

# Migration control in Europe: Frontex's debriefings through a human rights perspective.

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**Abstract.** The management of migration is of great relevance to the European Union and its agencies since the conception of the European common area, particularly in order to contain “irregular” migration. In this sense, the EU created, in 2004, an organization specialized in the control of its external borders, the European Border and Coast Guard Agency (Frontex). Considering this context, this research aims at examining Frontex’s role, EU’s guard and militarized arm in the control of migration, during its activities of “protection” of Europe’s external borders and how they may violate common rules of human rights. Firstly, it assessed Frontex’s preference in collecting and analyzing data, as intelligence is seen as the “brain” of the Agency. As a result, it is evidenced that the constant surveillance of EU’s external borders and the assigning of risky areas are essential to Frontex’s functioning. In addition, Frontex’s debriefings are analyzed as, possibly, a mechanism of violation of fundamental rights, shedding light on an unexplored topic within the academic community. The chosen methodology was literature review of both academic writings and of official documents from the European Union and Frontex. The results of the investigation point out that Frontex incorporates in its routine the disregard for human rights of people in transit and that the debriefings may contributed to these daily violations.

**Keywords.** Migration, Frontex, human rights, immigration control.

## 1. Introduction

In the last few decades, migration flows towards Europe have received great attention, both by the academic community and by policymakers in the continent. The debate within academic studies is mostly centered around how migration is usually portrayed in security terms, which contradicts rules of human rights and denies mobility to a certain group of people (see Huysmans [1]). Many authors study how the European Union, which presents itself as a protector of human life, is rather intertwined with practices that violate fundamental rights. The present article is a contribution to this area of study, given that it exposes some of the harms that arise from migration framings that are produced by the European Union.

Firstly, a brief context of EU’s migration policies is exhibited, in order to present some modes of how they are designed and with which mentality behind them. One of European Union’s agencies is highlighted in this article: the European Border and Coast Guard Agency (Frontex). The choice to put Frontex at the center of the debate is explained by the

current importance of the organization in the management of flows of people and by the continuous expansion of its mandate. Frontex is seen as a protector of EU’s realities against alleged risks that stem from ungoverned immigration. The Agency is an essential coordinator of European actions in the field, and it is thus helpful to assess its methods of operation, so as to find not-yet-explored outcomes of migration policies in Europe.

When examining how Frontex executes its work, one preeminent characteristic is the value given to data collection and analysis. It is the “brain” of the organization, as it molds how and where Frontex’s capacities are applied, according to where insecurity seems to be coming from. Because of this, Frontex attempts to collect as much information about migration towards the EU as possible, through the European Border Surveillance System (EUROSUR) – which is led by Frontex – or by other channels of surveillance. One other strategy of data gathering is through the collection of testimonies from migrants who have recently arrived to the European external borders, i.e. the debriefings.

Debriefings have real consequences, such as influencing criminal investigations and mapping of suspects [2] (as it will be further detailed later). However, I did not find academic writings whose major concern was investigating Frontex's debriefings, although it is a common practice within the Agency's framework of action. As it will be pointed out in this article, the debriefings may be a mechanism of violation of human rights of migrants, along with pushbacks and the general denial of entrance to a new country, but there is little evidence on it. The present study attempts to shed light on this topic that is still generally unexplored, as harmful outcomes to an already vulnerable group of people can be raised by the debriefings.

## 2. Research method

The research method used in this article is literature review. This method was chosen because it is the most common in the field of International Relations and it is also proved to be one of the most fitting. Both academic writings and official documents from the European Union and Frontex will be analyzed, in order to delineate a broader perspective on Europe's migration policies and its effects on migrants' fundamental rights protection. In the field of Human Sciences, it is harder to apply methodologies which are more experimental which renders History and previous publications the greater sources for an IR researcher.

