



## **#ProtectNotSurveil answer to the European Commission's call for evidence "European Border and Coast Guard/Frontex- update of EU rules"**

The [#ProtectNotSurveil coalition](#)'s mission is to challenge the use of digital technologies at different levels of EU policies and advocate for the ability of people to move and to seek safety and opportunity without risking harm, surveillance or discrimination. We thank the European Commission for the opportunity to share our serious concerns with regards to the proposed reform of the European Border and Coast Guard Agency's (hereby referred to as Frontex) mandate.

This answer was written with the contribution of the following #ProtectNotSurveil members: [European Digital Rights \(EDRI\)](#), [Equinox Initiative for Racial Justice](#), [Access Now](#), [AlgorithmWatch](#), [Platform for International Cooperation on Undocumented Migrants \(PICUM\)](#), [Border Violence Monitoring Network \(BVMN\)](#).

We see the gradual reinforcement of Frontex as an integral part of the problematic expansion of the EU security and surveillance industrial complex, which thrives by developing technologies of control and repression against migrant people. Efforts to increase state control over people on the move as well as migrants, refugees and racialised people have led to systemic and massive human rights violations at and within EU borders:

- In the past eleven years, the Missing Migrants Project has recorded the deaths of tens of thousands of people in the Mediterranean Sea.<sup>1</sup>
- The number of pushbacks - a practice prohibited under international and EU laws - at Europe's external borders has increased so much in past years that they are described as "a systematic practice" and "a central part" of the European migration regime.<sup>2</sup>
- Degrading, violent, inhumane and life-endangering treatments by national border guards are seriously neglected by the EU and concealed from the public.<sup>3</sup>

Frontex is directly complicit in these human rights violations through its surveillance operations. The technologies it employs thus play a key role in the EU's violent and harmful system of border management and

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<sup>1</sup>32489 missing or dead migrants recorded in the Mediterranean since 2014. (consulted on 20 August 2025)

<https://missingmigrants.iom.int/region/mediterranean>

<sup>2</sup> <https://11.be/sites/default/files/2025-02/Pushbacks%20Report%202024.pdf>

In 2023, Border Violence Monitoring Network (BVMN) recorded 66 testimonies of pushbacks across Greece, and the Western Balkans, affecting approximately 1,021 persons on the move:

[https://euaa.europa.eu/sites/default/files/2024-02/border\\_violence\\_monitoring\\_network.pdf](https://euaa.europa.eu/sites/default/files/2024-02/border_violence_monitoring_network.pdf)

The EU trains and equips third countries' border and coast guards to ensure pull-backs and prevent people from crossing the Mediterranean Sea:

<https://fluchtforschung.net/from-push-backs-to-pull-backs-the-eus-new-deterrence-strategy-faces-legal-challenge/>

<sup>3</sup> <https://balkaninsight.com/2024/02/26/schengen-in-sights-eu-and-frontex-overlook-violent-bulgarian-pushbacks/>  
[https://bloodyborders.org/wp-content/uploads/2025/01/NNK\\_Frozen-Lives\\_25-01-20\\_2.pdf](https://bloodyborders.org/wp-content/uploads/2025/01/NNK_Frozen-Lives_25-01-20_2.pdf)



migration control. The level of responsibility of Frontex in human rights violations<sup>4</sup> should call into question the very existence of this agency as part of the EU's migration policy framework.

We are therefore extremely concerned about the stated aim of the reform to “equip it with state-of-the-art technology for surveillance and situational awareness”. This submission contains analysis and recommendations regarding the initiatives mentioned in the call for evidence falling within our scope of work, i.e. the rights and safety of racialised communities and migrants in the digital environment. **The absence of comments on certain parts of the call shall not be interpreted as an endorsement.**

In addition, Frontex is suffering from severe distrust, lack of transparency, accountability and legitimacy, which are completely absent in the list of problems the initiative aims to tackle. It is particularly striking that most of the feedback shared by migrant rights organisations<sup>5</sup> during the evaluation of the Regulation does not feature in the list of “gaps”. We strongly encourage the Commission to take into account and listen to the input and calls of communities and groups affected by Frontex's operations, as part of this consultation process.<sup>6</sup> These important views on the “current and emerging problems and challenges related to Frontex's tasks, activities, deployments, structure and governance” should be centred in the impact assessment of the Commission.

