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Playing the blame game: Accountability, blame management, and human rights in Frontex

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Playing the blame game: Accountability, blame management,
and human rights in Frontex



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Abbreviations

Table 1: Abbreviations

<i>Abbreviation</i>	<i>Full term</i>
Commission	European Commission
Council	European Council
EU	European Union
Frontex	European Border and Coast Guard Agency
IMF	International Monetary Fund
IO(s)	International organization(s)
Parliament	European Parliament
LIBE Committee	European Parliament Committee on Civil Liberties, Justice and Home Affairs
UN	United Nations
QCA	Qualitative Content Analysis

Abstract

Gradually, the authority and capability of IOs to undertake tasks that enhance the enjoyment of human rights have proliferated, but these growing capacities also expand the potential for rights to be violated. This has led to increasing efforts to hold IOs accountable for the consequences of their behavior. The costs for IOs of being accused of human rights violations in terms of punishment and lost legitimacy creates the incentive for them to avoid accountability. Yet how IOs avoid accountability for human rights violations has not been substantially studied. This thesis fills this gap by applying a theory of blame management to the context of Frontex, which in recent years has faced scrutiny for violating the non-refoulement rights of migrants at sea. In doing so this thesis challenges the popular understanding of IOs as institutions committed to the high road in global governance, particularly on matters of human rights. Through a single case study of Frontex this thesis scrutinizes and ultimately finds support for the argument that when put in the spotlight for alleged human rights violations, accountability and blame are avoided through denial, delay, diversion, and delegation rather than accepted.

Keywords: Accountability, blame management, Frontex, human rights, international organizations

1. Introduction

Over time, international organizations (*IOs*) have taken up activities that potentially bolster human rights (Heupel, 2013; Hirschmann, 2019; Hoffmann & Mégret, 2005). From United Nations (*UN*) peacekeeping to World Bank and International Monetary Fund (*IMF*) financial reforms to the rescue of migrants at sea by the European Border and Coastguard Agency of the European Union (*Frontex and EU, respectively*), expanded IO capabilities have in some respects furthered global human rights (Babická, 2011; Grigorescu, 2008). Nonetheless, these expansive competencies also enable IOs to violate the rights they formally protect. Such instances include sexual abuse by UN peacekeepers, corruption in World Bank job programs, and the unlawful return of migrants by Frontex (Babická, 2011; Capelos & Wurzer, 2009; Grigorescu, 2008; Heupel, 2013).

Thus, state and non-state actors have endeavored to hold IOs accountable for the effects of their behavior on human rights, while scholars have analyzed how accountability holders do so (Grant & Keohane, 2005; Grigorescu, 2008; Rubenstein, 2007). These increasing capabilities and efforts to hold IOs accountable have raised the salience of IO reputation and legitimacy as effective actors in global governance (Daugirdas, 2014). Because maintaining said reputation and legitimacy are central to IO relevance but can be damaged by allegations of perpetrating human rights violations, there is an incentive for IOs to avoid accountability. For instance, following allegations of UN complicity in sexual violence perpetrated by partner organizations during peacekeeping missions in the Congo, the UN initially denied association with the violators and therefore UN complicity (Hirschmann, 2020, p. 34). While this question of how IOs manage blame to avoid accountability for alleged human rights violations has pressing academic and societal implications, it has been largely overlooked or confined to study of the UN (Capelos & Wurzer, 2009; Hirschmann, 2020). Though this research has been valuable for developing a theory of accountability in global governance, blame management must be understood in a broader range of IOs. Frontex is an interesting case given its repeated history of alleged human rights violations, its position as an EU agency, and because neither Frontex nor the EU generally, have been substantially studied in the accountability or blame management literature (Babická, 2011). Therefore, this thesis asks: *How did Frontex manage blame in response to allegations of human rights violations between 2020 and 2021?*

Pursuing this research question is academically and socially relevant. In the IO accountability literature, this thesis fills a crucial gap in understanding why accountability efforts may fail. This thesis also advances the blame management literature by applying the methods articulated by Mitchell (2012) to the not yet studied case of Frontex and the context of IOs more generally. Socially, understanding how IO leaders avoid accountability for human rights violations is essential to developing accountability mechanisms that mitigate the effect of these strategies, thereby ensuring IOs are held accountable for their effects on human rights.

This thesis begins with a review of the IO human rights protection, IO accountability, and blame management literature. Subsequently, the theoretical framework and methodology are presented. Finally, a detailed analysis of blame management strategies used by Frontex is offered, followed by a conclusion that answers the research question, acknowledges limitations, and presents avenues for future research.

2. Literature review

Through a review of the literature on human rights in IOs, IO accountability for human rights, and blame management, this section reviews key works, thereby identifying the gaps this research aims to fill.

2.1 Effects on human rights

The expanded capacity of IOs and their negative effects on human rights have received growing academic attention. Particular focus has been dedicated to UN practices. Among others, Diehl and Balas (2014) and Ryan (2000) have traced the evolution of UN peacekeeping from ceasefire monitoring to peacebuilding. Dannenbaum (2010), Halling and Bookey (2008), and Steinert and Grimm (2015) examine this evolution from a human rights perspective, showing that although this development has occasionally enhanced human rights, it has also facilitated violations including sexual violence, human trafficking, and corruption. Others including Aust (2015), Biersteker (2015), and Heupel, Hirschmann, and Zürn (2018) have scrutinized the development of UN sanctions policy, with its effects on the rights to life and due process. The Bretton Woods institutions have received similar attention. Clark (2002), Abouharb and Cingranelli (2006), and Wahi (2006), have shown that although theoretically undertaken with great care to fundamental rights, World Bank and IMF lending practices have undermined physical integrity and life rights in some of the poorest countries. Though less studied, EU agencies such as Frontex have arguably infringed on migrant rights during return operations (Gkliati, 2020; Moreno-Lax, 2018).

Overall, this literature has made valuable progress toward establishing how expanded IO activities can undermine human rights. However, it has not substantially examined how these impacts have influenced IO behavior from an organizational perspective. Such an understanding is integral to developing a fuller picture of how IO activity affects human rights.

2.2 Human rights accountability

Subsequently, scholars have endeavored to understand how IOs are held accountable for the effects of their activities on human rights. Two main perspectives have emerged, with differing ideas on who holds IOs accountable: vertical and pluralist accountability. The vertical

accountability literature, as with much early international relations theory, emphasizes the primacy of states as accountability holders. Best summarized by Hawkins, Lake, Nielsen, and Tierney (2006), from this perspective IO accountability is the result of principal-agent relationships, whereby IOs attain their agency from and are held accountable by their state principals who delegate tasks to IOs (pp. 5-7). While this delegation brings benefits to states in terms of additional resources, enhanced dispute resolution, and strengthened collective decision-making, it harbors the risk that IOs use their given autonomy to act against state interests (Hawkins et al., 2006, p. 23). Thus, Hawkins et al. (2006) argue and demonstrate that states create accountability mechanisms within IOs through (re)contracting strict rules on IO activities, requiring monitoring and reporting, seeking alternative IOs more advantageous to state interests, and developing layered structures of authority (pp. 26-30).

Nielsen and Tierney (2003), studying alleged human rights violations by the World Bank, concur with but nuance this perspective by arguing that accountability is not only between states and IOs but rather embedded in a multilayered accountability network extending down to the individual level; however because states are the proximate principals of IOs, only they can hold them accountable, while accountability efforts by those outside the original delegation relationship fail (pp. 249-260). Meanwhile, though some such as Hoffmann and Mégret (2005) have advocated for the establishment of independent internal accountability mechanisms, Grigorescu (2008), studying state response to UN scandals through the creation of Internal Oversight Services, sheds light on how states also reconstruct internal IO accountability mechanisms to become indirect tools of state accountability (p. 287).

While enlightening, this scholarship has been critiqued by those who argue that, in contrast to Nielsen and Tierney's (2003) argument on the limited accountability power of non-state principals, non-state actors such as NGOs, individuals, courts, and IOs in addition to states have become salient actors in terms of IO human rights accountability. Early on, Woods and Narlikar (2001) assert that in the World Bank, IMF, and World Trade Organization, the combination of expanding influence on individual rights and the desire to retain legitimacy have motivated IOs to subject themselves to human rights accountability by NGOs engaged in monitoring and standard-setting (pp. 580-582). While scholars including Rubenstein (2007) have challenged the efficacy of this surrogate accountability by NGOs given that IOs are not

accountable to those directly affected, the role of non-state actors as accountability holders has not been disputed (p. 631). Giannetto (2020), studying how third parties lobby Frontex, offers a similar argument concerning the inclusion of civil society organizations in the Frontex Consultative Forum (pp. 520-521). Hirschmann (2019) incorporates a broader range of non-state actors in her theory of pluralist accountability, theorizing that norm entrepreneurs, NGOs, courts, expert commissions, and the like act as accountability holders if there is competition among the third parties to undertake such a task and the IO is vulnerable to such pressure (pp. 23-26).

