

MANAGEMENT BOARD DECISION 19/2022
of 16 March 2022
adopting the Agency's rules on the complaints mechanism

THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation¹ (hereinafter the "Regulation"), in particular Articles 100(2)(ae) and 111(1) thereof,

Whereas:

- (1) Recital 104 of the Regulation provides that the Regulation should establish a complaints mechanism for the Agency in cooperation with the fundamental rights officer, to safeguard the respect for fundamental rights in all the activities of the Agency. This should be an administrative mechanism whereby the fundamental rights officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration.
- (2) Article 111(1) of the Regulation provides that the Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up and further develop an independent and effective complaints mechanism in accordance with this Article to monitor and ensure respect for fundamental rights in all the activities of the Agency.
- (3) Article 111(2) of the Regulation further provides that any person who is directly affected by the actions or failure to act on the part of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, return intervention or an operational activity of the Agency in a third country, and who considers himself or herself to have been the subject of a breach of his or her fundamental rights due to those actions or that failure to act, or any party representing such a person, may submit a complaint in writing to the Agency.
- (4) Article 111(4) of the Regulation provides that the fundamental rights officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For that purpose, the fundamental rights officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director and forward complaints concerning members of the teams to the home Member State, including the relevant authority or body competent for fundamental rights in a Member State for further action in accordance with their mandate. The fundamental rights officer shall also register and ensure the follow-up by the Agency or that Member State.
- (5) Annex V to the Regulation provides that any person may report suspected breaches by statutory staff deployed as members of the teams of the rules on the use of force applicable under that Annex through the complaints mechanism provided for in Article 111.
- (6) In addition, Article 108(3) of the Regulation provides that the consultative forum shall be consulted on, *inter alia*, the functioning of the complaints mechanism.

¹ Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

(7) Article 100(1) of the Regulation provides that the Management Board shall be responsible for taking the strategic decisions of the Agency in accordance with this Regulation. Article 100(2)(ae) of the Regulation, which provides that the Management Board shall decide on any other matter where provided for in the Regulation, constitutes the necessary legal basis for this decision of the Management Board. While Article 111 of the Regulation already provides for clear and precise rules, this Decision should be considered as strategic within the meaning of Article 100(1) of the Regulation due to the sensitive nature of complaints as well as the need to develop an adequate framework to ensure the further development and independence of the complaints mechanism, as provided for in Article 111(1) of the Regulation.

(8) The consultative forum delivered comments on 29 November 2021 and 1 February 2022.

HAS DECIDED AS FOLLOWS:

Article 1

The Agency's rules on the complaints mechanism

The Agency's rules on the complaints mechanism, set out in the Annex to this Decision, are hereby adopted.

Article 2

Repeal

This decision replaces and repeals Executive Director Decision No R-ED-2016-106 of 6 October 2016 on the Complaints Mechanism.

Article 3

Entry into Force

This decision enters into force on the day following its adoption.

Done in Warsaw on 16 March 2022.

For the Management Board

[signed]

Marko Gašperlin
Chairperson

Annex: The Agency's rules on the complaints mechanism

THE AGENCY'S RULES ON THE COMPLAINTS MECHANISM

PART I - GENERAL PROVISIONS

Article 1

Scope of the rules and role of the Fundamental Rights Officer

1. This Annex sets out the Agency's rules on the complaints mechanism.
2. The complaints mechanism is an administrative mechanism provided for in Article 111 of the European Border and Coast Guard Regulation¹ (the "Regulation"). This mechanism aims to monitor and ensure respect for fundamental rights in all Agency activities, for example by informing decisions of the Executive Director envisaged in Article 46(4) and (5) of the Regulation in accordance with the procedure set out in the relevant Executive Director Decision.
3. The Fundamental Rights Officer ("FRO") is responsible for handling complaints received by the Agency through the complaints mechanism. The FRO ensures a follow up to any admissible complaint, in accordance with the Regulation, in close cooperation with the Executive Director, the Member States² and their relevant authorities or bodies competent for border management, return or fundamental rights. The FRO may request the complainant and/or other parties to submit materials which the FRO considers relevant for the purposes of assessing complaints.

