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EDITORIAL

Frontex at a turning point?

*Fabrice Leggeri's resignation and some prospects for the EU Border and
Coast Guard Agency*

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Abstract

At the end of April 2022, Fabrice Leggeri resigned from his role as Executive Director of the European Border and Coast Guard Agency, which he led since its creation in 2015. During his mandate, Leggeri was often criticised for Frontex's involvement in fundamental rights violations at European external borders. Thus, his resignation was enthusiastically welcomed by human rights activists and left-wing politicians in the EU Parliament. However, Leggeri's resignation raises a fundamental issue: that of the confusion surrounding Frontex's mandate. This blog post analyses the allegations leading to Leggeri's resignation, while aiming at clarifying the content of the Agency's mandate. In addition, the post puts forth some prospects for the Agency's future, problematizing European attitudes towards border control.

1. *Introduction*

On the 29th of April, Mr Fabrice Leggeri officially [resigned from his role as Executive Director](#) of Frontex. Leggeri, a French senior civil servant, directed Frontex since 2015, when the Agency – [originally created in 2004](#) – was transformed into the European Border and Coast Guard Agency (EBCG). The resignation came amid [prolonged and widespread criticism](#) against EBCG's alleged involvement in illegal pushbacks of asylum-seekers at sea. Officially, Leggeri's decision was caused by the disclosure of [EU Anti-Fraud Agency OLAF's findings](#) on the mismanagement of the European border agency, which were shared with Frontex's Management Board. In a document published on its website, the Agency's Management Board confirmed that an [extraordinary meeting was held on the 28-29 of April](#) in view of the investigations against Leggeri and other Frontex's staff members. The press-release specifies that «[a]t this meeting, the Executive Director was given the opportunity to comment on the findings contained in the OLAF report. On the first day of the meeting, he declared his resignation from all his functions with immediate effect». At the meeting, the Management Board appointed Ms Aija Kalnaja, the most senior Deputy Executive Director, as Acting Executive Director. Ms Kalnaja will therefore act as *ad interim* ED and lead the Agency until a successor is appointed.

In addition to addressing the allegations of human rights violations against Leggeri, this blog post tackles the confusion surrounding Frontex's mandate, with a view to ascertaining whether such confusion might endanger Frontex's role at the external borders of the EU, whilst allowing a sort of "hijacking" of the Agency at the hands of its Executive Director. Then, the paper endeavours to delineate some prospects for the future of the Agency, in light of the change in its leadership.

2. *Human rights violations and the confusion around Frontex's mandate*

In a [letter directed to Frontex's staff](#) and widely circulated after his resignation, Leggeri denied the Agency's involvement in pushbacks at sea, while lamenting that «[...] the Frontex mandate on which I have been elected and renewed in June 2019 has silently but effectively been changed». According to the former Executive Director, in fact, some believe that «Frontex's core mandate should be transformed into a sort of Fundamental Rights Body monitoring what Member States are doing at their external borders. But the mandate that the Agency got from the EU legislator in 2016 [...] was to support Member States in managing and protecting the external borders». On its part, the Commission did not comment on Leggeri's claims and failed to publicly thank him for his service, releasing a [dry statement](#) whereby it «[...] takes note of the resignation with immediate effect of the Executive Director of the European Border and Coastguard Agency». Remarkably, the Commission added that «Frontex fulfils a critically important task to support Member States manage common European Union external borders and to *uphold fundamental rights* in doing so». Therefore, explicitly contradicting Leggeri's

claims on the mandate of the Agency, the Commission underlined the role of Frontex in the protection of fundamental rights at European external borders.

Leggeri's resignation letter and the Commission's statements reveal a certain degree of confusion around the mandate of the EBCG. Whilst the former Executive Director seems convinced that the EBCG's existence is mainly linked to the protection of European external borders, the Commission insists on the Agency's duty to uphold fundamental rights in its activities. Such a lack of clarity on the relevant legal provisions may be particularly detrimental to the Agency's correct functioning. As argued by [Lorenzo Gasbarri in a blog-post](#) examining the topic of the mandate of international organizations, «the absence of clarity on the relevant primary obligations makes the issue of accountability extremely abstract, mainly because the discussion lacks the reference to the legal standards that the organization has to respect». In the case of the European border agency, the confusion surrounding the EBCG's mandate may be employed to carry out fundamental rights violations in a context of substantial impunity. Therefore, for the sake of clarity, it is crucial to ascertain the content of the EBCG's mandate, alongside its duties in the field of the protection of fundamental rights.

