



FRONTEX and Migrant Smuggling

A Reinforced Operational Role of the Agency since the Adoption of Regulations 2016/1624 and 2019/1896

David Fernández-Rojo

- ▶ The EU is increasingly faced with hybrid challenges, such as the current migration crisis with Belarus, that call for the development of reinforced links between the internal and external dimensions of security.
- ▶ One of the components of the European integrated border management that FRONTEX shall now develop is the prevention and detection of migrant smuggling.
- ▶ FRONTEX revealed how difficult it is to strike a balance between designing an effective integrated strategy for the management of the European external borders and the Member States' resistance to confer operational powers in national migrant smuggling investigations that are directly linked to their core national sovereignty.
- ▶ FRONTEX's operational mandate in migrant smuggling matters should be reconsidered since the Agency is merely able to cooperate with EU military missions, such as Sophia or Irini, in which only the Member States call the shots.

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Introduction

The current migration crisis with Belarus has again brought FRONTEX's operational assistance to a Member State that faces a sudden and extraordinary migratory pressure at its borders to the fore. However, FRONTEX's role as EU decentralized Agency in such critical situations has been hotly and at times emotionally debated several times before, particularly now that the Agency's operational powers have been clearly reinforced. This paper seeks to provide a description of FRONTEX's competencies in stopping organized criminal networks from smuggling migrants into the EU.

Regulation 2016/1624 and the recently adopted Regulation 2019/1896 represent the third and fourth legislative revision of FRONTEX's mandate and functions since the Agency was established by Regulation 2007/2004. Previously, Regulation 863/2007 introduced the rapid intervention teams and Regulation 1168/2011 strengthened the Agency's tasks as well as the protection of fundamental rights. In May 2015, the European Commission deemed the design of a European system of border guards with greater operational tasks necessary.¹ The adoption of Regulation 2016/1624 was extraordinarily fast,² taking not even a year from its proposal to its publication. Less than two years after the adoption of Regulation 2016/1624, the president of the European Commission announced the Commission's intention "to further strengthen the European Border and Coast Guard to better protect our external borders with an additional 10,000 European border guards by 2020"³. Again, in record-time, Regulation 2019/1896 was published⁴ on 14 November 2019.

Nowadays FRONTEX is a stronger decentralized Agency rather in a better position to assist a Member State that is facing a crisis scenario at its borders, such as the one that Poland is experiencing these days. Both Regulations 2016/1624 and 2019/1896 clearly strengthen FRONTEX's autonomy, making the Agency depend much less on the Member States' specific operational secondments and support. Finally, FRONTEX was to have its own equipment and operational personnel for its immediate deployment in joint and rapid operations. FRONTEX's objective consists in developing a European integrated management of the external borders by addressing both, the existing deficiencies at the national level and responding effectively to exceptional and sudden migratory flows. One of the components of the European integrated border management that FRONTEX shall develop is the prevention and detection of migrant smuggling,⁵ which is precisely the focus of this paper.

Hence, this article studies to what extent FRONTEX's operational role to prevent the smuggling of migrants has been reinforced since the adoption of Regulations 2016/1624 and 2019/1896. That is, can FRONTEX now provide an independent operational assistance to Member States that are facing a crisis at their borders? Can FRONTEX now participate in the national migrant smuggling investigations and put an effective end to this crime?

FRONTEX in a better
position to assist
Member States

FRONTEX's New Operational Powers in Preventing Migrant Smuggling

To avoid endangering the functioning of the Schengen area, Regulation 2016/1624 entitled FRONTEX to intervene if a Member State decides not to implement the measures recommended by the Executive Director to tackle the weaknesses detected at its external borders, or if the Member State does not request operational assistance in the face of disproportionate and sudden migratory pressure at its borders. However, it is debatable to what extent the Agency can impose the application of certain measures to a Member State that is opposed to them. Regulation 2016/1624, and now Regulation 2019/1896, do not provide much clarity in this respect – a common feature of those European legislative instruments in charge of regulating highly sensitive competences that require the support of national authorities.

