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From:	General Secretariat of the Council
To:	Delegations
Subject:	State of play of the implementation of the EBCG 2.0 Regulation in view of current challenges

Delegations will find enclosed a report from Frontex related to the implementation of EBCG.2.0 Regulation.

# STATE OF PLAY OF THE IMPLEMENTATION OF THE EBCG 2.0 REGULATION IN VIEW OF CURRENT CHALLENGES

**Frontex - European Border and Coast Guard Agency**

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## List of abbreviation used

ABN - Annual Bilateral Negotiations

COM - European Commission

EBCG - European Border and Coast Guard

EBCG 2.0 Regulation - Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

FX - Frontex, the European Border and Coast Guard Agency

IBM - Integrated Border Management

MB - Frontex Management Board

MFF - Multiannual Financial Framework

MS - Member States

PRN - Pooled Resources Network

SAC - Schengen Associated Countries

SC - standing corps

## I. Introductory remarks

Frontex, the European Border and Coast Guard Agency (FX) has been working closely with the European Commission (COM) to make all necessary arrangements for the successful realization of its new and enhanced tasks, having in mind a challenging, both for the Agency and the Member States, short deadlines (the first part of the standing corps is to be deployed already in the beginning of 2021).

Roadmap for the implementation of the European Border and Coast Guard 2.0 developed by COM and agreed with FX on 1st July 2019 has become the main tool to ensure transparency and effective monitoring of the progress, as well as the full accountability towards the EU Institutions. The Roadmap covers the main novelties brought by the Regulation and identifies the priorities for implementation as well as defines roles and responsibilities among FX, COM, MS and MB. The role of the Agency's Management Board is key in agreeing and adopting a series of implementing measures, as well as in providing strategic steering. For that reason two extraordinary MB meetings were held to discuss strategic preparation for the operationalisation of the new Regulation (2-3 October 2019 and 3-4 March 2020).

Moreover, regional meetings have been organised by FX in summer 2019, still before the Regulation came into force to gather views and expectations of the representatives of the Member States and Schengen Associated Countries' national forces to avoid creating solutions that might not be fully in line with the needs identified by MS/SAC. This effective and constructive engagement has been also transmitted to the operational and technical level where MS has been working closely with FX and COM via well-established channels such as PRN (Pool Resource Network) or ABN (Annual Bilateral Negotiations) in order to discuss, agree and implement the requirements of the new Regulation.

It is important to remember that EBCG as a concept is part of the wider European Integrated Border Management (IBM) Strategy which sets the vision for smooth and lawful transit of persons and goods across safe, secure and well-functioning external borders of the EU. With the new Regulation and in accordance with Article 8, the strategic steer will be formalised through the establishment of the Multiannual Strategic Policy Cycle for IBM and once it is running the Technical and Operational Strategy will be revised accordingly.

This report summarises the state of play of the implementation activities and provides overview of current challenges brought not only by the outbreak of COVID-19 pandemic but also due to the legal challenges identified in the EBCG 2.0 Regulation, as well as ongoing budget negotiations and possible changes to the MFF.

## II. Main areas of implementation - state of play

### 1. Establishment of the Standing Corps

#### 1.1. Recruitment Strategy for the Agency's Statutory Staff of the standing corps (Category 1)

The standing corps, once deployed, will be able to exercise executive powers including the use of force, subject to the authorisation of the host Member State or Third Country, in order to carry out border

control or return tasks. Starting with 5 000 staff in 2021<sup>1</sup>, the standing corps will be fully functional by 2027 with up to 10 000 staff<sup>2</sup>. The rights to exercise executive powers, perform border and migration checks and use force vested on Category 1 of the standing corps requires that the recruitment is aligned with those of law enforcement, such as physical aptitude and expanded medical tests.

For 2021, the recruitment of the approximately 700 of the Agency's statutory operational staff has until the COVID-19 outbreak gone according to the plan set out in the Recruitment Strategy established in the summer of 2019. There were 7238 applications received, out of which 5482 were eligible. Having such high numbers of applicants contributed to the establishment of a very competitive process where only the best candidates could have been selected to serve in the standing corps. Up to today, 304 candidates successfully passed the entire selection process and will be included on the reserve list. Additional interviews using video conferencing tools are planned for the next weeks for about 40 - 50 candidates, who have already successfully attended the physical aptitude tests and are now ready to be interviewed. The recruitment process for the other candidates who didn't attend the physical aptitude tests is still ongoing amid the COVID-19 crisis - more details are provided under the chapter IV.

## 1.2. Profiles

Profiles are the same for all categories of the standing corps, and they are means to define knowledge, skills and competences required to perform a set of operational tasks.