## 3. EU's migration framework

Human mobility is ruled by a number of European institutions, such as the European Parliament and Council and EU's Commission, who legislate or orient migratory policies in the continent. There is, consequently, a holistic approach to migration. These policies are thus defined in the supranational environment, by regulations such as the Treaty on the Functioning of the European Union, the Treaty on European Union, and the Schengen Borders Code, which clearly states that the management of migration is an *European* design. Border control at the European external borders are as a result implemented "in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control" [3].

The preeminent concern of the creation of rules on immigration is "irregular" migration, i.e. the one that is done in ways that are not prescribed in European regulations. Fears allegedly originated by ungoverned migration or by a "mass" of unclassified migrants entering the EU are constantly repeated, and the EU's role to prevent or reduce this type of immigration is continuously reiterated [4]. In this sense, the Schengen Borders Code affirms that "border control should help to combat illegal immigration [...] and to prevent any threat to the Member States' internal security, public policy, public health and international relations" [3].

## 3.1 The European border guard

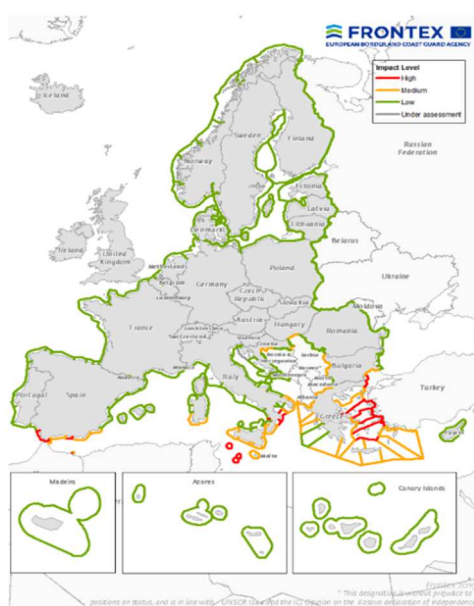
In view of the European Union's migration framework, there are many organizations and regulations related to the administration of flows of people, given its holistic approach to migration. It is crucial to the European migration regime, therefore, the coordination between border guards of its member states. In this sense, specific institutions to head the common migration regime were created, being one of its examples the European Border and Coast Guard Agency (Frontex). Frontex is part of the Justice and Home Affairs network, and it is closely connected to the EU Commission, the European External Action Service (EEAS) and to other European delegations [5]. Frontex is an important actor in the elaboration of border management in an integrated way, as it develops a common culture of surveillance and policing of borders.

Frontex was created in 2004 and it is currently responsible for supporting European operations and promoting "a 24/7 monitoring of the borders and collecting and sharing related information with authorities at the national and EU level" [6]. The most recent changes in Frontex's regime, which reinforced its mandate, were in 2019, when a new regulation was approved. One of the recent reforms is the enabling of partnerships between Frontex and any country in the world, as prior to that it was only possible that the Agency collaborated with states that immediately border the EU or with countries that had bilateral agreements with an EU member state [7]. This device strengthens the operational role of the Agency and establishes the constitution of "a permanent corps of 10.000 border guards with executive powers", expected to be put in place by the end of 2024 [8]. Frontex's corps has the authority to manage migratory flows and participates in return operations. The European border control is, therefore, "institutionally represented and materially operated by Frontex" [9].

In 2013, to support the policing of the European external borders, the European Border Surveillance System (EUROSUR) – which is led by Frontex – was established [10]. It aims at facilitating data sharing and promoting the cooperation between EU member states, in order to prevent cross-border crimes and immigration. The situational frames produced by EUROSUR about the European external borders are responsible for molding the reaction of security agents in its operations, which renders EUROSUR "essential to the daily functioning of Frontex" [10].

Surveillance systems and the analysis of data are of great importance to Frontex, given that it allows the establishment of priorities in the employment of the Agency's capacities. Risk analysis, elaborated with information collected by European organizations and states, were described to be Frontex's "brain", precisely because of its potential to orient operations according to what is known about migratory flows. The Migratory Map [11] is one example of the grouping of these materials, containing the routes

used towards Europe and the most common origin countries of detained migrants. Also in the intent to map Frontex operational preferences, EU member states divide their borders in sections which are then attributed a label by Frontex according to its “impact” – or its “risks” to the Schengen area –, varying from low to critical [10]. The critical sections, as claimed by Frontex, are around Greece and Turkey and in the border between Europe and Africa (i.e. the Spanish and Italian external borders), not coincidentally the same regions where transit countries of a high number of “irregular” migrants are located [12].



