities of EBCG and in particular Frontex still relevant in view of current needs and challenges?

EQ.2.3. To what extent and how have the needs and challenges evolved over time?

The EBCG and in particular Frontex activities (Art. 10 of the EBCG Regulation) [have been/ have not been / have partially been] relevant in addressing the needs of different stakeholders at the EU external borders.

The EBCG and in particular Frontex activities [have been/ have not been / have partially been] relevant in addressing the challenges presented at the EU external borders.

The EBCG and in particular Frontex activities are aligned with the scope and objectives of the EBCG Regulation.

The activities of EBCG and in particular Frontex [are/are not /are partially] relevant in view of current needs and challenges.

Quantitative indicators:

Mapping of number and type of activity implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, number of people rescued, number of smugglers identified, quantity of drugs seized, etc.)

Mapping of number and type of outputs/practical results of activities implemented

Number of staff / stakeholders implementing activities

Duration / time scope of activities

Budget utilisation – Actual money spending on activities as per article 10 EBCG Regulation, as well as spending rate, i.e., percentage of actual money spending compared to resources allocated.

FRAN Indicators

EDF-RAN (European Union Document-Fraud Risk Analysis Network)

Return Data Collection indicators.

Qualitative indicators:

Mapping and typology of current needs and challenges by stakeholder type and by policy area.

Mapping and typology of emerging needs and potential future challenges by stakeholder type and by policy area.

Degree to which needs and challenges have evolved over time.

Degree of alignment between the Frontex activities with the needs of different

Baseline analysis

Desk research

Targeted surveys

Semi-structured interviews

Thematic case studies

Field visits

Legal analysis

	stakeholders Degree of alignment between the Frontex activities with the challenges presented at the EU external borders. Degree of alignment between objectives of the EBCG Regulation and the problems and challenges identified. Level of achievement of the specific objectives foreseen by the Strategic Framework and reflected in the Single Programming Document's Strategic Action Areas: 1) Reduced Vulnerability of the External Borders based on Comprehensive Situational Awareness; 2) Safe, Secure and Well-Functioning EU External Borders; 3) Sustained European Border and Coast Guard Capabilities 4) Implement and support European Integrated Border Management to ensure safe and well managed EU external borders 5) Reinforce the external dimension aimed at multiplying Frontex operational impact through cooperation 6) Develop Upgraded Management System Aimed at Ensuring Accountability, Regularity and Legality of All Frontex Activities Opinion-based indicators: Perceptions from stakeholders and experts considering that Frontex activities have been relevant in addressing the needs of different stakeholders at the EU external borders. Stakeholders' and experts' views on the degree to which Frontex activities are adapted to emerging needs and challenges. Stakeholders' and experts' views on the degree to which Frontex activities are aligned with the scope and objectives of the EBCG Regulation. Stakeholders' perceived quality of the activities delivered.	
EQ.3. How did Member States make use of Frontex in the protection of EU external borders and migration management through: EQ3.1. Joint Operations and rapid border interventions EQ3.2. Joint Return Operations EQ3.3. Risk Analysis		
Degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint operation and rapid border interventions (as	Quantitative indicators: Results in the context of Joint Operations carried out annually (number of person days or asset days by type of border; apprehensions, seizures, etc.) Type of technical and/or operational assistance provided by Frontex by coordinating and organising joint operations	Desk research, including Joint Operation Final Evaluation Reports, Risk Analysis Annual reports and the biannual Strategic Risk Analysis Targeted surveys

opposed to other operations at national/international level) Degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint return operation and rapid border interventions (as opposed to other operations at national/international level) Extent to which the operations were relevant to the objectives of protection of EU external borders and migration management Degree to which Member States have made use of Frontex in carrying out risk analysis (as opposed to other operations at national/international level)	Number and type of other (alternative) operations organised at national/international level Type of technical equipment deployed in joint operations Number of Rapid border interventions carried out annually Number and type of Return Operations (breakdown by Joint and National) carried out annually, and indicators linked to related results (e.g. number of persons escorted; number of flights, etc); Number and type of Risk Analysis and related products carried out annually. Number of Standing Corps deployed (by types of border crossings, functions, EU/third countries). Qualitative indicators: Level of achievement of focus areas of the Single Programming Document's Strategic Action Areas (e.g., Provide effect-oriented and flexible operational response; Position Frontex as an important player in the area of combatting cross-border crime; Support migration management by ensuring effective returns) Opinion-based indicators: Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in the protection of EU external borders by organising joint operation. Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in the protection of EU external borders by organising return operation. Stakeholders' and experts' views on the degree to which Member States have made use of other (alternative) operations at national/international level. Stakeholders' and experts' views on the degree to which Member States have made use of Frontex in carrying out risk analysis (as opposed to other operations at national/international level).	Semi-structured interviews Thematic case studies Field visits Legal analysis
EQ.4. How is the upgrade of the communication network (Article 14) up to CONFIDENTIAL UE/EU CONFIDENTIAL relevant for the functioning of the EBCG and its operational needs, including the exchange of information in EUROSUR?		
The upgrade of the communication network (Article 14) up to CONFIDENTIAL UE/EU	Quantitative indicators: Number of resources involved in the operationalisation of the upgraded communication network.	Baseline analysis Desk research

	CONFIDENTIAL is [is not] relevant for the functioning of the EBCG and its operational needs, including the exchange of information in EUROSUR.	Budget utilisation and budget allocated to the upgraded communication network, in comparison to previous communication network's budget. Number of people trained for the use of the new communication network systems. Metrics on the use of the network (e.g. number of classified documents / information units shared; number of Member States exchanging information via the network); Amount of EU classified information at CONFIDENTIAL UE/EU CONFIDENTIAL level that would be exchanged. Qualitative indicators: Level of success of operations in relation to the role of the upgraded communication networks Extent of reduced vulnerability of external borders, and well-functioning of the EU external border management, as a consequence of the upgraded communication network Level of achievement of objectives under Focus Area 1.2 "Create an EBCG environment and community of intelligence-led operational activities", of the Single Programming Document's Strategic Objective 1 "Reduced vulnerability of the external borders" Opinion-based indicators: Stakeholders and experts' views on the relevance for EBCG operations of the novelties introduced in the communication network Stakeholders' opinions on the resilience and security of IT systems Stakeholders' view on the level of guaranteed confidentiality of information shared Stakeholders' view on the scope of the communication network (a multipurpose network, not limited to EUROSUR only)	Targeted surveys Semi-structured interviews Thematic case studies Field visits Legal analysis
Effectiveness	EQ5. How and to what extent did Frontex meet its core objectives and priorities as set out in the EBCG Regulation? How has the EBCG as a whole and in particular the Agency progressed and achieved results with respect to each specific component of the European integrated border management? EQ 5.1 How and to what extent did Frontex support Member States in protecting and managing EU external borders through operational activities? EQ 5.2 How and to what extent did Frontex support Member States through all phases of return procedures? EQ 5.3 How and to what extent did Frontex reduce vulnerabilities at external borders through improved situational awareness (including the extent to which risk analysis contributed		

to the improvement of situational awareness)?

EQ 5.4 How and to what extent did Frontex support Member States through capacity building activities?

EQ 5.5 How and to what extent did Frontex implement horizontal activities (education & training; research & innovation; fundamental rights) through intra-agency and inter-agency cooperation?

EQ 5.6 How and to what extent did Frontex promote and respect fundamental rights through all Agencies' activities?

Frontex [met/did not meet/partially met] its core objectives and priorities as set out in the EBCG Regulation.

Frontex achieved tangible results and outputs that can be directly linked to its core objectives and priorities.

Frontex supported [did not/partially] Member States in protecting and managing the EU external borders through operational activities and integrated planning, in particular, Joint Operations, Joint Return Operations and Risk Analysis.

Frontex supported [did not/partially] capacity building activities through training, research and development and human and technical resources.

Frontex supported [did not/partially] Member States in the area of return through all phases of return procedures (return decisions, voluntary returns, post-arrival and re-integration) and strengthen cooperation with third countries, in line with the EU's comprehensive external engagement.

Frontex supported [did not/partially] improved situational awareness.

Frontex [successfully/unsuccessfully] implemented horizontal activities through inter-agencies and intra-Agency cooperation and integration.

Quantitative indicators:

Mapping of number and type of activities implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, etc.)

Outputs and specific results achieved from activities (e.g., number of people rescued, number of smugglers identified, quantity of drugs seized, etc.)

Mapping of number and type of outputs/practical results of activities implemented per activities set out in the Annual Work Programmes

Progress towards strategic and horizontal objectives as set out in multi-annual programming documents

Progress towards achievement of Key Performance Indicators (KPI) as set out in multi-annual Programming document

Budget utilised for each activity

Qualitative indicators:

Level of achievement of Frontex's objectives and priorities

Degree to which the results achieved can be attributed to specific Frontex activities

Level of Frontex's contribution to specific components of the European integrated border management, including inter alia:

border control, including measures to facilitate legitimate border crossings and detection of cross-border crime

search and rescue operations for persons in distress at sea

risk and threat analysis

information exchange and cooperation between Member States

Desk research (e.g. Single Programming Documents, Consolidated Annual Activity Reports, Commission opinions to Frontex Single Programming, ECA Special Report on Frontex, etc.)

Stakeholder semi-structured interviews

Targeted surveys

Thematic case studies

Field visits

Frontex [successfully/unsuccessfully] promoted and respected fundamental rights through all the Agency's activities. Frontex, together with the Member States, [successfully/unsuccessfully] ensured the effective implementation of European integrated border management. EBCG as a whole and in particular the Agency has [has not/partially] progressed and achieved results with respect to each specific component of the European integrated border management (Art. 3 of the ECBG Regulation).	cooperation with third countries in particular on neighbouring third countries and countries of origin or transit for illegal immigration technical and operational measures related to border control return of third-country nationals use of state-of-the-art technology including large-scale information systems Opinion-based indicators: Stakeholders' and experts' views on the degree to which Frontex [successfully] met the objectives and priorities set out the EBCG Regulation Stakeholders' and experts' views on the degree to which Frontex [successfully] contributed to each specific component of the European integrated border management	
EQ6. How effective has the implementation of the EBCG Regulation by the Member States and by Frontex been? What factors contributed to a successful delivery and what obstacles were encountered? EQ6.1 How effective has been the implementation of operational activities? EQ6.2 How effective has been the implementation of capacity building activities? EQ6.3 How effective has been the implementation of horizontal activities? EQ6.4 How effective has been the observance and promotion of and fundamental rights?		
The implementation of the EBCG Regulation by the Member States and by Frontex has been [not been/partially been] effective. The implementation of the EBCG operational activities by the Member States and by Frontex been [not been/partially been] effective. The implementation of the EBCG capacity building activities by the Member States and by Frontex been [not been/partially been] effective. The implementation of the EBCG	Quantitative indicators: Mapping of number and type of activities implemented annually (e.g., number of operations launched, number of working arrangements with TCs, number of inter-agency cooperation arrangements, number of standing corps officers deployed, etc) Outputs and specific results achieved from activities (e.g., number of people rescued, number of smugglers identified, quantity of drugs seized, etc.) Qualitative indicators: Level of achievement of the Single Programming Document's Strategic and Horizontal Objectives (e.g., Reduced Vulnerability of the External Borders; Safe, Secure and Well-Functioning EU External Borders; Develop an upgraded Management System aimed at ensuring Accountability, Regularity and Legality of all Frontex activities, etc.)	Desk research (e.g. Single Programming Documents, Consolidated Annual Activity Reports, Commission opinions to Frontex Single Programming, ECA Special Report on Frontex, relevant action plans from the EIBM and Joint Operation Final Evaluation Reports etc.) Stakeholder semi-structured interviews Targeted surveys Thematic case studies Field visits

horizontal activities by the Member States and by Frontex been [not been/partially been] effective. The observance and promotion of fundamental rights in the context of EBCG by the Member States and by Frontex been [not been/partially been] effective. There are certain identifiable factors that contributed to a successful delivery and implementation of the EBCG Regulation by the Member States and by Frontex. There are certain identifiable obstacles encountered in the delivery and implementation of the EBCG Regulation by the Member States and by Frontex.	Level of implementation of operational activities by Frontex under the EBCG Regulation Level of implementation of capacity-building activities by Frontex under the EBCG Regulation Level of implementation of horizontal activities by Frontex under the EBCG Regulation Level of observance and promotion of fundamental rights by Frontex under the EBCG Regulation Level of cooperation at strategic and operational level amongst Member States and with the assistance of Frontex Extent to which shared responsibility of the implementation of the EBCG Regulation was effective/ successful Identification of success factors encountered by (i) Member States and (ii) Frontex in the implementation of the EBCG Regulation Identification of obstacles encountered by Frontex in the implementation of the EBCG Regulation Opinion-based indicators: Stakeholders' and experts' opinion on the extent of the effectiveness of Frontex and Member States' activities in implementing the EBCG Regulation Stakeholders and experts' opinion on main challenges and main strength in the implementation of the EBCG Regulation	
EQ7. What external factors have affected progress towards the objectives and how are they linked to the EBCG Regulation?		
There are certain identifiable factors that boosted/hindered the progress towards the achievement of the objectives, including: Overall budget management and rules at EU level may have impacted planning and resource allocation; Third country cooperation factors may have impacted JOs, returns, or other cooperation activities;	Qualitative indicators: Nature of the external factors identified (crisis at the external borders; fundamental rights complaints) Mapping of Frontex initiatives to respond to external factors (e.g., Flexibility index: extent to which Frontex is able to adapt and deploy) Opinion-based indicators: Proportion of stakeholders considering that the effectiveness of achieving the objectives was positively/negatively impacted by internal/external factors.	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

Overall migration situation or events (eg. COVID, crisis at Belorussian border, war in Ukraine) may have shifted resources to new priorities. Member State (in)actions may have limited or delayed the effective implementation or achievement of objectives by the Agency. (e.g. implementation of EUROSUR, or vulnerability assessment) The achievement of objectives was positively/negatively impacted by certain identifiable internal/external factors.	Opinions on what factors may have boosted/hindered the effectiveness of achieving the objectives	
EQ8. How has Frontex contributed to better coordination and cooperation between the relevant stakeholders, in particular in and between Member States in the context of European Integrated Border Management?		
EQ8.1 How did Frontex contribute to establishing and developing mechanisms for operational cooperation to implement the concept of European Integrated Border Management (EIBM), including establishing the Multiannual Strategic Policy Cycle; translating Commission strategic steering into the Technical and Operational EIBM strategy, and facilitating and fostering the implementation of the Technical and Operational strategy for EIBM across the EBCG)?		
Frontex has [not /partially] contributed to better coordination between the relevant stakeholders, in particular in and between Member States in the context of Integrated Border Management. Frontex has [not /partially] contributed to better cooperation between the relevant stakeholders, in particular in and between Member States in the context of EIBM.	Quantitative indicators: Number of working arrangements concluded with stakeholders Share of stakeholders involved in Frontex activities in the context of EIBM Estimate of risk analyses or analytical products produced and shared with stakeholders, particularly Member States Metrics linked to EUROSUR use that demonstrate coordinated approach Qualitative indicators: Extent to which Single Programming Document's Horizontal Objective 1, Focus Area 4.1 has been achieved, i.e., "Establish and develop mechanisms for operational cooperation to implement the concept of the EIBM" Typology and extent of support provided to stakeholders Level of cooperation at strategic and operational level amongst Member States	Baseline analysis Desk research, including the thematic evaluation of the European integrated border management (EIBM) strategies and the 2019 technical and operational strategy for EIBM (TO EIBM) Targeted surveys Semi-structured interviews Thematic case studies Field visits

	and with the assistance of Frontex Extent and quality of information exchange between Frontex and Member States Opinion-based indicators: Stakeholders' and experts' views on the degree to which Frontex [successfully] contributed to each specific component of the EIBM Stakeholders' opinion on the effectiveness of Frontex initiatives in coordinating initiatives in the context of EIBM Stakeholders' level of satisfaction about Frontex role in EIBM activities	
EQ9. Are Frontex operational activities based on an up-to-date and comprehensive risk analysis? EQ 9.1 To what extent did Frontex produce reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance, to inform its operational activities? EQ 9.2 To what extent did Frontex produce risk analysis (pre-warning and forecasting) within all four tiers of EIBM to inform its operational activities?		
Frontex operational activities based on an up-to-date risk analysis. Frontex operational activities based on a comprehensive risk analysis, integrating data from multiple sources, including Member States data, EUROSUR, vulnerability assessments, liaison officers, third countries (eg. AFIC), open sources, partner EU agencies; Frontex risk analyses provide data which fulfils the operational needs;	Quantitative indicators: Number of risk analyses and related products conducted and linked to specific operational activities; Number of (mega-)trends identified Number of risk analysis centres and networks set up Qualitative indicators: Typology of (mega-)trends identified Extent to which FRAN Indicators are achieved through Frontex activities (e.g., detention of illegal-border crossing, returns, detections of false documents, etc.) Extent of achievement of Single Programming Document Focus Areas objectives (e.g., 1.1, 1.2., 1.3.) Extent of development of risk analysis capabilities Opinion-based indicators: Stakeholders' and experts' views on the suitability of Frontex's risk analysis to serve operational activities/ Stakeholders and experts' opinions on the level of activities' compliance with risk analysis conclusions	Desk research, including Frontex' Operational Plans, Risk analysis reports Targeted surveys Semi-structured interviews Thematic case studies Field visits

EQ10. How and to what extent has Frontex delivered relevant assistance to Member States in the training of national border/coast guards, including the establishment of common training standards?

Frontex [successfully / unsuccessfully] delivered relevant assistance to Member States in the training of national border/coast guards, including the establishment of common training standards.

Frontex Common Core Curriculum was successfully integrated into national training programmes, contributing to harmonisation of border and coast guarding education, improved competence and interoperability;

Frontex Common Core Curriculum [has/ has not] proven to be effective in practice.

Quantitative indicators:

Number and types of trainings delivered (with relevant metrics such as number of training hours)

Number of border/coast guards trained

Number of training guidelines/standards produced and delivered

Budget allocation and utilisation for training activities

Share of stakeholders agreeing on sufficient time being dedicated to trainings

Relevant indicators from feedback forms from trainees

Qualitative indicators:

Evidence of Member States' needs assessment carried out

Extent of achievement of Single Programming Document's Strategic Objectives (e.g. SO. 3 – Sustained European Border and Coast Guard Capabilities)

Extent to which objectives and structure of trainings are in line with the objectives of the EBCG Regulation and the needs identified through risk analysis

Extent of cooperation with stakeholders in the designing of training activities

Satisfaction score (CSAT) of the internal and external stakeholders

Opinion-based indicators:

Trainees' level of satisfaction

Trainers' level of satisfaction

Stakeholders' opinion and feedback on trainings

Relevant documents, including Common Core Curricula, European Joint Master, interviews and questionnaires with Frontex (including with Standing Corps categories 2 and 3)

Targeted surveys

Semi-structured interviews

Thematic case studies

Field visits

EQ11. How has Frontex supported Member States by deploying its technical equipment in the Member States?

Frontex has [successfully / unsuccessfully] supported Member States by deploying its technical equipment in the Member States.

Quantitative indicators:

Agency's share of the pool for technical equipment

Types and number of equipment procured between 2019 – 2022;

Extent of technical equipment deployed to provide assistance, per

Baseline analysis

Desk research

Information from OperaEvo and Annual Bilateral Negotiations

	category/typology of equipment (e.g., IT equipment, logistic equipment, military equipment, etc.) Asset days reported in JOs / Rapid Border Interventions Budget allocated and utilised to develop technical equipment Qualitative indicators: Extent to which technical equipment matches defined operational needs Extent to which technical equipment and resources are made available Level of achievement of strategic objectives (e.g., SO.2 – Focus Area 2.1: Provide effect-oriented and flexible operational response) Opinion-based indicators: Stakeholders' opinion on the suitability of technical equipment to respond to operational needs Stakeholders' level of satisfaction about the cooperation with Frontex on sharing technical equipment Stakeholders' experience with the deployment of technical equipment with focus on timing, efficiency, responsiveness, etc.	Targeted surveys Semi-structured interviews Thematic case studies
EQ12. How has Frontex cooperated with authorities in third countries? How has Frontex facilitated cooperation between Member States and authorities in third countries? To what extent has this cooperation been framed within a broader framework of the EU's external action?		
Frontex has [successfully / unsuccessfully] cooperated with authorities in third countries. Frontex has [successfully / unsuccessfully] facilitated cooperation between Member States and authorities in third countries.	Quantitative indicators: Number of working arrangements and agreements concluded with authorities in TCs Share of cooperation activities with TCs, including countering irregular migration, countering cross-border crimes, rescuing people etc. Number of liaison officers in third countries Number of trainings of TCs' national border guards Number of operations conducted in/in cooperation with TCs Qualitative indicators: Extent and typology of operational and technical assistance to authorities in TCs	Baseline analysis Desk research, including International cooperation Strategy 2021-2023, reporting on international cooperation and operational activities to the Management Board Targeted surveys Semi-structured interviews, including with relevant CSDP missions and operations and respective EU Delegations, as well as EEAS (CPCC, ISP, SecDefPol) Thematic case studies

	Extent of achievement of Single Programming Document's Horizontal Objectives 2 "Reinforce the external dimension aimed at multiplying Frontex operational impact through cooperation with [...] third countries" Extent to which TCs' border management capacities have been supported Extent and quality of information sharing between Frontex, Member States and TCs, including in the EUROSUR framework Opinion-based indicators: Stakeholders' opinions on the extent to which Frontex coordinate operational cooperation between Member States and TCs Stakeholders and experts' opinions on the quality of the support, expertise, equipment etc. provided by Frontex to TCs Stakeholders and experts' opinions on the effectiveness of cooperation with TCs for achieving Frontex's operations objectives	
EQ13. How has Frontex cooperated with the EU agencies, CSDP Missions and Operations and international organisations, in particular on the coast guard functions with EFCA and EMSA and with relevant national/international organisations? EQ13.1 How has the Agency cooperated with international organisations and does the EBCG Regulation allow the Agency to cooperate with all international organisations that are relevant for carrying out its tasks efficiently? EQ13.2 How has the Agency cooperated with EU agencies? EQ13.3 How has the Agency cooperated with CSDP Missions and Operations? Is the existing framework of cooperation sufficient? How could it be improved?		
Frontex has [successfully / unsuccessfully] cooperated with the EU agencies, CSDP Missions and Operations and international organisations, in particular on the coast guard functions with EFCA and EMSA and with relevant national/international organisations. The EBCG Regulation allows [does not allow] the Agency to cooperate with all international organisations that are relevant for carrying out its tasks efficiently.	Quantitative indicators: Number of working arrangements and agreements concluded Number of inter-agency studies, reports, collaborations Number of activities performed in cooperation with CSDP Missions and Operations Qualitative indicators: Typology of support provided to EU Institutions and EU Delegations, CSDP Missions and Operations, international organisations Level of achievement of Strategic Objective 2 Focus Area 2.3 "reinforcing the cooperation between Frontex, EMSA and EFCA for the development of European cooperation on Coast Guard Functions"	Desk research Targeted surveys Semi-structured interviews, including with Maritime Analysis and Operations Centre – Narcotics (MAOC – N), NATO MARCOM, European Coast Guard Functions Forum (ECGFF), CSDP missions and operations and EEAS (CPCC, ISP, SecDefPol) Thematic case studies

		Alignment with guidelines and objectives agreed with EMSA and EFCA Frontex's level of cooperation in cost guard functions with EU agencies and international organisations Opinion-based indicators: Stakeholders' opinions on the quality and effectiveness of the coordinate approach between Frontex and EU institutions, agencies, delegations, CSDP Mission and Operations, and international organisations	
EQ14. How has Frontex promoted and respected fundamental rights through all the Agency's activities? EQ14.1. In which ways has Frontex created the conditions for ensuring and promoting the respect of fundamental rights in its activities? EQ14.2. How has the Serious Incident Reports (SIRs) mechanism been implemented to provide an effective procedure to report and investigate potential fundamental rights violations? EQ14.3. How has the complaints mechanism provided an effective and accessible tool for reporting, investigating, and remedying perceived breaches of fundamental rights? EQ14.4. How effective is the fundamental rights framework established by the EBCG Regulation in ensuring the protection of fundamental rights in the course of executing the Agency's mandate, including by empowering FRMs to conduct thorough and impartial monitoring activities? EQ14.5 How effectively has Frontex monitored return operations organised and coordinated by the Agency? (Article 50(5) of EBCG Regulation)?			
	Frontex has [successfully/ unsuccessfully] promoted and respected fundamental rights through all the Agency's activities. Frontex has created [not created] the conditions for ensuring and promoting the respect of Fundamental Rights in its activities in specific ways. The Serious Incident Reports (SIRs) mechanism has been implemented [successfully/ unsuccessfully] to provide an effective procedure to report and investigate potential fundamental rights violations. The complaints mechanism has [has not] provided an effective and accessible tool for reporting, investigating, and remedying perceived breaches of fundamental rights	Quantitative indicators: Number of Serious Incident Reports (SIRs) submitted by deployed staff and follow-ups (investigation in cooperation with involved Member State, actions to address identified shortcomings, redress, etc. Number of and complaints received by the Agency and follow-up actions taken Estimates of the use of the complaints mechanism and follow-ups (actions taken to address identified shortcomings, redress, compensation, etc) Number of legal complaints against Frontex Number of trainings delivered on fundamental rights operations Staff involved in developing a fundamental rights strategy and in fundamental rights related activities Budget allocation and utilisation for fundamental rights related activities Qualitative indicators: Level of compliance of Frontex's operations and activities with fundamental rights legislation (E.g., EU Charter of Fundamental Rights; Fundamental rights norms in EU JHA acquis, etc.)	Baseline analysis Desk research, including Fundamental Rights Officer reports, Action Plan for the implementation of fundamental rights related recommendations (i.e. FSWG, WG FRaLO), Consultative Forum reports Targeted surveys, including with Consultative Forum Semi-structured interviews, including Fundamental Rights Agency Thematic case studies Legal analysis

The fundamental rights framework established by the EBCG Regulation was effective [not effective] in ensuring the protection of fundamental rights in the course of executing the Agency's mandate The expanded role of the oversight and monitoring provided by the Fundamental Right Officer contributes to higher level of compliance with human rights standards.	Level of compliance with FRA and external evaluators recommendations Quality and effectiveness of fundamental rights' training contents Extent of possibility to scrutinise compliance with fundamental rights in Frontex activities Level of achievement of Single Programming Document's Horizontal objective 3 "Develop an upgraded Management System aimed at ensuring Accountability, Regularity and Legality of all Frontex activities" Extent to which objectives foreseen in the Fundamental Rights Strategy are met Opinion-based indicators: Stakeholders and experts' views on the extent of effectiveness of the operations' fundamental rights monitoring Stakeholders' opinion on the effectiveness of the Fundamental Rights Strategy and its level and quality of implementation	
EQ15. How has Frontex supported Member States in the area of return through all phases of return procedures (forced returns, voluntary returns, post-arrival and re-integration)? EQ15.1. How has the Agency supported Member States specifically in the area of post-arrival and post-return activities including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries? EQ15.2. Which role has the Agency in building synergies and connecting Union-funded networks and programmes in the field of return in third countries? EQ15.3. How has Frontex supported Member States in terms of coordinating return operations led by Member States? EQ15.4. How has Frontex provided support to Member States in terms of organising Frontex-led operations?		
Frontex has [successfully/unsuccessfully] supported Member States in the area of return through all phases of return procedures (pre-return, returns, post-arrival and re-integration). Frontex has [successfully/unsuccessfully] supported Member States specifically in the area of post-arrival and post-return activities including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third	Quantitative indicators: Number of returns supported by Frontex (forced returns and voluntary returns and departures) Number of personnel deployed on return procedures Budget allocation and utilisation for return procedures Number of pre - return procedures (e.g. identification missions) carried out, including in coordination with Member States and TCs Number of Frontex-led operations Qualitative indicators: Extent to which FRAN indicators are met	Baseline analysis Desk research Targeted surveys Thematic case studies Legal analysis

countries. The Agency has a specific role in building synergies and connecting Union-funded networks and programmes in the field of return in third countries. Frontex has [successfully/unsuccessfully] supported Member States in terms of coordinating return operations led by Member States. Frontex has [successfully/unsuccessfully] provided support to Member States in terms of organising Frontex-led operations.	Extent of achievement of Single Programming Documents' Strategic Objectives such as "Safe, Secure and Well-Functioning EU External Borders", and Focus Areas such as "Support migration management by ensuring effective returns" Degree to which Frontex has provided assistance to Member States' experiencing challenges with their return systems Level and quality of organisation and coordination of return operations Extent to which the non-binding reference model for reference IT systems for return case management provide effective support to Member States' border guards Technical, including IT, equipment provided by Frontex Level of assistance provided in voluntary returns Support provided by Frontex to Member States in the areas of return through all phases of return process (Art. 48 of EBCG Regulation) in compliance with fundamental rights Support provided by Frontex to Member States in strengthening cooperation with third countries, in line with the EU's comprehensive external engagement Support provided by Frontex to Member States in post-arrival and post-return activities, including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries Support provided by Frontex to Member States in organising and coordinating return operations led by Member States and Frontex-led operations Analysis of organisation and coordination of return operations, including Joint Return Operations carried out Opinion-based indicators: Stakeholders and experts' opinion on the role of Frontex in implementing returns operations Stakeholders' view on the effectiveness and quality of Frontex's support to Member States and TCs on returns	
EQ16. How has the exchange of information in the framework of EUROSUR improved situational awareness and reaction at the external borders of EU Member States? This concerns the cooperation between Member States as well as with third countries. EQ16.1 How has the Agency's and Member States' implementation of the EUROSUR framework been effective in terms of information exchange in order to improve the situational awareness and increase the reaction capabilities among the relevant stakeholders, including in the detection, prevention and combating of irregular immigration and		

cross-border crime as well as in contributing to the protection and saving the lives of migrants?

EQ16.2 How did the Agency manage to integrate EUROSUR with the rest of the operational activities? Are there any duplications between EUROSUR and other operational information channels?

The exchange of information in the framework of EUROSUR improved [did not improve] situational awareness and reaction at the external borders of EU Member States.

The Agency's implementation of the EUROSUR framework has been [not been] effective in terms of information exchange in order to improve the situational awareness and increase the reaction capabilities among the relevant stakeholders, including in the detection, prevention and combating of irregular immigration and cross-border crime as well as in contributing to the protection and saving the lives of migrants.

The Agency manage to integrate EUROSUR [successfully/unsuccessfully] with the rest of the operational activities.

There are [are not] any duplications between EUROSUR and other operational information channels.

Quantitative indicators:

Number of EUROSUR activities conducted in support of MS/TCs

Number of events entered into EUROSUR (by MS and Frontex)

Number of analytical reports shared in EUROSUR (by MS and Frontex)

Other relevant quantitative indicators from EUROSUR to be provided by Frontex

Qualitative indicators:

Level of cooperation between Frontex and MS/TCs through EUROSUR

Extent to which information is exchanged through EUROSUR

Level of achievement of Single Programming Document's Strategic Objectives, such as "Reduced Vulnerability of the External Borders based on Comprehensive Situational Awareness"

Extent to which the development of operational technical capacities and IT systems such as EUROSUR has been sustained

Extent to which TCs' information exchange capabilities have been strengthened

Extent to which reporting is adapted to and compliant with EU legal framework, including fundamental rights

Quality of cross-border crime-related EUROSUR data collected and reported

Level of complementarity and/or inter-changeability between EUROSUR and other information exchange channels

Mapping of operational standards created to support EUROSUR

Opinion-based indicators:

Stakeholders' and experts' opinion on the level of operationalisation of EUROSUR's information exchange network and its compliance with EU law standards, including fundamental rights and data protection

Baseline analysis

Desk research, including EUROSUR evaluation report of 2022

Targeted surveys

Semi-structured interviews, including with EU SatCen, EMSA, EFCA, EASA, Frontex staff

Thematic case studies

Legal analysis

Effici

EQ17. Costs and benefits: What are the costs and benefits generated by EBCG (not only financial, but also operational) in each Member State, in Frontex and overall?

EQ17.1 Are there significant differences in cost and benefits in the Member States, and if so, what is causing them?

EQ17.2 Have there been administrative costs or savings for citizens and business?

There are certain costs generated by EBCG in each Member State, in Frontex and overall.

There are certain benefits generated by EBCG in each Member State, in Frontex and overall.

There are [are not] significant differences in cost and benefits in the Member States.

Certain factors contribute to potential significant differences in cost and benefits in the Member States.

There have been [not been] administrative costs or savings for citizens and business.

Quantitative indicators:

Direct costs (to Member States and Frontex) generated by the EBCG, including financial and operational costs (e.g., budget allocated and utilised for increasing/improving IT, military, coordination and logistic equipment)

Number of human resources employed on EBCG activities – specific attention to vacancy rate and turn-over rate

Estimate on the time required for adopting/implementing major changes

Number of external services used

Qualitative indicators:

Typology of costs identified and stakeholders targeted (e.g., administrative costs, one-off costs, recurrent costs)

Scale and quality of benefits generated both in Member States and TCs (e.g., trainings delivered, operations concluded, exchange of information conducted, working arrangements concluded, etc.)

Perception of the efficiency of resource allocation in view of factors such as the priorities defined and the need for trained staff

Efficiency in using available facilities, equipment, etc.

Evidence of activities not being implemented due to a lack of human or financial resources

Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation

Opinion-based indicators:

Stakeholders' opinion on whether the benefits are greater than the costs incurred

Baseline analysis

Desk research, including Frontex final evaluation report for each joint operation from the Agency and from Frontex evaluation report on Flexible Operational Activities in Return for the relevant years

Targeted surveys

Semi-structured interviews,

Thematic case studies

EQ18. What factors have influenced the efficiency of the implementation of the EBCG Regulation? How and to what extent? (e.g. governance and set-up, clear division of competences between Member States and Frontex, policy framework, legal base, etc)

Certain factors influenced the efficiency of the implementation of the EBCG Regulation.

EU budgetary rules and the

Quantitative indicators:

Estimate on the time required for adopting/implementing major changes

Number of tools (e.g., IT equipment, infrastructure etc.) which required major

Baseline analysis

Desk research

Targeted surveys

multiannual financial framework impacted (or not) the efficiency of the implementation of the EBCG Regulation Member State / third country budgetary rules have / not impacted the efficiency of implementation of the EBCG Regulation;	changes Number of trainings delivered and people trained Budget allocated and utilised for adapting to novelties introduced with the EBCG Regulation Qualitative indicators: Extent to which major changes needed to be introduced to comply with EBCG Regulation Extent to which human resources have been capable to efficiently adapt to novelties Cost categories where inefficiencies can be identified Additional costs incurred due to the inefficiencies identified Evidence of activities not being implemented due to a lack of human or financial resources Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation Opinion-based indicators: Stakeholders and experts' views on factor hindering/boosting the efficiency of the EBCG Regulation Proportion of stakeholders who consider that internal and external factors have facilitated/hindered the efficiency of the Regulation	Semi-structured interviews Thematic case studies Legal analysis
EQ19. Are there any inefficiencies of the implementation of the EBCG Regulation? What is the simplification and cost reduction potential of the Regulation?		
Certain inefficiencies of the implementation of the EBCG Regulation have been identified. There is certain simplification and cost reduction potential of the Regulation.	Quantitative indicators: Cost categories where inefficiencies can be identified Number of Frontex activities where inefficiencies can be identified Number of cost categories which can be simplified Additional costs incurred due to the inefficiencies identified Percentage of inefficiency costs on the total cost of the activities Number and type of administrative inefficiencies identified	Baseline analysis Desk research, including Budget implementation reports covering the period 2019-2023 Targeted surveys Semi-structured interviews, Thematic case studies

	Qualitative indicators: Degree of alignment between budget allocated and expenditure Evidence of activities not being implemented due to a lack of resources Existence of administrative processes and obligations that are significantly burdensome Alternative or additional measures to increase results Opinion-based indicators: Stakeholders' opinion on whether inefficiency in Frontex's activities (administrative and operational) can be identified Stakeholders' opinion on the scope of further simplification and burden reduction	
EQ20. Do the resources that have been allocated to Frontex correspond to the tasks assigned to the Agency by the EBCG Regulation?		
The resources that have been allocated to Frontex correspond [do not correspond] to the tasks assigned to the Agency by the EBCG Regulation.	Quantitative indicators: Allocation of budget per activity and actual budget utilised per activity Cost categories where inefficiencies can be identified Number of Frontex activities where inefficiencies can be identified Percentage of inefficiency costs on the total cost of the activities Budget allocated to hiring new resources Turnover rate, vacancy rate Qualitative indicators: Degree of alignment between budget allocated and expenditure Evidence of activities not being implemented due to a lack of resources (human and financial) Opinion-based indicators: Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to carry out tasks assigned	Baseline analysis Desk research, including Budget implementation reports covering the period 2019-2023 Targeted surveys Semi-structured interviews, Thematic case studies
EQ21. How has Frontex used its human and financial resources to achieve the objectives set out in its work programmes during the 2019-2023 period? Is the distribution of resources adequate for meeting these objectives?		

Frontex has [successfully/ unsuccessfully] used its human and financial resources to achieve the objectives set out in its work programmes during the 2019-2023 period? Is the distribution of resources adequate for meeting these objectives.	Quantitative indicators: Number of human resources employed on EBCG activities – specific attention to vacancy rate and turn-over rate Allocation of budget per activity and actual budget utilised per activity Cost categories where inefficiencies can be identified Number of Frontex activities where inefficiencies can be identified Percentage of inefficiency costs on the total cost of the activities Budget allocated and utilised for adapting to novelties introduced with the EBCG Regulation Qualitative indicators: Degree of alignment between budget allocated and expenditure Evidence of activities not being implemented due to a lack of resources (human and financial) Degree to which the financial and human resources allocated to Frontex increased after the implementation of the EBCG Regulation Extent to which major changes needed to be introduced to comply with EBCG Regulation Opinion-based indicators: Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to achieve the work programmes' objectives Stakeholders' opinion on whether the resources allocated to Frontex have been allocated effectively within the Agency	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
EQ22. How and to what extent has the governance and organisational structure of the Agency enabled Frontex to perform its tasks, having regard to its size, composition and organisation?	Quantitative indicators: Number of human resources covering governance and organisational positions Turnover rate Budget allocated and actual expenditure for governance and organisational activities	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies

	Number of human resources employed on EBCG activities Allocation of budget per activity and actual budget utilised per activity Qualitative indicators: Degree of alignment between governance costs and tasks performed Degree of alignment between budget allocated and expenditure for all activities Extent to which governance costs are proportionate to size, composition and organisation of Frontex Existence of administrative processes and obligations that are significantly burdensome Opinion-based indicators: Stakeholders' opinion on whether the organisation structure enabled Frontex to carry out tasks assigned	Legal analysis
EQ23. How have the Agency's procedures and working practices been conducive to performing its tasks? EQ23.1 How have the Agency's internal coordination mechanisms (including Director briefings) helped facilitate cooperation at horizontal level? EQ23.2 Have the Agency's human resources been deployed effectively? EQ23.3 How have the Agency's strategies, action plans, operating procedures and guidelines supported the performance of its tasks?		
The Agency's procedures and working practices have [have not] been conducive to performing its tasks.	Quantitative indicators: Number of human resources employed on EBCG activities Allocation of budget per activity and actual budget utilised per activity Budget allocated and utilised for developing working practices and procedures Number of new working practices (e.g., codes of conduct, working guidelines, etc.) produced Qualitative indicators: Extent to which human resources have been capable to efficiently adapt to the Agency's procedures and working practices Degree of alignment between governance costs and tasks performed Existence of administrative processes and obligations that are significantly burdensome	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis

Coherence		Opinion-based indicators: Stakeholders' opinion on whether the resources allocated to Frontex are sufficient to carry out tasks assigned Stakeholders' opinion on whether new working procedures are aligned with the Agency's objectives Stakeholders' opinion on whether new working procedures are aligned with the EBCG Regulation's objectives and tasks foreseen Stakeholders' opinion on whether new working procedures have facilitated working performances	
	EQ24. To what extent are Frontex data collection for the risk analysis and vulnerability assessments coherent?		
	Frontex data collection for the risk analysis and vulnerability assessments are [are not] coherent. The information collected via the vulnerability assessment process is accurate, up-to-date, and comprehensive allowing for the preparation of an effective risk analysis, serving operational and strategic needs;	Quantitative indicators: Categorisation of data gaps in vulnerability assessments by Member State, type, thematic area covered etc. Existence and nature of overlaps between the different types of data collected Existence and nature of exploited / unexploited synergies between data collected Existence and frequency of use of internal data-sharing exchange mechanisms and processes Existence and frequency of use of mechanisms and processes to involve Frontex's staff members responsible for the different activities in the design and planning process of data collection Opinion-based indicators: Stakeholders and experts' views on coherence of data collected Stakeholders' perceptions of obstacles and areas for improvement	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
	EQ25. To what extent have the objectives and activities of the EBCG been coherent with other relevant EU policies and objectives? (e.g. migration and asylum, EU visa policy, EU's Common Foreign and Security Policy, Common Security and Defence Policy (CSDP), etc)		
	The objectives and activities of the EBCG have been [have not been] coherent with other relevant EU policies and objectives.	Quantitative indicators: Number of references to EBCG's activities in EU policy reports Number and typology of cooperation and coordination mechanisms established in order to ensure coherence and complementarity of activities at EU level and to	Baseline analysis Desk research Targeted surveys

	avoid overlaps Qualitative indicators: Degree of coherence of EBCG's activities with the objectives and activities of other EU institutions, bodies and agencies, as well as relevant policies Extent to which Frontex participates in boards / working groups or other cooperation mechanisms with other EU Agencies (Europol, Eurojust, eu-LISA, FRA, etc). Existence and nature of the synergies between EBCG's activities and other EU institutions, bodies and agencies Existence of unexploited synergies between EBCG's activities and other EU institutions, bodies and agencies Opinion-based indicators: Stakeholders' perceptions of the level of coordination of activities and processes across EU Institutions, bodies and agencies to avoid overlaps and promote synergies (including the work of the Commission (DG INTPA/NEAR) in third countries in the context of EU development/ neighbourhood cooperation in the areas of border management/ return/ integration)	Semi-structured interviews Thematic case studies Legal analysis
EQ26. To what extent have Frontex activities been coherent with the activities of other stakeholders in European Integrated Border Management? (e.g. EU institutions, EU JHA agencies, etc.)		
EQ26.1 To what extent have the objectives and activities of the EBCG been coherent with the objectives and activities of other EU institutions, bodies and agencies?		
Frontex activities have [have not] been coherent with the activities of other stakeholders in Integrated Border Management. Frontex activities have been coherent with activities of Member States; Frontex activities have been coherent with those of other relevant EU institutions and agencies; Frontex activities have been coherent with those of partner third countries;	Quantitative indicators: Number of references to Frontex activities in stakeholders' reports Number and typology of cooperation and coordination mechanisms established with stakeholders Qualitative indicators: Number and quality of agreements with relevant stakeholders, facilitating coherence of activities; Degree of coherence of Frontex activities in EIBM with the objectives of other stakeholders Existence and nature of synergies between Frontex activities in EIBM and other stakeholders' activities	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis

	Existence of unexploited synergies between Frontex activities in EIBM and other stakeholders' activities Opinion-based indicators: Stakeholders' perceptions of the level of activities' coordination between Frontex and other stakeholders	
EQ27. To what extent are the various pieces of EU legislation regulating the operations of the EBCG coherent with one another? To what extent do they comply with EU law on personal data, other fundamental rights, Regulation 656/2014 and the Common Approach on Decentralised Agencies?		
The various pieces of EU legislation regulating the operations of the EBCG have [have not been] coherent with one another. The various pieces of EU legislation comply [do not comply] with EU law on personal data protection, other fundamental rights, Regulation 656/2014 and the Common Approach on Decentralised Agencies.	Qualitative indicators: Categorisation of EU legislation contents related to EBCG's operations by type, thematic area covered etc. Existence and nature of overlaps between the different EU legislation contents related to EBCG's operations Existence and nature of exploited / unexploited synergies between EU legislation contents related to EBCG's operations Existence and nature of synergies between EU legislation regulating EBCG'S operations and EU fundamental rights legislative framework Existence and nature of synergies between EU legislation regulating EBCG'S operations and EU data protection legislative framework Existence and nature of synergies between EU legislation regulating EBCG'S operations and Regulation 656/2014 Existence and nature of synergies between EU legislation regulating EBCG'S operations and the Common Approach on Decentralised Agencies Opinion-based indicators: Stakeholders and experts' views on the existence of synergies / unexploited synergies between EU legislation on EBCG's operations Stakeholders and experts' views on the existence of coherence between EU legislation on EBCG's operations and EU legislation on fundamental rights, data protection, Common Approach on Decentralised Agencies, etc.	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
EQ28. How are Frontex's internal procedures, including planning, monitoring and reporting ensuring that its activities are internally coherent? How have the Management Board's activities contributed to ensure this internal coherence?		

