

FRONTEx



**EUROPEAN BORDER AND
COAST GUARD AGENCY**

TENTH ANNUAL REPORT

Frontex Consultative Forum on Fundamental Rights 2022



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Frontex
**Consultative Forum
on Fundamental Rights
2022**

Frontex – European Border and Coast Guard Agency

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1 EXECUTIVE SUMMARY



Humanitarian return flight to Tajikistan from Poland

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This report provides an overview of the activities undertaken by the Consultative Forum in 2022. It outlines the main observations and recommendations raised throughout the year with Frontex and its Management Board to strengthen fundamental rights protection in the Agency's activities.

In 2022, the Consultative Forum stepped up its operational fundamental rights advice by:

- ♦ increasing the presence of its experts in VEGA activities to advise on the identification of vulnerable persons;
- ♦ carrying out on-the-spot visits with the objective of improving its operational understanding and respectively tailoring future recommendations to the operational context;
- ♦ participating, as a member, in the newly established Fundamental Rights Guidance Board of ETIAS, established under Regulation (EU) 2018/1240.⁴

Details of activities are provided in Annex I, while Annex II lists the 'Requests for Information' submitted to Frontex; Annex III presents the Recommendation on Aerial Surveillance Activities which the Consultative Forum issued in November 2022. As of May 2022, access to information for the Consultative Forum improved considerably, with some information shared by Frontex directly with the Consultative Forum. As a result, less formal 'requests for information' were submitted compared with to previous years. Moreover, fewer recommendations were issued because the Consultative Forum focused more on specific fundamental rights advice in the context of operations.

From 2022 onwards, the Consultative Forum will publish its expenses as indicated in Annex V. Finally, Annex VI lists all past recommendations the Consultative Forum had issued to Frontex up to 2022.

From 2019 onwards all Consultative Forum recommendations are annexed to the annual reports.

2022 was marked by the publication in the press of a report of the European Anti-Fraud Office (OLAF),¹ disclosing information collected during an investigation on Frontex that revealed obstacles to reporting and addressing allegations of fundamental rights violations in Frontex-financed operations. Following the resignation of the Executive Director in the aftermath of the publication of the report, the newly elected Frontex Management Board Chairperson and the appointed Frontex Executive Director *ad interim* invested efforts in the reestablishment of trust in the Agency including in its relationship with the Consultative Forum. Among the first steps in this trust-building effort, it was decided that the Consultative Forum Chairs would be invited to attend the discussions on fundamental rights agenda items at all Frontex Management Board meetings.

Frontex reiterated its commitment to implementing the recommendations of the various oversight and inquiry mechanisms such as the Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea (FRaLO)² and the LIBE Frontex Scrutiny Working Group (FSWG).³

Furthermore, the Frontex Management Board issued a decision in July 2022 introducing rules for the Executive Director and the Management Board to inform the Consultative Forum about the follow-up to its recommendations and to ensure that action be

- 1 OLAF Final Report on Frontex, Available: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>
- 2 Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea.
- 3 See Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations by LIBE Committee on Civil Liberties, Justice and Home Affairs, available at: https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf.



UNHCR activities in Greece

© United Nations High Commissioner for Refugees

taken with regard to recommendations of the Fundamental Rights Officer.⁴ Although neither the Fundamental Rights Officer's, nor the Consultative Forum's recommendations are of a binding nature for Frontex, it is important that Frontex introduces a modality to inform whether or not action has been taken on recommendations, or provides a written justification in case action has not been taken.

The Consultative Forum observed an increased effectiveness of the Frontex fundamental rights monitoring mechanism, particularly due to the findings and evidence collected by the Fundamental Rights Monitors, who were fully operational by the end of the year and undertook regular monitoring missions. While these ultimately resulted in an increase of recommendations and proposals for mitigating measures to be introduced into Frontex processes and operations, a gap emerged in relation to the follow-up actions undertaken by Frontex.

⁴ Management Board Decision 43/2022 of 20 July 2022, adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-ups to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Office, available at: https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-43_2022-adopting-rules-on-cfs-and-fros-recommendations_pr.pdf

A positive development in 2022 was the adoption by Frontex of the Standard Operating Procedures on Article 46 of Regulation (EU) 2019/1896. In line with its provisions, a Working Group was established later in the year to assess the fundamental rights situation in Greece and to formulate a recommendation to the Executive Director as to whether procedures under Article 46 should be triggered.

The Consultative Forum presented its 2023 Programme of Work in November 2022 to the Frontex Management Board. The Tenth Annual Report of the Consultative Forum will be presented to the European Parliament's LIBE Committee and the Council Working Party on Frontiers, and to any other stakeholder upon request.

2 INTRODUCTION



IOM expert at Otaci Border Crossing Point in Moldova on the occasion of VEGA Land Activity

© International Organization for Migration

The year in review was marked by the Russian invasion of Ukraine on 24 February 2022 and its dramatic consequences in terms of population movements across the external borders of the European Union. Millions of Ukrainian refugees and thousands of third country nationals residing in the country fled the war seeking protection throughout the European Union and beyond.

Facing a rapidly evolving humanitarian situation, EU Member States maintained a unified stance and decided on 4 March 2022 to activate, for the first time, the Temporary Protection Directive.⁵ According to UNHCR data, more than 4.8 million Ukrainians benefitted from this protection measure.⁶

One of the immediate operational responses by Frontex was to offer countries bordering Ukraine support in border management, including through the launch of VEGA activities aiming at expediting the identification of vulnerable persons, including victims of human trafficking, specifically children, to which the Consultative Forum experts greatly contributed.

A major development which impacted on Frontex operational activities was the conclusion of the EU-Moldova Status agreement,⁷ following which Frontex launched Joint Operation Moldova in order to support the authorities, helping 'control illegal immigration flows, tackle cross-border crime and to enhance European cooperation and law enforcement activities'.⁸ The operation saw the deployment of up to 84 Standing Corps officers and document inspection devices to support border checks.

⁵ Council Directive 2001/55/EC of 20 July 2001, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>.

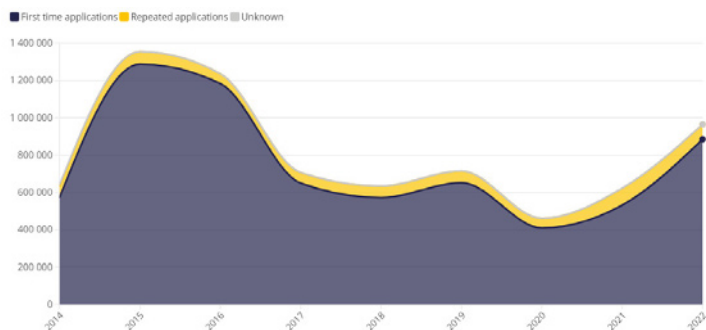
⁶ UNHCR, Operational Data Portal, Ukraine Refugee Situation, available at: <https://data.unhcr.org/en/situations/ukraine?vm=single>, February 2023.

⁷ Frontex sending Standing Corps officers to Moldova, 21 March 2022, available at: <https://frontex.europa.eu/media-centre/news/news-release/frontex-sending-standing-corps-officers-to-moldova-8KKC9T>.

⁸ Op.cit.

Overall, 2022 saw a rise in the number of irregular entries, with approximately 330 000 irregular border crossings detected at the EU's external borders, of which 45% occurred via the Western Balkans.⁹ This represents the highest number since 2016 and an increase of 64% compared to the previous year, as Frontex reported.¹⁰

In terms of asylum applications, the European Union Agency for Asylum (EUAA) reported¹¹ that around 966 000 applications for international protection were lodged in EU+ countries in 2022, an increase of more than 50% from 2021, in addition to around 4 million people who fled Ukraine benefitting from temporary protection. Syrians and Afghans remained the largest applicant groups. Turks became the third largest group in 2022, followed by Venezuelans and Colombians, who applied in record numbers.



Source: EUAA, Latest Asylum Trends - Annual Overview 2022¹²

⁹ As highlighted by Frontex 'the number of detections of irregular border-crossing at the external borders of the European Union. The same person may cross the border several times in different locations at the external border'.

¹⁰ EU's external borders in 2022: Number of irregular border crossings highest since 2016, available at: <https://frontex.europa.eu/media-centre/news/news-release/eu-s-external-borders-in-2022-number-of-irregular-border-crossings-highest-since-2016-YsAZ29>.

¹¹ Almost 1 million asylum applications in the EU+ in 2022, 22 February 2022, available at <https://euaa.europa.eu/news-events/almost-1-million-asylum-applications-eu-2022>.

¹² Latest asylum trends, Annual Overview 2022, European Union Agency for Asylum, available at: <https://euaa.europa.eu/latest-asylum-trends-annual-overview-2022>

Throughout 2022, Frontex increased its external engagement and cooperation. On 20 September, Frontex and Mauritanian authorities inaugurated a risk analysis cell in Nouakchott within the framework of the Africa-Frontex Intelligence Community (AFIC).¹³ Earlier in July, the European Council published its decision to kickstart the negotiation process leading to the signing of Status Agreements for Frontex operations with Mauritania¹⁴ and Senegal.¹⁵ By the end of October 2022, a new Status Agreement was signed between the EU and the Republic of North Macedonia, expected to become operational in the first quarter of 2023.¹⁶

Operationalising its enhanced mandate on returns, currently encompassing the full spectrum of return-related activities, the Agency stepped up its support to Member States including in voluntary and forced return and reintegration of returnees. By June 2022, Frontex assumed the responsibilities from the European Return and Reintegration Network (ERRIN), integrating returns fully into its operational activities.

Earlier in the year, on June 30, the Court of Justice of the European Union (CJEU) ruled that Lithuania's immigration legislation restricted the right to apply for asylum and established automatic detention, which the CJEU found to be in direct violation of EU law (C-72/22

¹³ Frontex opens risk analysis cell in Nouakchott, 22 September 2022, available at <https://frontex.europa.eu/media-centre/news/news-release/frontex-opens-risk-analysis-cell-in-nouakchott-ZcNIBL>.

¹⁴ Council Decision (EU) 2022/1168 of 4 July 2022 authorising the opening of negotiations on a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency in the Islamic Republic of Mauritania, 7 July 2022, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022D1168>.

¹⁵ Council Decision (EU) 2022/1169 of 4 July 2022 authorising the opening of negotiations on a status agreement between the European Union and the Republic of Senegal on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Senegal, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D1169&qid=1676368859801>.

¹⁶ Council Decision (EU) 2022/1958 of 13 October 2022 on the signing, on behalf of the Union, of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D1958&qid=1676369120177>.

PPU).¹⁷ Frontex did not renew its border surveillance activities, nor its activities at detention centres in Lithuania.

In September, the European Ombudsman decided to open an inquiry regarding the handling of a complaint concerning the rights of migrants in Frontex 'debriefing' interviews in Spain.¹⁸ The Ombudsman addressed Frontex with questions regarding the availability of legal aid during the procedure, records of consent from individuals and the lack of external oversight of debriefings.

In November, the European Data Protection Supervisor (EDPS) informed the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE) of the Frontex audit regarding debriefing interviews and the processing of personal data for Risk Analysis project (PeDRA).¹⁹

Allegations of breaches of the right to apply for asylum and of the non-refoulement principle were reported along the EU external borders, with many reports originating from Greece and Bulgaria. The reports raised serious concerns about the respect for the right

¹⁷ C-72/22 PPU, Request for a preliminary ruling under Article 267 TFEU from the *Lietuvos vyriausios administracinis teismas* (Supreme Administrative Court of Lithuania), made by the decision of 2 February 2022, received at the Court on 4 February 2022, in the proceedings M.A, 30 June 2022, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=261930&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=8473376>. See also UN High Commissioner for Refugees (UNHCR), *UNHCR legal observations on the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506)*, 28 July 2021, available at: <https://www.refworld.org/docid/610d26971a1.html> [accessed 3 April 2023] the Consultative Forum's recommendations (Annual Report 2021, available at: <https://prd.frontex.europa.eu/wp-content/uploads/cf-annual-report-2021-final.pdf>) following the observation mission to Lithuania as well as individual Members' positions on the matter; See Amnesty International's Report 'Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned', available at: <https://www.amnesty.org/en/documents/eur53/5735/2022/en/>

¹⁸ How the European Border and Coast Guard Agency (Frontex) handled a complaint concerning the rights of migrants in 'debriefing' interviews, <https://www.ombudsman.europa.eu/en/opening-summary/en/160908>, Case_1452/2022/MHZ - Opened on Wednesday | 21 September 2022.

