

April 2016

### Schengen and the management of the EU's external borders

#### Main instruments:

Schengen Borders Code Regulation [562/2006](#) and Frontex Regulation [2007/2004](#)

*This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.*

#### EP committee responsible at time of adoption of the EU legislation:

- Committee on Civil Liberties, Justice and Home Affairs (LIBE)

#### Date of adoption of original legislation in plenary:

- [23 June 2005](#) (Regulation 562/2006), [9 March 2004](#) (Regulation 2007/2004)

#### Entry into force of legislation:

- 13 October 2006 (Article 40, Regulation 562/2006), 26 November 2004 (Regulation 2007/2004)

#### Planned date for review of legislation:

- By 13 October 2009 the Commission had to submit a report on the application of Title III of the Regulation (Article 38, Regulation 562/2006).

- Within three years from the date of Frontex having taken up its responsibilities (1 May 2005), and every five years thereafter, an independent external evaluation on the implementation of the Frontex regulation has to be commissioned (Article 33, Regulation 2007/2004).

#### Timeline for new amending legislation:

On 15 December 2015, a legislative [proposal](#) to reinforce Frontex and move towards a European Border and Coast Guard was published along with a [proposal](#) to modify the Schengen Borders Code.

## 1. Background

In its May 2015 Communication on the [European Agenda on Migration](#), the European Commission set out its broad framework for a migration policy based on four pillars of action: to 1) reduce incentives for irregular migration, 2) ensure an efficient border management, 3) strengthen the common asylum policy<sup>1</sup> and 4) update the policy on legal migration.<sup>2</sup> This briefing will focus on ensuring an efficient border management.

The free movement of persons is a fundamental right guaranteed by the EU to its citizens (Article 21, Treaty on the Functioning of the EU (TFEU)). This right entitles the Union citizens to travel, work and live in any EU

<sup>1</sup> In this regard see [Implementation Appraisal on the Dublin system](#), Gertrud Malmersjo and Milan Remáč, European Parliamentary Research Service, European Parliament, April, 2016.

<sup>2</sup> In this regard see [Implementation Appraisal: The EU Blue Card Directive](#), Milan Remáč, European Parliamentary Research Service, European Parliament, December 2015.

country without special formalities. According to Article 67(2) TFEU, the EU ensures the absence of integral border controls for persons and frames a common policy on asylum, immigration and external border control, based on solidarity between the Member States (MS).

However, the 2015 migration crisis has demonstrated certain vulnerabilities at both external and internal borders. In particular, it has become clear that the EU needs strong external borders to maintain the free movement within the Schengen area. According to Frontex, 1.8 million<sup>3</sup> illegal crossings at the EU's external borders were detected in 2015 compared to 280 000 in 2014, which at the time was already an unprecedented number.<sup>4</sup> By far the highest number of detections were reported on the Eastern Mediterranean route (885 386 in 2015), mostly on the Greek-Turkish border. Since September 2015, the uncontrolled secondary movement of migrants has led seven MS – Belgium, Denmark, Germany, Hungary, Austria, Slovenia and Sweden – to reinstate border controls on a temporary basis<sup>5</sup> as set out in the Schengen Borders Code (SBC). The SBC allows the reintroduction of border controls based on events requiring immediate actions as well as foreseeable events; while the two reasons can be combined, there are set time limits on how long the border controls can remain.<sup>6</sup>

To address the migration challenge, the EU has taken several actions to reinforce its external borders, notably via the [hot spot approach](#). This approach means that European agencies such as Frontex and the European Asylum Support Office (EASO) assist those MS with most pressure on their external borders (Greece and Italy) with the registration and screening of asylum applicants as well as with returns. More recently, the March 2016 [deal](#) with Turkey to return irregular migrants entering Greece while agreeing to take in Syrian refugees directly from refugee camps in Turkey instead, which has just come into operation, is also expected to decrease the pressures on the EU's external borders. In its '[Back to Schengen' communication](#)',<sup>7</sup> the European Commission set out a roadmap for internal borders to be lifted. The communication also noted the considerable costs of non-Schengen. The Commission estimated that a full re-introduction of internal borders would cost between €5 billion and €18 billion annually, and that over a billion journeys are undertaken within the Schengen area each year.<sup>8</sup> For a brief overview of the 'cost of non-Schengen', see the [EPRS briefing](#) 'Schengen area: Update and state of play'.<sup>9</sup>

The pieces of amending legislation dealt with in this report are also intended to strengthen the external borders by creating a European Border and Coast Guard, and by introducing more stringent checks on all those entering and exiting the EU's external borders, hence allowing for a border-free zone within the EU.

## 1.1 Overview of Schengen and related legislation

The 'Schengen *acquis*' was originally created outside the European legal framework. The Schengen *acquis* is built on the 1985 Agreement on the gradual abolition of checks at their common borders ([Schengen Agreement](#)). This international agreement was signed outside the EU framework and proposed a gradual abolition of border checks at the common borders between the five contracting parties.<sup>10</sup> The Agreement proposed harmonisation in various areas such as visa policies or strengthening cooperation in police or judicial matters. In 1990, the Agreement was amended by the [Convention implementing the Schengen Agreement](#).<sup>11</sup> The Convention entered into force in 1995, abolishing the internal borders among the contracting countries and creating a single external border with a single set of applicable rules. In addition,

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<sup>3</sup> Please note that these figures may contain double counting as per Frontex disclaimer, [Frontex News October 2015](#).