Seeking to move beyond binaries, scholarship has sought to merge these perspectives into a coherent theory of IO accountability. Heupel (2013), predominantly analyzing compliance with UN sanction policy, theorizes that both state and non-state actors were complementary in the accountability process, with states primarily exerting pressure through sanctions, and third parties through monitoring, standard-setting, and reputational sanctions. Hirschmann (2020) extends on this argument, demonstrating through UN peacekeeping that third party and vertical accountability are complementary because third parties initiate accountability pressures that damage the legitimacy of the IO and subsequently trigger vertical accountability functions (p. 35).

Ultimately, existing literature offers valuable insights into how and by whom IOs are held accountable for the effects of their activities on human rights, not only through direct principal-agent relationships but also through a broader network of actors. The depiction of IOs as active agents also provides valuable insights into how IOs shape their own accountability processes. Nonetheless, this literature has not considered why accountability may fail given IO efforts to avoid it and has granted little attention to how accountability processes may evolve over time.

2.3 Blame management

Approaches to accountability avoidance via blame management have also been developed, though only in domestic contexts. This literature has predominantly studied blame management tactics. Seminally, Weaver (1986) argues that because blame is more punished by voters than credit-worthy events are rewarded, leaders seek to manage blame for misconduct by preventing, delaying, deflecting, or diffusing blame. McGraw (1990), analyzing how voters react

to blame management rather than the tactics themselves, echoes the argument of Weaver (1986). However, McGraw (1990) instead frames her typology of political accounts around ideas of political excuses, which entails a denial of responsibility, and political justifications which entail accepting responsibility but seeking to minimize the costs. Later, McGraw (2002) reframes this argument around concessions, justifications, excuses, and denial depending on whether responsibility is accepted or denied and the event is accepted or denied as negative. Hood (2002) articulates similar strategies to McGraw (2002) but also incorporates how blame can be moved among multiple actors through reversion, displacement, shifting, and/or sharing. Leong and Howlett (2017) go beyond tactical typologies, studying the motivation behind how leaders approach wrongdoing, arguing that the type of strategy used is driven not by cost-benefit calculations but desires to retain legitimacy.

While these theories are useful to disentangle how leaders avoid blame and accountability domestically, they remain confined to domestic contexts despite the potential value to be gained by applying them to international governance. Moreover, these works tend to understand blame management as a strategic behavioral choice rather than an argumentative strategy, despite blame management not only being a physical act but also a way of constructing events when responding to allegations (Hansson, 2018).

2.4 Bridging the gap

In sum, although these works have made valuable contributions, they have not yet been bridged to understand how IOs may avoid accountability for alleged human rights violations. Scholars such as Hoffmann and Mégret (2005) and Hirschmann (2020) have mentioned this notion in passing. Capelos and Wurzer (2009), studying UN scandals, are among the only authors to explicitly theorize how IOs manage blame for human rights violations. However, the authors examine the arguably over-studied UN, rely on quantitative content analysis rather than examining the underlying meanings in statements, and apply a blame management theory that cannot account for the layered international governance landscape. Thus, two gaps persist: A study of how IOs manage blame for human rights violations with a theory that can account for blame-shifting, and a study of blame management in IOs beyond the UN and Bretton Woods institutions. This thesis fills these gaps by applying a blame management theory that accounts for

features unique to layered governance landscapes to the understudied yet relevant case of Frontex. Specifically, this thesis investigates: *How did Frontex manage blame in response to allegations of human rights violations between 2020 and 2021?*

3. Theoretical framework

This section outlines the concepts of accountability, blame, and blame management. Subsequently, the theoretical argument for how IOs avoid accountability is established, ending with the core hypotheses of this thesis.

3.1 Core concepts

Though there is no single conceptualization of accountability, there are three dimensions of accountability discussed by various global governance scholars from which a conceptualization for IOs can be constructed (Bovens, 2007; Buchanan & Keohane, 2006; Grant & Keohane, 2005; Hawkins et al., 2006). Generally, accountability is a relationship between actors where the accountability subject is monitored by an accountability holder to whom the subject also justifies its conduct and receives punishment from when violations are detected. Thus, for IOs this relationship entails internal and external bodies setting standards of IO behavior, monitoring standard compliance, and imposing punishment when standards are breached. Despite the concepts being frequently interchanged, accountability is much broader than responsibility which is limited to questions of IO legal obligations.

Meanwhile, blame management has been far less explicitly theorized in political science, and even less in relation to IOs. Weaver (1986) and Hood (2011) implicitly understand blame management as a process of reducing, eluding or transferring burden for actions that contradict expectations. Mitchell (2012) connects these ideas explicitly to accountability by understanding this burden manipulation as a process of influencing information, evaluation standards, and consequences of wrongdoing to minimize costs associated with accountability. Though contested, understanding accountability and blame as inverse is appropriate because blame here is a reaction to accountability processes (Hood, 2014). Hence relating this to IOs, blame management can be understood as a process of seeking to reduce, elude, or transfer blame through influencing information, standards, and punishments.

3.2 Theoretical argument

The theoretical argument of this thesis is based on theory exploring how national leaders manage blame in response to allegations of human rights violations. This is supplemented by literature on self-interest and reputation in IOs. It must be noted that these theories are weakened

by their lack of consideration about how societal and cultural contexts influence blame and that the theory of blame management relied on is inconsistent concerning the precise nature of reputation as a cost motivating blame management. Nonetheless, there are several core advantages of this approach. By offering an underlying logic for why IOs seek to manage blame and including a perspective on blame management that accounts for the hierarchies and networked organizations through the notion of delegation, this thesis challenges the argument that blame management theories developed from domestic contexts cannot transfer to that of IOs. Though others such as Hood (2014) have studied delegation as a form of blame management, the framework of Mitchell (2012) applied in this thesis is the only theory that incorporates delegation while explicitly outlining the motivation for delegation versus other management tactics and presenting a framework specific to human rights. The latter is relevant because the particular stigma associated with human rights violations may play a salient role in understanding how blame is managed (Adler-Nissen, 2014).

The first argument necessary for this research concerns why accountability subjects seek to manage blame. Various scholars have shown from a rationalist perspective that actors largely define their self-interest in terms of the costs and benefits associated with particular behaviors (Checkel, 1997; Geisinger & Stein, 2008; Goldsmith & Posner, 2002; Müller, 2004; Quackenbush, 2004). Connecting this to accountability, it can be argued that accountability evasion is motivated by self-interest in avoiding the costs associated with accountability (Mitchell, 2012). This is contingent on the form of accountability being imposed. With hard accountability, costs primarily entail tangible punishment including sanctions, suspension or cancellation of activities, and firing of officials, among others (Fox, 2007). Contrastingly, soft forms of accountability impose costs primarily related to the reputation of and trust in the organization, in addition to the effectiveness of governance (Adler-Nissen, 2014; de Cremer & Bakker, 2003; Busuioc & Lodge, 2016; Hall, Blass, Ferris, & Massengale, 2004). For individual leaders, these costs can take personal and governance forms (Mitchell, 2012, pp. 45-47). These costs resulting from accountability processes endanger the ability of individual leaders to govern due to lost political support or loyalty of those actors relied on to implement policy, and therefore it is in the interest of states to avoid accountability mechanisms that could impose such costs (Mitchell, 2012, pp. 45-47).

Though developed in the context of states, this argument likewise applies to IOs and their leadership. This is because IOs and their leadership are also subject to both hard and soft accountability which impose personal and governance costs (Daugirdas, 2014). In the context of IOs, the personal component refers to the reputational costs associated with blame. IOs are particularly sensitive to reputational costs because a reputation as a “good” actor in global governance is integral to IO legitimacy, which is in turn critical to IOs remaining relevant forums for state action, powerful actors in the articulation of global norms, and part of the democratic global governance landscape (Daugirdas, 2014; Tallberg & Zürn, 2019). The governance costs imply that those actors IOs rely on to execute their activities may be less committed to enabling IOs if they come to bear the brunt of the blame for the violations. This can likewise jeopardize IO activities given that they ultimately rely on their principals and partner agents to execute their respective tasks (Hooghe & Marks, 2015). Thus, because the costs associated with human rights violations jeopardize IO legitimacy and therefore relevance in addition to commitment from implementing actors, it is in the interest of IOs to avoid accountability mechanisms that could impose such costs. The mechanisms below likewise apply to IOs based on the aforementioned logic.

The second argument addresses the question of how blame is managed by those actors called to issue accounts. Though often understood as a behavioral strategy, following the argument of Hansson (2018), blame management is also a language game. Therefore, strategies of blame management can also be understood as communicative patterns. Following the motivations above, Mitchell (2012) posits blame can be managed in four ways, with the precise technique dependent on the nature of the blame assigned (p. 27). The first three mechanisms entail accepting or rejecting ownership to varying degrees, while the fourth involves shifting blame (Mitchell, 2012, p. 28). Most basically, leaders can deny the actions, evidence, or consequences of the human rights violation, with the outcome being that there is officially no rights violation committed and no accountability. However, this technique is not always possible, particularly once knowledge of the rights violation is well-documented and widespread (Mitchell, 2012, pp. 28-29). Here, leaders may rely on the tactic of delay, whereby the time before potential ownership is acknowledged is prolonged, for example through inquiries with the

aim that other more pressing issues arise and thus no accountability is issued (Mitchell, 2012, pp. 30-31). Alternatively, some form of accountability can be offered through diversion, whereby the accountability subject takes ownership but avoids the aforementioned costs by recontextualizing the violation around the ideas that everyone gets their hands dirty or that in these contexts the violations are inevitable and a tragic choice that must be made (Mitchell, 2012, pp. 31-32). Hence, though the actor is formally held accountable, costs are mitigated because the violations appear justified. Finally, and most theoretically interesting in relation to the idea of hierarchies and networks, ownership can be taken but shifted to lower levels within the organization, so that costs are borne, but by those at the bottom (Mitchell, 2012, pp. 34-35). Here the costs borne by the organization are minimized as lower levels bear the punishment, and a form of accountability is offered. Though this risks jeopardizing the commitment from IO implementing partners, once the violation has been established and linked to the IO, delegation may be the best option for securing continued legitimacy from accountability holders.