Article 2

Definitions

The terms used in these Rules shall have the following meaning:

- a) "Admissible complaint" means a complaint that fulfils admissibility criteria according to Article 111 of the Regulation and Article 5(3) of these Rules;
- b) "Admissibility criteria" means complaint requirements as set out in Article 111 of the Regulation and further developed in Article 5(3) of the Rules, which have to be fulfilled in order for a complaint to be declared admissible;
- c) "Agency" means the European Border and Coast Guard Agency;
- d) "Agency activity" means a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, return intervention or an operational activity of the Agency in a third country;
- e) "Complainant" means the person who submits a complaint or on whose behalf a complaint is submitted;
- f) "Complaint" means any written communication containing allegations of fundamental rights violations, addressed to the Agency by a person affected by the actions or failure to act of any person involved in an Agency activity, or from their representative;

¹ Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

² For the purpose of these rules, the term "Member State" includes also the States participating in the relevant development of the Schengen acquis within 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.

- g) “Complaints mechanism” means the complaints mechanism of the Agency set out in Article 111 of the Regulation;
- h) “Consultative Forum” means the Consultative Forum of the Agency;
- i) “DPO” means the Data Protection Officer of the Agency;
- j) “Executive Director” means the Executive Director of the Agency;
- k) “Expression of concern” means an inadmissible or unfounded complaint or other correspondence which raise issues which may be relevant for the Agency;
- l) “FRO” means the Fundamental Rights Officer of the Agency;
- m) “New evidence” means new and relevant information submitted by a complainant in connection to an inadmissible or unfounded complaint, and which is not merely a restatement of information already submitted;
- n) “NFPOC” means national Frontex points of contact in accordance with Article 13 of the Regulation;
- o) “Regulation” means the European Border and Coast Guard Regulation (EU) 2019/1896;
- p) “Rules” means the present rules of the Agency on the complaints mechanism;
- q) “Statutory staff” means staff employed by the Agency in accordance with the Staff Regulations of Officials of the European Union (the “Staff Regulations”) and the Conditions of Employment of Other Servants of the Union (the “Conditions of Employment”) laid down in Council Regulation (EEC, Euratom, ECSC) No 259/683, including members of category 1 of the Standing Corps⁴.
- r) “Staff member of the Agency” means, for the purpose of these Rules:
 - statutory staff; and
 - national experts seconded to the Agency’s headquarters (“SNEs”) or to antenna offices without prejudice to the fact that the Member States remain the employer of the SNEs.

For the avoidance of doubt, members of the teams who are not members of category 1 of the Standing Corps as well as other staff involved in an Agency activity shall not be considered staff members of the Agency.

- s) “Staff involved in an Agency activity” means a member of the teams in accordance with Article 2(17) of the Regulation, including a seconded member of the teams or seconded national expert pursuant to Article 111(7) of the Regulation;
- t) “Third-party data subject” means an individual who is the subject of personal data and different from the complainant;
- u) “Use of force” means a recourse by statutory staff deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms, or equipment.

Article 3 *Making a complaint*

1. Any person of any age may submit a complaint free of charge if they are directly affected by the actions or a failure to act on the part of staff involved in an Agency activity and consider themselves to have been the subject of a breach of their fundamental rights due to those actions or that failure to act. For the avoidance of doubt, a failure to act may include, but is not limited to, failure to refer persons who inquired about international protection to the relevant authorities.

³ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ L 56, 4.3.1968, p. 1).

⁴ In accordance with Article 54(1) of the Regulation.

2. A complaint may be made even where the complainant has not sought other remedies, whether administrative or judicial. Submitting a complaint under this mechanism does not prevent the complainant from resorting to other remedies, including administrative or judicial remedies.
3. A complainant may be represented by any party, whether a natural or legal person, acting on their behalf. In such a case, references to “complainant” are to be read as “representative” where the context so permits.
4. A complaint shall be submitted in writing using the standardised complaint form or other comparable means. The complaint may be submitted to the Agency by post or by electronic means, including electronic devices or the Agency’s website. The Agency shall ensure the possibility for the complaint to be submitted to the staff members of the Agency present in operational areas, and for example to the relevant Fundamental Rights Monitors, or directly to the Fundamental Rights Officer.
5. Letters, emails or other forms of communication which contain allegations of fundamental rights violations, and are received through channels other than those listed in paragraph 4 of this Article, shall be redirected appropriately by the recipient.
6. A complaint may be submitted in any language.
7. In accordance with Article 20(2) of the Code of Conduct applicable to all persons participating in Frontex operational activities⁵, participants⁶ must provide information about the complaints mechanism and complaint form, to any person who wants to report an alleged fundamental rights violation under this mechanism.