## 1. Weakening Frontex's data protection rules is unacceptable

In the call for evidence, it is argued that “the rules on processing relevant data, including personal data, are *complex*, but also *incomplete*, and hinder Frontex's work on situational awareness, cross-border crime prevention and return activities”. Portraying data protection rules as “complex” or “incomplete” is a dangerous misrepresentation aimed at legitimising their weakening or removal.

This is confirmed in the section identifying “ambitious solutions” in the call for evidence: the goal would be to “improve” the rules on processing of operational personal data with respect to “crime detection”, namely Article 90 of the Frontex Regulation which regulates the processing of operational data. It is particularly concerning as detection in a law enforcement context often means general and indiscriminate data collection which is subsequently analysed with AI tools or similar automated technology to find possibly unknown suspects.

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<sup>4</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)

<sup>5</sup> <https://picum.org/wp-content/uploads/2022/09/PICUM-Submission-on-the-evaluation-of-the-European-Border-and-Coast-Guard-Regulation.pdf>

<https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>

<sup>6</sup> <https://abolishfrontex.org/about-us/>

<https://www.equinox-eu.com/eu-leaders-change-course-and-end-your-war-on-migrants/>

<https://edri.org/wp-content/uploads/2020/11/Technological-Testing-Grounds.pdf>



Such processing is precluded by the current Frontex Regulation since the processing of personal data must be targeted. Article 90 indeed seeks to limit Frontex's role in data collection and other processing for crime prevention, detection and investigation to a supporting one for Europol, Eurojust and Member States' law enforcement authorities.<sup>7</sup> Consequently, Frontex is legally prohibited from collecting personal data about migrants for law enforcement purposes. It may not proactively seek and collect such information and should not alter the nature of its migration management activities for these purposes. Contrary to what the call for evidence claims, the current Regulation does "sufficiently define the role of Frontex in combating cross-border crime".

The EDPS 2022 audit<sup>8</sup> reported that Frontex had systematically and on its own collected information on migrants during so-called "debriefing interviews" and transferred all the collected data in bulk to Europol as part of the PeDRA programme, without assessing the strict necessity of the transfer and data reliability and quality. The EDPS opened an official investigation following this audit and reprimanded the agency in January 2025 after it had found "a severe breach of Frontex Regulation."<sup>9</sup> At the time of the revelations, Frontex's own Data Protection Officer (DPO) held that the programme posed 'a serious risk of function creep in relation to the Agency's mandate'.

Article 90 does not suffer from a lack of clarity. It defines very clearly the categories of persons whose data can be processed, under which circumstances and for what purposes. Reopening Article 90 to widen its scope or loosen the restrictions on data processing would undermine the rights and safety of people affected and would further criminalise people crossing borders as well as human rights defenders, suspected to be involved in migrant smuggling. It risks legitimatising the way Frontex has carried out debriefing interviews, which are profoundly unfair and opaque. They are covert interrogations, which leave no paper trail, no records of Frontex referrals to national authorities, deprives individuals of their privacy, and no lawyer is present. The EDPS strongly criticised them in his 2022 audit report for failing to meet the data protection principle of fairness.

**Instead of seeking to legalise this inhumane practice, the Commission should put an end to it.**

Furthermore, the requirement of strict necessity in Article 90 reflects the highly sensitive nature of personal data that may be processed in migratory and border contexts, especially as most migrants are in a situation of heightened vulnerability. It obliges Frontex to closely consider people's fundamental rights before processing

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<sup>7</sup> According to Article 90, Frontex can only process personal relating to natural persons whom the competent authorities of the Member States, Europol, Eurojust, or the Agency have reasonable grounds to suspect are involved in cross-border crime.

<sup>8</sup> [https://www.edps.europa.eu/system/files/2023-05/edps\\_-\\_23-05-24\\_audit\\_report\\_frontex\\_executive\\_summary\\_en.pdf](https://www.edps.europa.eu/system/files/2023-05/edps_-_23-05-24_audit_report_frontex_executive_summary_en.pdf)

<sup>9</sup> [https://www.edps.europa.eu/press-publications/press-news/press-releases/2025/edps-reprimands-frontex-non-compliance-regulation-eu-20191896\\_en](https://www.edps.europa.eu/press-publications/press-news/press-releases/2025/edps-reprimands-frontex-non-compliance-regulation-eu-20191896_en)



their data, which could have adverse and disproportionate impacts. It is therefore crucial that this requirement remains untouched.