In close cooperation with Member States throughout the autumn of 2019 the revision of the profiles for personnel to be deployed in Frontex operational activities under the provisions of the EBCG 2.0 Regulation was adopted by the Management Board on 4 January 2020. New profiles offer much better versatility and flexibility acknowledging that some sets of tasks are of more generalist border management nature whereas others are of specialist or niche tasks.

As planned, further bilateral discussions were conducted in order to allocate the numbers and profiles per Member State for each Category of the standing corps as well as the Indicative Multiannual Planning in order to comply with the Regulation. The subsequent Management Board decision was adopted on 4 April 2020.

## 1.3. Pooling Capabilities

The spirit of the EBCG 2.0 Regulation is that Categories 1 and 2 will become the backbone and core of the Frontex led operational activities along with the Agency's own technical equipment. Category 3 should predominantly cater for additional operational needs including rapid interventions, high level specialists and technical crews.

Subsequently this implies a new way of mobilising resources and deploying them, hence a new approach has been developed in cooperation with MS/SAC with a view of making the trained and equipped standing corps operational by 2021 and sustain the ability to deliver operational effect as it grows,

<sup>1</sup> And 1 500 Category 4 staff from the Rapid reaction pool - transitional provision until 2024.

<sup>2</sup> By 2027: 3,000 statutory staff members employed by the Agency (Category 1) consisting of - Operational staff, including technical crews for the Agency's own equipment 250 ETIAS staff and 400 Support staff; 1,500 long term secondments from MS/SAC (Category 2); 5,500 short term secondments from MS/SAC (Category 3); Rapid reaction pool (Category 4) - transitional provision until 2024.

bearing in mind that the operational autonomy of the Agency will gradually increase towards 2027, allowing the Agency to become a fully-fledged and reliable partner to MS/SAC thus providing additional resources to manage external borders.

Given the current situation, the Agency is launching a survey to Member States to understand the state-of-play on the national process for nominating Category 2 and 3. On the basis of its outcomes, discussions can commence on risks and possible mitigation measures.

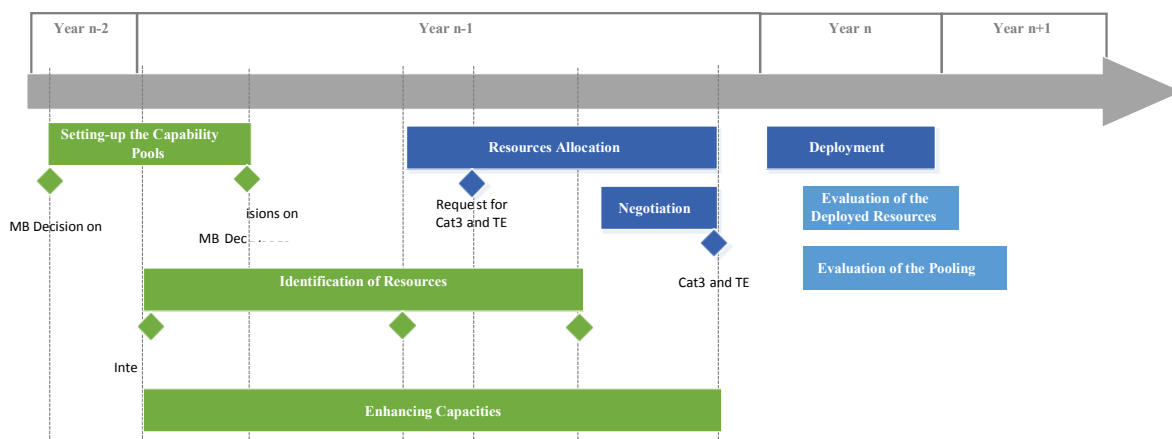


Figure 1 Pooling Capabilities timeframe

#### 1.4. Training

The new Regulation tasks the Agency with training of the standing corps setting out particular requirements for Category 1. For this purpose, the Agency developed the Basic Training Programme for the standing corps CAT 1 which follows the Common Core Curricula for Border and Coast Guard Basic Training in the EU (CCC Basic), thus embedding interoperability and harmonisation with MS.