PART II - PROCEDURE FOR RECEIVING CORRESPONDENCE AND HANDLING COMPLAINTS

Article 4

Stages

The complaints mechanism shall be divided into three main stages:

- (a) stage 1: Receipt of complaints and admissibility review;
- (b) stage 2: Handling of admissible complaints concerning staff members of the Agency by the FRO;
- (c) stage 3: Action by the Executive Director or home Member State on admissible complaints.

Article 5

Stage 1: Receipt of complaints and admissibility review

1. Upon receipt, the FRO electronically records complaints and assigns them a reference number, in the order in which they are received. An acknowledgment of receipt is sent to the complainants, informing them of the reference number, of the fact that the admissibility assessment was initiated by the FRO, the result of which will be communicated to the complainant, as well as of the duration of the admissibility assessment pursuant to paragraph 4.
2. To facilitate the initiation of immediate civil or criminal proceedings in the Member States, all complaints recorded by the FRO, including against statutory staff, shall be transmitted by the FRO to the relevant host and home Member State without delay. Furthermore, for the purpose of transparency and the need to ensure that the complaint mechanism is not abused, this transmission may serve the Member States to facilitate the institution of civil or criminal proceedings for defamation to ensure that their reputation is not tainted, in accordance with national law.

⁵ Decision of the Executive Director No R-ED-2017-32 of 10.4.2017 adopting the Code of Conduct applicable to all persons participating in Frontex Operational Activities.

⁶ “Participant” is defined at Article 2(b) of the Code of Conduct applicable to all persons participating in Frontex operational activities to refer to any person participating or engaged in a Frontex operational activity.

3. The FRO decides on the admissibility of a complaint following an examination of the requirements in Article 111(2) and (3) of the Regulation. In particular, a complaint shall be declared admissible where:
 - (a) a complainant alleges to be directly affected by the actions or failure to act on the part of staff involved in an Agency activity, and consider themselves to have been subject of a breach of their fundamental rights due to those actions or that failure to act;
 - (b) the complaint is substantiated, i.e. the information presented in the complaint allows FRO to ascertain, with reasonable probability, that the alleged actions or failures to act have actually taken place;
 - (c) the actions or failures to act at point (b) could involve concrete fundamental rights violations;
 - (d) the complaint does not concern working relations between the Agency and its staff, e.g. issues falling within the scope of the Staff Regulations and Conditions of Employment;
 - (e) the complaint is not manifestly repetitive, frivolous or malicious;
 - (f) the complaint is made within one year from the date on which the alleged violation of the fundamental rights occurred or the complainant was informed or learnt about such violation, or the complainant was not otherwise prevented by any circumstance from making a complaint about such an alleged violation;
 - (g) it concerns facts which occurred after 6 October 2016; and
 - (h) the complaint contains the name and contact details of the complainant, without prejudice to Article 20 of these rules.

Where there is a risk of retribution by reason of submitting the complaint, the name and contact details of the complainant shall be made available only to the FRO and shall be kept confidential from the rest of the Agency until that risk has subsided, but not later than 1 year from the date of submission. The complainant shall provide details on that risk which the FRO shall assess. The FRO shall remain in contact with the complainant during that period through a communication channel available to the complainant. At all times, the complaint not containing the complainant details that is sent to the Member States shall be processed according to national law, which prevails.