In addition to the above, a further expansion of Frontex's role in the management and transfer of personal data is foreseen in the Commission's proposal for a new "Return Regulation".<sup>10</sup> The proposal would allow Frontex to process and transfer personal data, including sensitive data on people's health and criminal record not only to Member States authorities, but also to third countries (Arts. 39-41). This goes clearly beyond the scope of Article 90, which does not allow Frontex to transfer data to third countries. Moreover, the proposal also allow for data transfers to countries that lack adequate data protection frameworks, with no effective oversight or redress mechanisms for the individuals concerned.<sup>11</sup>

**We strongly oppose any mandate for Frontex to collect personal data about migrants in a general and indiscriminate manner for the purpose of profiling and automated crime detection similar to the 2022 revision of the Europol Regulation.**<sup>12</sup> This type of data-driven policing is inherently discriminatory and has been documented in numerous studies to exacerbate existing inequalities and further criminalise racialised, marginalised and poor communities.<sup>13</sup>

## 2. Reduce Frontex's role in EU-funded research and make it visible

Frontex plays an outsized role in EU-funded research and innovation projects in border security, by shaping project calls, facilitating implementation, allocating its own R&D funding, and doing so with limited transparency.

The agency's influence has steadily grown over the years, and especially so since 2020, when it signed an agreement<sup>14</sup> with the Commission's Directorate-General for Migration and Home Affairs (DG-Home) that allows Frontex to actively and structurally shape EU research, including extremely controversial projects based on

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<sup>10</sup>Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC

<sup>11</sup> <https://www.accessnow.org/press-release/the-eu-must-stop-the-digitalisation-of-the-deportation-regime/>

<sup>12</sup> Recommendations on the revision of Europol's mandate, EDRI position paper, 10 June 2021  
<https://edri.org/wp-content/uploads/2021/06/Recommendations-on-the-revision-of-Europols-mandate.pdf>

<sup>13</sup> ENAR, Data-Driven Policing: The Hardwiring of Discriminatory Policing Practices across Europe, November 2019, available at: <https://www.enar-eu.org/wp-content/uploads/data-driven-profiling-web-final.pdf>

Douwe Korff, The EU's own Snowden scandal, 17 January 2022,

<https://www.ianbrown.tech/2022/01/17/the-eus-own-snowden-scandal>

Douwe Korff, Opinion on Core Issues in the PNR CJEU Case, November 2021,

<https://www.ianbrown.tech/wp-content/uploads/2021/12/KORFF-FREE-Paper-on-Core-Issues-in-the-PNR-Case.pdf>

<sup>14</sup> [https://prd.frontex.europa.eu/wp-content/uploads/20200206\\_tor-ec-dg-home-frontex-1.pdf](https://prd.frontex.europa.eu/wp-content/uploads/20200206_tor-ec-dg-home-frontex-1.pdf)



automation and artificial intelligence.<sup>15</sup>

More precisely, for projects funded through the Horizon Europe framework programme, Frontex can now “identify research activities” that are capable of addressing its own operational capability gaps,<sup>16</sup> “translate these gaps into requirements for solutions to be researched”, “contribute to the development of solutions by facilitating their operational testing and validation”, “monitor the outcomes of research”, and even facilitate “their market uptake and deployment”.

The result is a plethora of opaque fantasies of total control<sup>17</sup>, which exclusively obey to Frontex’s own securitarian and techno-solutionist view of migration management.

In fact, while beneficiaries are requested to maintain strong ties with Frontex throughout the duration of a project, the voices and needs of people on the move, migrants, refugees and racialised people are structurally ignored. Access requests to project documents by civil society are regularly muzzled<sup>18</sup> or answered with hundreds of redacted<sup>19</sup>, incomprehensible and ultimately useless pages by the EU Commission’s Research Executive Agency.

Furthermore, through its “Border Management Innovation Centre”, a self-defined “lab-space designed to strengthen the European research and innovation capacity in the field of border security”, Frontex can also “contribute to the implementation” of EU-funded Horizon projects. The agency already indicated several projects<sup>20</sup> aimed at surveillance assemblages, unmanned vehicles, and “intelligent” tools for border management that have problematic and unanswered ethical implications. We however don’t know if and how this has led to the actual deployment of EU-funded technological outputs in operational settings.