The Basic Training Programme for the Agency's contribution of statutory staff to the standing corps (Category 1) will ensure that its knowledge, skills and competencies are on par with the national partners. The Programme was endorsed by the Management Board on 2 October 2019. Within a very short period of time - September 2019 to March 2020 - the design, syllabus, content and training material for the basic training have been developed by Frontex with the aid of experts from MS/SAC. The aim is to ensure that the quality of the training and its delivery is the same irrespective of individual trainers and training premises. As a result the following products have been developed:

- **Training Implementation Manual<sup>3</sup>:** The basic programme in terms of sessions, methodes, duration of modules, required capacity, and capability; the training package: session plans, exercise plans and training material (still partially under development) to be delivered;
- **Good Practices:** An EU approach to interventions, including force measures, and their associated tactics, techniques and procedures, based on agreed practices in the respective subject matter area.

<sup>3</sup> i.e. the guide for trainers and training institutions

Furthermore the detailed schedules and course material are under development.

In view of delivering training for Category 1 and in the spirit of solidarity, the Agency has launched Calls for proposals from the national authorities of MS/SAC concerning the:

- **Necessary infrastructure, equipment and administrative support** needed to implement the Basic Training Programme. The selection process is ongoing and expected to be finalised at the end of April;
- **Nomination of trainers** with a view of final selection being completed by end of April in order to establish a pool of national trainers.<sup>4</sup>

Work in progress includes:

- Development of **training maps** for Category 1 of the standing corps and respective means by which they will be implemented;
- **Quality Assurance** process to ensure that the training provided is of adequate quality to ensure that staff performing their tasks meet the operational requirements.

### 1.5. Uniforms for the standing corps

Pursuant to Article 82 of the EBCG 2.0 Regulation, Category 1 shall wear, where appropriate, the Uniform of the European Border and Coast Guard standing corps while performing their tasks and exercising their powers, including the use of force and carrying weapons. The design and specifications for the uniforms of the EBCG SC Category 1 shall be established by a decision of the Management Board, based on a proposal from the Executive Director after receiving an opinion of the European Commission on that matter.

The specifications and design of the Uniform was presented to the Management Board in February 2020. The associated documents were submitted to the Commission in March 2020 and the official the Commission's official opinion is expected in May 2020.



Figure 2 Standing corps uniform design

<sup>4</sup> MS/SAC have nominated in total approximately 130 subject matter experts as trainers. Following the finalisation of the selection procedure all who pass will receive dedicated training through the delivery of 9 courses out of which 6 have already been scheduled. Worth mentioning is that out of the nominated subject matter experts 29 have already undergone training.

In parallel, a Framework Agreement for the Training Outfits has been secured. These are the interim garments for the new recruits to be used until the service uniforms have been acquired and delivered.

## 2. Deployment Management

The Task Force Deployment Management was set up at the beginning of February 2020 to manage the development of processes and structures necessary for appropriate management of the standing corps. Nonetheless, the work had begun much earlier in a number of working and focus groups to prepare grounds and agree on initial approaches.

### 2.1. Financial arrangements

The Agency has been actively contributing to the drafting of the implementing rules of Article 61 (financial support for the deployment of the standing corps) which final text shall be adopted as soon as the European Border and Coast Guard Committee will become operational.

The financial arrangements for standing corps (Art. 54 ff) have been extensively discussed with internal and external stakeholders (five times at regular and extraordinary MB meetings). The draft decisions for SC Category 2 and Category 3 are ready for submission to the Commission for opinion. After favourable opinion, they will be submitted to the Management Board for decision.

The deployment guide that will regulate the financial arrangements for deployments of Category 1 staff is in its final drafting. The deployment guide will include some derogations from the Commission's mission guide, which is not designed to cater for the special needs of standing corps officers.

### 2.2. Governance of the standing corps

The deployment modalities for the standing corps were developed and discussed with the relevant stakeholders. There is still ample work ahead to define the details; one major milestone will be the definition of the governance of the standing corps, covering not only operational, but also HR and administrative management. This is expected to be developed in the course of 2020.

Moreover, with the establishment of the standing corps and in particular its Category 1, the Agency's role and responsibility in providing duty of care requires establishment of integrated OSH (Occupational Safety and Health) Management System. The process is ongoing, with necessary administrative arrangements being analysed.

### 2.3. Antenna offices

The concept on how to implement antenna offices is at its beginnings, several options have been discussed. The Executive Director will submit to the Management Board a proposal in the second half of 2020.

## 2.4. Supervisory Mechanism to monitor use of force

The Art. 82 of the EBCG 2.0 Regulation stipulates that Category 1 of the standing corps can perform their tasks during the deployment, which may require the use of force<sup>5</sup>, including carrying and use of service weapons and non-lethal equipment<sup>6</sup> whereas the Art 55 (5) (a) implies an obligation to establish appropriate supervisory mechanism to monitor the application on use of force by statutory staff, including rules on reporting and specific measures such as those of a disciplinary nature, with regard to the use of force during deployments. The main difficulty derives from the fact that the nature of work to be carried out by Category 1 staff is different in comparison to regular staff in an EU Agency. Nevertheless, discussions are ongoing and it is anticipated that MB Decision will be adopted by the end of June 2020.

