



Annual Report

Fundamental Rights Officer

2020

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List of acronyms

CFR	Charter of Fundamental Rights of the European Union
CM	Complaints Mechanism
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
ED	Executive Director
EFRGB	ETIAS Fundamental Rights Guidance Board
EIBM	European Integrated Border Management
ETIAS	European Travel Information and Authorisation System
EU	European Union
FRO	Fundamental Rights Officer
FROM	Fundamental Rights Monitor
IOM	International Organization for Migration
JO	Joint Operation
MB	Management Board
MS	Member State
OPLAN	Operational Plan
RBI	Rapid Border Intervention
SAC	Schengen Associated Countries
SIR	Serious Incident Report
THB	Trafficking in Human Being
UNHCR	United Nations High Commissioner for Refugees

Executive summary

The Fundamental Rights Officer Annual Report provides an overview of the activities of Frontex's Fundamental Rights Officer and the Fundamental Rights Office in 2020. It provides an update on the status of implementation of fundamental rights in the Agency's activities, in line with its Fundamental Rights Strategy. The 2020 FRO Report is output-oriented and is structured around main topics, as featured in the Agency's Fundamental Rights Strategy. The report presents an overview of fundamental rights-related activities and the role of the Fundamental Rights Officer, describing the structures and instruments put in place as well as actions taken to contribute to ensure compliance with fundamental rights, to translate fundamental rights into concrete measures and promote an environment conducive to respect for and promotion of fundamental rights.

Following a situational overview [section 2], the report elaborates on the integration of fundamental rights safeguards in Frontex's operational cycle, ranging from operational planning to implementation and evaluation [section 3]. The report further focuses on the actors and methods involved in fundamental rights monitoring [section 4], followed by a section on the inclusion and considerations of fundamental rights in trainings and the development and use of new technologies in border management [section 5]. The report continues with a part on the Agency's cooperation around European Integrated Border Management with stakeholders and partners at various levels [section 6]. It concludes with observations on transparency provisions related to public access to documents [section 7], a status update on the staffing of the Fundamental Rights Office [section 8] and a summary [section 9].

As the first of its kind, this report provides unique insights into the role of the Fundamental Rights Officer and the work of the Fundamental Rights Office. In particular, it highlights the new developments related to the adoption of the 2019 Frontex EBCG Regulation (Regulation (EU) 2019/1896), the enhanced mandate of the Fundamental Rights Officer and the team's independence, as well as the role of the Agency in jointly enhancing the implementation of fundamental rights. At the same time, the report identifies areas of future work and specific challenges to be addressed moving forward.

This first Annual Report was presented by the Fundamental Rights Officer to the Frontex Management Board in the third quarter of 2021.

1. Introduction

Frontex, the European Border and Coast Guard Agency, was established by the European Border and Coast Guard Regulation¹ (the EBCG Regulation) on the foundations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.² Frontex supports EU Member States (MS) and Schengen Associated Countries (SAC)³ in ensuring European Integrated Border Management (EIBM) at the external borders.

According to the Treaty on European Union, respect for human rights is one of the founding values of the European Union.⁴ The Charter of Fundamental Rights of the European Union is primary EU law, binding on the EU at all times, as well as EU Member States when acting within the

scope of EU law. In this context, EU Member States, Schengen Associated Countries and Frontex, in the performance of their roles related to European Border and Coast Guard,⁵ shall guarantee the protection of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and international law instruments, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto and obligations relating to access to international protection, respecting in particular the principle of *non-refoulement*.

According to the EBCG Regulation, Frontex addresses migratory challenges and potential threats at the EU external borders. Its work relates to safeguarding internal

security with full respect for fundamental rights, while maintaining the free movement of persons within the Union. The Agency also contributes to the detection, prevention and combating of cross-border crime at the external borders. Since December 2019, Frontex has extended its involvement in third countries (TC),⁶ expanded the scope of support to the MS/SAC in returning third country nationals⁷ and adopted new elements of border surveillance. Frontex has further taken a new role in monitoring migrants' onward movements in cooperation with the European Asylum Support Office (EASO). Finally, as per the EBCG Regulation, a representative of the European Union Agency for Fundamental Rights (FRA) shall be invited to the Management Board meetings when points related to the protection

1 Regulation (EU) 2019/1896 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

2 Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

3 Schengen Associated Country means countries associated with the implementation, application and development of the Schengen *acquis* in the meaning of the Treaty on the Functioning of the European Union and its Protocol (No. 19) on the Schengen *acquis* integrated into the framework of the European Union, that is, Norway, Iceland, Liechtenstein, and Switzerland.

4 Article 2 of the Consolidated Version of the Treaty on European Union (OJ C 326, 26.10.2012, p. 17).

5 Article 80(1) of the EBCG Regulation.

6 For instance, following the removal of geographical restrictions to carry out actions under status agreements.

7 Now including all phases of the return process, support to the implementation of voluntary returns and post-return activities.

of fundamental rights are to be discussed.⁸ In sum, the entry into force of the EBCG Regulation has substantially extended the mandate and capacities of the Agency and thus broadened its impact on fundamental rights. These changes were accompanied by legislative and practical efforts to better safeguard fundamental rights compliance within all Frontex activities.

The Fundamental Rights Officer (FRO) is responsible for monitoring Frontex's implementation of its fundamental rights obligations in accordance with EU and international law and advises⁹ the Agency on fundamental rights-related issues pursuant to Article 109 of the EBCG Regulation. Appointed by the Management Board (MB), the FRO and the staff of the Fundamental Rights Office, including the Fundamental Rights Monitors, have an independent role within the Agency to reinforce the respect for, protection and promotion of fundamental rights.¹⁰ To effectively monitor the Agency's compliance with fundamental rights, including by "conducting investigations into any of its activities" as stated in Article 109(2)(b) and by carrying out on-the-spot visits,¹¹ the EBCG Regulation equips the FRO with additional tools. The Fundamental Rights Officer may issue opinions in relation to any Frontex activity both at the policy and operational level and as regards its cooperation with partners, pointing to fundamental rights challenges, potential fundamental rights violations or the risks thereof.¹² More specifically, the FRO advises the Executive Director and reports directly to the Management Board. The FRO is mandated under the EBCG Regulation's Article 109(2)(i) to "Inform the director about possible violations of fundamental rights during activities of the Agency". Furthermore, as per Article 109(2)(c), the FRO contributes to "the Agency's fundamental rights strategy and the corre-

sponding action plan, including by issuing recommendations for improving them".

In addition, the FRO provides training on fundamental rights and access to international protection to Frontex staff and to MS/SAC representatives in Frontex operations, emphasising particularly their individual obligations. Finally, the FRO is also responsible for handling complaints and reports on serious incidents related to possible violations of fundamental rights within Frontex activities. At the operational level, the FRO will be supported in its work by the Fundamental Rights Monitors who, independent in the performance of their duties, will constantly monitor and assess the fundamental rights compliance of Frontex operational activities as well as provide advice and assist participants in the implementation and safeguarding of relevant provisions, while contributing to the promotion of fundamental rights as part of the EIBM.

Main components of Frontex's fundamental rights protection and monitoring system include:

- ♦ the Fundamental Rights Strategy (Article 80(1) of the EBCG Regulation) – Serving as a guiding framework to align Frontex activities with fundamental rights standards and principles, the strategy outlines the impact of fundamental rights on Frontex's work on integrated border management. It contains the requirements for the Agency to comply with its obligations stemming from international and European law, elaborating on concrete steps to promote and protect the fundamental rights of those who cross the EU borders. The strategy relates to Frontex's areas of work, in particular: analysis-based planning, the conduct of operational activities, including of return operations, and its cooperation with Member States, officers and

authorities of third countries. The strategy also relates to the responsibilities of all participants in Frontex's operational activities and to fundamental rights in training, research and innovation. An Action Plan will further include practical fundamental rights safeguards to guide the implementation of Frontex's operational activities. It will align with the Annual Work Programme of the Agency in order to ensure relevance for its mission and operational goals in the framework of EIBM;

- ♦ the Serious Incident Report procedure (Article 38(3)(h) of the EBCG Regulation) – The EBCG Regulation and Frontex's Codes of Conduct¹³ oblige every participant in Frontex operational activities to immediately report in the form of a Serious Incident Report (SIR) any situation of potential violations of fundamental rights, including violations of the EU *acquis* or international law, of the provisions of Frontex's Code of Conduct applicable to all persons participating in Frontex operational activities and the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, as well as situations with serious actual or potential negative implications for Frontex core tasks. SIRs of fundamental rights relevance are assigned to FRO for handling;
- ♦ the Complaints Mechanism (Article 111 of the EBCG Regulation) – This tool allows for the submission of individual complaints from persons who are directly affected by the actions or failure to act of staff involved in Frontex activities, and who consider themselves to have been subject to a breach of their fundamental rights due to those actions or failure to act;

⁸ Article 104(6) of the EBCG Regulation.

⁹ The FRO is tasked with "Advising the Agency where he or she deems it necessary or where requested on any activity of the Agency without delaying those activities" by Article 109(2)(d) of the EBCG Regulation.

¹⁰ Article 109(2)(c) of the EBCG Regulation mandates the FRO with "Promoting the Agency's respect of fundamental rights".

¹¹ The FRO is tasked with "carrying out on-the-spot visits to any joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation or return intervention, including in third countries" by Article 109(2)(g) of the EBCG Regulation.

¹² Specifically, the FRO is mandated to perform the following tasks: "Providing opinions on the operational plans drawn up for the operational activities of the Agency, on pilot projects and on technical assistance projects in third countries" by Article 109(2)(e) and "Providing opinions on working arrangements" by Article 109(2)(f) of the EBCG Regulation.

¹³ Code of Conduct for all persons participating in Frontex operational activities, developed under EBCG Regulation, Article 81, accessible at https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf; also refer to the Code of Conduct for Return Operations and Return Interventions, accessible at https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf.

- the Consultative Forum (Article 108 of the EBCG Regulation) – Since 2013, the Consultative Forum provides independent advice to the Agency on respect for, protection and promotion of fundamental rights in Frontex activities;¹⁴
- the Supervisory Mechanism on the use of force (Article 55(5)(a) of the EBCG Regulation) – The mechanism provides a framework for the Agency to monitor the application of the provisions on the use of force by its statutory staff, and follow up, including a reporting obligation for incidents on the use of force that has been extended to all members of the standing corps.

The EBCG Regulation further strengthens Frontex's responsibilities with a reinforced obligation of the Executive Director, after consulting the FRO, to suspend, terminate,

withdraw the financing for any activity of 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, or to not launch activities that could lead to violations of fundamental rights or international protection obligations of a serious nature (Article 46 of the EBCG Regulation). These decisions shall be based on duly justified grounds. The FRO advises the Executive Director on the recommended course of action if serious or persistent violations are found prior to the launch or during the Agency's activity.

In addition, the EBCG Regulation established the European Border and Coast Guard Standing Corps – the European Union's first uniformed law enforcement

service, composed of Frontex and MS/SAC officers. Deployed along the external land, sea and air borders of the European Union and Schengen Area, and on the territory of third countries, the Standing Corps forms part of the EU's operational arm for European integrated border management. For the first time, Frontex statutory staff deployed as members of the teams may exercise executive powers, including the use of force, under the command and control of the host MS (or third country).

The full operationalisation of the EBCG Regulation's provisions will be essential in addressing the continued concerns related to alleged violations of fundamental rights at the EU external borders, in a climate of an increased public attention to Frontex's fundamental rights responsibilities and accountability.

2. Situational overview

Migration and border security remain strategic priorities for the EU, amid an evolving geopolitical landscape and migratory pressures at the EU external borders. The Commission overcame the political deadlock over the reform of the Common European Asylum System (CEAS) with the presentation of the New Pact on Migration and Asylum in September 2020. The Pact proposes a comprehensive European approach to migration management and border protection across the EU. It foresees improved procedures within the asylum and migration system, aiming at striking a fair balance in responsibility sharing among Member States. It specifically aims at developing more effective procedures, improved cooperation with countries of origin and transit, successful integration of refugees and return of migrants with no legal right to stay. Several elements of the Pact have a direct impact on fundamental rights at the EU borders.