	Frontex's internal procedures, including planning, monitoring and reporting are [are not] internally coherent. Frontex has [has not] made specific efforts to ensure that its internal procedures are coherent. The Management Board's activities have [have not] contributed to ensure this internal coherence.	Quantitative indicators: Number of Frontex internal procedures which refer to other internal procedures documents Qualitative indicators: Categorisation of Frontex's internal procedures by type, thematic area covered and subject delivering the procedure / supervising its application Existence and nature of exploited / unexploited synergies between the different procedures Existence and frequency of use of internal information and knowledge-sharing exchange mechanisms and processes Existence and frequency of use of mechanisms and processes to involve Frontex's staff members responsible for the different activities, including the Management Board, in the design and planning process Opinion-based indicators: Stakeholders' opinion on existence of synergies and coherence among Frontex's internal procedures Stakeholders' view on the role of the Management Board in contributing to internal coherence	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
EU Added Value	EQ29. How has the new mandate of Frontex introduced by the EBCG Regulation contributed to achieving the objectives of the EBCG as a whole? (for example, Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system) The new mandate of Frontex introduced by the EBCG Regulation [successfully/ unsuccessfully] contributed to achieving the objectives of the EBCG as a whole.	Qualitative indicators: Categorisation of novelties introduced with the EBCG Regulation Mapping of activities carried out to comply with novelties introduced with the EBCG Regulation Mapping of synergies between the novelties introduced, the activities carried out and the objectives of the EBCG Opinion-based indicators: Stakeholders and experts' opinion on the existence of synergies between the novelties introduced, the activities carried out and the objectives of the EBCG Stakeholders and experts' opinion on the role of the new Frontex's mandate for	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis

	achieving the EBCG's objectives	
EQ30. How has the new mandate of the Agency contributed to supporting Member States in implementing effective border management? (e.g. Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system)		
The new mandate of the Agency [successfully/ unsuccessfully] contributed to supporting Member States in implementing effective border management.	Quantitative indicators: Number of operations conducted in Member States in cooperation with / coordinated by Frontex Number of protocols, procedures etc. shared with Member States Number of trainings conducted with Member States' border guards Qualitative indicators: Extent to which Frontex is building interoperability among Member States through successful introduction of common practices/standards Extent to which Frontex is used as information hub disseminating information Opinion-based indicators: Stakeholders' perceptions on the role of Frontex at the national level Stakeholders' perceptions on the role of EBCG operations in support to Member State operations Stakeholders' perceptions on the usefulness of EBCG' outputs to inform Member States activities and operations	Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
EQ31. Could the objectives of the EBCG Regulation have been achieved sufficiently by the Member States acting alone?		

	The objectives of the EBCG Regulation could have [could not have] been achieved sufficiently by the Member States acting alone.	Quantitative indicators: Number of operations conducted by Member States without the cooperation/coordination from EBCG Number of working procedures, trainings, protocols developed by the Member States alone Number of information sharing platforms created and managed by the Member States alone Number of completed/partially completed/not completed activities Qualitative indicators: Mapping of best practices developed by and shared among Member States Opinion-based indicators: Stakeholders' perceptions on the role of EBCG at the national level Stakeholder perceptions on the impact of the limitation of activities by the EBCG on the achievement of its objectives Stakeholder perceptions on the role of Member States on the achievement of the EBCG Regulation's objectives	Counterfactual analysis Baseline analysis Desk research Targeted surveys Semi-structured interviews Thematic case studies Legal analysis
REVIEW OF STANDING CORPS			
RQ1. How has the deployment of the Standing Corps been relevant in supporting Member States in the protection of EU external borders, migration management and returns?			
Review of Standing Corps	The deployment of the Standing Corps has been relevant in supporting Member States in the protection of EU external borders, migration management and returns.	Quantitative indicators: Number of Standing Corps recruited and trained Number of Standing Corps who completed the training Number of operations where the Standing Corps have been deployed FRAN Indicators (e.g., Returns procedures, Detections of false documents etc.) Number of activities where the Standing Corps are involved (returns, rescuing, smugglers identification, etc.) financial support and other resources and assets mobilised to support the training and deployment of the Standing Corps	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

	Number of Standing Corps deployed in third countries Number of Standing Corps already trained vis-à-vis number of Standing Corps expected to be trained to date Qualitative indicators: Activities conducted by the Standing Corps in operations Role of the Standing Corps in carrying out activities related to the FRAN Indicators (e.g., assistance in return related activities, Detection of illegal stays etc.) Mapping of the role of the Standing Corps in carrying out border management, migration management and return activities Extent to which the Single Programming Document's Strategic Objective 3 "Sustained European Border and Coast Guard Capabilities" has been achieved Presence of structures and procedures to ensure that the members of the teams (Standing Corps) can be held civilly and criminally liable), particularly in the context of their deployment in third countries Extent to which the Standing Corps have been effective in ensuring the Member States an equally adequate support in the areas of (a) protection of EU external borders, (b) migration management and (c) returns (identifying the areas still needing improvement)? Opinion-based indicators: Stakeholders' view on the role of the Standing Corps in the activities conducted in cooperation with Member States Stakeholders' opinion on the role the Standing Corps have in improving Member States' operations to protect borders and manage migration Standing Corps' level of satisfaction with the training received Competent authorities' level of satisfaction with the operations of the Standing Corps	
RQ2. The EBCG Regulation requires the deployment of all Standing Corps members (with few exceptions) in the field, excluding them from contributing to the activities conducted in the Headquarters. Is this limiting the capacity of the Agency to implement its full mandate?		
The deployment of all Standing Corps members in the field is [is not] limiting the capacity of the Agency to	Qualitative indicators: Activities conducted by the Standing Corps in operations	Desk research Targeted surveys

	implement its full mandate.	Activities conducted by the Agency in the Headquarters (e.g., administrative activities) (including in light of MB Decisions 41/2022 and 42/2022) Typology of expertise needed for conducting activities in the Headquarters Opinion-based indicators: Stakeholders' opinion on the impact of the Standing Corps not contributing to Headquarters activities to the Agency's capacity to implement its mandate Stakeholders' opinion on the added value of involving the Standing Corps in the activities in the Headquarters	Semi-structured interviews Thematic case studies Field visits
	RQ3. How has the reserve for rapid reaction as part of the Standing Corps been relevant in supporting Member States, in light of the increased number of categories 1, 2 and 3 staff?		
	The reserve for rapid reaction as part of the Standing Corps has been [has not been] relevant in supporting Member States, in light of the increased number of Categories 1, 2 and 3 staff.	Quantitative indicators: Extent of practical deployment of the reserve for rapid reaction of the Standing Corps (Category 4) Trends in the share (%) of SCs Cat. 4 within the SC Frequency in which the rapid reacting mechanism involving SCs Cat. 4 have been deployed Number of SCs Cat. 4 effectively trained vs Number of SCs Cat. 4 forecasted to be trained by date Budget allocated to the recruitment, training, deployment of SCs Cat. 4 Qualitative indicators: Areas of deployment/activity types in which the Member States most deployed the SCs Cat. 4 Areas of operation in which the SCs Cat. 4 are most effectively trained and areas needing further training Factors hindering / confirming / favouring the role of SCs Cat. 4 in ensuring Member States adequate support in case of rapid reaction Opinion-based indicators: Share (%) of stakeholders considering SCs Cat. 4 as relevant in supporting Member States for rapid reaction operations Extent to which stakeholders consider the actual level of preparation of SCs Cat 4	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

		adequate for rapid reaction Share of stakeholders confirming that the number of SCs Cat. 4 is adequate to the current needs of the Agency in terms of its rapid reactions' capacity Extent to which stakeholders agree on the numerical adequacy and effective preparation of the current SCs Cat. 4 contingent in light of current and emerging trends of crisis scenarios / border management requiring the mobilisation of rapid reaction mechanisms Share of stakeholders outlining that the budget allocated to SCs Cat. 4 is inadequate	
RQ4. Which are the national authorities of Member States and Schengen Associated Countries which provide contributions to the Standing Corps (Categories 2 and 3)?			
	Certain [to be specified] national authorities of Member States and Schengen Associated Countries which provide contributions to the Standing Corps.	Quantitative indicators: Number of National authorities providing contributions to the Standing Corps (Categories 2 and 3) Qualitative indicators: Nature of contributions provided National Authorities providing contributions to the Standing Corps, per typology of National Authority and of contribution provided Extent to which the contributions to the SCs Cat 3 provided by MSs / SAC is provided by the same national authority types (e.g., Ministry of Interior) Opinion-based indicators: Share (%) of stakeholders agreeing that the national authorities of MSs / SAC providing contributions to SC Cat. 3 ensure an adequate coverage of the skills required by the Agency mandate's objectives	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits
RQ5. How has the number of Standing Corps members, the composition (e.g. Standing Corps categories) and geographical distribution of the Standing Corps meet the operational needs of the Agency?			
	The number of Standing Corps members, the composition (e.g., Standing Corps categories) and geographical distribution of the Standing Corps has met [has not met] the operational needs of the Agency.	Quantitative indicators: Number of standing corps members per category per Agency's planned number Number of standing corps members per geographical distribution per operational needs of the Agency Number of activities which involve the Standing Corps, per category of Standing	Desk research Targeted surveys Semi-structured interviews Thematic case studies

	Corp and geographical distribution Number of operations which involve the Standing Corps, per category of Standing Corp and geographical distribution Qualitative indicators: Operational needs of the Agency Activities which respond to the operational needs of the Agency that involve the Standing Corps Evidence of operational needs of the Agency not being fully/partially covered for lack of resources, including Standing Corps Extent to which the Single Programming Document's Strategic Objective 3 "Sustained European Border and Coast Guard Capabilities" has been achieved Opinion-based indicators: Stakeholders' view on the role of the Standing Corps in achieving the operational needs of the Agency Stakeholders' view on factors hindering / contributing to enhance the effectiveness of the deployment of SCs in achieving the operational needs of the Agency	Field visits
RQ6. How has the Agency been effective in the recruitment and training of the Standing Corps category 1? Does the recruitment ensure professionalism and geographical balance?		
The Agency has [has not] been effective in the recruitment and training of the Standing Corps Category 1. The recruitment ensures [does not ensure] professionalism and geographical balance.	Quantitative indicators: Number of Standing Corps category 1 recruited, per area of expertise and state of origin (vacancy rate, turnover rate) Number of Standing Corps positions vacant Number of Standing Corps Category 1 recruited and allocated to specific activities Number of Standing Corps Category 1 recruited and not allocated to specific activities Number of Standing Corps Category 1 trained Number of trainings delivered to Standing Corps Category 1 Qualitative indicators:	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

		Specificities of the recruitment process Timing of the recruitment process Standing Corps' level of satisfaction with the recruitment process Contents of the trainings Standing Corps' level of satisfaction with the trainings	
	RQ7.How has the Agency been effective in the deployments of the Standing Corps Category 1?		
	The Agency has been [not been] effective in the deployments of the Standing Corps Category 1.	Quantitative indicators: Number of Standing Corps Category 1 deployed Number of operations conducted with the presence of Standing Corps Category 1 Qualitative indicators: Typology of operations where the Standing Corps Category 1 have been deployed Timing for the deployment of the Standing Corps Category 1 in operations Operations that would require the deployment of Standing Corps Category 1 Opinion-based indicators: MS views on the effectiveness of deployment	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits
	RQ8.How has the Agency been effective in the deployment of the Standing Corps Categories 2 and 3?		
	The Agency has been [not been] effective in the deployments of the Standing Corps Categories 2 and 3	Quantitative indicators: Number of Standing Corps Categories 2 and 3 deployed Number of operations conducted with the presence of Standing Corps Categories 2 and 3 Qualitative indicators: Typology of operations where the Standing Corps Categories 2 and 3 have been deployed Timing for the deployment of the Standing Corps Categories 2 and 3 in operations	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

		Operations that would require the deployment of Standing Corps Categories 2 and 3 Opinion-based indicators: MS views on the effectiveness of deployment	
	RQ9. To what extent is the size of individual Member States' contributions to the Standing Corps adequate to meet the objectives of the EBCG and proportionate to these?		
	The size of individual Member States' contributions to the Standing Corps is adequate [not adequate] to meet the objectives of the EBCG and proportionate to these.	Quantitative indicators: Size of Member States' contributions to the Standing Corps (Estimate) Ratio between Standing Corps and activities to be conducted Qualitative indicators: Extent to which Standing Corps' activities are required for achieving EBCG objectives Opinion-based indicators: Experts' opinion on the adequacy of the Member States' contribution to meet the EBCG objectives	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits
	RQ10. How are the Member States' capabilities coherent with the size of the Members States' contributions to the Standing Corps? Have the contributions impacted capabilities available for other needs (e.g. CSDP missions and operations)?		
	The Member States' capabilities are [are no] coherent with the size of the Members States' contributions to the Standing Corps? Have the contributions impacted capabilities available for other needs (e.g. CSDP missions and operations)	Quantitative indicators: Size of Member States' contributions to the Standing Corps Size of Member States' capabilities Ration between capabilities and contributions Qualitative indicators: Typology of operations where Member States' capabilities are involved (e.g., Standing Corps, CSDP missions, etc.) Opinion-based indicators: Stakeholders' opinion on the impact of Member States' contributions to the Standing Corps to capabilities available for other needs	Desk research Targeted surveys Semi-structured interviews Thematic case studies Field visits

ANNEX III.A EVALUATION OF THE EBCG REGULATION, DETAILS ON ANSWERS TO THE EVALUATION QUESTIONS

This part of Annex III presents detailed answers to the evaluation (sub-)questions for each of the evaluation criteria.

1. Relevance

EQ1. Relevance of scope and objectives: To what extent did the scope and objectives of the EBCG Regulation remain relevant to current and emerging needs and challenges over the implementation period?

EQ1.1. To what extent are the scope and objectives of EBCG Regulation aligned with current needs and challenges in external border management and in implementing the EU return policy?

EQ1.2. To what extent are the scope and objectives of EBCG Regulation adept to address emerging and potential future challenges and threats at the external borders and in the field of return?

EQ1.3. Are there any gaps, in terms of remaining needs or challenges, which should be addressed/remain unaddressed by the EBCG Regulation?

The EBCG Regulation remains largely relevant for responding to the current and emerging needs and challenges, particularly with regard to the tasks that are part of the core Frontex mandate, including external border management and return. Trends in the threats and risks of irregular migration and cross-border criminal activities have remained high since 2019 and are likely to continue, indicating that the Regulation and its broad objectives will remain relevant also in the future³⁰⁴. In 2019, a total number of 141 846 detections of illegal border-crossing along the EU's external borders was reported³⁰⁵. This number fell to around 124 000 in 2020³⁰⁶. A year later, in 2021, the total number of illegal border-crossing was just short of 200 000³⁰⁷ and has further increased to around 330 000

³⁰⁴ Frontex (2022). 'Strategic Risk Analysis', p. 38.

³⁰⁵ Frontex (2020). '2019 in brief', p. 9. Available at: [frontex_inbrief_website_002.pdf \(europa.eu\)](https://frontex.europa.eu/media-centre/news/news-release/irregular-migration-into-eu-last-year-lowest-since-2013-due-to-covid-19-j34zp2)

³⁰⁶ Frontex (2021). 'Irregular migration into EU last year lowest since 2013 due to COVID-19'. Available at: <https://www.frontex.europa.eu/media-centre/news/news-release/irregular-migration-into-eu-last-year-lowest-since-2013-due-to-covid-19-j34zp2>

³⁰⁷ Frontex (2022). 'EU's external borders in 2021: Arrivals above pre-pandemic levels'. Available at: <https://www.frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>

in 2022³⁰⁸. In 2023 a 17% increase has been reported from January to September compared to the same period of last year, corresponding to 279 350 irregular border crossing detected³⁰⁹. However, it is difficult to fully assess the extent to which the EBCG Regulation addresses needs and challenges in external border management, due to the ongoing status of its implementation.

The scope of the EBCG Regulation encompasses the EBCG, comprising Frontex and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, and the national authorities responsible for return activities (Article 4). However, the Regulation largely focuses on the activities and governance of Frontex³¹⁰ rather than the whole EBCG, since Member States retain primary responsibility for the management of their external borders (Article 7). This somewhat limits the scope of the EBCG Regulation and its relevance to the whole of the EBCG, creates a certain legal ambiguity and can impact the overall efficiency of the Regulation's implementation. An example of this may be the EBCG Regulation's focus on instituting a comprehensive framework for promoting and protecting the respect for fundamental rights in the management of the EU's external borders. While the Regulation introduces concrete and detailed measures for the Agency, stakeholders have noted that the Regulation fails to "sufficiently operationalise corresponding duties for Member States", resulting in a divergence that has negative implications on the ability to guarantee that fundamental rights are upheld uniformly across European border management. The 15 components of the European Integrated Border Management (EIBM) (Article 3), which feature fundamental rights as one of the three overarching components, aim to mitigate this by setting out thematic and overarching policy priorities and strategic guidelines to support the implementation of EIBM both by Frontex and Member States.

Some stakeholders pointed to a lack of clearly defined objectives in the Regulation that they see as a weakness in relation to the achievement of the Regulation's objectives³¹¹. The main underlying objective of the Regulation can be interpreted as the implementation of EIBM at national and Union level. By outlining the key components of EIBM, the Regulation sets the scope for the Agency's activities (and thus helps to set objectives) in supporting the implementation of EIBM as a whole. However, this does not

³⁰⁸ Frontex (2023). 'EU's external borders in 2022: Number of irregular border crossings highest since 2016'. Available at: <https://www.frontex.europa.eu/media-centre/news/news-release/eu-s-external-borders-in-2022-number-of-irregular-border-crossings-highest-since-2016-YsAZ29>

³⁰⁹ Frontex (2023). 'Arrivals in the Central Mediterranean slow in September'. Available at: <https://www.frontex.europa.eu/media-centre/news/news-release/arrivals-in-the-central-mediterranean-slow-in-september-o9Qe64>

³¹⁰ Interview with Frontex.

³¹¹ Interviews with MB and Frontex.

provide a clear set of strategic objectives to guide the implementation of the Regulation. The policy priorities and strategic guidance for the EBCG come from the Multiannual Strategic Policy for EIBM (Article 8), which was established in March 2023³¹². It has just been translated into the new Technical and Operational Strategy by Frontex, adopted by its Management Board (MB) in September 2023³¹³, and Member States are yet to adjust their national strategies for EIBM to the new requirements. Therefore, it remains to be seen to which extent the Commission's Communication is sufficient to provide a clearer set of objectives for the EBCG as a whole.

The scope of responsibility of the Agency in respect of cross-border crime is limited but also leaves room for interpretation of what the limits of Frontex's supporting role are. The Agency provides various types of support to Member States at border checks³¹⁴. Stakeholders were clear that the Agency's mandate does not include 'investigations' or 'support to investigations of crime', which clearly fall within the remit of the European Union Agency for Law Enforcement Cooperation (Europol), Eurojust and national law enforcement authorities. However, the lack of a definition of the operational assistance activities linked to 'detection, prevention, and combating' cross-border crime leaves room for various interpretations to the Member States and to Frontex with a clear risk of the Agency getting involved in operational activities falling outside of the scope of the Treaty provisions that form the legal bases of the Regulation.

While no gaps have been identified in the Regulation that would negatively impact its relevance to address emerging and potential future challenges at the external borders, its future relevance can only be conclusively assessed once it is implemented in its entirety.

EQ2. To what extent have the EBCG and in particular Frontex activities (Art. 10 of the EBCG Regulation) been relevant in addressing the needs/challenges presented at the EU external borders? Are they still relevant in view of current needs and challenges and have the needs and challenges evolved over time?

EQ2.1. To what extent have the EBCG and in particular Frontex activities been relevant in addressing the needs/challenges presented at the EU external borders and in the field of return?

³¹² European Commission (2023). 'Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border management'. COM(2023) 146 final.

³¹³ Management Board Decision 30/2023 of 20 September 2023 adopting the Technical and Operational Strategy for European Integrated Border Management 2023-2027.

³¹⁴ Interviews during site visits and with Frontex.

EQ2.2. Are the activities of EBCG and in particular Frontex still relevant in view of current needs and challenges?

EQ.2.3. To what extent and how have the needs and challenges evolved over time?

Frontex's activities remain relevant in addressing the needs and challenges present at EU external borders.

Frontex provided extensive operational assistance to Member States through joint operations (JOs) and rapid border interventions (RBIs), including technical and operational assistance to support Search and Rescue (SAR) operations. Through its maritime, land and air operations, Frontex assists with the management of EU's external borders, including border surveillance and border management. With high levels of irregular migration and persistent threat of trafficking in human beings into the EU, operations have been highly relevant to needs, enabling Member States facing migratory flows to draw on additional human resources and technical equipment, and facilitating the standardisation of procedures and harmonisation of operational implementation of good practices at EU level.

The deployment of the SC has corresponded to irregular migration pressures on migratory routes. Member States on the Central/Western Mediterranean and Eastern Borders and Western Balkans migratory routes have received the highest proportional increase of human resources deployed. Member States on the Eastern Mediterranean route have also seen an increase – albeit more limited – in deployments.

Although the deployment of the SC has been relevant to migration and return management, their ability to provide relevant support to Member States has been hindered by practical, organisational and legislative limitations.

An effective and humane return policy is an integral part of the EU migration and asylum policy. According to the data provided by Member States to Eurostat, in 2022³¹⁵, over 430 000 third-country nationals were ordered to leave the EU because they have no legal right to stay in the EU³¹⁶. In this context, Frontex's assistance to Member States in implementing returns of illegally staying third-country nationals who are subject of an enforceable return decision is highly relevant.

³¹⁵ Eurostat: Third country nationals ordered to leave – annual data (rounded).

³¹⁶ See: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/return-and-readmission_en

On situational awareness, Frontex produces a significant volume of quality risk analysis products designed for use in the Member States and contributes to EU mechanisms such as the Migration Preparedness and Crisis Blueprint and the Integrated Political Crisis Response (IPCR). Vulnerability assessments have proved relevant to Member States in promoting awareness of capability limitations and enabling an appropriate reaction mechanism through the form of simulation exercises and the Executive Director (ED) recommendations.

The majority of Member States agreed that the implementation of the EUROSUR framework has been effective in terms of information exchange to improve situational awareness³¹⁷. However, only a minority believe that the information requested in EUROSUR is relevant to improving detection, prevention and combating of irregular immigration and cross-border crime, or contributing to the protection and life-saving of migrants³¹⁸, with almost half of the respondents neither agreeing or disagreeing with the statement, or providing no answer³¹⁹.

A great majority of Member States believe that the training component of Frontex's mandate is relevant in addressing their needs and challenges³²⁰. However, Member States would prefer more specialised training on topics that are relevant to addressing current challenges, such as the use of EUROSUR, risk analysis and advanced level document inspection, for either Category 2 or 3 SC staff or for Member States themselves.

Frontex has undertaken significant effort to provide human and technical resources to facilitate Member States' tackling migratory challenges or challenges related to cross-border criminal activity. The availability of certain profiles and types of equipment is insufficient, which might mean that Member States have certain needs that cannot currently be met. It is unclear how maritime border management capabilities will be developed. The present training and acquisition strategies are geared towards land and air border capabilities, while the needs for maritime border management are much greater in terms of financial and human resources.

³¹⁷ Survey of MS/SAC authorities: 17/27.

³¹⁸ Survey of MS/SAC authorities: 6/27.

³¹⁹ Survey of MS/SAC authorities: 11/27.

³²⁰ Survey of MS/SAC authorities: 15/27 agreed, 7/27 strongly agreed.

Frontex's work in the external dimension is relevant in helping to implement the four-tier-access control model of EIBM. The four-tier model includes measures in third countries – especially countries of origin and transit of irregular migration (first tier) and measures with neighbouring countries (second tier). Frontex has also continued to build partnerships and synergies with relevant international organisations.

EQ.3. How did Member States make use of Frontex in the protection of EU external borders and migration management through:

EQ3.1. Joint Operations and rapid border interventions

During the evaluation period, Frontex provided extensive technical and operational assistance to Member States. Frontex's operational support was mainly in terms of border surveillance and border checks activities via JOs at the external borders. The majority of JOs and RBIs focused on the land and sea external borders under significant migratory pressure. Other types of operational activities are carried out through focal points established at key border crossing points.

Almost 80% of Frontex's JOs budget is devoted to operations at sea on important irregular migration routes to the EU. The main focus of maritime operations is border surveillance, although other key activities are often carried out, including border checks. Frontex allocates most of the remaining 20% of its JOs' budget to establishing focal points at airports and land borders.

While most of the operational budget is spent at the maritime external borders – the cost of deploying sea vessels, helicopters and surveillance planes is high – patrol cars, drones and thermal imaging vehicles at land borders are also perceived as highly relevant. JOs Focal Points Air, Land and Sea are an important platform for the deployment of first-line and second-line experts (document experts, debriefers, intelligence officers, etc.) at border crossing points along the external land and sea borders and in the main EU airports, where they assist/reinforce the detection of cross-border crime. At key border crossing points, the Focal Point concept functions throughout the year. Focal Points also host common actions and operations initiated by other law enforcement agencies (e.g. Europol).

Most Member States surveyed participated in JOs³²¹, with about half participating in operational activities to fight cross-border crime³²² and document fraud³²³.

During the evaluation period, two RBIs interventions were initiated by Greece and one in Lithuania in response to the Belarus crisis (in 2021). Greece and Lithuania valued the support received, but Lithuania reported that significantly more resources were received than requested, which presented challenges. In Romania, at the beginning of Russia's full-scale invasion of Ukraine in 2022, local authorities preferred to supplement the resources for an ongoing operation (JO Terra) rather than initiate and manage an RBI. This is because an RBI requires lists of needs (profiles and types of equipment), new budgets, identification of additional human and technical resources by all contributing Member States, and solutions for complex logistical problems in a very short timeframe. Local authorities preferred to receive additional resources more flexibly under the umbrella of regional Frontex JO.

Table 1: Frontex joint operations carried out in the period 2020-2023

Operation	2020	2021	2022	2023³²⁴
<i>Total number of joint operations</i>	15 operations	19 operations	20 operations	24 operations
<i>Air, land and maritime operations</i>	1 operation	1 operation	1 operation	1 operation
<i>Land joint operations</i>	3 operations	5 operations	5 operations	9 operations
<i>Maritime joint operations</i>	8 operations	11 operations	13 operations	13 operations

³²¹ Survey of MS/SAC authorities: 22/27.

³²² Survey of MS/SAC authorities: 15/27.

³²³ Survey of MS/SAC authorities: 14/27.

³²⁴ Number of operations for 2023 cover the period from 1 January 2023 to 12 September 2023.

<i>Air joint operations</i>	1 operation	1 operation	1 operation	1 operation
Total number of rapid border interventions	2 (Greece-Turkey)	1 (Lithuania – Belarus)	-	-

Source: Frontex CAARs (2020-2022)

EQ3.2. Joint Return Operations

Frontex is responsible for coordinating return operations at a technical and operational level, including voluntary returns. In 2022, Frontex recorded an increase of 36% in the total number of persons returned (compared to 2021), with a steady increase in the share of voluntary returns.

Stakeholders at the EU and national level valued Frontex’s operational and technical assistance in return, particularly in organising return operations and other return-related activities. At least 55% of Member States surveyed did not encounter any challenges when cooperating with Frontex in the different stages of the return process.

Some Member States³²⁵ particularly valued Frontex’s assistance in organising charter flights, which are considered a safer option to return violent and difficult cases. Two Member States with small caseloads commented that Joint Return Operations (JROs) provide an opportunity to return the most difficult cases in a more controlled environment, which would be very inefficient in national return operations. Efforts were made to use scheduled flights for cases that could reasonably be returned that way.

Challenges included last-minute cancellations of JROs, which typically reflected issues such as last-minute submission of asylum applications or difficulties in cooperation between the organising Member State and the third country of destination.

EQ3.3. Risk Analysis

³²⁵ Survey of MS/SAC authorities: 3/27.

The Agency's risk analysis products are well received at strategic level, but lack of access to certain intelligence information limits their use at operational level³²⁶. These products, especially annual and strategic risk analysis reports³²⁷, are primarily used by Member States to feed information into their own national-level analyses³²⁸.

A minority of Member States have reported, to some extent, using Frontex's risk analysis products directly for their operational planning^{329,330}. However, it is not clear that the relevance and/or usefulness of Frontex's risk analysis products is sufficient to support the operational planning of a majority of Member State³³¹ information, which is not typically shared with Frontex by Member States.

Another shortcoming identified by a minority of Member States was the lack of regional or locally specific analysis³³². Others found the strategic analysis helpful, but felt there was not sufficient analysis linked to the JOs³³³. Risk analysis on specific Member States may overlap with national risk analyses, adding limited value to the Member States in question, which is already aware of the level of risk at its own external borders³³⁴. Timeliness of reporting may also limit Member States' ability to use Frontex's risk analysis in their operational planning, with quarterly reports sometimes issued with two-month delays, 'way too late' for operational planning³³⁵.

EQ.4. How is the upgrade of the communication network (Article 14) up to CONFIDENTIAL UE/EU CONFIDENTIAL relevant for the functioning of the EBCG and its operational needs, including the exchange of information in EUROSUR?

³²⁶ Interviews during two site visits.

³²⁷ Interviews with two MS/SAC.

³²⁸ The ECA (2021) report revealed similar results: 95% of the 20 MS/SAC surveyed reported that their national risk analyses were informed by Frontex's risk analysis.

³²⁹ Interviews with MS/SAC authorities: 5/26.

³³⁰ Survey of MS/SAC authorities: 12/27 agreed; 9/27 neither agreed nor disagreed, 4/27 disagreed.

³³¹ Criminal intelligence (from various sources), as well as military and civilian intelligence agencies, with operations in third countries bordering EU, provide Member State authorities with useful information on risks and threats.

³³² Interviews with MS/SAC authorities: 5/27.

³³³ Interviews during two site visits.

³³⁴ Interview with one MS.

³³⁵ Interview with one MS.

Although the Regulation foresees an upgrade of the EUROSUR communication network to CONFIDENTIEL UE/EU CONFIDENTIAL, this has not been implemented. The formal reason is that Frontex facilities do not meet the requirements for such an upgrade, but nor have the purpose and added value of the upgrade been clearly defined.

Frontex pointed out the considerable cost of upgrading the communication network, with little added value in terms of the additional information that could be shared via EUROSUR³³⁶. The data in EUROSUR do not require EU confidential classification level, and there would be extensive costs to set up the technical infrastructure for the secure network. This would include a data center with Faraday cage, secure areas, network segregations, and certified network equipment. Frontex concluded that it ‘is challenging to identify a real business need to have a secure network up to CONFIDENTIEL UE/EU CONFIDENTIAL classification level’³³⁷. Some Frontex stakeholders highlighted that upgrading to this higher level would have similar financial costs but could have higher added value³³⁸.

Similarly, when asked whether they believe that the upgrade of EUROSUR to CONFIDENTIAL UE/EU CONFIDENTIAL will allow them to share and input additional information and improve the European situational picture, around half of the responding Member States were not in favour³³⁹, stating that this would have limited benefit because other networks allow such information to be shared. Critics of the idea highlighted that: 1) higher classification will not actually allow them to share additional information³⁴⁰; 2) could further limit access to EUROSUR data³⁴¹; 3) cost of the upgrade³⁴². A minority of Member States see a potential advantage in upgrading the communication network, as this could help to improve information sharing³⁴³ and would improve the European situational picture³⁴⁴. The only type of information specifically identified, which is classified and would add value to the situational

³³⁶ Scoping interview; interview with Frontex.

³³⁷ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

³³⁸ Scoping interview; interview with Frontex.

³³⁹ Survey of MS/SAC authorities: 13/27 shared a negative opinion.

³⁴⁰ Survey of MS/SAC authorities: 1/27.

³⁴¹ Survey of MS/SAC authorities: 4/27.

³⁴² Survey of MS/SAC authorities, 2/27.

³⁴³ Survey of MS/SAC authorities, 2/27.

³⁴⁴ Survey of MS/SAC authorities, 3/27.

picture, includes the location of military assets involved in operations where joint operations take place, such as the Aegean or Central Mediterranean³⁴⁵.

Frontex is currently considering alternative technical solutions to enable communication at CONFIDENTIEL UE/EU CONFIDENTIAL level, as required by the EBCG Regulation.

When it comes to the processing of the EU classified information (EUCI) and sensitive non-classified information (SNCI), specific rules should be provided in the security rules of the Agency, subject to the prior approval by the Commission and adopted by the MB in accordance with Article 92 and 100(2)(ac) of the Regulation. There appears to be some divergence between Article 92 of the Regulation which covers a broader spectrum of security-related aspects of the functioning of the Agency than what is provided for in Article 100(2)(ac) which is limited to the processing of EUCI and SNCI only. This issue, however, has been successfully resolved during the implementation process through the adoption of the security rules of the Agency of 30 July 2022³⁴⁶.

2. Effectiveness

EQ5. How and to what extent did Frontex meet its core objectives and priorities as set out in the EBCG Regulation? How has the EBCG as a whole and in particular the Agency progressed and achieved results with respect to each specific component of the European integrated border management?

EQ 5.1 How and to what extent did Frontex support Member States in protecting and managing EU external borders through operational activities?

Frontex reports the results of operational activities involving both its co-financed assets and host Member States' assets. Therefore, it is not possible to attribute results solely to Frontex's contribution. Stakeholders at EU level and Member States agreed that despite a volatile and unpredictable environment, Frontex maintained its footprint in JOs, including an exponential increase in operational results in 2022.

³⁴⁵ Interview with Frontex; interview during one site visit; survey of MS/SAC authorities: 7/27 shared a positive opinion.

³⁴⁶ Management Board Decision 45/2022 of 30 July 2022 adopting Security Rules of the European Border and Coast Guard Agency (Frontex).

Overall, Frontex's operational support is valued by Member States and has contributed to managing the migratory pressures and protecting and managing EU external borders. Frontex adds value to Member States by providing human resources and equipment, standardising procedures, and harmonising operational implementation of good practices at EU level. While at least 30% of the Member States surveyed did not experience any issues during Frontex operations, those that have experienced difficulties reported issues related to planning of operations, command-and-control, language, availability of SC profiles, different work practices and work rules, and sharing/access to information. Some of the factors hampering the effectiveness of Frontex support to Member States in protecting and managing EU external borders through operational activities are further elaborated in the response to EQ 6.

EQ 5.2 How and to what extent did Frontex support Member States through all phases of return procedures?

Overall, Frontex has become an essential actor in the common EU system for return, taking on new responsibilities in the return of migrants. Frontex offers support to Member States in all phases of the return process – from pre-return and identification missions to post-return, including reintegration. The majority of respondents did not face any challenges when cooperating with Frontex in the different stages of the return process. They have reported positive cooperation with Frontex in the field of returns and noted indirect benefits, such as time savings and reduced administrative burden³⁴⁷, financial savings³⁴⁸, swifter execution of returns³⁴⁹ and reducing secondary movements.

Pre-return assistance was valued by Member States, with reports of good experiences with European Return Liaison Officers (EURLOs), who helped with re-documentation and facilitated return operations. Particular added value was reported by Member States without representation in the third country.

The provision of technical expertise and assistance is one of the key areas where Member States enjoyed support from Frontex. The deployment of Frontex Return Escort and Support Officers (FRESOs) was valued by several countries. Frontex support with

³⁴⁷ Survey of MS/SAC authorities: 9/27.

³⁴⁸ Survey of MS/SAC authorities: 10/27.

³⁴⁹ Survey of MS/SAC authorities: 9/27.

identification missions was also highlighted. With small caseloads to many third countries, it is seen as more cost-effective and less of an administrative burden to join an identification mission with another Member State.

The EBCG Regulation extended the Agency's mandate to include the possibility to provide assistance with voluntary returns. Since then, the Agency has enhanced its tailored support for this type of return. Voluntary returns made up 40% of all returns in 2022 - a significant share of Frontex's returns³⁵⁰. A majority of Member States surveyed did not experience any issues in the Agency's support to voluntary returns and departures.

However, several factors hindered its effectiveness in return operations and return-related activities. Some of the provisions in the EBCG Regulation do not reflect the operational reality, in the sense that they do not recognise the interdependence of border management and return in the migration management process, it is not always clear in the EBCG Regulation if 'returns' are considered part of border management. This creates uncertainty as regards the application of some provisions, such as 'contingency planning' (Article 9(4)).

A related aspect is the lack of a specific governance framework for the area of return. While the EBCG Regulation extended the Agency's return mandate, the governance structure of Frontex has remained unchanged so far. Stakeholders at EU level, including Frontex, commented that competences in the area of return are typically scattered across different institutions in the Member States and there is no single interlocutor, creating communication difficulties. Member States also have different models of implementing returns, which hinders operational cooperation. Currently, the National Focal Point of Contact (NFPOC) is responsible for such communication; however, the case study in Bulgaria shows that lack of clear division of responsibilities and overlapping responsibilities in the area of return between authorities hosting the NFPOC, and other competent authorities may create inefficiencies.

On return interventions, Article 52 of the EBCG Regulation envisages that Frontex will carry out return interventions, providing Member States with enhanced technical and operational assistance, and Article 2(28) defines 'return intervention' as 'deployment of return teams and organisation of return operations'. In Article 53(1), the drafting ('may' clause) to some extent contradicts this

³⁵⁰ Frontex Consolidated Annual Activity Reports (2019-2022).

definition. The concept does not cover the whole range of activities that the Agency can deliver to support Member States. To date, no Member State has requested a return intervention from Frontex. However, Frontex provides support by deploying SC return specialists and FRESOs in a more predictable and long-term manner.

EQ 5.3 How and to what extent did Frontex reduce vulnerabilities at external borders through improved situational awareness (including extent to which risk analysis contributed to the improvement of situational awareness)?

Frontex has been able to contribute to improved situational awareness at external borders through its products, including risk analysis, vulnerability assessments and 24/7 situational monitoring. A majority of respondents to the Member State survey declared that Frontex's activities contribute to comprehensive situational awareness and building a situational picture through 24/7 (near) real-time situation pictures, crisis monitoring and surveillance³⁵¹.

The EBCG Regulation 'reinforces significantly the analytical products focusing more than ever on prediction and prevention'³⁵² and risk analysis remains one of Frontex's highest-value activities. The risk analysis products generated by Frontex generally perform well across a number of key qualitative metrics. The Risk Analysis Unit produced over 1,200 regular risk analysis products in 2022, excluding weekly and monthly risk analysis reports on joint operations. Recent technological developments (e.g. new IT, use of business applications) and increased cooperation with European Maritime Safety Agency (EMSA) and European Fisheries Control Agency (EFCA) have also improved risk assessment and directly impacted the preparedness of Member States³⁵³. Cooperation with the EU Satellite Centre (SatCen) also improved Frontex's ability to keep its risk analyses up to date³⁵⁴.

Vulnerability assessments are a useful tool in allowing Frontex to monitor potential vulnerabilities at EU's external borders, and to work with Member States to reduce those vulnerabilities. Additional synergies with the complementary Schengen evaluation mechanism contribute to added coherence. The European Commission and Frontex have worked together to ensure better synergies

³⁵¹ Survey of MS/SAC authorities: 16/27.

³⁵² Frontex (2022). 'Single Programming Document 2022-2024', p. 18.

³⁵³ Interview with Frontex.

³⁵⁴ Interview with SatCen.

between the two mechanisms and report improvements in this regard. Nevertheless, some Member States still see these mechanisms as overlapping³⁵⁵.

A majority of Member States respondents believe that Frontex's vulnerability assessment activities help to assess Member States' readiness and capacity to face challenges at external borders and are conducive to better preparedness³⁵⁶. The assessments are also seen as helpful in the context of the Schengen evaluations³⁵⁷.

Nevertheless, several elements impact its ability to provide up-to-date and comprehensive situational monitoring. This stems in part from limitations in the EBCG Regulation related to processing of personal data by Frontex (including in the context of EUROSUR and for risk analysis purposes) and is partially due to certain implementation issues (including incomplete reporting by Member States in the context of EUROSUR and delays in Frontex providing risk analysis products in all four-tiers of EIBM).

The extent to which the Agency's ability to deliver risk analysis might be limited is to a certain degree affected by the existing rules on processing of personal data as well as by limits on collection of potentially useful information from different types of open sources (such as Social Networks). The objectives of the return-related risk analysis are not clear (data to produce such analysis is largely unavailable from Member States or is gathered at disproportionate costs in comparison with the benefits). As further elaborated in response to EQ 9, Frontex risk analysis is also incomplete when considering the full scope of EIBM, as pre-frontier and third-country analyses is insufficient.

The lack of access to intelligence information is also one possible impediment to producing actionable and operationally relevant information, particularly with respect to the pre-frontier situational picture. Data made available from the EEAS' EU intelligence and Situation Centre (Intelligence Analysis and Reporting) is not available to the Frontex Situation Centre (despite being available to all Member States' Ministries of the Interior). Member States rarely share intelligence data with Frontex and, if they do so at all, it is on a bilateral basis³⁵⁸.

³⁵⁵ Interviews with MS/SAC authorities: 8/27; survey of MS/SAC authorities: 4/27.

³⁵⁶ Survey of MS/SAC authorities: 14/27.

³⁵⁷ Interviews with DG HOME and Frontex.

³⁵⁸ Interview with Frontex.

Another aspect that continues to undermine the overall EU situational awareness is the reporting linked to interception of migrant movements outside the jurisdiction of authorities responsible for border management³⁵⁹. In a number of Member States, the movements of irregular migrants are established not within the border zone, but after they have moved further into the Member States (whether arriving by sea or land). Data on such incidents remains outside the view of Frontex. For instance, one Member State reported that situational monitoring comprises both interceptions in border areas, as well as by police within the country. Consequently, in recent years, about 80% of irregular migrants (entered into Eurodac) are identified from inside the country³⁶⁰.

A number of implementation issues have also been identified, including incomplete reporting by Member States in the context of EUROSUR and delays in Frontex providing risk analysis products in all four-tiers of EIBM, due to methodological and data issues, especially in relation to return and third-country data. Consequently, analytical products are not always sufficiently tailored to Member States' operational needs or, as is the case with risk analysis, do not contain actionable information.

When it comes to vulnerability assessment, Member States pointed to several issues in the vulnerability assessment process. A small group expressed concern that vulnerability assessment data collection is highly cumbersome and places a heavy administrative burden on their authorities³⁶¹. This administrative pressure is compounded by a 'highly inefficient IT platform', with restrictive access, recurring technical errors and lost data, reducing the added value of the annual baseline vulnerability assessment. Nevertheless, Member States recognise the relative recency of the vulnerability assessment system, and Frontex has reported an ongoing upgrade to the Vulnerability Assessment Platform to deal with this problem³⁶².

The analysis also found that, while the data collections for risk analysis and vulnerability assessment should be coherent with one another, the processes within Frontex are not sufficiently interlinked. One issue is that vulnerability assessment data are not fully used in risk analysis products. This discrepancy is due to a certain level of conceptual misalignment between methodologies. The core of the problem, as identified by Frontex and Member States, is that the definition of vulnerability in the Common Integrated Risk

³⁵⁹ Interviews with Frontex.

³⁶⁰ Site visit in one MS. Based on Ministry of the Interior migration statistics.

³⁶¹ Interviews with MS/SAC: 6/27; survey of MS/SAC authorities: 3/27.

³⁶² Frontex (2022). 'Single Programming Document 2023-2025', p. 41.

Analysis Model (CIRAM) does not match the definition of vulnerability in the Common Vulnerability Assessment Methodology (CVAM). For Member States, vulnerability assessments are a concrete, quantitative and capacity-based system with measurable outcomes. Conversely, the conceptualisation of vulnerability in CIRAM includes ‘pull factors’, reflecting broader factors influencing the arrival of migratory flows from outside of the EU.

In addition, the level of confidentiality of vulnerability assessment data means that it is harder to access this information for risk analysis. While the purpose of vulnerability assessments is to allow Member States to address their own specific weaknesses, risk analysis can take a more overarching and EU-wide approach, with an associated lower level of sensitivity. Frontex also has separate systems for producing risk analyses and vulnerability assessments, which impacts their coherence.

Finally, one weakness of vulnerability assessments, that significantly limits their effectiveness, is the lengthy and indirect enforcement system established by the EBCG Regulation. The ‘escalation procedure’ in Article 33(9)-(10) does not appear to be commensurate with the gravity of the vulnerabilities identified by the Agency at the EU’s external borders, but even within the existing legal framework, the MB does not follow up on the ED’s recommendations in a timely manner.

EQ 5.4 How and to what extent did Frontex support Member States through capacity building activities?

The Agency expanded its capability development activities over the course of 2020-2023. Frontex implemented a range of training activities for Member States and third countries. Most targets for training activities were met across 2020-2022. While precise assessment of the training activities is not yet available, in 2023, Frontex continued to provide training as a cross-sectoral horizontal task. For 2023, Frontex planned to deliver a number of dedicated training for the SC (at both basic and specialised levels as appropriate), for border management and return, addressing specific operational elements relevant to their tasks and responsibilities and raising necessary awareness on the respect of fundamental rights. For example, Frontex remains committed to maintaining the highest standards of training for Category 1 officers and as part of this commitment, for example, an annual ongoing training programme on use of force has been implemented progressively to provide Category 1 officers with the essential skills and knowledge regarding the use of force³⁶³. One of the defined objectives withing the training activities for 2023 was also to strengthen EBCG

³⁶³ Quarterly Report on the European Border and Coast Guard Agency’s Capabilities, Q2/2023.

capacities with specialised training courses and products in IBM related areas, supporting the implementation of Frontex mandate. The programming for 2023 also foresees development and implementation of common educational standards, effective training methodologies and quality assurance system³⁶⁴.

Although Frontex successfully delivered assistance, including by establishing common training standards, almost half of the Member States noted the lack of training for either Category 2 or 3 staff, or for Member States.

The Regulation requires that capability development is guided by the Agency's multiannual planning of resources and national capability development plans, leading to a capability roadmap. All but one national capability development plan have been finalised, following the adoption of the Methodology and Procedure for Establishing National Capability Development Plans through MB Decision 2/2021 in 2021 (Article 9(6))³⁶⁵. However, the latter document does not detail how to assess and present capabilities, which may have contributed to the late submission of the plans by a number of Member States and could complicate the establishment of the Agency's capability roadmap. However, as the roadmap is work in progress, the actual impacts can only be assessed at a later stage.

The multiannual strategy for the acquisition of the Agency's equipment³⁶⁶ was adopted by the Agency's MB in September 2023. As a result, integrated planning (Article 9) could not be fully implemented yet and there were no well-defined short, medium, and long-term acquisition needs within Frontex or the EBCG as a whole, nor a strategic direction and vision for the long-term development of the capabilities of the Agency. This impacted the efficiency of acquisition within Frontex, which in turn impacted the Technical Equipment Pool (TEP). For example, the acquisition of various items was delayed, forcing the Agency to rely on options that proved inefficient, at least initially, such as renting vehicles³⁶⁷. Given that the EBCG Regulation focuses on Frontex's technical equipment as the backbone of EU's border management, this presents a significant problem.