Not only has the so-called “refugee crisis” promoted the empowerment of FRONTEX, but it also revealed the growing nexus and interdependency between the Area of Freedom Security and Justice (AFSJ) and the Common Security and Defense Policy (CSDP),⁵ as well as the need to establish a reinforced coordination between the internal and external dimensions of security at the EU level. In particular, the Global Strategy on Foreign and Security Policy for the EU asserted the growing interdependence and need for integration of the internal and external dimensions of security.⁷ The Global Strategy designated the promotion of an effective cooperation between the CSDP missions and the AFSJ decentralized agencies, such as FRONTEX, as crucial to “enhance border protection and maritime security in order to save more lives, fight cross-border crime and disrupt smuggling networks”.⁸

Similarly, the EU Action Plan against Migrant Smuggling (2015–2020) promoted the establishment of a CSDP military mission, Operation Sophia, to identify, capture and dispose the vessels used by the smugglers in the Mediterranean Sea, as well as to reinforce FRONTEX's operational tasks to collect, analyze and exchange information on the smuggling of migrants.⁹

Growing nexus
between the Area
of Freedom Security
and Justice (AFSJ) and
the Common Security
and Defense Policy
(CSDP)

FRONTEX's Involvement in Operations Sophia and Irini

This article looks at Sophia and Irini as they are the first two EU naval military operations expressly centered on migrant smuggling matters and the management of external borders in the Mediterranean in which FRONTEX was involved. Operation Sophia commenced its activities on 22 June 2015¹⁰ aiming to disrupt “the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (...)”¹¹. Whereas Operation Sophia's mandate was planned to expire on 31 December 2018,¹² a technical extension of three months was agreed with the aim of reaching a compromise between the Member States and the EU on the distribution and disembarkation of the migrants that were being rescued in the Mediterranean.¹³ Until 31 March 2019, negotiations about the future of Operation Sophia were at a standstill.¹⁴ Criticism over the mission increased after it was revealed that despite the EU authorities knowing that the military Operation could add to the dangers of crossing the Mediterranean, its funding and the approach were continued.¹⁵ Finally, Member States agreed to extend Operation Sophia's mandate until 31 March 2020, when Operation Irini replaced it.¹⁶

Operation Irini's mission differs substantially from Operation Sophia's since the former presents as its key task to contribute “to the implementation of the UN arms embargo on Libya with aerial, satellite and maritime assets”¹⁷. Consequently, Operation Irini does not refer to search and rescue operations since no naval forces are deployed. However, article 10(3)

Council Decision (CFSP) 2020/472 insists that Operation Irini and FRONTEX shall cooperate to dismantle the criminal networks illegally smuggling migrants into the EU. In this regard, article 69(1) of the 2019 amending the Regulation on FRONTEX indicates that the Agency shall cooperate with missions and operations of the CSDP.

FRONTEX designed a specific structure for operational cooperation with Operation Sophia, and then with Operation Irini, to ensure that the military missions and the activities that the Agency develops in the Mediterranean (initially the joint operation Triton and, since February 2018, the joint operation Themis¹⁸) generate synergies, achieve the planned operational results and their mandates are coordinated. With this aim, Operation Sophia and FRONTEX shared as well as designed operational plans and constantly exchanged information and tactical decisions. The exchange of information with FRONTEX was essential to increase, on the one hand, general operational awareness and, on the other, to effectively tackle transnational crimes, such as migrant smuggling.¹⁹

Operation Sophia and FRONTEX's Liaison Officers were in charge of developing daily operational and analytical briefings, sharing and confirming the situational picture and position of the deployed vessels and aircrafts, supporting the planning of patrolling activities and assisting on the collection of information from rescued migrants.²⁰ That is, the Liaison Officers enabled the communications between Operation Sophia and FRONTEX's coordination structures, developed synergies in the planning of the patrolling activities at sea and guaranteed an efficient exchange of information and intelligence.

Importance
of exchange
of information

Furthermore, according to FRONTEX's annual activity report for 2016, the Agency developed training activities for Libyan officials. Within the framework of Operation Sophia, nine FRONTEX instructors on board the Italian naval ship "San Giorgio" delivered a training program in December 2016 to improve the preparation and planning of border control operations, to fight against smuggling of migrants, and to ensure the protection of human rights in all coastguard activities undertaken by the Libyan Navy.²¹

Lastly, special interest presents the possibility that FRONTEX may now acquire its own technical equipment and develop an independent operational capacity to reduce the dependency of FRONTEX on the Member States' contributions.²² To this end, the European Commission budgeted 40 million euro for FRONTEX to acquire technical equipment between 2017 and 2020.²³ FRONTEX signed two contracts with the companies Leonardo and Israel Aerospace Industries, for a value of 1.7 and 4.75 million euro respectively, providing a total of 900 flight hours for a period of 120 days during which the use of drones in the control and surveillance of the borders by the Agency will be assessed.²⁴ In the 2021–2027 multiannual financial framework, an allocation of 2,200 million euro was reserved for FRONTEX to acquire its own air, maritime and land assets.²⁵ FRONTEX is thus empowered to further strengthen its operational cooperation with Operation Irini, through its own maritime and air resources, as well as its own personnel.