## 2.5. Service Weapons and Non-Lethal Equipment - acquisition and logistics

As provided by the new Regulation, standing corps officers Category 1 while performing their tasks might require carrying and use of service weapons, ammunition and other equipment. In efforts to determine the legal basis for acquiring weapons, a legal advice and analysis was sought by the Agency which led to addressing the European Commission for clarity on the way to proceed since it was confirmed that the EBCG 2.0 Regulation and the Headquarters Agreement do not provide sufficient legal basis for the Agency to acquire, register, store and transport firearms in Poland.

In the meantime all technical requirements regarding the above mentioned tender have been prepared and, as soon as the legal situation is clarified, Frontex can launch a tender. In addition, technical specifications are being finalised for non-lethal equipment and it is expected that the acquisition process will be completed by the end of 2020 thus enabling deployment of adequately equipped Category 1 staff.

## 2.6. Opera Evolution

Launched in early 2019, Opera Evolution is the natural evolution of previously used tools - Opera 2.0 and ABNet. It will provide a comprehensive software tool to pool and provide capabilities for operational activities and enable their management during deployment, including the financial management. This unique and comprehensive tool, acting as an interface between Member States and the Agency, was contracted for design and production following one and half year of thorough preparations during which the associated internal business processes were mapped and requirements defined. Adaptation has been done during the course of the project to ensure compliance with the new Regulation.

<sup>5</sup> Use of force' refers to recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment.

<sup>6</sup> Fire arms, batons, lachrymatory agents (e.g. pepper spray) and handcuffs.

## 2.7. Integrated Planning - Capability Planning and Contingency Planning

The new Regulation introduces the concept of Integrated Planning, which consists of three elements - Operational Plans for border management and resources for the reality of today, Contingency Plans for the worst case situations and Capability Development Plans to address the medium and long term needs. Both the Contingency and Capability Development Plans shall contain the scenario against which they have been developed. Furthermore the procedure and method to establish these plans shall be adopted by the Management Board. The Agency shall establish an Overview of the national Capability Development Plans and its own multiannual plans, based on which a Capability Roadmap shall be established. Once approved by the Management Board it shall be annexed to the Technical and Operational European IBM Strategy.

Working closely with Member States and the Commission in the end of 2019 and early 2020, the Agency has developed and tabled a proposal for a Capability Development Planning process, procedure and methodology in March 2020. Following feedback from Member States a revised proposal will be disseminated in April 2020 with a view of submitting it for adoption by the Management Board in May 2020. Following this a similar technical approach will be applied to deliver methodology for Contingency Planning in Member States, drawing on the already published handbook.

In parallel, the Agency is embarking on establishing its own comprehensive approach to capability planning, and effectively implementing the Capability Development Plan in order to deliver operational effect for the short, medium and long term.

## 2.8. Equipment, Support and Logistics - Multiannual Acquisition Strategy

The Regulation states that the Agency may acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, activities in the area of return, including return operations and return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency.<sup>7</sup> In order to ensure the effective use of the proposed financial resources, the acquisition of the necessary assets should be based on a Multiannual Strategy for the Acquisition of the Agency's Own Equipment,<sup>8</sup> developed by taking into account a comprehensive multiannual strategy on how the Agency's own technical capabilities are to be developed, shall ensure the effective use of the proposed financial resources. It should take into account the multiannual strategic policy cycle for European integrated border management and should be accompanied by a detailed implementation plan specifying the timeline for acquisition or leasing, procurement planning and risk mitigation.

Approach to the Multiannual Acquisition Strategy has been endorsed by the Management Board in February 2020. Considering that key building blocks, such as Multiannual Policy Cycle on European Integrated Border Management and Capability Roadmap are not available, the first draft Strategy draws on historical data, risk and vulnerability assessment and new operational concept.

<sup>7</sup> *Ibid.*, Article 63(1).

<sup>8</sup> *Ibid.*, Recital 71.

## 2.9. Development of Technical Standards for Border Control Equipment

The Agency has set up Technical Expert Groups made of experts from Member States and European institutions, tasked to develop initial agreements on a set of technical standards for various border control equipment. Technical Standards on Maritime Equipment, on Aerial Equipment and on equipment related to the Entry and Exit System (EES) are being drafted and will be presented to the Agency Management Board in June 2020. Technical Standards on terrestrial equipment (both surveillance and on border checks) will be presented to the Management Board in November 2020.