<sup>4</sup> Frontex [Annual Risk Analysis](#), March 2016, and Frontex [Annual Risk Analysis](#), April 2015.

<sup>5</sup> Norway also reinstated border controls due to migration, while France did so due to COP21 and then the terrorist attacks.

<sup>6</sup> See the [summary](#) of time limits for those MS currently having reintroduced border controls.

<sup>7</sup> Communication from the Commission '[Back to Schengen - A Roadmap](#)', COM(2016) 120 final.

<sup>8</sup> No details regarding the calculation of these costs were presented in the Commission's document.

<sup>9</sup> 'Schengen area: Update and state of play', Alexandra Gatto, Pierre Goudin, Risto Niemenen, [Briefing](#), European Parliamentary Research Service, European Parliament, March 2016.

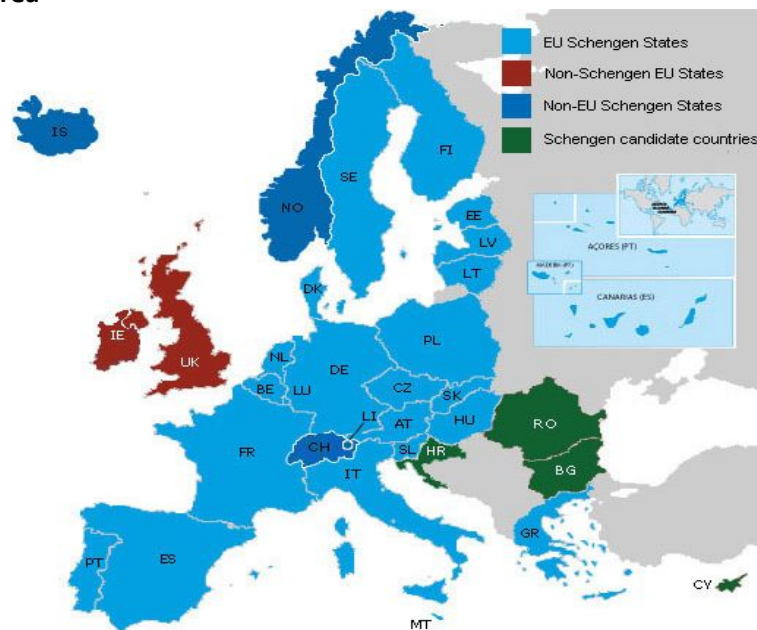
<sup>10</sup> The Schengen Agreement was signed by the Netherlands, Belgium, Luxembourg, France and the Federal Republic of Germany. By that time the European Communities had already 10 Member States.

<sup>11</sup> The signatories of the Convention were the same countries as above.

the Convention (Title IV) created a [Schengen Information System](#) (SIS)<sup>12</sup> - a system allowing the authorities to enter and consult alert data on wanted or missing persons. The system is intended to increase the internal security in the Schengen area. The [Treaty of Amsterdam](#) (1997) incorporated the Schengen cooperation agreement into the EU legal framework in 1999.<sup>13</sup> Since 1999, the rules regulating the border-free Schengen area were improved and further developed. They are included in various decisions and regulations adopted by the EU institutions<sup>14</sup>.

Currently, the Schengen area consists of 22 MS and four non-EU countries ([Switzerland](#), [Iceland](#), [Norway](#) and [Liechtenstein](#)) who have all agreed to a passport free zone. In addition, there are four MS which are designated as 'Schengen candidate countries', namely Bulgaria, Romania, Croatia and Cyprus.<sup>15</sup> These countries are waiting to join the Schengen area once the conditions for abolishing internal borders have been met. The UK and Ireland, on the other hand, have chosen not to take part in the Schengen area. Monaco, the Vatican and San Marino, which are not EU MS, are considered de facto members of the Schengen area given their geographic location.

#### Scheme 1 – Schengen area



Source: European Commission, [DG Migration and Home Affairs](#).

#### Regulation [562/2006](#) establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

The regulation constitutes a development of provisions of the Schengen *acquis*. It lays down the rules relating to border control of persons crossing the external borders of the EU as well as the internal borders within the EU.<sup>16</sup> It also deals with rules related to the temporary reintroduction of border controls at

<sup>12</sup> With regard to SIS, see [Regulation 1987/2006](#) on the establishment, operation and use of the second generation Schengen Information System (SIS II), [Regulation 1986/2006](#) regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificate and [Council Decision 2007/533/JHA](#) on the establishment, operation and use of the second generation Schengen Information System (SIS II).

<sup>13</sup> The protocol integrating the Schengen *acquis* into the legal framework of the EU is also currently included in the TFEU as [Protocol \(no 19\)](#).

<sup>14</sup> Apart from the regulations discussed below, see also, [Regulation 1052/2013](#) establishing the European Border Surveillance System (Eurosur), [Council Regulation 1053/2013](#) establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, [Council Regulation 539/2001](#) listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement or [Regulation 656/2014](#) 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'.