**Fig. 1** – European external border sections [10].

Frontex is present in intelligence sharing, in the patrolling of borders, in return operations, in “partnerships” with third countries and in the production of reports and analysis – which all contribute to the continuation of the paradigm that views migration as matter of security (or that securitizes it) and of an image of Europe as a body to be protected. Stachowitsch and Sachseder [13] identify in risk analysis produced by Frontex the framing of migration as a security issue. In other documents written by Frontex, it is suggested that the Agency is essential to Europe so as to react to the “mass” of people crossing the border “illegally”, especially since 2016 [14]. With the aid of textual and visual elements, Frontex reaffirms Europe’s “victimization” regarding migratory processes and a “fantasy of an invasion from the South” [13].

risk is primarily understood as stemming from ‘migratory pressure’, ‘crowds’, and people crossing the border ‘en masse’ (p. 44; ‘intense pressure’, p. 7 and 44; ‘sudden large flows’, p. 44) which is frequently related to the loss of control (p. 6). This framing of being outnumbered and overrun is also prevalent in the imagery, with no less than 18 maps visualizing the EU external borders, sometimes as being overridden by large arrows, or EU member states disappearing

behind ever widening circles representing immigration numbers [13]

Frontex’s equipment and expertise – through the provision of technologies and the deployment of border guards – would be, therefore, essential to address this “crisis”. According to Frontex executive director, Hans Leijten: “Migration is one of the key challenges of the EU and Frontex is one of its most important assets” [14]. Apart from its material resources, Frontex is represented – in its own reports – as an institution that contributes to the protection of human rights, or that puts them at the center of its activities. This would constitute a further reason to defend its existence, especially considering the context of persistent violence towards migrants, being in pushbacks, deaths at sea or assaults experienced in the path to a new country. One aspect that would exemplify this alleged respect for human rights is the strengthening of Frontex’s Fundamental Rights Officer, an independent officer within Frontex framework. In this sense, by describing its agency as integrated to the protection of human rights, “it simultaneously casts itself as a moral actor and protector of human life, securing itself against criticism and strengthening its position as an actor in European border policing” [9].

However, there are individuals and organizations (as the collective of groups that constitute Abolish Frontex [15] and Frontexit [16]) that criticize Frontex’s corps treatment to migrants. Frontex’s answers to these accusations are normally linked to the idea that the Agency is not the real guilty part. In its reports, the “villain” image, i.e. the responsible for putting the life of people in transit at risk, are tied to smugglers and traffickers of guns, people, and drugs. On the other hand, when a violent act is perpetrated by a security actor, the strategy is to detach Frontex’s image from it. Even when it is stated that human rights were violated, the Agency declares, with the argument that its actions are bound by EU member states decisions, that they were not present directly in the area and thus it is impossible to blame Frontex. This type of response is quintessential in cases of pushbacks in the Aegean Sea [17]. Within the totality of complaints of fundamental rights violations in 2022 made by Frontex official channel – 58 in total –, 49 were inadmissible and, mostly (41 cases), for not having operational activity of the Agency [18].

Some authors point that, although there are legal impositions to Frontex’s actions, what is found *in practice*, that is, in Frontex’s guards routines, is the constant violation of rights of migrants. López [19], in her analysis of Frontex’s border guards’ daily actions in the Aegean Sea, strives for portraying their routines and possible contractions in their actions. She points to a detachment of migrants as “subjects of rights” (people who must be saved) from migratory processes (that must be surveilled), which leads to a simultaneous securitization and victimization of migrants’ bodies [9]. In this sense, “illegal” border security strategies are routinized by Frontex, through pushbacks, “physical assaults,

arbitrary detention, collective expulsions, kidnapping and abandonment at sea in inflatable rafts, dangerous manoeuvres putting people in danger, sabotage of engines and denial of access to asylum" [19]. Frontex's operational plans unite an alleged "protection" of fundamental rights to securitization objectives. These coexisting and diverging goals result in varied readings of projects, which concede some level of freedom of interpretation to agents that execute them in practice [19].