However, strengthening FRONTEX's operational tasks is not in itself a novelty since Regulation 1168/2011, which expanded the initial mandate of FRONTEX, already tried to promote the operational autonomy of the Agency²⁶ – however, with little success. At the time, FRONTEX did not only lack the operational and technical capabilities to manage its own aircrafts, vessels and vehicles, but also the Member States were not willing to register equipment acquired and operated exclusively by the Agency in their territory, again due to the unclearly regulated Agency's responsibility.²⁷ Whereas the European Commission now presents a significant budget commitment to ensure that FRONTEX purchases or leases its own resources, the Agency continues to lack the technical structures and operational expe-

rience that is needed to manage its own equipment. Regulation 2019/1896 does not design a clear framework of responsibility for the operations to be conducted by the Agency with its own equipment either. Likewise, it remains questionable whether the Member States will now authorize the registration of aircrafts in their territories to be deployed as part of Operation Irini and that are beyond their control.

The Hotspot Approach and the Crime Information Cell: FRONTEX's Reinforced Operational Role in National Migrant Smuggling Investigations

On 4 May 2018, the Council adopted an amending decision on Operation Sophia to establish a Crime Information Cell (CIC) tasked to “facilitate the receipt, collection and transmission of information, including personal data, on human smuggling and trafficking, the arms embargo on Libya, illegal trafficking (...), as well as crimes relevant to the security of the operation”²⁸. That is, the CIC aimed to develop a communication channel to share analytical and operational information on migrant smuggling in the Mediterranean between the military Operation and FRONTEX, and promote the collection and use of information by enhancing collaboration between Operation Sophia and FRONTEX.²⁹ The CIC thus centered on information sharing and set the path for greater multilateral and institutionalized operational cooperation between FRONTEX and CSDP missions like Operation Sophia or Irini. Operation Irini also hosts a CIC in order to “facilitate the receipt, collection and transmission of information, including personal data, on the arms embargo on Libya (...) on illegal exports from Libya of petroleum (...), and on human smuggling and trafficking (...)”³⁰.

Moreover, cooperation between FRONTEX and Operations Sophia and Irini was clearly strengthened after the introduction of the hotspot approach. The 2015 European Agenda on Migration envisaged a significant role for FRONTEX and Operation Sophia in order to implement the Agenda and closely cooperate in the management of the hotspots established in Italy and Greece. There are geographical areas subject to sudden, specific and exceptional mixed migratory flows that national systems of borders and asylum are not capable of effectively processing.³¹ The establishment of a hotspot is requested by the concerned Member State after having assessed the situation at its external borders and considered the risk analysis prepared by FRONTEX and EASO. The mission of the hotspots consists in providing a platform for the EU AFSJ agencies to swiftly coordinate their activities, while assisting frontline Member States that cannot adequately manage a disproportionate migratory pressure on their own. The hotspot approach establishes a framework, under which third-country nationals arriving in an extraordinary influx can be disembarked, identified, registered, fingerprinted and processed in a coordinated, effective and expedited manner to ultimately relocate, return or grant them asylum, as appropriate. Such hotspots are centrally coordinated within the territory of the requesting Member State and bring together national and local authorities, the European Commission, the AFSJ agencies and the main organizations working in the field.³²

FRONTEX' engage-
ment in hotspots

As soon as the hotspots are up and running, a EU Regional Task Force (EURTF), which is chaired by the European Commission, is to be established to promote the exchange of information and coordinate the work and operational tasks on the ground of the competent national officials, Operations Sophia and Irini and the AFSJ Agencies' Migration Management Support Teams.³³ The AFSJ Agencies, in cooperation with the competent national authorities and Operations Sophia and Irini, were in charge of leading the EURTF.

The involvement of FRONTEX and Operation Sophia in the EURTF facilitated the implementation of the hotspot approach by strengthening the Agencies' operational presence on the ground, developing the Agencies' regular cooperation, and building mutual trust with the competent national authorities, which enhanced the swift exchange of information and data among the hotspot stakeholders and promoted the effective and uniform application of the EU *acquis* at the national and local level. FRONTEX, the competent national authorities and Operation Sophia worked hand in hand in the hotspots to conduct debriefing activities aiming to gather information about the migrants' travel routes and to combat criminal smuggling networks.