Pursuant to [Regulation \(EU\) 2019/1896 of 13 November 2019](#), establishing the European Border and Coast Guard, the Agency is aimed at ensuring integrated border management (so-called IBM) in *full compliance with fundamental rights*. The concept of integrated border management is defined by Article 3 of the Regulation as a multi-layered concept, consisting of several components, including border control, measures to facilitate legitimate border crossings, and search and rescue operations for persons in distress at sea launched and carried out in accordance with [Regulation \(EU\) No 656/2014](#) and with international law. Notably, Regulation 656/2014, establishing rules for the surveillance of the external sea borders of the EU, provides, in Article 4, that the principle of *non-refoulement* and fundamental rights should always be respected in the context of the surveillance operations carried out by Frontex at sea. Moreover, as clearly stated in recital 103, Regulation 2019/1896 respects the fundamental rights and values established in Article 2 and 6 of the Treaty on European Union and the Charter of Fundamental Rights of the EU. These include respect for human dignity (Article 1 of the Charter), the right to life (Article 2), the right to asylum (Article 18) and the protection against removal and expulsion (Article 19). In addition, Article 5, para.4 of Frontex Regulation specifies that «[t]he Agency shall contribute to the continuous and uniform application of Union law, including the Union *acquis* on fundamental rights, in particular the Charter of Fundamental Rights of the European Union, at external borders [...]». Similarly, Article 10 of the founding regulation, listing the EBCG's tasks, foresees that the Agency «monitors compliance with fundamental rights in all of its activities at the external borders» and cooperates with the FRA (the EU Fundamental Rights Agency) «in order to ensure the continuous and uniform application of the Union *acquis* on fundamental rights».

As for the Executive Director's role, Frontex Regulation establishes that he/she is independent from any government but accountable to the European Parliament and to the Council. In addition, the Regulation attaches a number of fundamental rights-related duties to the

position of the Executive Director. For instance, he/she is tasked to assess the fundamental rights and international protection situation prior to any operational activity. In addition, he/she is obliged to reply to the fundamental rights officer (FRO) as to how concerns regarding possible violations of fundamental rights in specific activities or projects have been addressed. Further, the Regulation foresees that the executive director may suspend or terminate activities, in whole or in part, in case of violations of fundamental rights that are serious in nature or likely to persist.

References to human rights have also been repeatedly incorporated into Frontex official documents, long before 2019 (date in which, according to Leggeri, the silent modification of the Agency's mandate started). In the [annual report for 2008](#), for the first time, Frontex specified that «[f]ull respect and promotion of fundamental rights [...] is the most important corner stone of modern European border management». Further, [the 2009 annual report](#) stated that «full and sincere respect of fundamental rights is a firm and strategic choice of Frontex». In 2015, Leggeri himself, upon being appointed Executive Director, affirmed that «fundamental rights must always be anchored in Frontex mission». Moreover, in 2011, the Agency was mandated to create the position of a [Fundamental Rights Officer and to establish a Consultative Forum on Fundamental Rights](#). In the same year, an obligation was introduced to develop a Fundamental Rights Strategy. In light of these observations and the above-mentioned legal provisions, it is indisputable that the respect of fundamental rights has been sewn into the fabric of the Agency since its first years of existence.

Notwithstanding the numerous references to the respect of fundamental rights in the legislative instruments and policy documents regulating Frontex's mandate, the Agency was repeatedly involved in human rights violations in the Mediterranean. In June 2021, the [ONG Sea Watch published a report](#) where it held that «[a]erial reconnaissance enables Frontex to gather extensive knowledge about developments in the Central Mediterranean Sea and relay information about boats in distress to the "competent authorities" [...] When spotting a boat in the Libyan Search-and-Rescue (SAR) zone, Frontex [...] often only informs the Libyan authorities [...], despite NGO or merchant vessels also being in the vicinity. By forwarding the information to the Libyan Joint Rescue Coordination Centre (JRCC) and sometimes even directly guiding the so-called Libyan Coast Guard to the position of a boat, Frontex coordinates and facilitates the interceptions and pullbacks of people in distress to Libya». The [German newspaper Der Spiegel has also conducted an enquiry](#), which revealed that Greek border guards have been carrying on push-back operations in clear violation of international law, with the crucial complicity of Frontex. In particular, the enquiry highlighted that during a specific push-back operation, Frontex was present on the distress scene, but failed to effectively carry out a SAR operation, as required by international law and by its mandate, as clarified above.