2.1. Migration Data

As of December 2020, an estimated 111,057 refugees and migrants arrived at the EU external land and sea borders.¹⁵ According to the United Nations Office of the High Commissioner for Refugees (UNHCR), 87,412 arrivals by sea (including to Italy, Greece, Spain, Cyprus and Malta) and 7,435 by land (including Greece and Spain) were recorded in the Mediterranean,¹⁶ while 17,921 people were recorded arriving in South Eastern Europe.¹⁷ This marks a decrease of around 20% compared to 2019, likely due to a tightening of the security of border zones and COVID-19-related restrictions imposed by Member States. Notably, these figures do not reflect undetected entries and cases of attempted arrivals, prevention of entry and unprocessed returns. Nationals of Tunisia, Algeria, Afghanistan, Pakistan, Syria and Turkey accounted for the largest number of migrants arriving in the EU. In

addition, as reported by EASO, approximately 461,300 applications for international protection were lodged in the EU as of December 2020, which represents a substantial decrease (-31%) compared to 2019.¹⁸ Moreover, the number of deaths at the external borders remained alarmingly high: the International Organization of Migration (IOM) and UNHCR have estimated that 1,458 persons died or went missing in 2020, with the biggest share, 1,014, in the Mediterranean.¹⁹

The COVID-19 pandemic affected migration and human mobility across Europe. Both EU Member States and third countries, including key transit and departure countries, restricted movements to minimise the spread of the virus, through the implementation of national lockdowns, travel bans and exceptional preventative health measures. According to the IOM, as of June 2020, 25% of land border crossing points and 9% of maritime crossing

14 A secretariat of the consultative forum is provided by the FRO as mandated by Article 109(2)(h) of the EBCG Regulation.

15 Data from UNHCR updated as of 31 December 2020, accessible at <https://data2.unhcr.org/en/situations/>.

16 Data from UNHCR updated as of 31 December 2020, accessible at <https://data2.unhcr.org/en/situations/mediterranean>.

17 UNHCR's RBE on South Eastern Europe, related to Refugees, asylum-seekers and other mixed movements - November 2020, accessible at <https://data2.unhcr.org/en/documents/details/84138>.

18 Latest asylum trends identified by EASO, accessible at <https://www.easo.europa.eu/latest-asylum-trends>.

19 UNHCR's Data and Trends on Europe situation, related to arrivals and displaced populations - November 2020), accessible at <https://data2.unhcr.org/en/documents/details/83905>.

points in the European Economic Area (EEA) were closed.²⁰ Irregular arrivals were also reduced substantially due to the pandemic. In 2020, the total number of reported detections of irregular border crossings along the EU external borders fell by 13% (to around 124,000) compared to 2019 (141,846).²¹ In April alone, Frontex reported an 85% decrease in the number of detections of irregular border crossings on Europe's main migratory routes.²² During autumn, record-high numbers of arrivals were noted along the Western African route, with mounting migratory pressure in the Canary Islands. In November, 22,800 irregular border crossings, 30% more than in September, were registered (departures from Morocco).²³

In response to the significant increase in the number of migrants reaching the Canary Islands, in November 2020, Frontex Situational Awareness and Monitoring Division launched a Rapid Vulnerability Assessment concerning Spain. As a sub-process of the Vulnerability Assessment, the Rapid Vulnerability Assessment monitored the immediate consequences of newly identified challenges for the EU's external borders and shared the outcome with Spain at the end of December 2020. Based on the findings, the Frontex Executive Director issued recommendations for practical measures to address the situation, particularly as relates to enhancing the registration and screening capacities in the Canary Islands.

2.2. Fundamental Rights at the EU borders

In 2020, migratory pressure was elevated in Greece's Eastern Aegean Sea and Evros regions. On the verge of the outbreak of the COVID-19 pandemic in Europe in early 2020, Turkish authorities announced they would no longer stop refugees and migrants from reaching Europe by land and sea.²⁴ As a consequence, movements of people, including a high number of vulnerable persons, increased sharply.²⁵ In response to the situation, the Hellenic authorities enacted certain measures, including the closure of selected border crossing points, the temporary suspension of asylum requests for one month and the immediate return to the countries of origin of those who entered Greece illegally, where possible without registration or individual risk assessment.²⁶ Upon request from the Hellenic authorities, Frontex launched a Rapid Border Intervention (RBI Evros 2020 and RBI Aegean 2020) to provide support at the Greek-Turkish border both at land and sea.

Throughout 2020, various entities have expressed concerns about the alleged persisting practice of collective expulsions or so-called 'pushbacks' at the internal and external EU borders, especially in the Aegean Sea, Central Mediterranean, and Eastern Mediterranean as well as along the Croatian border with Bosnia and Herzegovina and Serbia. International organisations, non-governmental organisations and the media published numerous

reports, testimonies and research findings documenting these so-called 'pushbacks' alongside other alleged serious violations of the EU Charter of Fundamental Rights at the EU land and sea borders, including of the principle of *non-refoulement*, the prohibition of torture and inhuman and degrading treatment, and the right to asylum. In addition to receiving information through internal reporting including in the form of SIRs, the FRO made use of a number of reports from international organisations, EU agencies and civil society actors, including statements by the IOM, UNHCR and FRA, with footage of possible fundamental rights violations at land and sea borders.

As regards the Greek-Turkish borders in particular, incidents involving so-called pushbacks have been reported inter alia by UNHCR, the United Nations Working Group on Arbitrary Detention, the United Nations Committee against Torture, the Greek National Commission on Human Rights, as well as the GCR,²⁷ Amnesty International,²⁸ Human Rights Watch²⁹ and HumanRights360.³⁰ According to available information, more than 200 fundamental rights-related incidents occurred on the Greek and Turkish coasts between March and August alone. A compilation of reports³¹ and media sources by the FRO on the issue resulted in a list of potential fundamental rights violations, including alleged collective expulsions as well as other practices (e.g. excessive use of force, illegal deportation, refusal of conducting search and rescue, confiscation and destruction of property).³² Information

20 Data and trends recovered from IOM's portal, accessible at <https://migration.iom.int/>.

21 Frontex news release, accessible at <https://frontex.europa.eu/media-centre/news-release/irregular-migration-into-eu-last-year-lowest-since-2013-due-to-covid-19-j34z2pa>; see also Frontex's Migratory Map, accessible at <https://frontex.europa.eu/along-eu-borders/migratory-map/>.

22 Situation at EU external borders in April – Detections <https://frontex.europa.eu/media-centre/news-release/situation-at-eu-external-borders-in-april-detections-lowest-since-2009-mjE5Uv>.

23 Situation at EU external borders – Western African route, accessible at <https://frontex.europa.eu/media-centre/news-release/situation-at-eu-external-borders-western-african-route-at-record-highs-yzD0DS>.

24 Reported, among others, by Reuters, accessible at <https://www.reuters.com/article/us-syria-security-turkey-migrants-idUSKCN2oL33V>.

25 IOM calls for humane response at the EU-Turkey border, accessible at <https://www.iom.int/news/iom-urges-restraint-calls-humane-response-eu-turkey-border>; also reported in FSC Report No. 10598/2020.

26 See FSC Report No. 10624/2020 - Measures by the Greek Government to upgrade the security at the land and sea borders, 1 March 2020.

27 Greek Council for Refugees, Country Report: Greece, available in the Asylum Information Database (AIDA), accessible at <https://www.asylumineurope.org/reports/country/greece>.

28 Greece/Turkey: Asylum-seekers and migrants killed and abused at borders, Amnesty International – 3 April 2020, accessible at <https://www.amnesty.org/en/latest/news/2020/04/greece-turkey-asylum-seekers-and-migrants-killed-and-abused-at-borders/>.

29 Greece: Violence Against Asylum Seekers at Border Detained, Assaulted, Stripped, Summarily Deported – 17 March 2020, accessible at <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>.

30 Defending Human Rights In Times Of Border Militarization, HumanRights360 – 19 October 2020, accessible at <https://www.humanrights360.org/defending-human-rights-in-times-of-border-militarization/>.

31 From open source data, reported news and calls for action from international organisations, including: UNHCR, accessible at <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>; the United Nations Special Rapporteur, accessible at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25736>; and Human Rights Watch, accessible at <https://www.hrw.org/news/2020/10/06/greece-investigate-pushbacks-violence-borders>; and reports from Turkish Coast Guard Command.

32 For example, see from open source data, reported news on The New Humanitarian | Greece's 'new tactic' of migrant expulsion ; Pushbacks: Migrants accuse Greece of sending

on alleged fundamental rights violations was further described in the SIRs and complaints in the Complaints Mechanism received and handled by the FRO in 2020 [see 4.3 and 4.4].

In October 2020, Frontex launched an internal inquiry³³ into incidents reported by the media, related to Frontex operational activities at the EU external borders between Greece and Turkey. After the extraordinary meeting³⁴ of the Frontex Management Board of 10 November 2020, the Agency decided to set up a Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (FRaLO),³⁵ an “evaluation committee to consider legal questions related to the

Agency’s surveillance of external sea borders and accommodating the concerns raised by Member States about ‘hybrid threats’ affecting their national security at external borders”,³⁶ to which the Fundamental Rights Officer was invited. The FRO has been consistently monitoring the situation, provided the WG FRaLO with advice and with FRO documents relevant for further assessments, as well as reporting to the Management Board on follow-up actions.

On top of existing challenges, the COVID-19 pandemic has had severe consequences in the realm of fundamental rights at the EU external borders. General movement restrictions and the closure of EU borders

have constrained the FRO in conducting field monitoring of Frontex operations: in 2020, only one field mission to Italy was completed. Monitoring has thus been conducted via other remote means, including exchanges with Frontex’s Operational Response Division and Situational Awareness and Monitoring Division; participating in briefings provided to deployed officers and analysing incoming reports; gathering information from the media; cooperating with the Consultative Forum and UNHCR; reviewing and delivering opinions on operational and strategic documents; refining the SIR procedure and the Complaints Mechanism; and developing a fundamental rights due diligence procedure.

3. Fundamental Rights compliance in Frontex operational activities

All operational activities falling within the mandate of Frontex, including their planning, implementation and evaluation, must comply with international and Union law including the Charter of Fundamental Rights (the Charter). Likewise, the tasks and the professional conduct of all stakeholders and participants in European Integrated Border Management are equally guided by respect for equality, non-discrimination and accountability, and by a dignified interaction with partners and those on the move across the EU external borders.

3.1. Analysis-based planning: Risk Analysis and Vulnerability Assessment in EIBM

Upon request of Member States or by the Executive Director, operational activities of the Agency are preceded by a thorough risk analysis of migratory flows, trends and

other possible challenges at the external borders and within the EU. Frontex collects and analyses data from Member States, EU bodies, partner countries and organisations, as well as from open sources, with the aim of creating a situational picture, identifying key influencing factors and risks as well as establishing trends. Frontex’s risk analysis activities are divided into three categories: Strategic Analysis, Operational Analysis and Third Country Analysis. They are used both to advise high-level decision-makers and for daily coordination of joint operations (JOs).

To provide a comprehensive situational picture, the data provided by Member States to the Agency for risk analysis purposes include information on the situation of persons in need of international protection and on particular needs of vulnerable groups (e.g. children, including unaccompanied children, pregnant women, victims

of gender-based and sexual violence, victims of trafficking in human beings (THB), stateless persons³⁷ and others in a vulnerable situation or at risk). Building on this data, the methodologies applied in risk analysis reflect the impact on the rights and vulnerabilities of persons crossing the borders. In the future, such analysis could be enhanced by means such as ensuring that data on migrants, including on entry/exit and referrals, is systematically disaggregated by nationality, sex and age during collection and assessment. Likewise, it is essential to ensure that the specific needs of vulnerable persons are understood and addressed, and that capacities of Member States are in place to serve those needs. The assessment of capacities and readiness of Member States to manage migratory flows is thus based on qualitative factors, allowing for an informed preparation of operational activities (e.g. the deployment of border guards with specific expertise

33 them back out to sea - BBC News ; ‘Catastrophe for human rights’ as Greece steps up refugee ‘pushbacks’ | Refugees | The Guardian and from the Turkish Coast Guard Command Frontex launches internal inquiry into incidents recently reported by media – 27 October 2020 <https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-internal-inquiry-into-incidents-recently-reported-by-media-ZtuEBP>.