¹⁹ Exchange of personal data between Frontex and Europol - Processing of Personal Data for Risk Analysis (PeDRA) project, Hearing at Committee on Civil Liberties, Justice and Home Affairs (LIBE), https://edps.europa.eu/system/files/2022-11/22-11-08_libe-frontex-pedra_en.pdf, accessed April 04, 2023.

to seek asylum, potential violations of the non-refoulement principle, serious breaches of fundamental human rights and procedural guarantees, enshrined in international, European Union and regional human rights instruments.²⁰

²⁰ 'Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders', Recommendation by Council of Europe Commissioner for Human Rights, April 2022, <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>, "Commissioner seeks clarification on investigations into alleged pushbacks of migrants trying to cross the border into Bulgaria", Letter from Council of Europe Commissioner for Human Rights, 21 December 2022, <https://www.coe.int/az/web/commissioner/-/commissioner-seeks-clarification-on-investigations-into-alleged-pushbacks-of-migrants-trying-to-cross-the-border-into-bulgaria>, 'News Comment: UNHCR warns of increasing violence and human rights violations at European borders', UNHCR, 21 February 2022 <https://www.unhcr.org/news/briefing/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html>, 'IOM Concerned about Increasing Deaths on Greece-Turkey Border', news release by IOM, 18 February 2022, <https://www.iom.int/news/iom-concerned-about-increasing-deaths-greece-turkey-border>, *Pushbacks in Evros on Greece-Turkey border* from GREECE // BIMONTHLY BULLETIN ON REFUGEES AND MIGRANTS, Greek Council for Refugees, Oxfam and Save the Children, October 2022 https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2022-10/GCR_OXFAM_STC_Bulletin%20on%20Refugees%20and%20Migrants%20in%20Greece.pdf, '2022 Country Report: Bulgaria', AIDA, 30 March 2023, https://asylumineurope.org/wp-content/uploads/2023/03/AIDA-BG_2022update.pdf, 'Beaten, punished and pushed back A pattern of institutionalised human rights violations at EU borders reconfirmed: How pushbacks remained the standard practice and a de facto tool for border management in 2022', Protecting Rights at Borders (PRAB), 26 January 2023, [PRAB Report January to December Draft 4 - Clean \(drc.ngo\)](https://prab.org/2023/01/26/prab-report-january-to-december-draft-4-clean-drc-ngo/), '32nd GENERAL REPORT OF THE CPT', European Committee for the Prevention of Torture and Inhumane and or Degrading Treatment or Punishment, March 2023, [1680aabe2b \(coe.int\) https://asylumineurope.org/wp-content/uploads/2023/03/AIDA-BG_2022update.pdf](https://www.coe.int/t/Doc/General%20Reports/32nd%20General%20Report%20of%20the%20CPT%20-%20March%202023.pdf), 'Beaten, punished and pushed back A pattern of institutionalised human rights violations at EU borders reconfirmed: How pushbacks remained the standard practice and a de facto tool for border management in 2022', Protecting Rights at Borders (PRAB), 26 January 2023, '32nd GENERAL REPORT OF THE CPT', European Committee for the Prevention of Torture and Inhumane and or Degrading Treatment or Punishment, March 2023, 'Press Release: Presentation of the Recording Mechanism of Incidents of Informal Forced Returns and its first Interim Report', Hellenic Republic – National Commission for Human Rights, available at [ΕΕΔΑ - Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου - Press Release: Presentation of the Recording Mechanism of Incidents of Informal Forced Returns and its first Interim Report \(nchr.gr\)](https://www.nchr.gr/press-releases/presentation-of-the-recording-mechanism-of-incidents-of-informal-forced-returns-and-its-first-interim-report).

3

ROLE AND COMPOSITION



European Union Agency for Asylum expert in Pournara, Cyprus

© European Union Agency for Asylum

The Frontex Consultative Forum was established in October 2012 and has been operational since January 2013. Pursuant to Article 108 of Regulation 2019/1896, the Consultative Forum provides independent advice to the Agency on the respect, protection and promotion of fundamental rights in its activities.

Regulation 2019/1896 highlights specific areas,²¹ where the Agency should seek the Consultative Forum's views but also enables the Consultative Forum to work on any matter related to fundamental rights upon request by the Agency, the Management Board, or the Fundamental Rights Officer or on its own initiative.²²

In 2022, the Consultative Forum was able to resume most of its activities in person, including the 28th and 29th Consultative Forum that took place in Warsaw, and two on-the-spot visits to the operational areas of Frontex at the external borders of the European Union.²³

The Consultative Forum does not have a mandate to monitor Frontex activities. It is the Fundamental Rights Officer and the Fundamental Rights Monitors who have the competence 'to constantly assess the fundamental rights compliance of Frontex operational activities.'²⁴

²¹ See the analysis in the Seventh Annual Report, Frontex Consultative Forum on Fundamental Rights 2019, available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf.

²² Article 108 (1) and Article 108 (3) of Regulation (EU) 2019/1896.

²³ Article 108 (5) of Regulation (EU) 2019/1896.

²⁴ Article 110 of Regulation (EU) 2019/1896.



29th Consultative Forum Meeting (19th October 2022, Warsaw, Poland)

© European Border and Coast Guard Agency

In 2022, the Consultative Forum was composed of 14 organisations, which contributed with their expertise and resources on a voluntary basis. UNHCR, EUAA and FRA are statutory members of the Consultative Forum as per Regulation 2019/1896. CoE, IOM, OSCE/ODIHR and the UN High Commissioner for Human Rights (UN Human Rights) Regional Office for Europe were invited by Frontex to become members of the Consultative Forum.²⁵ Since 2021, the Council of Bars and Law Societies of Europe has also been a member of the Consultative Forum.²⁶ The 14 organisations comprised:

Two European Union agencies:

- European Union Agency for Asylum (EUAA); and
- European Union Agency for Fundamental Rights (FRA).

Five international organisations:

- Council of Europe (CoE);
- International Organisation for Migration (IOM);
- Organization for Security and Co-operation in Europe — Office for Democratic Institutions and Human Rights (OSCE/ODIHR);

²⁵ Management Board Decision 4/2020 of 29 January 2020 amending Management Board Decision 29/2019 of 2 December 2019 on the composition of the Consultative Forum on Fundamental Rights, available at: https://prd.frontex.europa.eu/wp-content/uploads/mb_decision_4_2020_amending_management_board_decision_292019_of_2_december_2019_on_compositionof_cf.pdf.

²⁶ Management Board decision 49/2021 of 21 September 2021 selecting and inviting the proposed civil society organisation to become a member of the Consultative Forum on Fundamental Rights: https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2021/MB_Decision_49_2021_selecting_and_inviting_the_proposed_Civil_Society_Organisation_to_become_a_member_of_the_CF_on_Fundamental_Rights.pdf

- ♦ UN Human Rights Office– (OHCHR);
- ♦ United Nations High Commissioner for Refugees (UNHCR).

Seven civil society organisations:

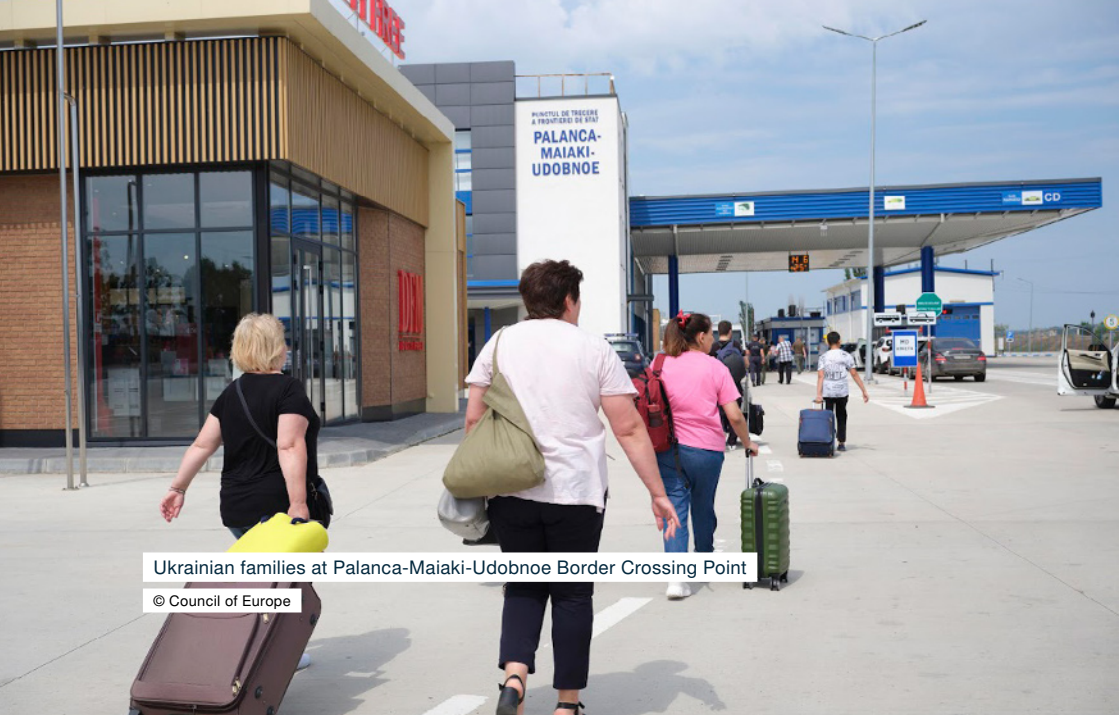
- ♦ Amnesty International European Institutions Office (AI EIO);
- ♦ Churches' Commission for Migrants in Europe (CCME);
- ♦ Council of Bars and Law Societies of Europe (CCBE)
- ♦ International Commission of Jurists (ICJ);
- ♦ Jesuit Refugee Service Europe (JRS);
- ♦ Red Cross EU Office;
- ♦ Save the Children.

UNHCR and FRA co-chaired the Consultative Forum in 2022 with the support of the Consultative Forum Secretariat, which is facilitated by the Fundamental Rights Office.²⁷

Amnesty International European Institutions Office and the International Commission of Jurists announced their withdrawal from the Consultative Forum taking effect as of 1 January 2023 following ten years of valuable membership.

During the 92nd Management Board Meeting, the Frontex Management Board adopted decision 62/2022 to renew the mandate of the

²⁷ Article 109, 2(h) of Regulation 2019/1896



Ukrainian families at Palanca-Maiaki-Udobnoe Border Crossing Point

© Council of Europe

current Consultative Forum Members taking effect from 1 January 2023 and remaining valid until 31 January 2023.²⁸

Since May 2022, the Organization for Security and Co-operation in Europe — Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been representing the Consultative Forum in the European Travel Information and Authorisation System (ETIAS) Fundamental Rights Guidance Board, in compliance with Article 10(1) of the ETIAS Regulation.²⁹

Please contact us: consultative.forum@frontex.europa.eu

²⁸ Management Board Decision 62/2022 of 23 November 2022 Renewing the mandate of the Consultative Forum on Fundamental Rights until 31 December 2023, available at https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-62_2022-on-the-extension-of-cf-membership.pdf.

²⁹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1240&from=EN>.

4 FUNDAMENTAL RIGHTS ADVICE TO FRONTEX ON OPERATIONS



Kapitan Andreevo Border Crossing Point, Consultative Forum on-the-spot visit to JO
Terra 2022 – Bulgaria

© Frontex Consultative Forum on Fundamental Rights

4.1 On-the-spot visits

According to Article 108(5) of Regulation 2019/1896, the Consultative Forum may, 'without prejudice to the tasks of the fundamental rights officer, carry out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas and to return operations and return interventions, including in third countries.' Observation missions allow the Consultative Forum to tailor its recommendations to Frontex's operational context.

The locations for on-the-spot visits are proposed by Consultative Forum members, in consultation with the Fundamental Rights Officer based on emerging challenges concerning the protection of fundamental rights.

As a follow-up to each on-the-spot visit, the Consultative Forum shares its observations and advice, in a confidential setting, with the Frontex Management Board Chair, respective Management Board member(s) and with representatives of Frontex and its Fundamental Rights Office in the framework of focus group meetings. In 2022, three focus group meetings took place following on-the-spot visits to the Frontex Situation Centre in Warsaw, as well as to Spain and Bulgaria.

4.2 Multipurpose aerial surveillance

Frontex provides aerial surveillance via Joint Operations and *ad hoc* Multipurpose Aerial Surveillance (MAS) services to Member States. In the last years, these services have expanded and have become more sophisticated in scope and reach. Serious fundamental rights concerns have been raised that information gathered via aerial surveillance and provided to third countries may have contributed



Kapitan Andreevo Border Crossing Point, Border with Türkiye, Consultative Forum on-the-spot visit to JO Terra 2022 – Bulgaria

© Frontex Consultative Forum on Fundamental Rights

to disembarkations and push backs, potentially in violation of the non-refoulement principle, at various sections of EU external borders, including through maritime interceptions in the Central Mediterranean followed by disembarkations in Libya.

The on-the-spot visit to the Frontex Situation Centre, from where the Multipurpose Aerial Surveillance activities are coordinated, served as a follow-up to previous meetings with Frontex. The goal of the visit was to clarify aspects of some operational activities performed by the Agency, including the framework of cooperation with Member States, as well to gain a better understanding of fundamental rights-related issues.

The information gathered by the Consultative Forum's delegation was instrumental in issuing the Consultative Forum Recommendation on Aerial Surveillance activities of Frontex in November 2022, which is annexed to the current report (Annex III).

4.3 Joint operations Indalo and canary islands – Spain

In May 2022, the Consultative Forum conducted an on-the-spot visit to Joint Operation Indalo and on the Canary Islands.

The Consultative Forum's delegation met with the Policía Nacional and Guardia Civil, Frontex-deployed staff, civil society organisations, as well as representatives of the Spanish Ombudsman (*Defensor del Pueblo*) and local Bar Associations. The delegation also visited the temporary reception centre, the Centros de Atención Temporal de Extranjeros (CATE) in Las Canarias and Lanzarote, as well as the disembarkation point in Almeria and Cartagena.

Issues discussed included, amongst others, modalities of debriefing activities,³⁰ modalities for the identification of vulnerable persons and referral pathways, information provision on asylum procedures and complaint mechanisms, screening and identification procedures, disembarkation protocols, cooperation with local humanitarian actors, as well as issues concerning interpretation and the provision of cultural mediation services.

4.4 Joint operation terra – Bulgaria

In December 2022, the Consultative Forum undertook an on-the-spot-visit to Joint Operation Terra in Bulgaria.

The mission agenda included a series of meetings with national authorities, border guard officers, Frontex deployed personnel, representatives of the Bulgarian Ombudsman, as well as civil society organisations and international organisations active in the country. The mission included a visit to the border crossing points of Malko Tarnovo and Kapitan Andreevo, both located at the EU external borders with Türkiye. The Consultative Forum delegation also visited the detention centres of Lyubimets and Busmantsi, where Frontex is operational. Activities include screening and debriefing of intercepted migrants and surveillance at green borders. The operational area faces pressing fundamental rights challenges, with numerous allegations of fundamental rights violations, as reported by various independent sources as well as the Fundamental Rights Officer.

³⁰ How the European Border and Coast Guard Agency (Frontex) handled a complaint concerning the rights of migrants in 'debriefing' interviews, available at: [How the European Border and Coast Guard Agency \(Frontex\) handled a complaint concerning the rights of migrants in 'debriefing' interviews | Case | European Ombudsman \(europa.eu\)](https://www.euro-ombudsman.europa.eu/en/cases/case-18-2022-how-the-european-border-and-coast-guard-agency-frontex-handled-a-complaint-concerning-the-rights-of-migrants-in-debriefing-interviews)

5

FUNDAMENTAL RIGHTS ADVICE TO FRONTEX ON PROCEDURES



Border surveillance on the Danube River, Romania - Joint Operation Terra 2022

© Frontex

5.1 Application of Article 46

Article 46 of Regulation (EU) 2019/189631

Decisions to suspend, terminate or not launch activities

1. The executive director shall terminate any activity of the Agency if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.
2. The Member States participating in an operational activity by the Agency may request that the executive director terminate that operational activity. The executive director shall inform the management board of such request.
3. The executive director may, after informing the Member State concerned, withdraw the financing of an activity or suspend or terminate it if the operational plan is not respected by the host Member State.
4. The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.
5. The executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by the Agency where

³¹ Article 46 of Regulation (EU) 2019/1896N.

he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.