3.3 Hypotheses

In brief, the argument of this thesis is that the consequences of accountability for alleged human rights violations motivate IOs to manage the blame in a way that minimizes potential costs. Because of the centrality of IO legitimacy to their effectiveness as global governance actors and the extent to which IOs rely on their external partners and principals to execute their tasks, IOs are incentivized to respond to allegations via denial, delay, or diversion. However, once there is a clear link between the organization and abuse, it is no longer possible to avoid blame and retain agent confidence, thus blame is then delegated to lower levels. Hence, four hypotheses result:

- **H_{deny}** In response to allegations of human rights violations, IO officials tasked with responding to accountability efforts *deny* the existence of violations.
- **H_{delay}** In response to allegations of human rights violations, IO officials tasked with responding to accountability efforts *delay* responding to accountability claims.
- **H_{divert}** In response to allegations of human rights violations, IO officials tasked with responding to accountability efforts *divert* attention from the severity of the violations.

- **H_{delegate}** In response to allegations of human rights violations, IO officials tasked with responding to accountability efforts *delegate* blame for the violations to those directly involved in the alleged violation.

4. Research design

This section sequentially outlines the research design, case selection, data, method of analysis, and concept operationalization.

4.1 Research design and case selection

Given that this research aims to apply theories of blame management to the new context of IOs, a single case study is the optimal research design. This is because transferring the context of a theory requires substantial analytical detail on the new case, and highly detailed study is one of the primary advantages of case studies (Halperin & Heath, 2020, p. 234). Although this rich detail limits the external validity and thus generalizability of this study, this is overcome by situating this research in a comparative context (Halperin & Heath, 2020, p. 235). Specifically, how IOs manage blame for alleged human rights violations is of wider relevance to the IO accountability and blame management literature; thus contributing to these fields and efforts to move towards an encompassing theory of accountability in global governance. As elaborated below, because Frontex can be considered a typical case of an IO accused of human rights violations, this research offers an analysis that may be compared to other IOs accused of violations, including the UN.

Frontex was selected because it represents an interesting yet overlooked case of an IO accused of human rights violations that satisfies case study and typical case criteria (Geddes, 2003; Halperin & Heath, 2020, pp. 234-236; Seawright & Gerring, 2008, pp. 299-300). Most basically, Frontex is a new case to apply a theory of blame management, offering insights beyond the cases from which the theory was developed. Frontex is also within the domain of cases to which blame management theories apply because although Frontex claims to adhere to human rights agreements including the EU Charter of Fundamental Rights and 1951 Convention on the Status of Refugees, it has repeatedly been accused by NGOs, civil society, European Parliament (*Parliament*) representatives, and others of violating said rights (Fink, 2015). The right to non-refoulement, meaning the prohibition on state return of asylum seekers to countries where they risk persecution, has received particular attention in these accusations (Papastavridis, 2010, p. 105). Frontex is also a suitable case to test the strategies articulated by Mitchell (2012) as it satisfies his core case criteria. Particularly, Frontex is hierarchically structured between its Board, Directors, Divisions, and member state resources; the nature of its work is also intimately

related to security as Frontex makes use of Coast Guard forces (Fink, 2015). Moreover, the allegations were shocking at the time of publication, as indicated by the institutional and media scrutiny they received, and Frontex contested the occurrence of the violations. The study period of January 2020 to December 2021 is interesting and relevant because several media outlets released stories of Frontex complicity in migrant pushbacks in the Aegean Sea that triggered accountability demands and the initiation of the new European Parliament Frontex Scrutiny Working Group.

4.2 Data and method of analysis

To test the hypotheses, primary data is studied in the form of accounts issued by Frontex leadership components, specifically the Management Board, Executive Director, and Fundamental Rights Officer to the public, European Commission (*Commission*), and Parliament. Though formally also accountable to the European Council (*Council*), data from the Council is not used because Frontex did not issue accounts for the violations directly to the Council. The data is composed of speeches, press releases and statements, written letters, and the Annual Report by the Fundamental Rights Officer. These were selected based on keywords in Appendix I via the website of the Commission, Parliament, Frontex, Statewatch, and Bellingcat.

This data is analyzed via qualitative content analysis (*QCA*), with themes as the recording unit. QCA is the optimal method because per Hansson (2018), blame management is not only a behavior but also a verbal act in speeches, reports, and statements. QCA is most suitable precisely for the analysis of textual information to extract latent meaning rather than simply the frequency of phrases and words (Halperin & Heath, 2020, p. 376). Themes refer to the articulation of a single idea, here type of blame management strategy (Halperin & Heath, 2020, p. 378). This is the optimal unit because a blame management strategy can range from a single phrase to multiple paragraphs. The risk that the validity and reliability of results obtained via QCA are compromised by coder bias is minimized through the publication of all coding material in Appendix II, relying on a clearly defined coding scheme applicable to other cases or to replicate this analysis, and re-checking coding results for coder stability (Halperin & Heath, 2020, pp. 384-388).

4.3 Operationalization and coding framework

Blame management is operationalized based on its form, which is related to the amount of ownership accepted for the violation and how, if at all, it is contextualized. From these dimensions, there are four mutually-exclusive forms of blame management that serve as the core categories for this analysis. To ensure the coding framework is exhaustive, a miscellaneous category has been added to incorporate potentially relevant appeals beyond the core categories and a missing category for instances where no strategy is present. The categories are distinguished in the text by color codes in Appendix II and shortly in Table 2 below.

Three of these core tactics entail not directly accepting ownership for the violation. First, denial is indicated when Frontex leadership explicitly rejects ownership for complicity in the pushbacks or their occurrence and therefore no contextualization is offered. Though arguably not discussing the violation should also qualify as denial (Mitchell, 2012), for replicability and coding accuracy only direct denials are considered. With delay, Frontex leadership stresses the need for further investigation and/or ongoing internal investigations, thereby neither accepting nor refuting ownership and contextualizing the pushbacks as unclear due to the need for further understanding. This is indicated by reference to the inconclusiveness of complicity in pushbacks and the establishment or findings of internal working groups. Lastly, via delegation, ownership for the pushbacks is shifted from Frontex leadership to the member states or lower leadership levels, for example from the Management Board to Executive Director; thus the pushbacks are contextualized in terms of proximity to the intervention on the ground. To capture the duality of this violation in terms of preserving the standing of leadership but shifting blame to lower levels, delegation is indicated by reference to the obligations of lower staff levels, invitation to lower levels to address the violations, and reference to the proactiveness of Frontex leadership vis-a-vis lower levels. However, with diversion Frontex leadership indirectly accepts ownership for, or at least knowledge of, the pushbacks but places this in an acceptable context, namely situational necessity, or worse conditions elsewhere. The former is particularly relevant for Frontex, referring potentially to the complex border situation between Greece and Turkey or the rapid expansion of authority experienced by Frontex in recent years.

Table 2: Coding scheme blame management

Blame management technique	Ownership accepted	Recontextualization
<i>Denial</i>	No	None
<i>Delay</i>	No	Further inquiry
<i>Delegation</i>	Yes (lower levels)	Situational proximity
<i>Diversion</i>	Yes	Situational necessity, conditions elsewhere
<i>Miscellaneous</i>	Varies	Varies
<i>Missing</i>	None	None

5. Analysis and discussion

This section presents and discusses the results of the QCA. Ultimately, support was found for all four hypotheses, but with qualifications concerning the context and manner in which blame was managed.

5.1 Delegation: The law of gravity holds

Throughout the documents studied, the Executive Director, Management Board, and Fundamental Rights Officer delegated blame, though in different ways. The Executive Director consistently shifted blame to the member states, regardless of his audience. In some instances this was direct, for example when he framed his request for information to Portuguese and Romanian officials in terms of their more informed understanding given that their forces were actually on the ground thereby implying their responsibility (Leggeri, 2020f, 2020g). More indirectly, he consistently referenced that in the Greek interventions operational control lies with the member states while Frontex forces are present but “have not... command on the operation” and that of those deployed in Greece “hardly 10 were Frontex staff... the rest [were] staff deployed by the member states” (European Parliament, 2020). These statements serve to create the image that Frontex was only a weak facilitating actor that did not have enough structural influence to facilitate or know of the alleged violations. The Executive Director further shifted blame by emphasizing the Agency’s proactivity in reacting to the violations versus the unresponsiveness of member states, as in the extended time it took for the Greek Minister to respond to his inquiry and the additional suspicious cases the Director reported himself (European Parliament, 2020). Press releases invoked similar sentiments to those of the Executive Director (Frontex, 2020b). Similarly, the Working Group report on fundamental rights in the Aegean Sea and Fundamental Rights Officer explicitly stated that the “question [of fundamental rights violations] can only be answered by the officers in charge” and that Frontex forces had been instructed by Greek officials not to monitor the area of the alleged violations (Fundamental Rights Officer, 2021; Management Board, 2021b).