34 Available summary on the “Extraordinary meeting of Frontex Management Board on the alleged push backs on 10 November 2020”, European Commission, accessible at https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-alleged-push-backs-10-november-2020_en.

35 Management Board Decision 39/2020 of 26 November 2020 on the establishment of the Management Board Working Group on Fundamental Rights and Legal and Political Aspects on Operations.

36 Frontex news release, accessible at <https://frontex.europa.eu/media-centre/news/news-release/frontex-calls-for-committee-to-consider-questions-related-to-sea-surveillance-BMieC8>.

37 Stateless person means a person who is not considered as a national by any State under the operation of its law, see Article 1, 1954 Convention Relating to the Status of Stateless Persons.

in THB or other cross-border crime, child protection, gender-based persecution, or international protection, to places where such assistance is required, based on the anticipated vulnerabilities and identified needs) and enhancing cooperation between border authorities of Member States and other specialized institutions.

To this end, in 2020 the FRO provided methodological support to ensure fundamental rights are factored into the Agency's risk analysis advising on the collection and analysis of data in quantitative and qualitative terms, in cooperation with data protection supervisory bodies at European and Member State level and the Frontex Data Protection Officer. In particular, the FRO has recommended in the assessments, observations and evaluations of operational activities as well as in other fora (e.g. operational meeting with Member States) to collect statistical information about the identification and referral of vulnerable groups to enable gap analysis and better planning of activities at all border sections.

In addition, since 2020 the updated Common Integrated Risk Analysis Model (CIRAM), a conceptual framework to assist in the preparation of risk analyses, has been undergoing a consultation process with the Member States and is still under revision. The FRO stands ready to provide guidance and assistance in relation to fundamental rights at the border, in light of the European Commission and the European Border and Coast Guard establishing the multiannual strategic policy cycle³⁸ for European integrated border management and an integrated planning process for border management and return, including operational planning, contingency planning and capability development planning processes.

In addition to the above, to understand the challenges to efficient border management the Agency is tasked to carry out vulnerability assessments of Member States' capacity to manage their borders. These assessments allow for the identification of weaknesses and measures to address

them, preventing crises at the EU external borders before they arise. In 2020, the FRO contributed to several vulnerability assessments, including of Member States' referral mechanisms for vulnerable persons and in relation to gaps identified during FRO missions.

Article 32(2) of the EBCG Regulation outlines the comprehensive nature of the Vulnerability Assessment. The Agency should monitor and assess the availability of Member States' technical equipment, systems, capabilities, resources, infrastructure and skilled and trained staff necessary for border control using both qualitative and quantitative variables. Furthermore, the Vulnerability Assessment should factor in fundamental rights-related information, and specifically assess the availability and effectiveness of mechanisms and procedures for the identification and referral of vulnerable persons, including those in need of or wishing to apply for international protection.

In September 2020 the FRO participated in the Pilot Simulation Exercise organised by the Frontex Vulnerability Assessment Unit. The concept, concentrating on the referral mechanism and cross-border crime, with a particular focus on trafficking in human beings, was developed together with experts from the Fundamental Rights Office, the Coast Guard and Law Enforcement Unit and the Risk Analysis Unit, and tested at four air-Border Crossing Points in three Member States (Romania, Slovenia, and Sweden). Colleagues from various Frontex entities also participated in the exercise. Despite challenges presented by COVID-19, the web-based solution offered an opportunity for all volunteering Member States to participate. At the same time, it functioned as an effective awareness session on THB-related issues, including a presentation of recent trends by Europol, which has received positive feedback from participating MS officers. The exercise also yielded information on the functioning of the referral mechanism and feedback loop from investigative authorities to the border-control authority following a referral.

3.2. Joint operations, pilot projects, rapid border interventions

Frontex Operational Activities, taking place at the EU sea, land and air borders or in third countries [see 6.3], are based on risk analysis and uniquely tailored to the circumstances identified by the Agency.³⁹ In 2020, Frontex planned and implemented 15 Joint Operations, including in third countries. Of these, eight were maritime, five took place at land borders and two at airports. Three activities were hosted for the first time by Albania (2019) and Montenegro (2020) following the entry into force of their respective Status Agreements with the EU. In March 2020 Frontex launched two Rapid Border Interventions upon request of the Hellenic authorities: RBI Evros 2020 to support along the Greek-Turkish land border in the Evros region, and RBI Aegean 2020 to support Greek border surveillance activities, including search and rescue operations, in the Aegean Sea. Moreover, in November 2020, due to a sharp increase of irregular migratory flow along the Western African route, Frontex launched an operational activity in the Canary Islands.

Respect for, protection and promotion of fundamental rights are mandatory elements throughout the planning, implementation and evaluation of activities by the Agency. At the level of planning, the FRO provides opinions on operational plans and working arrangements and advises on the implementation of status agreements, pilot projects and technical assistance projects in third countries. The FRO then follows up, closely monitoring ongoing activities [see section 4], and participates, among others, in the evaluation of joint operations through the submission of a formal note. To ensure alignment and compliance of Frontex's operational activities with fundamental rights, the FRO may provide recommendations to the Agency to adopt fundamental rights safeguards and practical measures.

According to Article 10(1)(ad) of the EBCG Regulation, the Agency is requested to

³⁸ As referred to in Article 8(7) of the EBCG Regulation.

³⁹ Frontex may launch an operation upon a request from a Member State facing challenges at its external border. However, the Frontex Executive Director can also recommend a joint operation or rapid border intervention to a Member State based on the results of a vulnerability assessment or where a critical impact level is attributed to one or more external border sections and taking into account the Member State's contingency plans, the Agency's risk analysis and the analysis layer of the European situational picture. The Agency supports the host Member State with border control, surveillance, search and rescue operations, registration and identification capacities, as well as coast guard functions and combatting cross-border crime. The levels of deployment depend on the level of migratory pressure in the area.

"follow high standards for border management, allowing for transparency, public scrutiny and full respect of the applicable legal framework ensuring respect, protection and promotion of fundamental rights." The corresponding function of monitoring the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities, rests with the FRO as per Article 109(2)(b) of the EBCG Regulation. It can be undertaken by the FRO herself/himself through "carrying out on-the-spot visits to any joint operation, rapid border intervention, pilot project, migration management support team, return operation or return intervention, including in third countries". In the operational areas, the FRO can deploy the Fundamental Rights Monitors⁴⁰ to execute these functions, as per Article 110 of the EBCG Regulation.

Furthermore, the FRO may play a preventive role specific to the operational context. The assessment of fundamental rights risks related to engaging in a given operational activity is the precondition for the start of a particular activity. According to Article 46 of the EBCG Regulation, when consulted the FRO may advise the Executive Director not to launch an activity by the Agency, in case there are already 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 (Article 46(5) of the EBCG Regulation). Likewise, if serious or persistent fundamental rights violations related to the Agency's activities emerge during operational activities, the Director shall, after consulting the Fundamental Rights Officer, suspend or terminate the said activity or withdraw financing in line with Article 46(4) of the EBCG Regulation. To ensure these decisions are based on duly justified grounds, when taking them, the Executive Director should take into account not only the advice of the FRO but all relevant information, such as the number and substance of complaints registered that have not been resolved by a national competent authority, serious inci-

dents reports, reports from coordinating officers and other relevant international organisations, Union institutions, bodies, offices and agencies.

For this purpose, throughout 2020, the FRO has developed an internal fundamental rights due diligence procedure to establish a comprehensive methodological approach to analysing the risks of fundamental rights violations related to operational activities, including in cooperation with third countries. The procedure also serves the FRO to provide informed advice to the Executive Director for his potential decision not to launch, suspend, terminate or withdraw financing, in whole or in part, of operational activities in line with Article 46 of the EBCG Regulation. The internal FRO procedure is based on a fundamental rights risk assessment methodology aligned with the processes of the Commission and the European External Action Service (EEAS) as well as on information from trusted partners such as EASO, UNHCR, local organisations and national human rights institutions. The internal FRO due diligence procedure complements the emerging due diligence policy of the Agency, on which the FRO will also be consulted.

3.3. Analysis and Observations to operational documents

Operational plans for joint operations contain general instructions on how to safeguard fundamental rights, including data protection requirements, during Frontex operational activity as defined by Article 38(3) of the EBCG Regulation. Operational plans (OPLANs) are binding on the Agency, on the host and participating Member States as well as on third countries, as relevant. They include practical provisions on the respective tasks and fundamental rights-based responsibilities for different team members which are drawn up with the support of the FRO and with advice and assistance provided by the Fundamental Rights Monitors. The FRO provides formal opinions on draft OPLANs in accordance with Article 109 (2)(e) of the

EBCG Regulation. In 2020, the FRO provided comments and observations to 11 operational plans [Box 1] to be taken forward in future OPLANs.

To ensure protection of fundamental rights, the EBCG Regulation specifically stipulates that OPLANs should contain 1) procedures for the referral of persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and other persons in vulnerable situation to competent national authorities for appropriate assistance;⁴¹ and 2) a mechanism to receive and transmit to the Agency complaints against any persons participating in an operational activity of the Agency, including border guards or other staff of the host MS and members of the teams, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency.⁴²

In March of 2020, in cooperation with Frontex Operational Division, the FRO developed the "General instructions on how to ensure the safeguarding of fundamental rights during the operational activity of the Agency", including a complaints mechanism, to ensure that operational plans contain the fundamental rights safeguards as required by the EBCG Regulation.⁴³ These instructions cover EBCG obligations as regards the protection of fundamental rights, including access to international protection and referral of vulnerable groups, individual tasks and responsibilities of deployed team members, specific fundamental rights safeguards in relation to Third Country Observers and references to the role of the Fundamental Rights Monitors.

In the context of Regulation 656/2014,⁴⁴ the FRO provided observations with regard to the Agency's maritime operations. In 2020 the FRO expressed the need to enhance the quality and comprehensiveness of the assessments of the situation in third countries, including their content and the methodology to be followed by the Member States as well as by the Agency. The FRO called for regular

⁴⁰ The recruitment process of at least 40 Fundamental Rights Monitors started in the fourth quarter of 2020, with their on-boarding in the second quarter of 2021.

⁴¹ Article 38(3)(m) of the EBCG Regulation.

⁴² Article 38(3)(n) of the EBCG Regulation.

⁴³ Article 38(3)(l) of the EBCG Regulation.

⁴⁴ Regulation (EU) 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex also introduced changes to the mandate of the agency, namely in terms of what concerns sea operations coordinated by Frontex, accessible at <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex:32014R0656>.

updates and use of a wide range of sources to ensure that the information collected to assess the situation served the purpose of preventing violations of the principle of *non-refoulement*. Accordingly, the FRO has further recommended enhancing the general assessments of fundamental rights situation in third countries.

The Fundamental Rights Officer raised concerns regarding the launch of two Rapid Border Interventions in 2020: RBI Evros and RBI Aegean. In addition to FRO Observations to both operational plans, the FRO issued a supplementary opinion to Rapid Border Intervention Evros. This was addressed to both the Management Board and the Executive Director. In this opinion, the FRO stressed that the engagement in RBI Evros 2020 could lead to fundamental rights risks of a serious nature, including with regard to undermining international protection and the right of *non-refoulement*. The FRO thus recommended the Executive Director to reconsider the terms of the deployments, referring to Article 46(4) and (5) of the EBCG Regulation.