³⁶⁴ Management Board Decision 13/2022 of 16 March 2022 on adopting the preliminary Annual Work Programme for 2023 and the final draft estimates of the Agency's revenue and expenditure, including the draft Establishment Plan for 2023 (as part of it).

³⁶⁵ Management Board Decision 2/2021 of 15 January 2021 adopting the methodology and the procedure for establishing the national capability development plans.

³⁶⁶ Adopted on 15 September 2023 by the Agency's Management Board.

³⁶⁷ Field visit to Frontex headquarters; interview with Frontex; survey of MS/SAC authorities: 1/27.

Nevertheless, the TEP grew from 1 245 items in 2020 to 3 623 items in July 2023. Frontex also deployed major equipment, light equipment and portable equipment to existing JOs in response to the full-scale invasion of Ukraine by the Russian Federation. In 2020-2023, Frontex supported capability-building through TEP. Activities included the management and coordination of the pool, as well as the provision of operational, logistical and technical support and expertise. The TEP includes major equipment (ME)³⁶⁸, light equipment (LE), and portable equipment (PE). Each year, the MB decides on a minimum number of items of technical equipment (MNITE) needed for the TEP to respond to the needs of the Agency in the following year. Equipment is (co-)owned by the Member States or by the Agency. The TEP also includes the Rapid Reaction Equipment Pool (RREP) and the equipment made available by the Member States and Frontex, services contracted by the Agency, technical equipment co-financed from the ISF Specific Actions fund, and technical equipment made available by host Member States.

Frontex provided a significant amount of PE (as well as other equipment for the SC)³⁶⁹. The provision of technical resources was somewhat effective in maintaining and raising the level of cooperation at strategic and operational level among Member States, and with the assistance of Frontex.

In 2020-2023, Frontex supported capability-building in research and innovation by promoting and delivering standardisation and harmonisation of border management capabilities, promoting and delivering innovation in border management capabilities, and executing and supporting research³⁷⁰. In its multiannual programming documents, the Agency set out relevant key activities, linked to expected results and indicators. Essentially, these activities amounted to several main areas of support, assisting Member States, building EBCG capability, and responding to specific needs:

- Technical standards for the equipment to be included in the capability pools and to be deployed in the activities of the Agency;
- A comprehensive research and innovation platform to enable research and facilitate the dissemination of research information;

³⁶⁸ Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy refers to ‘large-scale operating equipment for border management [...] purchased by the Member States’ (‘that shall be registered in the technical equipment pool’) (Article 13(14(b))).

³⁶⁹ Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021; Frontex (2023). ‘Draft Annual Implementation Report 2022’.

³⁷⁰ Frontex (2023). ‘Research and Innovation’. Available at: <https://frontex.europa.eu/innovation/research-and-innovation/research-and-innovation-at-frontex/>

- Assisting the Commission in implementing EU-funded border management research through the development of the Senior User role of Frontex in selected topics of EU Framework Programmes for Research and Innovation;
- Piloting border management-related technological solutions and research findings fostering further development of EBCG capabilities.

EQ 5.5 How and to what extent did Frontex implement horizontal activities (education & training; research & innovation; fundamental rights) through intra-agency and inter-agency cooperation?

As part of its synergies with EU partners externally³⁷¹, Frontex specifies cooperation³⁷² with eight EU agencies³⁷³. That cooperation also supports the implementation of horizontal components of EIBM, including on fundamental rights (together with FRA), research and innovation (Europol, European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom Security and Justice (eu-LISA), SatCen, etc.), and education and training (European Union Agency for Law Enforcement Training (CEPOL), European Union Agency for Asylum (EUAA), EMSA, EFCA, etc.). Joint activities are carried out under the EU Agencies Network (EUAN), the Justice and Home Affairs Agencies' Network (JHAAN), and the EU Innovation Hub for Internal Security, where Frontex is an active member, contributing to the Networks' activities and meetings.

Progress in research and innovation activities accelerated in 2021 and 2022. Frontex was able to meet most of the 2021 and 2022 goals of its research and innovation activities from the development of minimum requirements for equipment, the organisation of industry days and conferences and the delivery of studies and guidelines/handbooks, to the development of the Research for Innovation Network, assistance to the Commission on selected Horizon topics (research proposals and progress review), and work under Innovation Cells, among others. Importantly, technical standards were developed in 2020 (minimum requirements for aerial and terrestrial equipment) and released in 2021 through MB Decision 51/2021 (technical standards for maritime equipment, technical standards for aerial equipment, technical standards for land border surveillance equipment, and technical standards for document inspection equipment) in cooperation with Member States and the Commission³⁷⁴. In 2022, a methodology for the development of

³⁷¹ Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023'.

³⁷² Frontex (2023). 'EU partners'. Available at: <https://frontex.europa.eu/we-build/eu-partners/eu-agencies/e>

³⁷³ CEPOL, EFCA, EMSA, EUAA, eu-LISA, European Union Agency for Criminal Justice Cooperation (Eurojust), Europol, and FRA.

³⁷⁴ Management Board Decision 51/2021 of 21 September 2021 adopting technical standards for the equipment to be deployed in Frontex activities.

technical standards was adopted through MB Decision 36/2022³⁷⁵. Frontex provided support to the development of Common Minimum Surveillance Standards for Land Borders and Common Minimum Surveillance Standards for Maritime Borders, and completed the maintenance process for the standards adopted in 2021. Many activities are still ongoing in 2023 (e.g. the development of a knowledge platform with information on the new border checks procedures, EES support package, common minimum standards for border surveillance, Research Study on High Altitude Pseudo Satellites, Border Checks and Migration Management Equipment: solutions for Interoperability, etc.)³⁷⁶.

The Agency continues to provide training on relevant fundamental rights standards and practices. The Fundamental Rights Officer (FRO) cooperated with the Training Unit of the Agency to include fundamental rights aspects in various training sessions (basic training following deployment, training for FRMs, training for SC' members, sessions on monitoring systems, training specific to Units, refresher training and training to national authorities and third country officials)³⁷⁷. The Fundamental Rights Office's staff provided around 140 training days over 2022³⁷⁸.

Cooperation with FRA has helped to establish high fundamental rights standards in the training. However, FRA has reported that Frontex has recently outsourced training to Member States' authorities, which makes it difficult to assess the extent to which those previous high standards have been incorporated into these new models.

Since the beginning of the recruitment of FRMs in 2020, the Agency has provided specific training for FRMs. During the consultation, 26 of 34 FRMs indicated that the courses prepared them for the role of FRM only to some extent.³⁷⁹ More specifically, 15 out of 34 indicated that the training did not sufficiently address the practical aspect of monitoring. To improve training for FRMs, the FRO is engaging with the Training Unit of the Agency to discuss changes to the training programme and how to improve its effectiveness³⁸⁰.

³⁷⁵ Management Board Decision 36/2022 of 28 June 2022 adopting the methodology for development of technical standards for the equipment to be deployed in Frontex activities.

³⁷⁶ Frontex (2023). Results of Research & Innovation activities.

³⁷⁷ Frontex (2021). 'The Fundamental Rights Officer Annual Report 2021'.

³⁷⁸ Frontex (2022). '2022 in brief'. Available at: https://frontex.europa.eu/assets/Publications/General/In_Brief_2022/2022_in_brief.pdf

³⁷⁹ Survey of FRMs: 15/34.

³⁸⁰ Interview with the Fundamental Rights Office.

EQ 5.6 How and to what extent did Frontex promote and respect fundamental rights through all Agency's activities?

The EBCG Regulation aims to establish a comprehensive fundamental rights framework, given that it includes horizontal safeguards as well as a number of roles, procedures and instruments, to be set up and/or implemented by the Agency, to ensure the protection of fundamental rights in the execution of the Agency's mandate. Nonetheless, more could be done to better streamline the respect for fundamental rights in the structure and procedures of the Agency. While stakeholders note that potential improvements in this regard could be achieved by revising the Regulation, such as enshrining in the Regulation the obligation to report witnessed violations of fundamental rights, a significant part of the work to be done is perhaps less due to gaps in the Regulation but is related more to gaps in its implementation³⁸¹. Therefore, it is positive to note the significant progress achieved by the Agency and its FRO since the entry into force of the Regulation, while recognizing that the Agency is undergoing a process of implementation and transition in management, and hence remaining vigilant to identify areas where improvement can be achieved in the short to medium term.

Respect for fundamental rights has to be ensured in all Agency's activities; the FRO seeks to make sure that it is a mandatory element during all stages of activities (planning, implementation, and monitoring/evaluation). To guarantee fundamental rights compliance during operational activities, the Agency draws up operational plans that include general instructions on how to safeguard fundamental rights during the operational activity of the Agency³⁸². In this respect, the FRO provides, among others, opinions on the operational plans, and may recommend to the Agency to adopt additional specific fundamental rights safeguards and practical measures during the operations³⁸³. This activity is crucial to uphold fundamental rights in an operational context, provided that the input by the FRO is sought in a timely and proactive manner and taken into consideration. However, the Fundamental Rights Office stated that although the Agency adopted some of the measures proposed by the FRO, the input is frequently subject to negotiations and is, in practice, read by the Operational Response Division of the Agency only, even if the FRO is advising the Agency as a whole³⁸⁴.

³⁸¹ Input from the CF.

³⁸² Article 38 of the EBCG Regulation.

³⁸³ Listed among the tasks of the FRO in Article 109 of the EBCG Regulation.

³⁸⁴ Based on an interview with the Fundamental Rights Office.

On the inclusion in the operational plan of conditions for compliance with fundamental rights, the FSWG found limitations, which include unclear conditions in the operational plans for the cooperation by the host Member State with the FRO³⁸⁵. The FRO is asked to provide a fundamental rights assessment for each operational plan on an annual basis, but also in the evaluation of each operation at the end of the operational year. Overall, the expanded role introduced by the EBCG Regulation for the oversight and monitoring provided by the FRO can be considered as a contributing factor to higher level of compliance with fundamental rights across the activities and operations of the Agency and its staff. Nevertheless, stakeholders such as FRA have flagged concerns with regard to the ability of the Agency to consistently guarantee a similarly high level of protection of fundamental rights in other increasingly important aspects of its work, including processing of personal data³⁸⁶. On this point, the Agency has aimed to largely address these concerns through the incipient adoption by year end of the revised implementing rules on processing personal data and operational personal data, which have been revised following critical opinions by the European Data Protection Supervisor (EDPS).

In 2021, the Agency updated the Fundamental Rights Strategy³⁸⁷ and approved an Action Plan³⁸⁸ to implement the Strategy, indicating key time-bound action points to ensure that the Agency's work is aligned with fundamental rights. The Action Plan also includes overarching EBCG components, whose implementation is applicable to all components of the EBCG, rather than exclusively the Agency.

The EBCG Regulation introduced the role of the FRMs. Regrettably, the Agency failed to fulfil its commitment required by the EBCG Regulation to recruit *at least* 40 FRMs by December 2020. It was not until August 2021 that the first deployment of FRMs took place. However, the Agency now has 46 FRMs, who have been fully trained and who, in 2022, spent almost 1 000 days in the field monitoring Frontex activities and operations (without counting forced-return monitoring activities)³⁸⁹.

³⁸⁵ European Parliament Frontex Scrutiny Working Group (FSWG) (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

³⁸⁶ Input from FRA.

³⁸⁷ Frontex (2021). 'Fundamental Rights Strategy'.

³⁸⁸ Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

³⁸⁹ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2022.'.

To guarantee high professional standards in the area of return, the Agency adopted the Code of conduct for return operations and return interventions coordinated or organised by the Agency³⁹⁰. The EBCG Regulation requires that the Code assures returns are carried out with full respect for fundamental rights. Together with the Code of conduct for staff participating in the operational activities, this Code stresses the Agency's commitment to fully respecting, upholding and fulfilling fundamental right-related obligations in the area of return operations. The analysis shows that the EBCG Regulation and Code for Return seek to achieve this by delineating a number of obligations and good practices to be observed/implemented. To ensure compliance, the Agency adopted changes to increase the monitoring level of return operations. Despite this framework and instruments, the analysis identified some challenges that might impact how effectively the Agency is carrying out monitoring activities.

In 2021 and in 2022, the Agency adopted rules on the supervisory mechanism for the use of force, which provide a framework for the Agency to monitor the application of the provisions on the use of force by the statutory staff³⁹¹.

The Agency continued to provide training on relevant fundamental rights standards and practices. To this end, the FRO cooperated with the Training Unit of the Agency to include fundamental rights aspects in various training sessions and ensure that fundamental rights components are embedded in an operational and practical manner throughout Frontex training curricula. The Fundamental Rights Officer staff provided around 140 training days over 2022³⁹².

An internal culture that is attentive to the respect of fundamental rights is a prerogative for the Agency's compliance with the fundamental rights framework established by the EBCG Regulation and its implementing rules. The Agency, and the FRO particularly, have been making efforts to foster a culture that is respectful of fundamental rights among staff. For instance, the increasing presence of the FRMs is valuable to inform deployed staff on practices in line with fundamental rights, identify potential

³⁹⁰ Frontex, Code of Conduct for return operations and return interventions coordinated and organised by Frontex.

³⁹¹ Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps, 2021; and Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard standing corps.

³⁹² Frontex (2022). '2022 in brief'. Available at: https://frontex.europa.eu/assets/Publications/General/In_Brief_2022/2022_in_brief.pdf

violations, and encourage the use of reporting mechanisms³⁹³. A culture of respect for fundamental rights can also be pursued through more proactive and consistent involvement of the CF, relying more regularly upon the expertise on fundamental rights aspects of the Agency's activities and processes its members provide. Recently, the collaboration between Agency and the CF has improved, in part due to changes in the Agency's management, with the ED that better acknowledged the value of the CF and sought to involve its members more proactively, but also due to the implementation of internal documents such as MB Decision 43/2022 on the follow up to recommendations by FRO and CF. Nevertheless, more can be done to facilitate the CF's ability to provide its advice and support to the Agency. To achieve this, the CF's suggested involving the CF in a more timely and comprehensive manner, loosening the confidentiality requirements imposed onto the CF to enable its members to seek consultations within their networks, and making CF recommendations immediately publicly available, thereby also enhancing Agency's accountability³⁹⁴.

Similarly, mechanisms such as the complaints mechanism and Serious Incident Report (SIR) mechanism provide not only an important avenue to report potential wrongdoings and have them investigated, but also present important information avenues for FRO and Agency to address fundamental rights-related issues where they may arise. Nevertheless, stakeholders have noted that inconsistencies or lack of clarity in the EBCG Regulation risk undermining the effectiveness of these mechanisms by, for example, not providing avenues for appealing decisions by the FRO or not establishing rules on the timely cooperation of national authorities with investigations of complaints that concern them³⁹⁵.

Additionally, while recommending to increase the awareness of the complaints mechanism among potential complainants, the CF also recommended facilitated reporting. This may entail lowering the threshold for submitting reports, giving the FRO more flexibility in assessing whether a complaint has a merit, but also introducing a simplified method to access the complaint mechanism and for example make it more accessible to children and vulnerable persons.

³⁹³ Based on interviews with the Fundamental Rights Office and a civil society organisation/member of the CF.

³⁹⁴ Input from the CF.

³⁹⁵ Input from FRA.

Despite these positive changes, some stakeholders remain of the opinion that the overall culture of the Agency should change and that there remains considerable work to be done to achieve a substantive cultural shift within Frontex³⁹⁶. In this regard, continuing to increase communication on fundamental rights matters and establishing open channels for dialogue within the Agency is essential. By fostering an environment that encourages open discussions and addresses concerns related to fundamental rights, the Agency could actively promote a culture that prioritizes the respect of, and compliance with, fundamental rights³⁹⁷. In parallel, it is important for the Agency to continue to explore ways to embed fundamental rights in relevant Agency's processes and activities; for example, as mentioned by FRA, to strengthen among others the fundamental rights component of vulnerability assessments³⁹⁸. This effort, which must be continuous in nature, will largely materialise through Agency documents aimed to operationalise legal provisions of the Regulation, as has for example been the case with the adoption of the Standard Operating Procedure (SOP) on the SIR mechanism or on the decision-making process in the context of Article 46 as ED decisions. Nevertheless, as also noted by the CF, it is crucial that further operationalisation of Regulation provisions makes these provisions effective, usable, and transparent, without redefining them or risking to curtail their powers, scope, or effects³⁹⁹.

These efforts should be complemented by continued attention to ensure that the resources available to the Fundamental Rights Office, including personnel, are reflective of the rapid growth of the Agency and its increased number of activities and deployments. The pace of the growth of the Fundamental Rights Office and Data Protection Office staff, being the Offices most entrusted with supporting the Agency in guaranteeing compliance with fundamental rights, should credibly match the pace of growth of the Agency, as also noted by interviews with stakeholders⁴⁰⁰.

EQ6. How effective has the implementation of the EBCG Regulation by the Member States and by Frontex been? What factors contributed to a successful delivery and what obstacles were encountered?

EQ6.1 How effective has been the implementation of operational activities?

³⁹⁶ Based on interviews with a Member of the European Parliament, a civil society organisation/member of the CF, and international organisations/members of the CF.

³⁹⁷ Based on an interview with the Fundamental Rights Office.

³⁹⁸ Input from FRA.

³⁹⁹ Input from the CF.

⁴⁰⁰ Input from FRA, interview with Frontex DPO.

Overall, Frontex's operational support is valued by Member States and has contributed to managing the migratory pressures and protecting and managing EU external borders.

However, the following issues were identified during the evaluation:

- **Operational planning:** Frontex JOs are planned and implemented on the basis of the standard operational cycle. Eleven Member States⁴⁰¹ surveyed experienced no issues with the joint planning of operations, while 10⁴⁰² experienced some issues. One Member State, for example, found the operational planning of a joint operation to be cumbersome. Two Member States stated that national operational awareness is usually more up-to-date than the information provided by Frontex products. Similarly, One Member State noted that the Agency's analyses of national operational planning are not immediately useful, being overly general and insufficiently focused on the situation at the country's external borders (while recognising that this may reflect the low threat level at the borders). One Member State reported delays in the MMO 2022 and pointed to Frontex's bureaucratic approach to both operational activities and fundamental rights.
- Member States believe that the annual bilateral negotiations process works well overall, despite being informed by individual national perspectives. In the past, there was no clear concept for prioritising the needs of various countries, but the recently developed four-category prioritisation concept (critical/high/medium/low) has improved matters. One Member State reported that the joint planning process coordinated by the Operational Response Division works well, despite being administratively burdensome during the annual planning and operation.
- **Command-and-control:** The evaluation found that the lack of a clear command-and-control structure hindered its operational effectiveness. Command-and-control issues were reported by six Member States. Multiple reporting channels, including the functional line of reporting and the Coordinating Officer, create inconsistencies. The delay in creating an organisational structure adapted to the needs of the managing of the SC, has also contributed to multiple unclear and inefficient command structures. Frontex is developing a new Frontex operational control-and-command (FC2) concept, which has been the subject of a pilot project that took place in Romania with overall positive feedback from Frontex staff and the host Member State. The results of the pilot are to be further analysed and presented to the MB in November 2023,

⁴⁰¹ Survey of MS/SAC authorities: 11/27.

⁴⁰² Survey of MS/SAC authorities: 10/27.

and the concept should then be trialled on a larger scale, with multiple Frontex deployments in different Member States slated to follow the FC2 structure in 2024. FC2 aims to establish an operational structure with clear reporting lines and swift decision-making capabilities from headquarters to the field. The aim is to empower staff to be more mobile on the ground, as the current silo approach does not allow resources to be flexibly relocated from one domain to another.

- **Organisational and logistical issues undermining effectiveness:** Several organisational issues undermine operational effectiveness, organisational image and, in some cases, staff morale. These include practical issues with weapons transportation, lack of equipment and uniforms, and poor advanced logistical support. Limitations and difficulties related to logistics such as availability of patrol/service vehicles (need to rent unmarked vehicles)⁴⁰³, non-availability of adequate fuelling and maintenance⁴⁰⁴. Overall, the lack of advanced logistical support (expected to be provided via the antenna offices) in assisting SC staff with car rentals and accommodation, as well as changes of deployment, undermined the effectiveness of deployments.
- **SC profiles and training:** As the SC was just being established, Member States reported that the availability of different profiles did not fully correlate with the overall needs. The availability of certain profiles has gradually improved over time (crew members and Frontex tactical support officers are planned to cover 100% of the needs addressed for the second half of 2023⁴⁰⁵). Specific profiles are in high demand. Illustrative for the same period are the needs addressed to the EBCG for border guard officers (8089 deployments), advanced level document officers (1735), and debriefing officers (1225). However, Frontex reports up to 65% shortages for certain profiles, such as dog handlers, 47% for return specialists, and a 33% shortage for advanced level document officers. Some Member States experienced issues with the level of training and preparedness during deployment.
- **Access to information and relevant databases:** Challenges in sharing and accessing information were reported by nine Member States and confirmed during field visits⁴⁰⁶. Only four Member States facilitate some form of access. Other Member States currently do not allow Frontex to consult relevant databases, including national databases for border checks.

⁴⁰³ Case studies in two Member States.

⁴⁰⁴ Case study in one Member State.

⁴⁰⁵ Frontex report on capabilities to the Management Board, 5.9.2023.

⁴⁰⁶ Survey of MS/SAC authorities: 9/27.

However, where such access is provided, the information is often available in the national language, which is an obstacle for Frontex officers.

Frontex has not yet finalised the technical implementation of access to Schengen Information System (SIS), as provided by Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862. In order to perform effective border checks, Frontex officers need access to SIS, Interpol's Stolen and Lost Travel Documents (SLTD) and relevant national databases. The current lack of access to relevant European databases (such as SIS), which is due to delays and implementation issues, further limits the support the Agency can provide for border checks.

Certain aspects of the application of the EU Staff Regulations to Category 1 SC staff are found to hinder effectiveness of operational performance. The current legal framework is not adapted to reflect the role of Frontex SC staff, including their functions as a uniformed, armed service with executive powers. In Member States typically law-enforcement officers' employment is regulated by special legislation, different from the one of civil servants, foreseeing early retirement, special working hours, pay, and conditions, including for deployment; This situation is seen as disruptive at an operational level by some Member States and Frontex, which limits the operational effectiveness of the SC, as the EU Staff Regulations has not been created to meet the needs of an operational service with executive powers, resulting in inconsistencies in areas such as working conditions, selection procedures, deployment locations, leave entitlements, disciplinary measures, and complaints mechanisms.

Several Member States reported that Frontex officers cannot perform tasks independently due to practical/logistical limitations. Examples include having no access to databases via the national interface due to language limitations, with over half of the Member States reporting language issues arising during Frontex operations, or security clearance requirements.

EQ6.2 How effective has been the implementation of capacity building activities?

One horizontal observation spanning the three areas of capacity building (training, research and innovation, human and technical resources, particularly the provision of technical resource support) is that overarching capability planning – the strategic direction for the capability-building activities – was incomplete as of September 2023. All but one Member State sent their national capability development plans to Frontex (Article 9(4)), but no multiannual acquisition strategy (Article 63(2)) documenting short, medium and long-term needs, and therefore no capability roadmap (Article 9(8)), was presented under the evaluation period by Frontex. There is a

lack of strategic direction and vision for the long-term development of the capabilities of the Agency. The multiannual acquisition strategy for technical equipment was submitted to the European Commission for an opinion in November 2022; the Commission adopted its opinion in May 2023. It was adopted by the MB in September 2023. Only the multiannual plan for the SC (Article 54(4)(e)) was adopted in 2022. The fact that overarching capability planning is incomplete makes capability development a difficult process.

Other challenges related to capacity-building include:

- The principle of annuality poses a challenge for Frontex when acquiring complex equipment that takes months or years to build, test and deliver. In these cases, the procurement process often cannot be completed within a single financial year. To overcome this, Frontex has to use multiple contracts, or commission and decommission funds, which leads to inefficiencies.
- A significant challenge is the lack of clarity in the acquisition strategy and logistics concept for equipment. Insufficient and poorly defined acquisition needs meant that Frontex has delays in acquiring various items, resorting to inefficient options like renting vehicles instead of investing in its own fleet, with rental conditions not necessarily appropriate for the use of the vehicles, resulting in complex procedures and high maintenance costs. The strategic and operational planning process has not adequately addressed equipment needs in terms of types, quantities, and acquisition plans for different types of borders (maritime, air, and land) in the short, medium, and long term. This was largely the result of delays in the preparation and adoption of the Agency's multiannual strategy for the acquisition of equipment.

Some legislative and operational/implementation issues hindered the implementation and deployment of technical resource support at procurement and deployment stage, such as lack of infrastructure for equipment, and issues with customs and transportation, adaptation of equipment to local environments, recognition of technical equipment across jurisdictions, registration and maintenance of vehicles, and flags (in the maritime context).

Challenges related to training activities during 2020-2023 included limited availability of trainers and locations, COVID-19 restrictions, low administrative support, and delays in planning and capability development. Financial data showed fluctuating funding and a large volume of activities that may not have been fully implemented.

The effectiveness of the implementation of training activities was hindered by operational/implementation issues, as well as by some legislative issues. More concretely, implementation of training for the SC has highlighted various issues hindering the effectiveness of training activities, identified by both Frontex and Member States⁴⁰⁷, including:

- **Lack of high-quality trainers⁴⁰⁸:** Frontex recruits trainers from the Member States and within its own staff. Member States have valuable and up-to-date expertise that they can teach, and their trainers can take their teaching experience at Frontex back to their country (enabling the harmonisation of training). However, the (best) trainers in Member States are not always available. Three Member States noted the lack of communication between Frontex and the National Training Coordinators⁴⁰⁹, but trainer availability is also influenced by poor payment for trainers (Article 45, 57(2); 95(6), 56(2); 56 and 57 EBCG Regulation) and the somewhat low Daily Subsistence Allowance rate. There is no profile for trainers among the SC (decided by MB decision, as per Article 54(4)), following the rules for deploying SC staff (Article 54(2), 54(7)), despite the SC having relevant hands-on experience to share.
- **Training facilities⁴¹⁰:** Frontex has difficulties in attracting a sufficient number of training schools to host their training because of its long duration and the relatively high number of learners. Frontex has allocated over EUR 20 million in grants over the past three years to Member States' police academies to host Frontex training of SC Category 1 officers⁴¹¹. This puts pressure on guaranteed training in the long term, and possibly on the quality of the training facilities. Frontex has also dealt with a lack of clarity on the rules that apply to its trainees (as opposed to host Member States' trainees) at training centres, including rules for code of conduct, discipline, rules that apply to training (for example, on physical training, the use of force), rules relating to the use of firearms (in case of accidents), and rules when not passing certain assessments. The EBCG Regulation specifies that the 'Agency training centre' should be established, upon decision of the MB (Article 62(3)). Such decision was not taken in the period under evaluation. There is no clarity, and no clear assessment of the financial efficiency for Frontex (i.e. assessment of building an operating its own training centre vs. grants-based trainings) and the long-term viability of the present approach.

⁴⁰⁷ Interviews with Frontex and MS/SAC authorities: 2/27; scoping interviews.

⁴⁰⁸ Field visits to two Member States; interviews with Frontex and MS/SAC authorities: 2/27.

⁴⁰⁹ Interviews with MS/SAC authorities: 3/27.

⁴¹⁰ Interviews with Frontex.

⁴¹¹ See calls for proposals at: <https://frontex.europa.eu/about-frontex/grants/>

The effectiveness of training activities is thus somewhat complicated by the shared responsibility of the implementation of the EBCG Regulation with Member States. At the same time, a majority of Member States agreed or strongly agreed that, in the spirit of shared responsibility, the division of competence between Member States and Frontex, as set out in the EBCG Regulation, is sufficiently clear and adequate to meet the objectives on education and training of border and coast guards⁴¹². From a design point of view, there appears to be a satisfactory level of involvement from both sides⁴¹³.

Some legislative and operational/implementation issues hindered the implementation and deployment of technical resource support at procurement and deployment stage, such as lack of infrastructure for equipment, and issues with customs and transportation, adaptation of equipment to local environments, recognition of technical equipment across jurisdictions, registration and maintenance of vehicles, and flags (in the maritime context).

When it comes to research and innovation, Frontex supported capability-building in research and innovation by promoting and delivering standardisation and harmonisation of border management capabilities, promoting and delivering innovation in border management capabilities, and executing and supporting research⁴¹⁴. In its multiannual programming documents, the Agency set out relevant key activities, linked to expected results and indicators. Essentially, these activities amounted to several main areas of support, assisting Member States, building EBCG capability, and responding to specific needs:

- Technical standards for the equipment to be included in the capability pools and to be deployed in the activities of the Agency;
- A comprehensive research and innovation platform to enable research and facilitate the dissemination of research information;
- Steering EU-wide border management research through the development of the Senior User role of Frontex in the implementation of EU framework programmes for research and innovation;
- Piloting border management-related technological solutions and research findings fostering further development of EBCG capabilities.

In the area of research and innovation, the extent to which the Agency has been able to ‘proactively monitor and contribute to research and innovation activities relevant for European integrated border management including the use of advanced border control

⁴¹² Survey of MS/SAC authorities: 14/27 agreed, 4/27 strongly agreed.

⁴¹³ Interviews with Frontex.

⁴¹⁴ Frontex (2023). ‘Research and Innovation’. Available at: <https://frontex.europa.eu/innovation/research-and-innovation/research-and-innovation-at-frontex/>

technology, taking into account the capability roadmap referred to in Article 9(8)' (Article 66(1)) and to assist Member States and the Commission in 'identifying key research themes' taking into account the capability roadmap (Article 66(2)), cannot be fully assessed, as the roadmap in question does not yet exist.

The analysis further revealed several minor issues hindering the development of relevant capabilities, innovation, and standardisation and harmonisation of capabilities, e.g. difficulties with regard to the adoption of standards for technical equipment, or the adoption of a methodology for defining standards, the lack of a clearer link between capability development plans and risk and vulnerability assessments⁴¹⁵, as well as lengthy internal processes⁴¹⁶ and by interdependencies with other work⁴¹⁷. Additional information on research and innovation is included in replies to EQ 5.4., EQ 5.5. and EQ 6.3.

EQ6.3 How effective has been the implementation of horizontal activities?

The effectiveness of the implementation of research and innovation activities was only slightly impeded by (mainly) legislative issues, with practical solutions applied. The EBCG Regulation does not contain a clear reference to the adoption of technical standards (through an MB decision), the adoption of a methodology for defining standards (Articles 16, 64(5)), or the adoption/publication of minimum standards for border surveillance (a task of the Agency as per Article 10(1)(z)). It could also be clearer on the mandate of the Agency on research and innovation, following the developments during the evaluation period.

EQ6.4 How effective has been the observance and promotion of fundamental rights?

The EBCG Regulation aims to establish a comprehensive fundamental rights framework. Accordingly, it includes horizontal safeguards, roles, procedures and instruments (to be set up and/or implemented by the Agency) to ensure the protection of fundamental rights in the implementation of the Agency's mandate. The EBCG Regulation describes EIBM as a shared responsibility

⁴¹⁵ Interview with Frontex.

⁴¹⁶ For example, the procurement process, leading to a delay in the delivery of handbooks.

⁴¹⁷ Some planned activities could not be started by the relevant unit within Frontex because of their interdependence with the progress on the new Frontex headquarters and API legislation.

of the Agency and the national authorities responsible for border management, while recognising that Member States retain primary responsibility for the management of their sections of the external borders. Member States, in close cooperation with the Agency, must carry out the management of the external borders and the enforcement of return decisions in full compliance with Union law, including the respect for fundamental rights⁴¹⁸.

Article 3(2) of the EBCG Regulation reinforces that fundamental rights are an overarching component in the implementation of EIBM by the EBCG (comprising the Member States and the Agency). Although the respect of fundamental rights also applies to the Member States and not only to Frontex, there are different limitations to the scope of the instruments established by the EBCG Regulation (Frontex or Member State staff) and different rules and procedures apply (for example, different procedures for SIRs and complaints related to Frontex's staff and national staff). The analysis highlighted these limitations and their consequences, particularly for the activities of the FRO and FRMs. Many concerns about fundamental rights reported to the FRO do not relate to Frontex's staff or assets, but, rather, to alleged violations by Member States' staff during operational activities in which Frontex is also participating in some capacity. In such cases, the powers of the FRO are limited, as they do not include monitoring the national authorities' activities, which are instead covered by applicable national monitoring mechanisms (such as the national ombuds institutions). The Fundamental Rights Office's monitoring of Member States' staff involved in operational activities has on occasions created tension with some Member States, whose authorities question the extent of the Office's activities and suggest that it is overstepping its mandate⁴¹⁹. The limitations of the Fundamental Rights Office's mandate can also hamper the activities of FRMs and their access to operational areas. Some national authorities have sought to bring diverging interpretations of the limits of FRMs' access to operational areas and, thus, monitoring. For some host Member States, the activities of national staff in the context of the joint operation are not covered by the Fundamental Rights Office's mandate and thus should not fall under the monitoring of the FRMs⁴²⁰.

Some clarification was brought by the 2023 SOP for FRMs⁴²¹. Although the scope of the FRM's monitoring actions is limited to areas where the Agency is operational, FRMs may collect information and assess the situation of fundamental rights, related to border and

⁴¹⁸ Article 7 of the EBCG Regulation.

⁴¹⁹ Interviews with the Fundamental Rights Office.

⁴²⁰ Interviews with the Fundamental Rights Office.

⁴²¹ Frontex (2023). 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FRMs) in Frontex operational activities'. Internal document.

migration management, in the Member States and third countries in which the Agency conducts operational activities, including relevant activities of national authorities. This is not to evaluate Member States' authorities per se, but, rather, to evaluate the situation insofar as it may have an impact on Frontex's activities, on its reputation, and above all on its ability to conduct its activities and operations in full compliance with fundamental rights.

The analysis also focused on the observance of fundamental rights in Frontex's operations to support Hungary (on border management), Lithuania, Greece and for the operation in the Central Mediterranean. It also explored Frontex's cooperation with third countries, highlighting the main fundamental rights considerations. According to several stakeholders, these operations might present high risks to fundamental rights⁴²². The Agency (based on FRO recommendations) adopted some mitigating measures to seek to ensure that violations of fundamental rights do not occur in the context of its support to Member States, and that there is no risk of Frontex's staff and/or assets being involved, even indirectly, in violations. Although the personnel of the Agency has not been found to have operated in violation of fundamental rights, including in previous formal investigations such as by the FSWG⁴²³, there are concerns about the potential indirect involvement of the Agency through inaction, by failing to suspend or terminate an operation in line with its obligations stemming from Article 46 of the EBCG Regulation⁴²⁴, or where violations of fundamental rights may be perpetrated by staff of national authorities, without knowledge or participation of the Agency but in the context of JOs.

Nevertheless, a question remains on the extent to which the Agency makes full use of its current toolbox to ensure compliance with fundamental rights, including adopting the decision referred to in Article 46 of the EBCG Regulation. The latter was triggered in only one case to date – Frontex's support to border management in Hungary, despite fundamental rights concerns being raised by stakeholders for other operations.

EQ7. What external factors have affected progress towards the objectives and how are they linked to the EBCG Regulation?

⁴²² Interviews with civil society organisations/non-members of the CF, civil society organisations/ members of the CF, an international organisation/member of the CF, and the Fundamental Rights Office.

⁴²³ FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'; Management Board Decision 39/2020 of 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (FRALO WG).

⁴²⁴ Interviews with civil society organisations/non-members of the CF, civil society organisations/members of the CF and an international organisation/member of the CF, and the Fundamental Rights Office.

The years considered for the evaluation of the Regulation were heavily influenced by external factors and crisis, such as the COVID-19 pandemic, the war in Ukraine, and the instrumentalisation of migration by Belarus.

The overall disruptive impact of COVID-19 on the implementation of the EBCG Regulation cannot be underestimated. As a result, Frontex was not able to implement all of its activities, recruitment and deployment of the SC was delayed, and financial implementation was affected. Disruptions in the global supply chain made the provision of the technical equipment more complex, leading to delays in availability. The closure of international travel reduced the pressure of irregular migration at the external borders of the EU, reducing the need for Frontex support from Member States.

The unpredictable geopolitical environment of recent years has further meant that Frontex has had to adapt quickly to unforeseen challenges at external borders, impacting its ability to plan and diverting its resources away from anticipated activities. The most challenging events have been the Belarus border crisis and the creation of an artificial migration route on Europe's Eastern border (requiring the deployment of additional resources at Europe's Eastern land borders), as well as the full-scale invasion of Ukraine by the Russian Federation in February 2022 (creating an unprecedented mass influx of people into the EU as they fled the war in Ukraine). At the same time, a steep rise in irregular migration was observed: in 2022, around 330,000 irregular border crossings were detected at the EU's external border, the highest number of irregular border crossings since 2016, and in the first seven months of 2023 the increase was of roughly 13% compared to the same period in 2022.

Implementation of the EBCG Regulation took place in an evolving policy environment, including ongoing reform of the Schengen Borders Code (Regulation 2016/399/EU), the new Visa Code, changes to or developments of new border information technology (IT) systems (SIS, European Travel Information and Authorisation System (ETIAS), Entry/Exit System (EES), Visa Information System (VIS)) and interoperability between EU information systems (Regulations (EU) 2019/817 and 2019/818); as well as changes to key partner agencies' mandates, such as Europol and EUAA.

The evaluation period was a period of significant turmoil for the Agency itself, with an investigation by the European Anti-Fraud Office (OLAF)⁴²⁵, a critical report from the European Court of Auditors (ECA⁴²⁶), significant media scrutiny, and criticism from civil

⁴²⁵ See: https://www.europarl.europa.eu/doceo/document/E-9-2022-000861-ASW_EN.html

society, eventually resulting in a change to the Agency's leadership in 2022. On 20 December 2022, the MB appointed a new ED, Hans Leijtens⁴²⁷.

EQ8. How has Frontex contributed to better coordination and cooperation between the relevant stakeholders in particular in and between Member States in the context of European Integrated Border Management?

EQ8.1 How did Frontex contribute to establishing and developing mechanisms for operational cooperation to implement the concept of European Integrated Border Management (EIBM), including establishing the Multiannual Strategic Policy Cycle; translating the Commission's strategic steering into the Technical and Operational EIBM strategy, and facilitating and fostering the implementation of the Technical and Operational strategy for EIBM across the EBCG)?

The multiannual strategic policy for EIBM, as envisaged in the EBCG Regulation (Article 8), was established in March 2023. The Agency has adopted the technical and operational strategy for EIBM (TO-EIBM) in September 2023, which forms the first stage of implementation. The TO-EIBM identifies actions to translate strategic guidelines for the 15 EIBM components for the Member States and the Agency. Member States are currently implementing their national strategies for EIBM, therefore, its impacts cannot be evaluated yet. Other key aspects of EIBM (integrated planning) are yet to be finalised and cannot be evaluated at present.

The concept of EIBM has developed gradually, becoming legally binding with the adoption of Regulation (EU) 2016/1624. The 2016 EBCG Regulation set out the Agency's objective to develop and implement EIBM. The 2016 and 2019 EBCG Regulations also outlined the main components of EIBM, with the 2019 EBCG Regulation including the 15 components that constitute EIBM.

The 2019 EBCG Regulation specifically sets the EIBM policy cycle as a strategic governance framework for the effective implementation of EIBM. The policy cycle is intended to provide the strategic direction to inform the implementation of EIBM over five years.

⁴²⁶ See: <https://www.eca.europa.eu/bg/publications?did=52964>

⁴²⁷ Frontex (2022). 'Management Board appoints Hans Leijtens as new Frontex Executive Director'. Available at: <https://www.border-security-report.com/management-board-appoints-hans-leijtens-new-frontex-executive-director/>

To inform the implementation of EIBM as outlined in the 2016 EBCG Regulation, Frontex developed a first TO-EIBM⁴²⁸, which was adopted in May 2019. At the time of drafting the TO-EIBM, the 2019 EBCG Regulation was in the process of being finalised and, when adopted, set a new framework for the Agency's activities. As such, Frontex has since focused on the implementation of its new mandate rather than the operationalising of its existing TO-EIBM.

The first step in creating the EIBM policy cycle as envisaged in the 2019 EBCG Regulation was the publication of the Frontex Strategic Risk Analysis in 2020⁴²⁹, followed by the publication of a Commission policy document developing a multiannual strategic policy on EIBM in May 2022⁴³⁰. This was followed by the adoption of the Commission Communication establishing the multiannual strategic policy for EIBM in March 2023, which used the 2022 Strategic Risk Analysis⁴³¹ as a basis.

In its programming documents, Frontex emphasises that strategic-level EIBM-related activities depend on the establishment of the policy cycle. As mentioned above, Frontex has adopted a new TO-EIBM in September 2023, which will help Member States in drafting their national strategies for EIBM and ensure better alignment with Frontex programming documents⁴³². The revision of the TO-EIBM is supported by the MB EIBM Working Group established in June 2022⁴³³.

Additional elements related to EIBM, including integrated planning (Article 9), are not yet fully implemented. Not all Member States have finalised their national capability development plans. These plans, as well as the Frontex Multiannual Acquisition Strategy (adopted in September 2023) should subsequently inform the preparation of the Frontex capability roadmap, which is the final step of the EBCG's integrated planning.

While the full implementation of EIBM is pending, some enhanced coordination in the area of EIBM has been achieved through the implementation of the Frontex mandate overall, which includes close coordination with Member States in several thematic areas

⁴²⁸ https://frontex.europa.eu/assets/Key_Documents/IBM/EU_IBM_Brochure_EN.pdf

⁴²⁹ Frontex (2020). 'Strategic Risk Analysis 2020'.

⁴³⁰ European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896'. COM(2022)303 final.

⁴³¹ Frontex (2022). 'Strategic Risk Analysis 2022.'

⁴³² Interview with Frontex.

⁴³³ Management Board Decision 33/2022 of 7 June 2022 establishing the Management Board Working Group on European Integrated Border Management.

(returns, joint operations, capacity-building, situational awareness, etc.). This is further supported by the deployment of Frontex Liaison Officers (FLOs) in Member States (Article 31), a move rated positively by the majority of Member States⁴³⁴.

EQ9. Are Frontex operational activities based on an up-to-date and comprehensive risk analysis?

EQ 9.1 To what extent did Frontex produce reliable and actionable information through 24/7 (near) real-time situation and crisis monitoring surveillance, to inform its operational activities?

EQ 9.2 To what extent did Frontex produce risk analysis (pre-warning and forecasting) within all four tiers of EIBM to inform its operational activities?

Frontex conducts and supports various situational awareness activities to underpin EU border management decisions that are intelligence-driven and to plan for targeted operational responses. Frontex's operational activities are generally based on up-to-date risk analysis and are well received by key stakeholders. The Agency produces a wide range of risk analysis products specifically on its JOs. These products are made available through the regular channels of FOSS/CIRCABC, as well as through daily or weekly briefing sessions for SC and national border control staff.

The Frontex Situation Centre is responsible for 24/7 situation monitoring, early alerts and a comprehensive and up-to-date situational picture of the external borders and the pre-frontier area of the EU. The Agency dispatches information to national authorities on the situation at the external borders through the European situational picture, as well as consistently reporting on events occurring in areas where it is deployed in an operational capacity. Frontex uses and supports EUROSUR, through EUROSUR fusion services, to reflect the situation at the European borders on a 24/7 basis. Nevertheless, there are some gaps in Frontex's ability to provide complete, consistent and timely situational awareness.

To a certain extent, this has resulted in a patchwork of national situational pictures rather than a single, uniform European situational picture⁴³⁵. In addition to the exemptions for land and sea border crossing points, Member States were not required to report illicit air

⁴³⁴ Survey of MS/SAC authorities: 18/27 agreed or strongly agreed that the network of Frontex Liaison Officers (FLOs) fostered cooperation and dialogue between Frontex and national authorities in the context of EIBM; 6/27 did not provide an answer or neither agreed nor disagreed.

⁴³⁵ European Court of Auditors (ECA) (2021). 'Special Report 8/2021: Frontex's support to external border management: not sufficiently effective to date.'

border crossings, either at air border crossing points or into national airspace, until 5 December 2021⁴³⁶. As a consequence of these (permanent and previously temporary) measures, the situation at the EU borders was not adequately reported in a near-real-time capacity⁴³⁷.

Frontex highlighted examples of RBIs based on its risk analysis, namely at the Greek/Turkish border in February 2020⁴³⁸. They cited the Ukraine crisis as a prime example of Frontex's ability to monitor migration flows immediately.

During the field visits, a number of Member States' authorities commented on the usefulness of these products during operations. For SAR operations, risk analysis is received as a post-event assessment that allows a better understanding of the situation (SAR are usually urgent and generally do not allow for preparatory action)⁴³⁹. The SC receives weekly risk analysis updates. They stated that they were regularly informed and that these updates were helpful⁴⁴⁰. In Greece, local police receive weekly reports from Frontex about the whole operational area, which the interviewee considers useful, as well as monthly reports on the operational area⁴⁴¹. Meanwhile for JO Terra, some stakeholders pointed out that they can attend daily risk analysis briefings⁴⁴², but most do not and the briefings often have limited added value (much of the reporting focuses generally on areas where most of the issues are, but not specifically on the border sections with which they are concerned).

Some weaknesses were identified through consultation with Member States and Frontex. For example, the risk analysis produced by Frontex does not adequately cover all four tiers of EIBM, leading to delays in full implementation of Article 29(3) of the EBCG Regulation, which states that 'the risk analyses referred to in paragraph 2 shall cover all aspects relevant to European integrated border management with a view to developing a pre-warning mechanism'⁴⁴³.

⁴³⁶ Article 123 of the EBCG Regulation; the Regulation contains a provision (in force until 5 December 2021) stating that Member States could provide information on border checks and air border surveillance on a voluntary rather than mandatory basis.