In 2020, amidst allegations of Frontex's involvement in violations of fundamental rights at the EU's external borders, the [Parliament's Committee on Civil Liberties, Justice, and Home Affairs \(LIBE\)](#) decided to investigate the Agency's action at sea. In January 2021, LIBE decided

to step up its action and established the [Frontex Scrutiny Working Group](#) (FSWG) to monitor all aspects of the functioning of the Agency, including compliance with fundamental rights, alongside the issue of transparency and accountability towards Parliament. The FSWG conducted a fact-finding investigation, collected evidence, and presented [its final report](#) in July 2021. While the report «did not find evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined», it found 'serious shortcomings». First, it acknowledged that serious allegations of fundamental rights violations had been «consistently reported» by «credible actors» both at national and international levels. Second, it stressed Frontex's failure to take action in order to prevent or even reduce the risk of such violations, and underlined deficiencies in the Frontex monitoring and reporting system for fundamental rights violations. Third, it voiced regret about the significant and unnecessary delay in the recruitment procedure of the Fundamental Rights Monitors (FRM) and invited the Agency to be more proactive so to ensure the fulfilment of its «negative and positive fundamental rights obligation» clearly established in the founding regulation. Finally, with regard to the Parliament's oversight, the FSWG concluded that Parliament had not been adequately informed on the EBCG's actions, that confidentiality hampered Parliament's scrutiny, and that Leggeri's statements to Parliament «did not reflect the knowledge he had at the time of his statements».

3. Where is Frontex going?

In light of the recurring allegations of fundamental rights violations carried out with Frontex's complicity at European external borders, one is left to wonder whether the problem is caused by the founding Regulation itself – allowing a wide margin of appreciation in the interpretation of the Agency's mandate and the consequent “hijacking” of the EBCG at the hands of its Executive Director – or rather by the circumstance that the objective of defending European external borders and that of respecting international human rights law, as enshrined in the founding instruments, cannot be easily reconciled. In other words, is this an issue of textual interpretation of EU legislative instruments or rather the result of the structural inadequacy of European border management policies, which require substantial revision? In this regard, [it has been argued](#) that the past decade has witnessed the «peculiar co-existence of the securitization of the border and the growing presence and prominence of human rights and humanitarian ideals in border policing practices».

In the current geopolitical and historical context, with the Taliban's takeover in Afghanistan, the war triggered by the Russian invasion of Ukraine, and the weaponization of migrants at the Polish-Belarusian border, the European Union is faced with a delicate task: that of protecting the proper functioning of Schengen – including the liberalisation of EU internal borders and the protection of the external ones – while at the same time defending the human rights of migrants in an increasingly volatile and violent global context. If the Union aims at maintaining its global reputation of human rights defender, it must take account of the plight

of migrants at its external borders. Thus, in order to strike the right balance between EU's security needs and the imperative to respect migrants' fundamental rights, the Union must be able to rely on a robust border agency that respects its mandate and the institutional limits imposed on its action.

Many commentators saw Leggeri's resignation as an «[opportunity for a fresh start at the Agency](#)». However, the change in leadership does not erase the EBCG's past involvement in pushbacks and fundamental rights violations. The breaches of human rights law were not carried out by Leggeri on his own. They were facilitated – if not even encouraged – by Frontex's concrete functioning and internal political context. As underlined by [Hanne Beirens, director of the Migration Policy Institute Europe](#), the current «political landscape will not make it easy for [the next Executive Director] to navigate because of [a] drastic shift towards a kind of almost normalisation of pushbacks». As a matter of fact, the EBCG's Management Board – which wields considerable political power over the Agency as the only organ supervising its functioning and with the power to dismiss its Executive Director – is composed of representatives of the border authorities of the EU Member States, plus two members of the European Commission. The political direction of the Agency is therefore in the sole hands of EU Member States. Consequently, after Leggeri's resignation, the EU as a whole is at a turning point. It will need to decide whether the language of humanitarianism and human rights protection enshrined in the EBCG's founding instruments serves the sole objective of legitimating the Agency's existence – a sort of humanitarian façade of restrictive border policies – or rather constitutes a concrete policy objective for the EBCG. In other words, as long as the EU embraces exclusionary border policies, and some Member States maintain a restrictive – or even openly xenophobic – attitude towards migration, it will be difficult to substantially change EBCG's functioning and the attitude towards people on the move.

FURTHER READINGS

Dottrina:

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