## 3. Operational Activities

### 3.1. Operational Activities

Establishment and permanent deployment of the standing corps requires adjustment to the operational planning. FX is currently revising its planning process regarding Joint Operations. The planning would be linked to the Integrated Planning on EIBM as necessary and it will be the basis for the (multi-)annual planning and decisions on the SC profiles as well as to the ABN-process for the deployment of the Category 3 of the SC.

### 3.2. Returns

#### ❖ Post-arrival and post-return

In line with the new mandate, Frontex will become involved in supporting MS in post-arrival/post-return activities. In this context, the Agency will gradually take over the AMIF-funded European Return and Reintegration Network (ERRIN), which is a joint initiative of 15 MS and the European Commission. During the inception phase of ERRIN, an agreement was concluded between the Commission, the Agency and ERRIN, that the activities of ERRIN would be taken over by the Agency, in accordance with its new legal basis. An important milestone in the transfer process is the development of a 'Plan for a transitional handover of ERRIN' which is identified in the EBCG 2.0 Roadmap. Currently, the Transfer Plan is at the final stage of review and is expected to be endorsed by the Agency in the next weeks. The Plan describes the scoping of activities, including also which groups of returnees will be eligible for FX assistance in the future.

#### ❖ (Assisted) Voluntary returns

Frontex has already put in place a solution to support Member States with the implementation of voluntary returns. The first 2 voluntary returns by scheduled flights were carried out with FX technical assistance on 14-15 February 2020, a number which has increased to 28 by 14 April. A dedicated module in the Frontex Application for Returns (FAR) for voluntary returns by charter flight is currently being developed in order to better assist MS with voluntary returns. In addition to the technical solution and support already in place, a number of additional activities are still foreseen. These include support on the ground from a FX representative or from a return counsellor which will be provided by the deployed return teams which are part of the standing corps starting from 2021.

### ❖ Return teams in the standing corps

While the work on return teams is aligned with the Agency's overall progress in the implementation of the standing corps, additional steps are being taken to bridge the current support to Member States from the pools (forced-return escorts, return specialists and monitors) by updating MB decisions and technical systems.

## 3.3. False and Authentic Document online (FADO System), art. 79 EBCG 2.0 Regulation

### ❖ Background

Regulation (EU) 2020/493 of the European Parliament and of the Council on the False and Authentic Documents Online (FADO) system was published on 30 March 2020 and it will enter into force on 26 April 2020. It repeals the Council Joint Action 98/700/JHA (2018/0330 B COD) and provides for the European Border and Coast Guard Agency ('Frontex') taking over the administration and the operational and technical management of the FADO system.

In particular, it establishes that the European Border and Coast Guard Agency ('Frontex') shall:

- Ensure the proper and reliable functioning of the FADO system, and
- Provide support to the competent Member State authorities in the detection of false documents.

Furthermore, Frontex is not only tasked to take over the FADO system, but shall also modernise and operate the system efficiently. The General Secretariat of the Council (GSC) is the current FADO system administrator and will operate the system until the takeover is completed.

Within Frontex, the entity that will implement the provisions of the Regulation 2020/943 is the Centre of Excellence for Combatting Document Fraud (CED), Operational Response Division.

### ❖ FADO Requirements collection

In anticipation of the publication of the new FADO regulation, Frontex organised several identification workshops and participated in the FADO Subgroup. The first version of the high-level Solution Requirement Document was presented at the FADO subcommittee on 10 December 2019 and was forwarded to MS in mid-January 2020 for their review and feedback. A second version of the document, incorporating the needs of Frontex and the comments from MS is now going to be shared with COM and MS and presented together with the high level Vision Document at the art. 6 FADO subcommittee in June 2020 (the previous meeting in March, 2020 was cancelled due to COVID-19 restrictions).

The high-level Solution Requirement Document and the high level Vision Document will constitute the basis for the Business Requirements Document (BRD), which will be the primary reference for the initiation of the tender for the new FADO system.

### ❖ FADO takeover Project

The main goals for 2020 is to establish the FADO project governance body, finalise and agree the high level Solution Requirement Document, and the Vision Document. Additionally and depending of the preferred project approach, the procurement of the business analysis services and/or the system development services will be drafted.

### 3.4. Law enforcement activities

The Regulation enforced the Agency competences in the area of cross border crime, starting from article 1 and culminated with article 3 (a) stipulates as one of the main components of European Integrated Border Management the measures related to the prevention and detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism. Several instruments have been used for implementing the tasks falling under the cross border crime topic, the main being the Frontex participation in the activities of the EMPACT/EU Policy Cycle, also the developing of one pilot project, called Investigation Support Activities - Cross Border Crime (ISA CBC), dedicated on the fight against drug trafficking and terrorism.