⁴³⁷ European Court of Auditors (ECA) (2021). 'Special Report 8/2021: Frontex's support to external border management: not sufficiently effective to date.'

⁴³⁸ Frontex (2021). 'Consolidated Annual Activity Report 2020'.

⁴³⁹ Interview with one MS.

⁴⁴⁰ Site visits interviews in two MS.

⁴⁴¹ Interview with a MS.

⁴⁴² Interview with one MS; site visit in one MS.

⁴⁴³ Article 29(3) of the EBCG Regulation.

The key elements of EIBM that are missing from Frontex risk analysis products are returns and third-country information. Some stakeholders suggested the need to add return to Frontex risk analysis products (as well as to vulnerability assessments) to ensure that they capture all components of EIBM. Frontex also highlighted the need to incorporate returns into risk analysis^{444,445}, but there are a number of challenges. The first is the lack of clarity regarding the purpose of analyzing the risks linked to returns. For instance, if the main objective is to assess the risk of unsuccessful returns (for example, at strategic level), there will be a need for specific types of information to be collected both at Member State level (risk of absconding, for example), or in third countries (risk linked to compliance with international agreements, or security threats), neither of which is presently collected. Returns are not covered under the vulnerability assessment and national capacity for successful returns is unclear. If, for instance, an aspect of return is successful ‘reintegration’ of returnees, procedures and data to make such assessment are not available. Frontex and Member States are currently discussing the types of return indicators that could be added to the risk methodology.

In the context of the fourth tier of EIBM, ‘activities inside the EU/Schengen Area and between EU and Schengen countries’ is one area that can improve risk analysis. Stakeholders, particularly those from Member States authorities without land or sea external borders, consider that secondary movements are not sufficiently covered in Frontex’s risk analysis products. There are some significant gaps in data on incidents with movement and detection of irregular migrants outside internal border areas.

EQ10. How and to what extent has Frontex delivered relevant assistance to Member States in the training of national border/coast guards, including the establishment of common training standards?

A great majority of Member States reported that the training of border and coast guards, and return experts, as per Frontex’s mandate, is clearly defined and conducive to addressing their needs⁴⁴⁶. Member States noted that the education and training of the EBCG, in particular the common training standards, provided by Frontex contributed to improving training of national border guards⁴⁴⁷, developing and strengthening border management capabilities in Member States⁴⁴⁸, facilitating cooperation among Member States’

⁴⁴⁴ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁴⁴⁵ Frontex (n.d.). ‘Regulation Review RAU contribution’. (Unpublished, provided to ICF).

⁴⁴⁶ Survey of MS/SAC authorities: 15/27 agreed, 5/27 strongly agreed.

⁴⁴⁷ Survey of MS/SAC authorities: 18/27 agreed, 4/27 strongly agreed.

⁴⁴⁸ Survey of MS/SAC authorities: 16/27 agreed. MS/SAC’ overall satisfaction with the extent to which training activities tailored for them met broader objec-

border and coast guard training institutions⁴⁴⁹, successfully mainstreaming fundamental rights in the national training programmes⁴⁵⁰, and ensuring a harmonised and common approach to EU border and coast guard training in the Member States⁴⁵¹. Both the implementation of specialised training on the EES and ETIAS, for example, and the implementation of the Common Core Curricula (CCC) guaranteed strategic cooperation among Member States (with the assistance of Frontex, to some extent).

While Member States valued Frontex's assistance in training national border/coast guards as part of the SC, at least 14 Member States noted that the training for Category 2 or 3 or for Member States was not frequent enough, due to the focus on the training for SC Category 1⁴⁵².

As further elaborated under EQ 6.2, the biggest training-specific issues were: (1) insufficient capacity within Frontex to deliver all training activities, (2) the lack of high-quality trainers (partly due to the lack of a trainer profile in the SC and to inadequate compensation for trainers), and (3) difficulties in finding and managing host training centers.

EQ11. How has Frontex supported Member States by deploying its technical equipment in the Member States?

Frontex provided a total of 2 194 items to the technical equipment pool for use by the SC in the second quarter of 2023⁴⁵³. The provision of technical resources was somewhat effective in maintaining and raising the level of cooperation at strategic and operational level among Member States, and with the assistance of Frontex.

Nevertheless, a number of shortcomings were identified by the Agency:

tives (such as developing and strengthening border management capability) is coherent with the higher extent of cooperation of national stakeholders in the design of training activities.

⁴⁴⁹ Survey of MS/SAC authorities: 13/27 agreed, 3/27 strongly agreed.

⁴⁵⁰ Survey of MS/SAC authorities: 16/27 agreed, 2/27 strongly agreed.

⁴⁵¹ Survey of MS/SAC authorities: 17/27 agreed, 4/27 strongly agreed.

⁴⁵² Interviews with MS/SAC authorities: 10/27; field visits to three MS; survey of MS/SAC authorities: 1/27.

⁴⁵³ Among which: 1) Aerial Surveillance Services (through Framework Contracts for manned and unmanned aircrafts), including 16 Fixed Wing Aircrafts, 2) Services for transportation by land, sea, and air, and in support of returns and readmissions, 3) 86 Patrol Cars, 4) 100 Mobile Offices and other deployable facilities, 5) 13 Mobile Surveillance Systems, 6) 1 977 items of portable equipment, including equipment for border checks, as well as portable surveillance equipment, including optical and thermal imaging. Quarterly Report on the European Border and Coast Guard Agency's Capabilities Q2/2023.

- In 2020, there were some gaps in the percentage of technical equipment needs met, and shortages in almost every category of technical equipment following the annual bilateral negotiations (in particular, for fixed-wing aircraft), and in the percentage of RBI Aegean 2020 covered. Two additional resources requests were needed⁴⁵⁴;
- In the years 2021, 2022 and 2023, there were shortages in specific technical equipment (mainly fixed-wing aircrafts, helicopters, coastal patrol vessels, offshore patrol vessels) following the annual bilateral negotiations.

On the one hand, certain Member States encountered challenges in acquiring TE, primarily due to conflicting national priorities and the requirement to contribute to shared resources. On the other hand, it is important to note that not all Member States have consistently delivered on their legal obligations in this regard. A persistent issue remains that Member States do not make available the equipment that was purchased via EU-funding, to the Agency, although it is mandatory to do so for the equipment that is regulated by Article 64(14) of the EBCG Regulation. Not making this equipment available results in Frontex not being able to use these types of large-scale equipment in addressing the challenges at the external borders in support of Member States⁴⁵⁵. A minority of Member States indicated challenges or obstacles in obtaining technical equipment assistance from Frontex⁴⁵⁶, with some stating that Frontex's progress in this area has not been sufficiently fast⁴⁵⁷.

Availability issues identified in the stakeholder consultations included:

- Initial lack of use of force equipment for deployed SC at border crossing points. This issue has since been resolved;⁴⁵⁸
- Lack of mobile surveillance system and patrol cars⁴⁵⁹ (the latter was also noted by Frontex);
- Pauses between the deployment of different fixed-wing aircraft in JO Opal Coast due to lack of sufficient planes,⁴⁶⁰ or between the deployments of other types of equipment⁴⁶¹ (also noted by Frontex);

⁴⁵⁴ Management Board Decision 41/2021 of 15 July 2021 adopting the Annual Implementation Report 2020.

⁴⁵⁵ Frontex (2023). 'Draft Annual Implementation Report 2022'.

⁴⁵⁶ Interviews with MS/SAC authorities: 3/27; survey of MS/SAC authorities: 10/27, 13/27 did not answer.

⁴⁵⁷ Interviews with MS/SAC authorities: 2/27.

⁴⁵⁸ Field visit in one MS.

⁴⁵⁹ Survey of MS/SAC authorities: 1/27.

⁴⁶⁰ Survey of MS/SAC authorities: 2/27. One comment stated that during Joint Operation Opal Coast, the live-streaming function of the fixed-wing aircraft was often unavailable and the plane's tracking device was switched off several times.

- Lack of lorry scanners with technical operators⁴⁶²;
- Lack of Offshore Patrol Vessels and aircraft⁴⁶³;
- Not enough heavy equipment (ME) in general⁴⁶⁴;
- Not enough crews deployed with heavy equipment (ME), which limits the operational use of said equipment⁴⁶⁵;
- Some compatibility issues of Frontex provided equipment with the technical equipment already in use by national border guards were also mentioned⁴⁶⁶.

Key stakeholders within Frontex confirmed that the demand for technical equipment was higher than could be met⁴⁶⁷. The annual bilateral negotiations capture needs at a specific point in time, but those needs may subsequently fluctuate⁴⁶⁸. The effectiveness of training activities is thus somewhat complicated by the shared responsibility of the implementation of the EBCG Regulation with Member States. At the same time, a majority of Member States agreed or strongly agreed that, in the spirit of shared responsibility, the division of competence between Member States and Frontex, as set out in the EBCG Regulation, is sufficiently clear and adequate to meet the objectives on education and training of border and coast guards. From a design point of view, there appears to be a satisfactory level of involvement from both sides.

The effectiveness of the provision of technical resource support within and by Frontex was hindered by incomplete capability planning, broader legislative issues (for example, with the Financial Regulation, the EU Staff Regulations), issues with the EBCG Regulation, and operational/implementation problems in the planning, procurement and deployment of technical resources.

⁴⁶¹ Field visit in one MS; survey of MS/SAC authorities: 1/27.

⁴⁶² Survey of MS/SAC authorities: 1/27.

⁴⁶³ Field visit in one MS.

⁴⁶⁴ Interviews with MS/SAC authorities: 1/27; survey of MS/SAC authorities: 1/27.

⁴⁶⁵ Field visit in one MS.

⁴⁶⁶ Survey of MS/SAC authorities: 1/27. One MS reported initially having issues with this, but not anymore, purchasing equipment according to Frontex specifications.

⁴⁶⁷ Interview with Frontex.

⁴⁶⁸ Interviews with Frontex and MS/SAC national authorities: 3/27.

EQ12. How has Frontex cooperated with authorities in third countries? How has Frontex facilitated cooperation between Member States and authorities in third countries? To what extent has this cooperation been framed within a broader framework of the EU's external action?

Overall, Frontex's activities in the external dimension, especially cooperation with third countries, is well regarded by key stakeholders and has a clear legal basis⁴⁶⁹. Under the Regulation, Frontex can cooperate with third countries via status agreements, working arrangements, or through non-operational cooperation⁴⁷⁰.

The EBCG Regulation (Article 73) brought new opportunities for cooperation with third countries, including the ability for Frontex to conduct joint operational activities with executive powers anywhere on the territory of a third country, subject to a status agreement and an operational plan. It also allows for the exchange of information with third countries in the framework of EUROSUR (Article 75) through the inclusion of EUROSUR provisions in an operational plan based on a status agreement or a working arrangement.

Frontex's engagement with third countries sits within the broader framework of EU external action, as outlined in its International Cooperation Strategy (2021-2023) and is an integral part of EIBM. Frontex aims to contribute to EU external action policy and promote EIBM standards through EU and Member State initiatives⁴⁷¹. The great majority of Member States agreed that cooperation with third countries is clearly defined in the EBCG Regulation and is conducive to addressing specific needs and challenges at external borders⁴⁷².

The EBCG Regulation added new fundamental rights and data protection safeguards, improving the clarity of requirements for cooperation with third countries. The high level of scrutiny by EU institutions exists to provide safeguards and ensure that cooperation with third countries is in line with EU external action and compliant with fundamental rights and data protection principles.

⁴⁶⁹ Relevant articles of Section 11 of the EBCG Regulation.

⁴⁷⁰ Non-operational cooperation (such as implementation of EU-funded capacity-building projects to build administrative capacity, transmit know-how or enhance situational awareness of border management) also contribute to developing new partnerships that can lead to more formalised forms of cooperation at a later stage.

⁴⁷¹ Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 36.

⁴⁷² Survey of MS/SAC authorities: 20/27 agreed, 1/27 strongly agreed.

Currently, Frontex cooperates with some third countries under status agreements based on the 2016 EBCG Regulation (negotiations on new agreements in line with the new model status agreement have been concluded or are ongoing). In line with Article 76(1) of the EBCG Regulation, a model status agreement was adopted by the European Commission in December 2021⁴⁷³. Four new status agreements already follow the revised model, in line with the 2019 EBCG Regulation (Moldova, North Macedonia, Montenegro and Albania) The first-ever JO with executive powers on the territory of a third country was launched in Albania in 2019⁴⁷⁴. Since then, Frontex has launched operations in Montenegro (2020), Serbia (2021), and North Macedonia (2023)⁴⁷⁵.

One of the implementation challenges reported by Frontex is the voluntary nature of Member States participation in operational activities stemming from a status agreement on the territory of a third country. This lack of obligatory participation creates gaps in operational needs and does not allow Frontex to fully perform its activities. This is also true in relation to technical equipment, with the current legal framework foreseeing (co-) financing of technical equipment only in the context of a participating and/or hosting Member State⁴⁷⁶.

The Commission also adopted a model working arrangement on 21 December 2021. Frontex finalised negotiations of a number of working arrangements based on this new model. The first such text, negotiated with Niger, received a negative opinion from EDPS, which found the arrangement's data protection provisions insufficient for inter-national data transfers to Niger. Because these provisions are broadly based on the model working arrangement, the Commission is currently working with Frontex and the EDPS to amend the model's personal data protection provisions. Once a text has been agreed with EDPS, the finalisation of the negotiations of these new generation working arrangements can take place. Frontex currently has twenty working arrangements with third country authorities in place, all based on earlier iterations of the EBCG Regulation.

⁴⁷³ European Commission (2021). 'Communication from the Commission to the European Parliament and the Council: Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624'. COM(2021) 829.

⁴⁷⁴ Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 4.

⁴⁷⁵ Frontex (2023). 'Draft Consolidated Annual Activity Report 2022'.

⁴⁷⁶ Frontex (2023). 'Evaluation of the EBCG Regulation EMB/2023', p. 2.

Frontex has access to other means to cooperate with third countries as well. Article 73(4) of the EBCG Regulation links cooperation with third countries within the framework of working arrangements to be undertaken ‘where available’. This allows the Agency to undertake other types of cooperation (capacity-building, technical assistance, etc.), which can serve as a trust-building tool before a more formalised agreement is concluded.

Another important mechanism is the deployment FLOs to third countries, which are hosted in EU Delegations in those countries, ensuring EEAS support to Frontex activities. By 2022, Frontex had deployed six FLOs, covering 14 countries⁴⁷⁷. From a Member State perspective, the role and contribution of FLOs is not always clear. The site visits to Greece and Bulgaria, for instance, found no contact between the Member States authorities and the FLO in neighbouring Turkey⁴⁷⁸, suggesting that the role and added value for the management of the EU-Turkey border could be improved. On the other hand, the Frontex headquarters’ perspective was somewhat different, as the Risk Analysis Unit received various types of useful data from the Turkey-based FLO.

Although related to cooperation of Member States with third countries and therefore not strictly relevant from perspective of the Agency, it is worth noting that almost all Member States (three missing) and SACs have provided the Commission so far with information on the existing bilateral or multilateral agreements related to border management and return concluded with third countries as required by Article 76(3) of Regulation (EU) 2019/1896. Frontex has been receiving this information bilaterally from Member States and SACs already. No draft provisions of the new agreements have been provided to the Commission for consultation in accordance with Art. 76(3) of the Regulation.

EQ13. How has Frontex cooperated with the EU agencies, CSDP Missions and Operations and international organisations, in particular on the coast guard functions with EFCA and EMSA and with relevant national/international organisations?

EQ13.1 How does the agency cooperation with international organisations and does the EBCG Regulation allow the Agency to cooperate with all international organisations that are relevant for carrying out its tasks efficiently?

⁴⁷⁷ Frontex (2023). ‘Draft Consolidated Annual Activity Report 2022’, Activity 5.1.1.

⁴⁷⁸ Interviews with two MS.

Cooperation with international organisations under working arrangements is limited by specific provisions in Article 68 of the EBCG Regulation, which sets out an exhaustive list of international organisations⁴⁷⁹ with which Frontex may cooperate. According to Frontex, this limits the ability of the Agency to develop more structured cooperation with relevant partners, including some organisations with which it has established useful cooperation in the past (e.g., ICMPD, DCAF, NATO, WCO). The Agency's external work is coordinated with the support of the Commission, any new working arrangements are subject to the Commission's prior approval and must also be approved by the MB. This suggests sufficient mechanisms to steer the Agency in the external dimension and provide oversight of its cooperation with the right partners, making the added value of including an exhaustive list of organisations in the EBCG Regulation unclear. Similarly, there is no reference in the EBCG Regulation to the Agency's cooperation with non-State actors, although Frontex is also involved in post-return and post-arrival activities alongside non-State actors, such as non-governmental organisations (NGOs)⁴⁸⁰.

Concrete forms of cooperation can differ. For example, a number of these international organisations take part in the CF and cooperate with Frontex on the promotion of EIBM that is fully compliant with human rights (such as the CoE, OSCE/Office for Democratic Institutions and Human Rights (ODIHR), the United Nations Refugee Agency (UNHCR), the United Nations Human Rights Office (OHCHR), International Organization for Migration (IOM)). Other areas include cooperation linked to border management/cross-border crime more broadly (including with Interpol, OSCE, and MAOC-N).

In practice, Frontex has working arrangements with eight international organisations. This includes two that are not listed in Article 68 of the EBCG Regulation (DCAF, ICMPD). These working arrangements pre-date the Regulation.

Frontex is able to maintain less formal cooperation with organisations outside of working arrangements. With such organisations Frontex aims to promote dialogue and coordination in areas of mutual interest, including cooperation with the WCO, ICMPD, Allied Maritime Command (MARCOM) of NATO and the ILO⁴⁸¹.

⁴⁷⁹ United Nations (UN), International Criminal Police Organisation (Interpol), Organisation for Security and Cooperation in Europe (OSCE), Council of Europe (COE) and Maritima Analysis and Operations Centre – Narcotics (MAOC-N).

⁴⁸⁰ Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document.

⁴⁸¹ Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 35.

In its analysis of the EBCG Regulation, Frontex emphasised the importance of expanding Article 68 to ensure that it can maintain effective cooperation on customs, especially in relation to cross-border crime⁴⁸². Article 68(4) of the EBCG Regulation explicitly calls for cooperation between the Agency and the Commission, Member States, and the EEAS in activities relating to customs, including risk management. Frontex cooperates with customs on coastguard functions, joint operational activities, training, and information sharing (among others)⁴⁸³.

Although Article 68 of the EBCG Regulation does not foresee NATO as a cooperation partner, Frontex has had different forms of cooperation with NATO in the past, with NATO contributing to international efforts to stem illegal trafficking and migration in the Mediterranean Sea, deploying a maritime force in 2016 to provide intelligence, surveillance and reconnaissance (Operation Sea Guardian)⁴⁸⁴. NATO has developed close cooperation with a number of EU operations in the Mediterranean (e.g. EUNAVFOR Med Operation Sophia)⁴⁸⁵, and has in the past agreed on the modalities of cooperation with Frontex operations (e.g., in the Aegean Sea)⁴⁸⁶.

EQ13.2 How has the Agency cooperated with EU agencies?

Cooperation with specific agencies depends on areas of common interest. For example, cooperation with the EFCA and the EMSA is established to support the implementation of the European cooperation on coast guard functions. Through a Tripartite Working Arrangement, the three agencies support within their respective mandates, one another and national authorities responsible for coastguard functions, including via information-sharing, surveillance and communication services, capacity-building and risk analysis. The three agencies work jointly on multipurpose operations, where they undertake activities to support various coastguard functions falling under their respective remit⁴⁸⁷. Overall, cooperation is rated positively by both agencies, and the legal base for their

⁴⁸² Frontex (2023). 'Evaluation of the EBCG Regulation'. Internal document, p. 7

⁴⁸³ Frontex (2019). 'Smart borders: bringing Frontex and customs closer together'.

⁴⁸⁴ Drake, N.R. (2018). 'Efficiency and relevance of EU-NATO operations in the Mediterranean as a cure for irregular migration.'

⁴⁸⁵ See:

https://www.nato.int/cps/en/natohq/topics_128746.htm#:~:text=NATO%20is%20contributing%20to%20international%20efforts%20to%20stem,international%20law%20and%20the%20law%20of%20the%20sea

⁴⁸⁶ European Commission (2016). 'Modalities of the cooperation between Frontex and NATO in the Aegean Sea'. Statement. Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_16_601

⁴⁸⁷ Interviews with Frontex, EFCA, EMSA.

cooperation is sound. However, as Frontex's functions deal with elements outside of EMSA and EFCA's mandates, the two agencies would like greater clarity on Frontex's core functions and thematic areas and the legal implications of operating outside territorial waters for coast guard functions.

Overall cooperation with Europol is rated as good, with regular contact between the two agencies⁴⁸⁸. A minority of Member States stressed the importance of ensuring complementarity and avoiding overlaps, in view of Frontex tasks in the area of cross-border crime. Europol cited some instances where Frontex took on tasks that fell within the Europol remit, requiring follow-up clarifications, for example where both agencies issued risk analysis products related to the impact on EU security of the Russian Federation's aggression towards Ukraine. Nevertheless, Europol believes that communication between the two agencies is effective, and that it is possible to resolve such issues. Some Frontex stakeholders noted that the EBCG Regulation does not sufficiently specify the role, limitations, and procedures in its tasks to support Europol, Eurojust and national law enforcement authorities⁴⁸⁹ or that its mandate in this area is too narrow. Yet the importance of avoiding overlaps in mandates of Frontex and Europol has been highlighted by the Commission and some Member States, which partly explains the narrow interpretation of Frontex mandate in this field⁴⁹⁰. Moreover, the majority of Member States agreed that the cooperation with Europol and Eurojust was already well defined⁴⁹¹, and did not suggest further expanding the mandate of Frontex in this field. A new working arrangement between the Agencies would be needed to clarify the details of their cooperation under their enhanced mandate.

In line with the respective mandates of Frontex and EUAA, the two agencies are expected to coordinate their activities to support Member States on returns. They are also expected to cooperate on Migration Management Support Teams (Article 40) as well as in other common operational activities, such as shared risk analysis, training, and support to Member States with contingency planning (recital 53))⁴⁹².

⁴⁸⁸ Interviews with Frontex and Europol; survey of MS/SACs authorities: 14/27 agreed; 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

⁴⁸⁹ ICF interviews with EDPS and Frontex.

⁴⁹⁰ Interviews with MS/SAC authorities: 4/27.

⁴⁹¹ Survey of MS/SAC authorities, 14/27 agreed and 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to addressing specific needs and challenges at external borders.

⁴⁹² Interviews with Frontex and EUAA.

Frontex cooperates with CEPOL on capacity-building and contributes to the EU Strategic Training Needs Assessments (EU-STNA), which identifies training needs in the area of internal security and its external dimension⁴⁹³. Frontex contributes to CEPOL webinars and online modules and provides trainers and speakers. Frontex believes that the two mandates are complementary and can effectively reinforce one another, but has also specified the need to ensure close coordination and clear division of training tasks⁴⁹⁴.

FRA is a member of the CF and also participates in the ETIAS Fundamental Rights Guidance Board. A representative of FRA is invited to Frontex MB meetings when the agenda includes points related to fundamental rights. FRA assisted Frontex to establish, develop the concept for implementing the relevant provisions, and recruit the FRMs⁴⁹⁵.

Frontex has increased its cooperation with eu-LISA. The two agencies exchange expertise and best practice on training, information and communications technology (ICT)-related projects and services, research and development. The collaboration between eu-LISA and Frontex takes place within the framework of the implementation of ETIAS, EES and interoperability. eu-LISA also assisted Frontex to implement its access to the SIS, as well as with capacity-building for Frontex officers, with training modules developed by eu-LISA.

EQ13.3 How has the Agency cooperated with CSDP Missions and Operations? Is the existing framework of cooperation sufficient? How could it be improved?

Frontex has successfully enhanced its cooperation with Common Security and Defence Policy (CSDP) missions and operations. The war in Ukraine showed that having a more overarching mechanism for cooperation with CSDP missions could provide the necessary flexibility for Frontex to establish swift cooperation with those CSDP missions not previously considered a priority.

Cooperation with CSDP missions and operations is limited to the areas specified in the EBCG Regulation (Article 68(1)(j)), which include ‘(i) the promotion of European integrated border management standards; (ii) situational awareness and risk analysis’. Current

⁴⁹³ CEPOL (2022). ‘European Union Strategic Training Needs Assessment 2022-2025’. Available at: <https://www.cepola.europa.eu/publications/european-union-strategic-training-needs-assessment-2022-2025>

⁴⁹⁴ Interview with Frontex.

⁴⁹⁵ Interview with Frontex.

cooperation efforts vary depending on the country of interest and the mandate of the specific mission or operation. In practice, Frontex has a working arrangement with one CSDP mission (EUCAP Sahel Niger) and one CSDP operation (Operation UNAVFORMED Irini). It has also opened discussions with the EU Advisory Mission (EUAM) Ukraine and EUBAM Libya⁴⁹⁶. Not all CSDP missions or operations have mandates that are aligned with the tasks of Frontex, but those focused on civilian security and capacity-building are more natural partners.

The Civilian Planning and Conduct Capability (CCPC) within EEAS confirmed that it is in regular contact with Frontex to explore areas of cooperation with the CSDP missions. EEAS sees considerable added value in being able to draw on Frontex expertise. Interviews with different divisions of the EEAS⁴⁹⁷ acknowledged general cooperation (both operationally and on policy) between Frontex and the EEAS, albeit with some room for improvement. Overall, EEAS sees the EBCG Regulation as sufficient to facilitate its cooperation with Frontex.

EEAS highlighted that CSDP missions can provide strong support to Frontex, as they usually have well-established contacts with authorities in their host countries and have a solid awareness of the local situation⁴⁹⁸. Frontex has indicated its interest in enhancing cooperation with CSDP missions, an interest shared by the EEAS, which suggested including cooperation with CSDP missions explicitly in Article 10 of the EBCG Regulation to raise awareness of potential cooperation⁴⁹⁹.

EEAS favours having one overarching working arrangement for all CSDP missions, so as to enhance flexibility of cooperation. Negotiating a working arrangement can reportedly take between one and one-and-a-half years, which does not allow for adaptation to unexpected needs. The ability to develop swift cooperation between a CSDP mission and Frontex in response to new threats would have been beneficial in the case of the full-scale invasion of Ukraine by Russia in early 2022. Frontex was active on the EU side of the Eastern border but did not have a status agreement with Ukraine⁵⁰⁰ or a working arrangement with EUAM Ukraine, limiting its ability to cooperate with both. However, one difficulty with having an overarching cooperation agreement is the fact that not all CSDP

⁴⁹⁶ Frontex (2022). 'Draft Consolidated Annual Activity Report 2021', Activity 5.2.1.

⁴⁹⁷ Interviews with EEAS.

⁴⁹⁸ Interview with EEAS.

⁴⁹⁹ Interview with EEAS.

⁵⁰⁰ Frontex did have a working arrangement in place with the Ukrainian State Border Guard Service.

missions operate in third countries that are set as a priority by Frontex (on the basis of specifications set out in the EBCG Regulation). Any potential overarching working arrangement would likely need to include a mechanism for prior approval by the Commission and MB before launching cooperation with a new CSDP mission.

EQ14. How has Frontex promoted and respected fundamental rights through all the Agency's activities?

EQ14.1. In which ways has Frontex created the conditions for ensuring and promoting the respect of Fundamental Rights in its activities?

Frontex has put in place a number of conditions to ensure and promote the respect of fundamental rights, by adopting and/or implementing rules and procedures. This includes adoption of the Fundamental Rights Strategy and the implementing Action Plan, involving the FRO extensively in the activities of the Agency (contributing to a wide range of tools and procedures, such as operational plans), the deployments of FRMs in the field (almost 1000 days in 2022), adopting relevant MB Decisions (on the complaints mechanism, SIRs, supervisory mechanism on the use of force, etc.), data protection safeguards and Data Protection Officer (DPO) activities, and training and efforts to promote a fundamental rights culture within the Agency.

The research shows that these elements have the potential to guarantee fundamental rights compliance by the Agency, and significant progress has certainly been made despite some setbacks and initial delays, such as adopting MB Decisions and recruiting 40 FRMs – although Frontex now has 46 operational FRMs – which may pose risks to delivering on the commitments to ensure respect for fundamental rights. See further details in EQ 5.6 and 6.4.

EQ14.2. How has the Serious Incident Reports (SIRs) mechanism been implemented to provide an effective procedure to report and investigate potential fundamental rights violations?

From a fundamental rights perspective, the SIR mechanism provides important information for the FRO to monitor the Agency's compliance with its obligations to respect fundamental rights. It also provides the Agency with an important tool to predict potential risks of fundamental rights violations, which can be mitigated through better training, increased scrutiny, greater deployments of FRMs, or safeguards and other considerations being included in the Operational Plans. However, the research found a number of factors that continue to limit its effectiveness. Some of these factors, crucial among them an insufficient involvement of the FRO in handling reports, have been addressed in the 2021 adoption of the revised SOP on SIRs, which repealed and replaced the original SOP

from 2014. Other factors persist, such as limited sources of information, which can be exacerbated by regularly facing perceived insufficient cooperation during investigations and follow-up from national authorities, difficulty in ascertaining/imposing sanctions, as well as lack of transparency (SIRs are restricted documents) and avenues for redress⁵⁰¹.

Early on, the Working Group on fundamental rights and legal operational aspects of operations in the Aegean Sea (FRaLO)⁵⁰² and the FSWG pointed out the insufficient involvement of FRO in handling SIRs (before 2021). The functioning of the SIR mechanism assumes a shared culture of high attention to fundamental rights protection within the Agency and among all participants in Frontex's activities, who should report not only evidence but also suspected cases of violations. However, the FSWG found that some deployed border guards who needed to submit a SIR through the chain of command were discouraged from submitting the report⁵⁰³.

Other challenges reported include the long processing time for individual SIRs (limited staff, for example), insufficient cooperation from national authorities during investigations, and inadequate follow-up from national authorities⁵⁰⁴.

SIRs are followed up through the recommendations made by the SI-Handler in a final report and through the reporting on patterns of SIRs to the MB, while continuous follow-up is ensured by the FRO. A model is now being tested with one Member State where dedicated liaisons have been appointed to facilitate closer interaction with the FRO⁵⁰⁵.

The analysis highlighted the absence of sanctions for failing to report SIRs related to fundamental rights violations, and the insufficient indications of the sanctions applicable to those responsible and how often they are imposed.

SIRs could lead to disciplinary measures for failing to comply with the Code of Conduct. However, Frontex indicated that for SIRs category 1, the responsibility and sanctions are more difficult to ascertain and impose, as these typically relate to national authorities' actions (with some rare exceptions pending)⁵⁰⁶.

⁵⁰¹ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵⁰² Management Board Decision 39/2020 of 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations.

⁵⁰³ FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

⁵⁰⁴ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵⁰⁵ Interview with the Fundamental Rights Office.

SIRs are treated as restricted documents, limiting stakeholders' access and, potentially, the transparency and accountability of Frontex insofar as it has taken/not taken action.

The low number of SIRs initially may indicate that the mechanism was not fully utilised and/or not functioning well, as the number of SIRs was low compared to the potential fundamental rights violations documented by independent organisations. In 2022, the Agency reported a continuously increasing number of SIRs related to fundamental rights (72 SIRs category 1, of which 8 remained open in April 2023). By November 2023, the FRO had opened 43 SIRs concerned with fundamental rights⁵⁰⁷.

The shortcomings of the SIR mechanism, in particular following the investigations into allegations of Frontex's involvement in pushbacks, prompted the Agency to improve the mechanism. One initiative was the adoption of an amended SOP on the SIR mechanism in 2021, which replaced the 2014 SOP on SIRs and enhanced the role of the FRO by allowing for direct reporting of situations that potentially violate fundamental rights, as well as automatically assigning the FRO as case-handler for alleged violations of fundamental rights⁵⁰⁸.

To ensure increased reporting, the FRO took steps to increase Agency staff awareness of the SIR mechanism and the revised SOP, through training and briefing activities. In addition, the FRO created a dedicated SIR team (around six staff members) within the Fundamental Rights Office. The capacity of the SIR team is considered sufficient for now, although there is a need to increase the resources allocated, given the growing number of SCOs and new deployment activities⁵⁰⁹. The work of FRMs could be considered a contributing factor to the growing number of SIRs. The presence of FRMs on the ground encourages deployed staff to submit SIRs⁵¹⁰, and FRMs are also able to submit SIRs themselves should they witness, or be made aware of, incidents that merit doing so.

⁵⁰⁶ Interview with the Fundamental Rights Office.

⁵⁰⁷ Frontex (2023). 'Fundamental Rights Office'. Internal document.

⁵⁰⁸ Executive Director Decision on standard operating procedure (SOP) – serious incident reporting.

⁵⁰⁹ Interview with the Fundamental Rights Office.

⁵¹⁰ Interview with the Fundamental Rights Office.

The adoption of the SOP on SIRs is relatively recent and further monitoring is needed to assess the functioning of the SIR mechanism under the new rules⁵¹¹. Overall, the SIR mechanism remains an important instrument in the toolbox of the FRO to map and indicate fundamental rights challenges and monitor the Agency's compliance with its fundamental rights obligations.

EQ14.3. How has the Complaints Mechanism provided an effective and accessible tool for reporting, investigating, and remedying perceived breaches of fundamental rights?

Overall, the analysis found that the good functioning of the complaints mechanism is limited by a number of factors related to its set up and implementation. There is some lack of clarity in the EBCG Regulation (the procedure referenced in Article 111(5)) and potential inconsistencies between the EBCG Regulation and MB Decision 19/2022. To strengthen the mechanism's functioning, the Agency and the FRO have taken positive steps and worked to raise awareness of the mechanism, while MB Decision 19/2022 adopted rules to develop the mechanism further. Nevertheless, some of the issues remain.

Despite being one of the main reporting mechanisms, there are concerns about the set up and implementation of this mechanism. The Agency registered a low number of complaints initially (before 2021), 18 in 2019 (7 admissible), and 24 in 2020 (7 admissible). However, from 2021, the number increased significantly, with 27 complaints in 2021 (6 admissible)⁵¹² and 69 in 2022 (9 admissible, 10 under admissibility assessment). As of 1 September 2023, 37 complaints have been registered, with four deemed admissible and a further seven pending assessment. This gives a total of some 200 complaints under the mechanism, with an admissibility rate of around 20%⁵¹³. The inadmissibility may derive from different factors, such as complaints not concerning operational activities of the Agency, complaints not directly affecting the individuals submitting them or lack of fundamental rights issues, working relations between the Agency's and its staff, etc.

Over the years, a number of stakeholders have raised concerns about the set up and implementation of the complaints mechanism, suggesting that these may have limited its capacity to provide an effective and accessible tool for reporting, investigating, and remedying alleged breaches of fundamental rights. More specifically, these concerns relate to access, scope, independence, and

⁵¹¹ Survey of MS/SAC authorities: 1/27.

⁵¹² Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

⁵¹³ Interview with the Fundamental Rights Office.

transparency of the mechanism, the limited role of the DPO in the process, issues with follow-up to complaints, and absence of remedy and appeal.

The complaints mechanism does not provide access to those who have not been affected ‘directly’ by actions or omissions⁵¹⁴, nor does it allow the possibility to initiate a complaint *ex officio*⁵¹⁵ (whereas it is possible for the FRO to initiate SIRs category 1 based on third-party information and sources) nor to submit anonymous complaints⁵¹⁶. This restricted access might be a contributing factor to the low number of complaints submitted via this mechanism.

The EP⁵¹⁷ and the European Ombudsman⁵¹⁸ called into question the independence of the complaints mechanism, given the role of the FRO and ED respectively, in assessing and deciding on the complaints. Although the FRO recommends appropriate follow-up, the decision on the merits of the complaint lies with the ED, who should ensure proper follow-up and report back to the FRO. The EBCG Regulation does not establish the criteria to be used by the ED to decide the merits of the complaint, nor was this addressed by MB Decision 19/2022. For complaints concerning national staff, the merits of the complaints are assessed by the national authorities, as the FRO forwards those complaints to the relevant Member States and sends a copy to the Member States’ national human rights institution for further action, according to their mandates.

Where a complaint relates to data protection issues, the ED consults the DPO before taking a decision⁵¹⁹. During the consultation, it was reported that the work of the DPO in this area has been very limited so far⁵²⁰. There is also a risk of overlap between FRO and

⁵¹⁴ European Council on Refugees and Exile (ECRE) (2021). ‘Holding Frontex to account. ECRE’s proposals for strengthening non-judicial mechanisms for scrutiny of Frontex’.

⁵¹⁵ FRA (2018). ‘The revised European Border and Coast Guard Regulation and its fundamental rights implications. Opinion of the European Union Agency for Fundamental Rights’.

⁵¹⁶ Interviews with the European Ombudsman, FRA, a civil society organisation/member of the CF (5) and a civil society organisation/ non-member of the CF; European Ombudsman (2020). ‘Decision in OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer’.

⁵¹⁷ FSWG (2021). ‘Report on the fact-finding investigation on Frontex concerning fundamental rights violations’.

⁵¹⁸ European Ombudsman (2020). ‘Decision in Case OI/5/2020/MHZ, Functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer’.

⁵¹⁹ Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

⁵²⁰ Interview with Frontex.

DPO activities in relation to data protection complaints, as the processing of personal data requirements is regulated as a fundamental right, limiting DPO involvement⁵²¹.

Another challenge is transparency, as the EBCG Regulation does not establish the criteria to be used by the ED for the decisions on the complaints, giving them considerable discretion⁵²².

The low number of complaints received could be due to the lack of awareness and engagement by Frontex officers in providing information on the mechanism to individuals (such as new arrivals).

The FSWG⁵²³ and the European Ombudsman⁵²⁴ stressed the inadequate and delayed follow-up to complaints. Regarding complaints about Frontex staff, two civil society organisations expressed doubts about the follow-up to complaints and the extent to which corrective measures are implemented within the Agency⁵²⁵. For complaints about national staff, the FRO reported that the follow-up from the national authorities has been inadequate⁵²⁶.

On the admissibility of complaints, the complainants have no remedy to appeal the decision by the FRO that a complaint is not admissible. The only possibility provided by the EBCG Regulation is for the complainants to submit new evidence when the complaints are declared inadmissible or unfounded; in such cases, the FRO reassesses the complaint⁵²⁷. The FRO's decision does not prevent the complainant from pursuing redress through other avenues, such as the national or European courts, or relevant entities such as the Ombuds institutions.

The EBCG Regulation does not provide for the possibility of appeal within the complaints mechanism. The European Ombudsman found that the mechanism lacks scrutiny and indicated that decisions by the ED on complaints forwarded by the FRO may be

⁵²¹ Interview with Frontex.

⁵²² Interview a with civil society organisation/non-member of the CF.

⁵²³ FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning fundamental rights violations'.

⁵²⁴ Interview with the European Ombudsman.

⁵²⁵ Interviews with civil society organisations/members of the CF.

⁵²⁶ Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

⁵²⁷ Article 111(5) of the EBCG Regulation.

challenged before the European Ombudsman⁵²⁸. When individuals experience a violation of their fundamental rights that is subsequently ascertained through the complaints mechanism, a clear remedy is missing (such as a compensation fund or other concrete remedies).

Following pressure from EU-level stakeholders (EP, European Ombudsman⁵²⁹, etc.) and attention from civil society organisations, the Agency started a process to strengthen the complaints mechanism, in particular to review the implementing rules.

To increase the effectiveness of the complaints mechanism, the FRO increased awareness by updating the complaint form, introducing a new online submission tool, and distributing information about the mechanism to various Frontex operational areas. Regular reporting suggests that this has helped raise awareness of the mechanism among potential complainants, although this also differs between areas. In general, steps such as translating the leaflets and posters about the mechanisms, or simplifying the online procedure, have a positive impact on use of the mechanism. The FRO also provided input on the new rules of the complaints mechanism and held training sessions for Frontex staff at headquarters and in the field, as well as for local partners during the monitoring of Frontex operational areas to build capacity⁵³⁰. The Agency's recent awareness-raising actions might be considered contributing factors to the increasing number of complaints submitted.

In 2022, the MB adopted Decision 19/2022 on the Agency's rules on the complaints mechanism to respond to the need to develop an adequate framework to ensure the further development and independence of the complaints mechanism⁵³¹.

EQ14.4. How effective is the fundamental rights framework established by the EBCG Regulation in ensuring the protection of fundamental rights in the course of executing the Agency's mandate, including by empowering FR Monitors to conduct thorough and impartial monitoring activities?

⁵²⁸ Interview with the European Ombudsman.

⁵²⁹ The European Ombudsman launched an inquiry in 2020. The findings were published in June 2021 and included recommendations to make the complaints mechanism effective and address its shortcomings.

⁵³⁰ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵³¹ Management Board Decision 19/2022 of 16 March 2022 adopting rules on the complaints mechanism.

The analysis found that the overall effectiveness of the framework is somewhat limited by gaps and lack of clarity within the EBCG Regulation, as well as by implementation issues.

Respect for fundamental rights is a legal obligation of the EBCG (Member States' authorities and the Agency) under EU and international law⁵³². To comply with these EU and international obligations, and as the Agency must carry out its activities in compliance with fundamental rights, the EBCG Regulation provides for horizontal safeguards, such as Articles 1, 3, 5, 46, and data protection safeguards in Articles 89 to 92, specific roles (FRO, FRMs, CF, cooperation with FRA), and procedures and instruments (codes of conduct, SIR procedure, complaints mechanism, supervisory mechanism on the use of force) to ensure the protection and monitoring of fundamental rights. The Agency also adopted the Fundamental Rights Strategy and implementing Action Plan to deliver on its obligations.

Although Article 5 requires the Agency to contribute to the continuous and uniform application of Union law, it refers to external borders only and it not explicitly cover the Agency's activities on return,⁵³³ although this is indicated in other provisions (such as Article 48). This may be considered a gap in the text and the respect of fundamental rights by the Agency in all areas covered by Frontex's mandate, including in the area of return, could be reflected better in this provision.

Article 46 provides for another important fundamental rights safeguard of the EBCG Regulation, as it reinforces the obligation of the ED to suspend, terminate or not launch any activity of the Agency that could violate fundamental rights.⁵³⁴ Various stakeholders highlighted that the EBCG Regulation leaves considerable discretion to the ED in this regard.⁵³⁵

To strengthen the functioning of Article 46, the Agency adopted the SOP in 2022, establishing the roles and responsibilities within the Agency to support the decision-making process of the ED.⁵³⁶ The SOP also aims to clarify the applicable criteria for decisions. It

⁵³² Recital 103 and Article 80 of the EBCG Regulation.

⁵³³ FRA (2018). The revised European Border and Coast Guard Regulation and its fundamental rights implications. Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications.

⁵³⁴ Article 25 of the Regulation (EU) 2016/1624 (no longer in force) referred to the suspension or termination of activities only, without including the preventive component (i.e. not launching the activities).

⁵³⁵ Based on interviews with civil society organisations/non-members of CF (2/4) and civil society organisations/members of CF and international organisation/member of CF.

suggests taking a gradual approach and using the principle of proportionality when deciding actions to be taken under Article 46. Whenever appropriate, mitigation/corrective measures should be put in place so as to resolve the situation without triggering Article 46. The Regulation, together with the SOP, seem to provide a balanced solution to ensure the functioning of the mechanism.

The views of stakeholders differ on the consequences of triggering Article 46, as withdrawing would limit monitoring and reporting of fundamental rights violations at EU level. Some stakeholders suggested a ‘reverse Article 46’ that could entail additional safeguards and/or enhanced presence of the Agency in response to Member States’ violations at the borders, to monitor/ensure compliance (instead of withdrawing)⁵³⁷. Another topic addressed during the consultation was related to the authority adopting the decision referred to in Article 46. By delegating the decision to trigger Article 46 to the ED, the EBCG Regulation may risk placing excessive public and political pressure on the ED alone, without involving other relevant actors (such as the MB, European Commission, or the Council of the European Union). On the other hand, the potential involvement of such actors could lead to the politicisation of the process (with the risk of having political actors blocking in practice the possibility of triggering Article 46). A third option could be to retain the ED’s current final decision-making powers, but to seek to depoliticise the process, and the potential triggering of Article 46. This could be achieved by establishing a clear and standardised decision-making process that also provides the Agency with a series of interim measures, of a technical nature, that can be implemented to seek to improve the situation on the ground. These measures should be devised in close cooperation between the FRO and the Agency’s operational units and would represent a standard toolset available to the ED to prevent needing to trigger Article 46. Among others they could include heightened presence of FRMs, additional ad hoc trainings, or the temporary assignment of monitoring-related responsibilities to the deployed members of the standing corps, for example, to ensure that Frontex, also in the interest of shared responsibility, actively collaborates with the host state to minimise and prevent the identified fundamental rights violations, rather than opt to leave a situation that poses fundamental rights-related risks.

⁵³⁶ Decision of the Executive Director, Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.

⁵³⁷ Interview with Frontex and FRO.

To complement and implement the legislative framework, the EBCG Regulation requires the Agency to draw up, implement and develop a Fundamental Rights Strategy⁵³⁸. The Fundamental Rights Strategy was initially adopted in 2011 and updated in 2021. Its objective is to guarantee the protection of fundamental rights in the performance of the daily tasks of the Agency related to EIBM⁵³⁹. In 2021, the MB approved an Action Plan to implement the Fundamental Rights Strategy. The Action Plan from 2021 provides practical fundamental rights safeguards that guide the implementation of the Agency's operational activities, integrated into the Agency's Annual Work Programme, towards the achievement of its mission and operational goals within EIBM⁵⁴⁰. The Action Plan has a section addressed exclusively to the Agency and another section concerning the EBCG as a whole.

When setting out fundamental rights compliance with relevant EU and international law, Article 80(1) of the Regulation refers to the Member States and the Agency (EBCG). However, in relation to the Fundamental Rights Strategy, it addresses the Agency only, creating an asymmetry in the fundamental rights framework⁵⁴¹.