<sup>15</sup> At the time of accession, the Schengen candidate countries must incorporate the whole of the Schengen *acquis* into their legal system. The Council decides on applications to join the Schengen area on the basis of unanimity. Before its decision, an evaluation by Commission and EU country experts has to be carried out to ensure that all necessary measures that allow to lift the barriers have been adopted. See [Council Regulation 1053/2013](#) establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

<sup>16</sup> Article 1 Regulation 562/2006.

internal borders. The regulation applies to any person crossing the internal or external borders of a MS.<sup>17</sup> When applying the regulation, the MS have to fully comply with international and EU law relating to the status of refugees.<sup>18</sup>

The regulation sets out the checks required on MS nationals as well as third-country nationals, with the latter being subject to more thorough checks to verify their right of entry and their travel documents. Internal borders, however, can be without a border check on persons, irrespective of their nationality, although Member States' enforcement agencies can still exercise their powers at border areas.

The Schengen Borders Code allows a temporary reintroduction of border controls at internal borders in case of a serious or immediate threat. However, the reintroduction of border control is time-limited and the exact extensions depend on the type of issue identified. If a MS decides to temporarily close its borders the European Commission and other MS have to be notified. The European Council can, in exceptional circumstances, also recommend the closure of internal borders on the advice of the Commission.<sup>19</sup>

Since 2011, the European Commission publishes biannual reports on the functioning of Schengen, giving an overview of latest developments to strengthen cooperation between MS. The [latest report](#) published in December 2015 focuses on the migration challenge and on the terrorist attacks in Paris. The report lists the main lessons learnt from these developments, noting the importance of robust registration and screening procedures of asylum applicants and of EU legislation in this area being respected; that temporary closure of borders can in extreme events help address secondary movements; and that MS need to be able to effectively monitor migration developments to prepare themselves appropriately.

In 2013<sup>20</sup> the monitoring of the implementation of Schengen was strengthened. This meant that from 2015, five to seven MS would be evaluated each year starting with Austria, Belgium, Germany, Liechtenstein and the Netherlands.<sup>21</sup> Once evaluated, MS need to respond to the assessment outlining how they plan to tackle any potential weaknesses identified. In extreme cases, where inefficiencies persist and the use of additional support from, for example, Frontex has been insufficient to address the Member States' problems, border controls can be reintroduced temporarily.

In December 2015, the European Commission published a [proposal to amend the regulation on a targeted modification of the Schengen Borders Code](#).<sup>22</sup> While the proposal itself only concerns amendments to Article 7 of Regulation 562/2006, the implications are quite far reaching. The proposal increases the checks carried out on MS nationals (or others with right to free movement), verifying their identity and travel documents, and checking both on entry and on exit. Exit checks are also introduced for third-country nationals. An impact assessment was not provided, making it difficult to assess the impact of, in particular, extended checks on EU nationals. However, the proposal acknowledged a potential additional burden by stating that systematic checks on all EU nationals could 'lead to a disproportionate impact on the flow of traffic at the borders', and therefore proposed that MS, having formally assessed the risks, could in certain cases limit themselves to targeted checks. The details of what such targeted checks would entail were not specified.

**Entry/Exit System** – First presented in 2013, the European Commission published a [revised proposal](#) on establishing an entry/exit system for third-country nationals crossing the EU's external borders in April 2016. The proposal would also amend the Schengen Borders Code to integrate the technical changes it contains. The main reasons for introducing an entry/exit system were to: address border delays, ensure better identification of 'overstayers' and combat terrorism. The proposal is accompanied by an [Impact](#)

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<sup>17</sup> The regulation is applicable to all MS with the exception of [the UK](#) and [Ireland](#). It also applies to Switzerland, Norway, Iceland and Liechtenstein.

<sup>18</sup> For more information, see [Implementation Appraisal on the Dublin system](#), Gertrud Malmersjo and Milan Remáč, European Parliamentary Research Service, European Parliament, April 2016.

<sup>19</sup> Articles 23, 25 and 26 of Regulation 562/2006 set out the conditions for internal border closure. Articles 23 and 25 can be used consecutively.

<sup>20</sup> See Regulation 1053/2013.

<sup>21</sup> The Commission's biannual report on the functioning of Schengen, also outlines the progress of the 2015 evaluations so far including findings from announced visits to Austria and Belgium COM(2015) 675.

<sup>22</sup> COM(2015) 670 final.

[Assessment](#) and complements the Schengen Borders Code proposal. The Impact Assessment points out that a more efficient border management in relation to third-country nationals would also benefit overall border management if more checks on EU nationals were also introduced.

## 1.2 Overview of Frontex and related legislation

Frontex<sup>23</sup> was established in October 2004 by Council Regulation [2007/2004](#) and became operationally active in October 2005. The main purpose of Frontex is to promote and coordinate border management in Europe. While the main focus is on coordinating joint operation, the agency also provides training, risk analysis and research. In addition, it also coordinates joint return operations. Frontex's role has been strengthened over time, notably in 2007<sup>24</sup> when the Rapid Border Intervention Teams (RABIT) were established, setting out the responsibilities of guest officers (national border guards deployed outside their own MS). In a crisis situation, a MS can request the deployment of RABIT for border guard assistance for a limited period. The mechanism has rarely been used, but was deployed in 2010, for example, on the Greek-Turkish border. In 2011,<sup>25</sup> Frontex's role was again strengthened with the stipulation that Frontex create European Border Guard Teams (EBGT) for joint operations and rapid border interventions. These teams would be made up of MS experts according to specific expert profiles developed by Frontex.