## 4. EUROSUR and Inter-Agency Cooperation

As regards issues related to the integration of EUROSUR, the starting point of all activities is the adoption of the Implementing Act, for which the Commission is in the lead.

In particular, the adoption of an Implementing Act on EUROSUR situational pictures and definition of Specific Situational Pictures are to be finalised after the adoption of the Implementing Act and no later than the end of 2020.

Work has already started in relation to the creation of a fourth impact level in EUROSUR and related procedures. The new concept is to be expected at the end of Q3 2020.

Similarly, work has started with regard to monitoring of EUROSUR and related EUROSUR Fusion Service. WA is currently being negotiated with EASA, keeping COM in the loop. Internal discussions are also ongoing with regards to a WA with EUROCONTROL. Still, the Implementing Act will define how the new aerial surveillance service will be implemented.

Technical work is also ongoing considering the Practical Handbook on European Coast Guard Functions with a planned deadline as of Q2 2020.

## 5. Risk analysis and Vulnerability Assessment

As regards the preparation of a strategic risk analysis for European IBM, after several consultations with the Commission on the scope and methodology, the draft report is under internal checks and will be soon shared with the Commission for their final review. It is planned to have it ready for MB endorsement in June 2020 and submission to the EU institutions afterwards.

Work on the Common integrated risks analysis Model (CIRAM 3.0) is on track and the model is planned for adoption at the MB Meeting in June 2020.

In terms of the Vulnerability Assessment, the ongoing 2020 Baseline Assessment Process is largely on track, despite issues caused in the data collection phase by difficulties in accessing the Vulnerability

Assessment Platform (VAP) and the onset of the COVID-19 pandemic with subsequent lockdown measures across the EU. By now all but one MS have submitted either all or partial data. Although the risk remains, the final reports should be finalised by the beginning of July at the latest.

## 6. Liaison Officers of Member States

Article 13 of the Regulation allows the Member States to deploy liaison officers to the Agency. The Management Board shall lay down the rules and conditions for such deployments, and the Agency is required to provide the necessary support.

Frontex is now developing the concept for the deployment modalities of the liaison officers and intends to present the first considerations to the Management Board in June.

Considering the complexity of the process and the need to engage various stakeholders, the discussion within the Management Board on the modalities of the deployment is intended to be conducted in the second half of the year, with a view to prepare a final decision.

## 7. ICT developments

As regards an overview and upgrade of the Agency's information management systems, it became clear that re-building of a completely new architecture is needed as the current one is obsolete and not compatible with EBCG 2.0 requirements. That's why Frontex established the ICT and Information Governance Board and developed the ICT EBCG Operational Plan 2020-2025. At the moment, there are several ICT activities related to the implementation of the new mandate running in parallel.

### 7.1. On-boarding and operational support of the standing corps

This activity consumes considerable resources as new infrastructure has to be prepared in a short period of time to support all staff members from anywhere, in a secure way. To cover these strategic objectives ICT has developed the Frontex Cloud Implementation Plan that will be deployed in Q3 2020. The second important aspect is the ICT support of standing corps in operation as of 2021. For this purpose Frontex will use the EDA Satcom and CIS services Framework Contracts (FWC), which Frontex joined at the beginning of 2020.

### 7.2. Development of the new EUROSUR Communication Network

On EUROSUR Communication Network (ECN), Frontex services are acting in two directions. The new EUROSUR Communication Network Investment Plan is under study by an external partner in order to deliver a clear idea on the financial effort necessary to achieve the ambition of the EBCG 2.0 Regulation (Art 14, 15, 16, 17). The initial plan defines the full operational capability for this new network in 2025. In view of this timeline, the current EUROSUR network must be modernised and better secured. A modernisation plan is under development and will evaluate the budget necessary to invest in 2020-2021 to maintain the network up and running till its replacement in 2025.

### 7.3. Digitalisation in the field of returns

In accordance with the provisions of Article 48 (c) stipulating the development of a reference module for national IT systems on return case management, Frontex has prepared, published and made available to MS, the reference model RECAMAS v.1.0. In 2020 Frontex continues to update RECAMAS model with best national practices, increased scope (including post return module), and through providing of necessary support to MS in improving their national systems.