Overall, the expanded role introduced by the EBCG Regulation for the oversight and monitoring provided by the FRO may be considered to contribute to a higher level of compliance with fundamental rights across the activities and operations of the Agency and its staff. Nevertheless, certain factors have hindered the effectiveness of the FRO's role. These include limitations arising from the FRO position within the Agency, the scope of the FRO mandate and constraints on the monitoring and investigative powers, and the advisory role and limited follow-up to FRO recommendations.

Particularly important are the FRO's opinions on all operational plans, provided that input is requested in a timely and proactive manner and that the opinions received by the FRO are adopted in full. However, although the Agency has adopted some of the measures proposed by the FRO, the input is subject to negotiations and is, in practice, read by the Operational Response Division of the Agency only, even if the FRO is advising the Agency as a whole⁵⁴².

⁵³⁸ Article 80 of the EBCG Regulation.

⁵³⁹ Frontex (2021). 'Fundamental Rights Strategy'.

⁵⁴⁰ Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

⁵⁴¹ Interview with FRA.

⁵⁴² Interview with the Fundamental Rights Office.

As highlighted during the stakeholders' consultation, the absence of an obligation on the MB and ED has de-prioritised the follow-up to FRO recommendations. In the case of Hungary, for example, the suspension of the Agency's support for border management took place five years after the first recommendation of the FRO⁵⁴³.

To address this issue, the MB adopted Decisions 6/2021⁵⁴⁴ and 43/2022⁵⁴⁵. As the 2021 MB Decision 6/2021 on the independence of the FRO did not provide specific procedures on follow-up to FRO recommendations, the MB adopted a separate Decision 43/2022, laying down the procedures, including timelines and deadlines, for the ED and MB to act on the recommendations of the FRO and CF⁵⁴⁶.

Other challenges to the work of the FRO have at times derived from the improper or lack of implementation of some of the EBCG Regulation's provisions. For example, the Regulation requires that sufficient and adequate human and financial resources are provided to the FRO to fulfil its tasks⁵⁴⁷. Despite this obligation, the capacity of the Fundamental Rights Office was insufficient for quite some time and was increased considerably only from 2021-2022. Although this issue is now resolved with regard to the human resources available to the FRO, the DPO faces a similarly concerning issue, due to its very limited capacity. The situation risks jeopardizing the Agency's ability to fully respect the fundamental rights to privacy and protection of personal data, or to comply with applicable data protection rules and legislation.

The EBCG Regulation introduced the role of FRMs, who have the pivotal task to '[...] assess fundamental rights compliance in operational activity, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of EIBM'⁵⁴⁸. To facilitate effective monitoring, the EBCG Regulation requires that FRMs have access to all areas in which the

⁵⁴³ European Parliament Frontex Scrutiny Working Group (FSWG) (2021). Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. Available at: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf

⁵⁴⁴ Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy.

⁵⁴⁵ Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

⁵⁴⁶ Management Board Decision 43/2022.

⁵⁴⁷ Article 109(5) of the EBCG Regulation.

⁵⁴⁸ Article 109(3) and Article 110(1) of the EBCG Regulation.

operational activity of the Agency takes place and to all documents relevant to the implementation of that activity. However, the national authorities of some Member States have raised different interpretations of the scope of the FRMs' mandate/monitoring and their ability to access to operational areas and documents (including databases), which has hindered the effectiveness of the monitoring activities. In addition, limitations imposed by some national authorities in carrying out some of their activities, such as participating in (land and sea) patrolling and/or debriefing interviews, further constrained FRMs' effectiveness in fulfilling their monitoring capabilities.

To guarantee effective monitoring, the ED adopted the SOP for the FRMs in March 2023⁵⁴⁹. The SOP aims to clarify the scope of monitoring for FRMs. This is limited to the Agency's operational activities (in line with Article 110(2) EBCG Regulation). However, for the FRO to comply with his advisory role to the Agency (including under Article 46), the SOP indicates that FRMs may collect information and assess the situation of fundamental rights, related to border and migration management, in the Member States and third countries in which the Agency conducts operational activities, including relevant activities of national authorities. This is in order to facilitate the evaluation of the situation in areas where the Agency operates, as this may have an impact on Frontex's activities, on its reputation, and above all on its ability to perform all its tasks in a way that is fully compliant with international and EU law, including fundamental rights⁵⁵⁰.

While the new rules clarify the scope of monitoring and suggest a non-explicit connection between the activity of the FRMs and the FRO/SIR role in Article 46, the SOP could have gone further, for instance clarifying the extent to which information collected on national authorities could be used by the FRO, or the limits between the FRO/FRMs monitoring and national monitoring by relevant entities⁵⁵¹.

⁵⁴⁹ Frontex (2023), 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities'. Internal document.

⁵⁵⁰ Frontex (2023), 'Standard Operating Procedure (SOP) on roles and responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities'. Internal document.

⁵⁵¹ Interview with Fundamental Rights Office.

Stakeholders also highlighted the transparency of FRMs' reports. These reports are not generally publicly available, which may limit the transparency of the mission's findings and the monitoring system overall⁵⁵². However, certain findings of FRMs' missions are presented to the public, as the FRO Annual Reports draw on information from FRMs.

Unlike the FRO and FRMs, the CF does not have the mandate to monitor Frontex activities. Rather, it assists the Agency by providing independent advice on fundamental rights matters. The ED and the MB, in coordination with the FRO, may consult the CF on any matter related to fundamental rights⁵⁵³. Although the CF may carry out on-the-spot visits to the Agency's operations (its headquarters and those in host Member States), these visits are not aimed at fundamental rights monitoring. Instead, their objective is to collect information, which may be used to inform the CF's work to advise the Agency (for instance, to become familiar with the operational context). Despite being an important instrument, several challenges stemming from the EBCG Regulation itself and/or its implementation, risk limiting the impact of the CF's work. These challenges include insufficient access to information, lack of requests for consultations from the Agency or insufficient time to reply to requests, and limited follow-up to the CF's recommendations. Several stakeholders also highlighted the difficulties for civil society organisations to continue contributing to the work of the CF on a voluntary basis, given their limited resources and staff⁵⁵⁴.

In light of the limited direct results of the CF's work and insufficient follow-up by the Agency, various stakeholders noted that there have been internal discussions about the added value of CF membership⁵⁵⁵. One member reported that consulting the CF seems a 'tick-box exercise' for the Agency rather than an effective tool for members to provide significant input to the work of Frontex⁵⁵⁶.

In line with the CF's suggestions⁵⁵⁷, the Agency established a procedure to follow-up on CF and FRO advice⁵⁵⁸. The new rules introduce a timeframe for follow-up and provide for a procedure to ensure the accountability of the ED, including the MB's obligation to issue conclusions urging the ED to comply with their obligations⁵⁵⁹.

⁵⁵² Interviews with two civil society organisations/members of the CF.

⁵⁵³ Article 108(1) of the EBCG Regulation.

⁵⁵⁴ Interviews with civil society organisations/members of the CF.

⁵⁵⁵ Interviews with a civil society organisation/non-member of the CF, and civil society organisations/members of the CF.

⁵⁵⁶ Interview with a civil society organisation/member of the CF.

⁵⁵⁷ Consultative Forum (2022). 'Annual Report 2021'. Available at: <https://prd.frontex.europa.eu/document/ninth-consultative-forum-annual-report-2021/>

More recently, also other positive developments were observed following the resignation of the previous ED and the subsequent attention, both under the ED *ad interim* and the new ED, to fundamental rights within the Agency. Stakeholders reported that cooperation between the Agency's management and the CF has improved, and access to information has been enhanced⁵⁶⁰.

In line with Article 55 of the EBCG Regulation, the supervisory mechanism on the use of force (point (a) of Article 55(5)) provides a framework for the Agency to monitor the application of the provisions on the use of force by the statutory staff of the SC deployed as members of the team. In 2021, the MB (Decision 7/2021) adopted implementing rules on the supervisory mechanism on the use of force⁵⁶¹. Despite this, the FSWG found that these rules fail to guarantee that sufficient fundamental rights expertise is involved in the decision-making in these cases⁵⁶². To address concerns on the functioning of this supervisory mechanism, MB Decision 61/2022 amended the 2021 Decision in relation to the role of the Advisory Committee on the Use of Force (ACUF) with regard to the supervisory mechanism⁵⁶³.

More recently, in line with the EBCG Regulation's obligations⁵⁶⁴, the Agency adopted two codes: the Code for participants in operational activities⁵⁶⁵, and the Code in the field of return⁵⁶⁶. Although not a codification of legislation, these codes envisage common standardised procedures and principles that contribute to increasing knowledge of fundamental rights' respect among operational staff.

⁵⁵⁸ Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

⁵⁵⁹ Articles 1, 2 and 6 of the Management Board Decision 43/2022.

⁵⁶⁰ Interviews with civil society organisations/members of the CF (5/5), and international organisations/members of the CF.

⁵⁶¹ Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps.

⁵⁶² FSWG (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'.

⁵⁶³ Management Board Decision 61/2022 of 23 November 2022 amending Management Board Decision 7/2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps.

⁵⁶⁴ Article 81 of the EBCG Regulation.

⁵⁶⁵ Frontex (n.d.). 'Code of Conduct for all persons participating in Frontex activities'.

⁵⁶⁶ Frontex (n.d.). 'Code of Conduct for all persons participating in Frontex activities'.

EQ14.5 How effectively has Frontex monitored return operations organised and coordinated by the Agency? (Article 50(5) of EBCG?)

The Agency adopted a Code of conduct for return operations and return interventions, which reinforces the need to respect fundamental rights when carrying out these activities⁵⁶⁷. To ensure compliance, the Agency adopted changes to increase the monitoring level of return operations. Despite this framework and instruments, the analysis identified some challenges (such as level of contribution to the forced-return monitors pool) that might impact the Agency's effectiveness in carrying out monitoring activities.

The monitoring of forced-return operations is carried out by the pool of forced-return monitors. The pool is set up by the Agency from monitors of competent bodies of the Member States. The Agency also contributes FRMs to the pool⁵⁶⁸.

The governance of the pool of forced-return monitors is one of the issues raised by FRA, as the management of the pool of forced-return monitors is currently assigned to the FRO (independent but not external). An external entity could enhance the independence of the pool⁵⁶⁹. Before 2021, the pool solely comprised monitors from Member States, while the Fundamental Rights Office worked to train and then appoint FRMs as forced-return monitors⁵⁷⁰.

Issues were reported in relation to the limited number of experts made available to the pool by Member States, which might limit the capacity to meet monitoring needs for all relevant operations⁵⁷¹.

Experts from the FRO participate in these activities, and, with the recruitment of FRMs, they started participating in forced-return operations. In 2021, three FRMs were recruited to act as forced-return monitors, and an additional number of FRMs served as forced-return monitors when their capacity was requested to ensure adequate monitoring of flights. Throughout 2023, additional monitors are

⁵⁶⁷ Frontex (n.d.). 'Code of conduct for return operations and return interventions coordinated and organised by Frontex'.

⁵⁶⁸ Article 51 of the EBCG Regulation.

⁵⁶⁹ Interview with FRA.

⁵⁷⁰ Interview with the Fundamental Rights Office.

⁵⁷¹ Interview with DG HOME.

being trained as forced-return monitors, to ensure the monitoring capacity is adequate to respond to the needs of Agency and Member States⁵⁷².

Regarding the monitoring level, the FRO reported that in the first half of 2020, 59 out of 72 operations by charter flights with Frontex support had monitors on board; while, in the second half of same year, 92 monitors participated in return operations by charter flights, of which 68 were deployed from the pool upon Member States' request⁵⁷³. For 2021, the FRO's Annual Report indicated that the FRMs monitored 18 return operations⁵⁷⁴.

Starting from 2022, the FRO published Observations to return operations conducted in the 1st and 2nd half of 2022. In the first half of 2022, out of the 136 forced-return operations by charter flights supported by Frontex, 104 were covered by monitors present on board⁵⁷⁵. For the second half of 2022, monitors were present for 104 of the total 151 of return operations by charter flights supported by Frontex⁵⁷⁶.

On the FRMs' level of participation in these monitoring activities, in 2021 they monitored a total of 18 return operations supported by the Agency⁵⁷⁷, while in 2022 they covered 40 return flights and 20 pre-departures⁵⁷⁸. In 2023 (until 1 September) FRMs monitored 30 return operations, in addition to those covered by the other monitors from the forced-return pool⁵⁷⁹.

To strengthen fundamental rights safeguards in monitoring, the Fundamental Rights Office contributed to the training for forced-return monitors and created networks to increase trust between monitors and national authorities, and international and national organisations⁵⁸⁰.

⁵⁷² Interview with the Fundamental Rights Office.

⁵⁷³ Frontex (2021). 'The Fundamental Rights Officer Annual Report 2020'.

⁵⁷⁴ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵⁷⁵ Frontex (2022). 'Fundamental Rights Officer's Observations to return operations conducted in the 1st half of 2022, 1 January – 30 June 2022'.

⁵⁷⁶ Frontex (2023). 'Observations to Return Operations conducted in the 2nd half of 2022'.

⁵⁷⁷ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵⁷⁸ Frontex (2022). '2022 in brief'.

⁵⁷⁹ Based on an interview with the Fundamental Rights Office.

⁵⁸⁰ Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

During the consultation, several concerns were raised about Frontex's support to Hungary with return operations. FRO recommended that the Agency should not be involved in the return of third-country nationals who are seeking international protection in Hungary⁵⁸¹, while the CF suggested the introduction of mitigating measures to address potential risks associated with return decisions issued by Hungarian authorities⁵⁸².

To address these concerns, the Agency put in place mitigating measures⁵⁸³. For example, it amended the individual form to be filled in by Hungarian authorities for each returnee and handed to Agency staff carrying out the joint operations. The form now includes questions on the possibility to claim asylum ensured by the national authorities to the individual subject to the return decision. Despite this change, concerns persist, with one stakeholder noting that, without additional safeguards, it cannot be excluded that the Agency is involved in return operations that could pose risks to fundamental rights⁵⁸⁴.

EQ15. How has Frontex supported Member States in the area of return through all phases of return procedures (pre-return, forced returns, voluntary returns, post-arrival and re-integration)?

EQ15.1. How has the Agency supported Member States specifically in the area of post-arrival and post-return activities including the roll-out and functioning of the Joint Reintegration Services and other return programmes in third countries?

Frontex has effectively supported Member States through all phases of return procedures. Post-arrival support and reintegration are a relatively new area for the Agency, due to the recent expansion of its mandate. While Article 48(1) of the EBCG Regulation provides for Frontex to assist Member States with post-arrival and post-return activities, these activities are not clearly defined. The Regulation only refers to activities that happen after the return as 'post-arrival' and 'post-return assistance'. There is no reference to the common term 'reintegration' in the Regulation. Under the Joint Reintegration Services (JRS), Frontex has a working definition of post-arrival as 'support upon arrival till a maximum three days after arrival' and post-return as 'support to help a returnee build a new livelihood in the country of return provided within 12 months after departure'. EU stakeholders commented that the lack of clear definitions of

⁵⁸¹ Frontex (2022). 'Fundamental Rights Officer Annual Report 2021'.

⁵⁸² Consultative Forum (2022). 'Annual Report 2021'.

⁵⁸³ Frontex (2022). 'The Fundamental Rights Officer Annual Report 2021'.

⁵⁸⁴ Interview with the Fundamental Rights Office.

post-return and reintegration activities creates operational challenges and legal uncertainty. The business processes of reintegration services are very different to other forms of assistance offered by the Agency, which stakeholders find problematic.

Some Member States⁵⁸⁵ reported that they do not (yet) have any experience in participating/requesting Frontex's assistance as part of JRS. Those countries that received assistance reported positive experiences overall.

Some Member States⁵⁸⁶ believe that the Agency should be given a mandate to organise self-governed return operations from third countries to third countries, in order to prevent secondary movements to EU from neighbouring third countries and build effective return capacity.

EQ15.2. Which role has the Agency in building synergies and connecting Union-funded networks and programmes in the field of return in third countries?

EURLOs helped Member States with re-documentation and facilitated return operations. This added particular value in third countries where Member States did not have a consular presence. The European Centre for Returns Division (ECRET) stated that the annual nature of the financial cycle hinders the effectiveness of operational planning and implementing activities in line with the operational cycle. The deployment of EURLOs to countries like Iraq requires a longer deployment than one year. The annual tenders for reintegration partners do not allow for longer-term capacity-building or relationship-building in third countries of return. Additionally, the procurement processes create additional administrative burden for both Frontex and reintegration partners. This was confirmed in interviews with the Directorate-General for International Partnerships (DG INTPA), which observed inefficiencies in the process that did not allow for longer-term capacity-building.

EQ15.3. How has Frontex supported Member States in terms of coordinating return operations led by Member States?

Frontex coordinates forced-return operations from individual Member States (national return operations) or jointly from more than one Member State (JROs), and with the use of means provided by third countries (collecting return operations). The returns are carried out

⁵⁸⁵ 12 MS/SAC.

⁵⁸⁶ Three MS.

by Member States by air (charter and scheduled flights), sea, and land. Returns by charter flights are carried out by airplanes chartered by either Member States or Frontex, while returns by scheduled flights are implemented on regular commercial flights. The Agency can also provide escort officers to Member States, either ad hoc (for a specific operation) or through long-term deployment of an SCO with the relevant profile.

EQ15.4. How has Frontex provided support to Member States in terms of organising Frontex-led return operations?

In 2022, for the first time, the Agency organised and carried out two end-to-end return operations with charter flights to Albania and Nigeria. Survey respondents reported no issues with the first end-to-end Frontex operations in 2022 and participating Member States were positive in their feedback. A third operation was successfully organised in March 2023 to Bangladesh.

EQ16. How has the exchange of information in the framework of EUROSUR improved situational awareness and reaction at the external borders of EU Member States? This concerns the cooperation between Member States as well as with third countries.

EQ16.1 How has the Agency's and Member States' implementation of the EUROSUR framework been effective in terms of information exchange in order to improve the situational awareness and increase the reaction capabilities among the relevant stakeholders, including in the detection, prevention and combating of irregular immigration and cross-border crime as well as in contributing to the protection and saving the lives of migrants?

EQ16.2 How did the Agency manage to integrate EUROSUR with the rest of the operational activities? Are there any duplications between EUROSUR and other operational information channels?

Although EUROSUR largely supports the provision of a European situational picture, it is unable to fully provide complete and up-to-date awareness of the situation at the EU's external borders. Challenges include possible contradictions in the text of the EBCG Regulation, as well as incomplete implementation. The upgrade of the communication network to CONFIDENTIAL UE/EU CONFIDENTIAL classification level has not taken place, and its value has been questioned, given the cost of the upgrade.

Previously identified issues continue to persist:

- Cooperation levels differ: not all Member States and SACs report border events;

- National coordination centres' practices differ: reported incident formats and timing varies across Member States, leading to poor data quality. Some countries create incident reports for each individual, while others only created incident reports covering several people;
- Development and integration of new capabilities are not fully implemented: the operational and analysis layers of EUROSUR have not been implemented comprehensively.

All Member States and SACs complied with the obligation under Article 21(1) of EBCG Regulation to notify the Commission on the establishment of the National Coordination Centres. Subsequently, the Commission circulated this information to the Member States and SACs and to the Agency in accordance with the Regulation.

All Member States and SACs complied with the obligation under Article 89(1) of Regulation (EU) 2019/1896 to notify the Commission on the details of the national authority designated as a data controller.

The situational picture at the EU external borders that EUROSUR provides can thus only be partially accurate, complete and up-to date. A majority of Member States respondents to the study survey agreed that the implementation of the EUROSUR framework is effective in terms of information exchange to improve situational awareness⁵⁸⁷. However, only a minority agreed that it has been effective in terms of information exchange to increase the reaction capabilities among the relevant stakeholders⁵⁸⁸ or sufficient to improve detection, prevention and combating of irregular migration and cross-border crime⁵⁸⁹.

While input of data by Member States remains a challenge, there have been significant improvements in data quality, flow, and speed of reporting. One of the most notable achievements is the marked increase in data quality, with a decrease in re-entry rates⁵⁹⁰. Frontex suggested that adding a tool to monitor the quality of data reports by Member States could be helpful, with data quality reports

⁵⁸⁷ Survey of MS/SAC: 17/27.

⁵⁸⁸ Survey of MS/SAC: 13/27.

⁵⁸⁹ Survey of MS/SAC: 6/27.

⁵⁹⁰ Frontex. 'Report to the European Parliament and the Council on the functioning of EUROSUR Article 121(5) of Regulation (EU) No 2019/1896'.

potentially feeding into existing quality control mechanisms (vulnerability assessments, Schengen evaluations, etc.), which would issue recommendations where needed⁵⁹¹.

The volume of data has increased in recent years – albeit with limitations due to technical roadworks as part of the implementation process – leading to a more efficient and effective flow of information⁵⁹².

Despite these successes, some areas require further attention. The delay in data entry remains rather high, albeit with exceptions in some Member States. Data latency in EUROSUR is not close to real-time, which makes the information less actionable. This needs to be addressed to ensure close to real-time, automated reporting^{593,594}.

Frontex further highlighted possible contradictions between Articles 28 and 89 of the EBCG Regulation, which impacts on the type of personal data it can process in the context of EUROSUR, and may then impact the effectiveness of the services provided by EUROSUR⁵⁹⁵. These limitations include contradictions regarding the use of open source intelligence in the context of EUROSUR.

Moreover, Frontex pointed out to a legal unclarity regarding the scope of the EUROSUR Security Accreditation Board, being an independent security accreditation authority for the ‘European component’ of EUROSUR (in line with Commission Delegated Regulation 2021/581) and the authority that should be in charge of accrediting the communication network. Currently, the Frontex Communication Network (Article 14) (on which EUROSUR runs) is under Frontex Security Accreditation Authority (SAA), which falls under the Frontex ED. As such, there could be overlaps between ESAB’s role in EUROSUR and the ED’s role as SAA for other systems running on (at least partly) the same network.

Finally, at a technical level, the cooperation between Frontex’s Risk Analysis Unit and EUROSUR has been described as the closest and most useful by Frontex staff, but there are some technical issues with the integration of information from the Joint Operations Reporting and Analysis Framework (JORA) and EUROSUR. Frontex’s decision to temporarily sever the link between the two

⁵⁹¹ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁵⁹² Interview with Frontex.

⁵⁹³ Interviews with Frontex and EU Institution.

⁵⁹⁴ Survey of MS/SAC: 3/27.

⁵⁹⁵ Interviews with Frontex.

information frameworks – due to the increase of classification level to confidential – led to a duplication of information channels, with one Member State reporting that they abandoned reporting via EUROSUR in favour of JORA to avoid double reporting.

3. Efficiency

EQ17. Costs and benefits: What are the costs and benefits generated by EBCG (not only financial, but also operational) in each Member State, in Frontex and overall?

EQ17.1 Are significant differences in cost and benefits in the Member States, and if so, what is causing them?

EQ17.2 Have there been administrative costs or savings for citizens and business?

Most of the costs associated with the EBCG Regulation have been borne by Frontex, i.e. the EU budget. In particular, Frontex budget steadily increased each year from EUR 329.6 million of opening EU contributions in 2019, to EUR 788.9 million in 2023, with the Agency's closing budget almost doubling between 2019 and 2022. The growth is set to continue during the current Multiannual Financial Framework (2021-2027) at an annual rate of approximately 16% until 2027⁵⁹⁶. In line with the extended mandate given to the Agency by the EBCG Regulation, the financial resources dedicated to the SC, the Agency's equipment and horizontal operational support increased significantly, as also shown in the Agency's Single Programming Documents 2022-2024 and 2023-2025. Nevertheless, Member States have also incurred costs in fulfilling the obligations and activities outlined by the Regulation.

Apart from financial transfers from Frontex and resource pooling (which aims to achieve economies of scale and scope), the identified benefits are primarily non-monetary. They include harmonising procedures among Member States and sharing best practices.

Main findings on the financial and non-financial costs borne by Member States:

- A significant proportion of resources from national budgets is allocated to IT-related activities, particularly for EUROSUR upgrades. The amount of IT-related funds for Member States is consistent with the increasing investments of Frontex in IT systems for situational awareness, information exchanges and security, and these activities are expected to increase in the coming years, based on the Frontex Information Management Framework. While Frontex handles a considerable portion of IT

⁵⁹⁶ For additional details on the opening EU contributions to the Agency from 2019 to 2027 and on the closing contributions from 2019 to 2022 please refer to Annex IV – Overview of benefits and costs.

investments, Member States are responsible for developing national modules to connect with EU systems and facilitate information exchange.

- Member States have used EU funds⁵⁹⁷ to implement the EBCG Regulation and manage borders and migration. These funds benefit Member States and also foster their contribution to increase Frontex operational capacity, by registering also the acquired means of transport and border surveillance in the Agency's technical equipment pool.
- The allocated amount to Member States programmes (incl. the Schengen Associated Countries) from the 2014-2020 ISF-Borders and Visa is EUR 2.4 billion, while under 2021-2027 Border management and Visa Policy Instrument (BMVI), it amounts to EUR 4.2 billion – these two instruments supporting to a significant extent also the implementation of EBCG Regulation by the Member States.
- Under the 2014-2020 ISF-B, by means of three Specific Actions launched in 2015, 2017 and 2018, an additional total amount of EUR 335.8 million⁵⁹⁸ has been supporting Member States with the purchase of border surveillance equipment to be put at the disposal of Frontex (up to 90% EU co-financing rate of the total eligible expenditure).
- Under 2021-2027 BMVI, a similar specific action was launched in 2022 for the purchase by the Member States of equipment to be put also at the disposal of Frontex, in total, EUR 201.1 million EUR being added to the Member States BMVI programmes. A similar BMVI specific action is envisaged to be launched in 2024.
- The strategic and operational planning process imposed by the EBCG Regulation on Member States has proved burdensome and somewhat inefficient. Operational, capability and contingency plans have posed challenges due to overlaps with situational awareness tools (vulnerability assessment) and other mechanisms, burdening smaller Member States with limited resources. The development of national capability plans was delayed, causing further delays at both EU and national level. The requirement for advance planning of TE deployment has been problematic for Member States, exacerbated by limited guidance and the novelty of the process. However, these challenges are expected to decrease in the future.

The main benefits of the EBCG Regulation for Member States:

⁵⁹⁷ Internal Security Fund (ISF) – Borders and visa (2014-2020); Integrated Border Management Fund (Border Management and Visa Instrument (BMVI) 2021-2027); Asylum, Migration and Integration fund (AMIF) (2014-2020); Asylum, Migration and Integration fund (AMIF) (2014-2020).

⁵⁹⁸ See https://commission.europa.eu/system/files/2020-06/db_2021_programme_statement_internal_security_fund.pdf (p. 3).

- The majority believe that the objectives of the Regulation could not have been adequately achieved by Member States alone, except for measures within the Schengen area where views are more neutral. Smaller countries and those with borders facing migration routes expressed greater satisfaction with the support received from Frontex, particularly in terms of risk analysis, returns, and deployment of resources. Differences in perceived benefits can be attributed to variations in operational needs and levels of support received. Issues such as resource availability, deployment speed, reimbursement values, and filling quotas for secondments and deployments may impact the overall perception of Frontex's support.
- The availability of TE provided by Frontex to Member States has increased, particularly in light and portable TE (total increase in TE from 2019 and 2020 was of 51% for the TE available and of 61% for the asset-days, while in these percentages reached respectively 65% and 68% for the first quarter of 2023). In addition, major TE, such as vessels and aircraft, have seen a shift towards the Central/Western Mediterranean, Eastern Mediterranean, Eastern Borders, and Western Balkans migratory routes. The deployment of TE aligns with migratory pressures and the type of border to be surveyed. While stakeholders supported the concept of a TEP to reduce costs for Member States, availability and deployment challenges remain. Some Member States faced obstacles in purchasing TE, mostly due to reported discrepancies between emerging national priorities and the legal obligation of making EU co-funded equipment available to the Agency (as stated in Article 64(14) of the EBCG Regulation). Issues with equipment availability and maintenance procedures were also reported.
- The SC is perceived positively by Member States for its contribution to border management activities. The number of officers and deployments has increased, particularly for Member States facing Central/Western Mediterranean, and Eastern Borders and Western Balkans migratory routes. However, there are challenges with the adequacy of individual Member State's contributions and the reimbursement of costs, which has led to additional expenses for some countries. Budgetary restrictions, recruitment difficulties, and administrative workload were also identified as issues.
- Member States greatly value the support provided by Frontex on returns, recognising advantages such as time and administrative burden savings, financial savings, and the availability of additional resources. Estimated (self-reported) savings from four Member States for 2022 range from EUR 190,000 (in the case of Estonia) to EUR 34.3 million (in the case of Malta)⁵⁹⁹. The FAR system was praised for its ease of use and cost reduction. Frontex's adaptability during the COVID-19

⁵⁹⁹ Figures to be taken cautiously: since self-reported, their comparability is unclear. Furthermore, it is unclear to what extent these are net financial benefits or simply transfers of costs from Member States to Frontex.

pandemic and the freeing-up of national staff through the deployment of Frontex officers was also acknowledged. Indirect benefits include the reduction of secondary movements and networking opportunities.

Businesses operating in areas relevant to Frontex activities (e.g. equipment, logistics) could in principle benefit from centralised procurement procedures managed by Frontex, as well as for a possible harmonisation of standards which can result from Frontex activities. However, these are indirect effects hard to detect and assess, especially in the years under consideration due to the challenges with procurement processes experienced by Frontex.

There is limited anecdotal evidence of indirect effects for citizens, too partial for any projection at EU level or quantification. The activities in the area of returns of Frontex and the participation of Member States to JROs have contributed to a larger use of charter flights for the return of citizens, instead of commercial flights.

EQ18. What factors have influenced the efficiency of the implementation of the EBCG Regulation? How and to what extent? (e.g. governance and set-up, clear division of competences between Member States and Frontex, policy framework, legal base, etc.)

Key external and internal factors influenced the efficiency of the implementation of the EBCG Regulation.

The overall disruptive impact of COVID-19 on the implementation of the EBCG Regulation cannot be underestimated. As a result, Frontex was not able to implement all of its activities, recruitment and deployment of the SC was delayed, and financial implementation was affected. Disruptions in the global supply chain made the provision of TE more complex, leading to delays in availability.

The unpredictable geopolitical environment of recent years has further meant that Frontex has had to adapt quickly to unforeseen challenges at external borders, impacting its ability to plan and diverting its resources away from anticipated activities. The most challenging events have been the Belarus border crisis and the creation of an artificial migration route on Europe's Eastern border, as well as the full-scale invasion of Ukraine by the Russian Federation in February 2022. For an Agency in transition, having to react quickly in such a challenging environment leaves less room for the proper development of its own internal procedures and processes.

At the same time, Frontex's ability to step-up its operational support to Member States on the Eastern border has highlighted the added value of the Agency.

A number of internal factors impacting the efficiency of Frontex activities have been identified.

Firstly, instances of a lack of legal coherence have created challenges impacting on the implementation of Frontex mandate, including:

- Inefficiencies stemming from the application of the EU Staff Regulations to the Category 1 SC, as the Staff Regulations are not best suited to an operational, uniformed and armed services (e.g., complex travel management for numerous deployments of individuals leading to cumbersome administrative process and delays in reimbursements of staff, misalignment of working hours, etc.).
- Interpretation issues in relation to the scope of Frontex's supporting role in the fight against cross-border crime and on the purpose (and limits) to processing operational personal data (Article 90). The explicit narrowed possibilities for Frontex to process operation data (Articles 90 and 10(1)(q)) frame its role and scope of responsibilities in this area. Although the EBCG Regulation is clear on the purpose of operational personal data processing, the MB 69/2021 leads to some ambiguity, as stressed by the EDPS.

Furthermore, additional internal challenges impacting on efficiency are:

- The current organisational structure of Frontex, which does not fully support the implementation of its mandate. This is especially true of the SC, which is overseen by several Divisions, leading to multiple reporting lines as well as a lack of clear structure for the SC.
- Operational issues faced by SC staff when deployed (including lack of access to databases) leads to inefficiencies in the support they are able to provide on the ground.
- Procurement issues; the implementation of Frontex activities faced challenges in the procurement of TE, exacerbated by the disruptions caused by the COVID-19 pandemic. These challenges include gaps in the current hiring matrix, which does not include highly specialised operational staff to assess technical specifications; adapting TE to different terrains and navigating varying standards across Member States. Inefficient procurement choices (including leasing of cars instead of purchase) can result in financial costs (higher insurance and maintenance expenses) and non-financial costs (delays, duplication of costs, damage to Frontex's image).

When asked about the division of competences between Frontex and Member States, overall, both Member States and Frontex felt that this was clear and did not lead to additional inefficiencies⁶⁰⁰.

EQ19. Are there any inefficiencies in the implementation of the EBCG Regulation? What is the simplification and cost reduction potential of the Regulation?

The most substantial issues that create inefficiencies were linked to:

- Structure and deployment of the SC: the present deployment mode of SCOs is based on individual deployments. While such flexibility is well founded in some instances (e.g. ALDO experts at BCPs), in others (e.g. large groups of BGOs) it is inefficient. Frontex is considering within its new structure approaches to setup SC organisational units. Eliminating individual officers having to arrange logistics for accommodation, transportation, transfer of personnel equipment (firearms), etc, will help raise efficiencies of scale.
- Lack of clearly developed logistics concept, absence of antenna offices: As some of the case studies showed, lack of local arrangements forced SCOs to drive excessive distances to fuel service vehicles⁶⁰¹, or to find accommodation⁶⁰².
- The delayed adoption of the Agency's acquisition strategy (September 2023) and delays in developing a clear vision for the deployment of the SC, resulting in reliance on rented or short-term leased vehicles. Such solutions are often not feasible for border guard needs (e.g. need to have vehicles of certain colour, or to install various equipment – communication, special lights, etc). The high costs borne by Frontex for rentals in 2023⁶⁰³, could also be sufficient to purchase number of vehicles for Frontex needs. No analyses have been done by Frontex on buy vs. lease vs. rent.
- The decision to use Member States training centres instead of developing Frontex own training facility. The current reliance on MS training centres leads to high costs. No analysis has been done so far by Frontex to assess if in the mid to long run, the current grants-based approach is more efficient than the development of the Agency's own training facility.

⁶⁰⁰ Survey with MS/SAC; Frontex interview.

⁶⁰¹ Case study in one MS.

⁶⁰² Case study in one MS.

⁶⁰³ See: Frontex rental requirements, <https://frontex.europa.eu/innovation/announcements/invitation-to-frontex-online-vehicle-rental-industry-day-6-july-2022-hIMZZy>, and tender: <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=13380>

- Decision to split the entry of incident information between JORA and EUROSUR. NCCs reported that presently, they need to re-enter manually JORA incident data into EUROSUR (as well as their national systems), indicating in some instances triple entry of identical information⁶⁰⁴ Previously such information was simultaneously entered into both systems.

Several other inefficiencies linked to administrative burden resulting from the implementation of the EBCG Regulation were identified:

- Member States face additional costs and administrative burdens related to the reimbursement of Category 2 and Category 3 officers, including travel costs and other expenses, which are often insufficient to cover the full costs or to motivate experienced officers to be deployed. Recent changes in reimbursement reporting requirements for Member State staff have reportedly increased the administrative burden on Member States⁶⁰⁵.
- Similar issues arise with the financial support under Article 61 for officers, with a cumbersome administrative system and inadequate reimbursement levels making it challenging for Member States to maintain staffing levels and meet national needs. The administrative workload leads to a mobilisation of resources that could be used more effectively by Member States. Moreover, the correction coefficient for reimbursement under Article 61 does not adequately account for changes in the costs of living, but is not related to the implementation of the Regulation per se.
- The EBCG Regulation imposes a number of obligations on Member States relating to the multiannual strategic planning process of Frontex, which may lead to potential duplication of efforts and thus present a potential for simplification. Member States highlighted that the operational plans (art. 9) overlap with the situational awareness tools to some extent, as well as with other mechanisms (e.g., SCHE-VAL⁶⁰⁶). While the situational awareness tools can help Member States with the operational planning, it can overburden resources.

The above processes need further analysis with a view to achieving simplification and cost reduction.

⁶⁰⁴ Interviews with two MS.

⁶⁰⁵ Interview with one MS. Reportedly SC officers internally deployed from one border to a JO, also created significant additional workload – instead of bulk reporting of costs, individual receipts and reporting from each officer was introduced by Frontex. As personnel has a frequent rotation schedule (e.g. bi-weekly), this forces Member States to continuously report on costs and provide resubmission request.

⁶⁰⁶ Schengen evaluation and monitoring mechanism.

See: https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring_en

EQ20. Do the resources that have been allocated to Frontex correspond to the tasks assigned to the Agency by the EBCG Regulation?

The allocation of human and financial resources in Frontex's strategic planning has been broadly in line with the tasks assigned to the Agency by the EBCG Regulation (Article 10).

Between 2020 and 2023, human resources were more uniformly distributed across Frontex tasks than financial resources. Since the beginning of the implementation of the EBCG Regulation, the number of staff allocated to operational response tasks increased slightly, from 24% of the total in 2020 to 30% in 2023. Situational awareness followed the opposite trend, although it remained a relatively staff-intensive task. The share of human resources allocated to returns remained stable. The proportion of personnel focused on the development of SC and technical equipment pools remained broadly unchanged. In 2020, immediately after the entry into force of the EBCG Regulation, the share of planned financial resources for the hiring and training of SC was highest, at 28% of the total⁶⁰⁷. Similarly, the financial resources allocated to situational awareness were relatively higher in 2020, which may be linked to the upgrade of the EUROSUR system while the opposite was true for operational response and technical equipment. As these estimates were made at the beginning of the year, the relatively lower allocation for operational response should not be interpreted as a consequence of the COVID-19 pandemic. The proportion of funds assigned to returns remained fairly stable between 2020 and 2023.

The adopted or forecasted budgets for 2022 and 2023 show that the financial resources committed to operational expenditure increased significantly following the introduction of the EBCG Regulation. The commitments for operational response activities – European Standing Corps, Agency equipment, and horizontal operational support – increased most⁶⁰⁸. The data show that relatively high amounts were committed to the development of the SC in 2020. As these figures account for the budget amendments triggered by the COVID-19 pandemic, they reflect any logistical or procurement difficulties encountered in 2020 and 2021. In particular, after internal transfers and reductions, commitments for return activities and information and data analytics were affected more than those assigned to the SC⁶⁰⁹.

⁶⁰⁷ The average for 2021-2023 is just below EUR 400,000, compared to EUR 1.87 million in 2020.

⁶⁰⁸ 102% increase for European Standing Corps, 53% increase for Agency equipment, 52% increase for Horizontal operational support, from 2019 to 2022.

⁶⁰⁹ Frontex (2020). 'Final Annual accounts 2020'. Frontex (2021). 'Final Annual accounts 2021'.

EQ21. How has Frontex used its human and financial resources to achieve the objectives set out in its work programmes during the 2019-2023 period? Is the distribution of resources adequate for meeting these objectives?

Frontex has effectively allocated its human and financial resources, aligned with its strategic and horizontal objectives and the implementation requirements of the EBCG Regulation. Since 2021, staff have shifted towards strategic objectives related to operational activities rather than horizontal objectives such as internal management and cooperation. The SCs development drove financial resources allocation in 2020, while resource planning from 2021 onwards has been stable, prioritising operational support, returns, and horizontal management.

Taking into account the total staff of the Agency, including the recruited permanent SC, it is clear that the human resources dedicated to operational response and management increased significantly in the years following the adoption of the EBCG Regulation. The staff of the ETIAS Central Unit and the FRO also appear to have increased in relative terms. Conversely, the proportion of human resources devoted to internal management decreased. However, if the Category 1 SC are excluded, the proportion of non-deployable human resources allocated to operations remained unchanged over the years. The same is true for returns and international cooperation. Instead, the proportion of staff allocated to capacity-building and situational awareness decreased. The relative growth of staff allocated to ETIAS and FRO can also be observed here. Finally, the proportion of staff working in internal management decreased, while executive management increased slightly in relative terms.

Overall, the Agency can count on approximately 1,000 staff in the Agency's headquarters and can recruit up to 4% of the total number of the SC set out in Annex I for supporting functions related to the establishment of the SC (up to 400 by 2027). At the same time, while the EBCG Regulation states that the SC need to be deployed in operational areas, a substantial number of the SC staff members were deployed in the different entities of the Agency's headquarters. This triggered discussions on the need for certain SC profiles to be deployed at the headquarters to perform operational functions (see Annex III.B - Review of the SC).

The activities related to the enforcement and monitoring of fundamental rights constitute an additional horizontal responsibility throughout the Agency's operations. Indeed, Frontex allocates a portion of its available human and financial resources to maintaining

its fundamental rights framework⁶¹⁰ and 'Fundamental rights activities' constitutes a separate category of expenditure in its budgets. This indicates that although the allocation of resources to fundamental rights activities increased following the introduction of the EBCG Regulation, the amounts committed in the budgets did not keep pace. However, this issue was resolved in 2022.

Frontex faces a significant challenge in implementing its increasing financial resources, despite their initial annual budgets have been reduced by the budgetary authority. Besides the general MFF 2021-2027 reduction in the Agency's budget (40%), further reductions were applied to the annual budget for Frontex in 2021, 2022 and 2023. The Agency's budget in those years was reduced by EUR 61 million⁶¹¹, by EUR 65 million and EUR 50 million respectively. Despite these cuts, the Agency recently released EUR 15 million of its EU contributions for 2023, EUR 57,2 million in 2022 and EUR 14,6 million in 2021. Moreover, in the years 2019 and 2020, the Agency also released respectively 22,3 million and 98,9 million (mainly due to the challenging circumstances caused by the COVID-19 pandemic). At the same time, based on the executed budget, the implementation of the appropriations is sound, confirming that the agency is still quite effective in forecasting its short-term budget implementation. Moreover, the Agency has largely been able to adapt its budgetary management to the new mandate and expected operational results. Some areas of expenditure, generally related to the implementation of the EBCG Regulation, have proved particularly problematic from a budgetary and financial management perspective.

Frontex's ability to spend its voted budget within the year was lower in 2020 and 2021 than in 2019, but only for 'infrastructure and operating expenditure' and for 'operational expenditure', while 'staff expenditure' remained within targets. Nevertheless, Frontex has generally been able to spend the amounts carried over from the previous year, with no significant difference between the three years considered. The implementation analysis of these appropriations indicates that the great majority (about 90%) of the amounts carried forward under 'Infrastructure and operating expenditure' and 'operational expenditure' are paid within the year following the initial commitment, while a greater proportion (50%) of those recorded under 'Staff expenditure' is returned each year, although this is small in absolute terms.

⁶¹⁰ Corresponds to Key Activity 6.4.1 in the Agency's SPDs.

⁶¹¹ The 61 million is backloaded to 2025, 2026 and 2027 (EUR 61m/3).

A more in-depth analysis of budget implementation of 'operational expenditure' reveals that 'Agency equipment' and 'strengthening capacities', which includes training and research and innovation, are particularly problematic budget items, due to relatively low payments and relatively high carry-over cancellations (for instance, in the monthly budget implementation reports covering 2021 and 2022, the Agency reported 22% cancellations of carried-over funds under 'Agency equipment' in 2021 and 15% in 2022, corresponding respectively to EUR 5.9 million and EUR 13.4 million). A key challenge in this regard has been the insufficient clarity on the multiannual acquisition strategy and logistics concept, linked to the delays in the adoption of the multiannual acquisition strategy⁶¹². On the other hand, expenditure related to the SC displays low percentages of returned appropriations.

EQ22. How and to what extent has the governance and organisational structure of the Agency enabled Frontex to perform its tasks, having regard to its size, composition and organisation?

The governance structure in the EBCG Regulation focuses on Frontex and supports the performance of its tasks. In addition, effectiveness and efficiency improvements could be achieved through greater strategic guidance from the MB, simplifying some of the approval procedures within the European Commission, and enhancing internal resources in key offices (e.g. DPO).

Looking at governance in the context of the EBCG Regulation, the focus remains on the governance of Frontex itself and not of the national authorities, as Member States retain primary responsibility and competence for management of their borders. The governance model of Frontex is largely in line with the Common Approach on Decentralised Agencies⁶¹³. The roles of the MB and ED – as well as the accountability of the ED to the Commission, Council and EP – are well-defined in the EBCG Regulation, with the Agency expected to report fully on its activities to the EP, to the Council and to the Commission. Several independent internal bodies were established within the Agency to support its governance, including a DPO, FRO and IAC.

The expanding workload of the MB in line with the expanding mandate of Frontex represents a challenge. However, there appears less of a need to redefine MB's role, but rather, an impetus to simplify its procedures to make its decision-making and oversight more

⁶¹² The multiannual strategy for acquisition and management of the Agency's equipment has been adopted on 15 September 2023 with Management Board decision 28/2023.

⁶¹³ Interview with European Commission, Secretariat-General.

efficient. According to a small minority of Member States, the expanding mandate creates a high workload for MB members, often leading to discussions of very technical issues that are not a priority for all⁶¹⁴ and leaving limited time for high-level strategic discussions (including on key documents, like the Single Programming Document (SPD))⁶¹⁵. Attempts to steer discussions within the MB towards more strategic topics are seen as an improvement⁶¹⁶. For many Member States, the national authorities represented at the MB are not those responsible for return activities, impacting the effectiveness of strategic-level governance on return policies⁶¹⁷.

The creation of an Executive Board (EB) to support the MB was seen as a positive step in helping to identify and analyse strategic issues⁶¹⁸. The MB and the EB are supported by the Working Group on Budget and Accounts⁶¹⁹, which undertakes the preparatory work on accounts and budget to facilitate decision-making by the MB, as well as dealing with human resources and audits.

Strategic guidance by the MB may be strengthened by the multiannual strategic policy cycle for EIBM, which will allow the MB and its dedicated Working Group on EIBM to guide and oversee the development of the technical and operational strategy and its implementation processes⁶²⁰.