4. When reviewing the admissibility of a complaint, the FRO, relying on information provided, for instance, by Fundamental Rights Monitors, may liaise with other entities in the Agency to ascertain the requirements listed in paragraph 3. The FRO shall approach designated contact points when requesting information from other entities in the Agency. These contact points shall be designated by the Executive Director and communicated to the FRO.
5. The FRO decides on the admissibility of a complaint within 30 days from registration of the complaint. In exceptional cases, that period may be extended by 15 days, provided that the complainant is notified in advance and that detailed reasons are given.
6. Where action is required from the complainant and the FRO cannot contact them for a period of one year since the request for action, the complaint is deemed to be discontinued.
7. Once a complaint is declared admissible, the FRO immediately forwards it to the Executive Director.
8. Where a complaint is declared admissible, the FRO informs the complainant in writing that the complaint has been registered and its case reference number, that a review of the merits has been started and that a response may be expected as soon as it becomes available. If a complaint is forwarded to national authorities or bodies in accordance with Articles 8 and 9, the FRO shall provide the complainant with their contact details.
9. The FRO informs the complainant about the progress in the handling of the complaint
10. Where a complaint is declared inadmissible, the complainant is informed and, if available, provided with further options for addressing their concerns. In particular, the complainant shall be informed about the possibility to submit new evidence within one year of the date on which the initial decision on inadmissibility was communicated. If the complainant submits new evidence, the FRO shall reassess all the information in accordance with paragraph 3 within the deadline provided for in paragraph 4 which applies from the date the new evidence was submitted.
11. In accordance with the principle of good administration, any decision by the FRO shall be in written form and adequately reasoned.

Article 6

Stage 1: Joining and staying complaints

1. Where the FRO decides that two or more complaints refer to the same or similar facts, the FRO may decide to join these complaints and treat them as one complaint, under the condition that such joining of itself may not have a negative impact on the review of a complaint. The FRO informs all affected complainants about the decision to join complaints.
2. The FRO may stay the handling of an complaint in justified circumstances, in particular where the facts and allegations concerned are being considered by a court.
3. Where additional information from the complainant is needed and the FRO cannot contact them for a period of one year, the complaint may be considered discontinued, save in exceptional circumstances.
4. Stayed or discontinued complaints may be reopened by a reasoned decision of the FRO.
5. The FRO informs the complainant in writing of any FRO decision to stay, discontinue or reopen the complaint.

Article 7

Stage 2: Handling of admissible complaints concerning staff members of the Agency by the FRO

1. In the case of an admissible complaint against staff members of the Agency, the FRO undertakes an assessment of the complaint in view of recommending appropriate follow-up, in accordance with Article 111(6) of the Regulation.

2. The FRO ascertains the accuracy of the facts alleged in the complaint as far as reasonably possible and in close cooperation with other entities in the Agency, in accordance with the applicable rules.

Where relevant, the FRO may rely on information provided by the Fundamental Rights Monitors assigned to the relevant operational activity of the Agency. The FRO may also request the complainant and third parties to submit further information.

3. Upon ascertaining the facts in accordance with paragraph 2, the FRO provides a legal analysis of the concrete fundamental rights violations having regard to the relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of *non-refoulement*.

4. Where the facts amount to concrete fundamental rights violations, the FRO draws up a report. That report shall include:

- (a) an account of the facts and the related concrete violations of fundamental rights; and
- (b) a recommendation for appropriate follow-up, which may include disciplinary measures or referral for the initiation of civil or criminal justice proceedings in accordance with the Regulation, national law and other applicable rules, in particular the Staff Regulations and Conditions of Employment (the "FRO's recommendation"). FRO's recommendation shall be proportionate to the facts.

The FRO prepares the report within 30 days of it being declared admissible and forwards the report to the Executive Director without delay.

Article 8

Stage 3: Action by the home Member State on complaints concerning staff involved in an Agency activity of that Member State

1. The FRO forwards all admissible complaints against staff involved in an Agency activity of the Member States to the NFPoC and to the relevant competent authority or body of that Member State according to Article 111(4) of

the Regulation. The FRO provides the complainant with the relevant competent authority's/body's contact details.

2. In accordance with Article 111(7) of the Regulation, the home Member State shall ensure appropriate follow-up, including disciplinary measures, referral for the initiation of civil or criminal justice proceedings as necessary, and other measures in accordance with national law.
3. The home Member State shall report back to the FRO as to the findings and follow-up within 6 months of the date on which the admissible complaint was forwarded using a template which the FRO draws up pursuant to Article 111(10) of the Regulation. Decisions of the home Member State shall provide sufficient written justifications. If necessary, the FRO may request the home Member State to report at regular intervals of 3 months thereafter.

If the home Member State fails to report back or provides an inadequate response, the FRO informs the Executive Director and the Management Board without delay.

