



In Focus

Leaving the European Union: Frontex and UK Border Security Cooperation Within Europe

Summary

The European Border and Coast Guard Agency, commonly known as Frontex, is the body responsible for coordinating and improving the border security of the Schengen area. In recent years, with the rise in refugees and migrants attempting to reach Europe, the profile of Frontex and the demands placed on it have increased. During this period, while the UK has not been a full member, it has been represented on its management board, and its involvement in Frontex operations has increased. With the UK now leaving the EU, but expressing in its Article 50 notification a desire to maintain existing arrangements for security and border cooperation, the UK's relationship with Frontex may need to be re-examined.

Background

Frontex became operational in 2005.¹ Based in Warsaw, its primary objective was to establish a coherent approach to integrated border management across the Schengen area. Its tasks included: planning and co-ordinating rapid border interventions, and staff and equipment more generally, across the external borders of the Schengen area; coordinating return operations for foreign nationals staying illegally across the EU; developing common training standards and tools; and conducting risk analyses across the EU's external borders.² In 2007, Frontex also developed a rapid response capability in the form of the Rapid Border Intervention Teams (RABITs, later renamed European Border Guard Teams), a common pool of staff supplied by national border agencies who could be deployed at short notice to help shore up the EU's external borders.³ Since 2013, Frontex has also been supported by Eurosur, an information-exchange framework which allows intelligence and information concerning the EU's external borders to be shared between member states.⁴

Frontex focuses on coordinating the work of existing border agencies across Europe, rather than direct management of the borders, and this is reflected in the arrangements for staff and equipment. These are loaned by their respective countries for particular operations, making Frontex almost entirely dependent on these resources being forthcoming.

Recent Developments

The last five years has seen Frontex expand its role and, in the process, come under increased scrutiny. During this period the number of migrants attempting to seek refuge in Europe, often via dangerous sea crossings in the Mediterranean, greatly increased.⁵ With sharp increases in deaths from attempted sea crossings, and after Italy cancelled its national Mare Nostrum naval search and rescue operation in 2013 on cost grounds, Frontex began to take the lead in coordinating and deploying resources across the

Mediterranean for border control, surveillance and search and rescue.⁶ This included the Triton and Poseidon Joint Operations, naval missions which covered the main central and eastern Mediterranean routes used by migrants, as well as operations to support local authorities dealing with the refugee crisis in Italy and Greece. The Bureau of Investigative Journalism has argued that, while these operations were successful in many ways—most notably in terms of the 173,500 lives saved across the Mediterranean in 2014 alone—these operations did however expose severe weaknesses in the structure of Frontex and the powers granted to it.⁷

In response to criticisms that Frontex was underfunded and underpowered, the European Commission published a proposal for its reform in 2015.⁸ Under this proposal, a new EU border force would be created, with greater powers to intervene in situations requiring “urgent action” if it believed that member states were failing to guard their external borders effectively.⁹ Resources and staffing would also increase, with at least 1,500 national border guards available for deployment at short notice. However, a number of member states, including Poland, Greece and Sweden, were critical of this plan, in particular the strengthened powers of intervention.¹⁰ The Regulation which followed in September 2016, authorising the new European Border and Coast Guard Agency (with Frontex retained as its working title) reflected these criticisms, and contained arguably weaker provisions for intervention.¹¹

The reformed Frontex became operational in January 2017, and over the next three years will become larger but not significantly more powerful than its predecessor, according to several academic experts on EU border affairs.¹² The new agency has been granted a budget of €281 million in 2017, increasing to €322 million in 2020, while staff numbers are projected to grow from 402 in 2016 to 1,000 in 2020.¹³ As in the 2015 proposals, Frontex is tasked with monitoring and verifying the effective functioning of the external borders of the member states. However, if a member state is found to be repeatedly resisting its recommendations for reform, the ultimate sanction will be the reestablishment of internal borders relevant to that member state, rather than mandatory intervention by Frontex.¹⁴

UK's Involvement in Frontex

When Frontex was first established, the UK sought full membership, but was excluded on the grounds that the UK does not participate in the Schengen agreement.¹⁵ The UK, however, has attended Frontex Management Board meetings as an observer without the right to vote. The UK may also participate in operations, although this must be authorised on a case-by-case basis by an absolute majority of the Frontex Management Board.¹⁶ One notable example of this was the deployment of HMS Bulwark as part of Operation Triton in the summer of 2015, during which it rescued over 4,747 people.¹⁷ That year the UK participated in at least six separate Frontex operations, and organised a Joint Return Operation to Albania.¹⁸ This cooperation is also supported by exchanges of border surveillance data. Article 19 of Regulation 1052/2013, which established the Eurosur surveillance system, also empowers member states (but not Frontex directly) to conclude bilateral or multilateral agreements with the UK and Ireland, allowing them share certain limited sets of data and information.¹⁹