Likewise, the Management Board delegated blame, though less often than the Executive Director, and not only to the member states. Most clearly, during an extraordinary meeting between the Commission and Management Board to discuss the violations, they stated that they expect the Executive Director to “suspend or terminate” activities suspected of fundamental

rights violations and in case substantiated allegations come to his knowledge that he “will take without delay all appropriate action” (European Commission, 2020a). In doing so, the Management Board delegated blame for both potential Agency complicity in the violations and any inappropriate handling of the investigations to the Executive Director. Only briefly and weakly was blame shifted to the member states, for instance when before the Parliament the Management Board Chair stated that “external border management is... a key shared responsibility of member states and the Agency...” (European Parliament, 2021b).

5.2 Delay: Further investigations

In addition to delegation, delay was another substantially relied-on strategy primarily by the Management Board but also the Executive Director and Fundamental Rights Officer. The Executive Director invoked delay both to the Commission and Parliament, though not in his initial communications. Initially, this took the form of reference to an internal inquiry and fact-finding mission into the alleged violations at Greek borders (Frontex, 2020b). As pressure from the Commission and Parliament for a concrete response to the allegations continued, he further delayed a concrete outcome to these investigations, arguing the inquiry was now “divided into three phases due to its complexity and scope” (Leggeri, 2020j). When these outcomes were released, he moved away from delaying investigations. Instead, the Executive Director shifted to delaying a direct response by citing the need for further clarification of various legal obligations borne by Frontex, including how to classify various operational situations (European Parliament, 2020).

Concurrently, the Management Board relied on delay more extensively from the outset. Following its early extraordinary meeting with the Commission, the Management Board stated that an internal sub-working group would be established because “urgent action is needed... to investigate all aspects related to” fundamental rights (European Commission, 2020a). Beyond further investigations, the Management Board likewise delayed direct response by citing other tasks it expected the Executive Director to execute such as “beef[ing]-up the training in fundamental rights” and establishing an evaluation committee (European Commission, 2020b). The form of delay shifted following the publication of the Working Group report, which itself relied on delay in asserting that in more than five incidents the data could not be sufficiently analyzed and therefore conclusions could not be drawn and that legal clarification, as referenced

by the Executive Director, was needed (Management Board, 2021b). Afterward, the Management Board repeatedly cited this report to delay acknowledging the violations and made general statements on the need to improve reporting systems (Management Board, 2021b). The Fundamental Rights Officer only briefly delayed blame concerning technical delays in advisory practices (Fundamental Rights Officer, 2021).

5.3 Diversion: A complex situation

Though notably less prominent, both the Executive Director and Management Board relied on diversion, though not the Fundamental Rights Officer. Interestingly, diversion here did not entail direct acknowledgment of responsibility, but rather indirectly based on context because it was only invoked when directly pressed by the Commission and Parliament to respond to the violations. Generally, this diversion entailed references to the complex geopolitical situation between Greece and Turkey and national security. Writing to the Parliament Committee on Civil Liberties, Justice and Home Affairs (*LIBE Committee*), the Executive Director asserted that “the situation in the eastern Aegean... has been complicated because of a disagreement between Greece and Turkey over their maritime borders” and that this has had implications for operations in the area for instance on search and rescue (Leggeri, 2020e). The same argument was provided to the public in a press release (Frontex, 2020b). Similar arguments were invoked later, for instance pertaining to the complexities caused by the overlapping border claims between Greece and Turkey (European Parliament, 2020). National security and pressing danger were likewise added to this narrative by referencing physical force Frontex forces had faced and the security concerns this raised, for instance recalling the “almost daily shootings coming from Turkey at the land border when Frontex patrol were operating” (European Parliament, 2020). Hence, though not admitting direct responsibility, in depicting a situation of ongoing border disputes that jeopardize national security, any potential wrongdoing that may be uncovered later on was made to seem justifiable and even inevitable given the situation.

Furthermore, the rapid expansion of the Agency and its activities was invoked. Responding to accusations in the Parliament that the violations may be a consequence of Agency culture, the Executive Director offered the defense that “5 years ago we had only 2 persons in the Fundamental Rights Office, now we have 10, and the budget that was proposed this year was 500,000 euro and I proposed an increase to 1.3 million for next year” (European Parliament,

2020). Likewise, the Management Board invoked these expanding capacities when speaking to the Parliament stating that “with the new regulation in 2019, the amount on the task of the Agency... we have complemented these changes [in] quite [a] short time” (European Parliament, 2021b). As with the border dispute and security, these statements do not admit responsibility but offer a seemingly plausible reason to the Commission, Parliament, and public for why any potential violations occurred.

5.4 Denial: Frontex is innocent

Similarly, denial was a less prominent but still noted strategy for the Executive Director and Management Board. Interestingly, denial was only observed later in the period study, once actors had cast doubt on the details of the alleged violations through strategic delay. Moreover, denial was only resorted to when testifying before the Parliament and in Management Board reports and meetings. It was avoided before the Commission, though Commission members were present in Parliament meetings. Denial entailed denying both the violations themselves and various pieces of evidence. Speaking before the LIBE Committee, the Executive Director began with the statement that “there were not active, direct or indirect participation of Frontex staff” in pushback activities despite their presence in the area (European Parliament, 2020). Subsequently, he moved to deny that a Frontex surveillance flight was deployed on the night in question, and when there was a flight that detected suspicious cases, they were reported (European Parliament, 2020). In communication with the LIBE Committee, he then denied the occurrence of pushbacks generally as there were no suspicious cases other than those he reported to the Greek Minister (Leggeri, 2020). Likewise, in the first meeting of the Frontex Scrutiny Working Group he asserted there is “no... evidence... saying that Frontex would have participated [in] or... carried out violation[s] of fundamental rights” (European Parliament, 2021a).

Contrastingly, the Management Board only once resorted to denial, not denial of the pushbacks themselves but Frontex complicity. Specifically, it was argued that “there are indeed no indications that an incident as reported by the media for 28/29 April was observed by Frontex assets” (Management Board, 2021a). Meanwhile, in the final report of the Management Board working group the pushbacks themselves were denied because in eight cases “no third-country nationals were turned back in contravention of the principle of non-refoulement” (Management Board, 2021b). Yet confusion was then generated around this point as the report argued that six

of the eight violations occurred in Turkish, not Greek, territorial waters. The report further denied that the operations were considered search and rescue, thus denying that the violations were technically possible (Management Board, 2021b). Moreover, the report then moved to reiterate that none of its assets deployed had reported to it any violations, thereby denying that the violations occurred (Management Board, 2021b).

5.5 Miscellaneous: Saving face

In addition to the strategies corresponding to the hypotheses of this thesis, several patterns beyond these hypotheses were detected. Notably, these were invoked mainly by the Executive Director, and only briefly in the Management Board Working Group report. One pattern was reference to the lives Frontex had saved and the general “good” the Agency did. This was most prominent in the Executive Director’s correspondence with the director of Amnesty International over the alleged violations. He noted that Frontex had assisted in the “rescue of 19,651 people in 350 Search and Rescue operations since 2017” (Leggeri, 2020d). In this correspondence and his testimony to the LIBE Committee, the Executive Director asserted that without Frontex, violations throughout its areas of deployment, particularly in the Aegean Sea, would not have been detected (European Parliament, 2020).

Additionally, the Executive Director made various references to his openness to scrutiny and accountability processes as a necessary measure he was willing to submit to. To illustrate, he opened his statement to the Frontex Scrutiny Working Group with the sentiment that it was “in the interest of the Agency... to shed light and to have clarity on alleged accusations” and that the Working Group was a welcomed opportunity for the Agency to learn and implement recommendations (European Parliament, 2021a). This sentiment echoed in his testimony to the LIBE Committee with his acknowledgement that the Agency needs more rules to protect fundamental rights and that investigations against the Agency including by the EU Ombudsman were welcome (European Parliament, 2020, 2021a). This is best embodied by his statement that “I’m ready... to implement the recommendations but also to seek guidance” (European Parliament, 2021b). Similarly, the Fundamental Rights Officer referenced the centrality of protecting fundamental rights during interventions around Greece, stating that “respect for, protection and promotion of fundamental rights are mandatory elements throughout the planning, implementation and evaluation of activities by the Agency” (Fundamental Rights Officer, 2021).

Overall, this indicates that beyond the central strategies addressed in this thesis, accountability was also evaded through reminders of the necessary functions Frontex fills, the benefits of their work, and their seeming openness to investigation and scrutiny.