The Agency shall follow-up on the matter if no report is received from the home Member State.

4. If a complaint is declared unfounded, the complainant shall be informed by the FRO about the possibility to submit new evidence to the FRO within one year of the date on which the initial decision was communicated to the complainant. If the complainant submits new evidence, the home Member State shall reassess the information and ensure the appropriate follow-up, in accordance with this Article.

Article 9

Stage 3: Complaints concerning staff involved in an Agency activity in third countries

1. When activities which the Agency performs in the territory of third countries give rise to a complaint concerning alleged fundamental rights violations, the part of the complaint regarding the allegations concerning staff involved in an Agency activity is treated by the FRO in accordance with the procedure set out by these Rules.
2. When the complaint or part of the complaint involves the allegations of fundamental rights violations concerning third country staff, the competent national authority of the respective third country deals with it in accordance with its national rules and regulations.

Article 10

Stage 3: Action by the Executive Director on admissible complaints concerning staff involved in an Agency activity

1. In the case of an admissible complaint concerning staff members of the Agency, the Executive Director shall ensure the appropriate follow-up to FRO's recommendation through measures provided for by the applicable rules, in particular the Staff Regulations and Conditions of Employment and the Management Board Decision on administrative inquiries and disciplinary proceedings⁷.
2. If the complaint is related to data protection issues, the Executive Director consults the Data Protection Officer ("DPO") of the Agency before taking a decision on that complaint.
3. Within 6 months of receiving FRO's recommendation, the Executive Director shall report to the FRO as to both the findings, where applicable following an administrative inquiry, and of any follow-up measure. If necessary, the Executive Director shall further report to the FRO at regular intervals of 3 months thereafter. Decisions of the Executive Director shall provide sufficient written justifications.
4. Where a member of the teams other than a staff member of the Agency is found to have violated fundamental rights or international protection obligations pursuant to Article 8, the Executive Director shall request that the home Member State remove that member immediately from the Agency activity or the Standing Corps. That request shall be reasoned.

⁷ Management Board Decision 26/2018 of 25 October 2018 adopting general implementing provisions on the conduct of administrative inquiries and disciplinary procedures.

5. If a complaint is declared unfounded by the Executive Director, the complainant shall be informed by the FRO about the possibility to submit new evidence within one year of the date on which the initial decision was communicated to the complainant. If the complainant submits new evidence, Article 7 shall apply *mutatis mutandis*.

Article 11

Immediate actions

1. If an imminent risk of irreparable harm to the complainant or to the Agency exists, the Agency shall consider undertaking immediate action at any stage of the procedure, until that risk subsides or ends.
2. If an imminent risk of irreparable harm exists, the FRO may recommend an appropriate course of action to the Executive Director.

Article 12

Damages for violations of fundamental rights

If fundamental rights violations result in a damage caused by members of the teams operating in a host Member State, during their operations, Articles 84 and 97 of the Regulation may apply under the conditions set out in the respective Article.

Article 13

Expressions of concern

1. Correspondence received by the FRO which is not a complaint, but which nevertheless raises relevant issues for fundamental rights compliance in the Agency's activities, may be treated by the FRO as an expression of concern.
2. An inadmissible complaint may be treated by the FRO as an expression of concern when it raises issues relevant for the Agency's fundamental rights compliance.
3. The FRO may address an expression of concern to the Executive Director or the Management Board with a recommendation for appropriate follow-up. Where relevant, the FRO may also address expressions of concern to competent national authorities through NFPoCs.
4. Correspondence received by the FRO which is not a complaint, and which raises no issues relevant for fundamental rights compliance in the Agency's activities is treated as correspondence outside the mandate of the FRO.

Article 14

Complaints on the misuse of force

1. A natural person of any age may submit a complaint in accordance with the present Rules involving a possible breach by the Agency statutory staff deployed as members of the teams of the rules on the use of force applicable under Annex V to the Regulation, in particular involving suspected breaches of the general principles governing the use of force and weapons. Such complaints shall be dealt with by the FRO in accordance with the present Rules.
2. Where, in accordance with Article 10(1) of those Rules, the Executive Director ensures the appropriate follow-up to FRO's recommendation in case of a complaint against a staff member of the Agency, the Executive Director shall consider, among others, measures provided for in the Management Board Decision adopting the supervisory mechanism to monitor the application of the provisions on use of force by statutory staff, including rules on reporting and specific measures, such as those of a disciplinary nature, with regard to the use of force during deployments.