### Evaluation of Frontex

Frontex has grown quickly over a short time both in terms of staff and budget. Recruitment challenges had meant Frontex depended heavily on Seconded National Experts (SNE) when it was established. SNEs still make up around a quarter of staff while around 45% are now Temporary Agents.<sup>26</sup> Since it was set up, two external evaluations have been undertaken, one in 2009<sup>27</sup> and one in 2015.<sup>28</sup> Both have centred on stakeholder and staff views (mainly gained from interviews and online surveys) of the efficiency and effectiveness of the agency rather than on quantitative data on performance. Overall, both evaluations concluded that Frontex had successfully achieved its remit.

The **2009 evaluation** noted that it was too early to fully assess the impact of the agency. While it found that Frontex was fulfilling its objectives so far, the [report](#) noted some constraints, in particular that the agency had to rely on MS equipment which, although promised, did not always materialise and continued to be under the command of that MS. The **2015 evaluation**<sup>29</sup> looked at Frontex's development from 2008 to 2014. This evaluation concluded that overall Frontex was operating effectively. It particularly highlighted its coordinating role in Joint Operations and Returns as being particularly effective. The report also flagged some areas for improvement. For example, the agency's role still needed clarifying, particularly in relation to MS and other EU agencies; Frontex lacked information to assess the capacity of MS to face a challenge on their borders; and accessing technical resources from MS was still a challenge as was insufficient human resources to effectively promote fundamental rights monitoring in all the agency's activities. The report also noted that human and financial resources had not always kept up with the increase in the agency's responsibilities and that more could be done to ensure that the different units inside the agency were better integrated.

In terms of resources, the European Commission noted that Frontex's budget has continued to increase as a result of migratory pressure. The European Coast Guard proposal includes an additional budget increase from the €143 million originally planned for 2015 up to €238 million in 2016, reaching €322 million in 2020.

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<sup>23</sup> Frontex full name: the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

<sup>24</sup> Regulation [863/2007](#).

<sup>25</sup> Regulation [1168/2011](#).

<sup>26</sup> Various annual Frontex General Reports.

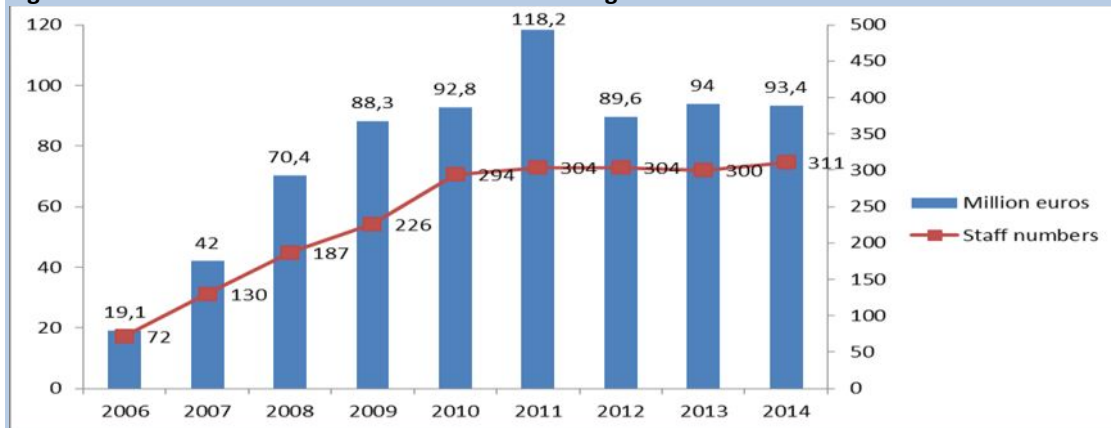
<sup>27</sup> 'External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union', COWI, January 2009.

<sup>28</sup> 'External evaluation of the Agency under Art. 33 of the Frontex Regulation: Final Report' Ramboll Management Consulting and EurAsylum, July 2015. Not available on internet as of 18 April 2016.

<sup>29</sup> See footnote 28.

The number of staff would also increase from its 402 staff members at the start of 2016 to 1000 by 2020 when all additional staff would be recruited.

**Figure 1 – Overview of Frontex staff numbers and budget allocation 2006 to 2014**



Source: Various annual Frontex General Reports

In terms of MS, the organisation of border and coast guards varies considerably. In some cases border control and coast guards are separate agencies while, in others, border management is part of the national police's responsibilities. (See Frontex's [overview](#) of national agencies). As an example, the UK Border Force operates controls at 138 air, sea, rail, and port borders, including in France and Belgium. It has well over 7 000 staff and its budget is around £600 million.<sup>30</sup> Its coastguard search and rescue services, is incorporated into the Maritime and Coastguard agency which has over 1 000 staff working on search and rescue as well as producing guidance on maritime issues and providing certificates to seafarers.