#### 4. Debriefings as an insecurity tool

Along with complaints of disrespect for human rights, Frontex's debriefings are a practice that are not always in accordance with the protection of fundamental rights. This practice is very much deployed in joint maritime operations, such as the ones in Italy and Greece (as operations Sophia or Hera, among multiple others), whose desired result is "obtaining information either from detected persons that have entered illegally the European Union via the external borders in order to produce intelligence about country of origin, reason for travelling, routes and modus operandi or involvement of facilitators" [20]. This data can be shared with relevant national authorities and with the European Union Agency for Law Enforcement Cooperation (Europol) to assist in criminal investigations. In this sense, the intention to combat cross-border crime is visible, being the "irregular" crossing of borders one of these crimes. According to Frontex deputy director, Uku Särekanno, the debriefings made it possible to map nearly 13 thousand suspects between 2016 and 2022 [2].

Debriefings are supposedly anonymous, i.e. the sources are not passed on to other organizations. Nevertheless, European Data Protection Supervisor, Wojciech Wiewiórowski, has stated that Frontex may be violating data protection rights when sharing testimonies to Europol, by not censuring personal information that might identify their owners, even if their names are not included [21]. Apart from sharing this data with Europol, they are used and analyzed by Frontex, in order to delineate "better informed" risk analysis, which may eventually influence the Agency to reorient its strategies. Debriefings, therefore, can potentially impact on two organizations that focus on preventing and combating crime (and migration as a criminal activity).

It is openly known that the data collected support criminal investigations in European Union member states. Helena Maleno, in her book *Mujer de frontera: Defender el derecho a la vida no es un delito* [22], narrates her story as a defender of human rights and the criminal process opened against her in Moroccan courts. Maleno, a Spanish woman fixed in Tanger, directly helps migrants, and cooperates with search and rescue operations at sea by giving coordinates (that she receives by calls) of boats which are in

danger to corresponding authorities. Because of her work and for reporting the treatment given to migrants by the EU, Maleno was accused of being involved with trafficking in human beings and inciting undocumented migration [22]. The process did not start in Morocco, but rather had its dossier produced by the Spanish national police. Throughout the book, she addresses Frontex's debriefings, sharing that they asked migrants who were responsible for conducting the boats used to cross the Mediterranean, which could lead to arrests and condemnations of up to 10 years of prison [22]. She also reveals that Frontex's border guards interrogated recently arrived migrants about her and her work and that their testimonies were part of her incriminating dossier.

One of Frontex's permanent corps official, when describing her own job as an interviewer, highlighted that "it is important to show empathy" [23], because people being heard are highly vulnerable and possibly have undergone traumatic experiences. However, affection may, additionally, be a tool to collect further data brought by the interviewee, given Frontex's aspiration to hold as much information about migratory flows as possible. People in transit are a primary source in obtaining a more accurate knowledge of current practices in border crossing activities, being thus essential to orient where Frontex's capacities should be deployed. Through the creation of bonds or some level of proximity with the interviewer, migrants could feel more comfortable to share other parts of their stories, which makes empathy an interesting data collecting instrument during debriefings.

According to Frontex, debriefings must take place under voluntary consent, and they shall not harm the interviewee's immigration process [20]. In this sense, debriefings are not officially criminal interrogatories, but they happen in situations marked by an immense power asymmetry, "in the context of irregular entry, lack of privacy, and in the presence of police officers, where individuals are detained and at risk of deportation" [24]. The presence of interpreters is qualified as "not necessarily required in all locations" [20], which challenges the alleged consent given (both to be interviewed and to have their story shared with other European agencies), as there might be obstacles to the full understanding of the spoken language. Something of even greater detriment is that, in the Handbook to the Operational Plan [20], Frontex highlights the benefits of using interpreters during debriefings as they are capable of identifying dialects. The interpreters can more easily distinguish "exactly who the migrants in fact are and where they come from" [20], as not always – purposely or not – identification documents (which display the person's nationality) are shown. The fundamental interest of establishing clearer communication is, consequently, not assuring that the interviewee understands the interaction entirely, but rather is supported by a

preoccupation of acquiring more information from people who cross the European borders.