5.6 Discussion

From this analysis, arguments can be made concerning how these findings connect to the hypotheses and theoretical logic of this thesis. Shortly, this thesis has argued that in response to alleged human rights violations between 2020 and 2021, Frontex leadership sought to evade accountability by denying, delaying, diverting, and delegating blame. This is because accountability costs damage IO legitimacy and the loyalty of those actors the IO relies on to execute its tasks. The hypotheses and underlying logic of this thesis are largely supported, though with qualifications concerning the precise nature of their invocation. All blame management strategies discussed by Mitchell (2012) were invoked, but nuances in their use warrant examination.

Most basically, these findings show that when understood as not only a behavioral but also a verbal strategy, blame is not managed through one mechanism at a time but rather a combination of multiple. Concerning how the mechanisms were invoked, delegation went beyond directly shifting blame to lower levels per Mitchell (2012), but also entailed emphasizing the proactivity and limited mandate of Frontex. This can still be explained by Mitchell's (2012) argument that pressure from accountability holders to acknowledge blame, here the Parliament and Commission, can prompt leaders to discuss their own role. These pressures, exemplified by ongoing discussions, made it necessary to not only shift blame but also contrast this with the agency's own role which strengthened the instances of direct delegation by creating the image that Frontex had exhausted its capacity and thus delegation was warranted. However, the way diversion was invoked partially contrasts the logic of Mitchell (2012) because Frontex leadership did not take responsibility and then place it in an acceptable context. Instead, blame was diverted by responding to direct requests for an explanation by discussing the complicated nature of geopolitics and rapid organizational expansion. The argument of Blakeley and Raphael (2020) that blame management is both past and future oriented captures this finding, because by placing

the blame in an acceptable context while only indirectly acknowledging potential responsibility, Frontex laid the foundation to clear itself of future violations.

That delegation and delay were more frequently relied on than diversion, denial, and miscellaneous strategies supports the logic of these hypotheses. Per Buchanan and Keohane (2006), IOs are expected to offer transparent and accountable governance. Delegation and delay enabled Frontex to partially fulfill these expectations by portraying the Agency as committed to due diligence and fundamental rights while also avoiding directly accepting responsibility and therefore bearing accountability costs. Following Hawkins et al. (2006) denial was less present because it risks damaging member state trust by making the agency appear uncommitted to due diligence; yet it was still invoked once these associated costs had been mitigated. Per Capelos and Wurzer (2009), diversion and miscellaneous strategies provided a way to save face, but cannot satisfy substantive pressures for accountability.

The findings also show that within Frontex, the blame management approach is not unitary because the Executive Director delegated blame to member states while the Management Board delegated to the Executive Director and delayed response. This is best explained by the arguments of Perkowski (2019) and Rijpma (2012) that Frontex is not a unitary institution but rather a loosely coupled organization with different bodies representing varied interests. The implication is that bodies such as the Management Board composed of member state representatives, though part of the supranational agency, prioritize retaining member state loyalty while the Executive Director is more influenced by EU institutions and interests (Thomson, 2008). This also explains why delay was implemented more by the Management Board, as it enables blame for both the Agency and member states to be at least temporarily avoided.

Furthermore, this study raises interesting similarities and differences relative to blame management in states and other IOs. Particularly, they contrast the conclusion of Capelos and Wurzer (2009) that the UN managed blame primarily through concessions, which accept responsibility and the negativity of the violation, and denial, which refutes the event and its negative nature. This may be explained by differences in how the violations were investigated. In the UN, various independent investigative bodies conducted inquiries making violations more likely to be detected. Meanwhile in Frontex, these investigations were internally led, which enabled the establishment of a knowledge barrier. Although the UN relied more extensively on

denial, for both IOs it was only invoked after investigations had been launched. This enabled them to deny allegations and preserve their image without seeming unwilling to submit to accountability processes.

Similarly, the delegation logic aimed to deflect direct costs while still offering some form of accountability. Additionally, these findings contrast with states studied by Mitchell (2012) and Blakeley and Raphael (2020), where in relation to torture national officials primarily denied and delegated blame. Differences concerning denial may be explained by both the context and way the violations were released. In the national cases some time passed before the violations were connected to national officials, while in Frontex media reports linked the Agency to the violations from the onset. Meanwhile, the finding that both states and Frontex made extensive use of delay reflects a common desire from those at the top to avoid direct costs but still offer some accountability to retain the image of an actor committed to good practices to enable future action.

6. Conclusion

Ultimately, the findings of this research largely support the hypotheses that following allegations of human rights violations between 2020 and 2021, Frontex leadership evaded accountability by managing blame through denial, delay, diversion, and delegation. Moreover, they support the underlying argument that the reputational and governance costs accountability imposes on IOs leads them to manage blame to avoid said costs. However, the findings suggest that Frontex leaders were more inclined to invoke delegation and delay rather than diversion and denial as the former two enable the Agency to avoid accountability costs while still meeting external expectations of accountability. Moreover, not all actors within Frontex delegate blame in the same way, suggesting divergent interests between institutional bodies.

This research contains various strengths and limitations. The primary strength is that it has presented an argument that can transfer a theory of blame management developed in the context of states to IOs. Moreover, although a single case study over a narrow time period limits the generalizability of these findings, because this is the first time a theory of blame management has been transferred to Frontex, the analytical detail yielded from this limited scope was fruitful for comprehensive analysis. Additionally, the questions of validity and reliability that arise while using QCA were mitigated as much as possible through the development of a clear coding protocol and framework and publication of all materials in Appendix II.

These findings offer new insights into the human rights responsibility, IO accountability, and blame management literature. To the former, this thesis adds another facet to understanding IOs' growing influence on human rights, namely how it is a cornerstone of accountability processes whilst also manipulated by leadership to serve their self-interest. This research also fills a crucial gap in the IO accountability literature by showing how accountability efforts may fail as a result of blame management and that although IO leadership may submit themselves to formal accountability processes and implement some reform, they aim to avoid accountability in terms of direct punishment. Finally, this thesis contributes to advancing blame management scholarship by moving these theories beyond the domestic context to the international.

Given the expanding influence of global governance, there are several pressing avenues for future research following from this thesis. For one, scholars should endeavor to study blame management responses for human rights violations over a longer period within Frontex and in other IO bodies such as the North Atlantic Treaty Organization and European Commission.

Likewise, small-n comparisons on how various IOs responded to human rights violations and more extensive comparison of how this juxtaposes state reactions would contribute towards a more generalizable understanding of how IOs manage blame for human rights violations. A final salient research item is to apply alternative theories of blame management to IOs to reap a wider range of theoretical understanding concerning how blame is managed. As the case of Frontex has shown, the mere presence of accountability mechanisms is not enough to ensure quality global governance.

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8. Appendix I

Table 3: Search terms sources

<i>Terms</i>
Executive Director
Frontex
Fundamental rights
Leggeri
Management Board
Pushbacks
Push backs

Table 4: Timeline of sources

<i>Date</i>	<i>Source</i>
8-5-2020	Letter: Executive Director inquiry to Greek Minister of Maritime Affairs and Insular Policy
10-6-2020	Press release: Frontex and FRA agree to establish Fundamental Rights Monitors
24-7-2020	Written question responses following the presentation to the members of the LIBE Committee on the activities of the European Border and Coast Guard Agency
6-8-2020	Letter: Response of Executive Director to Vice Admiral H.C.G. Hellenic Coast Guard Commandment
13-10-2020	Letter: Response of Executive Director to Amnesty International reports

“Waves of impunity” and “Between life and death”	
27-10-2020	Letter: Executive Director notification to Chairman of LIBE Committee
27-10-2020	Press release: Frontex launches internal inquiry into incidents recently reported by media
9-11-2020	Letter: Executive Director inquiry to Management Board Member of Portugal
9-11-2020	Letter: Executive Director inquiry to Management Board Member of Romania
10-11-2020	Conclusions of the Chairperson of the Management Board Statement Extraordinary Meeting
24-11-2020	Letter: Executive Director notification to German Federal Minister of the Interior, Commission Vice President for Promoting the European Way of Life and Commissioner for Home Affairs
25/26-11-2020	Statement of the Chairperson of the Frontex Management Board from its 82nd meeting
27-11-2020	Letter: Executive Director notification to Commission Vice-President for Promoting the European Way of Life, Commissioner for Home Affairs, and Committee on Civil Liberties, Justice, and Home Affairs
20-11-2020	Letter: Executive Director response to Management Board Member of Sweden
1-12-2020	Testimony Executive Director to European Parliament Committee on Civil Liberties, Justice, and Home Affairs
20/21-1-2021	Conclusions of the Management Board’s meeting on the preliminary report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea

1-3-2021	Final report of the Frontex Management Board Working Group: Fundamental rights and legal operational aspects of operations in the Aegean Sea
4-3-2021	Executive Director opening statement to first session of the European Parliament Frontex Scrutiny Working Group
5-3-2021	Conclusions of the Management Board's meeting on the report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea
16-3-2021	Chairman Management Board statement of views to European Parliament Civil Liberties, Justice, and Home Affairs Committee
16-3-2021	Executive Director statement of views to European Parliament Civil Liberties, Justice, and Home Affairs Committee
25-6-2021	Annual report Fundamental Rights Officer, section three fundamental rights compliance in Frontex operational activities and section four Fundamental Rights Monitoring
15-7-2021	Press release: Frontex welcomes report by the Scrutiny Working Group