With regard to the European Commission, overall the stakeholders interviewed felt that the Commission's powers were well defined⁶²¹. At the same time, the high volume of responsibilities confers a high workload, including very formalised procedures, such as having to issue a formal opinion, approval or recommendation, which may require an approval of the College of Commissioners (sometimes on quite technical issues).

⁶¹⁴ Interviews with MS/SAC authorities.

⁶¹⁵ Interviews with MB and Frontex.

⁶¹⁶ Interview with DG HOME.

⁶¹⁷ Interviews with two MS.

⁶¹⁸ Interviews with MB, DG HOME, Frontex.

⁶¹⁹ The Management Board Working Group on Budget and Accounts was established by Management Board Decision 25/2014 of 27 November 2014; then reinforced by Management Board Decision 33/2016 of 19 October 2016, which adopted a new concept; Management Board Decision 23/2021 of 25 March 2021 stipulates that the Working Group on Budget and Accounts should support the Executive Board.

⁶²⁰ European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of the Regulation (EU) 2019/1896'. COM(2022)303 final; European Commission (2023). 'Communication establishing the multiannual strategic policy for Europe-an Integrated Border Management'. COM(2023) 146 final.

⁶²¹ Interviews with MB (with one Member State questioning whether the Commission requires two representatives) and Frontex.

The political scrutiny and budgetary oversight of the EP appears largely effective according to stakeholders, with the EP enhancing its oversight following intense media pressure on Frontex. In January 2021, it created a FWSG to monitor the Agency's compliance with fundamental rights⁶²². A report of the Working Group on its investigation was presented in July 2021⁶²³.

The report by the EP's FSWG noted that parliamentary oversight could be strengthened in relation to the role of national parliaments holding their own national governments accountable⁶²⁴. This has highlighted the need to use Article 112 of the EBCG Regulation, which allows for cooperation between the EP and national parliaments to exercise scrutiny more effectively. This is especially relevant in the context of the shared responsibility of Frontex and national authorities.

Some external stakeholders believe that a permanent EP representative on the MB would enhance oversight⁶²⁵. However, interviewees from the Parliament did not favour this option, given the need for the EP to retain independence⁶²⁶.

On the powers of the ED assisted by three Deputy Executive Directors, the stakeholders overall considered the powers of the ED to be well defined in Article 106 of the EBCG Regulation. The decision to expand the management structure of the Agency to include three Deputy Executive Directors with well-defined portfolios is seen to add efficiency in light of the expanding Agency mandate, as well as moving towards delegated decision-making rather than relying on an overly centralised model⁶²⁷, but additional decentralisation at division level could be beneficial, to better account for the Agency's growing size and tasks.

The current organisational structure of the Agency is not sufficiently aligned with its new mandate and suggests an underestimation of the human and administrative resources needed to support the expanding mandate, therefore further changes are needed. In 2018,

⁶²² European Parliament (2022). 'Scrutiny of Frontex'. Briefing. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698816](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698816)

⁶²³ European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee. Available at: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf

⁶²⁴ Strik, T. (2022). 'European oversight on Frontex'. Available at: <https://verfassungsblog.de/european-oversight-on-frontex/>

⁶²⁵ European Council on Refugees and Exiles (ECRE) (2021). 'Holding Frontex to account: ECRE's proposal for strengthening non-judicial mechanisms for scrutiny of Frontex'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

⁶²⁶ Interviews with MEPs.

⁶²⁷ Interviews with Frontex and the European Commission.

Frontex comprised four divisions and one unit⁶²⁸. As of 2022, it has nine divisions⁶²⁹, each with a coordination office to facilitate horizontal cooperation. Comparing the 2018 structure of the Agency with its current structure shows that despite its expansion in response to its new mandate, it still failed to adequately accommodate the necessary operational management for the SC. The transformation from a traditional EU agency administration into an operational agency able to deploy, manage and logistically support a 10 000-strong SC, consisting (primarily) of officers and specialised equipment and assets, is still incomplete.

According to the updated Roadmap for EBCG Regulation implementation (November 2022), the Agency plans to carry out a broad functional evaluation of the workload and available competencies of staff, including considering possible reallocations between divisions and units in 2023 to ensure that all units have the staff to ensure the timely implementation of the EBCG Regulation. The need for a functional review was emphasised by the IAC, which pointed to the need to ensure that the new structure corresponds to the needs of the Agency (outputs, needs, key functions and outcomes).

Discussions are ongoing on how best to embed the SC into the organisational structure of the Agency. The SC is currently overseen by a number of divisions, which creates ambiguity. On the operational level, this results in multiple reporting channels, including the functional line of reporting and the Coordinating Officer. SC officers are not clearly informed that they should report to their Coordinating Officer on the ground and sometimes perceive their functional manager as their line of reporting. It also means that functionally, Deployment Management Division staff have responsibility for SC (including writing their performance reviews) though they have no clear understanding of the day-to-day work each SC staff performs.

The Agency waited for the appointment of a new ED (in post as of March 2023) to start internal discussions about possible reorganisation⁶³⁰. The new organisational structure of the Agency is expected to be adopted by the MB in November 2023.

EQ23. How have the Agency's procedures and working practices been conducive to performing its tasks?

⁶²⁸ Management Board Decision 4/2018 of 9 March 2019 amending Management Board Decision 18/2017 of 14 June 2017 on the new organisational structure of the Agency.

⁶²⁹ Management Board Decision 46/2022 of 13 August 2022 amending Management Board Decision 43/2020 on the Agency's amended organisational structure.

⁶³⁰ Interview with Frontex.

EQ23.1 How have the Agency’s internal coordination mechanisms (including Director briefings) helped facilitate cooperation at horizontal level?

EQ23.2 Have the Agency’s human resources been deployed effectively?

EQ23.3 How have the Agency’s strategies, action plans, operating procedures and guidelines supported the performance of its tasks?

Frontex internal horizontal coordination mechanisms should be strengthened to improve the execution of the Agency’s tasks.

In 2022, the European Commission’s Internal Audit Service (IAS) highlighted the lack of sufficient internal coordination mechanisms as one weakness within Frontex⁶³¹. This is partly due to the fragmented organisational structure, as well as to insufficient existing horizontal coordination mechanisms.

Key forums for horizontal coordination include regular director briefings, which allow for updates from the director of each division to the ED. Each division has a coordination office, which has met regularly with the Frontex Executive Management Bureau in an attempt to improve and operationalise internal coordination⁶³². Nevertheless, there is reportedly room for further improvement, to ensure better coordination across divisions and units⁶³³.

Resource allocation seems to have been somewhat adequate for developing and managing human resources and TEPs. However, the analysis of the Agency’s planned resource allocation and key performance indicators (KPIs) indicate that the efficiency of financial resources has varied considerably over the years and understaffing might have been an issue for the development of the SC.

In consultation with the European Commission and the MB, Frontex developed a Roadmap for the implementation of the EBCG Regulation. Structured according to sections of the Regulation, the Roadmap is continuously updated, most recently in 2022⁶³⁴, and helps to inform Frontex programming documents and the implementation of its mandate. However, this Roadmap has provided an

⁶³¹ European Commission (2022). ‘Final audit report on governance, stakeholder management and external communication in the European Border and Coast Guard Agency’, p. 2.

⁶³² Interview with Frontex.

⁶³³ Interviews with Frontex.

⁶³⁴ Frontex (2022). ‘Roadmap: Implementation of Regulation 2019/1896’. EMB/ESO/November/2022.

overview of steps to be taken in a horizon of 1-2 years, focused on more immediate and short-term priorities. As such, at this point in time, there is no Roadmap in place indicating when exactly the Regulation will be implemented in full. Beyond the Roadmap, progress and planning related to information and communications technologies (ICT)-related activities (including EUROSUR, FADO and ETIAS) are also reported in the Frontex Information Management Framework and ICT Strategy 2022-2027.

4. Coherence

EQ24. To what extent are Frontex data collection for the risk analysis and vulnerability assessments coherent?

While the data collections for risk analysis and vulnerability assessment should be coherent with one another, the processes within Frontex are not sufficiently interlinked. One issue is that vulnerability assessment data are not fully used in risk analysis products. This discrepancy is due to a certain level of conceptual misalignment between methodologies. In addition, the level of confidentiality of vulnerability assessment data means that it is harder to access this information for risk analysis.

Frontex has separate systems for producing risk analyses and vulnerability assessments, which impacts their coherence. These systems are managed by separate units (Vulnerability Assessment Unit and Risk Analysis Unit), based on separate administrative processes and separate sources of information. Data collected as part of vulnerability assessments are classified, making them harder to share and access. While the purpose of vulnerability assessments is to allow Member States to address their own specific weaknesses, risk analysis can take a more overarching and EU-wide approach, with an associated lower level of sensitivity. A high-level stakeholder at Frontex underlined that these processes – particularly vulnerability assessments – should be treated separately as a matter of trust between the Member States and Frontex⁶³⁵.

The Frontex vulnerability assessment methodology is structured around a single overall process, resulting in annual baseline assessments.⁶³⁶ From an institutional perspective, Frontex's vulnerability assessment and risk analysis processes are coherent, bear little to no overlap in data collection (with one being broadly internally focused and the other outwardly focused), and are inherently complementary processes. There is alignment, at least in principle, between the guidelines for each process.

⁶³⁵ Interview with Frontex.

⁶³⁶ Management Board Decision 39/2016 of 23 November 2016 on adopting the Common Vulnerability Assessment Methodology.

In practice, however, there is incoherence between vulnerability assessment and risk analysis. While risk analysis is meant to include ‘vulnerabilities’, the Frontex vulnerability assessment does not feed into its risk analysis. The core of the problem, as identified by Frontex and Member States, is that the definition of vulnerability in CIRAM does not match the definition of vulnerability in CVAM⁶³⁷. For Member States, vulnerability assessments (as conducted by the Vulnerability Assessment Unit) are a concrete, quantitative and capacity-based system with measurable outcomes. Conversely, the conceptualisation of vulnerability in CIRAM includes ‘pull factors’, reflecting broader factors influencing the arrival of migratory flows from outside the EU⁶³⁸. In terms of migratory movement, Member States’ capabilities in dealing with border management crises do not represent a pull factor for migrants.

The day-to-day management of these processes falls on Frontex. Two interviewees at Frontex stated that the two processes were definitionally intertwined but needed to be further integrated for the sake of the quality of situational awareness more broadly⁶³⁹.

Stakeholders raised questions about the level of access to vulnerability assessment data. Even without the conceptual conflict between CIRAM and vulnerability assessment, the level of classification of vulnerability assessment data creates an issue in Frontex’s ability to access and integrate those data in risk analysis. Perceived political sensitivity among Member States means that the level of classification of these data are set at a higher level, hindering associated EU institutions’ access (compared to the wider range of publicly available risk analysis data and products)⁶⁴⁰. According to Frontex, Member States are reluctant for their vulnerability assessment data to enter the risk analysis process and therefore be available for scrutiny of other actors outside the one-to-one basis with Frontex.

EQ25. To what extent have the objectives and activities of the EBCG been coherent with other relevant EU policies and objectives? (e.g. migration and asylum, EU visa policy, EU's Common Foreign and Security Policy, Common Security and Defence Policy (CSDP), etc.)

⁶³⁷ Interview with Frontex (headquarters visit).

⁶³⁸ Interview with one MS.

⁶³⁹ Interviews with Frontex.

⁶⁴⁰ Interview with DG HOME.

Overall, the objectives and activities of the EBCG are coherent with other relevant EU policies and objectives. The Commission is specifically tasked with providing additional oversight and support to ensure coherence of Frontex activities with wider EU policies. As stated in the EBCG Regulation, the Commission should ensure consistency between EIBM and other Union policies in the field of the Union's external action and, in particular, the CSDP⁶⁴¹.

The adoption of the International Cooperation Strategy provides an overarching framework for ensuring the coherence of Frontex activities with other EU policies, as it is grounded in the EU legal and policy framework, including the Common Approach on Decentralised Agencies. The Strategy was drafted in consultation with relevant EU partners DG HOME, Neighbourhood and Enlargement Negotiations (DG NEAR), International Partnerships (DG INTPA), the EEAS, Member States and SACs, and the CF⁶⁴² to ensure coherence and synergies with other EU actors. It highlights the guiding policies⁶⁴³ Frontex uses to prepare its external priorities⁶⁴⁴.

The New Pact on Migration and Asylum⁶⁴⁵ builds on the EBCG Regulation and foresees the Agency contributing to several dimensions of the Regulation, especially given its enhanced role in returns⁶⁴⁶. The New Pact mainly focuses on the roles of the former European Asylum Support Office (EASO) (now EUAA) and Frontex. In principle, the New Pact is coherent with the Agencies' practices. However, significant parts are yet to be adopted by the co-legislators, making it difficult to fully evaluate coherence at this point⁶⁴⁷.

⁶⁴¹ Recital 89 of the EBCG Regulation.

⁶⁴² Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023', p. 9.

⁶⁴³ For example, the New Pact on Migration and Asylum; the Commission proposal to recast the Return Directive, the new European Security Union; the European Neighbourhood Policy; the European Development Policy, such as the European Consensus on Development; the Global Approach to Migration and Mobility (GAMM); the European Maritime Security Strategy (EUMSS) and the Global Strategy on Foreign and Security Policy for the EU; as well as region-specific strategies, such as the Commission Strategy on the Western Balkans, complemented by the Zagreb Declaration, the joint Council and the EEAS Eastern Partnership policy beyond 2020, and the EU Strategy with Africa.

⁶⁴⁴ Frontex (2021). 'Frontex International Cooperation Strategy 2021-2023'.

⁶⁴⁵ Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 23.9.2020 COM(2020) 609 final.

⁶⁴⁶ Interviews with European Commission Secretariat-General (2), and EEAS (1).

⁶⁴⁷ Interviews with European Parliament (2/4); for an overview, see European Commission (2023). 'State of Play: New Pact on Migration and Asylum'. Available at: https://ec.europa.eu/commission/presscorner/detail/en/fs_23_1850

The renewed EU Security Union Strategy⁶⁴⁸, adopted on 24 July 2020, highlights Frontex's supporting role in contributing to the prevention and identification of cross-border crime, including terrorism, at the external borders through border control, and reflects its enhanced mandate to strengthen EU coordination so as to support Member States to address common challenges.

The CSDP is an essential part of the EU's Common Foreign and Security Policy (CFSP), described in the Treaty of the European Union (TEU) and serving as the main framework for CSDP missions⁶⁴⁹. Article 21 of the TEU 'recalled that multilateralism is at the core of the EU's external action. Accordingly, EU partners can participate in CSDP missions and operations'⁶⁵⁰. The EBCG Regulation is aligned with these frameworks and establishes guidelines and objectives for the cooperation between Frontex and CSDP missions⁶⁵¹.

Frontex's work in the external dimension is coherent with the EU Action Plan on the Western Balkans (2022)⁶⁵² and the EU Action Plan for the Central Mediterranean (2022)⁶⁵³. The priorities set out in the Action Plans include strengthening border management, ensuring swift asylum procedures, taking action against the smuggling of migrants, and return. It emphasises the cooperation of Western Balkan countries with Frontex under the framework of existing and new Status Agreements. The Action Plan for the Central Mediterranean refers to Frontex's work in the area of returns, the role of Frontex and Member States in carrying out targeted assessments of the situation in the Central Mediterranean and reinforcing support through joint operations, as well as the need to conclude the working arrangement between Frontex and EUBAM Libya, and intensify cooperation with EUCAP Sahel Niger.

EQ26. To what extent have Frontex activities been coherent with the activities of other stakeholders in European Integrated Border Management? (e.g. EU institutions, EU JHA agencies, etc)

⁶⁴⁸ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU New EU Security Union Strategy. COM(2020) 605 final.

⁶⁴⁹ Legrand, J. (2022). 'Common security and defence policy'. Available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.2.pdf

⁶⁵⁰ Legrand, J. (2022). 'Common security and defence policy'. Available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.2.pdf

⁶⁵¹ Interview with EEAS.

⁶⁵² European Commission (2022). 'EU Action Plan on the Western Balkans.'

⁶⁵³ European Commission (2022). 'EU Action Plan for the Central Mediterranean.'

EQ26.1 To what extent have the objectives and activities of the EBCG been coherent with the objectives and activities of other EU institutions, bodies and agencies?

Overall, Frontex activities are coherent with the activities of other EU institutions and justice and home affairs (JHA) agencies. Frontex has well-established cooperation with key EU agencies, but some stakeholders nevertheless emphasized the need to avoid duplication of tasks (especially with Europol).

There may be instances where Frontex's coherence with other EU agencies comes from the design of the regulations and directives used to determine priorities. The founding regulations of Frontex and other agencies are part of different Union policies set out in the Treaties, which also establish limitations to their competences. Overall, cooperation with other agencies is considered satisfactory and coherent, although potential overlaps in mandates require close coordination and clarifications (for example, between Frontex and Europol). In this respect, a minority of Member States stressed the importance of ensuring complementarity and avoiding overlaps, in view of Frontex tasks in the area of cross-border crime⁶⁵⁴. Europol cited some instances where Frontex took on tasks that fell with the Europol remit, requiring follow-up clarifications, for example where both agencies issued risk analysis products related to the impact on EU security of Russia's invasion of Ukraine. Nevertheless, Europol believes that communication between the two agencies is effective, and that it is possible to resolve such issues.

Frontex notes that the EBCG Regulation does not sufficiently specify the role, limitations and procedures in its tasks to support Europol, Eurojust and national law enforcement authorities⁶⁵⁵. Some Frontex stakeholders stated that the current interpretations of its mandate in this area are thus too narrow. Yet the importance of avoiding overlaps in mandates of Frontex and Europol has been highlighted by the Commission and some Member States, which explains the perceived narrow interpretation of Frontex mandate in this field⁶⁵⁶. Moreover, the majority of Member States agreed that the cooperation with Europol and Eurojust is already well defined⁶⁵⁷, and did not suggest a need to further expand the mandate of Frontex in this field.

⁶⁵⁴ Interviews with MS/SAC authorities: 9/27.

⁶⁵⁵ Interviews with EDPS and Frontex.

⁶⁵⁶ Interviews with MS/SAC authorities: 4/27.

⁶⁵⁷ Survey of MS/SAC authorities, 14/27 agreed and 1/27 strongly agreed that cooperation with Europol and Eurojust is clearly defined and conducive to address-ing specific needs and challenges at external borders.

Frontex cooperates with the European Commission to ensure coherence in the context of different EIBM activities. For example, Frontex now has a strengthened role in EU-funded security research and innovation. The ToR between the Commission and Frontex⁶⁵⁸ recognise the Agency's key understanding and expertise on the standards, requirements and capability needs of the EBCG community, enabling it to assist DG HOME, which manages the security research part of the main funding instrument for research and innovation in Europe (Framework Programme for Research and Innovation, Horizon 2020 (2014-2020) and Horizon Europe (2021-2027)).

Frontex contributes regularly to meetings and situational awareness products issued in the remit of the Migration Preparedness and Crisis Blueprint Network, where close cooperation is ongoing also on forecasting and contingency planning. Frontex is also a key source for the Integrated Situational Awareness and Analysis reports (ISAA), produced in the context of the activation of the IPCR mechanism on migration. The use of data collected by Frontex ensures harmonization of sources and methodology across the EU. However, efforts are still needed to ensure EU-wide near-real time reporting of operational data.

To help to coordinate its external work, Frontex established an informal EBCG Expert Working Group on technical assistance to third countries (EXT-TA) in 2022, which includes representatives of international cooperation entities of Member States border management authorities and works in cooperation with other EU policy and funding initiatives⁶⁵⁹. This should help to foster synergies in the future.

EQ27. To what extent are the various pieces of EU legislation regulating the operations of the EBCG coherent with one another? To what extent do they comply with EU law on personal data, other fundamental rights, Regulation 656/2014 and the Common Approach on Decentralised Agencies?

Internal coherence

⁶⁵⁸ DG HOME (2020). 'Terms of Reference between DG Migration and Home Affairs and Frontex regarding the role of the European Border and Coast Guard Agency in the parts of the Framework Programme for Research and Innovation which relate to border security'.

Available at: https://home-affairs.ec.europa.eu/system/files/en?file=2020-02/20200206_tor-ec-dg-home-frontex.pdf

⁶⁵⁹ Frontex (2023). 'Draft Consolidated Annual Activity Report 2022', Activity 5.2.2.

While the EBCG Regulation's provisions are generally coherent with one another, the following issues have been identified as possible areas for improvement:

Although the objectives of the EBCG Regulation are mentioned in the preamble and in Article 1, they are defined broadly, with no dedicated chapter or provision, and the Regulation does not clearly outline the links between the general objectives and the Agency's activities. That lack of clarity is also evident in the objectives of the SC. The EBCG Regulation focuses on the composition and tasks of the Standing Corps, rather than clearly defining the objectives to be achieved.

While Article 4 of the EBCG Regulation defines the EBCG as a body comprising both the relevant MSs' authorities responsible for border management and Frontex, the provisions focus primarily on the Agency. For example, the governance structure concerns only Frontex and foresees governance mechanisms for the Agency but not for the EBCG as a whole. Section 1 (*Protection of fundamental rights*) sets out the general provisions addressed to the EBCG as a whole, while Section 2 (*Processing of personal data by the EBCG*) only sets out specific provisions and rules for the Agency.

Although the EBCG Regulation reiterates that Frontex implements EIBM as a shared responsibility with national authorities (Article 7), it is difficult to establish the responsibility of each actor (including for potential wrongdoing), especially given the involvement of multiple actors at national level⁶⁶⁰.

Frontex cooperates with different national authorities, but these authorities are not all represented on the MB (such as authorities in charge of returns). For JOs, various local authorities may be present in areas where Frontex operations take place, spanning different jurisdictions and obligations, depending on their legal nature and the legal order to which they are subject. Frontex's operational staff is under the tactical command and control of the host State, yet both Frontex and national operational staff are still responsible under EU law and international law, including the EU and international level fundamental rights frameworks. Article 84 of the EBCG Regulation attributes liability for damages under Frontex operations to the host State, but creates a situation where different authorities may avoid responsibility for wrongdoing. This difficulty in determining responsibility is compounded by its reliance on operational

⁶⁶⁰ Gkliati, M. (2022). 'The next phase of the European Border and Coast Guard: responsibility for returns and push-backs in Hungary and Greece'. European Papers; Fink, M. (2020). 'Frontex: Human rights responsibility and access to justice'. Available at: <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>

plans (which contain the most detailed description of the specific authority and decision-making powers), which are generally not made public.

Despite the EBCG Regulation setting out mechanisms for accountability (such as the monitoring activities of the FRO⁶⁶¹, or the complaints mechanism⁶⁶²), there is uncertainty about accountability where both Frontex and national border management actors are involved in operations⁶⁶³. This has a considerable impact on the Agency's perceived ability to respect and comply with fundamental rights, opening questions about the responsibility of national authorities and limiting FRO monitoring.

The analysis found inconsistencies within the EBCG Regulation in relation to the use of force (Article 82 and Annex V). In defining 'force', the EBCG Regulation does not clarify what is meant by 'the use of any instruments' when resorting to force⁶⁶⁴. Annex V provides general principles governing the 'use of force and weapons' and general practical rules on the 'use of force, weapons, ammunition and equipment' during operations and related activities. However, it is unclear whether the principles of using force, control, and authorisation are applicable to all means of force.

There are discrepancies between the staff addressed by Article 82 and Annex V of the EBCG Regulation. The Annex contains rules on the use of force and weapons applicable to statutory staff of the Standing Corps deployed as members of the teams, whereas Article 82 provides details on the use of force and weapons for all members of the teams and thus also applies to other categories of operational

⁶⁶¹ Articles 109 and 110 of the EBCG Regulation.

⁶⁶² Article 111 of the EBCG Regulation.

⁶⁶³ Fink, M. (2020). 'Frontex: Human rights responsibility and access to justice'. Available at: <https://eumigrationlawblog.eu/frontex-human-rights-responsibility-and-access-to-justice/>; Border Violence Monitoring Network (2022). 'Submission to the EU Commission on the evaluation of the implementation of Regulation 2019/1896 on the European Border and Coast Guard Agency (Frontex)'; Karamanidou, L. and Kasperek, B. (2020). 'Fundamental rights, accountability and transparency in European governance of migration: the case of the European Border and Coast Guard Agency'. Working Papers; European Parliament (2022). 'European Parliament Scrutiny of Frontex'. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI\(2021\)698816_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf); Karamanidou and Kasperek highlight that the terms used throughout the text of the EBCG Regulation to describe Frontex tasks – such as 'coordination', 'cooperation', 'facilitation', and 'support' – are not defined in the Regulation; interviews with Frontex and civil society organisations/members of the CF.

⁶⁶⁴ Annex V to the EBCG Regulation: 'For the purposes of this Regulation, 'use of force' refers to recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment [...]'.

staff. The EBCG Regulation adopts different formulations on the purposes for which force could be used, which might jeopardize strict implementation of the rules and allow wider use of force⁶⁶⁵. It also establishes an absolute prohibition on abusive or arbitrary use of force or coercive measures but does not define ‘arbitrary and abusive use of force’.

There are some inconsistencies and clarity issues in the fundamental rights framework set out by the EBCG Regulation, affecting the overall coherence. First, Article 109 of the EBCG Regulation provides that one of the tasks of the FRO is to monitor ‘the Agency’s compliance with fundamental rights, including by conducting investigations into any of its activities’, although these activities are not detailed in the text. Although the wording ‘any activities’ allows for a very wide scope of FRO action, increased clarity would better guarantee FRO involvement and provide a more specific basis for action. The same Article provides that ‘the management board shall ensure that action is taken with regard to recommendations of the fundamental rights officer’, without clarifying what that action might be.

Secondly, the EBCG Regulation does not regulate the functioning of the serious incident reports (SIRs) mechanism. SIRs are mentioned only in Article 46, as the ED takes them into account when triggering Article 46(4) and (5). Article 46 leaves considerable discretion to the ED, with some relevant indications found in the operational plans⁶⁶⁶.

Thirdly, on the complaints mechanism the analysis found that regardless of the good functioning of the mechanism, Article 111(2) of the EBCG Regulation leaves a gap concerning cases in which the alleged perpetrators of fundamental rights violations may be individuals involved in Frontex’s activities but not part of Frontex’s or Member States’ staff and employed by the Agency via external contractors (such as cultural mediators), also due to lack of clarity in Article 111(5) and potential inconsistencies of the Regulation with MB Decision 19/2022.

⁶⁶⁵ Article 82 of the EBCG Regulation adopts different formulations, such as ‘for the purposes of performing their functions or ensuring self-defence’, ‘achieve the legitimate law enforcement objective’, ‘achieve the immediate law enforcement aim’, ‘to ensure the performance of the Agency’s duties’ and ‘legitimate self-defence and legitimate defence of members of the teams or of other persons’.

⁶⁶⁶ In January 2022, the European Ombudsman suggested that Frontex publish comprehensive summaries of its operational plans, which define the parameters of its operations, and the analysis on which the Executive Director decides to suspend, terminate or not launch an activity due to fundamental rights concerns; European Ombudsman (2021). ‘Decision in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities’. Available at: <https://www.ombudsman.europa.eu/en/decision/en/151369>

Some unclarities within the EBCG Regulation in relation to personal data protection was identified. On the allocation of responsibilities between the Agency and the Member States, the EBCG Regulation (Article 88) requires the Agency and the host Member State to determine in a transparent manner the responsibilities for compliance with data protection obligations. However, the MB Decisions refers to the operational plans for the allocation of data protection roles and responsibilities. Considering that the operational plans are not publicly available and that only the publication of the summary of the plans is required on the Agency's website, this might have implications for data protection. It is not always clear directly from the EBCG Regulation and relevant MB Decisions who is the data controller, data processor, data supervisor, or the applicable rules (i.e. without assessing the applicable provisions of the operational plans).

On processing personal data, MB Decision 68/2021 provides that Frontex may process special categories of data if strictly necessary to achieve the purposes referenced in points (a), (c) and (e) of Article 87(1) of the EBCG Regulation. However, the EDPS found that the Agency does not have a legal basis to process special categories of data and should include clear and precise provisions governing the scope and application of such processing, as well as accompanying safeguards⁶⁶⁷.

According to Frontex, Article 87 is not sufficiently clear, as the purposes indicated in Article 87 cross-reference other articles of the EBCG Regulation for which the need to process personal data are not clear⁶⁶⁸. This is reported for Article 87(1)(d, e), on the facilitation of information exchange with law enforcement authorities of the Member States, Europol or Eurojust and for risk analysis. Frontex also highlighted a gap in the text, as Article 87(2) does not mention third countries among the entities that can provide it with personal data for the purposes foreseen in Article 87(1). In practical terms, the Agency could transmit personal data to the host third country, but not receive it⁶⁶⁹.

On the processing operational personal data, according to Article 90 of the EBCG Regulation, the Agency, in the performance of its tasks under Article 10(1)(q), may process operational personal data it has collected while monitoring migratory flows, carrying out risk analyses, or in the course of operations for the purpose of 'identifying suspects of cross-border crimes'⁶⁷⁰, in accordance with

⁶⁶⁷ EDPS (2022). 'Supervisory Opinion on the rules on processing of personal data by Frontex, Case 2022-0148'.

⁶⁶⁸ Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

⁶⁶⁹ Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

⁶⁷⁰ In line with its tasks established in Article 10(1)(q) of the EBCG Regulation.

Chapter IX of the EU DPR. Frontex may only exchange such personal data with Europol or Eurojust⁶⁷¹, and with the competent law enforcement authorities of the Member States⁶⁷².

This means that in performing its tasks the Agency processes personal data under the general part of the EU DPR, whereas it applies Chapter IX of the EU DPR for the processing of operational personal data indicated in Article 90 of the EBCG Regulation. As underlined by the EDPS, Article 90 read together with Article 10(1)(q) defines the purpose of this data processing. Accordingly, Frontex can do so in the context of the performance of its tasks under Article 10(1)(q) of the EBCG Regulation and for the sole purpose of ‘identifying suspects of cross-border crime’⁶⁷³.

However, Frontex indicated that the purpose of processing operational person data for the ‘identification of suspects of cross-border crime’ is too restrictive for the Agency. For Frontex, the current Article 90 limits the possibility of successfully engaging in its operational activities, without proper mechanisms to exchange information, secure communication channels and other crucial provisions to ensure national ownership of data, handling codes, data retention and logging obligations when communicating between Europol and Eurojust⁶⁷⁴. The Agency suggested that Article 90 could be amended to extend the purpose for processing operational personal data and to provide the Agency with a law enforcement mandate⁶⁷⁵. However, considering the current division in the EU Treaties between border control and law enforcement and the reference to specific law enforcement bodies, it is to note that Frontex has only a support role linked to the border-crossing element of the fight against cross-border crime, which is conducted by the appropriate entities.

The explicit narrowed possibilities for Frontex to process operation data (Articles 90 and 10(1)(q)) frame its role and scope of responsibilities in this area, as reflected in MB Decision 69/2021 on the rules on processing operational personal data by the

⁶⁷¹ Article 90(2)(a) of the EBCG Regulation: ‘[...] where they are strictly necessary for the performance of their respective mandates and in accordance with Article 68.’

⁶⁷² Article 90(2)(b) of the EBCG Regulation: ‘[...] where they are strictly necessary for those authorities for the purposes of preventing, detecting, investigating or prosecuting serious cross-border crime.’

⁶⁷³ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁶⁷⁴ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁶⁷⁵ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

Agency⁶⁷⁶. Although the EBCG Regulation is clear on the purpose of operational personal data processing, the MB Decision leads to some ambiguity, as stressed by the EDPS: ‘some wording in Articles 6, 7, 8 and 9 of the Annex [to the MB Decision] lends itself to conclude that collection of operational personal data is a primary task of Frontex, which is not the case [...]’⁶⁷⁷.

According to Frontex, the current framework poses limitations to the exchange of operational data with entities not mentioned by the EBCG Regulation or relevant MB Decisions, but may nevertheless be important partners, such as OLAF or the European Public Prosecutor Office (EPPO)⁶⁷⁸.

For personal data transfers to third countries and international organisations, the Agency may proceed in accordance with Chapter V of the EU DPR insofar as such transfer is necessary to the performance of its tasks. In the context of personal data transfer to third countries, the Agency can cooperate with third countries through a number of instruments. To date it has cooperated with third countries on the basis of status agreements, working arrangements or other types of documents (such as Memorandum of Understanding (MoU) and letter of intent)⁶⁷⁹. Where those working arrangements provide for the transfer of personal data, and where provided for by the EU DPR, Frontex is required to request prior authorisation from the EDPS⁶⁸⁰.

The European Commission model working arrangement was drafted in accordance with Article 76(2) of the EBCG Regulation and adopted in 2021. However, the EDPS indicated that the model lacked essential data protection safeguards and any working arrangement predicated on that draft model needs to be supplemented to ensure compliance with EU data protection law⁶⁸¹.

Data protection considerations also arise in the area of returns. The EBCG Regulation does not provide separately for the processing of personal data in the context of return activities, despite the increased mandate of the Agency. Article 86(3) of the EBCG Regulation

⁶⁷⁶ Management Board Decision 69/2021 of 21 December 2021 adopting the rules on processing operational personal data by the Agency.

⁶⁷⁷ EDPS (2022). ‘Supervisory Opinion on the rules on processing operational personal data by Frontex, Case 2022-0247’.

⁶⁷⁸ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁶⁷⁹ Interview with Frontex (1).

⁶⁸⁰ Article 73(4) of the EBCG Regulation.

⁶⁸¹ EDPS (2022). ‘Comments on the model working arrangements between the European and Coast Guard Agency and the authorities of third countries’.

Available at: [https://edps.europa.eu/sites/default/files/publication/20-07-](https://edps.europa.eu/sites/default/files/publication/20-07-03_edps_comments_on_model_working_arrangements_between_ebcg_and_authorities_of_third_countries_en.pdf)

[03_edps_comments_on_model_working_arrangements_between_ebcg_and_authorities_of_third_countries_en.pdf](https://edps.europa.eu/sites/default/files/publication/20-07-03_edps_comments_on_model_working_arrangements_between_ebcg_and_authorities_of_third_countries_en.pdf)

establishes that the transfer must take place under the conditions laid down in Chapter V of the EU DPR. Frontex reported that it relies on the Member States to do the transfers, or uses derogations on a case-by-case basis, as foreseen under Article 50 of the EU DPR⁶⁸². However, it is uncertain whether the wording of Article 50 of the EU DPR extends to cover ongoing data exchanges with third countries, as distinct from occasional transfers, and systematic use of such derogations by Frontex could amount to inappropriate use.

Article 89 of the EBCG Regulation, on EUROSUR, is an important data protection provision. Article 89 regulates the processing of personal data in the framework of EUROSUR, and limits the categories of personal data processed to ship and aircraft identification numbers, while subsequently allowing the processing of other personal data when ‘exceptionally required’ and ‘limited to what is necessary to the purposes of EUROSUR in accordance with Article 18’. The lack of clarity was not addressed by MB Decision 68/2021, which, as noted by the EDPS, does not contain any specific rules on the processing of personal data in the framework of EUROSUR and lacks key data protection elements (such as purpose, controller, safeguards)⁶⁸³.

The various modalities for Frontex to cooperate with third countries and exchange information, as laid down in the EBCG Regulation, is complex, making reference to various provisions, and at times unclear, particularly where it involves the use of EUROSUR. Article 89 refers to exchanges of information with third countries within the framework of EUROSUR, and subjects those transfers to Chapter V of the EU DPR (transfers of personal data to third countries or international organisations).

Despite having working arrangements or status agreements in place, the Agency reports that it has to consider the specific situation of third countries and to examine effective impediments to fundamental rights that could be derived from such transfers (in line with the Court of Justice of the European Union (CJEU) Schrems II judgment⁶⁸⁴)⁶⁸⁵.

⁶⁸² Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

⁶⁸³ EDPS (2022). ‘Supervisory Opinion on the rules on processing of personal data by the European Border and Coast Guard Agency, Case 2022-0148’.

⁶⁸⁴ CJEU Case C-311/18, 2020. Available at:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12312155>

⁶⁸⁵ Frontex (2023). ‘Evaluation of EBCG Regulation’. Internal document.

The EDPS and Frontex reported that the definition of ‘pre-frontier area’ in Article 2 of the EBCG Regulation, when read with Article 29, might allow a very wide interpretation that would enable the Agency to extend its satellite surveillance and application of EUROSUR worldwide, without limitation⁶⁸⁶.

External coherence

Overall, the EBCG Regulation is coherent with other EU-level legislative instruments as well as with the Common approach to Decentralised Agencies, however, the following areas could benefit from improvement:

Although Regulation 656/2014 (Sea Borders Regulation) and the EBCG Regulation are generally coherent, the former does not capture Frontex’s expanded mandate in SAR under EBCG Regulation. Article 10(i) of the EBCG Regulation states that Frontex provides technical and operational assistance to Member States and third countries in accordance with Regulation 656/2014 and international law, in support of SAR operations for persons in distress at sea, which may arise during border surveillance operations at sea. However, under international law, SAR is a national competence, therefore Frontex cannot conduct SAR operations independently or without the coordination of a national Rescue Coordination Centre (RCC)⁶⁸⁷.

Overall, this complex legal situation has an impact on establishing accountability vis-a-vis international law (notably, the United Nations Convention on the Law of the Sea (UNCLOS) and SAR Convention), particularly in a scenario where a Rescue Coordination Centre may opt not to initiate SAR after assessing information on a vessel in potential distress submitted by Frontex⁶⁸⁸. Hence, it

⁶⁸⁶ Interviews with EDPS and Frontex.

⁶⁸⁷ Frontex (2023). ‘How search-and-rescue works’. Available at: <https://frontex.europa.eu/media-centre/news/focus/how-search-and-rescue-works-83WoGT>

⁶⁸⁸ ‘Cooperation on SAR in EU remains challenging: with Frontex given a new mandate in coast guard operations, the coordination between Frontex and Member States has become rather more complex than facilitated’ (International Maritime Organization (IMO) (2017). ‘Record of views of the inter-agency meeting with the maritime industry on mixed migration’. Available at: [https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Record of views Inter-agency meeting with the maritime industry on mixed migration 30 October 2017_Final.pdf](https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Record%20of%20views%20Inter-agency%20meeting%20with%20the%20maritime%20industry%20on%20mixed%20migration%2030%20October%202017_Final.pdf); Statewatch (2021). ‘To SAR or not to SAR, part 1: Why is Frontex expected to save lives at sea?’. Available at: https://www.statewatch.org/analyses/2021/to-sar-or-not-to-sar-part-1-why-is-frontex-expected-to-save-lives-at-sea/#_ftn9; Border Violence Monitoring Network (2022). ‘Submission to the EU Commission on the evaluation of the implementation of Regulation 2019/1896 on the European Border and Coast Guard Agency (Frontex)’. Available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13557-European-Border-and-Coast-Guard>

remains difficult to distinguish accountability in situations where both Frontex and national border management actors are involved (see internal coherence)⁶⁸⁹.

The EBCG Regulation and the Return Directive (2008/115/EC) are coherent with one another. However, the term ‘assisted voluntary return’ was introduced in the EBCG Regulation without being defined and has no direct correlation with the definitions provided in the Return Directive (which only defines ‘return’ and ‘voluntary departure’)⁶⁹⁰.

Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more MSs of third-country nationals who are subjects of individual removal orders does not apply to Frontex. Nevertheless, the Agency has the power to coordinate or organise return operations (Article 50(1) EBCG Regulation). However, Article 50 is unclear on the legal framework for return operations and on coordination between Frontex operations and other types of operations. It does not clearly set out a specific framework for return operations organised by Frontex, nor does it refer to the potential coordination between Frontex's operations and those carried out within the framework of Council Decision 2004/573/EC. The absence of clear legal provisions risks differences between Frontex-organised return operations and those organised by Member States based on Council Decision 2004/563/EC⁶⁹¹.

There are challenges in applying the EU Staff Regulations and conditions of employment⁶⁹² to the EBCG Regulation and the SC, as they are not in all cases the best suited to an operational, uniformed, and armed service with executive powers. A number of tasks carried out by Frontex are by their nature law enforcement tasks, requiring special law enforcement training, use of firearms, and other

[Frontex-standing-corps-review-and-evaluation-of-Regulation/F3347064_en](#); Salzano L. (2021) 'Frontex accountability: an impervious path'. Available at: [EU Law Analysis: Frontex accountability: an impervious path](#)

⁶⁸⁹ Frontex (2023) How Search and Rescue works. Available at: [How Search and Rescue works \(europa.eu\)](#) ; European Parliament (2021). ‘Search and rescue in the Mediterranean’. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS_BRI\(2021\)659442_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS_BRI(2021)659442_EN.pdf)

⁶⁹⁰ Interviews with DG HOME and Frontex; Frontex (2020). ‘State of play of the implementation of the EBCG Regulation in view of the current challenges’. Available at: <https://data.consilium.europa.eu/doc/document/ST-7607-2020-INIT/en/pdf>; it mentions that ‘further elaboration (of these terms) is needed’ (p.16); Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document.

⁶⁹¹ Frontex (2023). ‘Evaluation of the EBCG Regulation’. Internal document.

⁶⁹² Regulation No 31 (EEC), 11 (EAEC), laying down the staff regulations of officials and the conditions of employment of other servants of the European Economic Community and the European Atomic Energy Community.

powers, which some MSs assign only to law enforcement personnel (such as the use of special regime vehicles, inspection of personal document, or access to certain databases). Within the SC (Categories 2, 3, and 4), these tasks are implemented by law enforcement officers. However, not all Member States' legislation allows SCs staff to carry weapons on their territory and Frontex is not always recognised as providing law enforcement services. Hence, the challenges do not solely derive from the application of the EU Staff Regulations but also arise from national legislation limitations and national authorities' willingness to allow SC Category 1 staff to perform certain tasks.

As a result, certain aspects of shift work and stand-by patterns, ranks, recognition of hardship, specific deployment rules outside the mission guide, disciplinary proceedings, rights, and entitlements are not suitable for the SC⁶⁹³. For instance, SCOs may work shifts under the operational command of a Team Leader from a certain Member State, who will work according to their national rules. The hours of work may not correspond to Frontex hours of work, which derive from EU Staff Regulations. This misalignment in working hours could create challenges for both Frontex as an Agency and for its officers in the field.

The Schengen Evaluation Regulation links to the EBCG Regulation through the risk analysis (Article 29) and vulnerability assessment (Article 32) carried out by Frontex. The reformed 2022 Schengen Evaluation Regulation aims to strengthen cooperation and synergies with Frontex and avoid duplication with other EU mechanisms (notably the Frontex vulnerability assessment)⁶⁹⁴. However, the vulnerability assessment and risk analysis (feeding in the preparation of the Schengen evaluations) do not include fundamental rights considerations, while the reform of the Schengen Evaluation Regulation strengthened the evaluation of the respect for fundamental rights under the Schengen *acquis* (e.g. with the FRA) providing a thorough fundamental rights analysis feeding in the Schengen evaluations and participating as an observer - in return).

The Schengen Borders Code (Regulation 2016/399) refers to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Council Regulation (EC) No 2007/2004, which was repealed by the 2016 Frontex Regulation (2016/1624). In 2021, the European Commission presented a proposal to amend the Schengen Borders Code,

⁶⁹³ Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'. Internal document.

⁶⁹⁴ Articles 8 and 10 of the Council Regulation (EU) 2022/922.

which fully reflects the competences of Frontex in supporting Member States. The analysis did not find inconsistencies between the two current texts, nor were any discrepancies reported by stakeholders during the consultation.

The EBCG Regulation (Article 114) indicates that the Agency is subject to Regulation (EC) 1049/2001 on public access to documents when handling applications for access to documents⁶⁹⁵. Overall, the EBCG Regulation and the internal framework set by MB Decision 25/2016 are in line with Regulation (EC) 1049/2001. The analysis did not find inconsistencies between the legal texts.

The evaluation also looked at the coherence of the EBCG Regulation with the Common approach to Decentralised Agencies, which is not a legislative document, and concluded that the Regulation is coherent with the Common Approach⁶⁹⁶. Frontex's structure and governance is generally in line with the principles set out in the Common Approach, such as the appointment of Frontex's ED, the procedures in place to regularly inform the EP about the Agency's activities, and procedures for dismissal. However, the Common Approach provides that the MBs of decentralised agencies should include 'where appropriate', a member designated by the parliament, which is not provided in Article 101 of the EBCG Regulation, partly due to the important independent control function of the EP over the Agency⁶⁹⁷. However, an expert from the EP attends the meetings of the MB⁶⁹⁸. Other requirements set out in the Common Approach, on accountability, controls and transparency requirements, are in line with the EBCG Regulation.

EQ28. How are Frontex's internal procedures, including planning, monitoring and reporting ensuring that its activities are internally coherent? How have the Management Board's activities contributed to ensure this internal coherence?

⁶⁹⁵ Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, pp. 43-48).

⁶⁹⁶ Council of the EU (2012). 'Joint Statement of the European Parliament, the Council of the EU and the European Commission on Decentralised Agencies and Common Approach on Decentralised Agencies. The Joint Statement and the Common Approach on Decentralised Agencies has legally non-binding character'.

⁶⁹⁷ Article 101 of the EBCG Regulation describes the composition of the MB, which comprises one representative of each Member State, and two representatives of the Commission (see: European Council on Refugees and Exiles (ECRE) (2021). 'Holding Frontex to account'. Policy paper. Available at: <https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

⁶⁹⁸ Article 104(7) of the EBCG Regulation.

Frontex internal procedures, including planning, support the coherence of its activities at least to some extent. For an Agency in transition, having to react quickly in a challenging environment leaves less room for the proper development of its own internal procedures and processes. Overall, the Agency has a clear planning process, with the programming process substantiated by a clear legal basis⁶⁹⁹. Existing documents set out the requirements informing the preparation of the Agency's programming documents, which are sent to the Commission, the EP and the Council, and are endorsed by the MB⁷⁰⁰.