FRO OBSERVATIONS TO PLANS

In 2020, the FRO provided comments and observations to the following operational plans:

- OPLAN JO Coordination Points 2020 Air
- OPLAN JO Flexible Operational Activities (FOA) Land 2020
- OPLAN JO FOA Western Balkans-Albania 2020
- OPLAN JO Themis 2020
- OPLAN Poseidon 2020
- OPLAN Coordination Points 2020 Land
- OPLAN Rapid Border Intervention Aegean 2020
- OPLAN Rapid Border Intervention Evros 2020
- OPLAN JO Montenegro 2020
- OPLAN JO Minerva 2020
- OPLAN JO Canary Islands – Focal Points Sea 2020

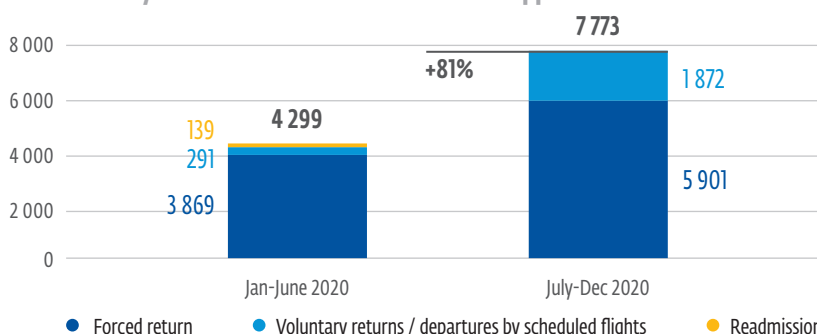
3.4. Return activities supported by Frontex

The Agency provides assistance to the Member States, facilitating the return of third-country nationals who have exhausted all legal avenues to remain in the EU/SAC or who have committed offences in a Member State and have lost the right to legally stay in its territory. Frontex support in return operations is operational and technical and occurs without entering into the merits of return decisions issued by MS/SAC authorities. In the first half of 2020, a total number of 4,299 third-country nationals were returned with support of Frontex (including 139 third country nationals readmitted to Turkey from Greece based on the EU-Turkey Statement), representing a decrease of 48% compared to 2019, largely due to the pandemic. Of the 72 operations by charter flights with Frontex support, 59 had monitors on board.⁴⁵ In the second half of the year, 7,773 (+81% compared to 2019) third-country nationals were returned, and readmission operations were suspended as of 12 March 2020. A total of 5,901 were forced returns. During the second half of 2020, 92 monitors participated in return operations by charter flights coordinated by the Agency, of which 68 were deployed from the Frontex pool upon Member States' request.⁴⁶ Following the Agency's expanded mandate, which entered into force in December 2019, Frontex has also been providing technical assistance to the Member States in voluntary returns since then. In 2020, around 2,163 voluntary returns/departures were carried out by MS/SAC with technical assistance from the Agency.

In every return operation organised or coordinated by Frontex, Article 82(3) of the EBCG Regulation obliges team members to fully respect fundamental rights while performing their tasks. This includes respecting the principle of *non-refoulement*, the prohibition of torture and of inhuman or degrading treatment or punishment as well as protecting human dignity, liberty and security of the returned persons. The use of force, including means of restraint by members of the return teams, shall be strictly limited in compliance with the principle of proportionality, necessity and in strict legality. Moreover, the conduct of participants in return operations has to align with applicable rules contained in the respective Operational Plans and the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex,⁴⁷ reflecting the standards in the Guide for Joint Return Operations coordinated by the Agency. Throughout the entire return operation, team members must take into consideration the specific needs and vulnerabilities of the returned persons, including their mental and physical condition, and individual risk assessments including the best interests of the child.

Article 50(5) of the EBCG Regulation provides for the systematic monitoring of return operations. In Collecting Return Operations, where means of transport and return escorts are provided by a third country to which persons are returned, at least one forced-return monitor (from the national forced-return monitoring bodies or the pool of forced return monitors) shall be present throughout the entire return operation⁴⁸.

Third country nationals returned with Frontex support in 2020



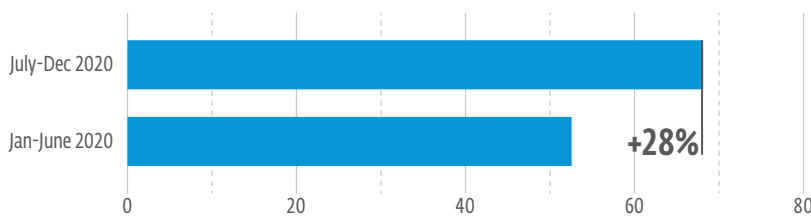
45 Frontex Evaluation Report (FER) Return Operations 1st Half 2020 and respective FRO observations.

46 Frontex Evaluation Report (FER) Return Operations 2nd Half 2020 and respective FRO observations.

47 Article 81(2) of the EBCG Regulation.

48 Article 50 (3) of the EBCG Regulation.

Monitors deployed from the Frontex pool upon MS request



The pool of forced-return monitors has been established by Frontex, with the FRO also making available experts to observe and report on fundamental rights compliance in forced-return operations and return interventions in line with consistent and transparent criteria.⁴⁹ In November 2020, the Frontex Management Board

adopted its decision⁵⁰ on the revised profile and determining the number of forced-return monitors to be made available to the pool of forced return monitors. The Agency took into account the opinion of the Fundamental Rights Officer of November 2020 pursuant to Article 51(1) of the EBCG Regulation.

In 2020, the FRO received 124 reports from monitors in return operations. Based on their thorough analysis, the FRO issued recommendations to the Member States and Frontex units concerned.⁵¹ The majority of the findings showed that the operations were undertaken in compliance with fundamental rights. Specific concerns, along with practical rights-based recommendations, were conveyed to Frontex European Centre for Returns (ECRet) and to the Member States. The FRO further regularly transmitted the main findings of the received reports to the Management Board and the Executive Director, as well as presenting them to monitoring institutions and in return-related fora.

4. Fundamental Rights monitoring

The fundamental rights monitoring system in Frontex is composed of a set of tools and instruments designed to ensure the compliance of the Agency's activities with fundamental rights. These instruments are used to translate Frontex's obligations stemming from the EBCG Regulation, the Charter of Fundamental Rights of the EU and international law into the work of the Agency, and to ensure adequate and timely responses, including reporting on concerns of possible fundamental rights violations in Frontex's operational activities, and the risks thereof.

4.1. Accountability

While performing their tasks and duties, all participants in Frontex operational activities, including deployed members of the teams as well as non-uniformed personnel (such as interpreters and cultural mediators) must comply with the statutory objectives and tasks of the Agency. This also includes compliance with international and EU law. The principles of trans-

parency and accountability gain particular importance with regard to the exercise of executive powers of Frontex statutory staff deployed as members of the teams.⁵²

In cooperation with the FRO, Frontex has developed a Code of Conduct⁵³ to guide the professional behaviour of the team members. Furthermore, fundamental rights monitoring, including through a comprehensive reporting system, is intended to ensure transparency and accountability for Frontex staff deployed to the Agency's operations. Accordingly, all persons participating in Frontex activities have an obligation to report any suspected violation of the Code of Conduct and/or fundamental rights enshrined in the Charter, e.g. via the Serious Incident Report (SIR) mechanism.

The EBCG Regulation introduced the authority of members of the EBCG standing corps to use force. The use of force, including the use of service weapons, ammunition and equipment, shall be exer-

cised in accordance with the national law of the host MS and in the presence of border guards of the host MS. To ensure the use of force is applied in line with fundamental rights and in strict adherence to the principles of necessity, proportionality and the duty of precaution,⁵⁴ the Agency set up a supervisory mechanism, in consultation with the FRO, to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps and provide a framework for follow-up where relevant.⁵⁵ In this framework, any incidents involving the use of force by statutory staff shall be immediately reported through the chain of command to the coordination structure for each operation, and consequently to the Fundamental Rights Officer and the Executive Director. The FRO is tasked with ensuring that incidents related to the use of force and use of weapons, ammunition and equipment are thoroughly investigated and reported without delay to the Executive Director. The EBCG Regulation

⁴⁹ Article 50 (5) of the EBCG Regulation.

⁵⁰ Management Board Decision 40/2020 of 26 November 2020 adopting the profile and determining the number of forced-return monitors to be made available to the pool of forced-return monitors.

⁵¹ Article 50 (7) of the EBCG Regulation.

⁵² Annex V to the EBCG Regulation.

⁵³ Code of Conduct for all persons participating in Frontex operational activities, developed under EBCG Regulation, Article 81 - accessible at https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf; also refer to the Code of Conduct for Return Operations and Return Interventions, accessible at https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf.

⁵⁴ Annex V to the EBCG Regulation.

⁵⁵ Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps.

further stipulates that the results of such investigations shall be transmitted to the Consultative Forum.

To operationalise this reporting obligation, the Agency has been developing a Standard Operating Procedure on the use of force reporting, on which the FRO was consulted at various stages of the drafting. In addition, in 2020, the FRO commented on a Frontex training manual on Good Practices in the Training of Force Measures, Firearms and Tactical Procedures, emphasising prevention and de-escalation techniques as well as the principles governing the use of force. The FRO's comments were incorporated into the manual that it is now being used to train the EBCG Standing Corps.

4.2. Fundamental Rights Monitors

Article 110 of the EBCG Regulation requires the appointment of Fundamental Rights Monitors as statutory staff of Frontex, at least 40 to be recruited by 5 December 2020.⁵⁶ The process was delayed pending decisions on the Frontex establishment plan as part of the budget for 2020, as well as the adoption of Management Board Decision 26/2020 of 23 September 2020⁵⁷ on the appointment of an *ad interim* Fundamental Rights Officer and Management Board Decision No. 34/2020 of 10 November 2020⁵⁸ on middle management staff. Recruitment procedures for the temporary agent positions at two levels were launched in November 2020 under the lead of the Fundamental Rights Officer *ad interim*. Frontex management does not have any appointing powers and responsibilities vis-à-vis the Fundamental Rights Monitors as FRO personnel, which are fully within the mandate of the FRO.⁵⁹ The FRO is also responsible for managing the monitors.⁶⁰

Deployed to the operational areas on behalf of the FRO, the Fundamental Rights Monitors (FROMs) will monitor and assess

PILOT PROJECT WITH FRA (November 2019–June 2021)

To set up the **Fundamental Rights Monitors**, Frontex launched a pilot project in cooperation with the Fundamental Rights Agency (FRA). The FRO and FRA conducted pilot monitoring visits to operational areas – at land borders (Bulgaria, Hungary, Poland and Croatia); at sea (Greece); at air borders (Rome Airport and Athens Airport); and in a third country (Albania).

These were key to testing the most effective means for monitoring and to set the right modalities for the deployment, conduct and work of the FROMs. The package contained guidelines, manuals, procedures, managerial models, learning plans and curricula for the FROMs.

The outcome of the project includes a methodology for the FROMs on profile-specific monitoring and reporting as well as training curricula for the FRO. Within the framework of this project, FRA also provided support with the recruitment process of the FROMs.

the fundamental rights compliance of Frontex activities and provide advice and assist in this regard, while contributing to the promotion of fundamental rights as part of European Integrated Border Management. Through their work, the FROMs will be a prominent element of Frontex's fundamental rights monitoring system. As the 'extension' of the Fundamental Rights Office in the field, they will support the Agency in upholding its fundamental rights obligations.

The FROMs will observe the activities undertaken by Frontex, documenting their compliance with fundamental rights standards. They will also monitor the procedures related to border management and returns⁶¹ and the environment in which those are implemented. The Fundamental Rights Monitors will not only assess compliance with fundamental rights but also play an important role in flagging related challenges and risks as well as opportunities for the promotion of Union and international law. In this context, the FROMs will cooperate with Frontex Coordinating Officers, advise and assist on matters related to fundamental rights and report to the Fundamental Rights Officer on potential concerns. They will also contribute to training on fundamental rights and assist the FRO in ensuring that

Frontex operational documents align with international and European fundamental rights standards.

Throughout 2020, the Fundamental Rights Office managed the joint pilot project with FRA to establish the function of the FROMs, defining their tasks and developing guidelines [see Box 2 below]. The recruitment process of the Fundamental Rights Monitors started in the fourth quarter of 2020; the first cohort is expected to come on board in the second quarter of 2021.