6. The decisions referred to in paragraphs 4 and 5 shall be based on duly justified grounds. When taking such decisions, the executive director shall take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The executive director shall inform the management board of such decisions and provide it with justifications therefor.

7. If the executive director decides to suspend or terminate deployment by the Agency of a migration management support team, he or she shall inform the other relevant bodies, offices and agencies active in the hotspot area of that decision.³²

Following the entry into force of the Frontex Executive Director Decision on Standard Operating Procedure on 25 January 2022 – a mechanism to withdraw the financing of, suspend, terminate, or not launch Frontex activities – Frontex, for the first time, established a Working Group in line with the Fundamental Rights Officer's advice to assess the fundamental rights situation in the operational area in Greece. The task of the Working Group, chaired by the Deputy

³² Decision of Executive Director No R-ED-2022-12 on Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities (available at <https://prd.frontex.europa.eu/wp-content/uploads/standard-operating-procedure-mechanism-to-withdraw-the-financing-of-or-suspend-or-terminate-or-not-launch-frontex-activities.pdf>).



Αφαλάξ
Remove



IOM expert and German Officer at Galati Border Crossing Point in Romania, on the occasion of VEGA Airport Activity

© International Organization for Migration

Executive Director for Operations and Returns, was to advise the Frontex Executive Director on the possibility to trigger the provisions of Article 46. In parallel, the Deputy Executive Director invited the Consultative Forum to an informal consultation in December 2022 to seek the Consultative Forum's views on the application of the Article 46 procedure. Whereas the Consultative Forum remarked on the delays in the establishment of the procedure, including the creation of the Working Group, despite longstanding allegations of fundamental rights violations in Greece, the Consultative Forum welcomed the exchange initiated by Frontex.

The Consultative Forum voiced the need for swift action by Frontex in cases of reported or alleged fundamental rights violations, and formulated proposals for consideration by the Working Group in its deliberations and for the final recommendation to the Executive Director. In particular, the Consultative Forum advised Frontex to:

- Compile in one place, ideally as part of operational plans, related recommendations and agreed mitigating measures stemming from previous and present assessments to facilitate the monitoring of progress in their implementation;
- Consider the activation of an 'emergency monitoring mode' entailing the constant presence of fundamental rights monitors in a specific location/country for a certain period;

- ♦ Consider the activation of VEGA activities to enhance the capacity for identification of vulnerable persons, including in sea operations;
- ♦ Consider deploying, temporarily, JORA experts from the headquarters to the field to overcome reporting gaps;
- ♦ Define thresholds and timelines for the agreed measures and for a potential 'exit strategy';
- ♦ Diversify sources (beyond Frontex internal sources) of information for the collection and verification of allegations;
- ♦ Enhance transparency about the scope, activities and conclusions, including the next steps planned for the Working Group.

The Consultative Forum is of the opinion that Article 46 does not constitute solely an emergency tool to be applied when there is a high risk of fundamental rights violations in Frontex operational areas or when such violations occur. The application of Article 46 should be introduced as a default standard mechanism into Frontex planning, implementation and evaluation processes. Its interpretation should not be limited to its provision requesting Frontex (Article 46(4)) to suspend and terminate activities in case of verified violations of fundamental rights, or concerns about the respect of the international protection obligations related to Frontex's activities, that are of a serious nature, or are likely to persist.

5.2 VEGA – The identification of vulnerable persons

The Consultative Forum welcomed Frontex's initiative to simplify the activation of VEGA as part of its operations in 2022. VEGA activities were launched along the EU-Ukraine borders, including border crossing points in Moldova, Poland, Romania and Slovakia. While VEGA activities predominantly focus on the identification of children at land and air borders, their scope was broadened towards the identification of all vulnerable persons and victims of trafficking in human beings.



Direction to Malko Tarnovo Border Crossing Point

© Frontex Consultative Forum on Fundamental Rights

Throughout 2022, 23 experts from Consultative Forum member organisations carried out on-the-spot visits in the framework of Frontex VEGA activities. The experts visited four airports (Chisinau, Pristina, Skopje, Tirana) and 14 Border Crossing Points and Focal Points (in Albita, Galati, Halmeu, Karasovici, Medininkai, Medyka, Nova Sela, Otaci, Raigardas, Sculeni, Sighetu Marmatiei, Terespol and Ubla) across Albania, Croatia, Kosovo,³³ Moldova, North Macedonia, Poland, Romania and Slovakia. The experts provided their observations through reports to Frontex. In total, Consultative Forum experts spent 54 weeks in operational areas.

³³ This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo Declaration of Independence.

The following are the main highlights of the fundamental rights-related observations:

- The key guiding principles for the identification of vulnerable persons contained in the VEGA handbooks could be extracted in the form of a flyer or booklet for quick reference and should be disseminated to deployed staff and national authorities;
- Additional measures should be taken to increase the awareness of risks, for example by collecting disaggregated data on persons identified and referred, and the recording of vulnerability indicators (such as on trafficking in human beings, gender-based violence, persons with disabilities and the elderly, vulnerability, statelessness and the crossing of persons without documents, children);
- Frontex should raise the awareness of deployed officers and national authorities on the broadened scope of VEGA as a tool to enhance the identification of all vulnerable persons and not only children;
- The establishment of VEGA in a 24/7 modality should be considered when increased arrivals are expected;
- Awareness of the complaints mechanism should be raised, with information readily available;
- Frontex should ensure that interpretation services are available at all locations. The lack of interpretation is an obstacle for the identification of vulnerable persons;
- Equal treatment should be ensured in the provision of information relating to temporary protection and access to asylum.

5.3 Fundamental rights guidance board of the European Travel Information and Authorisation System (ETIAS)

Regulation 2018/1240 establishes the European Travel Information and Authorisation System (ETIAS), an automated IT system created

to identify any security, irregular immigration and high epidemic risks posed by visa-exempt visitors prior to travelling to the Schengen Area. In 2022, Frontex continued its plans to operationalise ETIAS, which was originally envisaged to be rolled out at the end of 2022, but was postponed to the end of 2023, with a testing phase expected in May/June 2023.

Once operational, travellers arriving for a short-term stay, who are exempt from a visa to visit the Schengen zone, will have to apply online for travel authorisation before departure and will be issued travel waivers for a duration of three years, after their applications are processed against '[screening rules](#)' and an ETIAS 'watch-list' as foreseen in the Regulation.³⁴ ETIAS is part of the '[Smart Borders Package](#)'³⁵ and is linked to the [Entry/Exit System](#), which registers entries and exits of all non-EU nationals and systematically identifies over-stayers.

The Consultative Forum, in accordance with Article 10 (1) of Regulation 2018/1240, is a member of the ETIAS Fundamental Rights Guidance Board (FRGB)³⁶ with the mandate to perform regular appraisals and to issue recommendations to the ETIAS Screening Board on the impact of the processing of applications and the implementation of the ETIAS screening rules on fundamental rights. The Screening Board is an advisory body composed of representatives from each ETIAS National Unit and Europol and must be consulted on the definition, evaluation and revision of the 'risk

³⁴ Articles 33, 34, 35 of Regulation (EU) 2018/1240.

³⁵ Smart Borders – Background, available at: https://home-affairs.ec.europa.eu/pages/page/smart-borders-background_en

³⁶ In accordance with ETIAS Regulation (2018/1240, Article 10(2)), the FRO, and one member from the Frontex CF, the European Data Protection Supervisor, the European Data Protection Board, the European Union Agency for Fundamental Rights constitute the FRGB board members. It is supported by a Secretariat provided by the Fundamental Rights Office of the European Border and Coast Guard Agency.



indicators' developed for ETIAS, as well as for the implementation of the ETIAS watchlist.

The FRGB was established in November 2022. It adopted its rules on procedures and elected the European Data Protection Board as the chairperson and Frontex's Fundamental Rights Officer as deputy chairperson.³⁷ According to the rules of procedures, FRGB meetings are to be convened by the chairperson at least twice a year and all Board decisions are made by a simple majority. The FRGB issues its opinions, recommendations and appraisals in writing and its Secretariat is provided by the Frontex Fundamental Rights Office.

As a FRGB member, the CF will contribute to the development of the FRGB's work-plan, including on how to prevent discrimination and support fundamental rights compliance at every step of the development and implementation of the ETIAS travel system.

³⁷ Fundamental Rights Guidance Board to ETIAS started its work, 29 November 2022, available at: <https://frontex.europa.eu/media-centre/news/news-release/fundamental-rights-guidance-board-to-etias-started-its-work-INiaZ6>.

5.4 Fundamental rights advice provided within Frontex training activities

According to Article 62(6) of Regulation 2019/1896,³⁸ the ‘Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the border guards of Member States, including with regard to fundamental rights, access to international protection [...] after consulting the Consultative Forum and the Fundamental Rights Officer.’

The Common Core Curricula (CCC) is a key tool offering measurable common standards for basic-level border guard officers in the EU, which can be integrated in the national curricula in a flexible manner. The Consultative Forum provided its input to the CCC in July 2022, further integrating fundamental rights provisions throughout the entire curriculum.

In 2022, Frontex invited the Consultative Forum to attend development workshops relevant to the Frontex Course for Fundamental Rights Trainers. Based on the developed material, Consultative Forum experts also attended ‘train the trainers’ workshops. The trainers taking part in the workshops are expected to provide the same knowledge on fundamental rights to border personnel audiences in their home countries.

Consultative Forum members participated in several related training activities. The events enabled Consultative Forum members to observe Frontex’s methodology for the establishment of learning objectives including on fundamental rights. Within the workshops, a series of realistic scenarios were examined for potential violations

³⁸ Regulation (EU) 2019/1896

of fundamental rights. Consultative Forum members shared their own expertise, provided comments on the material and drew attention to the fundamental rights dimension of the issues discussed. Consultative Forum members also attended a specific workshop on the returns of families with children.

While the Consultative Forum issued a specific recommendation on training to Frontex in 2020 and occasionally attends Frontex training activities, assessing whether, and to what extent, these recommendations are followed up by Frontex is a challenge.

The presence of Consultative Forum members in Frontex training activities serves to raise awareness on fundamental rights and does not entail any broader endorsement of the material, the development process, or the delivery of linked training activities.

6

CONSULTATIVE FORUM MEMBERS' PROJECTS AND PUBLICATIONS



IOM expert at Pristina Airport, Kosovo, on the occasion of VEGA Airport Activity

© International Organization for Migration

Amnesty International European Institutions Office

In 2022, Amnesty International undertook several research missions to document violations at the EU's external borders, including in areas with operational deployment of Frontex officers. The following reports were published further to these research missions:

- ♦ [Poland: Cruelty Not Compassion, at Europe's Other Borders](#);³⁹
- ♦ [Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned](#);⁴⁰
- ♦ [Latvia: Return home or never leave the woods: Refugees and migrants arbitrarily detained, beaten and coerced into “voluntary” returns](#);⁴¹
- ♦ [Morocco: “They beat him in the head, to check if he was dead”: Evidence of crimes under international law by Morocco and Spain at the Melilla border](#);⁴²
- ♦ Amnesty International also continued to monitor the human rights situation at other external borders, highlighting its concerns and recommendations in a range of documents including the following:
 - ♦ [Libya/EU: Conditions remain ‘hellish’ as EU marks 5 years of cooperation agreements](#);⁴³
 - ♦ [EU: Holding people at unofficial detention sites an ‘intentional tactic’ to avoid scrutiny](#);⁴⁴

³⁹ Available at: <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

⁴⁰ Available at: <https://www.amnesty.org/en/documents/eur53/5735/2022/en/>

⁴¹ Available at: [Latvia: Return home or never leave the woods: Refugees and migrants arbitrarily detained, beaten and coerced into “voluntary” returns](#)

⁴² Available at: [Morocco: “They beat him in the head, to check if he was dead”: Evidence of crimes under international law by Morocco and Spain at the Melilla border](#)

⁴³ Available at: [Libya/EU: Conditions remain ‘hellish’ as EU marks 5 years of cooperation agreements](#)

⁴⁴ Available at: [EU: Holding people at unofficial detention sites an ‘intentional tactic’ to avoid scrutiny](#)

- ♦ [Poland: Authorities must act to protect people fleeing Ukraine from further suffering](#).⁴⁵

The Churches' Commission for Migrants in Europe (CCME)

CCME and its German member organisation, Diakonie, organised a visit on 18-19 July 2022 to Kos, in particular to the Pyli reception and detention facilities, in cooperation with partners in Kos. Birgit Sippel, Member of the European Parliament LIBE Committee and rapporteur on the screening regulation and her parliamentary assistant took part in the visit, in addition to a Consultative Forum member. The visit served as a fact-finding exercise looking into fundamental rights concerns around reception, detention, the integrity of the asylum procedures, the treatment of minors and alleged 'pushbacks'. The visit also entailed an exchange with Frontex to assess their role in screening and debriefing activities. The delegation shared its observations with FRO during the CCME European Asylum Conference in October 2022 in Warsaw.

Council of Bars and Law Societies of Europe (CCBE)

In 2022, the CCBE published the following papers:

- ♦ [CCBE statement](#) in favour of strengthening key procedural safeguards for unaccompanied children in transnational procedures (13/05/2022).⁴⁶

⁴⁵ Available at: [Poland: Authorities must act to protect people fleeing Ukraine from further suffering](#)

⁴⁶ Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20220513_CCBE-statement-in-favour-of-strengthening-key-procedural-safeguards-for-unaccompanied-children-in-transnational-procedures.pdf.