The Italian coast guard has over 10 000 staff and 150 ships and 21 aircrafts. It is mainly concerned with search and rescue but also deals with other issues related to maritime safety and control. In addition, it has the national police force which is responsible for border control, and the Guardia di Finanza which, among other things, deals with smuggling.<sup>31</sup>

The European Commission tabled a [proposal](#)<sup>32</sup> on a European Border and Coast Guard in December 2015 which included a substantial increase in Frontex's remit and a suggestion to rename the agency the 'European Border and Coast Guard Agency'. The new agency would take on a stronger oversight role to ensure the effective functioning of border controls. In particular, some of the key changes included:

- The potential to intervene – the agency would assess Member States' capacity to deal with challenges at their borders via mandatory vulnerability assessments. Where a MS failed to act on the assessment, there would be a possibility for the agency to intervene in the MS with the prior agreement of the European Commission;
- Increased monitoring capabilities – by establishing a monitoring and risk analysis centre which would deal with issues related to irregular entry as well as cross-border crime. The proposal would also enable the agency to have staff on the ground in a MS or in a third country to better monitor events;
- Better access to resources – there would be a mandatory pooling of human resources as well as the possibility to deploy an own technical equipment pool;

<sup>30</sup> 'The Border Force: Securing the border', UK Parliament, House of Commons, Public Accounts Committee, December 2013.

<sup>31</sup> Frontex's website, national authorities [overview](#).

<sup>32</sup> COM(2015) 671 final.

- Increased role in returns – the establishment of a Return Office that would assist MS in the return of those staying illegally in the EU as well as a coordinating role in operations between MS and third countries; and
- Increased emphasis on the Charter of Fundamental Rights through the setting up of a complaints mechanism to handle claims of violation of fundamental rights during operations involving the agency.

However, the proposals were not accompanied by an Impact Assessment – as was pointed out during the meeting of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 29 February 2016.

The European Commission stressed the urgency of its proposals tabled on 15 December 2015, in particular in view of the challenge mass migration posed to Europe. In its [conclusions](#) of 19 February 2016, the European Council called for the proposal to be accelerated and agreed before the end of June 2016. On [6 April](#) 2016, Council announced that it had reached a position and was ready to negotiate once Parliament had reached its view.

In advance of the proposal, Frontex's Management Board had issued a series of [recommendations](#) following the evaluation of the agency in July 2015. They included suggestions such as a giving Frontex a strengthened role in return operations, being able to propose short-term deployments of the Rapid Border Intervention Teams, increasing opportunities to cooperate with third countries, being able to monitor irregular movements within the EU, reforming the financial management of Frontex<sup>33</sup> and moving towards a European System of Border Guards, i.e. a system of European Border Guards and a Technical Equipment Pool.

The current proposal contains several of the key elements noted in the Frontex Management Board's recommendations. It also includes a complaints mechanism as suggested by the European Ombudsman (see section 2 of this briefing), and supported by the Parliament (see section 3 of this briefing).

## 2. EU-level reports, evaluations and studies

**European Parliament Study: [The proposal for a European Border and Coast Guard: Evolution or revolution in external border management](#) (April 2016)**<sup>34</sup>

This report identifies the key areas of the previously mentioned legislative proposal, its potential impact and gaps. For example, the report considers that the 'right to intervene', and the mandatory obligation to make border guards available for rapid intervention teams contravened the EU treaties and MS' right to control their own internal security. The report also finds areas which need further clarification, suggesting that, in order to avoid overlaps, a better differentiation of responsibilities under the Schengen Evaluation Mechanisms and the proposed Vulnerability Assessment is needed. Details on what 'relevant information' MS are obliged to provide to assist Frontex in its risk analysis are felt to be lacking and the accountability and responsibility of border officers when operating outside their territory could be made clearer.

The report also considers that adherence to the EU Charter of Fundamental Rights needs strengthening, and a role for the agency's Fundamental Rights Officer should be included in return operations. Any cooperation with third countries, especially in the area of returns, should only be undertaken if countries are party to the [Geneva Refugee Convention](#) and the [European Convention of Human Rights](#). The report concludes that the proposal is not addressing MS and the Border and Coast Guards' accountability and that the current relatively unclear division of responsibilities between different border management actors remains. It also notes that the dual responsibilities of monitoring MS as well as coordinating their joint operations might become problematic for Frontex.

<sup>33</sup> Currently Frontex co-finance its operational activities with grants but would see a contractual relationship between itself and its beneficiaries as a more efficient system.

<sup>34</sup> [Report](#) published by the Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament and produced for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

### European Commission [Study on the feasibility of the creation of a European System of Border Guards to control external borders of the Union](#) (June 2014)

This study looked at three potential options for creating a European System of Border Guards. The options were developed through desk research and with some feedback from the Commission and Frontex before being tested on stakeholders. There is no information about whether any other options were considered. Three options were tested: 1) an EU agency supporting MS in managing resources; 2) shared responsibilities and decision-making between MS and EU agency; and 3) the decision-making delegated to an EU agency.

A questionnaire was sent to MS representatives with subsequent focus groups organised with these representatives to discuss responses in more detail. The study used various points of contacts in the MS tasked with recruiting for the focus groups. It is therefore unclear who actually participated in the research in each MS, and how the analysis of the qualitative data (the focus groups) was done. A small number of MEPs from the LIBE Committee, as well as some of their assistants, were also interviewed at the later stages of the study. The report concluded that MS generally wanted to remain in control of their border guards and recommended a gradual approach towards the integration of Member States' border guards.