Lastly, Frontex has its own “Research Grants Programme”, whose first call for proposals was announced in November 2022, and that has since then funded<sup>21</sup> even more surveillance system capabilities.

As budgets are set to increase yet again in the upcoming budgetary period<sup>22</sup> in order to extend surveillance systems, develop and purchase new equipment and gadgets for border authorities, the lack of transparency,

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<sup>15</sup> <https://algorithmwatch.org/en/automated-fortress-europe/>

<sup>16</sup> <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-to-provide-border-security-expertise-to-european-commission-s-research-projects-ZrCBoM>

<sup>17</sup> <https://www.tni.org/en/publication/neoconopticon>

<sup>18</sup> <https://algorithmwatch.org/en/an-offer-you-cant-refuse-how-rea-turns-information-requests-into-bad-deals/>

<sup>19</sup> <https://algorithmwatch.org/en/fortress-europe-redactions/>

<sup>20</sup> [https://www.frontex.europa.eu/assets/EUresearchprojects/News/Day2/4\\_BoMIC.pdf](https://www.frontex.europa.eu/assets/EUresearchprojects/News/Day2/4_BoMIC.pdf)

<sup>21</sup> <https://www.frontex.europa.eu/innovation/eu-research/research-grants/>

<sup>22</sup> <https://www.statewatch.org/media/3964/europe-techno-borders-sw-emr-7-23.pdf>



accountability and legitimacy of Frontex's role in the research sector becomes a more acute problem. Opacity and lack of oversight of EU funding in the field of "research and innovation" related to border management have already been identified as posing significant threats to human rights, democratic standards and the rule of law.<sup>23</sup> Involving an EU agency that is unaccountable, repeatedly involved in human rights violations and not subject to adequate parliamentary scrutiny or judicial oversight further accentuates these problems. This is why **we strongly advise to significantly reduce, if not suppress, Frontex's structural, agenda-setting role in EU-funded research.**

### 3. Any governance structure is unfit to halt violations

Frontex has a long-track record of human rights violations and, despite the numerous reprimands or official decisions against its flawed accountability framework<sup>24</sup> the Agency has continued perpetrating and/or facilitating rights violations. Despite the Agency's alleged attempt to increase its internal oversight mechanisms (e.g. with the creation of the Fundamental Rights Office), violence has continued under Frontex's eye. This shows that existing accountability mechanisms – such as the Fundamental Rights Officer, Frontex Consultative Forum or its Serious Incident Reporting system – as well as the oversight exercised by external bodies – as the EDPS and EU Ombudsman – are to be considered insufficient and not fit for purpose, if the objective is to prevent deaths, pushbacks, and more broadly rights violations.

As highlighted by human rights organisations and people affected, these governance mechanisms are unfit to prevent any harm, but they rather legitimise the Agency's primary focus on securing borders, shifting the attention away from the need to ensuring the protection of people moving across them.

As an example, in 2021 the Platform for International Cooperation on Undocumented Migrants (PICUM) had decided to withdraw from the Frontex Consultative Forum assessing that the Forum's working methods did not allow for their meaningful participation and in light of the then growing concerns over Frontex's involvement in push-backs cases.<sup>25</sup> In a more recent instance, the search and rescue organisation SeaWatch was asked by Frontex to pay over eleven thousands euros in legal costs, following the EU court decision to dismiss a case in which the NGO asked access to documents and footage related to the involvement of a Frontex asset in the illegal interception of people in distress by the so-called Libyan Coast Guard in the Maltese Search and Rescue zone.<sup>26</sup> SeaWatch described Frontex's requirement to pay the legal fees as an 'institutional intimidation

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<sup>23</sup> <https://algorithmwatch.org/en/fortress-europe-redactions/>

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[https://www.ombudsman.europa.eu/en/news-document/en/143159?utm\\_source=some\\_EO&utm\\_medium=tw\\_organic&utm\\_campaign=Frontex\\_accountability\\_suggestion](https://www.ombudsman.europa.eu/en/news-document/en/143159?utm_source=some_EO&utm_medium=tw_organic&utm_campaign=Frontex_accountability_suggestion)

<sup>25</sup> <https://picum.org/blog/picum-is-no-longer-part-of-the-frontex-consultative-forum/>

<sup>26</sup> <https://sea-watch.org/en/eu-court-frontex-wrongfully-withholds-evidence/>



designed to deter public oversight and silence accountability efforts'. This is not the first time Frontex takes this approach with regard to court cases by civil society groups. In 2020 the agency sought €24,000 from two transparency activists and defended the practice in front of MEPs. Frontex has also sought legal costs from asylum-seekers trying to take it to court.<sup>27</sup> These examples show that any governance framework based on a punitive approach will not prevent rights violations, but rather provide the legal perimeters to enforce dangerous practices.