Quantifying the UK's overall financial contribution to Frontex is complex, as it has previously taken the form of a direct financial contribution, against which is offset the cost of supplying staff and equipment.²⁰ The Home Office has stated that the UK “does not contribute towards the administrative costs of Frontex”, but estimates that between 2006 and 2015 the UK's direct financial contributions “has remained stable” at £500,000 per year.²¹ However, this has often been entirely reimbursed, as contributions in staff and equipment have exceeded this sum.²² In 2014, the European Court of Auditors suggested that the UK's contributions should be reviewed, given “the considerably extended range of activities in which they are involved”, a view reiterated by the Home Office.²³ In 2015, the Home Office announced a revised approach, whereby the UK's direct financial contributions to Frontex would cease. Instead, equipment and staff would continue to be supplied on a case-by-case arrangement by the UK,

but at “nil cost to Frontex”, replacing the reimbursement mechanism.²⁴ It stated that this “significantly reduces the administrative burden on both Frontex and the Border Force”.²⁵

Possible Implications of Brexit on UK-Frontex Border Force Cooperation

The extent to which Brexit will impact upon the UK’s current relationship with Frontex remains unclear. The UK’s current arrangement with Frontex is covered by Article 51 of Regulation 2016/1624, which states that “the Agency shall facilitate operational cooperation of the member states with Ireland [which has an identical arrangement] and the United Kingdom in specific activities”, and makes no specific reference to the UK’s EU membership.²⁶ This is also the case with respect to Article 19 of Regulation 1052/2013, governing exchanges of data between the UK and Eurosur.²⁷ In July 2016, the House of Commons Home Affairs Committee called on the Government to “make clear how it intends to engage with the new EU border agency and how its engagement will differ from its current relationship with Frontex once the UK leaves the EU”.²⁸ On 27 March 2017, Baroness Williams of Trafford, the Minister of State for the Home Office, stated that “the UK will not take part in the new [European Border and Coast Guard] Agency. However, [the UK Government] will continue to provide support to its operations on a voluntary basis, as we have done with its predecessors”.²⁹

There are precedents for non-EU member states cooperating with Frontex on operational matters. A number of non-EU member states, including Switzerland, Norway and Iceland, have assisted Frontex operationally for many years. In the case of Iceland, a third of the country’s entire coast guard fleet has been loaned, and in 2014/15, it was estimated to have generated a surplus of over €7 million through these arrangements.³⁰ However, all of these countries are members of the European Economic Area (EEA), or have signed agreements of association with the Schengen area, or both.

Frontex regulations do contain further provisions for cooperation with ‘third countries’. The organisation has working arrangements with the authorities of 18 non-EU/EEA countries, and is negotiating arrangements with a further eight.³¹ So far the most active partnerships have been with authorities in third countries from which migrants are either originating from or transiting through, such as Turkey, and so the potential for maintaining the UK’s current level of operational co-operation through third country arrangements is still relatively untested. There are currently no non-EU or non-EEA countries who are invited to attend the Management Board of Frontex, and at least one British expert on Frontex has expressed the view that the UK might lose its right to participate in Frontex operations altogether.³²

Further Information

House of Lords Library briefings:

- [Schengen Agreement: A Short History](#), 7 March 2016
- [Leaving the European Union: Foreign and Security Policy Cooperation](#), 13 October 2016

House of Lords Committee reports:

- House of Lords European Union Committee, [FRONTEX: The EU External Borders Agency](#), 5 March 2008, HL Paper 60 of session 2007–08
 - House of Lords European Union Committee, [Brexit: Future UK-EU Security and Police Cooperation](#), 16 December 2016, HL Paper 77 of session 2016–17
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- ¹ Originally named the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the organisation soon took on 'Frontex' as its working title, which continues through to today, even after being officially renamed the European Border and Coast Guard Agency in 2016.
- ² EUR-Lex, '[European Agency for the Management of External Borders: Frontex](#)', accessed 29 March 2017.
- ³ [Regulation \(EC\) 863/2007](#).
- ⁴ [Regulation \(EU\) 1052/2013](#); Frontex, '[EUROSUR](#)', accessed 31 March 2017.
- ⁵ The number of illegal EU border crossings detected by Frontex increased from 66,383 in 2010, to 1,049,400 in 2015. In 2015, 84 percent of these came via the Eastern Mediterranean route. European Stability Initiative, '[The Refugee Crisis Through Statistics: A Complication for Politicians, Journalists and Other Concerned Citizens](#)', 30 January 2017.
- ⁶ Centre for European Policy Studies, '[A European Border and Coast Guard: What's In a Name?](#)', March 2016.
- ⁷ Bureau of Investigative Journalism, '[Europe's Refugee Crisis: Is Frontex Bordering on Chaos?](#)', 15 September 2015.
- ⁸ European Commission, '[Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and Repealing Regulation \(EC\) No 2007/2004, Regulation \(EC\) No 863/2007 and Council Decision 2005/267/EC](#)', December 2015, COM(2015) 671, pp 2–5.
- ⁹ *ibid*, p 34.
- ¹⁰ Politico, '[Countries Balk at EU Border Force Proposal](#)', 15 December 2015.
- ¹¹ [Regulation \(EU\) 2016/1624](#). For more commentary, see Herbert Rosenfeldt, '[Establishing the European Border and Coast Guard: All-new or Frontex Reloaded?](#)', EU Law Analysis Blog, 16 October 2016; David Fernández Rojo, '[It's a New Agency. It's a Federal Agency. It's the European Border Coast Guard! No Wait... It's Frontex](#)', EU Law Enforcement Blog, 28 February 2017.
- ¹² *ibid*.
- ¹³ European Commission, '[Report from the Commission to the European Parliament, the European Council and the Council on the Operationalisation of the European Border and Coast Guard](#)', December 2017, COM(2017) 42, p 10.
- ¹⁴ David Fernández Rojo, '[It's a New Agency. It's a Federal Agency. It's the European Border Coast Guard! No Wait... It's Frontex](#)', EU Law Enforcement Blog, 28 February 2017.
- ¹⁵ Free Movement, '[Brexit and Borders: Schengen, Frontex and the UK](#)', 8 June 2016. This arrangement also applies to Ireland.
- ¹⁶ *ibid*.
- ¹⁷ Alan Travis, '[HMS Bulwark's Replacement Yet to Rescue Any Migrants in Mediterranean](#)', *Guardian*, 27 July 2015.
- ¹⁸ Frontex, '[General Report 2015](#)', 2016, pp 48–51.
- ¹⁹ Angelo Marletta, '[Kingdom of Spain v Council: Another Piece in the "Schengen Puzzle"](#)', European Law Blog, 15 March 2016.
- ²⁰ House of Lords European Union Committee, '[FRONTEX: The EU External Borders Agency](#)', 5 March 2008, HL Paper 60 of session 2007–08, pp 35–6.
- ²¹ Bureau of Investigative Journalism, '[Europe's Refugee Crisis: Is Frontex Bordering on Chaos?](#)', 15 September 2015.
- ²² House of Lords European Union Committee, '[FRONTEX: The EU External Borders Agency](#)', 5 March 2008, HL Paper 60 of session 2007–08, pp 35–6.
- ²³ European Court of Auditors, '[Report on the Annual Accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the Financial Year 2014, Together with the Agency's Reply](#)', 8 September 2015, p 6; Home Office, '[Report on the Annual Accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the Financial Year 2014, Together with the Agency's Reply](#)', 17 November 2015.
- ²⁴ Home Office, '[Report on the Annual Accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the Financial Year 2014 together with the Agency's Reply](#)', 17 November 2015.
- ²⁵ *ibid*.
- ²⁶ [Regulation \(EU\) 2016/1624](#).
- ²⁷ [Regulation \(EU\) 1052/2013](#).
- ²⁸ House of Commons Home Affairs Committee, '[Migration Crisis](#)', 3 August 2016, HC 24 of session 2016–17, p 25.
- ²⁹ House of Lords, '[Written Statement: Justice and Home Affairs pre-Council statement](#)', 27 March 2017, HLWS557.
- ³⁰ Iceland Magazine, '[Icelandic Taxpayers Have Profited from the Refugee Crisis in the Mediterranean](#)', accessed 29 March 2017.
- ³¹ Frontex, '[Third Countries](#)', accessed 29 March 2017.
- ³² Bernard Ryan, '[The EU's Borders: Schengen, Frontex and the UK](#)', Free Movement Blog, 8 June 2016.

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