There appears to be an overall lack of a depository on rules of procedure, workflows, etc., which was highlighted during interviews with the IAC. In its 2022 report to the MB on its progress on implementing recommendations from the IAS and ECA audits, Frontex highlighted that the Frontex Internal Structure and Rules of Procedure (FISRoP) are currently being revised and a comprehensive review of the organisational structure of the Agency may take place⁷⁰¹.

The split of competences across a number of divisions is unclear, leading to a lack of ownership or clear processes⁷⁰². The need for a functional review was emphasised by the IAC, which pointed to the need to ensure that the new structure corresponds to the needs of the Agency (outputs, needs, key functions and outcomes).

Strategic guidance by the MB may be strengthened by the multiannual strategic policy cycle for EIBM, which will allow the MB and its dedicated Working Group on EIBM to guide and oversee the development of the technical and operational strategy for EIBM and its implementation processes⁷⁰³. The importance of ensuring effective oversight of the Agency by the MB was highlighted at the time

⁶⁹⁹ Including: EBCG Regulation; Management Board Decision 19/2019; European Commission communication C(2020) 2297; Executive Director Decision 2021-130.

⁷⁰⁰ Articles 106(2)(c) and 115 of the EBCG Regulation; Article 32 Frontex Financial Regulation; the programming process works in a two-year cycle, starting with the internal preparation (N-2); process of adoption and finalisation (N-1) and implementation (N), followed by reporting in the Consolidated Annual Activity Report. (N+1) and discharge of the budget (N+2).

⁷⁰¹ Frontex (2022). 'Agenda Point 6: Explanatory note the Implementation of IAS and ECA recommendations.'

⁷⁰² Examples include the split management of standing corps across a number of divisions; the split of the corporate governance division into two (creating a fragmented approach and inconsistencies, with one division responsible for ICT, finance and other for human resources, legal and procurement). Moreover, one unit has responsibility for procurement, while another oversees budget, with two directors holding decision-making power.

⁷⁰³ European Commission (2022). 'Developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896'. COM(2022)303 final; European Commission (2023). 'Communication establishing the multiannual strategic policy for Europe an Integrated Border Management'. COM(2023) 146 final.

when Frontex experienced intense media scrutiny about alleged fundamental rights violations. The MB had to ensure closer oversight⁷⁰⁴, in light of the EP's criticism that it had not played a 'more proactive role in acknowledging the serious risk of fundamental rights violations and in taking action to ensure that Frontex fulfils its obligations'⁷⁰⁵. A new MB Decision⁷⁰⁶ was adopted in 2022, ensuring improved procedures for following up on recommendations by the FRO and CF. This enhanced oversight by the MB is expected to decrease somewhat with the new Executive Director in place⁷⁰⁷. This points to a need for a level of flexibility, especially by the MB, to ensure additional political steering of the Agency, where necessary. The approval rights of the MB ensure that it cannot be bypassed in key decision-making processes.

The SC is currently overseen by a number of divisions, which creates ambiguity. On the operational level, this results in multiple reporting channels, including the functional line of reporting and the Coordinating Officer. SCOs are not clearly informed that they should report to their Coordinating Officer on the ground and sometimes perceive their functional manager as their line of reporting. It also means that functionally, Deployment Management Division staff have responsibility for Standing Corps (including writing their performance reviews) though they have no clear understanding of the day-to-day work each SC staff performs. Frontex is currently developing a new Frontex operational control and command (FC2) concept, which is being piloted in Romania in 2023 and which will likely result in a change to the way the Standing Corps are structured, including ensuring clearer reporting lines.

5. EU Added Value

EQ29. How has the new mandate of Frontex introduced by the EBCG Regulation contributed to achieving the objectives of the EBCG as a whole? (for example, Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system)

⁷⁰⁴ Interviews with MB and Frontex.

⁷⁰⁵ European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee, p.6. Available at: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf

⁷⁰⁶ Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to in form the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer'.

⁷⁰⁷ Interview with MB.

Frontex's new mandate, as introduced by the EBCG Regulation, contributes to achieving the objectives of the EBCG as a whole, as it supports Member States to implement effective border management. As stated in the first recital of the EBCG Regulation, the 'objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union'⁷⁰⁸. Article 77(2)(d) of the Treaty on the Functioning of the European Union (TFEU) defines the Union's goal for 'the gradual establishment of an integrated management system for external borders.' Indeed, the concept of EIBM developed gradually and only became legally binding with the adoption of Regulation (EU) 2016/1624.

Frontex's mandate has been designed in the framework of shared responsibility, with Frontex's tasks designed to ensure support to MSs in the effective management of external borders. To date, the key areas of support from Frontex to Member States have been deployment of the SC, operational support, situational awareness, return, capacity-building, deployment of technical equipment, and international cooperation.

The implementation of EIBM, which aims to reinforce the protection of the EU's external borders, requires collective actions by both competent national authorities and the EU. The concept itself underlines that EIBM should be developed at EU *and* national level, in the context of shared responsibility between Frontex and Member States' national authorities⁷⁰⁹.

EQ30. How has the new mandate of the Agency contributed to supporting Member States in implementing effective border management? (for example, Deployment of Standing Corps, expanded EUROSUR remit, management of False and Authentic Documents Online (FADO) system)

For a great majority of Member States, the areas of Frontex's mandate considered most conducive to addressing the specific needs and challenges at external borders include: 1) situational awareness (especially monitoring migratory flows and carrying out risk

⁷⁰⁸ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, pp. 1-131).

⁷⁰⁹ European Commission (2018). 'Progress Report on the implementation of the European Agenda on Migration. Annex 6: The main elements for developing the European Integrated Border Management Strategy. Available at: http://www.cdep.ro/afaceri_europene/CE/2018/COM_2018_250_EN_ACTE7_f.pdf

analysis⁷¹⁰, as well as supporting the development and operation of EUROSUR⁷¹¹); 2) return⁷¹²; and 3) joint operations⁷¹³. A majority of Member States also highlighted: 4) international cooperation (with third countries)⁷¹⁴; capacity-building (training⁷¹⁵ and technical assistance)⁷¹⁶, as well as the management of the FADO system⁷¹⁷.

The ability of the Agency to provide situational awareness products, including via an enhanced EUROSUR mandate, is viewed positively by the Member States and perceived to provide added value. EUROSUR situational awareness products, which serve a number of stakeholders (including the European Commission), as well as EUROSUR Fusion Services products (including maritime and aerial surveillance), add significant operational value to Member States lacking such capabilities, as well as MSs requiring additional capacity for these analyses. Risk analysis products provide wide coverage across thematic and geographical areas and provide Member States with a comprehensive view of risks at all EU borders.

Frontex provides an extensive ‘catalogue of services’ supporting Member States in all areas of return. Member States with smaller caseloads were particularly positive about the high added value of Frontex’s JROs via charter flights, which provided an opportunity to return the most difficult cases in a more controlled environment. In addition to assisting with returns, including voluntary returns, the Agency also contributed to harmonisation and capacity-building of national return case management systems and their digitalisation and modernisation through the RECAMAS framework. Post-return reintegration activities also provide significant EU added value, especially as some Member States may lack diplomatic or development presence to support reintegration in countries of return.

As a result of the ongoing establishment of the Standing Corps, the Agency is able to deploy staff and equipment in response to needs identified by Member States through joint operations. Frontex brings EU added value to the Member States by providing additional

⁷¹⁰ Survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

⁷¹¹ Survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

⁷¹² Survey of MS/SAC authorities: 23/27 agreed or strongly agreed.

⁷¹³ Survey of MS/SAC authorities: 22/27 agreed or strongly agreed.

⁷¹⁴ Survey of MS/SAC authorities: 21/27 agreed or strongly agreed.

⁷¹⁵ Survey of MS/SAC authorities: 20/27 agreed or strongly agreed.

⁷¹⁶ Survey of MS/SAC authorities: 20/27 agreed or strongly agreed.

⁷¹⁷ Survey of MS/SAC authorities: 18/27 agreed or strongly agreed.

human resources and equipment, as well as coordinating joint operations and other operational activities. At an EU strategic level, the EBCG Regulation provides for a mechanism to allocate or relocate resources (assets or personnel) to the sections where irregular migration flows are of greatest concern. Even though this process is not yet running smoothly and the scale of support will continue to grow, past and ongoing joint operations or RBIs have supported Member States effectively.

In theory, the national capability development plans, Agency capability development plan, and capability roadmap will lead to more effective development of capabilities across Member States. As these processes are being developed and not all elements are finalised, no definite conclusion can be drawn on the added value.

Member States believe that the education and training of the European border and coast guards, in particular the common training standards provided by Frontex, have contributed to improving the training of national border guards⁷¹⁸, developing and strengthening border management capabilities in their Member States⁷¹⁹, facilitating cooperation among Member States' border and coast guards' training institutions,⁷²⁰ mainstreaming fundamental rights in national training programmes⁷²¹, and ensuring a harmonised and common approach to EU border and coast guard training in the Member States.

EQ31. Could the objectives of the EBCG Regulation have been achieved sufficiently by the Member States acting alone?

The objectives of the EBCG Regulation could not have been achieved sufficiently by Member States acting alone.

The EBCG is composed of both the national authorities responsible for border management including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for return and Frontex. The EBCG Regulation provides for the implementation of EIBM as the shared responsibility of national authorities and Frontex⁷²², and the objectives and implementation of the EBCG Regulation as jointly shared by Member States and the Agency.

⁷¹⁸ Survey of MS/SAC authorities: 18/27 agreed, 4/27 strongly agreed.

⁷¹⁹ Survey of MS/SAC authorities: 16/27 agreed.

⁷²⁰ Survey of MS/SAC authorities: 13/27 agreed, 3/27 strongly agreed.

⁷²¹ Survey of MS/SAC authorities: 16/27 agreed, 2/27 strongly agreed.

⁷²² Article 1 of the EBCG Regulation.

Considering the areas of EIBM activity outlined in the EBCG Regulation, the overall consensus among Member States is that all four tiers could not have been achieved sufficiently by Member States acting alone. The majority of Member States respondents considered that this was particularly true in the areas of: 1) returns⁷²³; 2) risk analysis contributing to a comprehensive situational awareness⁷²⁴; and 3) border control measures at the external borders⁷²⁵. Some Member States highlighted that measures within the Schengen area remain primarily the competence of Member States rather than Frontex⁷²⁶. The activities of the Agency should always complement the efforts of Member States⁷²⁷.

ANNEX III.B REVIEW OF THE STANDING CORPS, DETAILS ON ANSWERS TO THE REVIEW QUESTIONS

RQ1. How has the deployment of the Standing Corps been relevant in supporting Member States in the protection of EU external borders, migration management and returns?

The deployment of the SC has been operationally mostly relevant supporting Member States at the external borders. As the creation of the SC has been a key addition to the Agency's mandate, as it forms a permanent resource to get resources for the Member States⁷²⁸. The competences and executive powers of the SC have been widening the usability and predictability of the support of Frontex.

⁷²³ Survey of MS/SAC authorities: 2/27 strongly disagreed; 20/27 disagreed.

⁷²⁴ Survey of MS/SAC authorities: 4/27 strongly disagreed; 16/27 disagreed.

⁷²⁵ Survey of MS/SAC authorities: 17/27 disagreed.

⁷²⁶ Survey of MS/SAC authorities: 10/27 neither agreed nor disagreed; 6/27 agreed. 1/27 strongly agreed.

⁷²⁷ EBCG Regulation, recital 12.

⁷²⁸ ICF study (2023), pp. 137-138. "The findings are based on an extensive data collection and analysis exercise conducted as part of the formal evaluation of the EBCG Regulation (see Annex 3). Data collection included an in-depth review of documents, a survey of 500 Standing Corps staff, a survey of Member State national authorities, five field visits to Frontex operations (which included interviews with national and Frontex staff on the ground), and additional interviews with Frontex, Member States' authorities and EU stakeholders (including the Commission, European Parliament and EU agencies)."

The SC has been aimed especially to be on the ground, supporting the Member States at the external borders, working side-by-side with Member States competent authorities in the external border control and return. It has been designed to be deployed based on the needs – risk analysis-based planning and requests of the host Member States. The needs may emerge either based on long term planning or ad-hoc needs. JOs or RBIs can address both cases⁷²⁹.

10 000 strong operational staff as SC is a new concept to ensure availability of the resources. It is to remedy the shortcomings of the previous pooling mechanism of the resources of the Member States. The numbers of contributions for each Member State to Category 2 and 3 of the SC are gradually increasing for the period between 2021 and 2027. Similarly, the number of SC in Category 1 recruited by the Agency is increasing⁷³⁰. Even if the implementation of the Regulation is on its way, and SC is not yet close to completion, building up the in progressing⁷³¹.

Overall, the Member States consider the deployment of the SC to be relevant in terms of Member States' needs. This is primarily because SC offers additional resources, when needed⁷³².

The deployments mostly correspond to migratory pressures along migratory routes. Member States impacted by the Central and Western Mediterranean and Eastern Borders and Western Balkans migratory routes have received the highest proportional increase of deployments. Member States on the Eastern Mediterranean migratory route has also seen an increase in deployments. The SC has provided significant and welcome support also to return operations⁷³³.

When it comes to SC effectiveness, it is mostly a question of training and equipping of the deployed staff to different kinds of assignments. This is because various kinds of profiles are needed for different tasks in different operational situations. Member States

⁷²⁹ Articles 7, 10 and 36 of the EBCG Regulation.

⁷³⁰ Annexes I-III of the EBCG Regulation.

⁷³¹ Frontex (2022). 'Annual Implementation Report; Frontex (2023). 'Consolidated Annual Activity Report 2022'.

⁷³² ICF study (2023), p. 138. Survey of MS/SAC authorities.

⁷³³ ICF study (2023), p. 138. Interviews with and survey of MS.

consider the profile categories to be adequately defined in terms of their roles and responsibilities⁷³⁴. However, the profiles needed for specific deployment are not always available and Member States face challenges when recruiting some specialists⁷³⁵.

The effectiveness of the SC has been diminished by some practical issues. If a border guard is deployed to another country, several issues, including practical, organisational, and procedural obstacles set certain limitations to the full utilisation of the deployed staff. This is mostly due to the host country's legislation or practices. For example, the SC has limited access to key databases, including SIS and national databases. This is only partially a language limitation; it is because only four Member States adapted legally and technically their systems and procedures to allow SC staff to effectively conduct border checks and query the necessary databases⁷³⁶. Additionally, the host Member State may have language limitation to liaise with SC⁷³⁷.

These issues have to be addressed during the ongoing implementation of the Regulation. Despite room for improvement in the hosting capacity and usability of SC, it can be concluded that SC has been relevant and has added value for Member States.

RQ2. The EBCG Regulation requires the deployment of all Standing Corps members (with few exceptions) in the field, excluding them from contributing to the activities conducted in the Headquarters. Is this limiting the capacity of the Agency to implement its full mandate?

The purpose of the Regulation is to ensure that SC is deployed to the operational areas, to support Member States in the operational work on the ground as the member of the teams. This means that the Regulation limits the possibility of posting of Standing Corps staff to headquarters of the Agency, or to perform non-operational tasks⁷³⁸.

In addition to the approximately 1 000 headquarters staff, the Regulation allows the Agency to recruit up to 4% of the total number of the SC set out in Annex I as statutory staff to be used for “supportive or monitoring functions for the establishment of the SC for the planning and management of its operations and for the acquisition of the Agency's own equipment”⁷³⁹.

⁷³⁴ ICF study (2023). Survey of MS/SAC authorities: 13/27

⁷³⁵ ICF study (2023), p. 138. Survey of MS/SAC authorities: 10/27.

⁷³⁶ ISF study (2023), p. 150. Interview with Category 1, 2 and 3 of the SC.

⁷³⁷ ICF study (2023), p. 150. Interviews with MS/SAC authorities.

⁷³⁸ Articles 54, 55, 56 and 57 of the EBCG Regulation.

⁷³⁹ Article 54 of the EBCG Regulation.

When the recruitment of SC staff was launched in 2020, the Agency had to redistribute its internal resources to manage this administratively complex task, placing additional strain on its resources. This initially created a mix between the support tasks performed by the 4% statutory staff recruited as part of SC and Frontex's headquarter staff, distributed within several Divisions with responsibility for the management of the SC. This includes staff in Human Resources, the Deployment Management Division, the Operational Response Division, and others⁷⁴⁰.

Some Frontex stakeholders are of the view that the 4% limitation is too restrictive and not sufficient to manage the administratively complex processes linked to SC planning and management. Others acknowledge that inefficiencies may partly stem from internal processes, which could be streamlined and improved. This would ensure more efficient planning and deployment, among others⁷⁴¹.

The Agency has not yet developed a clear concept about the present and future needs for general administrative support, operational support and size of operational activities taking place at the headquarters, vis-à-vis the overall size of the SC. Such clear view is likely to emerge because of the ongoing development of a new command structure for the SC and of the wider reorganisation of the Agency. The development of a management structure for the SC is essential for the implementation of the current Regulation, and for the need to ensure effective business processes, avoid overlapping, excess administration and to set clear responsibilities⁷⁴².

In the meantime, the deployment of some operational staff of the SC to the Agency's headquarters is justified for certain profiles. This is providing some flexibility for Frontex, in line with MB Decisions 27/2021, 8/2022 and 5/2023. In accordance with the relevant MB Decisions, the SC profiles which could be posted in the Headquarters include Debriefing Officers, Cross-Border Crime Detection Officers, Frontex Tactical Support Officers, Advanced Level Document Officers, Return Specialists, Forced Return Escort and Support Officers, and Information Officers, which operate multi-purpose aerial surveillance⁷⁴³.

Additional problems arise in relation to the places of deployment. The Agency's headquarters in Warsaw is the place of employment for Frontex's statutory staff, despite not being recognised as a place of deployment. This is creating administrative challenges. The division between statutory staff employed at the headquarters and statutory staff deployed in operations is reflected in the employment

⁷⁴⁰ ICF study (2023), p. 139-140. Interviews with Frontex.

⁷⁴¹ ICF study (2023), p. 140. Interviews with Frontex.

⁷⁴² ICF study (2023), p. 140. Interviews with Frontex.

⁷⁴³ Management Board Decisions 27/2021, 8/2022 and 5/2023; Frontex (2022). 'Final Audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'.

contracts of Frontex staff. Frontex staff are divided into two categories: Category A1 includes staff working at headquarters, while Category A2 refers to “deployed staff” of the SC⁷⁴⁴.

However, both categories of SC staff have Warsaw as their place of employment. The current set-up entails several practical and administrative challenges, including significant workload to process long-term missions and claims for rent, accommodation, and reimbursement⁷⁴⁵.

There are also several other administrative and practical issues deriving from the difference between the place of long-term deployment and the place of employment. For instance, because SC staff are officially employed in Warsaw but do not reside there or in their deployment location, they are unable to obtain vehicle license plates⁷⁴⁶.

The implementation of the rules needs to be reviewed, as the Agency proceeds with the reforms in the planning and reorganisation. Additionally, administrative issues and human resource management related issues in terms of place of employment and deployment must be solved in a sustainable manner.

RQ3. How has the reserve for rapid reaction as part of the Standing Corps been relevant in supporting Member States, in light of the increased number of categories 1, 2 and 3 staff?

The reserve for rapid reaction from the Member States’ staff is the Category 4 of SC⁷⁴⁷. During the review period, it has not been relevant to supporting Member States with border management tasks. No Category 4 staff were deployed in 2021⁷⁴⁸ or 2022⁷⁴⁹. The Regulation phases out Category 4 Standing Corps in 2025.

Category 4 has been formed and ready to be deployed “in the event that other categories of operational staff are fully deployed for a rapid border intervention”. It is to assist Member States in circumstances when Member States are facing ‘specific and

⁷⁴⁴ ICF study (2023), p. 141 and Frontex (2022). ‘Final Audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency’, pp. 31-32.

⁷⁴⁵ ICF study (2023). Interviews with Frontex.

⁷⁴⁶ ICF study (2023), p. 141.

⁷⁴⁷ Article 58 of the EBCG Regulation.

⁷⁴⁸ Management Board Decision 57/2022 of 29 October 2022 adopting the Annual Implementation Report 2021.

⁷⁴⁹ Frontex (2023). ‘Annual Implementation Report 2022’, p. 9.

disproportionate challenges⁷⁵⁰ at their borders. Nevertheless, resources from other categories, especially Category 3, have been available and sufficient to cover the needs.

For example, following increased tensions at the border between Lithuania and Belarus, the Agency launched a rapid border intervention in Lithuania in 2021. The intervention lasted from mid-July until the end of November 2021. Lithuania received support primarily via the activation of Category 3 short-term deployments. The Regulation allows for the redeployment of available members of the SC or deployment of additional staff in case of launching a rapid border intervention. Similarly, Category 4 staff were not deployed in response to the mass influx of persons arriving from Ukraine in the wake of Russia's full-scale invasion of Ukraine in February 2022, as other resources were available⁷⁵¹.

The post-COVID 19 period had generally low levels of irregular migration pressure. This is when deployment needs for Standing Corps was quite low. Several Member States believed Category 4 may no longer be relevant⁷⁵². This is becoming clearer, as the numbers in the Categories 1 – 3 are increasing year by year, and the Member States have factually re-allocated Category 4 staff to the other Categories of the SC. It seems that phasing out of Category 4 is feasible, as planned.

RQ4. Which are the national authorities of Member States and Schengen Associated Countries which provide contributions to the Standing Corps (categories 2 and 3)?

The European Border and Coast Guard includes by the national authorities of Member States responsible for border management, including coast guards, where relevant, and the national authorities responsible for returns⁷⁵³. This defines the scope of the national authorities, and sets the bar to evaluate, if the Regulation is implementable and implemented as meant.

There are three main group of national authorities that contribute to the SC: authorities that can be described predominantly law enforcement and border management authorities, predominantly defence authorities, and authorities with other duties. Most of the SC (97%) are long term seconded (Category 2) or short term nominated (Category 3) by national authorities with law enforcement and border management duties. These include police authorities, border and coast guards, as well as migration, integration, return

⁷⁵⁰ Preambles of the EBCG Regulation.

⁷⁵¹ Frontex (2023). 'Annual Implementation Report 2022', p. 9.

⁷⁵² ICF study (2023), p. 141. Interviews with MS/SAC national authorities: 2/27; survey of MS/SAC authorities: 4/27.

⁷⁵³ Preambles of the EBCG Regulation.

management, and customs. Only a minority of the SC is nominated or seconded by defence authorities (1.8%), including the French and Portuguese Navy, the Armed Forces of Malta and the Defence Command of Denmark, or by other authorities (0.2%), such as the General Inspectorate of Aviation within the Ministry of Interior (Romania) or the Prison and Probation Service, responsible for returns. In this regard, there is lots of versatility⁷⁵⁴.

Some of the contributing agencies have a combination of law enforcement and border guard tasks, but there are also specialised agencies, depending on the contributing country. In several countries, law enforcement or customs officers conduct tasks, which are external border control tasks in the Union acquis. It is not possible to strike a clear-cut universal definition to the Agencies that fall under the definition of European Border and Coast Guard. For Category 2, for example, Germany relies almost entirely on the federal police, but for Category 3 it includes 16 other regional police forces, as well as Customs and Criminal Police. The local police forces have also a major role in other Member States, such as Latvia, Greece, France, where police forces have a relevant role in the border management⁷⁵⁵.

It seems that multiple relevant agencies of the Member States contribute, depending on the national organisation, competences, institutional setup, and policies. This ensures the distribution of the burden across the Member State and ensures the participation of the suitable and competent professions, as envisaged by the Regulation.

RQ5. How has the number of Standing Corps members, the composition (e.g., Standing Corps categories) and geographical distribution of the Standing Corps meet the operational needs of the Agency?

The detailed composition of the SC meets the Agency's operational needs only to some extent⁷⁵⁶. Nevertheless, it is essential to analyse, which challenges are related to the transitional period of the launching of the SC, and which are structural problems that may need addressing in terms of the implementation going forward.

By 2027 the SC is to comprise of 10 000 officers. This includes 3000 Category 1 statutory staff hired by the Agency. Additionally, 1 500 will be seconded from the Member States for long term (Category 2) and the remainder 5500 to be nominated by the Member

⁷⁵⁴ ICF study (2023), p. 142.

⁷⁵⁵ ICF study (2023), p. 142.

⁷⁵⁶ ICF study (2023), pp. 142-145.

States for short term deployments (Category 3)⁷⁵⁷. Category 3 is deployed predominantly to fill in the gaps that cannot be covered by the longer deployments with Category 1 and 2. At present, it is yet to see to what extent the size of the SC will be sufficient in the years to come⁷⁵⁸.

So far, initial delays in recruitment of Category 1 staff, and related delays in the training and equipping have had an impact to the perception of Member States. The gaps are visible in certain profiles, such as dog handlers and Advanced level document officers⁷⁵⁹.

The implementation process of the SC has just recently started. In 2020, a task force for deployment management was set up to ensure the full operationalisation of the SC. An information campaign for the recruitment of the first candidates was launched. During the same year, 495 SC Category 1 were recruited, trained, and equipped. In 2022 and 2023, the number increased respectively to 678 and 970 SC Category 1 in comparison to the targets of 1000 and 1500 provided in Annex I of the EBCG Regulation⁷⁶⁰.

Table 2⁷⁶¹ is to provide an overview of the capacity of the SC⁷⁶² in the years 2021, 2022 and 2023. The main gap was in Category 1, a small gap in Category 2, but due to plentiful short-term deployments of Member States, de facto there were no major gaps affecting the deployments.

Table 2: Overall Development of the Standing Corps 2021 - 2023

Year Category	Regulation's Requirement by Category	Actual Recruited (CAT1) or Committed (CAT 2,3,4)	Note
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⁷⁵⁷ Annex I of the EBCG Regulation.

⁷⁵⁸ ICF study (2023), p. 142-143.

⁷⁵⁹ ICF study (2023), p. 142-143.

⁷⁶⁰ ICF study (2023), p. 143. The number of Standing Corps Category 1 staff as indicated in Annex I of the EBCG Regulation includes statutory staff deployed as members of the team in operational areas, staff responsible for the functioning of the European Travel Information and Authorisation System (ETIAS) and the 'up to 4% support staff' in line with Articles 54(7) and 54(8) of the EBCG Regulation. Therefore, the number of deployable team members is always less than the overall number required by the Regulation.

⁷⁶¹ Annual Implementation Report 2021; Quarterly Reports on the European Border and Coast Guard Agency's Capabilities (Q4 2022).

⁷⁶² Annex I, II and III of the EBCG Regulation and the number of officers recruited and nominated in each Category.

2021			
1	1000	495	
2	400	37	
3	3600	7752 (primary: 3444)	This number exceeds the minimum requirement of the Regulation as it includes both deployed and others, who were dedicated to the Standing Corps as a reserve. The length of the deployment periods varies.
4	1500	1500	Full commitments, even if no deployments
2022			
1	1000	678	
2	500	461	
3	3500	7809 (primary: 3419)	This number exceeds the minimum requirement of the Regulation as it includes both deployed and other, who were dedicated to the Standing Corps as a reserve. The length of the deployment periods varies.
4	1500	1500	Full commitments, even if no deployments
2023⁷⁶³			
1	1500	970	
2	500	450	
3	4000	3899	
4	1500	1500	

This means that the building up of the SC and gaining experiences out of it is only in a very early stage. In the future, more structured, planned and thoroughly implemented quality and quantity of the SC can be expected. Overall, the SC is still in implementation phase, and it is therefore not yet possible to draw conclusions on its overall size. Nevertheless, despite the identification of inefficiencies that

⁷⁶³ Latest data from Frontex report on capabilities to the Management Board 5.9.2023.

need to be addressed, Member States acknowledge the overall added value in the deployment of the SC and the size of individual Member States contributions to the SC appears to be largely adequate.

The predictability and coordination of the capacity building and staffing of the SC will improve with the adoption of the Capability Roadmap⁷⁶⁴. It will be looking to the future of the recruitment and training, as a part of EIBM governance process. The Roadmap is scheduled to be adopted by the Agency's MB still in 2023 and will be annexed to the Technical and Operational Strategy for EIBM Strategy⁷⁶⁵.

In addition to quantity, the quality of the SC must be considered in the planning. In terms of the composition of SC' categories, Member States reported gaps and deficiencies in certain profiles. This means that the capacity building to ensure certain categories of the experts must be considered while developing the Capability Roadmap.

Table 3 provides an overview of coverage rate of Frontex's needs for each profile in the SC, measured as the ratio of the availability of the various profiles over the identified needs⁷⁶⁶ by category, for 2021, 2022 and 2023. The gaps identified for profiles such as Dog Handler and Forced Return Escort and Support Officer (FRESO) are evident. Some of these gaps are because Member States struggle to provide the Agency with staff that fit the requested profiles.

Table 3: Gaps in the SC Profiles 2021, 2022 and 2023

Profile	% of Needs Fulfilled in 2021	% of Needs Fulfilled in 2022	% of Needs Fulfilled in 2023
Advanced Level Document Officer	96%	64%	66%
Border Guard Officer	72%	59%	84%
Crew Member	N/A	100%	100%

⁷⁶⁴ Articles 9, 62, 63 and 66 of the EBCG Regulation.

⁷⁶⁵ Article 9 of the EBCG Regulation.

⁷⁶⁶ ICF study (2023), p. 145. Based on Frontex Annual Implementation Reports.

Coast Guard Function Officer	100%	N/A	100%
Cross-border Crime Detection Officer	89%	66%	94%
Debriefing Officer	375%	87%	94%
Dog Handler	43%	24%	33%
Forced Return Escort and Support Officer	55%	51%	100%
Frontex Tactical Support Officer	79%	99%	100%
Information Officer	78%	93%	88%
Motor Vehicle Crime Detection Officer	94%	77%	72%
Return Specialist	74%	90%	57%

It appears that the gaps that have been experienced so far are gradually reducing, as the numbers of the categories in the SC approach the planned end state in 2027. Nevertheless, the profiles in the different categories require constant fine-tuning and the need to recruit and train the staff must be taken into consideration while developing the Capability roadmap that will define the recruitment and training plans for the Agency and Member States for years to come.

RQ6. How has the Agency been effective in the recruitment and training of the Standing Corps category 1? Does the recruitment ensure professionalism and geographical (national) balance?

Training and equipping are an integral follow-up to the recruitment, to have operational resource ready to be efficiently deployed. The establishment of the SC required significant recruitment, which was also impacted by the COVID-19 pandemic. The SC members' selection procedures turned out to be rather comprehensive, time consuming and complex⁷⁶⁷.

Most Category 1 staff are satisfied with the different aspects of the recruitment and induction procedures, including the submission of their application, physical test, medical check, and clarity of the employment offer⁷⁶⁸. Nevertheless, administrative resources for recruitment and processes of recruitment may be reviewed and streamlined as a part of the implementation of the Regulation.

However, there is an imbalance in the geographical representation within SC Category 1. The Agency should not only draw the versatility and expertise all around Europe, but also try to ensure a national balance and that the Standing Corps is perceived as a European representation of the Member States' Border and Coast Guard. The current workforce does not represent an EU-wide border uniformed service, nor does it reflect the diverse national backgrounds and working cultures of all Member States. Standing Corps staff from Greece, Romania, Portugal, Spain and Poland account for approximately 74% of Category 1 staff⁷⁶⁹.

This is firstly, because in the implementation of the Regulation, there are no national quotas for Category 1.

Secondly, there are factors that may reduce the attractiveness of the statutory staff positions. An essential factor is remuneration, benefits – including family benefits and working conditions - compared to the conditions in the home country service⁷⁷⁰.

Thirdly, different Member States treat Category 1 staff differently for the duration of their recruitment by Frontex. There are practices between forcing to leave service permanently, to allow re-applying to home service after the Category 1 employment, to granting long term leave of absence and allowing the smooth return home. This has impact to predictability and benefits of the potential applicants

⁷⁶⁷ ICF study (2023), p. 145-146. Frontex (2022). 'Final audit report on recruitment, training and deployment of the Standing Corps in the European Border and Coast Guard Agency'; interviews with EU agencies (2/8) and Frontex.

⁷⁶⁸ ICF study (2023), p. 146. Survey of Standing Corps Category 1: very satisfied or satisfied with: submission of application (86%), information on the recruitment process (63%), physical test (57%), medical check (69%), clarity of the employment offer (63%), and timing of the recruitment process (51%).

⁷⁶⁹ ICF study (2023), pp. 146-147. Based on Frontex Annual Implementation Report 2022.

⁷⁷⁰ ICF study (2023), p. 147. Interviews with Frontex and MS: 6/27.

to Category 1. Of the SC Category 1 staff with previous law enforcement experience, around 93% reported having resigned from their previous employer or taking a long period of unpaid leave⁷⁷¹.

The primary reasons for joining SC Category 1 staff include career ambition (65%), job satisfaction (63%) and salary (57%). The online survey suggests that recruits' profiles are overwhelmingly male, with an age range between 40 and 49⁷⁷².

13 of the 27 Member States considered that the recruitment of Category 1 staff does not ensure professionalism and geographical balance⁷⁷³. Looking into diversity and national balance is an essential issue in terms of next steps of the implementation.

Training is an integral part of the recruitment. Following their recruitment, given the specific skills required, Frontex statutory staff cannot be deployed immediately. It must undergo necessary border guard or return-related training, including training on fundamental rights. The training is considering their previous qualifications and professional experience of the SC specifically, the Agency has the mandate to provide the members of the SC with specialised training relevant to their tasks and powers⁷⁷⁴.

The picture of the amount, quality and impact of the training is somewhat mixed. The recent external evaluation of the training found that new recruits consider themselves ready to perform their tasks, such as border checks and border surveillance-related tasks, including refusal of entry, authorisation of entry, and patrolling. The national authorities expressed concerns about the level of professionalism of the recruits with no law enforcement background⁷⁷⁵.

Currently Frontex has a limited capacity to deliver training on its own. The training of the SC in all categories is heavily relying on the support and commitment of the Member States training resources, such as trainers and training facilities. In terms of implementation

⁷⁷¹ ICF study (2023), p. 147. Survey of the Standing Corps.

⁷⁷² ICF study (2023), p. 147. Survey of the Standing Corps.

⁷⁷³ ICF study (2023), p. 147. Survey of MS: 4/27 national authorities agreed that the recruitment of Standing Corps Category 1 ensures professionalism and geographical balance, while 5/27 preferred not to answer, and another 5/27 neither agreed nor disagreed.

⁷⁷⁴ Articles 55 and 61 of the EBCG Regulation.

⁷⁷⁵ ICF study (2023), pp. 148–149. Field visits to MS/SAC; interviews with MS/SAC authorities: 7/27; survey of MS/SAC national authorities. ICF study (2023), annex, p. 215. Referring to survey of MS/SAC authorities 10 out of 27 Member States noted issues related to the levels of training and preparedness of SC officers during deployments.

of the Regulation, the commitment of the Member States to support the training with resources, curricula development, exercises, facilities and other forms of hands-on-support is needed. Without long term predictable commitment of the Member States the training system cannot be ensured⁷⁷⁶.

Beside of the challenges, according to the data of 2020 and 2022, most formal targets for training activities were met for those years. Also, a recent external evaluation of the Extended Basic Training Programme (EBTP) found the content of the training to be highly relevant to the needs and expectations of the Agency, Member States and trainees, as well as coherent with the EBCG Regulation⁷⁷⁷.

Nevertheless, the overall quality, substance and quantity of the training needs further follow-up and analysis to provide reliable picture of the development needs. This is a part of the Capability roadmap development that will provide long term view for the training development for Frontex and Member States with a view to ensuring the necessary quality and quantity of staff in the long term. At the same time, ensuring long term training plans with proper European resources, utilisation of Partnership Academies in Member States and adequate finetuned curricula are an essential part of the implementation of the regulation⁷⁷⁸.

RQ7. How has the Agency been effective in the deployments of the Standing Corps Category 1?

The overall added value of SC is discussed in RQ1, the size and composition of SC, including the different profiles in RQ5 and training level of Category 1 in RQ6. According to Member States the effectiveness of Category 1 staff of the SC has been only somewhat effective⁷⁷⁹.

Firstly, the training of the different profiles has an impact to the composition of the SC, and its possibilities to be deployed effectively to the required tasks. It seems that Member States expect especially Category 1 staff to provide additional support in the specialised areas. These areas of specialisation lack experts available from Member States. This sets requirement of quality and content of the

⁷⁷⁶ ICF study (2023), p. 149. Field visits to MS/SAC; interviews with Frontex and MS/SAC national authorities: 2/27; Frontex (2023). 'Evaluation of the EBCG Regulation: Standing Corps'; ICF (2023). 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG'; interviews with Frontex and Member States: 2/27.

⁷⁷⁷ ICF study (2023), p. 147-148. A survey to MS/SAC. 'Evaluation of the design and functioning of the Extended Basic Training programme for the standing corps designed and delivered for the extended mandate and tasking as foreseen in the EBCG.'

⁷⁷⁸ Articles 9 and 55 of the EBCG Regulation.

⁷⁷⁹ ICF study (2023), p. 149.

training of profiles in Category 1. The survey of the SC has shown that the training may be too theoretical and could be developed to provide more practical skills to work in the daily working environment at the borders⁷⁸⁰.

Secondly, one issue was identified in relation to the planning of deployments. The current planning process and the Agency's interpretation of data protection rules do not allow the planning team to have full access to the information regarding expertise of the Category 1 staff members. This has led to a situation that staff members have been allocated to wrong tasks in the operations, creating negative perceptions. Additionally, the planning process has deployed some staff members to the operations, whose expertise was not needed on the ground⁷⁸¹. Duration of deployments is also a matter of effectiveness. Member States considered the longer deployment period to be of higher the added value⁷⁸².

Thirdly, there are some unclarities of the role of SC. SC was never meant to become a law enforcement agency, with investigative competences⁷⁸³. The lack of investigative competences is perceived as a weakness or as a gap⁷⁸⁴. In this regard, there is a space for improvement in terms of developing the Standard operational procedures, operational plans⁷⁸⁵ and briefing this to the staff to better itemise the tasks and competences of the Category 1, as well as for Member States to review their national law and practices⁷⁸⁶ to enable the effective deployment of Category 1 staff. This issue is applicable to all the Categories, but it has been interpreted to be most

⁷⁸⁰ ICF study (2023), p. 150. Survey of the Standing Corps; interview with Frontex.

⁷⁸¹ ICF study, p. 149-150. Survey of the Standing Corps.

⁷⁸² ICF study (2023), p. 151. Interviews at the on-site visits in two selected MS/SAC.

⁷⁸⁴ The legal basis for EU action in the field of intra-EU law enforcement cooperation is based on 87 TFEU: "the Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences", but it is not about full law enforcement competences, which is in the hands of MS. EBCG Regulation is about TFEU Art. 77 and 79.

⁷⁸⁴ ICF study (2023), p. 150. Interviews with two MS/SAC; ICF Study (2023), p. 26; Frontex (2023). 'Evaluation of EBCG Regulation'. Internal document.

⁷⁸⁵ Article 82(2) of the EBCG Regulation: "The performance of tasks and the exercise of powers by members of the teams, in particular those requiring executive powers, shall be subject to the authorisation of the host Member State on its territory as well as to applicable Union, national or international law, in particular Regulation (EU) No 656/2014, as described in the operational plans referred to in Article 38."

⁷⁸⁶ ICF study (2023), p. 19.

challenging for Category 1⁷⁸⁷. The Regulation grants SC executive powers, use of force, carrying service weapons⁷⁸⁸. Nevertheless, criminal investigation⁷⁸⁹ are not in the mandate of the Agency⁷⁹⁰.

Fourthly, certain aspects of the EU Staff Regulations do not seem to be suited to the needs of SC Category 1, who would need to work in the nightshifts, weekends, longer shifts, stand-by, if needed. The current rules limit the effectiveness of the SC deployments⁷⁹¹.

Additionally, logistical concerns were reported as obstacles in the efficient implementation of duties. The establishment of logistic hubs might reduce the need to use working time to pick up equipment, uniforms and weapons. Developing logistical arrangements and administrative rules, operational effectiveness was an issue. The host Member State can also contribute to the implementation of the smooth logistical arrangements, for example in terms of storing the equipment and weapons safely⁷⁹².

The SC has limited access to the relevant data bases, such as Schengen Information System and the national databases. This hinders SC ability to provide relevant support carrying out first-line border checks and related tasks⁷⁹³.

Finally, the host Member States' authorities' language skills seem to be an issue. The limited English-speaking staff at local level in Member States means that SC cannot effectively carry out their duties unless paired with English-speaking local officers. Even if in

⁷⁸⁷ ICF study (2023), pp. 115-116. Interviews with Frontex indicate that question of law enforcement status is understood to solve several issues, including to grant additional competences.

⁷⁸⁸ Article 55 and Annex V of the EBCG Regulation.

⁷⁸⁹ Law enforcement agency is referring to a national agency. For example, Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union defines 'competent law enforcement authority': a national police, customs or other authority that is authorised by national law to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities. Agencies or units dealing especially with national security issues are not covered by the concept of competent law enforcement authority. Every Member State shall, by 18 December 2007, state in a declaration deposited with the General Secretariat of the Council which authorities are covered by the concept of 'competent law enforcement authority'. Such a declaration may be modified at any time."

⁷⁹⁰ ICF study (2023), p. 116.

⁷⁹¹ ICF study (2023), p. 150.

⁷⁹² ICF study (2023), pp. 150-151.

⁷⁹³ ICF study (2023), p. 150. Interviews with Category 1, 2 and 3 SC.

some cases a common language can be found, lack of communication is a question of safety, security and a source of frustration for SC and the host country⁷⁹⁴.

RQ8. How has the Agency been effective in the deployment of the Standing Corps Categories 2 and 3?

Category 2 refers to operational staff seconded from Member States to the Agency for a long-term period of typically two years⁷⁹⁵. Category 3 refers to operational staff for short-term deployments for up to four months⁷⁹⁶.

Based on the very positive feedback from Member State authorities, the Agency has been effective in deploying Categories 2 and 3 SC⁷⁹⁷. Nevertheless, there are some challenges with Category 1, which are described in previously in chapter RQ7.

Member States are satisfied with the experience of Categories 2 and 3, especially when it comes to the competences of the staff. The national authorities value their background, professionalism, and value in operational support⁷⁹⁸.

The length of deployment of Category 2 is valued by the host Member States. Member States consider Category 3 useful to fill in the gaps in busy periods. The deployment periods are hoped to be longer, even if the picture of the prolongation option is mixed, referring to the work-life balance concerns and relatively low remuneration to attract volunteers⁷⁹⁹.

When it comes to the deployment planning of Frontex, the Agency recognises that the current deployment system is not efficient. As the amounts of deployments are increasing very quickly, the old planning models are not enough. Frontex is in the process of developing a new deployment model, aiming to deployment of functional teams rather than individual staff members⁸⁰⁰.

RQ9. To what extent is the size of individual Member States' contributions to the Standing Corps adequate to meet the objectives of the EBCG and proportionate to these?

⁷⁹⁴ ICF study (2023), p. 45. Survey of MS/SAC: 14/27; ICF study (2023), p. 122 and p. 155. Interviews with three MS/SAC; ICF Study (2023), p. 162.

⁷⁹⁵ Article 56 of the EBCG Regulation.

⁷⁹⁶ Article 57 of the EBCG Regulation.

⁷⁹⁷ ICF study (2023), p. 151.

⁷⁹⁸ ICF study (2023), p. 151.

⁷⁹⁹ ICF study (2023), p. 151.

⁸⁰⁰ ICF study (2023), p. 151.

The SC appears largely adequate to meet the objectives of the Regulation, namely the development and implementation of a system for the integrated management of the external borders and for ensuring the functioning of the Schengen area. The Agency has been able to answer all the requests for support by Member States, suggesting that overall contributions are adequate to meet the objectives. Where needs have not been met, this is due to the type of expertise (i.e. profiles) rather than the volume of contributions⁸⁰¹.

The operational needs must be assessed taking into consideration future needs, risk and new phenomena, vulnerabilities of the Member States that need to be supported, types of borders (land, sea, air), types of terrains, climate, infrastructure and similar factors. The determining the optimal size of the SC entails a complex analysis⁸⁰².

In the survey such opinion was shared by half of the responding Member States who agree that the size of individual contributions to the Standing Corps is adequate to meet the objectives of the EBCG Regulation⁸⁰³.

Focusing exclusively on the views of Member States, while half of the responding Member States find the size of the contributions adequate, a minority of respondents disagree with this conclusion⁸⁰⁴. Some Member States' representatives hope that the contributions should be more needs based, and there should not be binding quotas to contribute to the categories. Even if there must be predictability and continuity in the commitment of the Member States, it can be concluded that there is still room for improvement when it comes to the implementation of smart and flexible planning by Frontex⁸⁰⁵.

The capability roadmap will define the long-term recruitment and training needs for the Standing Corps. Implementation of this will roll out in the Agency's Single Programming Document, acquisition strategy and other strategic plans, as it will in the Member State's capability development plans. Year by year, the planning system of the Agency is moving to more needs based and flexible direction. The existing and foreseen operational needs of the host Member States will be the main driver for the confirmed deployments⁸⁰⁶.

⁸⁰¹ ICF study (2023), p. 152.

⁸⁰² ICF study (2023), p.152-153. Interviews with Frontex; case study; interviews with two MS.

⁸⁰³ ICF study (2023), p. 153. Survey of MS/SAC authorities: 11/27 positive (total 22 answers to the question).

⁸⁰⁴ ICF survey (2023), p. 153. Survey of MS/SAC authorities 11/27 positive (total 22 answers to the question).

⁸⁰⁵ ICF survey (2023), p. 153.

⁸⁰⁶ ICF study (2023), p. 153.