FX currently deals with the operation of an integrated return management platform, having assumed the management of Integrated Return Management Application (IRMA) from the Commission as of 2019. At the same time the Agency is also further working on the project for IRMA 2.0 to include new operational modules, and address the requirements and full scope of provisions referenced in the Articles 48 and 49 to ensure technical and operational assistance.

FX has also made first attempts in examining the possibilities to establishment of a communication infrastructure that enables linking of the return management systems of the Member States with the central system as per Article 48 (d) through the pilot project with AT.

## 8. Fundamental Rights

With the new mandate, further developments are to take place in the area of fundamental rights protection, among which setting up special rules of independence of Fundamental Rights Officer, special complaints mechanism and the establishment of the teams of the Fundamental Rights Monitors are the most significant ones.

Currently legal analyses and exchanges are taking place to identify all factors that should be accounted for in the MB decision on FRO special rules.

Regarding the adaptation of the complaints mechanism to the new regulation, internal consultations on the first draft of the ED Decision are ongoing in view to adapt the complaints mechanism.

As per selection of the Fundamental Rights Monitors, the Agency has signed a Service Level Agreement with FRA to support the establishment and training of the team of monitors. The first technical phase defining the scope and objectives for the next phase has been completed on 31 March 2020 and the current 2<sup>nd</sup> phase is now being planned to allow the establishment of the team of monitors by the end of 2020.

## 9. Data Protection

As regards developments in the area of data protection, the package of data protection implementing rules includes:

- Implementing Rules on the Data Protection Officer,
- Implementing Rules on Operational Personal Data,
- Implementing Rules on Restriction of rights for returnees,
- Implementing Rules on Restrictions of rights for administrative data,
- Implementing Rules on personal data processed within EUROSUR Framework.

This package shall be implemented throughout 2020. First draft of the implementing rules on the DPO is intended to be submitted to the MB in Q2 2020.

### III. Legal challenges related to the new Regulation

Besides the implementation effort in the areas indicated above, the Agency is also struggling with finding specific legal interpretation and solutions to some of the issues that constitute legal challenges, as specified below and for which the Agency will be seeking support from the Commission and the MS.

#### ❖ Service weapons

As provided by the Regulation, the members of standing corps Category 1 shall perform their tasks requiring carrying and use of service weapons, ammunition and other equipment. In efforts to determine the legal basis for acquiring weapons, ammunition and other equipment, the Agency received legal analysis from two different sources, by an external expert and a regulatory law firm.

Both analyses confirmed that the EBCG 2.0 Regulation and the Headquarters Agreement do not provide sufficient legal basis for the Agency to acquire, register, store and transport firearms in Poland. None of Polish legal acts either directly or indirectly mention the Agency as an entity, which is entitled to acquire (possess) firearms or ammunition for the purpose of fulfilment of its statutory tasks and duties, without a permit issued by the Polish authorities.

The Agency has addressed the shortcoming with a letter to the Commission asking for legal interpretation and support to resolve the matter.

#### ❖ Supervisory mechanism on the use of force (Article 55(5)(a) of the Regulation) including rules of a disciplinary nature

Establishment of a new supervisory mechanism on the use of force as well as rules of a disciplinary nature for the Category 1 statutory staff might be challenging in practical and legal terms as they do not fully integrate with the Commission rules on Administrative Inquiries and Disciplinary measures made pursuant to Annex IX Staff Regulations. Standing corps being the first uniformed service of the EU will require different treatment in comparison to the regular officials working in the EU Institutions starting already from a different recruitment procedure (involving additional medical checks which will continue throughout the year) to the totally different nature of tasks and risks associated with their deployments. Special arrangements or derogations to the Staff Regulations are needed to account for these needs.

#### ❖ Privileges and immunities (Article 96 of the Regulation)

Regulation implies that the Protocol No 7 on the Privileges and Immunities of the European Union annexed to the Treaty on European Union (TEU) and to the TFEU shall apply to the Agency and its statutory staff. However, the Protocol No 7 does not offer a full protection, or take into account a need for the inviolability of assets owned by Frontex (service vehicles, vessels, aircraft), and does not apply at all in third countries. HQ Agreement has limited scope as well as it covers only Poland. Article 63(4)(a) of the Regulation provides some degree of support, but it only includes acquisition and co-

ownership (major technical equipment), not leasing. EU level ‘status of forces agreement’, including measures for storage and transportation of service weapons, movements of Frontex vehicles, vessels and aircraft might be needed to account for this partial absence of rules.

#### ❖ **Voluntary returns, voluntary departures**

The terminology of voluntary return was introduced in the Regulation without providing any definition thereof. This terminology (voluntary departure vs voluntary return) is moreover not in line with the terminology used in the Return Directive (EBCG 2.0 refers to the definition of returns provided for in the Return Directive. The Return Directive, however, does not cover voluntary returns; a voluntary return is not a return within the meaning of the Return Directive). Further elaboration is needed.