Article 15

Closing a complaint

1. After assessing the follow-up measures taken by the Agency or the Member State in relation to an admissible complaint and after receiving their decision on that complaint, the FRO prepares a final report and proceeds to close the case within six months of receiving that decision. The FRO may include possible observations and recommendations in the report. The FRO then forwards that report to the Executive Director, Management Board and to the relevant home Member State.
2. Decisions adopted by the Executive Director or by the home Member State in relation to an admissible complaint shall contain an indication of the appeal possibilities provided under EU or, respectively, national law available for challenging the decision.
3. The FRO informs the complainant that the complaint has been closed and provides them with relevant information such as the findings, the follow-up, and the relevant decision.

PART III - PRACTICAL ASPECTS, REPORTING AND DATA PROTECTION

Article 16

Standardised complaint form

1. The FRO, in accordance Article 111(1) to (9) of the Regulation and this Decision, after consulting the Consultative Forum, draws up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights as well as a standardised form of a report on the misuse of force.
2. If necessary, the FRO may draw up further detailed practical rules concerning the standardised complaint form after consulting the Consultative Forum. The FRO ensures that information concerning these practical rules is readily available.

Article 17

Information on the procedure

1. In order to facilitate administrative efficiency and avoid miscommunication, information about the possibility and procedure for making a complaint shall be provided only upon request. The standardised complaint form and complaints mechanism booklet are made available on the Agency's website and in hardcopy during the Agency's activities in languages that third-country nationals understand or are reasonable believed to understand. The standardised complaint form shall be easily accessible, including on mobile devices.
2. In accordance with Article 38(3)(n) of the Regulation and the present Rules, the operational plans of the Agency shall include, among others, procedures setting out a mechanism to receive and transmit to the Agency complaints against any person participating in an operational activity of the Agency, including border guards or other relevant staff of the host Member State and members of the teams, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency.
3. In cooperation with the FRO, the Agency shall ensure that adequate training is provided on the complaints mechanism.
4. The Agency shall ensure that further guidance and assistance on the complaints procedure is provided to complainants.

Article 18

FRO reporting

1. The FRO shall include information on the complaints mechanism in the annual report, as referred to in Article 109(4) of the Regulation, including specific references to the Agency's and Member States' findings and the

follow-up of complaints. This report shall also include information on any practical rules drawn up by the FRO in accordance with Article 15(2).

2. The FRO regularly reports to the Executive Director and Management Board on the findings and follow-up of each admissible complaints.

Article 19

Memorandum of Understanding

The FRO and the DPO shall establish a Memorandum of Understanding related to data protection issues specifying a division of tasks between them and how they are to cooperate in respect of complaints received concerning a staff member of the Agency. That Memorandum of Understanding shall be concluded and transmitted to the Executive Director within 1 month of the entry into force of this Decision.

Article 20

Data processing and confidentiality

1. Where a complainant submits a complaint, that complainant shall be understood to consent to the processing of their personal data by the Agency including the FRO within the meaning of point (d) of Article 5(1) of Regulation (EU) 2018/1725⁸.
2. Complaints shall be dealt with confidentially by the FRO in accordance with national and Union law unless the complainant explicitly waive their right to confidentiality. When complainants waive their right to confidentiality, it shall be understood that they consent to the FRO or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

Article 21

Processing of data of third-party data subjects

Where a complaint contains personal data of third-party data subjects, the FRO erases these data before forwarding the complaint to the authorities of the relevant Member State.

PART IV - FINAL PROVISIONS

Article 22

Guidance

Without prejudice to these rules, this article applies where, based on experience gained in operating the complaints mechanism, there is a need for additional guidance on routines, working methods or technical issues. Such additional guidance may be given in writing by the Agency or by the FRO.

Article 23

Evaluation of the Agency rules on the complaints mechanism

The provisions of this Annex may be evaluated by the Executive Director in cooperation with the FRO and the Consultative Forum within eighteen months of these rules entering into force and every 2 years thereafter.

⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).