### The European Ombudsman special reports

The Ombudsman has looked into Frontex's work, particularly in the area of the EU Charter of Fundamental Rights, since the amendment to the Frontex's regulation in 2011<sup>35</sup> which required the agency to explicitly act in compliance with the Charter. The Ombudsman began an own initiative enquiry ([OI/5/2012/BEH-MHZ](#)) in 2012 to review how Frontex was complying with the Charter, seeking stakeholder views (18 responses received). While the enquiry concluded that Frontex was making 'reasonable progress', several [recommendations](#) were made including producing guidelines for staff involved in Joint Return Operations and clarifying various aspects of its code of conduct. One recommendation, to set up an internal complaints mechanism to handle any potential complaints relating to fundamental rights, was not accepted by Frontex.<sup>36</sup> The agency argued that this was beyond its remit and that the agency cannot answer for the actions of MS involved in operations. However, the Ombudsman argued that the agency would still be responsible for its own staff who were coordinating operations. The Ombudsman therefore sought Parliament's support for its recommendation regarding a Frontex complaint mechanism.

The Ombudsman has also conducted an inquiry into Frontex Return Operations ([OI/9/2014/MHZ](#)) making several [recommendations](#) on how to ensure respect of fundamental rights during forced returns. For example, the promotion of common rules on the use of restraints and ensuring that children and pregnant women are seated separately when returned. In its [response](#), Frontex stressed that MS were responsible for those being returned from their countries but agreed that different national regulations on restraints presented a practical problem.

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<sup>35</sup> Regulation [1168/2011/EU](#).

<sup>36</sup> See Frontex [reply](#).

## Other reports

### **Study: A European Border and Coast Guard: What is in a name?, Centre for European Policy Studies (CEPS) 2016**

This paper, produced by the independent think tank CEPS, critically assessed the European Commission's European Border and Coast Guard proposal. The paper argued that the proposal would not lead to an actual European Border and Coast Guard, as while Frontex's powers would increase it would continue to depend on MS for resources. The paper argued that Frontex has regularly received an increased budget to deal with new migratory challenges, but that staff numbers have never increased in the same way to allow the agency to deal more effectively with the situation. In addition, the proposal does not address the key issue of Member States' capacity to receive and process asylum seekers. A successful initiative needs to focus on intra-EU weaknesses in the handling of asylum applicants as well as safeguarding the external borders. Any proposal to strengthen Frontex should also consider reviewing the competences of the European Asylum Support Office (EASO) and the Dublin system.

### **The cost of non-Schengen**

Various organisations have looked into the potential costs of re-introducing internal borders. France Stratégie, a French government agency has looked at the consequences<sup>37</sup> for France of permanent internal border controls. It estimated the short-term annual cost to France at €1 to €2 billion and the long-term costs at €10 billion. The Bertelsmann Stiftung, a German foundation, has also looked at the economic impacts for Europe and Germany in particular in its Study on Departure from the Schengen Agreement which also stressed the long-term impact as particularly severe. They estimated that the closed borders would lead to a decrease in growth costing Germany around €77 billion by 2025. The report also predicted border controls would have a particularly negative impact on Austria, Spain and the UK. Both reports were published in 2016.

## **3. European Parliament position / MEPs' questions**

### **3.1 European Parliament Resolutions**

#### **European Parliament resolution of 2 December 2015 on the special report of the European Ombudsman in own-initiative inquiry concerning Frontex<sup>38</sup>**

While acknowledging Frontex's work in ensuring that the Charter of Fundamental Rights is taken into account in the agency's activities; the Parliament supported the European Ombudsman's proposal that Frontex set up a complaints mechanism to deal with any potential infringements to fundamental rights. The Parliament considered that such a mechanism would greatly increase transparency and noted that it would also improve Parliament's capacity to scrutinise the agency. The Parliament also expresses concern about the 'legal vacuum' surrounding any third country officer participating in joint return operations.

In its follow-up, the Commission stated that its proposal on a European Border and Coast Guard included a complaints mechanism that met the requirements set out in Parliament's resolution.

#### **European Parliament resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations<sup>39</sup>**

This resolution presented the Parliament's view on the radicalisation and recruitment of EU citizens by terrorist organisations. In this context, Parliament reiterated that 'the EU must step up its external border controls as a matter of urgency, on a basis of full compliance with fundamental rights', and calls on MS to make use of existing instruments, such as the Schengen Information System, and to fully implement existing rules on entry/exit controls at EU's external borders. Parliament also urged MS to increase their cooperation and to better share information on suspected 'foreign fighters' with other MS.

<sup>37</sup> 'Les conséquences économiques d'un abandon des accords de Schengen', France Stratégie, February 2016.

<sup>38</sup> [P8\\_TA-PROV\(2015\)0422](#).

<sup>39</sup> [P8\\_TA-PROV\(2015\)0410](#).

In its [follow-up](#) the Commission centred its response on the prevention of radicalisation and did not react to the points on Schengen and external borders.