In light of the arguments exposed, Frontex's debriefings can be pointed as a mechanism that contributes to the contravention of human rights of people in transit. Devices that would hinder these violations, such as respect for confidentiality, a better check for consent and the use of interpreters at all times, are not put in place by Frontex's operations. In addition, although it is not described by the Agency as a police interrogation, these debriefings carry many of its common features. Some of these characteristics are the possible lead to criminal investigations, mapping of suspects and imprisonment, seeing people being questioned as possible suspects, power asymmetries between the interviewer and the interviewee, among others. In this sense, the debriefings are not merely "conversations", but may be instead linked to real interrogations. Nevertheless, as it is not presented as such, it is harder to scrutinize and criticize Frontex's actions during debriefings, as (formally) it is not such a grave activity.

## 5. Conclusion

The European Union deliberately ties migration to security matters, especially considering "irregular" immigration. The equation of these two fields results in the challenging of human rights and often denies entry to the EU to a group of people. This association is usually done by opposing the preservation of Europe's identity, culture, and economy to people from third countries entering and living there [1]. EU's major role in solving the problems supposedly stemming from migration, given the presentation in this article of EU's policies, would be to reduce or even extinguish irregular immigration, regardless of the protection for human life.

Frontex, the guard of Europe's borders, has agency in this context since it helps in the securitization of migration. Through the coordination of European operations, Frontex "defends" EU's external borders against cross-border crime, being the irregular entry in the continent one of these transgressions. Frontex reaffirms its relevance in the administration of flows of people, as by describing itself as one of Europe's "most important assets" in the matter [14], and progressively gains more power through the approval of new regulations. EU's approach towards migration is intrinsically intertwined with how Frontex operates, and Frontex's actions reflect European frameworks. In this sense, the examine of how Frontex performs is crucial to scrutinize European perspectives on migration, for the purpose of observing a broader scope of the consequences in practice of EU's migration policies.

Two of Frontex's main characteristics are more deeply explored in this article: its predilection for collecting and analyzing data, and the routinization of violations of human rights. Intelligence is essential

to the organization as it influences how and where it deploys its capacities in order to fight against threats. Data is a central instrument in the (re)orientation of Frontex's preferences. On the other hand, the disregard for the protection of human rights is observed in Frontex's daily practice. Although it is prescribed by European law and Frontex's regulations, its operations are not limited to what is determined by these rules. The interest of protecting human life, formally established by Frontex, conflicts with the main goals of the Agency of mapping, surveilling, and denying the entrance of a group of people to the European Union.

Frontex's debriefings unite these two aspects. Firstly, they target at collecting data, in this case, from testimonies of people who have crossed European borders. They have an impact on criminal investigations and the mapping of suspects, along with Frontex's risk analysis, which could influence the Agency to reorient its course of action. Secondly, they manifest Frontex's inattention to the protection of human rights of people in transit. Confidentiality is not always respected when sharing information with other agencies, interpreters are not necessarily required, and the check for consent is frail (both by people possibly not understanding the language and by the context of power asymmetry and lack of privacy). All the features of these interviews could be evidence of how deplorable is the treatment given to migrants.

Despite the fact that debriefings are a common practice in Frontex's framework of action, it has not yet been assessed by the academic community. In the present time, there is still little evidence on the effects of debriefings in the protection of fundamental rights, but one can already see its dangerous potentials. It would be interesting, therefore, to further investigate this practice, as it can provide new methods – more subtle ones – in which Frontex (and the European Union) may be violating migrants' human rights.

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