Specifically, FRONTEX plays a threefold operational role at the hotspots: first, a registration and screening role – by assisting the concerned Member State in fingerprinting and determining the identity and nationality of the arriving migrants; second, a debriefing role – by contributing to the national migrant smuggling and trafficking investigations; and lastly, a return role – by coordinating with the competent national authorities regarding the return of those migrants who do not qualify for asylum or international protection. Cooperation between FRONTEX and Operations Sophia and Irini took place during the phases of registration, screening and debriefing. In regard to FRONTEX's registration and screening tasks, it shall be pointed out that the Agency's assistance starts even before the irregular migrants' arrival at the shores of the Member State hosting the hotspots. Specifically, FRONTEX in coordination with Operation Sophia and now Operation Irini, actively supports the concerned Member State in patrolling the external borders, improving cooperation on coast guard function activities, early detecting and preventing unauthorized border crossings, combating migrant smuggling, and supporting search and rescue operations³⁴ (through patrol vessels, helicopters, and fixed wing airplanes made available to the Agency, acquired or leased by FRONTEX).

FRONTEX' threefold operational role

According to the Standard Operating Procedures applicable to the Italian hotspots, "the FRONTEX team leader should contact the FRONTEX liaison officer on board the vessel or the captain of the vessel which carried out the rescue operation in order to receive all information useful for the subsequent preparation of debriefing and screening activities"³⁵. FRONTEX and Operation Sophia cooperated with the competent national authorities in disembarking and escorting the intercepted migrants to the hotspots. Subsequently, FRONTEX played a significant operational role in debriefing the migrants disembarked at the hotspots. FRONTEX, in close cooperation with EUROPOL, the competent national authorities and Operation Sophia, analyzed the seized items and any link to facilitators of migrant smuggling. The debriefing interviews, whose findings are shared with EUROPOL and Operation Sophia to identify facilitators and report them to the Member States, aim to discover further details about the routes taken by the migrants, reasons for traveling, modus operandi, and any possible smuggling and trafficking networks operating on the ground. FRONTEX shall collect the information, analyze it, and store it as intelligence that will then contribute to the Agency's risk analysis and to its future operational responses.³⁶

Conclusion

The "refugee crisis" has highlighted the growing nexus and interdependency between the AFSJ and the CSDP, as well as the need to establish a reinforced coordination between the internal and external dimensions of security at the EU level. While the CSDP was originally designed as a policy centered on managing such crises that occurred outside the EU territory, the CSDP increasingly addresses volatile, hybrid and internal security challenges, such as terrorism, instability in the neighboring territories of the EU or migrant smuggling. Nowadays the EU is increasingly faced with hybrid challenges, such as the current migra-

tion crisis in Poland on its border with Belarus, that call for the development of reinforced links between the internal and external dimensions of security. The inherently cross-border nature of these challenges demands the reinforcement of the bond between the internal and external dimensions of security, and the promotion of greater coherence between the AFSJ and the CSDP. That is, cross-border threats like migrant smuggling should no longer be tackled by adopting a classic conception of national sovereignty, since a truly effective management of borders and migrant smuggling can only be achieved through a fully coordinated response at the European level.

In this context, FRONTEX was strengthened in terms of its monitoring and supervision capacity, as well as in its operational autonomy, to ensure an effective and uniform functioning of the European external borders. FRONTEX now holds a greater weight in the operational assistance to the Member States, as well as in their ability to act outside the EU territory and participate in EU military missions such as Operations Sophia and Irini. Although it is true that currently FRONTEX assists the Member States more independently in matters closely linked to their national sovereignty prerogatives, the competent national authorities that vote at the Management Board will continue to tightly control the Agency's recently reinforced operational and supervisory functions. Only two representatives of the European Commission have voting rights in FRONTEX's Management Board and the presence of the European Parliament is non-existent. The Member States have thus ensured control of the strategic operational powers and the daily management of the Agency.

Consequently, FRONTEX cannot provide an independent operational assistance to Member States that are facing an urgent and significant migratory pressure at their borders without their consent. Even though the European Commission constantly and confusingly refers to the Agency as a *true* European system of guarding borders and coasts, Regulations 2016/1624 and 2019/1896 do not create a European Corps of Border Guards with full and exclusive competences to, for instance, participate in the national migrant smuggling investigations. While Regulations 2016/1624 and 2019/1896 reveal how difficult it still is to strike a balance between designing an effective integrated strategy for the management of the European external borders, reinforcing FRONTEX's involvement in preventing migrant smuggling remains an unresolved and urgent task. The operational mandate of FRONTEX in migrant smuggling matters should be reconsidered since the Agency is still merely able to cooperate in EU military missions where only the Member States call the shots.

FRONTEX
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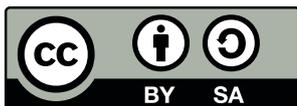
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