#### **European Parliament [resolution](#) of 10 September 2015 on migration and refugees in Europe<sup>40</sup>**

Parliament reiterated its commitment to open borders within the Schengen area. However, it underlined the necessity to ensure effective management of external borders. In this context, Parliament stressed that the free movement of people within the Schengen area has been one of the biggest achievements of European integration. It criticised the fact that people in need of international protection do not have many options to legally enter the EU. It noted that the building of fences and sealing-off of external borders are some of the reasons why these people resort to smugglers.

In its [follow-up](#)<sup>41</sup> to the resolution, the Commission did not specifically react to the above points raised by Parliament.<sup>42</sup>

#### **European Parliament [resolution](#) of 7 July 2011 on changes to Schengen<sup>43</sup>**

In this resolution, Parliament strongly recommended 'strengthening the Schengen governance in order to help ensure that each MS can effectively control its section of the EU's external borders'. Parliament also called for 'greater solidarity towards those MS facing the greatest influx of migrants'. It stressed the importance of ensuring that all MS abide by the Schengen rules and called for the Schengen evaluation mechanism to be strengthened. It also called on the Commission to clearly set out how the temporary reintroduction of internal borders can be used and to include additional exemptions.

In its [follow up](#)<sup>44</sup> of October 2011, the Commission informed Parliament that it had submitted [proposals](#) to reinforce Schengen governance while taking the Parliament's resolution into account. It noted that the proposals enhanced the ability to evaluate and monitor the application of the Schengen *acquis* by the MS. Furthermore, these proposals clarified the EU-based mechanism for the reintroduction of internal border controls. The Commission underlined that any reintroduction is always temporary.

### **3.2 Written questions by MEPs<sup>45</sup>**

#### **[Written question by Aldo Patriciello \(EPP, Italy\), January 2016](#)**

The MEP asked the Commission about what it was doing to safeguard the Schengen *acquis* 'by taking action against those countries that, by failing to act in accordance with obligations they have assumed, are jeopardising the stability of the European Union'.

#### **[Answer given by Dimitris Avramopoulos on behalf of the Commission, February 2016](#)**

The Commission answered that it is closely monitoring all the decisions by Member States in terms of the necessity and proportionality of the reintroduction of border controls and the subsequent prolongations. If there are any doubts about these decisions, it will approach the national authorities to request more information and it may also issue an opinion. The Commission noted that in October 2015 it had issued an opinion in relation to the temporary reintroduction of border controls in Germany and in Austria<sup>46</sup>.

#### **[Written question by Gérard Deprez \(ALDE, Belgium\), January 2016](#)**

The MEP inquired with the Commission when it intends to submit an overall evaluation of the Central Schengen Information System (SIS II) and the bilateral and multilateral exchange of supplementary information between MS.

#### **[Answer given by Dimitris Avramopoulos on behalf of the Commission, February 2016](#)**

The Commission informed that it envisages to present a report on the overall evaluation of SIS II in the

<sup>40</sup> [P8\\_TA-PROV\(2015\)0317](#).

<sup>41</sup> SP(2015)748.

<sup>42</sup> There are also other resolutions in which Parliament reacts to the issue of Schengen and the external borders, for example, European Parliament [resolution](#) of 4 February 2016 on the special situation of islands.

<sup>43</sup> [P7\\_TA\(2011\)0336](#).

<sup>44</sup> SP(2011)8297.

<sup>45</sup> Various questions have been raised by MEPs in the field of Schengen and the external borders of the EU. See, for example, [P-000108-16](#), [E-000413-16](#), [E-015995-15](#), [E-000040-16](#), [E-000078-16](#), [E-000095-16](#), [E-000363-16](#), [E-015675-15](#), [E-015647-15](#), [P-001913-16](#), [E-001386-16](#), [P-001304-16](#), [E-001119-16](#) and [E-015392-15](#).

<sup>46</sup> C(2015) 7100 final.

second quarter of 2016. It also referred to an [evaluation and fitness check roadmap](#) on the evaluation of SIS II.

**[Written question by Nadine Morano](#) (EPP, France), January 2016**

The MEP inquired about the measures which the Commission intends to take, both within the Schengen Area and at its borders, to help Member States enhance the security of their citizens.

**[Answer given by Dimitris Avramopoulos on behalf of the Commission](#), March 2016**

The Commission pointed to several measures it adopted in order to address the challenges the Europe is facing, including the 2015 [proposal](#) on the European Border and Coast Guard and the [proposal](#) amending the Schengen Borders Code. Furthermore, the Commission noted that it [proposed](#) to amend the European Criminal Record Information System to include third country nationals and has submitted a [proposal](#) on combating terrorism.

**[Written question by Eleni Theocharous](#) (EPP, Cyprus), December 2015**

In connection to the public debate and criticism surrounding Greece's failure to guard its borders, the MEP asked the Commission for recommendations to halt the influx of migrants. The MEP inquired whether the Commission is aware of an aggressive policy pursued towards Greece by Turkey.

**[Answer given by Dimitris Avramopoulos on behalf of the Commission](#), February 2016**

The Commission pointed to the [EU-Turkey Joint Action Plan](#) that intends to address the migrant crisis by supporting Syrians under temporary protection in Turkey and by strengthening cooperation to prevent irregular migration flows to the EU. This action plan aims to strengthen the EU-Turkey cooperation in relation to fighting migrant smuggling. In this context it also pointed to intensification of the exchange of information and to a need to comply with the mutual commitments. The Commission also noted that the hotspot concept is being implemented in Greece in order to better manage the migration flow on entry points to the EU territory that are affected by particularly high migration pressure.