## **IV. COVID-19 Impact**

In addition to the aforementioned ongoing implementation activities and legal challenges as identified by the Agency, there have been also severe consequences of the COVID-19 restrictions introduced by MS. The biggest impact of the lock-down measures could be seen on the establishment of the standing corps as most of the previously agreed strategies had to be amended in order to fit into a new reality. New solutions and innovative ways of working are now being explored to allow the Agency to achieve its goals and deliver the very much needed support to MS. It is true that some processes might be delayed or changed in shape due to the COVID-19 implications but it does not mean that the implementation of the new mandate shall be put on hold.

#### ❖ **Recruitment of Category 1 standing corps**

Considering COVID-19 impact, the sequence of recruitment has been changed not to jeopardise the process and still give equal opportunities to all candidates who have applied for the standing corps. Interviews with the use of video conferencing tools will re-start at the end of April. Respective invitations are being sent now and the expected number is 80 candidates during first week. The number of interviewed candidates will steadily grow and the estimate is having between 100 and 120 per week. In total approximately 1000 interviews are to be carried out (i.e. those who passed EN test). Once the contractor, which carries out the physical tests, re-opens, those with positive interview results will be invited to the test, which is a mandatory step in the recruitment. Although the interviews will reconvene through video conferencing, the selection process is still dependent on the physical and medical tests.

#### ❖ **Category 2 and 3**

The outcome of the survey which will be disseminated to Member States ahead of the Pooled Resources Network will give an indication of the impact of COVID-19 on Category 2 and 3.

#### ❖ **Pooling Process**

There is a risk that deadlines will not be met because of the recruitment and nomination challenges due to COVID-19.

### ❖ Training

The outbreak of the pandemic and consequent travel restrictions as well as social distancing measures affected the initial planning for the training of Category 1. In order not to delay the process any further a shift towards the e-learning has been agreed upon. The new approach will follow the same Full Basic Training of 6-month but some of the modules will be moved into online environment to enable distance learning. It is needless to add that the concept for a partial transition into an e-learning environment will be accompanied by all possible measures to develop the necessary operational competences and to keep the operational character of the training as much as possible. The course will comprise of a hands-on experience during the first days of deployment (training on the job) to ensure full readiness of new recruits to take up their duties. However, the successful implementation of this strategy will be depended on the availability of subject matter experts to urgently transform part of the Basic Training Programme into an e-learning as well as availability of the trainers to lead online courses. No delay is foreseen in the availability of the specialized profile related training of the standing corps. In principle, all the foreseen preparations are on track. Nevertheless, if the current situation will continue and restrictions will be imposed for a longer period of time, the specialized profile related training will be impacted by the unavailability of learners, trainers and specialized training facilities. The impact will affect not only the training of Category 1, but also Category 2 and 3.

## V. Consequences for the budgetary considerations

The extended legal mandate of the Agency is a result of the identified need at the EU level to provide an integrated response to protect the external borders through permanent deployment of standing corps and overcoming the persistent gaps in the voluntary contributions of staff and equipment of the Members States, to fight cross-border crime and significantly step-up the effective and sustainable return of irregular migrants as well as to further develop the situational awareness and information systems.

In the context of possible emerging risks related to COVID-19 and current threats at the EU external borders this need becomes even more visible and proves that integrated response to the border management is a key to the well-functioning, secure and solidary Union not only in a short term but also in the long run.

Looking at the economic implications of COVID-19 on the Member States, FX understands that adjustments will have to be made regarding the Multi-annual Financial Framework for 2021-2027.

Nevertheless, the Agency in order to serve its purpose and support MS in tackling internal and external challenges must continue developing its activities as in line with the new Regulation. The gradual deployment of the standing corps will allow for reinforcement of the permanent presence of European border guards on EU external borders as well as greater flexibility of deployment (quick response teams). Regarding the acquisition of own equipment, the preparatory steps for 2021 implementation are already taking place this year, and FX intends to continue increasing the capabilities and the acquisition of own equipment, in close coordination with Member States. Moreover, the investment in IT systems is needed, in particular regarding the upgrade and implementation of the new requirements

for the EUROSUR communication network. Regarding return activities, although the activities have currently been put on hold, they will resume once the restrictions on the aerial transportations are gradually lifted. Having a significant reduction to its budgetary envelope, the Agency will not be able to provide what has been initially intended undermining the concept of the EBCG as whole.

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