

SHARED - Shared Responsibility at the EU's External Borders

Call for papers

The **Observatori de Dret Públic de la Universitat de Barcelona** in collaboration with the **(B)OrderS Centre of Queen Mary University of London** and members of the **European Parliament** are hereby launching a call for papers concerning the notion of ‘shared responsibility’ in European law as applied to the European Border and Coast Guard Agency (Frontex), the EU Member States, as well as third countries and private entities with which they may collaborate in the implementation of the Schengen *acquis*, concerning the violation of fundamental rights in the context of border enforcement and migration control.

We welcome, in particular, submissions by early-career researchers (ECRs), including advanced PhD students, to present original work in three distinct fora, with a view to gathering expert feedback, participating in ongoing legal and policy debates, and contributing to a joint publication with established scholars.

Selected submissions will be invited for presentation at:

1. A **kick-off online workshop** in April 2023 with a mix of ECRs and recognised academics in the field, where short first drafts will be discussed;
2. A **meeting with policy makers and stakeholders** to be held at the **European Parliament** in the spring of 2023, where revised and more developed versions will be considered and a joint guidelines document collaboratively produced, consolidating best practices and making proposals for the way forward; and
3. A **final conference** at the **University of Barcelona** in the summer of 2023, where final results will be disseminated.

Selected papers will, in addition, be invited for publication at a **Special Issue** of a top EU law journal.

The organisers will cover most of the travel and accommodation costs of selected contributors. Further information will be provided at a later stage.

Background

Since its establishment in 2005, the competences, budget, and responsibilities of Frontex have exponentially increased to now include operational and enforcement powers, whose implementation has proven problematic especially in relation to fundamental rights. In fact, Frontex-coordinated missions, particularly in the Aegean Sea and at the EU-Turkey territorial border, have been notorious for the widespread and grave violations they have given rise to and for the opacity with which they have been conducted. Despite Regulation 2019/1896 expressly obliging the Agency to respect fundamental rights ‘in the performance of its tasks’ and making explicit reference to ‘obligations related to access to international protection, in particular the principle of *non-refoulement*’ (Article 80(1)), Frontex has been accused of having violated them in the implementation of its mandate. This has generated unprecedented scrutiny by civil society, EU bodies, and the media at large.

In reaction to very serious allegations, the European Parliament established, in 2021, a dedicated Frontex Scrutiny Working Group (FSWG). The EU Ombudsman, the EU Court of Auditors, and the EU Anti-Fraud Office (OLAF) have also undertaken their own investigations, all concluding to severe deficiencies, including violations of the principle of loyal cooperation, the covering up of illegal pushbacks, and other fundamental rights abuses in the Aegean Sea. The situation has prompted the resignation of the former Executive Director, but there has not been an appraisal of structural concerns, nor has the Agency faced any legal consequences.

A particularly worrying development concerns increasing cooperation with third countries, including at the operational level, which takes place without clarity on the applicable legal framework, effective remedies, or human rights safeguards. Non-binding ‘working arrangements’ are particularly problematic, as they exclude any *ex ante* democratic control by the European Parliament and impede judicial review by the European Court of Justice of compliance with the EU Charter of Fundamental Rights and primary law at large. ‘Status agreements’ pose similar challenges, providing for the immunity of the Agency before third countries’ jurisdictions and failing to identify any other channels to establish responsibility for possible violations.

Impunity begs questions regarding the extent of Frontex’s obligations as well as the effectiveness of the accountability mechanisms currently in place. Under Article 7 of Regulation 2019/1896, Frontex supposedly shares responsibility with the Member States, which however ‘retain primary responsibility for the management of their sections of the external borders’. Therefore, the exact contours of the notion of ‘shared responsibility’ remain unclear.

Objective

The present call for papers aims to gather contributions that shed light on the meaning, scope, and implications of ‘shared responsibility’ from different perspectives, taking international legal standards, EU constitutional norms, general principles, and the Schengen borders, migration and asylum acquis into account, by analysing the competence distribution it implies, the obligations binding on each of the actors concerned (whether the Agency, its own officials, the Member States, third countries, or private entities), and the remedies in place or to be set up, according to Article 47 of the EU Charter of Fundamental Rights, should any of the relevant obligations be violated.

Guidelines for submissions

Abstract **proposals**, in English, of **400 words maximum**, are invited **until 1 March 2023**. These should be accompanied by a **brief CV** of up to 1 page. Submissions should be **sent to <gesdi.idp@ub.edu>**.

Abstract proposals should include the following **elements**:

- (1) Background;
- (2) Main problem / research question(s);
- (3) Potential solution; and
- (4) Preliminary policy recommendations.

Proposals on any aspect concerning ‘shared responsibility’ in the context of migration and border control are welcome. Submissions may cover the following **possible themes**:

- Connections between ‘shared competence’ and ‘shared responsibility’;
- The impact of general principles (e.g. of solidarity) and constitutional norms (e.g. of institutional balance, loyalty, or mutual trust) on the conceptualisation of ‘shared responsibility’;
- The concrete content of fundamental rights obligations of the different actors intervening in joint operations coordinated by Frontex;
- The responsibility of individual officials, the Frontex coordinating officer, and the Executive Director on behalf of the Agency for non-compliance with duties to observe fundamental rights and/or cancel operations as necessary;
- The significance of operational plans in the determination of and apportionment of ‘shared responsibility’;
- ‘Shared responsibility’ with Member States, domestic authorities, individual officials of host and participating EU countries;
- ‘Shared responsibility’ when cooperating with non-State actors, including security providers and/or military companies supplying training, know-how, or equipment for joint operations;
- Frontex ‘shared responsibility’ with other EU bodies/Agencies and/or comparisons of applicable rules to cooperation involving other AFSJ Agencies, especially Europol and/or EUAA;
- Frontex responsibility in third countries when cooperating with non-EU authorities under working arrangements and/or status agreements (including the issue of standing corps’ immunity);
- ‘Shared responsibility’ in the context of data exchanges with EU and non-EU entities, especially when mediated by EUROSUR infrastructure;
- ‘Shared responsibility’ and the use of AI, IT systems, and other border control technology, including drones;
- The violation of transparency duties, access to documents and the right to good administration in the context of ‘shared responsibility’;
- Responsibility for fundamental rights violations in relation to EU funds transfers and expenditure, including under humanitarian and development aid;
- Remedies under EU law and the importance of the principle of effective judicial protection in the context of ‘shared responsibility’;
- The role and effectiveness of non-judicial accountability mechanisms in relation to the establishment and determination of ‘shared responsibility’.

Successful applicants will be notified on week commencing 6 March 2023.

Convenors

- Prof. Dr. Violeta Moreno-Lax (Queen Mary University of London & University of Barcelona) (project lead)
- Prof. Dr. Tineke Strik MEP (Radboud University Nijmegen & European Parliament)
- Laura Salzano (University of Barcelona)
- Dr. Mirentxu Jordana Santiago (University of Girona)