4.3. Serious Incident Reporting

Article 80 of the EBCG Regulation mandates Frontex to establish an effective mechanism to monitor respect for fundamental rights in all its activities. This requirement is operationalised in the Frontex Standard Operating Procedure to ensure respect for Fundamental Rights in the Agency's operations, in the pilot project (Standard Operating Procedure on Fundamental Rights)⁶² and in the Frontex Standard Operating Procedure on Serious Incident Reporting,⁶³ which oblige participants in Frontex operations to report Serious Incidents such as situations of potential violations of fundamental rights, including violations of the EU *acquis* or international

⁵⁶ Article 110(6) of the EBCG Regulation.

⁵⁷ Management Board Decision 26/2020 of 23 September 2020 on the appointment of an *ad interim* Fundamental Rights Officer.

⁵⁸ Management Board Decision No 34/2020 of 10 November 2020 on middle management staff.

⁵⁹ The EBCG Regulation entrusts all the powers of the appointing authority to the Fundamental Rights Officer, a role fully independent from Frontex management.

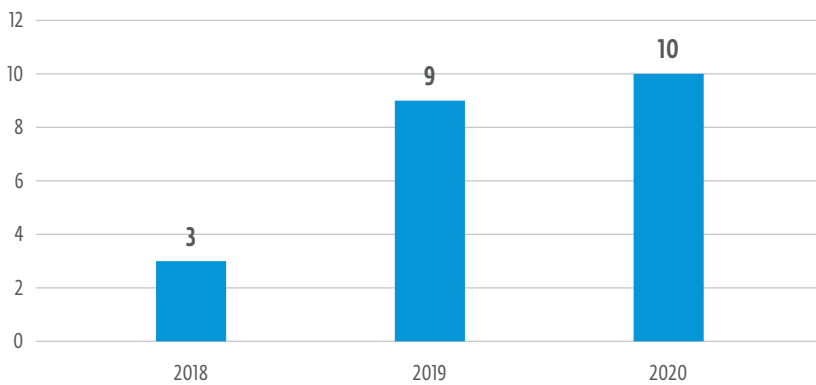
⁶⁰ Article 109(2)(j) of the EBCG Regulation.

⁶¹ The Fundamental Rights Monitors may act as forced-return monitors, when nominated by the FRO to the forced-return monitor pool.

⁶² ED Decision No 2012/87 of 19 July 2012 on the adoption of the Frontex Standard Operating Procedure to ensure respect of Fundamental Rights in Frontex joint operations and pilot projects.

⁶³ ED Decision No 2014/55 on the adoption of the Frontex Standard Operating procedure on Serious Incident Reporting.

Serious Incident Reports coordinated by the FRO



law. In addition, reporting obligations exist for potential violations of Frontex's Code of Conduct applicable to all persons participating in Frontex operational activities and the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, as well as situations with serious actual or potential negative implications on Frontex core tasks.

The information received is then assessed and analysed by the FRO once a formal SIR is provided. In addition, the FRO may also review SIRs that are not categorised as fundamental rights related and hence sent to other entities for evaluation in order to verify the categorisation. The FRO's mandate in the SIR context is to follow up on the collection of information related to the incident and support the Frontex monitoring system for fundamental rights with an analysis of fundamental rights implications. The FRO also has the task to identify preventive and corrective measures, and to provide recommendations in case of fundamental rights risks during the Agency's operational activities. Such recommendations form part of the final report closing a SIR drafted by the FRO, which contains a summary and assessment of the incident and identifies, where relevant, follow-up actions by the FRO and/or the Agency's business entities.

The aim of the SIR mechanism is to inform as soon as possible Frontex Senior Management, the Frontex Management Board, MS or SAC, and other stakeholders about the occurrence of a serious incident, allowing for swift responses to potential violations of fundamental rights and the risks thereof.

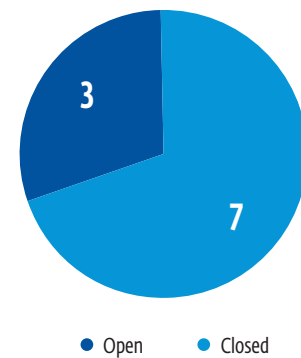
In 2020, 10 SIRs were registered with the FRO nominated as coordinator, which involved alleged violations of fundamental rights during operational activities coordinated by the Agency. As of the end of May 2021, seven SIRs had been closed and three remained open.

The FRO has regularly reported to the Agency's Management Board and also provided updates to the open cases. The SIRs have also informed FRO Opinions on operational activities and Frontex evaluation reports. Throughout 2020, the FRO has continued to address the competent authorities regularly for updates, final conclusions and findings, and produced a report on possible fundamental rights implications for the Agency's activities, which will be further updated in 2021 to contain the results of all pending cases submitted the previous year.

Finally, in 2020, the FRO identified SIRs related to potential violations of fundamental rights, which had not been categorised as relevant fundamental rights-related SIRs (Category 4). As a consequence, the FRO had not been nominated as a SIR coordinator in those cases, and hence was not in the lead in procedures such as information gathering, exchange with national authorities, assessing alleged violations of fundamental rights or issuing recommendations. Serious concerns were raised by the FRO in the MB meeting in November 2020 about SIR handling and follow up. The number of SIRs, various media reports and the subsequent FRaLO inquiry into the incidents resulted in a request for SIR

SIRs handled by FRO in 2020

Updated May 2021



procedure reform, as was recommended by the FRO and the Consultative Forum in previous years, to be in place by early 2021, assigning greater involvement and responsibility to the FRO.

4.4. Accountability

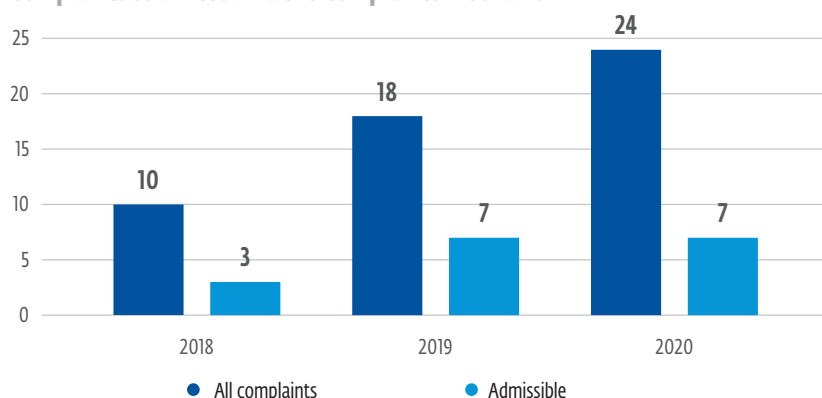
The individual Complaints Mechanism (CM) was set up by Regulation (EU) 2016/1624⁶⁴ and further developed by Regulation (EU) 2019/1896, with a clear objective of monitoring and ensuring respect for fundamental rights in all the activities of the Agency.⁶⁵ Within this independent administrative mechanism, the FRO is responsible for handling complaints received by the Agency, in accordance with the right to good administration, as per Article 111(4) of the EBCG Regulation, and based on the Executive Director Decision⁶⁶ of 6 October 2016 on the Agency's Rules on the Complaints Mechanism. Within the CM, any person who is directly affected by the actions or failure to act of staff involved in Frontex activities (i.e. joint operation, pilot project, rapid border intervention, migration management support team deployments, return operations, return interventions or operational activities of the Agency in third countries) and who considers that his or her fundamental right(s) have been violated due to those actions or failure to act, may submit a complaint in writing to the Agency. The FRO is responsible for performing an admissibility assessment of all complaints received and refers admissible complaints for further follow-up to Member States' authorities and stakeholders and to the Agency's Executive Director (if a regis-

⁶⁴ Regulation (EU) 2016/1624, accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R1624&from=EN>.

⁶⁵ Article 111(1) of the EBCG Regulation.

⁶⁶ ED Decision No R-ED-2016-106 on the Complaints Mechanism of 6 October 2016.

Complaints submitted via the Complaints Mechanism



tered complaint concerns a staff member of the Agency).

Since its establishment, the number of complaints received via the Complaints Mechanism has been relatively low, with a slight increase in recent years. Two complaints were submitted in 2016, 15 in 2017 and 10 in 2018. Efforts related to the dissemination of CM-related material and awareness activities have seen the numbers climb to a total of 18 complaints in 2019 and 24 in 2020. The FRO will monitor closely the impact of newly developed instruments and will continue advocating strengthening the Complaints Mechanism and making it a priority.

The functioning of the mechanism has been regularly reviewed and enhanced. In this sense, the FRO has continued to provide advice on and support to the development of tools to promote fundamental rights in border management activities, while continuously working on improving the effectiveness of the monitoring system, as provided by the EBCG Regulation. In 2020, the FRO prepared information booklets on the CM in new languages, facilitated their dissemination and finalised the development of a new tool for the submission of complaints through electronic devices. As provided for by Article 111(1) of the Regulation, the FRO has been continuously engaged and is being consulted on the drafting of the revised Rules on the Complaints Mechanism, providing advice on substantial aspects based on FRO's

experience in handling the individual complaints submitted via the CM. The purpose of the revised Rules on the Complaints Mechanism is to make improvements and adaptations to the mechanism that are needed within the framework of the reinforced mandate of the Agency and its operational context under the new EBCG Regulation.

The FRO has also handled an inquiry by the European Ombudsman (EO) relating to the functioning and effectiveness of the Complaints Mechanism. The FRO further provided replies to Public Access to Documents (PAD) requests as well as requests for information from journalists and individuals about the mechanism. Throughout 2020, the FRO has also been working on a memorandum of understanding with Albanian authorities regarding the handling of complaints received in relation to activities of the Agency in Albania under the Status Agreement, or in participation with Albanian staff, and clarifying the interaction between the two complaints mechanisms, the Agency's and the national mechanism. The MoU draft proposal was shared with the Albanian authorities in the last quarter of 2020 for their consideration. Similar agreements will also be set up with Montenegro and Serbia under the Status Agreement signed with the European Union.

In order to raise awareness and provide better access to the Complaints Mechanism, the FRO ensured wide distribution

of CM booklets⁶⁷ and provided trainings on the Complaints Mechanism, highlighting the obligation of field staff to inform migrants about its existence and functioning. Within its training capacity, throughout the year, the FRO delivered presentations on the CM to the Standing Corps (SC) category 1 within the Basic Standing Corps training, to team members deployed to the Frontex operation in Lampedusa, Italy within JO Themis and to multiple organisations (to the Polish bar association and various Polish migration non-governmental organizations, facilitated by UNHCR Poland). Printable versions of the CM booklet have been uploaded to Frontex One Stop Shop (FOSS) and Frontex Application for Returns (FAR), two Agency databases, where they can easily be accessed by all officers deployed to Frontex operations. The FRO also finalised and published an animated video providing information on the Complaints Mechanism to the general public and potential complainants. Disseminating information material on the CM within the Agency's operational areas and delivering presentations on the CM will continue to be a priority, as such presentations and field visits have provided the FRO with a platform not only for improving awareness amongst Frontex team members and other stakeholders but also for discussing challenges.

Steps to further increase awareness and ensure proper functioning of the mechanism are already planned, including through enhanced cooperation between the FRO and the European Ombudsman and national ombudsmen as well as with national fundamental rights bodies and authorities. With regard to the efficiency and effectiveness of the mechanism, shortcomings and weaknesses are to be further addressed, in particular to ensure that national authorities provide the FRO with comprehensive, transparent and timely replies, enabling adequate follow-up to complaints and making available to the FRO the tools and procedures if addressees do not report back within a determined time period.

67 The Complaints Mechanism's booklets are currently available in the following languages online: Albanian, Arabic, English, Farsi, French, Georgian, German, Kurdish, Pashtu, Russian, Serbian, Spanish, Tigrinya and Urdu.