#### **4. European Economic and Social Committee (EESC) and Committee of the Regions (CoR)**

At its plenary on 17 February 2016, the EESC adopted a [resolution](#) in support of Schengen. The EESC called on MS not to close internal borders as free movement within Schengen is one of the EU's most tangible achievements. It warned that the socioeconomic effects of closing borders would be huge. Instead, efforts should be made to protect the EU's external borders effectively. The EESC called on civil society to support the strengthening and even enlargement of the Schengen area and committed to make representations to EU institutions reminding them of the importance of keeping Schengen. The EESC is currently preparing its opinion on the European Commission's proposal on [European Border Guards](#) which is expected to be voted in its plenary on 25-26 May 2016.

The CoR has set up a website on its work on [migration](#), where it has captured from a local perspective the stories from the frontline in Greece or Italy, the transit (Austria and Hungary) and integration (Sweden, Belgium and the UK).

#### **5. European Court of Auditors (ECA)**

In 2014, the Court conducted a review of the External Borders Fund (EBF) which aims at ensuring an effective control of EU's external borders. This is the EU's main way of providing financial support to its external borders. The review covered the period 2007-2013, when almost €2 billion were made available for border management. MS mainly implement the funds via national programmes but the European Commission has oversight of the overall budget. The report found that the fund had contributed to financial solidarity, a key aim, but that the lack of monitoring and evaluation in MS and the Commission meant that it was not possible to assess further EU added value. In particular, the report found serious weaknesses in fund management in key MS such as Spain, Italy and Greece which had received almost half of the allocated funds. The report recommended that clear indicators be agreed so that the impact of the fund could be better measured, that more be done to increase the EU added value, that EBF be better

integrated in national border management strategies, and that way the funding is implemented in MS be improved. Further details can be found in a dedicated [EPRS briefing](#).<sup>47</sup>

In 2016, an [audit](#)<sup>48</sup> on EU spending<sup>49</sup> in six southern and eastern neighbourhood states was published recommending some improvements, in particular that measurable objectives be developed along with more effective monitoring and evaluation processes. As per its 2016 work programme,<sup>50</sup> the ECA also plans to prepare an audit on the Commission's response to the refugee crisis.

## 6. Conclusions

Events in 2015, most notably the unprecedented arrival of migrants to the EU, but also the terrorist attacks in Paris, showed that current border management strategies have not been sufficient to effectively deal with these challenges. The events have also highlighted how intrinsically linked the EU's external borders are with the absence of borders inside the EU. The proposed legislation therefore aims to reinforce the security of the external borders by increasing the powers of Frontex and by introducing increased entry and exit checks on anyone crossing the EU's external borders. However, the exact impact of the proposed measures and whether they will effectively address the EU's border challenges are less clear, as no impact assessments have been conducted on these measures.

According to the studies and discussions referred to above concerning the proposal to reinforce Frontex, it is considered unlikely that it will address some of the key weaknesses relating to Frontex, namely the lack of clear and distinct responsibilities between the agency and other EU agencies; and its current dependency on MS for resourcing. The report commissioned by the European Parliament's LIBE Committee on this topic also questioned the legality of parts of the proposal, in particular the agency's right to intervene against the will of a MS. The evaluations of Frontex concluded that the agency operated effectively, in particular in relation to its role as joint operations coordinator. The evaluation reports also noted a need for the agency's role to be better clarified, and that better access to resources was required. However, while these evaluations showed the agency to be effective, they were mainly qualitative in nature, focusing on interviews with stakeholders rather than on quantitative data on organisational performance. It is therefore uncertain whether the evaluations of Frontex have been comprehensive enough to ensure that any changes to its remit will maximise the potential of the agency to work effectively.

## 7. Other sources of information

- [Migrants in the Mediterranean: Protecting Human Rights](#), study (for the European Parliament's Subcommittee on Human Rights), Directorate-General for External Policies, European Parliament, October 2015.
- [Europe's refugee crisis: Is Frontex bordering on chaos?](#) The Bureau of Investigative Journalism, September 2015.
- Frontex [Governance Documents](#).
- [The economic impact of suspending Schengen](#), Cemal Karakas, At a Glance, European Parliamentary Research Service, European Parliament, March 2016.
- [The Economic Consequences of Schengen](#), Opinion, Bruegel, February 2016.
- [What is happening to the Schengen borders?](#) CEPS, December 2015.

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<sup>47</sup> The EU External Borders Fund (EBF): European Court of Auditors' Special Report No 15/2014, Biliana Tzarnoretchka, [Briefing](#) Implementation in Action, European Parliamentary Research Service, European Parliament, December 2014.

<sup>48</sup> ['Special Report No 9/2016: EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014'](#), European Court of Auditors, March 2016.

<sup>49</sup> The report looked at spending via the Thematic Programme for Migration and Asylum and the European Neighbourhood and Partnership Instrument.

<sup>50</sup> [The 2016 ECA Work Programme](#) considers 'Asylum, migration and security' as a high priority tasks for 2016.