- ♦ [CCBE Statement](#) following the deaths of migrants attempting to cross from Morocco to Melilla (04/08/2022).⁴⁷
- ♦ [CCBE recommendations](#) on a framework on legal aid in the field of migration and international protection (25/11/2022).⁴⁸

Following the invasion of Ukraine by Russia, the CCBE undertook, amongst others, the following actions:

- ♦ [List of contact points](#) which can be contacted by people fleeing Ukraine and in need of legal assistance.⁴⁹
- ♦ [CCBE statement](#) on the application of the Temporary Protection Directive to certain persons displaced by the Russian invasion of Ukraine (13/05/2022).⁵⁰
- ♦ Cooperation with Council of Europe regarding Asylum/Migration HELP eDesks.
- ♦ The CCBE has also continued to support [European Lawyers in Lesbos](#) (ELIL), a foundation providing legal assistance in Greece and in Poland, of which the CCBE is one of the shareholders.⁵¹

Council of Europe (CoE)

In the course of 2022, the Special Representative of the Secretary General on Migration and Refugees continued the coordination

⁴⁷ Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20220804_CCBE-Statement-following-the-deaths-of-migrants-attempting-to-cross-from-Morocco-to-Melilla.pdf.

⁴⁸ Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_20221125-CCBE-recommendations-on-a-framework-on-legal-aid-in-the-field-of-migration-and-international-protection.pdf.

⁴⁹ Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Ukraine/EN_Ukraine_20220331_Legal-assistance-list-of-contacts.pdf.

⁵⁰ Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20220513_CCBE-statement-on-the-application-of-the-Temporary-Protection-Directive.pdf.

⁵¹ Available at: <https://www.europeanlawyersinlesvos.eu/>.

of [the implementation](#)⁵² of the activities listed in the [Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe \(2021–2025\)](#),⁵³ adopted by the Committee of Ministers on 5 May 2021. In this framework important recommendations were adopted, such as:

- [Recommendation CM/Rec\(2022\)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration](#),⁵⁴ the first international legal instrument setting human rights standards on age assessment in the context of migration.
- [Recommendation CM/Rec\(2022\)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls](#).⁵⁵ It addresses a broad range of issues faced by migrant women and girls, both on the move and in countries of destination. It also provides Member States with a checklist of measures to ensure that migrant women's human rights are better protected. The recommendation covers all migrant, refugee and asylum-seeking women and girls, including those in irregular situations.
- [Recommendation CM/Rec\(2022\)21 of the Committee of Ministers on preventing and combating trafficking in human beings for the purpose of labour exploitation](#).⁵⁶ It draws on the monitoring work and guidance of the Group of Experts on Action against Trafficking in Human Beings (GRETA), the caselaw of the European Court of Human Rights, and conclusions and decisions of the European Committee of Social Rights. In May 2022, GRETA

⁵² Available at: <https://rm.coe.int/first-interim-report-on-the-implementation-of-the-action-plan/1680aa29bb>.

⁵³ Available at: <https://rm.coe.int/action-plan-on-protecting-vulnerable-persons-in-the-context-of-migrati/1680a409fc>.

⁵⁴ Available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a96350#showSearchBox=0.

⁵⁵ Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a69407.

⁵⁶ Available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a83df4.

launched a [Guidance note on addressing the risks of trafficking in human beings related to the war in Ukraine and the ensuing humanitarian crisis](#).⁵⁷ The Guidance note explains what can be done by Member States, quickly and without the need for structural reforms, to provide immediate assistance to people who have fled Ukraine, including to detect potential victims of human trafficking and adequately protect them.

The Lanzarote Committee developed the “[Handbook on Protection of children against sexual exploitation and sexual abuse in crisis and emergency situations](#)”⁵⁸ to guide practitioners and policymakers in reception, transit and destination countries to better prevent and protect children against sexual exploitation and sexual abuse. Although the handbook has been drafted to help authorities working to protect children who have fled Ukraine, the challenges highlighted and the proposed recommendations will also be applicable to other crises and emergency situations. The handbook is a more detailed version of [the Checklist on protection of children affected by the refugee crisis from sexual exploitation and sexual abuse: States’ main obligations under the Lanzarote Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse](#).⁵⁹ The latter contains concrete examples of measures that may be put in place to prevent sexual exploitation and sexual abuse, identify and report child victims, provide support to child victims of sexual exploitation and sexual abuse, and prosecute perpetrators.

⁵⁷ Available at: <https://rm.coe.int/guidance-note-on-addressing-the-risks-of-trafficking-in-human-beings-/1680a663e2>.

⁵⁸ Available at: <https://rm.coe.int/handbook-on-the-protection-of-children-against-sexual-exploitation-and/1680a8ae86>.

⁵⁹ Available at: <https://rm.coe.int/checklist-protection-of-children-affected-by-the-refugee-crisis-from-s/1680a62d04>.

The Special Representative of the Secretary General on Migration and Refugees carried out five fact-finding missions in 2022, notably to [the Czech Republic](#),⁶⁰ [the Slovak Republic](#),⁶¹ [Poland](#),⁶² [the Republic of Moldova](#)⁶³ and [Romania](#).⁶⁴

On 31 August 2022, [the European Court of Human Rights](#)⁶⁵ issued its updated guide on the caselaw of the European Convention on Human Rights relevant to [immigration](#).⁶⁶

In 2022 the Council of Europe Committee of Ministers examined at its Human Rights meetings the execution of the following [cases/groups of ECHR judgments concerning migration/asylum](#):⁶⁷ *M.A. group v. France*, *Khan v. France*, *Moustahi v. France*, *Ilias and Ahmed group v. Hungary*, *Feilazoo v. Malta*, *Ozdil and Others v. Moldova*, *M.K. and Others v. Poland*

In 2022, the [Council of Europe's Commissioner for Human Rights](#)⁶⁸ issued a [Recommendation](#)⁶⁹ on pushbacks, in which, among others, she emphasises EU member states' membership of Frontex's Management Board as representing an opportunity to advance a

⁶⁰ Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-the-czech-republic/1680a72648>.

⁶¹ Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-the-slovak-republic/1680a72646>.

⁶² Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-poland-by-ms-leyla-kayacik-speci/1680a7acc9>.

⁶³ Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-the-republic-of-moldova-by-ms-le/1680a818de>.

⁶⁴ Available at: <https://rm.coe.int/report-of-the-fact-finding-mission-to-romania-by-ms-leyla-kayacik/1680aa3ef1>.

⁶⁵ Available at: <https://www.echr.coe.int/Pages/home.aspx?p=home>.

⁶⁶ Available at: https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf.

⁶⁷ Available at: <https://hudoc.exec.coe.int/eng#%7B%22EXECDocumentTypeCollection%22%3A%5B%22CEC%22%5D%7D>.

⁶⁸ Available at: <https://www.coe.int/en/web/commissioner/>

⁶⁹ Available at: <https://www.coe.int/en/web/commissioner/-/pushed-beyond-the-limits-urgent-action-needed-to-stop-push-back-at-europe-s-borders>.

human rights-compliant approach to border management. This approach was also [addressed by the Commissioner in writing, as well as in numerous relevant interventions](#)⁷⁰ within countries where Frontex operations take place.

The [Parliamentary Assembly of the Council of Europe](#)⁷¹ adopted reports, resolutions on various migration-related topics, such as on [Protection and alternative care for unaccompanied and separated migrant and refugee children](#),⁷² [European Union Pact on Migration and Asylum: a human rights perspective](#),⁷³ [Gender mainstreaming of migration policies](#),⁷⁴ [Safe third countries for asylum seekers](#),⁷⁵ and [Pushbacks on land and sea: illegal measures of migration management](#).⁷⁶

The CoE stands ready to further contribute to Frontex's efforts in human rights training, including its Programme for Human Rights Education for Legal Professionals ([HELP](#)).⁷⁷ HELP's online courses, developed and applied in both EU Member States and third countries, as well as its specific methodology, can respond to the training needs of Frontex's Fundamental Rights Specialists.

European Union Agency for Asylum (EUAA)

⁷⁰ Available at: <https://www.coe.int/en/web/commissioner/news/tags/migration>.

⁷¹ Available at: <https://pace.coe.int/en/>.

⁷² Available at: <https://pace.coe.int/en/files/30076/html>.

⁷³ Available at: <https://pace.coe.int/en/files/29600/html>.

⁷⁴ Available at: <https://pace.coe.int/en/files/30214/html>.

⁷⁵ Available at: <https://pace.coe.int/en/files/29600/html>.

⁷⁶ Available at: <https://pace.coe.int/en/files/30216/html>.

⁷⁷ Available at: <https://help.elearning.ext.coe.int/>.

On 19 January 2022, with the entry into force of [Regulation \(EU\) 2021/2303](#),⁷⁸ the European Union Agency for Asylum (EUAA) replaced and succeeded the European Asylum Support Office (EASO). As the EU Agency tasked with supporting the implementation of the Common European Asylum System (CEAS), the work of the EUAA has close interlinkages with the work of Frontex on borders.

The following provides a summary overview of relevant EUAA activities/publications in 2022:

With close to a million asylum applications lodged in the EU+ and almost 5 million registrations for temporary protection following the Russian invasion in Ukraine, national asylum and reception systems experienced significant pressure in 2022. Upon request, the EUAA expanded its operations from 8 to 14 Member States to provide support on asylum, reception and temporary protection. While the EUAA does not have a mandate to implement operational support in third countries in the way it does within the EU, it does have a mandate to facilitate operational cooperation between Member States and third countries. In this context, for the first time, the Agency also deployed a small team to a non-EU country, Moldova, to help provide information to Ukrainians on the scheme for transfers from Moldova to pledging Member States.

Apart from operations, the Agency quickly stepped up its efforts in other areas as well, following the Russian invasion in Ukraine. These efforts included for example information provision, practical guides, tools, as well as the collection and analysis of data whereby the Agency was requested to also gather and analyse data relating to temporary protection. An overview of the EUAA response to the war in Ukraine can be found here: [EUAA Response to the](#)

⁷⁸ Regulation (EU) 2021/2303.

[Russian Invasion of Ukraine | European Union Agency for Asylum \(europa.eu\)](#).⁷⁹

Regarding **data analysis and research**, the Agency cooperates, where relevant, also with Frontex. Whilst most analytical outputs serve to inform evidence-based policy-making at EU and national levels, some analytical output is also publicly available, amongst others:

- ♦ The [EUAA's latest asylum trends webpage](#);⁸⁰
- ♦ [The Future of International Protection in the EU+ in the next ten years: Comprehensive Report](#);⁸¹
- ♦ Migration Drivers Reports: [Georgia as a country of Origin](#); [Egypt as a country of Origin](#);⁸²
- ♦ Mobility Trends Reports: [Afghan nationals in Pakistan, Iran, Turkey and Central Asia](#);⁸³

EUAA further collects information from a variety of sources and analyses developments in legislation, policies, practices and jurisprudence related to asylum. It coordinates several platforms, both restricted and public. Relevant examples include:

- ♦ [Who is Who in International Protection](#);⁸⁴
- ♦ [Caselaw database](#);⁸⁵

⁷⁹ Available at: <https://euaa.europa.eu/euaa-response-russian-invasion-ukraine>.

⁸⁰ Available at: <https://euaa.europa.eu/latest-asylum-trends-asylum>.

⁸¹ Available at: <https://euaa.europa.eu/publications/future-international-protection-eu-next-10-years-comprehensive-report>.

⁸² Available at: <https://euaa.europa.eu/publications/migration-drivers-report-georgia-country-origin>.

⁸³ Available at: <https://euaa.europa.eu/publications/mobility-trends-report-afghan-nationals-pakistan-iran-turkey-and-central-asia>.

⁸⁴ Available at: <https://whoiswho.euaa.europa.eu/>.

⁸⁵ Available at: <https://caselaw.euaa.europa.eu/Pages/default.aspx>.

- A joint report with the OECD and IOM on [Forced Displacement from and within Ukraine](#),⁸⁶
- Various relevant Situational Updates, such as: [Authorities involved in Access to the Asylum Procedure](#),⁸⁷ [Assessing the age of asylum applicants and providing guardianship](#),⁸⁸ [Analysis of measures to provide protection to displaced persons from Ukraine: Situational Report](#), etc.,⁸⁹

Also of relevance are the Agency's publications on country of origin information, which can be found on the EUAA [COI Portal](#)⁹⁰, with a total of 15 Country of Origin Information reports published in 2022, in addition to new country guidance on [Somalia](#)⁹¹ (June 2022) and two updates on [Afghanistan](#)⁹² (April 2022) and [Iraq](#)⁹³ (June 2022).

Furthermore, the EUAA also produced several relevant tools and guides in 2022, such as:

- [Practical Guides and Tools](#)⁹⁴: this booklet details all practical guides and tools that the Agency develops to help increase the knowledge and technical skills of asylum practitioners working in the field of international protection.

⁸⁶ Available at: <https://euaa.europa.eu/publications/forced-displacement-and-within-ukraine>.

⁸⁷ Available at: https://euaa.europa.eu/sites/default/files/publications/2022-10/2022_Who_is_Who_authorities_access_procedure_EN.pdf.

⁸⁸ Available at: <https://euaa.europa.eu/publications/assessing-age-asylum-applicants-and-providing-guardianship>.

⁸⁹ Available at: <https://euaa.europa.eu/publications/analysis-measures-provide-protection-displaced-persons-ukraine-situational-report>.

⁹⁰ Available at: <https://coi.euaa.europa.eu/>.

⁹¹ Available at: <https://euaa.europa.eu/country-guidance-somalia-2022>.

⁹² Available at: <https://euaa.europa.eu/country-guidance-afghanistan-2022>.

⁹³ Available at: <https://euaa.europa.eu/country-guidance-iraq-2022>.

⁹⁴ Available at: https://euaa.europa.eu/sites/default/files/publications/2022-07/2022_Practical_guides_tools_brochure_EN_0.pdf.

- ♦ [Brochure on access to the asylum procedure.](#)⁹⁵
- ♦ [Practical Guide on information provision – Access to the asylum Procedure.](#)⁹⁶
- ♦ [Applying the Concept of Safe Countries in the Asylum Procedure.](#)⁹⁷
- ♦ [Study on language assessment as a tool to determine the country of origin of applicants for international protection.](#)⁹⁸
- ♦ [All you need to know on age assessment.](#)⁹⁹
- ♦ [Practical Tool for Guardians: Temporary Protection for Unaccompanied Children fleeing Ukraine.](#)¹⁰⁰

European Union Agency for Fundamental Rights (FRA)

In 2022, with the entry into force of [Regulation \(EU\) 2022/555](#) FRA's mandate was amended slightly.