5. Knowledge, skills and competences

Ensuring that all Frontex stakeholders and participants in Frontex operational activities comply with fundamental rights standards requires continuous training, building and maintaining their knowledge of international and European law and promoting a culture of respect for fundamental rights. To this end, training sessions are developed and delivered to all participants upon entry into Frontex activities, before deployment and on a rolling basis. This is done with a view to continuously enhancing the capacities of team members, while promoting respect for fundamental rights when interacting with those who cross the EU external borders.

5.1. Training

Frontex ensures that, where possible, all statutory staff and members of the Standing Corps deployed as member of the teams receive training in EU and international law, including on fundamental rights and access to international protection.⁶⁸ These trainings also include specific guidelines for identifying persons seeking protection and directing them towards the appropriate procedures (referral) as well as guidelines for addressing the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance and other particularly vulnerable persons.⁶⁹ Staff members also receive theoretical and practical training on the use of force, weapons, ammunition and equipment as well as on fundamental rights safeguards.

In line with Annex V (4) to the EBCG Regulation, the FRO is mandated with verifying and providing feedback on the content of induction and refresher trainings, with special regard to aspects related to fundamental rights and how they can be protected in situations where the use of force is necessary, and to preventive techniques. The Frontex procedures regarding the use of force and the supervisory mechanism are to be considered as the underlying basis for this training and will be further developed.

The learning goals of the training activities are developed based on the needs of the deployed officers to ensure their daily tasks

are undertaken in line with the law and with the utmost professionalism and competence. The capacity building activities and the learning materials further mainstream fundamental rights, including on how to proactively identify and refer persons seeking international protection. Additional training courses, seminars on particular aspects of EIBM for officers, monitors of the competent national services of Member States and third countries, FROMs and others, are developed by the Agency where and when needed.

Throughout 2020, the FRO supported the Frontex Training Unit in the development of the curriculum for the Category 1 Standing Corps and delivered several training sessions for the Category 1 Standing Corps in Poland and Italy. In Poland the Fundamental Rights Office's team delivered a training module on fundamental rights relevant to border guarding and child protection to all participating Standing Corps members. In Italy a total of ten modules on fundamental rights were delivered to all participating Standing Corps members.

5.1. Research and development, state of the art technology

In the context of efforts at EU level to strengthen migration and security management through the creation and adaptation of a series of EU IT Systems, the Agency is increasingly relying on a number of technological solutions to improve the efficiency and effectiveness of its EIBM practice, while ensuring the Agency's compliance with fundamental rights. The Agency's use or future use of large-scale information technology systems, such as the Schengen Information System (SIS) II, the European Travel Information and Authorisation System (ETIAS), European Border Surveillance system (EUROSUR) and the Entry-Exit System (EES), may be both opportunities and challenges from a fundamental rights perspective.

Such IT systems can help prevent and combat cross-border crime, including the trafficking of human beings, and help find and assist persons in vulnerable situations

(e.g. during search and rescue), even contributing to ensuring the protection of those who cross EU borders and saving lives. At the same time, fundamental rights advocates have voiced concerns in relation to the protection of personal data and the principle of non-discrimination and have questioned the proportionality of extensive data collection and interoperability of systems. In any case, it is clear that compliance with fundamental rights must be a core element in the establishment and running of large-scale information systems under the responsibility of the Agency.

The Agency's work on the establishment of the ETIAS, specifically the ETIAS Central Unit, has been ongoing throughout 2020, with the FRO as a member of the Project Steering Committee. In 2021 the FRO will continue to provide support regarding the set-up of the system and advice in its areas of expertise.

The FRO will in particular play an essential role in setting up the ETIAS Fundamental Rights Guidance Board (EFRGB) as part of the ETIAS architecture and as foreseen by the ETIAS Regulation.⁷⁰ Mandated to perform regular appraisals and issue recommendations to the ETIAS Screening Board, the EFRGB will monitor the impact of the processing of applications and the implementation of the ETIAS screening rules on fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination. As part of its efforts to set up the board's secretariat, the FRO will liaise with other board members in the coming months, initiating discussions on rules and procedures.

Finally, to help ensure that the fundamental rights perspective is adequately integrated in the use of cutting-edge technology and interoperability systems within EIBM, throughout the year, the FRO and her team participated in workshops, seminars and other capacity development events of partners (CEPOL – the European Union Agency for Law Enforcement Training, Council of Europe, OSCE – the Organization for Security and Co-operation in Europe, ODIHR – the Office for Democratic Institutions and Human Rights).

⁶⁸ Article 62(2), (4), and (5) of the EBCG Regulation.

⁶⁹ Article 62(2) of the EBCG Regulation.

⁷⁰ Regulation (EU) 2018/1240; full text accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1240>.

6. Cooperation around EIBM

Efficient border management requires proactive coordination and cooperation. To that end, Frontex maintains collaboration with various stakeholders in the EU and beyond. Specifically, to ensure protection of fundamental rights in its activities, the Agency regularly exchanges and cooperates with governmental and non-governmental entities at the international, regional and local level.

6.1. Agency-supported cooperation at European and national levels

Within the European Union, Frontex supports the facilitation of cooperation among the national authorities responsible for border management and returns. The Agency also coordinates the implementation of joint operational activities among the Member States and reinforces their operational and technical capabilities to jointly address migratory challenges. For instance, the Agency-run pool of (MS/SAC) forced return monitors facilitates consistent monitoring of fundamental rights compliance in return operations and interventions.

Frontex also deploys liaison officers to Member States and Schengen Associated Countries to foster cooperation and dialogue between the Agency and national authorities. In 2020, 11 Frontex Liaison Officers contributed to promoting the application of the Union *acquis* related to the management of external borders and returns, including with regard to respect for fundamental rights. The Frontex Liaison Officers regularly cooperate with the Fundamental Rights Officer to promote respect for fundamental rights in the Agency's work.

6.2. Agency-supported cooperation at European and national levels

To ensure unified practices, Frontex cooperates with several EU institutions, bodies, offices and agencies, and international organisations in line with the EBCG Regulation. Its collaboration with the European Commission, the European External Action Service (EEAS), the Fundamental Rights

Agency (FRA), the European Asylum Support Office (EASO), the European Union Agency for Law Enforcement Cooperation (Europol), and the European Union Agency for Criminal Justice Cooperation (Eurojust), among others, allows for a constant exchange on migration management processes.

With regard to fundamental rights matters, FRO's cooperation with FRA, the EU's specialised Agency on fundamental rights, is of particular importance to advance the protection of and respect for fundamental rights [see section 4.2 on FROMs]. Proactive collaboration with United Nations entities and other international organisations, such as UNHCR, the Office of the United Nations High Commissioner for Human Rights (OHCHR), IOM and OSCE enables a valuable exchange of information and allows for joint promotion of the practice of rights-based migration management. Additionally, advice and support from the Consultative Forum on Fundamental Rights [see section 6.4], drawing attention to issues of concern and formulating recommendations to align practice with international law and standards, continued to be of great importance in 2020.

Throughout the year, the FRO was consulted multiple times in the Agency's process of renewing its International Cooperation Strategy 2021-23. The renewed Strategy, covering cooperation with third countries and international organisations, now includes a specific section on fundamental rights and data protection, highlighting further the importance of these matters in the external dimension of the Agency's work. The FRO was instrumental in ensuring that the most relevant points were included in this section.

6.3. Cooperation with third countries

Under Article 72(3) of the EBCG Regulation, bilateral and multilateral agreements between Member States and third countries shall comply with Union and international law on fundamental rights and on international protection. In cooperation with third countries, one role of the Agency is to provide technical and operational

assistance, within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and personal data and with regard to the principle of *non-refoulement*.

Both the Working Arrangements as concluded by the Agency and the Status Agreements as concluded by the EU with third countries contain provisions related to fundamental rights, including practical measures. Working arrangements and model status agreements are consulted with the Fundamental Rights Officer. In 2020, the FRO reviewed and provided opinions on several working arrangements with third countries, submitting considerations and proposals to drafts to ensure their alignment with the principle and standards of fundamental rights as well as with the EBCG Regulation, and contributed to the draft model working arrangement developed by the European Commission. Among those reviewed, the Working Arrangements with Albania, Georgia and Guinea were eventually signed. In addition, the FRO took part in the initial consultations for the drafting of the revised cooperation plan with Canada and reviewed and provided feedback on the draft cooperation plan with Moldova. To identify any potential fundamental rights risks while cooperating with third countries, either in the form of capacity building projects or operational activities, the FRO undertakes a due diligence assessment of the fundamental rights risks and impacts of such cooperation. In the case of fundamental rights risks, the FRO can advise the Executive Director to refrain from entering into such arrangements or to apply various mitigation measures not to implicate Frontex in potential fundamental rights violations, in line with Article 46 of the EBCG Regulation. In 2020, the FRO also contributed to the development of the Agency's 2021-2023 International Cooperation Strategy, relevant to the fundamental rights assessment prior to entering cooperation with third countries.

Within the realm of technical and operational assistance on border management, the FRO provided observations to Operational Plans for activities carried out in

third countries in 2020, specifically in Albania and Montenegro.

With a view to establishing and maintaining contacts with third-country authorities, the Agency deployed Frontex Liaison Officers. Five Frontex Liaison Officers were deployed to Niger, Senegal and Turkey, and to Serbia and Albania with a regional mandate covering the Western Balkan countries. They established and maintained contacts with the authorities of the third country, facilitating cooperation across all areas of Frontex's mandate. Prior to their deployment, Frontex Liaison Officers received briefings on fundamental rights and on the mandate of the FRO. During the deployments, information concerning fundamental rights-related matters might be brought to the attention of the FRO by the Liaison Officers, when necessary. The FRO utilizes such inputs in inquiries and for elaborating assessments and evaluation reports. In November 2020, the FRO also participated in the 6th meeting of the Frontex Liaison Officers Network, where

the Fundamental Rights Office's ongoing initiatives were presented, along with the newly established function of the Fundamental Rights Monitors.

6.4. Cooperation with third countries

According to Article 108(3) of the EBCG Regulation, the Consultative Forum shall be consulted 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. In 2020 the Consultative Forum, chaired by UNHCR and FRA, was composed of 14 members which contributed with their expertise and resources on a voluntary basis as well as cooperating closely with the FRO in various fields. With the objective of supporting the Agency in setting up an effective monitoring system, the Consultative Forum provided comments to the following documents drafted in the framework of the EBCG Regulation

implementation: the Frontex Fundamental Rights Strategy, the FRO Fundamental Rights Due Diligence Procedure as well as MB Decisions adopting the "Rules on the independence of the Fundamental Rights Officer" and "Establishing a Supervisory Mechanism to monitor the application of the provisions on use of force by statutory staff of the European Border and Coast Guard Standing Corps". During the first half of 2020, the Consultative Forum issued recommendations on the Agency's training activities to ensure that fundamental rights are consistently mainstreamed within the training curricula. In 2020, Consultative Forum meetings were held regularly via video conference to discuss core activities and potential areas of support. In addition, various consultation meetings with the FRO and other internal entities took place, inter alia on the child protection strategy and on the renewed Frontex International Cooperation Strategy 2021-23. To exercise its advisory role, the Consultative Forum regularly requested information from Frontex throughout the year.⁷¹

7. Public Access to Documents

The right of access to documents is an important element of the EU transparency policy. This right is enshrined in the Treaty on the Functioning of the European Union (Article 15 (3))⁷² and in the Charter of Fundamental Rights of the European Union (Article 42).⁷³ Regulation 1049/2001 regarding access to Parliament, Council and Commission documents, which develops mechanisms for submitting document requests and related rules on exceptions, applies to Frontex.⁷⁴ The practical implementation

of such access to documents held by the Agency was established in the Management Board Decision of 21 September 2016.⁷⁵

When handling requests for access to public documents, the FRO acts in accordance with the *acquis communautaire* and with good administration practices. In 2020, the FRO dealt with a high number of Public Access to Documents (PAD) requests, mainly concerning serious incident reports and follow-up measures as well as com-

plaints related to potential violations of fundamental rights, FRO Observations on Rapid Border Intervention, allegations of collective expulsions, FRO Reports to the Management Board, recruitment of fundamental rights monitors as well as documents related to return activities. All applications were considered and handled in cooperation with the Frontex Transparency Office.