There are a number of criteria that can be used to analyse the contribution of individual Member States. Table 4 below is figuring the comparison by some selected criteria. When evaluating the contributions, it is possible to compare Member States for example in terms of territory relatively to the total territory of all Member States (including Schengen associated countries) and the share of their population relatively to the total population of all of them. These two criteria are compared to the share of the Member States' contributions to Category 2 and Category 3 according to the Regulation, and the share of the actual Member States' contribution to the Standing Corps' deployment in 2021 for both Category 2 and Category 3 officers (expressed in man-days)⁸⁰⁷.

The comparison shows that some Member States (HR, DK, HU, LV, RO) contribute more than both their share of the population and territorial size, and some Member States (ES, FR) contribute significantly less than their share. Most Member States contribute a fair share to the overall number of SC staff, even if calculated with a limited and selective criterion.

Table 4: A sample of comparison criteria to evaluate the proportionate amounts of Member States' contributions

Member State	Share of EU territory	Share of EU Population	Share of CAT 2 Committed	Share of CAT 3 Committed	Share of 2021 CAT2&3 deployment man days
Austria	1.9%	2.0%	2.4%	3.3%	2.9%
Belgium	0.7%	2.5%	2.1%	2.3%	1.3%
Bulgaria	2.5%	1.5%	2.8%	1.7%	2.1%
Croatia	1.3%	0.8%	4.5%	3.0%	3.1%
Cyprus	0.2%	0.2%	0.6%	0.3%	0.2%
Czechia	1.7%	2.3%	1.5%	5.6%	2.6%
Denmark	0.9%	1.3%	2.1%	2.0%	3.4%

⁸⁰⁷ This methodology has been used by ICF study (2023), p. 154-155.

Estonia	1.0%	0.3%	1.3%	3.0%	1.5%
Finland	6.9%	1.2%	2.1%	4.8%	1.9%
France	12.4%	14.9%	10.7%	8.9%	6.0%
Germany	7.9%	18.2%	12.4%	17.1%	15.9%
Greece	2.9%	2.3%	3.9%	2.2%	2.4%
Hungary	2.1%	2.1%	4.7%	4.8%	5.0%
Iceland	1.6%	0.1%	0.2%	0.4%	0.3%
Italy	6.7%	12.9%	7.3%	6.8%	8.1%
Latvia	1.4%	0.4%	2.1%	3.6%	4.8%
Lithuania	1.4%	0.6%	3.0%	3.2%	2.6%
Luxembourg	0.1%	0.1%	0.6%	0.3%	0.3%
Malta	0.0%	0.1%	0.6%	1.2%	1.1%
Netherlands	0.8%	3.9%	3.4%	2.0%	3.6%
Norway	8.7%	1.2%	1.5%	0.7%	0.9%
Poland	6.9%	8.3%	7.1%	5.4%	6.5%
Portugal	2.1%	2.3%	1.9%	1.6%	6.7%
Romania	5.2%	4.2%	5.2%	3.7%	7.2%
Slovakia	1.1%	0.5%	2.6%	2.5%	1.4%
Slovenia	0.5%	1.2%	2.6%	1.6%	1.8%
Spain	11.3%	10.4%	6.9%	5.2%	3.3%
Sweden	9.2%	2.3%	2.6%	1.9%	2.2%
Switzerland	0.9%	1.9%	1.1%	1.1%	0.7%

This comparison is only showing two factors that that influences the size of Member States' contribution. The contributions of the

Member States to the SC were the result of a political compromise, based on the historical contributions, population, size of the Member State, resources, such as number of competent agencies, external borders and capabilities to contribute⁸⁰⁸.

RQ10. How are the Member States' capabilities coherent with the size of the Members States' contributions to the Standing Corps? Have the contributions impacted capabilities available for other needs (e.g. CSDP missions and operations)?

Member States are also financially supported to increase the amount of border guards⁸⁰⁹. Member States get also support in the training and other capacity building measures by Frontex⁸¹⁰. The challenge is not overall numbers of contributions, but more lack of specific profiles (expertise) and seasonal challenges during holidays and peak seasons⁸¹¹.

The concept of SC gives Member States and Agency a predictable long-term view to the contributions, and it allows effective planning and capability development. This is a welcome reform compared to the previous capacity pooling models⁸¹².

Table 5 below presents an analysis of the proportionality of Member States' contributions, comparing the potential impact that these contributions have on the overall law-enforcement capacity of a Member States⁸¹³. A few Member States expressed concern about the overall numbers⁸¹⁴. Though the national quotas for the contributions to the standing corps are assessed as proportionate Member States face some challenges when complying with the national quotas set in the EBCG Regulation. Some of the main challenges reported include lack of personnel⁸¹⁵, lack of personnel willing to be deployed⁸¹⁶ and busy periods of the year⁸¹⁷.

⁸⁰⁸ This methodology has been used by ICF survey (2023), p.154-155.

⁸⁰⁹ Article 61 of the EBCG Regulation.

⁸¹⁰ Article 62 of the EBCG Regulation.

⁸¹¹ ICF study (2023), p. 41.

⁸¹² ICF study (2023), p. 138 and European Commission (2018). 'Proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard'.

⁸¹³ ICF study (2023), pp. 157-158.

⁸¹⁴ ICF study (2023), pp. 158-159. Survey of MS/SAC authorities: 2/27.

⁸¹⁵ ICF study (2023), pp. 158-159. Survey of MS/SAC authorities: 4/27 "to a great extent", 11/27 "to some extent", 7/27 "to a limited extent".

⁸¹⁶ ICF study (2023), pp. 158-159. Survey of MS/SAC authorities: 3/27 "to a great extent", 8/27 "to some extent", 9/27 "to a limited extent".

⁸¹⁷ ICF study (2023), pp. 158-159. Survey of MS/SAC authorities: 6/27 "to a great extent", 3/27 "to some extent", 8/27 "to a limited extent".

Table 5: Example of a way to calculate the ratio between Member States' contributions to Categories 2 and 3 and their indicative national enforcement capacity⁸¹⁸

Member State	Category 2	Category 3	Total number of Standing Corps from law enforcement authorities	Total Contributions to CAT2&3	Indicative national law enforcement capacity	Total contributions versus national law enforcement capacity %
Austria	11	216	218	227	31,897	0.71%
Belgium	10	153	128	163	38,828	0.31%
Bulgaria	13	114	127	127	29,170	0.43%
Croatia	21	201	222	222	20,576	1.07%
Cyprus	3	21	24	24	4,828	0.49%
Czechia	7	369	376	376	40,113	0.93%
Denmark	10	130	76	140	11,300	0.67%
Estonia	6	196	202	202	4,070	4.96%
Finland	10	316	N/A	326	7,503	N/A
France	50	585	562	635	215,948	0.26%
Germany	58	1,126	1,184	1,184	250,558	0.47%

⁸¹⁸ As there are large differences in the institutional setup and competent agencies in the scope of European Border and Coast Guard, this data must be evaluated taking into consideration differences in reporting this.

Greece	18	146	94	164	56,232	0.16%
Hungary	22	317	339	339	37,559	0.9%
Iceland	1	24	6	25	640	0.93%
Italy	34	446	343	480	237,910	0.14%
Latvia	10	234	20	244	7,663	0.26%
Lithuania	14	208	N/A	222	7,849	N/A
Luxembourg	3	18	18	21	2,039	0.88%
Malta	3	79	7	82	2,243	0.31%
Netherlands	16	130	131	146	50,628	0.25%
Norway	7	47	54	54	N/A	N/A
Poland	33	355	N/A	388	97,899	N/A
Portugal	9	106	71	115	45,588	0.15%
Romania	24	245	238	269	49,670	0.47%
Slovakia	12	162	174	174	21,167	0.82%
Slovenia	12	103	115	115	7,242	1,5%
Spain	32	345	377	377	175,082	0.21%
Sweden	12	127	100	139	20,942	0.47%
Switzerland	5	72	N/A	77	18,663	N/A

According to the collected data, the contributions to the SC did not have a significant impact on the resources for other International or European missions or operations, including Common Security and Defence Policy (CSDP). Nevertheless, about a half of the Member States found contributions to the SC having impact to the other commitments⁸¹⁹. This means that Member States should consider commitments in the other policy areas while updating their Capability development plans, including long-term recruitment.

ANNEX IV. OVERVIEW OF BENEFITS AND COSTS

⁸¹⁹ ICF study (2023), p. 160. The result is based on survey of MS/SAC authorities.

Overview of costs and benefits identified in the evaluation							
		EU institutions		Member States		Businesses and citizens	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
Costs identified	Direct compliance costs (adjustment, administrative regulator charges: one-off) ⁸²⁰						
	Direct compliance costs (adjustment, administrative regulator charges: recurrent	Overall contribution to Frontex budget Opening EU contribution: approx. EUR 329.6 million (2019), 428.2 EUR million (2020), EUR 514.2 million (2021), EUR 704.7 million (2022), EUR 788.9 million (2023), EUR 925 million (2024), EUR 1,049.9 million (2025), EUR 1,130.4 million (2026), EUR 1,177.3million (2027) ⁸²¹ Closing EU Contribution: approx. EUR 307.3 million (2019), EUR 339.2 million (2020), EUR	Year-to-year increase in opening contribution in 2019-2023 of appr. 22% (25% from 2020) Difference between opening and closing contribution in general between 7% and 9%, with a peak in 2020 (22.6%), where the EBCR Regulation started being implemented, also due to external factors	National co-funding of technical equipment (ranging between 10% and 25%, in addition to the EU contribution of up to 90% of the total eligible costs) purchased via EU Funds available for this purpose (ISF B for the 2014-2020 period and BMVI for 2021-2027 period.	Additional costs for Standing Corps staff, including shares of their costs not covered by EU financial contribution as per Art. 61 of the EBCG Regulation, specific equipment and training needs,		

⁸²⁰ The EU contribution has been treated as a recurrent cost for the EU.

⁸²¹ The EU contribution for 2023 is per OJ L 58, 23 February 2023 ([SEC03.pdf \(europa.eu\)](#), pages 866 and 867; the figures for 2024-2027 are as per the Financial programming from January 2023.

		499.6 million (2021), EUR 647.5 million (2022)					
	<i>Enforcement costs (monitoring, inspection, litigation): one-off</i>						
	<i>Enforcement costs (monitoring, inspection, litigation): recurrent</i>						
	<i>Indirect costs (indirect compliance or transaction costs)</i>	-	-	-	-		
Benefits identified	<i>Direct benefits: one-off</i>		<i>Differences in EU opening and closing contributions (see above) represent an increase in EU budget available for other uses⁸²². On the other hand, cancellations can be signal of issues with planning of resources and activities and/or inefficiencies in implementation</i>		<i>Pooling of resources (e.g. for TE) is meant to help achieving economies of scale and of scope) Harmonisation of procedures across Member States and sharing of best practices⁸²³.</i>		
	<i>Direct benefits: recurrent</i>	EU contribution	Funds to	<i>More efficient use of resources</i>	<i>Member States used the EU funding (in</i>	<i>When requested not by</i>	

⁸²² Cancellations are treated as one-off benefits. While common to all EU agencies, their occurrence and amounts vary.

⁸²³ Survey of MS/SAC authorities: three MS.

	EBCG national components and Frontex' operational capacity ISF-Borders and Visa (2014-2020): Overall, EUR 2.4 billion EU allocation to Member States programmes, out of which approx. EUR 336.8 million to strengthen European Board and Cost Guard's Agency technical equipment pool. BMVI 2021-2027: Overall, EUR 4.2 billion EU allocation to Member States programmes. An amount of 201.1 million was added in 2023 to Member States programmes for the purchase of equipment to further strengthen EBCG, including Frontex operational capacity. AMIF 2014-2020: overall budget of EUR 7.6 billion for the period AMIF 2021-2027: overall budget of EUR 10.1 billion for the	<i>through pooling of resources and centralisation of some processes</i> <i>Harmonisation of practices and sharing of best practices</i> <i>Better and more direct cooperation with Member States</i> <i>The actual use by Frontex of the equipment - purchased by the Member States with EU support - depends on the actual registration of the equipment in the technical equipment pool, the compliance with the requirements to put it at Frontex's disposal and, ultimately, the bi-lateral agreements between the Agency and owner Member States.</i>	particular ISF Borders and Visa and BMVI, as well as AMIF) for increasing their own operational capacity to implement EBCG Regulation	<i>Frontex, Member States can use the purchased equipment under the targeted specific actions of ISF Borders and Visa and BMVI for at least eight months per year for national use. The financial benefits form returns, are difficult to estimate. Furthermore, it is unclear to what extent these may represent financial benefits or they are simply transfers of costs from Member States to Frontex.</i>		
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		period Returns Member States identified: time savings and reduced administrative burden, better and quicker execution of returns					
	<i>Indirect one-off benefits:</i>						
	<i>Indirect recurrent benefits:</i>					Businesses operating in areas relevant to Frontex activities (e.g. equipment, logistics) could in principle benefit from centralised procurement managed by Frontex, and from possible harmonisation of standards	These are indirect effects hard to detect and assess It is anecdotal evidence, insufficient for quantification and projection at EU level

ANNEX V. STAKEHOLDERS CONSULTATION - SYNOPSIS REPORT

This Annex presents the synopsis of the stakeholder consultation activities undertaken by the external service contractor as part of the Study to support the evaluation of the European Border and Coast Guard Agency (Frontex) and the review of the Standing Corps. It also includes short overview of other targeted stakeholder consultations carried out by the Commission and contributions received by the Commission.

Consultation objectives

The consultation followed the consultation strategy, developed and agreed by the ISG prior to the launch of the supporting study. The consultation strategy defined consultation scope and objectives and provided initial mapping of stakeholders to be consulted by using various methods and data collection tools, taking into consideration that in line with the study's ToR, and in order to ensure a comprehensive and representative collection of views other relevant stakeholders might be identified during the inception process. As part of the consultation strategy, a non-exhaustive list of possible specific consultation topics and information required from each stakeholder was drawn-up.

The goal of the consultation strategy was to ensure that across a series of consultation activities, all relevant stakeholders at EU and national level were given an opportunity to express their views on the relevance, effectiveness, efficiency, coherence and EU added value of the EBCG Regulation and in particular, of the Agency. More specifically, the consultation aimed to gather views of the stakeholders to be subsequently able to evaluate the application of the EBCG Regulation and the activities of the Agency.

Bearing in mind that the focus of the evaluation and the review was on structural and operational matters, the consultation strategy did not foresee a public consultation. However, the public was given a possibility to respond to the call for evidence for the initiative which was published on the Commission's 'Have Your Say' webpage. During the feedback period set from 5 September 2022 until 3 October 2022 six feedbacks were received, namely by: Berlin Institute for Empirical Integration and Migration Research, Humboldt-University Berlin (Germany), Platform for International Cooperation on Undocumented Migrants (Belgium), I Have Rights (Greece), Ministry of the Interior (Estonia), Statewatch (United Kingdom), and Border Violence Monitoring Network (Germany). The contributions were published on the Commission's website.

A short overview of their responses show that Border Violence Monitoring Network referred to alleged fundamental rights violations in operations where Frontex is involved and analysed EBCG accountability from several angles. It recommended an increased mandate for all institutions at the EU level that have oversight over Frontex operations. Statewatch called for full implementation of the current Regulation and made some proposals with regard to the implementation of specific articles (e.g. Art. 10). Estonian

Ministry of the Interior underlined certain unclarities in current provisions but assessed that more time is needed for full implementation of the Agency's mandate and harmonisation of processes with Member States. I Have Rights commented mainly on Article 46, while Platform for International Cooperation on Undocumented Migrants among others recommended certain measures to increase accountability of the Agency in the area of fundamental rights. Finally, Berlin Institute for Empirical Integration and Migration Research focused on legal framework for data collection and analysis as well as on the framework for the suspension of operations.

Stakeholder consultation overview

During the consultation process a broad range of stakeholders was consulted, both at the European, national and international level. To reach such a diverse pool of stakeholders, the contractor used different targeted consultation methods and tools.

The first step of the consultation was the launch of three surveys. These surveys targeted three stakeholder groups, namely: Member States authorities (including Schengen Associated Countries), SC staff, and FRMs.

The Member States authorities survey was divided into thematic sections. National authorities were asked to consult all relevant internal departments and authorities (such as Ministries of the Interior, border management and return authorities) to ensure that they could provide comprehensive answers to the different elements of the evaluation. This process allowed for internal consultation at national level and for each Member State to present a consolidated national response.

The study team also developed a survey for SC' members. The survey included questions for all categories, as well as category-specific questions.

Finally, the study team prepared a survey for FRMs. This was transmitted to Frontex contact points and the FRO for further dissemination.

Table 1: Overview of surveys

Stakeholder group	Survey inputs
Member State authorities	27 responses
Standing Corps	529 responses
FRMs	34 responses

Following the launch of the surveys, the study initially planned to conduct up to 130 interviews with key stakeholder groups, including: Frontex staff, Member States authorities, EU-level stakeholders (including the Commission, EP, EU agencies), civil society and international organisations, and third countries' authorities.

In addition to five scoping interviews at the inception phase, the study team eventually carried out 149 interviews, more than originally foreseen. This final number does not take into account final follow-up interviews with Frontex during the field visit to the Headquarters in Warsaw (as these were follow-up interviews with units and divisions already interviewed previously). The interviews mostly took place online (with the exception of the field visits to Member States and the visit to Frontex), and often, when preferred by Member States, in a combined format, with several authorities present, allowing for in-depth discussions. The team also took the opportunity to conduct additional interviews during some of the field visits and the visit to Frontex headquarters. The results of the interviews were analysed and compared to other sources of information.

Finally, five field visits to Frontex operations in Bulgaria, Finland, Greece, Italy and Romania were organised. Over two-three days, the study team met with central-level national authorities and visited land border crossing points or coordination centres of maritime operations to conduct on-site interviews with national and Frontex staff. Findings from the field visits helped to inform the review of the SC, as well as Frontex operations overall, their relevance and added value to Member States. Several of the external panel experts with previous border management expertise participated in the field visits. Also, a sixth and final visit to Frontex headquarters took place, which allowed the team to focus its discussions on emerging findings and address final data gaps.

Table 2: Overview of interviews, by stakeholder group

Stakeholder group	Interviews
MB representatives	AT, DK, ES, NL, PL
Member State authorities (<i>with multiple authorities, either in a joint format or as separate interviews</i>)	AT, BE, BG, CH, CZ, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI, SE, SK and CH, IS, NO Field visits to BG, EL, FI, IT, RO
EU level (except Frontex)	DG HOME DG INTPA DG JUST DG MARE DG NEAR EASA EDPS EEAS EMSA EUAA eu-LISA European Parliament (LIBE Committee)

Stakeholder group	Interviews
	European Ombudsman Europol EFCA FRA SatGen Secretariat-General of the European Commission
Frontex	Deputy Executive Director Executive Management Bureau Governance Support Centre Deployment Management Division Capacity-Building Division European Centre for Returns Division Situational Awareness and Monitoring Division Operational Response Division International and European Cooperation Division Data Protection Office Fundamental Rights Office Internal Audit Capability Standing Corps staff

Stakeholder group	Interviews
	Frontex Liaison Officers
International organisations	<i>CF member: 3</i>
Civil society organisations	<i>CF member: 5</i> <i>Non-members of CF: 4</i>
Third-country authorities	2 (Moldova and Montenegro)

Table 3: Overview of interviews completed for the Final Report

Stakeholder group	Total interviews
Member State authorities	63
EU level (except Frontex)	33
Frontex	39
International organisations	<i>CF members: 3</i>
Civil society organisations	<i>CF members: 5</i>

	<i>Non-members of CF: 4</i>
Third-country authorities	2
Total	149

Results of consultation activities

The following section provides a summary of the key findings for each category of stakeholders consulted, sub-divided, where possible, by key themes.

Member State authorities

As Member State authorities were one of the main relevant stakeholder groups, they were consulted via (i) survey (27 responses); (ii) interviews (63 conducted) and (iii) as part of the field visits (5 organised). This allowed for triangulation of comparative data (survey), as well as more in-depth insights of Member States' views and experiences (interviews and field visits).

Implementation of the EBCG Regulation in the context of EIBM

A majority of survey respondents from relevant Member State authorities agreed or strongly agreed that the EBCG Regulation is relevant to current challenges and needs at external borders, in particular: meeting situational awareness and risk analysis needs (23 out of 27); using state-of-the-art identification technologies (19 out of 27); supporting return activities (14 out of 20); and in light of increased cross-border crime and cross-border migrant smuggling and trafficking activities (18 out of 27). A majority also agreed that the Regulation was relevant to facilitating legal border crossing and legitimate travellers (16 out of 27) and increasing passenger and cargo flows (14 out of 27). Only a minority agreed or strongly agreed that it addresses increased international migration, including secondary (intra-EU) migratory movements (9 out of 27), terrorism, and hybrid threats (8 out of 27).

When asked whether they believed the current EBCG Regulation remains relevant to address current and emerging needs and challenges of external border management, Member State authorities agreed that it largely does overall. However, some stressed that it

is difficult to fully assess the extent to which the EBCG Regulation addresses needs and challenges in external border management, due to its ongoing implementation. Nevertheless, stakeholders affirmed that the EBCG Regulation addresses most current and emerging needs and challenges at this stage, particularly in relation to those tasks that are seen as part of the core Frontex mandate, including external border management and return.

With regards to possible gaps not yet addressed by the EBCG Regulation, Member States emphasised the importance of first ensuring full implementation of the current EBCG Regulation before deciding on substantive revisions. The majority believed that the EBCG Regulation has gaps, with different gaps identified by individual respondents (for example in the area of hybrid threats). One respondent highlighted the need to ensure complementary with the work of Europol and avoiding overlaps in mandates.

Shared responsibility under EIBM

A majority of Member States agreed or strongly agreed that, in the spirit of shared responsibility, the division of competences between MSs and Frontex, as set out in the EBCG Regulation, is sufficiently clear and adequate to meet the objectives on education and training of border and coast guards (18 out of 27). A great majority of Member States also believed that the training of border and coastguards and return experts component of Frontex's mandate was clearly defined and conducive to addressing the specific needs and challenges.

Considering the areas of EIBM activity outlined in the EBCG Regulation, the overall consensus among Member States is that all four tiers of the EIBM could not have been achieved sufficiently by Member States acting alone. The majority of respondents felt that this was particularly true in the areas of: 1) returns (22 out of 27); 2) risk analysis contributing to a comprehensive situational awareness (20 out of 27); and 3) border control measures at the external borders (17 out of 27). There is overall support for Frontex helping to coordinate measures in third countries, with some comments highlighting that Frontex could do more to ensure unified and coherent action.

Capacity-building

Frontex implemented a range of training activities for Member States and third countries and met most internal training targets. Although Frontex successfully delivered assistance (including establishing common training standards), almost half of the Member States noted the lack of training for either Category 2 or 3 of SC staff, or for Member States.

Member States noted that the biggest training-specific issues included insufficient capacity within Frontex to deliver all training activities, the lack of high-quality trainers (partly due to the lack of a trainer profile in the SC and to inadequate compensation for trainers), and difficulties in finding and managing host training centres. A great majority of Member States reported that the training of border and coastguards and return experts, as per Frontex's mandate, is clearly defined and conducive to addressing the specific needs and challenges (20 out of 27).

Member States noted that the education and training of the EBCG, in particular the common training standards, by Frontex contributed to improving training of national border guards (22 out of 27), developing and strengthening border management capabilities in their Member States (16 out of 27), facilitating cooperation among Member States' border and coastguards training institutions (16 out of 27), successfully mainstreaming fundamental rights in the national training programmes (18 out of 27), and ensuring a harmonised and common approach to EU border and coast guard training in the Member States (21 out of 27).

Situational awareness, risk analysis and vulnerability assessment

A majority of Member States (16 out of 27) declared that Frontex's activities contribute to comprehensive situational awareness and building a situational picture through 24/7 (near) real-time information, crisis monitoring and surveillance. Similarly, the majority of respondents agreed that Frontex's risk analysis products are comprehensive, timely, up-to-date, adequately sourced, and successful in monitoring migration flows.

A majority of Member States agreed that the implementation of the EUROSUR framework is effective in terms of information exchange to improve situational awareness (17 out of 27). However, at the same time, the majority do not see the current scope of EUROSUR and the information requested as sufficient to improve detection, prevention and combating of irregular migration and

cross-border crime, or to contribute to protecting and saving the lives of migrants, with almost half of the respondents neither agreeing or disagreeing with the statement or providing no answer (11 out of 27).

Operations

Most Member States (22 out of 27) participated in JOs, while about half (15 out of 27) participated in operational activities to fight cross-border crime and operational activities related to document fraud (14 out of 27). Overall, at least 30% did not experience any issues in the course of a Frontex operation. When issues are reported these include language issues; availability of SC profiles; joint planning; different work practices and work rules; and sharing/access to information. While 11 Member States did not experience any issues with the level of training of SCOs, 10 noted issues related to the level of training and preparedness of SCOs during deployment.

Return

The majority of survey respondents did not face any challenges when cooperating with Frontex in the different stages of the return process. Some Member States particularly valued Frontex's assistance with organisation of charter flights, as a safer option to return disruptive, extremely violent and difficult cases. Efforts were made to use scheduled flights for cases that can reasonably be returned using that mode. Two Member States with small caseloads commented that joint return operations provide an opportunity to return the most difficult cases in a more controlled environment. Pre-return assistance was also valued by the Member States with good experience and responsiveness from EURLOs.

In addition to the consultations in the context of the study, Member States were also consulted in the framework of the Council's preparatory bodies (Working Party on Frontiers and SCIFA), where certain aspects were discussed, such as Frontex's objectives, results and performance, shared responsibility, governance, fundamental rights and Article 46, processing and protection of personal data, external dimension and functioning and composition of the SC.

In the context of these consultations, Member States acknowledged the key importance of the EBCG evaluation and of the review of the SC. At the same time several Member States stressed that the mandate given to the Agency in 2019 should be fully implemented before the Regulation is revised.

With regard to **Frontex's objectives, results and performance**, several Member States welcomed the support provided by Frontex. There was consensus among intervening Member States that Frontex should focus on border management and return. However, several Member States also believed that Frontex should play a strong role in law enforcement, in particular as regards fighting cross-border crime and human smuggling. Some Member States pointed to new tasks on implementing the Pact, notably registration and screening.

Regarding the **shared responsibility**, Member States generally believed that there is a right balance between the responsibility of Member States and the Agency, underlining that the Member States have the main responsibility for the management of their part of the external borders and that Frontex's role was to support and supplement Member States in this regard with standing corps deployments, equipment and knowledge.

Concerning the **governance** aspects, more than half of Member States considered that the current composition of the MB was appropriate and allows for a proper discussion and decision-making process on strategic, operational and policy issues. When it comes to the list of tasks, Member States however agreed that the documents in general should be better prepared by prior discussion in the EB and that Member States' experts with technical expertise should be involved in the preparatory process, to avoid technical discussions at the MB level and allowing the MB to focus on strategic issues.

On **fundamental rights**, Member States acknowledged the importance of full compliance of Frontex' work with fundamental rights and welcomed the Fundamental Rights Office. One of them warned against duplication of work (e.g., with FRA). In this context, Article 46 was also touched upon. In this respect, some Member States advocated for a more prominent role of the MB when triggering the mechanism, while others have focused more on finding the right balance between the respect for fundamental rights and national security and effective border management, also emphasizing that operations should not be undermined. Some Member States were of the opinion that suspension of activities does not necessarily ensure the respect for fundamental rights and others considered that a withdrawal of Frontex from Member States facing pressure would create a threat to the Schengen Area.

On **data protection**, Member States mainly referred to bilateral agreements as an adequate tool to solve issues in this regard.

On the **external dimension**, several Member States called for more and stronger status agreements or their swift implementation, stronger presence in third countries and the need to provide operational support to the Western Balkans partners. Suggestions to link external action better to existing action plans and to react better to developments along the main migration routes were heard.

Regarding the **Standing Corps**, many Member States highlighted elements of effectiveness and quality of operational support and responding to needs rather than simply aiming at reaching the target number of 10,000. On the other hand, one Member State insisted on the formation of the SC by the set deadline.

Frontex (including CF)

The study team conducted extensive online interviews with Frontex units and divisions, as well as a two-day visit to Frontex headquarters in Warsaw.

Frontex described the challenges in applying the EU Staff Regulations to the EBCG Regulation and the SC, as their provisions, such as those related to shift work and stand-by patterns, ranks, recognition of hardship, specific deployment rules outside of the mission guide, disciplinary proceedings, rights, and entitlements, are not best suited to an operational, uniformed, and armed service with executive powers. The lack of an appropriate legal framework applicable to such service has negatively affected recruitment, management, and deployment of the SC.

During interviews, the Agency expressed view that its current **organisational structure** is not sufficiently aligned with its new mandate and further changes are needed. The transformation from a traditional EU agency administration into an operational agency able to deploy, manage and logistically support a 10,000-strong SC, consisting (primarily) of law enforcement officers and specialised equipment and assets, is still incomplete.

Another emerging key finding from the consultations with the Agency relates to issues in **processing personal data**, including the general rules governing processing of personal data by the Agency (Article 86), the main purposes of processing of the personal data (Article 87), as well as provisions concerning processing of personal data collected during JOs (Article 88). According to the Agency, the Regulation contains vague and unclear provisions on the possibility and scope of the Agency to process operational personal data. Consequently, Frontex cannot fully and successfully engage in operational activities without proper mechanisms to exchange

information, secure communication channels and other crucial provisions to ensure national ownership of data, handling codes, data retention and logging obligations (when communicating with Europol/Eurojust). The question remains as to whether the current framework impedes possible cooperation on exchange of personal data with entities not mentioned by the EBCG Regulation or MB decisions, but that are nevertheless important JHA partners in many domains (for example, OLAF or EPPO).

A survey for SC' members subsequently received 529 responses. The objective of the survey was to gather the inputs of SCOs on their background and their experience with recruitment, training and deployment. Most of the respondents were Category 1 SC (76.4%), followed by Category 2 SC (15.5%) and Category 3 SC (8.1%). Most of the officers were deployed as BGOs (58%) and had a law enforcement background (93%). Almost half of the respondents were between 40 and 49 years old (47%), with the next-largest age group aged 30-39 years old (35%). The vast majority of respondents were male (87%).

The study team also prepared a survey for FRMs. The survey aimed to gather information on FRMs' training and main challenges encountered during monitoring activities. However, based on the survey results, only a small number of FRMs have been deployed as forced-return monitors so far. Of the 34 responses, 21 indicated that have not yet been deployed as forced-return monitors and were unable to answer related questions.

In the context of the consultation process, the Commission also received a joint contribution of the CF. The overarching finding is that overall, the challenges faced by Frontex in achieving full compliance with fundamental rights appear to be less related to shortcomings and gaps in the EBCG Regulation and have more to do with gaps in the implementation of key provisions, such as the delay in the recruitment of the required number of FRMs. Moreover, the CF's contribution acknowledges that the implementation of the Regulation is still ongoing, and that therefore an in-depth evaluation would be premature. Accordingly, the CF concludes that the Regulation "is in no need of immediate revision and that priority should be given to improving its implementation"⁸²⁴.

This conclusion is reflected throughout the CF's feedback, wherein each area is described both in terms of lacking implementation and (where applicable) potential amendments to the EBCG Regulation. Nevertheless, even where amendments are suggested, improvements could arguably be obtained through other mechanisms, such as MB or ED decisions. For example, the CF suggests making its recommendations publicly available, but MB Decision 43/2022 seeks to address this by establishing that the CF's

⁸²⁴ Joint contribution of the CF concerning the evaluation of the European Border and Coast Guard Regulation, submitted on 2 June 2023.

recommendations must also be transmitted to the EP. In a similar way, the Agency could explore whether it could introduce, by way of MB or ED Decision, an improved empowerment scheme for the CF's members to reduce the burden on the CF's organisations and to encourage active participation and candidacies for its Chairmanship. Another suggestion by the CF is to review the impact of the Frontex codes of conduct after a certain period. This could be achieved without amendments to the Regulation, as it would also appear to be in the Agency's best interest. The CF also recommends that the Agency should as much as possible make its technical and operational assistance to the MSs conditional upon agreements to uniformly abide by these fundamental rights obligations. Today, this is achieved, and should be consistently achieved, through for example the negotiations on the Operational Plans of any new joint operation or other activity⁸²⁵.

With regard to other areas highlighted by the CF, some improvements have already been pursued and are in the implementation phase. For example, according to the CF's feedback the complaints mechanism and SIRs mechanisms could merit greater detail in the EBCG Regulation. The Agency has already recently sought to improve the mechanism through a revised SOP for each mechanism, and additional adjustments could be pursued once the current improvements have been implemented and evaluated. These could include stronger obligations on reporting of witnessed incidents, either in revised SOPs or even in the Code of Conduct. Similarly, some of the CF's concerns with regard to limitations to the FRO's powers have been addressed by the ED's Decision, in the context of the SOP on the operations of the fundamental rights monitors. This document reiterates the FRMs' access rights, among others, including to all operational areas of the Agency and to the data necessary to conduct evaluations and assessments. While the document is not legally binding for the Member States, the Agency could make its support to Member States conditional on full observance of its provisions. This would also serve to better mitigate the risk of reputational damage to the Agency. Overall, the CF's feedback provides reassurances that the EBCG Regulation is acceptably fit for purpose to ensure that the Agency complies with fundamental rights across all its operational activities. Even more so, the feedback provides an important supporting document for the Agency on how to further pursue the objective of full fundamental rights compliance, through enhanced implementation of the provisions of the Regulation, rather than by amending it. A comprehensive consideration and implementation of the CF's feedback by the Agency would also allow for a subsequent assessment of the overall, enhanced fundamental rights framework of the Agency and its ability to meet the challenges associated with the Agency's broader mandate under the EBCG Regulation.'

⁸²⁵ Joint contribution of the CF concerning the evaluation of the European Border and Coast Guard Regulation, submitted on 2 June 2023.

EU stakeholders

During the consultation process various EU level stakeholders were consulted. Among others, a total of 13 interviews were carried out with the European Commission and one scoping interview was organised with the Commission's MB representative. During the consultation process, four interviews were carried out with Members of the European Parliament (MEPs) of the LIBE Committee.

One EU stakeholder assessed that the governance model of Frontex is largely in line with the Common Approach on Decentralised Agencies. The interviewees referred to the new Pact, which builds on the EBCG Regulation and foresees the Agency to contribute to several of the dimensions in the Regulation, especially given its new role in returns. The new Pact is considered coherent with the Agency's practices, although the fact that the EU has not yet finalised negotiations on the new migration legislation foreseen in the Pact, makes the coherence assessment difficult.

A reference was also made to the renewed EU Security Union Strategy⁸²⁶ adopted in 2020 that highlights Frontex's role in tackling cross-border crime and terrorism at the external borders and reflects its enhanced mandate.

One of the stakeholders highlighted the lack of sufficient internal coordination mechanisms as a weakness within Frontex⁸²⁷. This is partly due to the fragmented organisational structure, as well as to insufficient horizontal coordination mechanisms.

When it comes to coherence and consistency of Frontex activities with wider EU policies, in the field of the Union's external action and, in particular, the CSDP, stakeholders consider that the EBCG Regulation is aligned with CFSP and CSDP frameworks and establishes guidelines and objectives for cooperation between Frontex and CSDP missions. Frontex's work in the external dimension is also coherent with the EU Action Plan on the Western Balkans (2022)⁸²⁸, which emphasises the cooperation of Western Balkans countries with Frontex under the framework of existing and new status agreements-

⁸²⁶ European Commission (2020). Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy'. COM(2020) 605 final.

⁸²⁷ European Commission (2022). 'Final audit report on governance, stakeholder management and external communication in the European Border and Coast Guard Agency', p. 2.

⁸²⁸ European Commission (2022). 'EU Action Plan on the Western Balkans.'

Interviews revealed that the political scrutiny and budgetary oversight of the EP appears largely effective, with the EP enhancing its oversight, also with the creation of the FSWG in January 2021, and by withholding twice (in 2019 and in 2022) the approval of the Agency's budget, which according to one respondent has an important political significance.

Nonetheless, the final report⁸²⁹ by the FSWG noted that parliamentary oversight could be strengthened with national parliaments holding their own national governments accountable. In this respect, one respondent highlighted the opportunity to make use of Article 112 of the EBCG Regulation, which allows for cooperation between the EP and national parliaments to exercise scrutiny more effectively. In the opinion of some external stakeholders a permanent EP's representative to the MB of the Agency could also enhance the oversight. However, other stakeholders expressed doubts on a permanent representative, given the perceived need for the Parliament to retain independence. Rather, an interviewee stressed the need for the EP to be more systematic in executing its oversight function over the Agency and suggested the possibility to set up permanent Parliamentary Scrutiny Group.

On Article 46 of the EBCG Regulation, the discussion focused on whether the decision referred to in Article 46 should be kept with the ED alone or delegated to the political actors. One interviewee raised concerns on the potential involvement of the MB, considering that the MB is a political body whose members mainly represent Member States' authorities, and are as such not willing to take decisions against other Member States because of political interests and considerations. A role for the MB could, however, be envisaged in the sense that the MB should be more demanding towards the ED's action in cases that there are serious fundamental rights violations. According to two interviewees, the decision on triggering Article 46 should stay with the ED provided that a more proactive approach would be adopted. Another representative proposed introducing inter-institutional agreements between Frontex, Council and EP on the decision to trigger Article 46 or alternatively, ensuring Member States' appropriate political representation in the MB of the Agency to make sure that the decision adopted by the Agency would be supported politically by national authorities.

During interviews, two representatives referred to the appointment of Frontex's ED and highlighted the EP's lack of sufficient access to information on the candidates to the position, which was clear during the appointment process of the current ED (2023).

⁸²⁹ European Parliament (2021). 'Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations'. Working Document, LIBE Committee. Available at: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf

Overall, four stakeholders indicated issues with the implementation of the EBCG Regulation rather than with the legislative text and expressed not being in favour of a new legislative proposal. Efforts should keep focusing on the implementation level.

In addition to the above, the EP's FSWG was informed by the Commission also of the interim results and preliminary findings of the study. The Commission highlighted the main evaluated aspects, emphasizing among others the evaluation of the fundamental rights framework, particularly provisions of Article 46. The Commission emphasized the on-going status of the implementation of the 2019 Regulation, which made it difficult to evaluate the full effect of the mandate. Delays in recruitment of the SC, the issues related to its geographical balance as well as the effectiveness and appropriateness of training were mentioned. The consistency of the legal framework with broader EU legislation and the Common Approach for Decentralised Agencies was mentioned and further analysis of the Commission anticipated in this regard. Finally, international cooperation was underlined.

During the discussion, members of the FSWG inquired mostly about the geographical and gender balance, flexibility, and deployment of the standing corps and on the Commission's role in the MB. Attention was given to the fundamental rights aspects and concerns regarding pushbacks. The importance of the common EU spirit within the SC and the EBCG in general was stressed. Call for EU SAR framework was expressed. One member enquired about the OLAF report and raised issues of the gender balance of the SC and of its attractiveness. References were made to Article 46. In this respect one member expressed some prudence before its modification. On the other hand, in the opinion of another, modifying it would also not justify its non-application. Questions were raised on the possibility of assessing its effectiveness given the fact that so far, the Article has never been applied⁸³⁰.

Other EU-level stakeholders consulted included EASA, EDPS, EEAS, EMSA, EUAA, eu-LISA, European Ombudsman, Europol, EFCA, FRA, and SatCen, for a total of 15 interviews. They were consulted on specific issues pertaining to the EBCG Regulation, depending on their remit and focus. In their comments interviewees inter alia mentioned some degree of overlap and incoherence between the objectives and activities of the EBCG with the objectives and activities of other EU institutions, bodies, and agencies. One stakeholder highlighted the necessity to increase the mainstreaming of fundamental safeguards in many areas of the Regulation and to reflect on the activities of the FRMs, with a view to fully utilise their potential, which is currently not the case.

⁸³⁰ Commission's presentation of the interim results of the study on the EBCG Regulation evaluation, FSWG meeting, 27 April 2023.

As a relevant stakeholder, FRA was consulted both as a member of the CF and in its own right⁸³¹. Its assessment of fundamental rights issues finds that at times there is an asymmetry between the safeguards that the EBCG Regulation foresees for the Agency and for the Member States as in this respect the Regulation appears to set a greater degree of obligations on the Agency than on its national-level counterparts, an assessment which is echoed by the CF. This asymmetry may create accountability gaps and differences in the fundamental rights standards observed from one operational area to another, particularly between deployments under the aegis of Frontex and deployments by Member States in third countries outside the Frontex framework. Moreover, it could enhance the reputational risk for the Agency, and appears incongruous particularly in the context of EIBM, which features strong fundamental rights safeguards along the lines of those implemented by the Agency but applies to all components of the EBCG. However, the ongoing implementation of EIBM may suffice to effectively bridge at least some of these asymmetries, as Member States will need to produce and subsequently adopt national EIBM strategies.

On the other hand, overall FRA finds that the internal fundamental rights mechanisms of the Agency are robust and expected to function effectively following the ongoing implementation period, although some improvements could be obtained by way of legislative adjustments focusing on the complaints mechanism and on fundamental rights assessments, particularly in the context of Article 46. Nevertheless, non-legislative initiatives (e.g. on the decision-making on Article 46 or revising the SOP on the SIRs mechanism) have demonstrated that there is a potential to improve the situation without further modifying the Regulation.

FRA also notes some additional issues concerning data protection that also affect EUROSUR, mostly stemming from perceived lack of legal clarity in the corresponding articles of the EBCG Regulation on data protection. Nevertheless, this evaluation comes during a time of drafting the implementing rules for the processing of personal data and operational personal data by the Agency. Therefore, while the EBCG Regulation arguably has some gaps and limitations on the subject of data protection, the objective is to bridge these by adopting MB Decisions on data protection and subsequently fully implementing them. With regard to FRA's finding that the fundamental rights provisions concerning EUROSUR could be improved, similar opportunities may arise in the context of processes such as the drafting of the EUROSUR Handbook, in which the FRO is comprehensively involved. Additionally, FRA flags a concern with regard to the limited resources available to the Data Protection Office of Frontex, but this is not regulated by the EBCG

⁸³¹ FRA contribution to the evaluation of the European Border and Coast Guard Regulation, 15 May 2023.

Regulation. Rather, it should indeed be a priority for the Agency's management to ensure that its DPO is adequately staffed to address not only the current, high volume of data protection-related requests, but also the upcoming increase in tasks connected to, among others, the operation of ETIAS.

According to FRA, the EBCG Regulation also does not address relevant fundamental rights provisions in its articles on vulnerability assessments and the multiannual strategic policy cycle, whereas Regulation (EU) 2022/922 revising the Schengen evaluation and monitoring mechanism does so more comprehensively. This causes significant discrepancies as synergies should be maximised between the two and can lead to an underreporting and lack of consideration for the fundamental rights aspects of vulnerability assessments.

Lastly, with regard to return monitoring, FRA finds that greater independence in monitoring could be achieved if the pool for forced-return monitoring was managed not by Frontex but by an entity not associated with the Agency. This finding is in line with FRA's assessments of forced-return monitoring systems in Member States, because monitoring conducted by the same authority overseeing the return operations is determined to be not independent enough to qualify as "effective" according to the Return directive. However, FRA also finds that thus far, the forced-return monitors have conducted their tasks without interference or obstruction, despite being technically under the management of the Agency.

International organisations and civil society organisations

The study team carried out three interviews with international organisations that are members of the CF. The team also interviewed five civil society organisations that are members of the CF and four others that are not part of the CF.

The interviews aimed to gather the views of stakeholders on Frontex's compliance with fundamental rights. The views of international organisations and civil society organisations were largely aligned, with stakeholders' concerns focusing on the limited functioning of Frontex's fundamental rights framework. One international organisation, for example, highlighted the importance of better mainstreaming fundamental rights in all operational activities of the Agency.

Key concerns of stakeholders regarding main elements of the fundamental rights framework relate to the Article 46 and the fact that in this respect the EBCG Regulation leaves ample discretion to the ED's decision.

Some interviewees also highlighted the Agency's limited follow-up to the FRO's recommendations.

On the FRMs' access to operational areas, an interviewee indicated that particularly in one Member State the FRMs encountered difficulties, such as delays in receiving approval by Member States' authorities and proposals to visit different locations and/or be part of other activities. According to another organisation, the FRMs' monitoring activity does not include proper shadowing of border guards.

As regards the SIRs mechanism, various civil society and international organisations raised the lack of follow-up on SIRs by Member States' authorities, the absence of sanctions for failing to report SIRs (related to fundamental rights violations), and the insufficient indication on which sanctions are applicable to those responsible and how often they are imposed.

In relation to the complaint mechanism, various interviewees raised concerns on the scope of access to this mechanism, on the discretion left to the ED in the decisions of complaints, and on limited awareness of the mechanism among the legal practitioners and civil society organisations. Regarding complaints towards Frontex staff, two of the interviewed civil society organisations expressed doubts regarding the follow-up to complaints and the extent to which corrective measures are being implemented within the Agency.

At operational level, a number of stakeholders discussed the risks to fundamental rights in some of Frontex's operations and Frontex's potential indirect involvement, referring particularly to the support to Hungary, Lithuania, Greece and in the Central Mediterranean, and cooperation with third countries.

For the organisations that are members of the CF, the interviews covered specifically the overall functioning of the CF, whether the conditions set out in Article 108 of the EBCG Regulation enabled the CF to provide valuable fundamental rights advice, and the main challenges encountered in the CF's work. In this respect, the main issue reported by the CF's members and some civil society organisations (non-members of the CF) is the lack of or improper follow-up to the CF's recommendations. An interviewee reported that the consultation of the CF seems a 'ticking box exercise' for the Agency rather than an effective tool for the CF's members to contribute significantly to Frontex's work.

During the consultation, some interviewees reported on the considerable workload and efforts required to contribute to the work of the CF. Providing expertise on a voluntary basis limits the possibilities for CF's members to share meaningful input to the work of the CF.

This is particularly relevant for the civil society organisations given their limited resources and staff. This also affects the possibility for smaller civil society organisations to take up the role of Chairs of the CF.