In 2022, the Russian invasion of Ukraine resulted in millions of people displaced externally and seeking protection in the European Union with an impact on a range of fundamental rights across the EU. FRA responded to the situation by collecting relevant data and providing practical expertise through tools and guidance.

- ♦ [The Russian war of aggression against Ukraine – The broad fundamental rights impact in the EU - Bulletin 2](#)

The Russian invasion of Ukraine triggered solidarity among EU governments, local authorities and society as they welcomed

⁹⁵ Available at: <https://euaa.europa.eu/publications/information-access-asylum-procedure>.

⁹⁶ Available at: <https://euaa.europa.eu/publications/practical-guide-information-provision-access-asylum-procedure>.

⁹⁷ Available at: <https://euaa.europa.eu/publications/applying-concept-safe-countries-asylum-procedure>.

⁹⁸ Available at: <https://euaa.europa.eu/publications/study-language-assessment-determination-origin-applicants-international-protection-executive-summary>.

⁹⁹ Available at: <https://euaa.europa.eu/publications/all-you-need-know-about-age-assessment>.

¹⁰⁰ Available at: <https://euaa.europa.eu/publications/practical-tool-guardians-temporary-protection-unaccompanied-children-fleeing-ukraine>.

more than 7 million people fleeing the aggression. The European Union's rapid response, activating the EU Temporary Protection Directive, offered welcome relief and much-needed support to those in need. It allowed displaced persons the opportunity to quickly settle and to work, travel and access services across the EU. But other pressing human rights issues have come to the fore and remain high on the EU's agenda, such as human trafficking, sexual and gender-based violence, hate crime and hate-fuelled disinformation.

- ♦ [National legislation implementing the EU Temporary Protection Directive in selected EU Member States](#)

The table covers the 16 EU Member States with the [most significant number of displaced persons](#) fleeing the Russian war of aggression in Ukraine (as of October 2022), including the four EU Member States bordering Ukraine. The categories of the overview are drawn from the European Commission's [Operational guidelines for the implementation of Council Implementing Decision 2022/382](#). The guidelines aim to help EU Member States with their most pressing questions when implementing the [EU Temporary Protection Directive \(2001/55/EC\)](#).

- ♦ [Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders](#)

Fundamental rights monitoring at EU external borders should be systematically and regularly carried out for a range of border management activities. These include border surveillance, apprehensions at land, sea and air borders, and the operation of referral mechanisms, including in the event of mass arrivals. This general guidance provides assistance to EU Member States in setting up national independent mechanisms to monitor fundamental rights compliance at EU external borders, in line with the screening regulation proposed by the European Commission on 23 September 2020. The EU Agency for Fundamental Rights prepared this guidance at the request of the Commission.

- ♦ [Search and Rescue \(SAR\) operations in the Mediterranean and fundamental rights](#)¹⁰¹

The EU Agency for Fundamental Rights (FRA) regularly collects data on the operations of NGO vessels involved in search and rescue in the Mediterranean. This includes any legal proceedings against them, as well as on any difficulties in disembarkations of migrants in safe ports.

- ♦ [Forced return monitoring systems - 2022 update](#)

Since 2014, FRA has been publishing an annual update of the forced return monitoring systems EU Member States have set up under Article 8 (6) of the EU's Return Directive (2008/115/EC). This overview describes different indicators for an effective forced return monitoring system, including:

- ♦ o the organisation responsible for monitoring forced returns,
 - ♦ o the number of operations monitored in 2021,
 - ♦ o the phases of monitored return operations,
 - ♦ o the number of staff trained and working as monitors,
 - ♦ o and whether the monitoring body issued public reports about their monitoring.
- ♦ [Guardianship systems for unaccompanied children in the European Union: developments since 2014](#)
- The report shows that, overall, although legislative changes have taken place in many Member States, national guardianship systems continue to face many challenges. The guardianship systems also still vary greatly across the EU.

¹⁰¹ Available at: [June 2022 Update – Search and Rescue \(SAR\) operations in the Mediterranean and fundamental rights | European Union Agency for Fundamental Rights \(europa.eu\)](#)

International Commission of Jurists (ICJ)

In 2022, the International Commission of Jurists (ICJ) successfully completed the implementation of a judicial training initiative (FAIR plus project¹⁰², which focused on the rights of migrants and refugees within the EU. The project culminated in the final event 'Is the EU living up to its values in relation to migrants and refugees?'¹⁰³ As part of the project, the ICJ published a paper on criminalisation of humanitarian help and other forms of support and assistance available to migrants and the defence of their human rights in the EU.¹⁰⁴

As part of the CADRE project,¹⁰⁵ which examined alternatives to detention for migrant children, the ICJ organised a series of three on-line conferences with experts and published training materials¹⁰⁶ concerning alternatives to detention for migrant children. Furthermore, the ICJ launched a caselaw database¹⁰⁷ on alternatives to detention with international and EU legal standards and national case law.

International Organization for Migration (IOM)

- ♦ [Return Counselling Toolkit](#) It proposes a harmonised and coherent approach to return counselling, which builds upon IOM standards and the Organization's longstanding experience in providing return and reintegration counselling to thousands

¹⁰² Available at: <https://www.icj.org/europe-training-materials-on-access-to-justice-for-migrants/>.

¹⁰³ Available at: <https://www.icj.org/upcoming-icj-event-is-the-eu-living-up-to-its-values-in-relation-to-migrants-and-refugees/>.

¹⁰⁴ Available at: <https://www.icj.org/wp-content/uploads/2022/04/Criminalization-paper-22-04-2022.pdf>.

¹⁰⁵ Available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2021/02/CADRE-Project-Description.pdf>.

¹⁰⁶ Available at: <https://www.icj.org/eu-training-materials-on-alternatives-to-detention-for-migrant-children/>.

¹⁰⁷ Available at: <https://www.icj.org/jurisprudence/>.

of migrants every year, in a multiplicity of countries and contexts. The Toolkit is a capacity-building instrument on return counselling based on key migrant-centred principles.¹⁰⁸

- ♦ [Return Counselling of Children and Their Families](#): This is a Module that complements the Return Counselling Toolkit. The module represents a collaborative effort between IOM, UNICEF and Save the Children to promote rights-based and child-sensitive return counselling in line with the Convention on the Rights of the Child and the IOM's Policy on the Full Spectrum of Return, Readmission and Reintegration. Mindful of the specific needs and rights pertaining to children, the module provides specialised guidance on how to prepare and deliver return counselling to accompanied, unaccompanied and separated children while upholding child rights and safeguards.¹⁰⁹
- ♦ [Returning to Debt: Examining the Effects of Indebtedness on Reintegration Outcomes](#) is a research project that builds on a previous one on debt and reintegration, by analysing returnees' and their households' experiences with debt in five countries (Bangladesh, Cameroon, El Salvador, Ghana and Iraq). The study reveals that the more coercive debt conditions were, the poorer the reintegration outcomes. Identifying such situations becomes critical in programming and policy making to support returnees' reintegration, as indebtedness can become a tipping point for further vulnerabilities.¹¹⁰
- ♦ [Fostering Returnees' Employment](#) is a Knowledge Paper that looks at the various approaches and types of interventions that can be envisaged to foster returnees' waged employment

¹⁰⁸ Available at: <https://publications.iom.int/books/return-counselling-toolkit>.

¹⁰⁹ Available at: <https://publications.iom.int/books/return-counselling-children-and-their-families>

¹¹⁰ Available at: <https://returnandreintegration.iom.int/system/files/resources/7ab50f05-3ee4-419c-82e4-8f590d282a8a/document/2022-%20Samuel%20Hall%2C%20University%20of%20Sussex%20and%20IOM.%20Returning%20to%20Debt.%20Examining%20the%20Effects%20of%20Indebtedness%20on%20Reintegration%20Outcomes.%20Final%20Report..pdf?type=node&id=2821&lang=en>.

as a key factor to reach sustainable reintegration. The paper is intended to provide ideas to reintegration, development and employment practitioners and policymakers worldwide on concrete support activities that can be carried out to foster returnees' waged employment.¹¹¹

- ♦ [Health and Reintegration](#) is a study that explored the links between health needs, access to care and sustainable reintegration of returnees in Brazil, Ethiopia, the Gambia, Georgia, Pakistan and Senegal. The study found that health and reintegration mutually impact each other over time and the negative repercussions are felt more by some than others.¹¹²
- ♦ [Monitoring and Evaluation Tools for Return and Reintegration Programmes](#) is a dedicated package of tools for the Monitoring and Evaluation (M&E) of return and reintegration programmes. It can be used for the development of results monitoring frameworks, M&E plans and to conduct monitoring and evaluation activities for return and reintegration programmes.¹¹³
- ♦ [Comparative Reintegration Outcomes between Forced and Voluntary Return and Through a Gender Perspective](#): The study presents key findings of two combined research projects aimed at highlighting the differences in reintegration outcomes among returnees. The first study examines the impact of whether or not the return was voluntary and its consequences on the economic, social and psychosocial dimension of reintegration. A similar approach was adopted in the second study aimed at examining

¹¹¹ Available at: <https://returnandreintegration.iom.int/en/resources/kmh-knowledge-paper-series/knowledge-paper-3-fostering-returnees-employment>.

¹¹² Available at: <https://returnandreintegration.iom.int/en/resources/kmh-research-study-report-study/research-study-3-health-and-reintegration-returning-space>.

¹¹³ Available at: <https://returnandreintegration.iom.int/en/resources/guideline/monitoring-and-evaluation-tools-return-and-reintegration-programmes>.

sex-based differences in reintegration outcomes and at better understanding gender-sensitive reintegration programming.¹¹⁴

- ♦ UN Network on Migration: [Mapping: Gaps and Positive Practices for Safe and Dignified Return and Sustainable Reintegration](#): The mapping provides a useful tool for raising awareness on different approaches and aims to contribute to a common understanding on how to best integrate people-centred, sustainable, human rights-based, gender-responsive, child-sensitive, whole-of-government and whole-of-society approaches into future design, implementation and evaluation of return, readmission and reintegration practices. The paper was drafted by the Return and Reintegration Working Group Co-leads (IOM, OHCHR, UNICEF).¹¹⁵

Jesuit Refugee Service Europe (JRS)

In 2022, a large part of the work of JRS Europe involved the coordination of the response to the Ukrainian displacement together with the country offices in Poland, Romania, Hungary and Ukraine itself. At the same time, the regular work of serving, accompanying and advocating for the rights of asylum seekers and refugees in Europe continued, with a particular focus, at the regional level, on the [support of the work of detention visitors from the JRS](#),¹¹⁶ raising awareness on the harmful effects of administrative detention with the launch of the series '[Detention under the spotlight](#)'.¹¹⁷ Furthermore, JRS Europe and its partners remained active in

¹¹⁴ Available at: <https://returnandreintegration.iom.int/en/resources/kmh-research-study-study/research-study-2-comparative-reintegration-outcomes-between>.

¹¹⁵ Available at: https://migrationnetwork.un.org/system/files/resources_files/Mapping-%20Return%20and%20Reintegration%20Mapping.pdf.

¹¹⁶ Available at: <https://jrseurope.org/en/news/bringing-hope-without-losing-hope-the-aim-of-the-dvsg/>.

¹¹⁷ Available at: <https://jrseurope.org/en/resource/detention-under-the-spotlight-issue-1-uk/>.

supporting migrants at several members states at EU external borders, such as in Spain and South-East Europe. Additionally, JRS Europe's partner in Spain – SJM – published its annual [report on the situation at the Spanish southern-border](#).¹¹⁸

Office for the High Commissioner for Human Rights (OHCHR)

In 2022, OHCHR published the chapter on 'Monitoring and protecting of human rights in the context of migration' in the *Manual of Human Rights Monitoring* series.¹¹⁹ This chapter sets out some of the key substantive and methodological issues that need to be considered when designing and carrying out human rights monitoring in the broader context of migration and displacement. It outlines approaches to monitoring a selection of human rights at various points in the migration cycle. It also provides sample questions for some monitoring situations, which can be adapted to particular contexts.

The Office also continued its advocacy on the importance of having a human rights-based approach to migration governance.

Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

In 2022, ODIHR organised the following events and trainings:

- ♦ [Training on human rights at international borders: Human rights principles, monitoring, safety and security](#): for Human Rights

¹¹⁸ Available at: <https://sjme.org/wp-content/uploads/2022/12/INFORME-FRONTERA-SUR-2022-020323.pdf>.

¹¹⁹ Available at: <https://www.ohchr.org/sites/default/files/documents/publications/2022-11-14/Chapter26-Monitoring-Protecting-HR-Migration.pdf>.

Defenders operating in the South-eastern Europe region, 9-13 May 2022.

- ♦ [Training to facilitate open dialogue on migration and relations between different communities in Poland](#), 30 May – 03 June 2022.
- ♦ [Migration, human rights and inclusion: Assessing the role of civil society in the OSCE region](#), 06 October 2022.¹²⁰
- ♦ [Training on human rights at international borders: Human rights principles, monitoring, safety and security](#): for Human Rights Defenders operating in Central and Eastern Europe region, 14-18 November 2022.¹²¹

Red Cross EU Office

The Red Cross EU Office (RCEU) is a membership office representing the 27 National Red Cross Societies in the EU, the Norwegian Red Cross, the Icelandic Red Cross and the International Federation of Red Cross and Red Crescent Societies (IFRC). It helps coordinate relations between its members and EU decision-makers and stakeholders, sharing their extensive experience and expertise in supporting vulnerable people and communities within and outside the EU.

Working with and for migrants in situations of vulnerability is one of the long-standing commitments of the Red Cross movement. Red Cross National Societies provide unconditioned assistance which is strictly humanitarian and focused on migrants' needs, vulnerabilities and potential – irrespective of their legal status. The RCEU adopted its [strategy for 2022-2027](#),¹²² which recognises fac-

¹²⁰ Available at: <https://www.osce.org/odihr/528063>.