⁷¹ For further information on the activities of the Consultative Forum, please refer to its Eighth Annual Report (2020).

⁷² Article 15 (3) of the Consolidated version of the Treaty on the Functioning of the European Union (Official Journal 115, 09/05/2008 P. 0054 – 0055): "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph".

⁷³ Article 42 of the Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407): "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium".

⁷⁴ Pursuant to Recital 115 of the EBCG Regulation: "The Agency should be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It should make public the information about all of its activities. It should likewise ensure that the public and any interested party are rapidly given information with regard to its work."

⁷⁵ Management Board Decision 25/2016 of 21 September 2016 adopting practical arrangements regarding public access to the documents held by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the "Agency").

8. Office capacity

The expansion of the scope of fundamental rights obligations by the Agency, as per the EBCG Regulation, requires adequate staffing and a strong team dedicated to overseeing the full and comprehensive implementation of the fundamental rights provisions of the new Regulation. In 2020, the position of the Fundamental Rights Officer remained vacant because she was indisposed for a long period. Since March 2020, the tasks of the FRO were taken over by the Associate Fundamental Rights Officer. In September 2020, the MB adopted a decision for the Fundamental Rights Officer ad interim to

take forward the FRO's responsibilities until a FRO was recruited, which is to be followed by the recruitment of his/her deputy in 2021.

In 2020, the Fundamental Rights Office consisted of 10 professionals, of which only three held senior positions, covering the entire portfolio. Procedural challenges resulted in delays both in the recruitment of the new FRO at middle management level and in the recruitment of the 40 Fundamental Rights Monitors, as mandated by the EBCG Regulation. The difficulties caused by limited resources, along with

transitional leadership, were compounded by the complex deliberations concerning the rules on the FRO's independence, which were finally adopted at the beginning of 2021. All of the above were crucial to ensure consistent and unconstrained fundamental rights monitoring.

The vacancy notices for the Fundamental Rights Officer and the Fundamental Rights Monitors were posted by the Agency in November 2020, for recruitment envisaged in the first and second quarter of 2021.⁷⁶

9. Conclusions

The year 2020 was a challenging one. The COVID-19 pandemic reshaped the landscape of migration, with multiple travel restrictions and border closures limiting the movement of people into and within the European Union. As such, the pandemic also limited the mode and extent of monitoring by the Fundamental Rights Officer and the team, especially regarding on-site visits to Frontex's operational activities. The beginning of the year was marked by the incidents at the Greek-Turkish border, which have continued to affect geopolitical dynamics and the efficiency of cross-border collaboration along the south-eastern stretch of the Schengen border. As travel restrictions due to Covid were increasingly eased towards the end of the year, Europe experienced an uptake in migratory movements, particularly on its Western Mediterranean maritime route.

Throughout the year, the media and the public paid particular attention to the challenges experienced at EU borders due to intense migratory pressures and to the conduct of border officials. Accusations of alleged malpractice, including alleged serious and persistent violations of the fundamental rights of those crossing (or attempting to cross) the Schengen borders irregularly, cast a shadow over the work of EU Member States and EU Border Control Officials and needed to be addressed

thoroughly. The functioning of Frontex and its entire fundamental rights infrastructure was at the centre of organizational and civil scrutiny. This meant that multiple inquiry procedures were opened by EU institutions and extensive investigations by journalists and media outlets took place. As allegations were featured prominently in the media, the Fundamental Rights Office consistently monitored the situation, continued to advise the Agency and the EU structures based on its assessments of the risks and how to best address them, and issued recommendations. The Fundamental Rights Office also proactively gathered reliable information on such issues, examining and cross-checking the available material, while actively cooperating with all actors involved at the best of its capacity.

The year 2020 was also one of change. Within the Agency, procedural and administrative changes were decided and implemented in order to respond to the demands of the expanding mandate of the organization, including the establishment of the Standing Corps, stipulated by the EBCG Regulation and adopted in December 2019. The Fundamental Rights Office has been involved in translating the tenets of the EBCG Regulation into the Agency's structures, policies and actions in tune with its strict attention to fundamental rights, which

required enhanced commitment and cooperation between different units.

Working at full capacity to meet the demand for advice and consultation, as per the EBCG Regulation, the Fundamental Rights Office provided multiple observations to operations and recommendations regarding Frontex engagement in operational activities both with MS/SAC and third countries, to ensure the Agency's compliance with fundamental rights.

Maintaining a proactive approach, the Fundamental Rights Office has continuously monitored, assessed fundamental rights risks and responded to challenges brought before the FRO in a demanding environment. Importantly, the Fundamental Rights Office revised and enhanced the components of the Agency's fundamental rights promotion and monitoring systems. It was involved in the development of new rules for the Agency's complaints mechanism as well as the fundamental rights-related elements of relevant Standard Operating Procedures – specifically, on the Serious Incident Reporting and on the use of force reporting mechanism. Additionally, the FRO and the team worked on the Agency-wide Fundamental Rights Strategy, as a framework document to capture the extent of Agency's fundamental rights tasks and obligations. In late 2020, the Fundamental

⁷⁶ A newly appointed Fundamental Rights Officer and a cohort of 20 Fundamental Rights Monitors will be coming on board in June 2021.

Rights Office also finalised its Fundamental Rights Due Diligence Policy, as an internal tool for fundamental rights impact assessment and the basis for the FRO's advisory capacity within the context of Article 46 of the EBCG Regulation.

Marked by the development and improvement of the Agency's tools for fundamen-

tal rights protection and monitoring, 2020 has laid the groundwork for a substantial enhancement of the FRO's work going forward. With its expanded mandate, an enhanced office structure and the establishment of the Fundamental Rights Monitors, the Fundamental Rights Office will continue to swiftly and effectively address fundamental rights concerns. In line with

the EU New Pact on Migration and Asylum setting out a comprehensive approach to migration management and border protection across the EU, joint practical efforts and more coherence are crucial to ensure the effective respect for, protection and fulfilment of the fundamental rights of those who seek to cross the EU borders.

ANNEX I

Information on the Complaints Mechanism

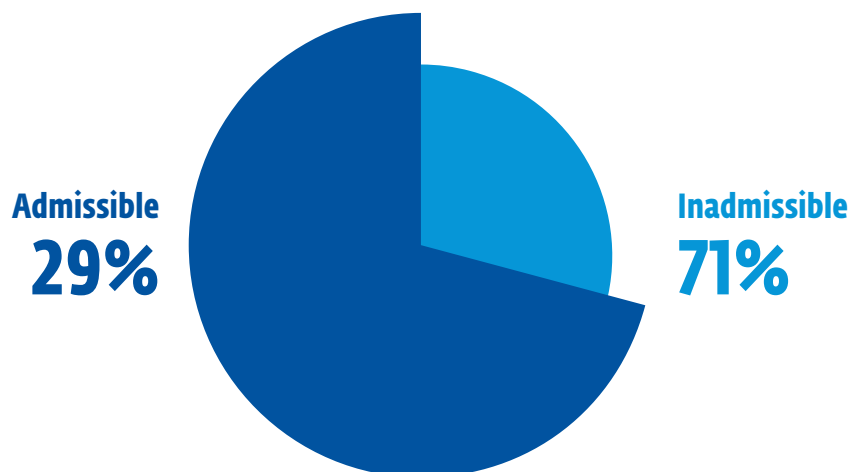
According to Article 111(9) of the EBCG Regulation, the Fundamental Rights Officer (FRO) shall include information on the Complaints Mechanism in the annual report of her/his activities, including specific references to the Agency's and MS findings and the follow-up complaints. Likewise, in order to increase transparency and accountability, the Agency should also report on the complaints mechanism in its annual report. In particular, it should cover the number of complaints received, the types of fundamental rights violations involved, the operations concerned as well as the follow-up measures taken by the Agency and Member States, where possible.⁷⁷

In 2020, the FRO received a total of twenty-four (24) complaints. After admissibility reviews, the FRO declared seven (7) of them admissible.

Regarding four (4) of the admissible complaints, the FRO will proceed with the preparation of their individual final report and consider each case closed. For the remaining three (3) admissible complaints, procedures before competent authorities are currently pending; the FRO has been in the process of consolidating information on the findings and follow-ups upon receipt of the complaints, requesting updates as necessary. Once this process is completed, the FRO will prepare a final report and close each complaint.

Regarding the complaints declared inadmissible, the FRO has responded to each individually. The responses included the reasons for the inadmissibility of the complaint. When possible, FRO provided complainants with further information on other available remedies, in case they wish to address their complaints or concerns to other institutions and/or authorities, in accordance with the principle of good administration and based on available information provided by Member States. Such information generally includes the complaints mechanism of the Member State's Ministry of Interior and the Ombudspersons or fundamental rights institutions, as well as some specific organizations, if known or available.

Cases by admissibility, 2020



⁷⁷ Recital (104) of the EBCG Regulation.

Admissible complaints

Complaint No.	Complainant	Allegation type	Frontex activity	Alleged Perpetrator	Type of case	Follow-up and Findings
CMP-2020-00003	A family, with five minor children, who was included in two readmission operations from Greece to Turkey.	Protection in the event of removal, expulsion, or extradition (Art. 19, CFR); Right to effective remedy and to a fair trial (Art. 47); Health care (Art. 35); The right of the child (Art. 24)	Readmission Operations from Lesvos, Greece to Turkey, scheduled for 27 January and 12 February 2020.	MS staff, Frontex operational implementation	Imminent risk	The FRO was informed that the European Court of Human Rights had issued an interim measure in this case, thus the family was not returned
CMP-2020-00005	A representative of a person who was included in a readmission operation from Greece to Turkey	Protection in the event of removal, expulsion or extradition (Art. 19, CFR); Right to effective remedy and to a fair trial (Art. 47, CFR); Right to asylum (Art. 18, CFR)	Readmission Operation from Lesvos, Greece to Turkey, scheduled for 5 February 2020	MS staff, Frontex operational implementation	Imminent risk	The FRO was informed that the person had lodged an appeal against the rejection of his request for international protection; the person was removed from the list for the scheduled readmission operation
CMP-2020-00006	A representative of a person who was included in a readmission operation from Greece to Turkey	Protection in the event of removal, expulsion or extradition (Art. 19, CFR); Right to effective remedy and to a fair trial (Art. 47, CFR); Right to asylum (Art. 18, CFR)	Readmission from Lesvos, Greece to Turkey, scheduled for 12 February 2020	MS staff, Frontex operational implementation	Imminent risk	The FRO was informed that the person had lodged an appeal against the rejection of his request for international protection; the person was removed from the list for the scheduled readmission operation
CMP-2020-00013	An unaccompanied child who was registered as adult	Protection of personal data (Art. 8, CFR); Rights of the child (Art. 2, CFR)	JO Poseidon 2020 - Registration in Registration and Identification Centre (RIC), Moria hotspot, Lesvos, Greece	MS staff, Frontex deployed officers	Standard	The FRO was informed that it was determined in asylum proceedings that the complainant is a minor, thus the referral was issued for housing and appointment of a commissioner for the unaccompanied child
CMP-2020-00017	A European couple alleging discrimination and mistreatment at a Border Crossing Point in Bulgaria	Human dignity (Art. 1, CFR); Prohibition of degrading treatment (Art. 4, CFR); Non-discrimination (Art. 21, CFR)	Joint Operation Focal Points 2020 land	MS staff	Standard	Following an inspection by the Border Police Directorate (including written explanations from the officers and a check of video recordings), it was concluded that the facts in the complaint did not correspond to the truth and the complaint "discredits the actions of Bulgarian border guards and derogates Bulgarian prestige". The FRO requested the video surveillance record but was informed that after a certain period the video had been deleted.
CMP-2020-00019	A family rejected by the Polish authorities while trying to apply for asylum at a Border Crossing Point at the Polish-Belarus border	Right to asylum (Art. 18, CFR), Protection in the event of removal, expulsion or extradition (Art. 19, CFR)	Joint Operation Focal Points 2020 Land	MS staff, Frontex operational implementation	Standard	Pending before national authorities. The complaint was forwarded to Polish authorities on 8 September 2020
CMP-2020-00024	Three (3) alleged unaccompanied children who were registered as adults	Protection of personal data (Art. 8, CFR); Rights of the child (Art. 24, CFR).	JO Poseidon 2020 - Registration in the RIC Moria hotspot, Lesvos, Greece	MS staff, Frontex deployed officers	Standard	Pending FRO handling