Appendix II

Coding protocol and framework

Based on the guidelines of Halperin and Heath (2020, pp. 379-380), the following coding protocol was developed to ensure the coding and subsequent analysis are reliable:

- Denial, delay, diversion, and delegation are predefined categories based on the theory of Mitchell (2012), but additional categories are allowed to emerge from the data, particularly through patterns within data coded as miscellaneous.
- Texts are coded for their implied meaning rather than direct reference to specific phrases. A partial exception to this is the category denial, where only direct refutation of the allegations and violations are coded rather than the absence of explicit acknowledgment of such violations.
- Precise guidelines and indicators for coding are specified in Table 1. The respective colors per strategy serve to indicate the code assigned to the colored portion of data.
- Distinction rules:
 - Denial vis-a-vis other strategies: Several cases were encountered where the primary portion of an argument was based on the establishment of further internal investigation mechanisms, the responsibility of member states, or the inevitable nature of violations, which included brief references that challenge the complicity of Frontex in the violation. In these cases of overlap, the denial fragment was coded apart from the rest of the strategy to capture the connected use of the mechanisms.

Table 5: Coding framework

<i>Category and color code</i>	<i>Description (Mitchell, 2012, pp. 28-35)</i>	<i>Indicators</i>
Denial	Human rights violation (the act, its evidence, etc.) is not acknowledged and/or dismissed. Officially no	<ul style="list-style-type: none"> ● Challenge evidence of the event itself. ● Challenge involvement of Frontex. ● Challenge involvement of Frontex associated forces.

	violation occurred and no accountability results.	
Delay	Accountability acceptance set back so that other events occur that reduce attention on the violation, can also entail engaging in other actions such as investigations that pushback accountability taking.	<ul style="list-style-type: none"> ● Reference to establishment of internal inquiry, sub-group, working group, etc. ● Reference to inconclusiveness of existing evidence or need for further clarification.
Delegation	Blame for the violation is redirected away from the leadership of the organization towards those at lower levels to avoid the extent to which costs of accountability are felt by the organization leadership.	<ul style="list-style-type: none"> ● Reference to reporting obligations of member states vis-a-vis investigative power of Frontex. ● Reference to the responsiveness and proactiveness of Frontex vis-a-vis member states. ● Reference to the obligations binding on member states. ● Invitation to member states to clarify their role in alleged violations. ● Reference to obligations of lower offices in Frontex, e.g. Management Board referencing obligations of Executive Director, Executive Director referencing obligations of member states.
Diversion	Acknowledge complicity in violations but attempt to distract from them by	<ul style="list-style-type: none"> ● Reference to the complexity of the situation at the borders. ● Reference to the rapid expansion of

	recontextualizing them as inevitable given the situation, things are worse elsewhere, etc. thereby making the violations appear acceptable. Ultimate goal is that no accountability is issued.	<p>Frontex mandate and capacities.</p> <ul style="list-style-type: none"> ● Reference to the inevitability of such violations given the circumstances. ● Reference to the trade-off between security and human rights.
Miscellaneous	Tactics that do not fit the aforementioned categories but are still coherent ways of managing blame. For example if the blame is fully accepted and acknowledged by the representative issuing the account.	<ul style="list-style-type: none"> ● Acknowledgement of the violation and complicity of Frontex. ● Acknowledgement of the need to improve Frontex internal accountability and protection of human rights.
Missing	No blame management strategy	<ul style="list-style-type: none"> ● All text that does not fit the above indicators and categories.

Table 6: Coded data in chronological order

<i>Source</i>	<i>Text</i>
Letter: Executive Director inquiry to Greek Minister of Maritime	Dear Minister, As the Executive Director of the European Border and Coast Guard Agency, Frontex, I am concerned about a certain type of incident occurred in the operational area of the Frontex coordinated Joint Operation (JO) Poseidon 2020/ Rapid Border Intervention (RBI) Aegean 2020, which has involved an interception of irregular migrants at sea, and their intended or subsequent return to the Turkish Territorial Waters (TTW).

Affairs and Insular Policy. 8-5-2020 On 18 April 2020, the Frontex contracted aircraft operating in the Aegean Sea in support of the above mentioned operations sighted a migrant boat with approximately 20-30 persons on board. By the time of the sighting there were both: Hellenic Coast Guard (HCG) and Turkish Coast Guard (TCG) patrolling vessels in the vicinity of the boat. HCG vessel was observed to embark the migrants on board. Approximately two and half hours after the embarkation, the HCG vessel was sighted again and this time transferring the migrants back to the migrant boat. After, a Hellenic patrol vessel towed the migrant boat towards TTW.

Taking into consideration the incident described above and to guarantee fundamental rights compliance in the operational activities at the external borders of the European Union, I invite you to internally investigate the incident. I would appreciate it if you could inform me on the outcomes of this enquiry as soon as available. Considering the fact that the border area is part of the operational area of the Frontex coordinated maritime operations, the adherence of fundamental rights in line with the European Integrated Border Management Strategy, in particular the compliance with the principle of non-refoulement, is an ultimate requirement.

Please let me assure you that I am willing to continue to provide Greece in the frontline of migration with my support while ensuring good cooperation to effectively protect the human rights of those at sea.

I look forward to receiving your reply and continuing our operational cooperation and support.

Yours sincerely,
Fabrice Leggeri
Executive Director

Press release: Frontex and FRA agree Today, Frontex, the European Border and Coast Guard Agency and the European Union Agency for Fundamental Rights (FRA) have agreed to work together to establish Fundamental Rights Monitors, design their training programme and integrate them into Frontex activities.

to establish
Fundamenta
l Rights
Monitors.
10-6-2020

“The establishment of the new monitors is another step to make our activities even more transparent and promote fundamental rights throughout all our activities. We are committed to ensuring the highest standards in all that we do. And Fundamental rights are an essential component of effective border management.” said Frontex Executive Director Fabrice Leggeri. “The Fundamental Rights Agency is a key partner for us in this task,” he added.

"It is essential that the EU, its Member States and agencies do their utmost to protect people's fundamental rights. Fundamental rights monitoring of operations at the land and sea borders can help ensure that rights violations do not occur. The Fundamental Rights Monitors are an important preventive tool and FRA will provide its fundamental rights expertise to help establish them. The vacancy notices should be published as soon as possible so the monitors can be deployed," said FRA's director Michael O'Flaherty.

In a ceremony that took place online, the two directors signed a Service Level Agreement in the virtual presence of Didier Reynders, Commissioner for Justice, Juan Fernando López Aguilar, the Chair of LIBE Committee in the European Parliament and Georgios Koumoutsakos, Alternate Minister, Greek Ministry for Migration. Other participants included high-level representatives from Germany and the European Parliament, as well as the Chair of Frontex Consultative Forum on fundamental rights.

The main tasks of the Frontex Fundamental Rights Monitors will be to make sure all operational activities are in line with fundamental rights framework, monitor all types of operations and contribute to Frontex training activities.

The monitors will be integrated with the Agency's Fundamental Rights Office. The Frontex Fundamental Rights Officer will oversee their work and assign them to particular operations.

By the end of the year, Frontex and FRA plan to establish a team of as many as 40 Fundamental Rights Monitors. They will undergo enhanced fundamental rights training before they take up their duties next year, when Frontex will

deploy the first members of the European Border and Coast Guard Standing Corps.

Written question answers Executive Director following the presentation

Question 4 - We would like to know if FRONTEX has recorded video surveillance of push backs that are regularly happening at the border between Turkey and Greece, whether at the land border or sea border. As FRONTEX has aerial surveillance to monitor this border, we assume that FRONTEX aerial surveillance records what is happening that could be used to see if those push backs are indeed happening. If FRONTEX does not have any recordings of its video surveillance, could you tell us what is the function of the aerial surveillance?

to the members of the LIBE Committee on the activities of

the Answer: A Serious Incident Report ('SIR') was created based on a sighting of an incident by aerial surveillance where people were transferred on a rubber boat from a vessel and later on rescued by Turkish authorities. In follow up to this SIR, it was ascertained that the Hellenic authorities had already launched an internal inquiry regarding this case (please see further details under question 5 below).

European Border and Coast Guard Agency. 24-7-2020

Question 5 - In light of the evidence of push backs and illegal collective expulsions to Turkey, as well as people left in distress at sea for hours and hours, has FRONTEX taken any action regarding this matter with the Greek authorities? Has it shown any concerns? Did FRONTEX ask the Greek authorities to put an end to these illegal practices?

Answer: Further to the regular monitoring and coordination of the proper implementation of Frontex operational activities in accordance with the relevant Operational Plans, in the course of the Rapid Border Intervention Aegean 2020, the Executive Director has notified the Hellenic Coast Guard regarding an incident earlier this year. Hellenic authorities confirmed that an internal inquiry had been launched and Frontex is not in a position to comment on such. In accordance with its mandate, Frontex will be continuing its situational monitor in its areas of operation; this includes ensuring compliance with fundamental

rights, and taking actions in case of suspected fundamental rights violations.