¹²¹ Available at: <https://www.osce.org/odihr/523955>.

¹²² Available at: <https://redcross.eu/positions-publications/red-cross-eu-strategy-2022-2027>.

tors including the need to continue work on improving access and humanitarian space for activities with and for migrants (especially at the borders); the persistent difficulties in accessing services and rights; respect for fundamental rights at borders; and the increased use of immigration detention. Throughout 2022, the RCEU focused its work on upholding migrants' fundamental rights in the negotiations of the European Pact on Migration and Asylum, ensuring humanitarian aid in view of the recent displacement from Ukraine and building on the solidarity momentum that this crisis has triggered across the EU.

Relevant RCEU public statements from 2022:

- April 2022, [Conflict in Ukraine and displacement to Europe: the Red Cross response](#).¹²³
- June 2022, [Building on unprecedented solidarity: promoting a more welcoming Europe](#).¹²⁴
- July 2022, [Perspectives from the EU's eastern border – News – Red Cross EU Office](#).¹²⁵
- December 2022, [Final call for EU governments to put humanity first in EU migration legislation and practice](#).¹²⁶
- January 2023, [Austrian Red Cross calls to uphold the humanity of migrants and refugees](#).¹²⁷

¹²³ Available at: <https://redcross.eu/latest-news/conflict-in-ukraine-and-displacement-to-europe-the-red-cross-response>.

¹²⁴ Available at: <https://redcross.eu/latest-news/building-on-unprecedented-solidarity-promoting-a-more-welcoming-europe>.

¹²⁵ Available at: <https://redcross.eu/latest-news/perspectives-from-the-eu-s-eastern-border>.

¹²⁶ Available at: <https://redcross.eu/latest-news/final-call-for-eu-governments-to-put-humanity-first-in-eu-migration-legislation-and-practice>.

¹²⁷ Available at: <https://redcross.eu/latest-news/austrian-red-cross-calls-to-uphold-the-humanity-of-migrants-and-refugees>.

Save the Children (SC)

During the first months of 2022, Save the Children focused on Frontex operations in Lithuania and Greece, as a follow up to the missions that took place in 2021. The findings of the missions were discussed with the FRO office and the CF, during the first CF meeting of 2022. Save the Children participated in the mission to Joint Operation Indalo and the Canary Islands. In May, Save the Children shared with the CF some considerations on the role of Frontex officers in Joint Operation Themis, in relation to identification and registration, and debriefing. In September, Save the Children published the report [Wherever we go, someone does us harm](#),¹²⁸ an in-depth research into the level and types of violence that children experience while attempting to reach Western Europe via the Balkans route, the circumstances of that violence, and the policies and practices that exist to support children.

United Nations High Commissioner for Refugees (UNHCR)

UNHCR, the UN Refugee Agency, is a global organisation dedicated to saving lives, protecting rights and building a better future for refugees, forcibly displaced communities and stateless people. UNHCR leads international action to protect people forced to flee their homes because of conflict and persecution. UNHCR delivers life-saving assistance such as shelter, food and water; helps safeguard fundamental human rights; and develops solutions that ensure people have a safe place to call home where they can build a better future. UNHCR also works to ensure that stateless people are granted a nationality.

¹²⁸ Available at: <https://www.savethechildren.org/content/dam/usa/reports/Wherever%20we%20go%20someone%20does%20us%20harm.pdf>.

- [UNHCR's Recommendations to the 2023 Swedish and Spanish Council Presidencies of the Council of the European Union \(EU\)](#)

In its 2023 recommendations, UNHCR outlined simple but effective actions for EU countries to take in respect of people fleeing war and persecution drawing on best practices from 2022.

- [UNHCR's Mid-Year Trends Report 2022](#)

UNHCR's 2022 Mid-Year Trends report highlighted that the number of forcibly displaced people globally surged to 103 million in the first half of 2022, the biggest six-month increase recorded.

- [UNHCR's Education Report 2022](#)

In UNHCR's 2022 Education Report, 'All Inclusive: The Campaign for Refugee Education', compiled data from more than 40 countries to show how refugees lag behind their non-refugee peers when it comes to enrolment in all levels of education.



¹²⁹ On public access to documents: The Consultative Forum has - in line with the principle of good administration - no objection to releasing its documents. Frontex is ultimately in charge of releasing the respective documents to applicants, in line with Regulation (EC) 1049/2001.

ANNEX I: Consultative Forum Activities in 2022

Overview of activities in 2022	
Focus Group meeting with Frontex and respective Management Board members concerning the on-the-spot observation visit to Lithuania (Joint Operation Terra 2021)	13/01
Focus Group meeting with Frontex and respective Management Board members concerning the on-the-spot observation visit to Greece (Joint Operation Terra 2021 and Joint Operation Poseidon 2021)	14/01
Consultative Forum chairs' participation in the 88 th Frontex Management Board Meeting (online)	26/01
Bilateral meeting with the Fundamental Rights Officer	09/02
27th Consultative Forum Meeting (online)	23/02
On-the-spot observation visit on Aerial Surveillance to Frontex Headquarters	22-23/02
European Union Asylum Agency (EUAA)'s exchange with the Consultative Forum on working methods in preparation of the establishment of the EUAA's Consultative Forum	14/02
Presentation by the chairs of the Consultative Forum Annual Report 2021 at the 89 th Management Board Meeting	16/03
Council of Europe Special Representative for Migration invited the Consultative Forum Members to participate in an online exchange of information on the situation of refugees fleeing Ukraine	08/04
Consultative Forum exchange in the context of the European Parliament Frontex Scrutiny Working group with Dr Mariana Gkliati, Assistant Professor of International and European Law, Radboud University	19/04
28th Consultative Forum Meeting in Warsaw	12/05
On-the-spot observation visit to Spain (Joint Operation Indalo and Canary Islands 2022)	16-20/05
Consultative Forum chairs' participation in the 90 th Frontex Management Board Meeting in Paris	06-07/06
Meeting with the European Centre for Returns in Spain	10/06
Frontex European Travel Information and Authorisation System Division (ETIAS) Presentation Meeting to the Consultative Forum	20/06
Focus Group meeting with Frontex and respective Management Board members concerning the on-the-spot visit to Spain - Joint Operation Indalo 2022 and Joint Operation Canary Islands 2022	22/06

Overview of activities in 2022	
Consultative Forum meeting concerning the <i>Feasibility study on the setting up of a robust and independent human rights monitoring mechanism at the external borders of the European Union</i>	29/06
Upon CCME's initiative, Consultative Forum members attended a parliamentary visit to the new reception centre on Kos to exchange with human rights actors and officials	18-19/07
First debriefing meeting with Consultative Forum experts' who attended Frontex VEGA operations with the objective to provide advice concerning the identification of vulnerable persons	20/07
Consultative Forum reviewed and commented on the Common Core Curricula	25/07
Appointment of a Consultative Forum representative to the ETIAS Fundamental Rights Guidance Board (EFRGB)	12/09
Second debriefing meeting with Consultative Forum experts who attended Frontex VEGA operations with the objective to provide advice concerning the identification of vulnerable persons	13/09
Consultative Forum co-chairs' presentation of the CF's work to the Council of Bars and Law Societies of Europe's (CCBE) Migration Committee	19/09
Consultative Forum chairs' participation in the 91 st Frontex Management Board Meeting	21/09
Consultative Forum attended the first Screening Board Meeting organised by the European Travel Information and Authorisation System Division	28/09
Participation in the first Meeting of the Working Group on ETIAS Risk Screening Operations	29/09
Consultative Forum meeting with Human Rights Watch to exchange on emerging fundamental rights issues	04/10
Publication of the Consultative Forum's Ninth Annual Report 2021	17/10
29th Consultative Forum Meeting in Warsaw	19/10
Consultative Forum co-chair joins visit of Deputy Fundamental Rights Officer and Fundamental Rights Monitors on a joint assessment concerning monitoring methodologies with various Council of Europe entities in Strasbourg	07-10/11
Participation in the first meeting of the ETIAS FRGB: Adoption of Rules of Procedures and election of Chairperson and Deputy Chairperson	14/11
Co-chair's participation in an expert meeting on the establishment of an independent and effective national monitoring mechanism in Vienna	17/11

Overview of activities in 2022	
Participation in the second Screening Board Meeting organised by the European Travel Information and Authorisation System Division	22/11
Participation in the second Meeting of the Working Group on ETIAS Risk Screening Operations	23/11
Presentation by the Co-Chairs of the Consultative Forum's 2023 Programme of Work at the 92 nd Frontex Management Board Meeting	24/11
Co-Chair's participation in a European Parliament Europol Scrutiny Working Group Hearing to share lessons learned in preparation of the establishment of a Europol Consultative Forum	30/12
Presentation in a panel with students of the Odysseus executive master programme of the Université Libre de Bruxelles	02/12
Steering Group Meeting concerning the application of the Article 46 procedure in Frontex operations	06/12
On-the-spot observation visit to Joint Operation Terra 2022 in Bulgaria	12-16/12
Consultative Forum Members' participation in seven training development workshops involving fundamental rights and the rights of the child in Warsaw and Bratislava	February - December
23 Consultative Forum experts participated in VEGA activities at 4 airports and 14 Border Crossing Points in Albania, Croatia, Kosovo, Moldova, North Macedonia, Poland, Romania and Slovakia.	June-December
Publication of the Consultative Forum's Programme of Work 2023	12/12



Border surveillance on the Danube River, Romania - Joint Operation Terra 2022

ANNEX II: Requests for information by the Consultative Forum

Information requested	Request Date	Response Date	Content of the response ¹³⁰
Consultative Forum requested access to: <ul style="list-style-type: none"> - the ongoing service requests agreements on aerial surveillance for Italy, Malta, Greece, Lithuania, Spain and Croatia under the framework of Joint Operations and EUROSUR Fusion Services and; - SOPs and the final version of the implementation plan that Frontex intends to introduce for the provision of the above services. 	31/05	21/06	Information provided

¹³⁰ When requesting information, the Consultative Forum should receive a response within 15 working days starting from the registration of the request.

ANNEX III: Recommendation on the assessment of fundamental rights implications of Multipurpose Aerial Surveillance in Frontex activities

Pursuant to Article 108(1) of Regulation (EU) 2019/1896 (hereinafter ‘Frontex Regulation’), the role of the Consultative Forum is to ‘assist [the Agency] by providing independent advice in fundamental rights matters’. The working methods of the Consultative Forum specify that it formulates and adopts opinions and recommendations and ‘may act on its own initiative or issue opinions at the request of the Management Board or the Executive Director when being consulted on certain matters.’

The Frontex Regulation also stipulates that ‘without prejudice to the tasks of the Fundamental Rights Officer, the Consultative Forum shall be provided with effective access in a timely and effective manner to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas and to return operations and return interventions, including in third countries.’¹³¹

Frontex’s border surveillance activities have expanded significantly in recent years, in terms of both capabilities and assets. Central to the Agency’s border surveillance activities is the Multipurpose Aerial Surveillance (MAS) service that Frontex provides to Member States in its various operations. Launched in 2015 as a pilot project and significantly expanded in the following years, MAS is a service delivered via the Framework Contract for Aerial Surveillance (FASS) using aircraft (helicopters, fixed wing aircraft and unmanned aerial

¹³¹ Article 108 (5) of the EBCG Regulation 2019/1896 and Frontex Consultative Forum on Fundamental Rights Working Methods: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_on_Fundamental_Rights_2021.pdf.

vehicles) to enhance situational awareness at the EU's external borders and pre-frontier areas by delivering real-time surveillance information to Frontex. MAS assets have been widely deployed to external maritime and land borders of the EU, but particularly in the Central Mediterranean. Video surveillance is streamed live by deployed aircraft, provided by contractors and analysed in real time by Frontex officials, who direct the aerial assets and process the collected data before passing it on to Member States and other EU Agencies¹³² for various purposes such as maritime search and rescue, fisheries inspection and control, maritime law enforcement etc.¹³³

The Consultative Forum has for some years expressed concerns¹³⁴ about the potential fundamental rights impact of increased Frontex aerial surveillance operations. One challenging situation concerns the Central Mediterranean and the provision of information on boats in distress located by Frontex to the Libyan authorities. As confirmed by Frontex, in about 50% of the cases, sightings by Frontex have triggered search and rescue and/or interceptions by Libyan coastguards of migrants and refugees from international waters, leading to their disembarkation in Libya. Such sharing of information is contributing to an increase in the number of rescued persons being brought back to Libya where they subsequently face arbitrary detention in inhumane conditions, as well as torture, ill-treatment and other serious human rights violations and abuses. Such conduct may also raise issues under the right to asylum and the prohibition of *refoulement* enshrined in the EU Charter of Fundamental Rights (Articles 18-19). Another challenge concerns the duration

¹³² See also the pending case *Naass and Sea Watch v Frontex* (Case T-205/22) before the Court of Justice of the EU, focusing on public access to MAS data in relation to a specific interception carried out by the Libyan Coast Guard with the alleged support of a Frontex drone inside the Maltese rescue zone.

¹³³ CF Annual Report 2020, pp.64-65.

¹³⁴ CF Annual Report 2019, pp. 24-25, CF Annual Report 2020, pp. 64-70, CF Annual Report 2021, p. 25, available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf.

of deployment of MAS assets: the recently published report¹³⁵ by the European Anti-Fraud Office (OLAF) provides evidence of Frontex having actively withdrawn MAS assets to avoid witnessing incidents potentially resulting in fundamental rights violations.

The Consultative Forum visited the Frontex Headquarters in February 2022 for two days, to gain insights into the matter; to better understand the technical aspects of MAS and the role and activities of Frontex in situations of detected search and rescue (SAR) cases; and to directly observe the Agency's MAS activities. The missions followed from a meeting with the Agency's MAS unit in September 2020 and a Consultative Forum – Frontex Steering Group meeting held in June 2021.