It is then deeply concerning that this Call for Evidence is proposing that 'the governance of Frontex needs to be adjusted to the evolving role of the Agency', suggesting that the increase in Frontex's powers is inevitable and that the oversight mechanisms should be designed around it. This would represent a dangerous consolidation of Frontex's agenda to be able to derogate from fundamental rights (such as data protection, see point 1), despite existing evidence of the Agency's involvement in rights-violating practices and attacks to civil society organisations.

**Therefore, we strongly oppose the design of any new governance structure that would simply legitimise Frontex's current unlawful practices** and shift the attention away from the need to increase protections, safeguards and regular pathways for those moving across borders.

#### 4. Conclusion: descaling the harms and violations

For several years now, the European Commission has sought to present the expansion of Frontex's budget and resources as a way to protect migrants, refugees, and asylum seekers from organised "smuggling" and reduce deaths on migratory routes (EU Migration and Asylum Package, EU action plan against migrant smuggling, Facilitator's Package, Return Regulation, etc.)

The Commission has, however, completely failed to acknowledge that the vast majority of harms experienced by migrant people is at the hands of law enforcement and border authorities. A joint report by UNHCR, IOM and MMC found that **state authorities were among the main perceived perpetrators** of violence against migrants.<sup>28</sup>

Instead, with each new initiative or legislation, the EU has continued to pursue a policy of criminalisation of migration and investment in border and police militarisation that only serves to pacify right-wing

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<https://www.statewatch.org/news/2025/july/frontex-chases-human-rights-activists-for-thousands-of-euros-in-court-costs/>

<sup>28</sup> UNHCR, On this journey, no one cares if you live or die: Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast – Volume 2, <https://www.unhcr.org/media/journey-no-one-cares-if-you-live-or-die-abuse-protection-and-justice-along-routes-between-1>





fear-mongering around migration instead of saving lives.

In turn, this approach has continually expanded Frontex surveillance capabilities<sup>29</sup>, underscored by invasive and aggressive data collection, without appropriate safeguards, oversight, or accountability mechanisms. The result is an EU agency with a rich history of impunity<sup>30</sup> and human rights violations with no accountability or change.

Furthermore, Frontex's expanding role in the area of deportations and data collection, reflected in the mandate review and so-called Return Regulation proposal, is extremely concerning. The agency already has a certain amount of involvement in deportations, and the Return Regulation risks greatly expanding its current role. However, Frontex has already been accused of refoulement during a deportation operation, violating both EU and international law.<sup>31</sup> Moreover, it cannot be ruled out that Frontex may assist a state in enforcing a flawed return decision. This was the case in the *WS and Others v Frontex case*, which several Syrian nationals were removed to Türkiye on a Frontex-coordinated flight, without being given the opportunity to apply for international protection.<sup>32</sup>

Despite these and countless other reports of human rights violations (including pushbacks, deaths, abuse) and data privacy violations by Frontex, the EU continues to pour money and resources into the agency while simultaneously retroactively codifying its malpractice through subsequent legislative initiatives. The next budget cycle earmarks another significant increase in funds for the current EU border regime.

In order to end Frontex violations and violence against migrants, EU policy must address the root causes of migration, end the criminalisation of migration, racial profiling, detention and deportations, provide safe pathways for refugees, migrants, and asylum seekers, as well as avenues for regularisation, and reorient public funds spent on the agency towards social needs, care and protection.

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<https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-a-buse>

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<https://www.euronews.com/2023/03/28/a-collapse-of-the-rule-of-law-how-does-frontex-get-away-with-plain-murder>

<sup>31</sup>

<https://www.amnesty.org/en/latest/press-release/2016/10/greece-evidence-points-to-illegal-forced-returns-of-syrian-refugees-to-turkey/>

<sup>32</sup>

<https://eulawanalysis.blogspot.com/2023/09/the-eu-general-courts-judgment-in-case.html>