Question 12 - EN: Particularly in view of the considerable expansion of Frontex's mandate, which has already been mentioned several times, we need the certainty that Frontex's work is a role model for a border and coast guard that is oriented towards fundamental rights and human rights. In fact, unfortunately we keep hearing the massive criticism that the Agency is at least complicit in the violation of fundamental rights at the external borders by certain Member States - I recall the reports from the Hungarian-Serbian border in 2016 and 2017 or the current cases in Greece since 2019. Please be specific: How do you intend to ensure the integrity of your operations in the future and ensure that fundamental and human rights are fully guaranteed in all operations involving Frontex?

Answer: Full compliance with fundamental rights obligations is a cornerstone of all activities undertaken by Frontex. In this respect relevant trainings are given to all deployed Team Members, as well as in the individual operational briefings provided to each officers prior to their deployment. The Frontex Code of Conduct, as well as Operational Plans include detailed instructions and obligations regarding professionalism, integrity and respect of fundamental and human rights. These obligations apply to all officers participating in the Joint Operations, including host country and other participants (e.g. observers). In case of any suspicion or allegation of misconduct in this respect all participants have the obligation to report it, and all reported suspicions are investigated through the Serious Incident Report process by the Agency. A complaints mechanism is systematically established for each Joint Operation in the Operational Plan, in accordance with Article 38(n) of the EBCG Regulation. To enhance Frontex' capability to monitor the compliance of its operational activities with fundamental rights, the EBCG Regulation foresees the establishment of Fundamental Rights Monitors (FRM). At least 40 FRMs are to be recruited (deadline is within a year following the entry into force of the

EBCG Regulation) to monitor the compliance of the Agency's activities with fundamental rights. According to Article 110 of the EBCG Regulation, FRMs will be entrusted with a broad range of tasks related to monitoring of fundamental rights, including the provision of advice and assistance to operations' stakeholders as well as contribution to the preparation, conduct and evaluation of operational activities of the Agency.

Question 16 - Thirdly, Croatia. We keep getting horrendous reports on systematic push-backs on the border. According to Frontex, the Agency deploys specialised officers, border surveillance vehicles and other equipment in Croatia. Will you be able to continue being present here, since Frontex is not legally allowed to operate in areas where human rights are being violated?

Answer: Croatia is a host country in the framework of Joint Operation Flexible Operational Activities on border surveillance only with the Croatian-Serbian border which is being currently only a monitoring area (without deployments).

This practically means, that Croatia only provides regular (daily) incident reporting. Frontex has not received fundamental rights related reports from Croatia regarding the Croatian-Serbian border. The green border between Croatia and Bosnia and Herzegovina has not been an Operational Area of Frontex JO focused on surveillance. In general, deployment of border surveillance experts (conducting border patrolling) has not been implemented in Croatia since the beginning of 2017.

Moreover, Croatia is hosting the Joint Operation (JO) Focal Points Land and Frontex deploys Technical Equipment and Human Resources within this JO. Focal Points are established at the Border Crossing Points (BCPs) and Frontex deployed Team Members provide support in border checks at the BCP. Frontex has not received fundamental rights related reports in the framework of this activity.

Letter: Dear Commandant,

Response of The European Border and Coast Guard Agency, Frontex, presents its

Executive compliments to you, and I would like to come back to you about a certain
Director to incident that has recently occurred in or close to the operational area of the
Vice Frontex coordinated Joint Operation (JO) Poseidon 2020/Rapid Border
Admiral Intervention (RBI) Aegean 2020. The incident apparently involved the detection
H.C.G. of irregular migrants at sea, and their intended or subsequent disembarkation to
Hellenic the Turkish Territorial Waters (TTW).

Coast Gaurd On 27 July 2020 the Frontex deployed Danish helicopter operating in the
Commandm Aegean Sea in support of the above mentioned operation reportedly detected a
ent. migrant boat near Chios Island. After the detection, a Hellenic Coast Guard
6-8-2020 (HCG) maritime asset took over the response and also the Turkish Coast Guard
(TCG) was reportedly informed. The occurrence in question has been reported
only as a prevention of departure incident within the JO Poseidon 2020, thus not
resulting in any reported operational response in the JO Poseidon 2020 as such.
Apparently, there has also been a communication from the HCG towards the
Danish helicopter command asking him to modify the actual detection location
afterwards.

Taking into consideration the incident described above and to guarantee
fundamental rights compliance in the operational activities at the external
borders of the European Union, I would like to invite you to launch an internal
investigation, in order to identify the actual details. I would appreciate it if you
could inform me on the outcomes of this enquiry at your earliest convenience.

Considering the fact that the border area is part of the operational area of the
Frontex coordinated maritime operations, and looking at the shared
responsibility of the Agency in border management - in line with the European
Integrated Border Management Strategy and the Frontex Regulation -, the
adherence to fundamental rights, in particular the compliance with the principle
of non-refoulement, is an ultimate requirement for both of us.

I would like to assure you of the continued efforts of Frontex in providing
Greece with our support in the frontline of migration as well as in the fight
against criminal or security threats at the external borders of the European

Union, while ensuring good cooperation to effectively protect the human rights of those at sea.

Yours sincerely,

Fabrice Leggeri

Executive Director

Letter: Dear Ms Anneliese Baldaccini,

Response of Executive Director to Amnesty International reports “Waves of impunity” and “Between life and death”.

With reference to your e-mail of 8 and 28 September 2020, I would like to thank you for submitting the reports to me.

I would like to clarify the role of Frontex, the European Border and Coast Guard Agency, in providing surveillance activities in the Central Mediterranean.

Neither the Regulation (EU) 2019/1896 nor the international legal framework (i.e. Search and Rescue Convention adopted in 1979, International Convention for the Safety of Life at Sea etc.) has entrusted Frontex to act as a Search and Rescue (SAR) authority. Frontex has no mandate to coordinate search and rescue cases.

It must be also highlighted that Frontex has no mandate to investigate Member States’ authorities.

Based on Regulation (EU) 2019/1896 and the provisions therein on the European Border Surveillance framework (EUROSUR), Frontex ensures the provision of surveillance tools. One of the tools of particular relevance in this regard is the Multipurpose Aerial Surveillance (MAS).

MAS uses aerial platforms that stream video and other data in real time from the Central Mediterranean directly to the Frontex Headquarters in Warsaw. Simultaneously, the real-time video is streamed to the respective national authorities through the established EUROSUR channels, the National Coordination Centres, who remotely participate in the specific surveillance flights.

In line with the SAR Convention adopted in 1979 and other international legal instruments, in case one of our planes spots a boat in distress at sea, the Rescue Coordination Centre (RCC) responsible in the Search and Rescue Region (SRR)

where the distress takes place and at the same time, neighboring RCCs operating in the Central Mediterranean as well as EUNAVFORMED HQ are also notified directly so that the rescue can be conducted as quickly as possible. This approach is followed also in case of sighting of vessels in distress in Libyan SRR in order to ensure that all the responsible SAR authorities in the area are aware of the event so that the people whose lives are in danger can be rescued without delay.

This consolidated procedure, endorsed by the European Commission (DG Home), allowed Frontex to help in the rescue of 19.651 people in 350 Search and Rescue (SAR) actions in the Central Mediterranean since 2017 as follows:

1. 2017: 2075 people in 37 SAR actions;
2. 2018: 4507 people in 57 SAR actions;
3. 2019: 4283 people in 76 SAR actions;
4. 2020 (until 24 September): 8786 people in 180 SAR actions.

In many of the detected cases by Frontex Surveillance Aircrafts, no coastal state was aware of the distress situation. Without Frontex's sightings those distress cases might have gone undetected and hence unanswered.

Given the risk of the potential loss of lives at sea, Frontex is committed to pursuing SAR sightings in the Central Mediterranean in full compliance with the SAR Convention. In that respect Frontex will keep informing all responsible Rescue Coordination Centres in the Central Mediterranean as detailed above.

Rescuing people in distress at sea remains Frontex top priority and a part of every surveillance activity of Frontex.

Once again, I take this opportunity to express my gratitude for having approached Frontex with the report of Amnesty International.

If you require further clarification, Frontex remains at your disposal.

Yours sincerely,

Fabrice Leggeri

Executive Director

Letter: Dear Mr López Aguilar,

Executive Director Notification to Chairman of LIBE Committee. I would like to notify you and the LIBE Committee that Frontex, the European Border and Coast Guard Agency, has launched an internal inquiry into suspicious incidents recently reported by several news organisations related to our activities at Greece's external borders. So far, no documents or other materials have been found to substantiate any accusations of violations of the law or the Frontex Code of Conduct by deployed officers.

27-10-2020 This inquiry highlights the Agency's commitment to uphold the highest border guarding standards in all of its operations and the fact that I and the rest of Frontex do not tolerate any violations of the fundamental rights in any of our activities. We remain committed to providing support to Greece at its external borders in line with our mandate and in the spirit of EU solidarity, in full respect of fundamental rights and international law.