LEGAL FRAMEWORK

1. The Consultative Forum recalls that Frontex activities are bound, inter alia, by the Frontex Regulation and Regulation (EU) No. 656/2014 establishing rules for the surveillance of the external sea borders carried in the context of operational cooperation with Frontex. Frontex maintains that the latter does not apply in case MAS is carried out as a EUROSUR Fusion service.¹³⁶ However, Article 80(2) of the Frontex Regulation, which applies across all Frontex activities, provides that in the performance of its tasks the Agency 'shall ensure that no person, in contravention of the principle of non-refoulement, be forced to disembark in, forced to enter, or conducted to a country, or be otherwise handed over or returned to the authorities of a country where

¹³⁵ European Anti-Fraud Office (OLAF), Final report of a Frontex investigation published by the German news magazine 'Spiegel': https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf

¹³⁶ Frontex, Implementation Plan (IMPLAN): Frontex Surveillance Aircraft (FSA) under EUROSUR Fusion Services as referred to in Article 28 of the EBCG Regulation, July 2022.

there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, in contravention of the principle of non-refoulement...’ The same provision is enshrined in Article 4(1) of Regulation (EU) No. 656/2014.¹³⁷

2. According to Article 46(4) of the Frontex Regulation, ‘[t]he executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.’ Similarly, according to Article 46(5), ‘[t]he executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by the Agency where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.’

¹³⁷ The principle of *non-refoulement* is explicitly set out in Art. 33 of the 1951 Geneva Convention; Art. 3 CAT; and Art. 16 CPED. The principle of *non-refoulement* has also been interpreted to be an implicit obligation of States that are parties to the ECHR (Art. 3) as well as to the ICCPR, CRC, ICMW, ICERD, CEDAW and the CRPD.

3. As widely recognised by the UN Secretary-General, international organisations and leading human rights non-governmental organisations, Libya cannot be regarded as a place of safety for the purpose of disembarkation of refugees and migrants rescued at sea.¹³⁸ In reports submitted in November 2021 and March 2022, the UN Human Rights Council-mandated Independent Fact Finding Mission (FFM) on Libya found that the pattern of interceptions at sea by the Libyan Coast Guard (LCG) followed by arbitrary arrest and detention by the Department for Combating Illegal Migration (DCIM), as well as the commission of and impunity for acts of murder, enslavement, imprisonment, torture, trafficking, extortion, enforced disappearance, sexual violence and other human rights violations perpetrated against migrants, provide evidence of ‘a systematic and widespread attack directed at [the migrant] population, in furtherance of a State policy’ that are indicative of crimes against humanity.¹³⁹ In its follow-up

¹³⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, www.refworld.org/docid/5f1edee24.html ; International Organization for Migration (IOM), *Libya considers its ports unsafe for the disembarkation of migrants*, 4 September 2020, <https://www.iom.int/news/libya-considers-its-ports-unsafe-disembarkation-migrants>; UN Special Rapporteur on the Human Rights of Migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, A/HRC/47/30, 12 May 2021, <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>; Office of the United Nations High Commissioner for Human Rights (United Nations Human Rights), “*Lethal Disregard*” *Search and Rescue and the protection of migrants in the central Mediterranean Sea*, May 2021, <https://reliefweb.int/report/libya/lethal-disregard-search-and-rescue-and-protection-migrants-central-mediterranean-sea>; Council of Europe Commissioner for Human Rights, *A distress call for human rights: The widening gap in migrant protection in the Mediterranean*, March 2021, <https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protectio/1680a1abcd>; Italian Court of Cassation, 6th Criminal Section, Decision 12/2021 (Vos Thalassa), 16 December 2021; Amnesty International, “*No one will look for you*”: *Forcibly returned from sea to abusive detention in Libya*, July 2021, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>; Human Rights Watch, *No escape from hell: EU policies contribute to abuse of migrants in Libya*, January 2019, <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>. UNHCR, Submission by the UNHCR in the case of *S.S. and Others. v. Italy* (Appl. No. 21660/18) before the European Court of Human Rights , 14 November 2019, https://www.refworld.org/country/LEGAL...ITA_5dcebf54_0.html. See also UN Human Rights Council, *Report on the Independent Fact-Finding Mission on Libya*, A/HRC/50/63, 27 June 2022, <https://www.ohchr.org/en/hr-bodies/hrc/libya/index>.

¹³⁹ *Report of the Independent Fact-Finding Mission on Libya*, 1 October 2021, A/HRC/48/83, para. 61; *Report of the Independent Fact-Finding Mission on Libya*, 23 March 2022, A/HRC/49/4, para. 46.



Humanitarian return flight to Tajikistan from Poland

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report of June 2022, the FFM on Libya found reasonable grounds to believe that crimes against humanity are being committed against migrants in Libya, including by mid- to senior-level Libyan officials as part of a ‘cycle of violence’ being systematically perpetrated against migrants.¹⁴⁰ Some Consultative Forum members, including UN agencies¹⁴¹ working in Libya, widely documented the situation of people intercepted by the Libyan Coast Guard and disembarked in Libya.¹⁴² The potential implications of the Agency’s actions have been repeatedly raised at Consultative Forum meetings with the Frontex Executive Management and the Frontex Management Board Chair. In light of systematic grave human rights violations and abuses refugees and migrants face in Libya, such returns to Libya may amount to violations of the principle of *non-refoulement*.

In 2022, Frontex was regularly deploying one or more aerial assets over the Central Mediterranean, including over the SAR region declared by Libya in December 2017. This engagement follows the approval of service requests submitted by Member States.

¹⁴⁰ Report of the Independent Fact-Finding Mission on Libya, 27 June 2022, A/HRC/50/63, para. 75.

¹⁴¹ Op.cit.

¹⁴² Amnesty International, *No One Will Look for You – Forcibly returned from sea to abusive detention in Libya* (2021); [Libya: “No one will look for you”: Forcibly returned from sea to abusive detention in Libya \(amnesty.org\)](#)

The Consultative Forum acknowledges that MAS services can provide benefits not only to Member States but also to people, including by contributing to saving lives at sea and in other dangerous contexts. Nonetheless, the Consultative Forum reiterates that MAS activities also raise serious human rights concerns. When Frontex aerial assets sight refugees and migrants in distress in the Libyan SAR region and the Frontex Situation Centre communicates their position to the relevant Maritime Rescue Coordination Centres (MRCC) and sometimes directly to the Libyan authorities, it is reasonably foreseeable that intercepted/rescued survivors will suffer serious fundamental rights violations after their disembarkation in Libya, including murder, enslavement, arbitrary detention, torture and ill-treatment, trafficking, extortion, enforced disappearance and sexual violence.

Until 2021, the Agency did not undertake any fundamental rights impact assessment before positively responding to service requests by Member States for aerial surveillance operations, including those over the Central Mediterranean, despite relevant obligations under the current and previous regulatory frameworks applicable to Frontex. Since late 2021, the Fundamental Rights Officer (FRO) has been engaged in the assessment of fundamental rights risks of new service requests and has been proposing mitigation measures. FRO can recommend restraint from launching a MAS service, if criteria under Article 46(5) of the Frontex Regulation are fulfilled. The Consultative Forum regrets that, in the absence of a human rights impact assessment, aerial surveillance operations have been designed and implemented for a long time without measures mitigating potential fundamental rights risks, for example through the parallel deployment of Frontex naval assets and/or other measures (either by Frontex or by Member States) to ensure that people

rescued at sea following sightings by Frontex officials are disembarked in a place of safety instead of Libya.

Frontex is currently finalizing an 'implementation plan' (IMPLAN) concerning Frontex Surveillance Aircraft services provided to Member States under the EUROSUR Fusion Services. In July 2022, Frontex shared with the Consultative Forum a draft IMPLAN, still subject to modifications. The IMPLAN will govern the process of approval and implementation of a service, including by crystallizing the role of FRO in the assessment of fundamental rights risks before and during the deployment of surveillance assets. The IMPLAN is also expected to clarify responsibilities for the handling of data.

While acknowledging that the draft IMPLAN represents a positive step forward, including by recognizing the role of FRO throughout the implementation process of the MAS services, the Consultative Forum is concerned that the Agency might fail to take adequate steps to ensure that its MAS activities fully comply with relevant obligations under EU law, including the principle of *non-refoulement*. In particular, with reference to MAS activities in the Central Mediterranean, the Consultative Forum is of the view that the Agency's support to Member States in providing aerial surveillance which triggers disembarkation in a country engaged in serious and repeated fundamental rights violations, risks putting the Agency in situations of non-compliance with the EU Charter of Fundamental Rights.

The Agency maintains that, in line with international law of the sea, distress situations are reported to all relevant Maritime Rescue Coordination Centres (MRCC), including the Libyan MRCC, as it is the responsibility of the relevant MRCCs to coordinate SAR operations, including by indicating a place of safety for disembarkation.

The Consultative Forum emphasises that international maritime law cannot override international human rights and refugee law nor set aside obligations under the EU Charter of Fundamental Rights which Frontex is bound by. Frontex must interpret its legal obligations relating to search and rescue at sea set out in the Frontex Regulation in a way that is informed by and consistent with its fundamental rights law obligations, preventing that the Agency's engagement could lead to human rights violations. This requirement of harmonious interpretation is also recognised in the Frontex' Fundamental Rights Action Plan, stressing that the Agency must '[c]ommunicate sightings and initial actions regarding distress situations to the competent and other relevant Rescue Coordination Centres, in line with the International Convention on Maritime Search and Rescue and in compliance with international human rights and EU law including the principle of non-refoulement and the EU Charter of Fundamental Rights.'

4. The Frontex Management Board Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea (FRALO) and the Frontex Scrutiny Working Group (FSWG) of the European Parliament both issued recommendations relating to MAS. In relation to MAS in the Aegean Sea, the 'Greece implementation plan'¹⁴³ which Frontex established with Greece in September 2022, contains references to the implementation of these recommendations. More specifically:
 - ♦ The FSWG considers – in line with a long-standing CF position – that Article 46 of the Frontex Regulation, with its due diligence procedures and all reporting mechanisms, must apply to all types of activities carried out by the Agency,

¹⁴³ This is a non-public arrangement between Frontex and Greece

including aerial border surveillance support and third countries support.¹⁴⁴

- ♦ The FRALO emphasised the importance for Frontex to document and monitor events in sensitive scenarios and suggested that ‘Frontex surveillance flights or other Frontex assets could in future remain at the location of detected incidents to document border police measures until they have been completed, provided that operational activities are not weakened and no gap in the surveillance system occurs’, a provision that is also included in the Frontex Fundamental Rights Action Plan.¹⁴⁵
5. The Consultative Forum recalls its recommendations on the fundamental rights implications of the Agency’s engagement with third countries of 21 May 2019¹⁴⁶ that calls on Frontex to carry out an effective fundamental rights impact assessment prior to engaging with a third country. Indeed, the Frontex Fundamental Rights Action Plan foresees that, ‘[w]hen designing ad hoc activities for third countries’, Frontex shall ‘seek FRO’s advice about how to mitigate potential fundamental rights risks in line with Frontex fundamental rights due diligence procedure.’¹⁴⁷

¹⁴⁴ See also European Parliament LIBE Committee on Civil Liberties, Justice and Home Affairs, [Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations](#) at p.12.

¹⁴⁵ Frontex Management Board Working Group, *Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea*: Final Report, 1 March 2021.

¹⁴⁶ Frontex Consultative Forum on Fundamental Rights, *Recommendations on the fundamental rights implications of the Agency’s engagement with third countries*, 21 May 2019

¹⁴⁷ Frontex, *Fundamental Rights Action Plan*, Adopted by the Management Board on 9 November 2021, Activity 69.

RECOMMENDATIONS

6. Frontex should prioritise the introduction of a sound mechanism to monitor the implementation of MAS related recommendations as formulated in the FRALO and FSWG reports.
7. It is paramount that Frontex introduces a human rights impact assessment and applies the Fundamental Rights Officer's due diligence procedure ahead of establishing a service agreement with a Member State or a third country for the provision of MAS services. Such an assessment would meet the fundamental rights safeguard requirements of the Frontex Regulation and would allow the Agency to mitigate potential risks of fundamental rights violations prior to launching activities, or during their implementation. This would allow Frontex to better assess the potential fundamental rights risks related to its activities and devise an appropriate risk mitigation response in line with Article 46 of the Frontex Regulation. Such response could include a range of mitigation measures to ensure that Frontex activities do not involve conduct that contributes to fundamental rights violations with the ultimate option of not launching, suspending or terminating its activities.
8. In accordance with its obligations under Article 46 of the Frontex Regulation, Frontex should ensure that FRO is enabled to undertake an adequate impact assessment of fundamental rights risks in relation to all MAS activities. Such assessment should be carried out against a defined set of publicly available indicators.

9. Frontex should annex the respective mitigating measures to each MAS activity to ensure compliance with the obligations set out in Article 80 of the Frontex Regulation, particularly in situations where Frontex shares information collected through MAS with authorities of Member States or third countries, in consideration of the risk that the availability of such information to those authorities may contribute to conduct resulting in fundamental rights violations.

10. When MAS assets are deployed at sea and the impact assessment indicates that it may involve disembarkation in places that do not meet the definition of ‘safety’ under international¹⁴⁸ and EU law,¹⁴⁹ Frontex should condition its approval and implementation of the service upon the adoption of any mitigation measures, including actions to be performed by either Frontex itself, or Member States, that may be necessary to ensure the protection of fundamental rights, including of the paramount right to life. Frontex should regularly monitor the implementation and effectiveness of such measures and suspend or withdraw support if/when fundamental rights risks are not mitigated. This may involve the establishment of *ad hoc* dialogues with relevant Member States or third countries to clarify responsibilities, address protection gaps and ensure that joint action never results in people being disembarked in places that do not meet the definition of ‘safety’.