Inadmissible complaints

Complaint No.	Complainant	Reason for inadmissibility
CMP-2020-00001	A person who alleged they were waiting in long lines for hours at Hungarian borders	No fundamental rights violation
CMP-2020-00002	A person in a return operation who alleged he had an ongoing asylum application and thus it was not possible to return him	Complaint closed as address of complainant is not known and he cannot be reached
CMP-2020-00004	A person who alleged that he would be deported from Germany to India, where according to his allegations his life would be endangered	No Frontex activity
CMP-2020-00007	A person who alleged damage of his property by a French customs officer while performing a customs control in Moutiers train station	No Frontex activity
CMP-2020-00008	A person who alleged bad behaviour when registering her bag by border guards at Croatia-Montenegro border	No fundamental rights violation
CMP-2020-00009	A person who alleged assault of his wife at the Frankfurt, Germany airport by a security guard	No Frontex activity
CMP-2020-00010	A company which complained about a public procurement procedure organised by the Romanian Border Police, for obtaining boats for Frontex activities	No fundamental rights violation
CMP-2020-00011	A minor held in a Greek prison; complaint submitted by his representative	No Frontex activity
CMP-2020-00012	A person who alleged fraud in connection to migrant smuggling	No Frontex activity
CMP-2020-00014	A person who alleged that his fiancée was held at the Greek-North Macedonian border	No Frontex activity
CMP-2020-00015	A police officer who complained about lack of transparency in the selection of Seconded National Experts for Frontex	No Frontex activity, no fundamental rights violation
CMP-2020-00016	Asylum seeker in Romania, detained and sent back without due process	No Frontex activity, not Frontex staff
CMP-2020-00018	A person describing fraud by a multinational company	No Frontex activity, not Frontex staff
CMP-2020-00020	A woman who alleged discriminatory treatment by Romanian border guards	The actions alleged were not performed by Frontex staff or within the framework of any Frontex activity
CMP-2020-00021	A young man legally residing in Norway with two (2) minor brothers in Greece, inquiring how to proceed with family reunification	The actions alleged were not performed within the framework of any Frontex activity
CMP-2020-00022	A returnee alleged mistreatment and confiscation of identification documents by German Police when they picked him up from his house to return him	The actions alleged were not performed by staff involved in a Frontex activity
CMP-2020-00023	A family alleged being pushed back towards Turkey by Greek authorities in Greek waters	Case closed without conducting admissibility assessment: The FRO made several attempts to contact the complainant for more information but received no reply. The FRO could not assess admissibility of the complaint and closed the case. The complainant has been informed about the possibility to provide information for the FRO to reopen the case.

Updated information on complaints from previous years closed in 2020

CMP-2017-00001 and CMP-2018-00005	
Complainant	The representative of a family of six (6) persons, including four (4) children, who had formally expressed to the competent authorities their will to seek asylum in Greece
Allegation types	Right to asylum (Art. 18, CFR); Rights of the child (Art. 24, CFR); Protection in the event of removal, expulsion or extradition (Art. 19, CFR)
Frontex activity	Air Readmission operation from Greece to Turkey
Alleged Perpetrator	Member State staff, Frontex operational implementation
Type of Case	Standard, reported weeks after the event
Follow up and Findings	<p>In January 2017 the Member State was asked for follow-up. On 25 October 2017, after several requests from the FRO, the Hellenic National Focal Point of Contact (NFPOC) replied that the complaint was still under investigation. On 13 February 2018 the ED asked Greek NFPOC for follow-up. On 17 July 2018 complaint CMP-2018-00005 was submitted due to the lack of response in case CMP-2017-00001 (violation of the right to good administration). The FRO requested follow-up from the NFPOC monthly, but with no reply. On 3 December 2018, the FRO was informed that the actions of the Hellenic Police do not fall under the competence of the General Inspector of Public Administration. The Hellenic Police ordered an internal Preliminary Administrative Investigation and reported to the FRO on 28 August 2019: "Please be informed that the final report regarding the case in subject has been issued. According to this report, no liability, at the disciplinary level towards the officers concerned, was established. Therefore, the investigation has been completed and archived, following the standard legal procedure". It was concluded that there was no evidence of fundamental rights violation. Complaints CMP-2017-00001 and CMP-2018-00005 were closed on 6 October 2020. The FRO prepared the following observations and recommendations:</p> <ul style="list-style-type: none"> • The Hellenic authorities' guarantee of the complainant's rights was questionable; • Protection of fundamental rights requires systematic reporting, effective investigation, and sanctions if violations occur, which according to the FRO was not respected here. There was no fair investigation within a reasonable time limit; no reasoning was provided; • The FRO welcomed the support by Frontex Senior Management in the follow-up; • The FRO recommended external review of the complaints mechanism and support by the Management Board when Member States do not fulfil obligations within the mechanism and seeking means of redress when there is no effective follow-up.
CMP-2017-00014	
Complainant	The representative of a person returned from Hungary to Afghanistan
Allegation types	Right to effective remedy and to a fair trial (Article 47 of the Charter); Protection in the event of removal, expulsion, or extradition (Article 19)
Frontex activity	Joint Return Operation, flight from Budapest, Hungary to Kabul, Afghanistan
Alleged Perpetrator	Member State staff, Frontex operational implementation
Type of Case	Imminent risk, as enshrined in Article 12 of the Agency's Rules on the Complaints Mechanism
Follow up and Findings	<p>The complainant was returned to Afghanistan, with a pending court appeal. The FRO informed national authorities about the complaint, but the complainant was sent back based on a new expulsion order. The FRO closed the complaint on 19 October 2020 and presented the following observations and recommendations:</p> <ul style="list-style-type: none"> • The Agency made all efforts to prevent a possible violation of the complainant's fundamental rights. Once the Hungarian Authorities reconfirmed that the return decision could be implemented, Frontex could not dispute its merits; • The representative was officially informed about return only days after the return; he did not obtain information about the case and could not contact the complainant or submit an appeal against the new removal order; • Based on the Judgment of the Metropolitan Administrative and Labour Court from 16 July 2018, with no further appeal possible, it is considered that the actions taken by the Hungarian Authorities as to the complainant's return were against EU law. There has been a violation of the principle of non-refoulement; right to effective remedy, right to legal representation, legal remedy and a fair trial; right to protection in the event of removal, expulsion, or extradition. The Court found the return was carried out without legal basis, as the removal order on which was based was annulled by national courts; • The FRO regrets the lack of measures taken, administrative or disciplinary, in response to the breaches of law occurred in this case <p>The FRO invited the Frontex Executive Director to consider safeguards to ensure that the risks of fundamental rights violations are minimised or eliminated during return operations; and to underline to the Hungarian Authorities that it is solely their responsibility to perform assessments with regard to their national legislation and procedures.</p>

CMP-2019-00004	
Complainant	The representative of three (3) families, sixteen (16) persons, including children and women in vulnerable situation, who were to be returned from Hungary
Allegation types	Right to asylum (Art. 18, CFR); protection in the event of removal, expulsion, or extradition (Art. 19, CFR); rights of the child (Art. 24, CFR); Health care (Art. 35, CFR); right to effective remedy and to a fair trial (Art. 47, CFR)
Frontex activity	Joint Return Operation, flight from Budapest, Hungary to Kabul, Afghanistan
Alleged Perpetrator	Member State staff, Frontex operational implementation
Type of Case	Imminent risk
Follow up and Findings	The families had applied for asylum in Hungary; their appeals were pending. It was alleged that the return would violate their rights, as their applications were merely dismissed based on a new inadmissibility ground, introduced contrary to EU asylum law. The FRO informed national authorities about the complaint and closed the case on 19 June 2020. The complaint was based on a readmission to Afghanistan that allegedly could have violated fundamental rights of the complainants but was subsequently cancelled. The FRO noted that the complainant's rights had been guaranteed by the authorities. The FRO recommended that Frontex MB and ED consider preventive measures to be inserted into existing procedures during preparatory stages of return operations, to ensure the protection of fundamental rights during Frontex operations

CMP-2019-00015	
Complainant	A person who was to be returned from Sweden and who provided medical certificates showing that the flight would seriously endanger his health. In the end, the complainant was not returned.
Allegation types	Right to health care (Art. 35, CFR) related to protection in event of removal, expulsion or extradition (Art. 19, CFR)
Frontex activity	Joint return operation financed by Frontex, flight from Sweden to Afghanistan
Alleged Perpetrator	Member State staff, Frontex operational implementation
Type of Case	Imminent risk
Follow up and Findings	The Swedish Police authority replied that the case was adequately reviewed, and the complainant's health situation was considered; these proceedings ended with a negative decision; thus, the return decision became final. There was no violation of fundamental rights and requirements for return had been met. Nevertheless, the complainant was not returned.

CMP-2019-00016	
Complainant	A person who was to be readmitted from Greece to Turkey
Allegation types	Protection in the event of removal, expulsion or extradition (Art. 1, CFR); right to effective remedy and to a fair trial (Art. 47, CFR); right to asylum (Art. 18, CFR)
Frontex activity	Readmission operation financed by Frontex from Lesbos, Greece, to Turkey
Alleged Perpetrator	Member State staff, Frontex operational implementation
Type of Case	Imminent risk
Follow up and Findings	<p>The FRO was informed that the complainant's application for international protection was rejected on second instance; then his readmission was scheduled; the complainant filed an application for annulment of the rejection of the asylum application and the readmission decision, before the Administrative Court of Appeal, and requested an interim order to postpone the readmission, which had not been issued, and the complainant was included in the readmission. The Hellenic authorities provided no additional information in response to the FRO's request. The FRO closed the case on 20 November 2020 and addressed to the Hellenic Police the following observations and recommendations:</p> <ul style="list-style-type: none"> • The Hellenic authorities' guarantee of the complainant's rights was questionable. • The Agency cannot question the merits of return decisions and Member States must provide an enforceable decision to return a person. If the validity of such a decision is called in question, the Member State must reconfirm that the readmission can be executed. The FRO's request to national authorities to explain the Greek legal framework regrettably remained unanswered, while several lawyers confirmed that until the decision on the right to remain is issued, the applicant has the right to stay in Greek territory. <p>The FRO invited the Agency's ED and the Chair of the MB to consider the following proposals:</p> <ul style="list-style-type: none"> • Support by the MB and European Institutions to address the challenges in the complaints mechanism, ensure strengthened fundamental rights safeguards, increased accountability and redress for those impacted by the actions, particularly in relation to effective follow-up to complaints. This matter is also addressed by the European Ombudsman's inquiry OI/5/2020/MHZ concerning the functioning of the Agency's Complaints Mechanism. • Meet with the MB representative of Greece to receive explanations about the national legal framework and respect for fundamental rights in return operations.

CMP-2019-00018

Complainant	A returnee to be returned from Sweden to a country where, according to his allegations, he had never been
Allegation types	Protection in the event of removal, expulsion or extradition (Art. 1, CFR)
Frontex activity	Joint return operation financed by Frontex, flight from Sweden
Alleged Perpetrator	MS staff, Frontex operational implementation
Type of Case	Imminent risk
Follow up and Findings	The FRO was informed that the Swedish Migration Agency reviewed the complainant's asylum application and issued a negative decision. The Swedish Migration Court and Administrative Court of Appeal rejected the complainant's appeal, thus the expulsion decision gained legal force. It was pointed out that the case was tried by three different authorities and at that moment the complainant was still in Sweden. FRO closed the case on 3 April 2020. The complaint was based on a scheduled Frontex Joint Return Operation from Stockholm, which allegedly could have violated the complainant's fundamental rights but that was subsequently cancelled. The FRO noted that the complainant's rights had been guaranteed by the national authorities

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