¹⁴⁸ International Convention for the Safety of Life at Sea, Regulation 33, as amended by [MSC.167(78) of 2004, para 6.12], International Maritime Organization (IMO), *Resolution MSC.167(78), Guidelines on the Treatment of Persons Rescued At Sea*, 20 May 2004, available at: <https://www.refworld.org/docid/432acb464.html>

¹⁴⁹ REGULATION (EU) No 656/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, article 2 (12) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0656>

11. Frontex should undertake a thorough review of its ongoing MAS activities particularly over the Central Mediterranean, to identify any fundamental rights risks and adopt appropriate actions to ensure that any relevant activities are planned and implemented in line with international human rights and refugee law and standards, including the principle of non-refoulement, and that people rescued at sea following sightings by Frontex assets are promptly disembarked in a place of safety rather than in Libya. Measures to be considered include systemic adjustments, such as the parallel deployment of Frontex and Member States' naval assets to ensure that people rescued at sea following sightings by Frontex officials may be disembarked in a place of safety, i.e. not in Libya, and the definition of an agreement between relevant state authorities on a mechanism to provide a place of safety to shipwreck survivors while ensuring the application of the principle of responsibility sharing amongst EU Member States.
12. Measures to be considered also include immediate adjustments in concrete practices, such as wider, timely use of mayday relay calls on emergency radio channels when vessels in distress requiring assistance are identified at sea; closer cooperation with NGOs deploying naval assets for search and rescue purposes; and the assurance that, unless otherwise dictated by *force majeure*, Frontex assets remain at the location of detected incidents to document border police/coast guard measures until completed, based on defined criteria established together with the FRO and regularly monitored.
13. Frontex assets might witness violations of fundamental rights, therefore Frontex should establish a framework on storing



Deployment of the Danish Helicopter in Kosice, Slovakia - Joint Operation Terra 2022

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and keeping MAS video footage in alignment with applicable data protection rules, to ensure that such footage is available in accountability processes. The duration of retention of such data needs to be proportionate and it should be ensured that the data is not used for other purposes.

14. The Fundamental Rights Officer and the Fundamental Rights Monitors should have unhindered access to all information and activities in relation to MAS activities in line with Article 109 (7) and Article 110 (1) of the Frontex Regulation and in line with Management Board Decision 06/2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff.¹⁵⁰ It is of particular importance that Frontex proactively ensures such access, particularly because the recently published

¹⁵⁰ Management Board Decision 06/2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff <https://prd.frontex.europa.eu/document/management-board-decision-06-2021-adopting-special-rules-to-guarantee-the-independence-of-the-fundamental-rights-officer-and-his-or-her-staff/>, 20 January 2021.

OLAF report provides evidence where in the past access to such information was denied or deliberately limited.

15. The evaluation of Frontex MAS activities should include the observations provided by the Fundamental Rights Officer in line with Article 47 of the Frontex Regulation.
16. Frontex staff that is involved in MAS activities and pilots in the assets should receive tailored training on the protection of fundamental rights in the context of such operations. Frontex should also raise their awareness about the use of the Serious Incidents Reporting mechanism in cases where they observe a potential risk of a fundamental rights violation.



Standing corps officers in Moldova

ANNEX IV: Consultative Forum Programme of Work 2023

1. FRONTEX CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS COMPOSITION & WORKING METHODS

The Frontex Consultative Forum on Fundamental Rights brings together key European institutions as well as international and civil society organisations that are concerned with the fundamental rights of migrants and refugees.

The current composition of the Consultative Forum was extended¹⁵¹ until the end of 2023 and is currently composed of representatives from:

- ♦ Churches' Commission for Migrants in Europe (CCME),
- ♦ Council of Bars and Law Societies of Europe (CCBE),
- ♦ Council of Europe (CoE),
- ♦ European Union Asylum Agency (EUAA),
- ♦ European Union Agency for Fundamental Rights (FRA),
- ♦ International Organization for Migration (IOM),
- ♦ Jesuit Refugee Service Europe (JRS Europe),
- ♦ Office of the High Commissioner for Human Rights (UN Human Rights - OHCHR),
- ♦ Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ ODIHR),
- ♦ Red Cross EU Office (RCEU),
- ♦ Save the Children (SC),
- ♦ United Nations High Commissioner for Refugees (UNHCR).

¹⁵¹ As per MB Decision 62/2022 of 23 November 2022 renewing the mandate of the Consultative Forum on Fundamental Rights until 31 December 2023, available at: https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-62_2022-on-the-extension-of-cf-membership.pdf.

These organisations contribute their work on a voluntary basis in accordance with the principles of independence, transparency, mutual respect, informed participation and collegiality. Given its diverse composition, the strength of the Consultative Forum is its ability to provide holistic analysis on respect for, protection and fulfilment of fundamental rights based on collective knowledge and expertise.

Amnesty International European Institutions Office (AIEIO) and the International Commission of Jurists (ICJ) withdrew their membership at the end of 2022.

Working methods of the Consultative Forum:¹⁵²

Three meetings per year with the Chair of the Frontex Management Board and the Frontex Executive Director present.

Steering Group meetings held to facilitate timely provision of expertise with Frontex executive management in-between the Consultative Forum meetings.

Regular meetings and exchange with Frontex business units.

Regular exchange with the Fundamental Rights Officer and his or her office.

Observation missions are organised in line with the Consultative Forum's working methods, with sufficient advance notice.

The working methods will be revised in 2023.

¹⁵² Frontex Consultative Forum, working methods 2021, available at: [Frontex Consultative Forum on Fundamental Rights 2021.pdf \(europa.eu\)](https://frontex.europa.eu/Frontex-Consultative-Forum-on-Fundamental-Rights-2021.pdf)

The Consultative Forum publishes an annual report,¹⁵³ which contains an overview of all recommendations and activities of the previous year. The Consultative Forum presents its Annual Reports to the Management Board, the European Parliament and the Council, and to any other stakeholder upon request.

The Agency shall inform the Consultative Forum on the follow-up to its recommendations, as per Article 108(3) of Regulation (EU) 2019/1896 and in line with Management Board decision 43/2022. Furthermore, the Frontex Management Board should share the Consultative Forum's recommendation with the European Parliament in line with Art. 8 (1).

2. INTRODUCTION

In accordance with Article 108 of the Regulation on the establishment of a European Border and Coast Guard¹⁵⁴ (hereinafter referred to as 'Regulation 2019/1896') the role of the Consultative Forum is to assist the Agency 'by providing independent advice in fundamental rights matters'. To this effect, the Consultative Forum may be consulted on any matter related to fundamental rights, including 'on the further development and implementation of the fundamental rights strategy, on the functioning of the complaints mechanism, on codes of conduct and on the common core curricula'.

¹⁵³ In line with Article 108 of the 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.

¹⁵⁴ As per 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. (Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&from=EN>. Last accessed 05/12/2022).

For the purpose of performing its duties, and in line with Regulation 2019/1896, 'the Consultative Forum shall be provided with effective access in a timely and effective manner to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas, and to return operations and return interventions, including in third countries'.

With the adoption of its Programme of Work, the Consultative Forum sets its priorities for 2023. The Programme of Work also defines the specific results the Consultative Forum aims to achieve.

The Program of Work reflects priorities and activities jointly identified with Frontex and its Management Board and it remains flexible for adjustments following *ad hoc* consultations between the Consultative Forum and the Executive Director of Frontex, the Frontex Management Board, the Fundamental Rights Officer, as well as Frontex divisions and business units, in line with emerging needs. In addition to the outlined priorities, the Consultative Forum can also provide advice at its own initiative and can submit requests for information to Frontex for this purpose.

In the implementation of this Program of Work, the Consultative Forum will continue working with and supporting the Frontex Fundamental Rights Officer and his team, while ensuring complementarity with his mandate and activities.

All activities and recommendations of the Consultative Forum must fully respect the right to protection of personal data.

3. PRIORITIES IN 2023:

Priority A: Advising on fundamental rights policies and processes of Frontex as they emerge

The Consultative Forum has to date provided advice in the setting up of an effective system to monitor, investigate and address potential fundamental rights violations. In line with its mandate, and building on its work in 2022, the Consultative Forum will continue offering its support to the Agency as regards the implementation of the 2019 European Border and Coast Guard Regulation in relation to fundamental rights either at the request of the Agency, its Management Board or at its own initiative.

Output: Continued advice on the effectiveness of the mechanism to monitor, investigate and address alleged fundamental rights violations in Frontex activities.

Output: Support to Frontex Fundamental Rights Monitors as requested by the Fundamental Rights Officer including on training and provision of information on practices and relevant guidelines for their area of work.

Output: Contribute with expertise to external oversight mechanisms' inquiries in relation to fundamental rights.

Output: Conduct on the spot visits to selected Joint Operations and formulate specific observations to the attention of Frontex Management and MB members, in close consultation with the FRO.

Output: Provision of input to the European Commission's evaluation of Frontex.

Priority B: Enhancing Frontex VEGA activities through fundamental rights advice

Consultative Forum members will continue joining VEGA deployments (at land, airports and, upon launch, at sea) to support the Agency and its staff in the identification of vulnerable persons.

Output: Deployment of Consultative Forum members to Vega operations and an increase of awareness in relation to the identification of vulnerable persons with Frontex staff. Contribution with fundamental rights expertise to related briefings and compilation of lessons learned.

Priority C: Advising within the ETIAS Fundamental Rights Governance Board

In 2022, the Consultative Forum appointed one of its members, ODIHR, to represent the Consultative Forum in the ETIAS Fundamental Rights Guidance Board.¹⁵⁵

Output: Ensuring the effective functioning of the ETIAS Fundamental Rights Guidance Board & continued fundamental rights advice in its set up and functioning.

¹⁵⁵ As per Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1240&from=EN>. (Last accessed 05/12/2022)

Priority D: Following up on the implementation of Consultative Forum Recommendations

The Consultative Forum will continue observing the extent of the implementation of their Recommendations. According to the Regulation and MB decision 43/2022¹⁵⁶ there is an obligation for Frontex to inform the Consultative Forum concerning the implementation of its recommendations.

Output: Exchange with Frontex and the Management Board concerning the follow up on CF recommendations, such as training, returns and others.

Priority E: Research on accountability

Launching an external research paper concerning the overall accountability of Frontex in its various activities will support the Consultative Forum in its advice to Frontex. The research paper should look into various scenarios of Frontex activities and analyse their fundamental rights dimension.

Output: Establishment of terms of references for a research paper drafted by an external service provider. The Consultative Forum members will use its findings and recommendations within their advisory role vis a vis Frontex.

¹⁵⁶ As per Management Board Decision 43/2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer, available at https://prd.frontex.europa.eu/wp-content/uploads/mb-decision-43_2022-adopting-rules-on-cfs-and-fros-recommendations_pr.pdf. (Last accessed 05/12/2022)

ANNEX V: Overview of Consultative Forum expenses

The Consultative Forum covers its expenses from the Frontex Fundamental Rights office budget. The Chairs carry out an estimation at the end of each year for the upcoming year for the allocation of the resources required.

The Consultative Forum's expenses amounted at 37,789.89€ in 2022.

CONSULTATIVE FORUM BREAK DOWN OF EXPENSES IN 2022		
Three On-the-spot visits to Frontex HQ, Spain and Bulgaria for 12 Consultative Forum members	13,409.08€	Total: 37,789.89€
Two in person Consultative Forum meetings (including travel, accommodation, catering and conference rooms when needed)	23,728.13€	
Participation in Frontex Management Board meetings	652.68€	

In addition to the above, Consultative Forum members also participated in VEGA activities and attended training workshops. These expenses were covered by the Frontex Field Operation Unit and by Frontex Training Unit respectively. As envisaged in Art. 108(4), the Consultative Forum issues an Annual Report concerning its activities. The Annual Report is jointly drafted by the CF Chairs and Members, with the support of the Consultative Forum Secretariat. The costs for the publication and printing of the Annual Report are covered by Frontex Media and the Public Relations Office (MPR).

The Consultative Forum's expenses covered by various Frontex units amounted at 64,867.35€ in 2022.

CONSULTATIVE FORUM BREAK DOWN OF EXPENSES WITHIN VARIOUS FRONTEX ACTIVITIES IN 2022

Participation of 23 Consultative Forum experts in Frontex VEGA activities for a total of 54 weeks of deployment at green and air borders in eight countries.	57,288.71€	Total: 64,867.35€
Participation of 7 Consultative Forum experts in 7 different Frontex training activities (including travel, accommodation, catering and conference rooms when needed)	5,794.66€	
Publication of the CF's Ninth Annual Report	1,783.98€	

ANNEX VI: Overview of Consultative Forum's recommendations 2013-2022

CONSULTATIVE FORUM RECOMMENDATIONS ON FUNDAMENTAL RIGHTS	YEAR OF ISSUANCE
Recommendation on the assessment of fundamental rights implications of Multipurpose Aerial Surveillance in Frontex activities	2022
Recommendations to the Frontex Fundamental Rights Officer in relation to operations in Hungary in the context of the Fundamental Rights Officer's assessment of Article 46 of Regulation (EU) 2019/1896	2021
Fundamental rights considerations in the context of search and rescue operations and interception at sea	
First Recommendation to the European Border and Coast Guard Agency on the Action Plan for the implementation of the Fundamental Rights Strategy	
Recommendations on the Frontex' Draft on "Best Practices on Returning Minors and Families"	
Second Recommendation to the European Border and Coast Guard Agency on the Action Plan for the implementation of the Fundamental Rights Strategy	
Recommendations on the draft "Standard Operating Procedure – setting up the mechanism to suspend, terminate, withdraw the financing or not to launch Frontex activities"	
Recommendations on the "Draft rules on the complaints mechanism"	
Recommendations on the "Code of Conduct for all Border Control Operations and all Persons Participating in the Activities of Frontex" and "Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex"	
Consultative Forum Recommendation on Training Activities of the European Border and Coast Guard Agency	2020
Recommendations on the fundamental rights implications of the Agency's engagement with third countries	2019
Recommendation on return activities of the European Border and Coast Guard Agency	
Recommendation on statelessness in the activities of the European Border and Coast Guard Agency	2018

CONSULTATIVE FORUM RECOMMENDATIONS ON FUNDAMENTAL RIGHTS	YEAR OF ISSUANCE
Recommendation on a child protection strategy for Frontex	2017
Recommendation on gender mainstreaming in Frontex activities	
Recommendation on Frontex activities at the Hungarian-Serbian border	2016
Recommendation of the Consultative Forum on the Complaints Mechanism	
No recommendation was issued in 2015	2015
Observations and recommendations of the Consultative Forum regarding the visit to the Poseidon Program	2014
Recommendations by the Consultative Forum to Frontex Draft Programme of Work 2015	
Recommendations on the Frontex Fundamental Rights Strategy concerning persons seeking international protection and vulnerable individuals or groups in need of protection or special care	2013

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