Earlier this year, as part of an operational dialogue with Greece, I had already asked its authorities to investigate two events near its islands in the eastern Aegean Sea. The Greek authorities found no proof of any illegal acts in one incident and are still looking into another one. As you are aware, under its mandate, the Agency does not have the power to investigate and must rely on Member States.

In my communication with the public, I noted that I also informed LIBE of an incident earlier this year when a crew of the Danish vessels deployed by the Agency was given incorrect instructions by the officers of the Hellenic Coast Guard. Following the incident Frontex, contacted the Greek authorities and the misunderstanding was clarified with the Hellenic Coast Guard.

At this point of time, the still ongoing inquiry has not identified any other suspicious cases than those already reported by the Executive Director to Greek authorities.

The situation in the eastern Aegean has been complicated for the vessels deployed by Frontex to patrol the external borders because of a disagreement between Greece and Turkey over their maritime borders. This has affected search and rescue activities in the area. Despite all these increasing difficulties

Frontex continues to save lives and has rescued 2 700 people so far this year.

Yours sincerely,
Fabrice Leggeri
Executive Director

Press release: Frontex launches internal inquiry into incidents recently reported by media.

27-10-2020

Frontex, the European Border and Coast Guard Agency, announced on Tuesday it has launched an internal inquiry into suspicious incidents recently reported by the media. So far, no documents or other materials have been found to substantiate any accusations of violations of the law or the Frontex Code of Conduct by deployed officers.

“In our conversation and contacts, I informed EU Commissioner Ylva Johansson that we are looking into the accusations leveled by several news organisations related to our activities at Greece’s external borders. We aim to uphold the highest border guarding standards in all of our operations and do not tolerate any violations of the fundamental rights in any of our activities,” said Frontex Executive Director Fabrice Leggeri.

“We remain committed to providing support to Greece at its external borders in line with our mandate and in the spirit of EU solidarity, in full respect of fundamental rights and international law,” he added.

Earlier this year, as part of an operational dialogue with Greece, the Frontex Executive Director had already asked its authorities to investigate two events near its islands in the eastern Aegean Sea. They found no proof of any illegal acts in one incident and are still looking into another one. Under its mandate, Frontex does not have the power to investigate and must rely on Member States. Executive Director Leggeri also alerted the members of the European Parliament of an incident earlier this year when a crew of the Danish vessels deployed by the Agency was given incorrect instructions by the officers of the Hellenic Coast Guard. Following the incident Frontex contacted the Greek authorities and the misunderstanding was clarified with the Hellenic Coast Guard.

At this point of time, the still ongoing inquiry has not identified other suspicious

cases than those already reported by the Executive Director to Greek authorities.

The situation in the eastern Aegean has been complicated for the vessels deployed by Frontex to patrol the external borders because of a disagreement between Greece and Turkey over their maritime borders. This has also affected search and rescue activities in the area. Despite all these increasing difficulties Frontex continues to save lives and has rescued 2 700 people this year.

Letter: Dear Mr Matos Moreira,

Executive Director inquiry to Managemen t Board Member of Portugal.
I would like to thank you for the support provided to the implementation of Frontex coordinated activities and for the fruitful cooperation in the frame of Joint Operations (JOs) and Rapid Border Interventions (RBI) at the sea borders, hosted by Greece. The deployment of the Portuguese officers and assets, especially during the crisis period of the COVID pandemic is highly appreciated and they contributed to the effective implementation of the operational activities.

9-11-2021 Frontex has recently received information about articles published in various media outlets about “Frontex illicit role in alleged pushbacks”. In the articles the Agency is criticized as having been complicit in maritime “alleged pushback” operations of migrants attempting to enter the European Union via Greek waters. Specifically, the articles refer to 6 incidents where Frontex assets have been involved. In three of these incidents the Portuguese vessels deployed at Lesvos have been identified as being in patrol in the vicinity, according to the sources on 04.06.2020, 05.06.2020 and 19.08.2020.

Taking into consideration that your assets were in the vicinity of the alleged push backs, I invite you to inform me about how do you assess the operational situation and how do you react to the accusations expressed by the media against Portuguese maritime assets?

I look forward to your answer and also taking the opportunity of this correspondence, I would like to thank you for your continuous support to Frontex’ coordinated activities.

Yours sincerely,

Fabrice Leggeri
Executive Director

Letter: Dear Mr Bute,

Executive I would like to thank you for the support provided to the implementation of
Director Frontex coordinated activities and for the fruitful cooperation in the frame of
inquiry to Joint Operations (JOs) and Rapid Border Interventions (RBI) at the sea borders,
Managemen hosted by Greece. The deployment of the Romanian officers and assets,
t Board especially during the crisis period of the COVID pandemic is highly appreciated
Member of and they contributed to the effective implementation of the operational
Romania. activities.

9-11-2021 Frontex received information about an article published in the Bellingcat media
outlet on the on 23 October 2020 about “Frontex illicit role on alleged
pushbacks”. In the article the Agency is criticized as having been complicit in
maritime “alleged pushback” operations of migrants attempting to enter the
European Union via Greek waters. Specifically, the article refers to 6 incidents
where Frontex assets have been involved. In two of these incidents the
Romanian vessels deployed at Lesvos have been identified as being in patrol in
the vicinity, according to the article on the 08.06.2020 and 15.08.2020.
Taking into consideration that your assets were in the vicinity of the alleged
push backs, I invite you to inform me about how do you assess the operational
situation and how do you react to the accusations expressed by the media
against Romanian maritime assets?

Moreover, with regards to the event on 08.06.2020, can you confirm whether
CPV 1103 had

the AIS data turned on or off?

Regarding the event on the 15.08.2020, can you provide additional information
on what CPV

MAI 1102 did after Hellenic Coast Guard took over the incident?

I await your reply and, taking the opportunity of this correspondence, I would
also like to

thank you for your continuous support to Frontex' coordinated activities.

Yours sincerely,

Fabrice Leggeri

Executive Director

Conclusions of the Chairperson of the Management Board
At the Commission's request, the Management Board of the European Border and Coast Guard Agency (Frontex) held an extraordinary meeting on 10 November 2020 to discuss the allegations of pushbacks of migrants in the Aegean Sea recently reported in the media, and a number of fundamental rights related points.

Statement

In addition to the Management Board's members and Frontex Executive Director, the meeting was attended by Frontex's Fundamental Rights Officer and interim, the Executive Director of the Fundamental Rights Agency, and an expert representing the European Parliament LIBESearch for available translations of the preceding Secretariat.

10-11-2020
The main discussion focused on the allegations of pushbacks recently reported in the media. The conclusions of the Chairperson of the Management Board on these discussions are available here below. **The Management Board in particular concluded that urgent action is needed in order to investigate all aspects related to the matter. It decided to set up a sub-group to the Management Board to further consider these aspects, in line with the distribution of responsibilities under the EBCG Regulation. The concrete mandate of this sub-group will be elaborated in view of the discussion at the next Management Board meeting on 25/26 November 2020.**

The Commission will submit a number of questions to the Executive Director to provide further clarifications in writing regarding Frontex's internal inquiry and the incidents, and on any follow up actions by the Agency's staff or Executive Director.

The Commission will submit a number of questions to the Executive Director to provide further clarifications in writing regarding Frontex's internal inquiry and the incidents, and on any follow up actions by the Agency's staff or Executive Director.

Conclusions of the Chairperson of the Management Board

The Management Board of the European Border and Coast Guard Agency

(Frontex) met today at the request of the Commission in an extraordinary session to discuss the Rapid Border Intervention ongoing in the Eastern Mediterranean, and in particular, the allegations of so-called pushbacks recently reported in the media.

The Management Board takes note of the report of the Executive Director on the “Rapid Border Intervention in the Eastern Mediterranean” and of the fact that the Executive Director will ask further legal interpretations of EU regulations’ provisions related to the operational activities at sea.

In this context, the Management Board stresses that all operations of Frontex have to be carried out in full compliance with the applicable legal requirements, and in particular with fundamental rights, notably the principle of non-refoulement. To that aim, the Management Board asks the Executive Director to ensure that the internal reporting system is solid and effective in order to allow for an immediate follow-up in case of incidences. Furthermore, it supports the proposal of the Executive Director to beef-up the training in fundamental rights and to provide this training not only to Frontex-deployed staff, but also to the staff of the ICCs.

Based on the initial proposal of the Executive Director to set up an evaluation committee, the Management Board concludes that urgent action is needed in order to investigate all aspects related to the matter. It decides to set up a sub-group to the Management Board to further consider these aspects, in line with the distribution of responsibilities under the EBCG Regulation. The mandate of this sub-group will be elaborated in view of the discussion at the next Management Board meeting, and should among others also contribute to clarify existing arrangements raised on the interpretation of EU regulations’ provisions related to operational activities at sea and the concerns raised by Member States about “hybrid threats” affecting their national security at external borders.

The Management Board expects that, pursuant to Article 46 of Regulation (EU) 2019/1896 on the European Border and Coast Guard, the Executive Director

will suspend or terminate any activity, in whole or in part, if he considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. The Executive Director is asked to inform immediately the Management Board and the Fundamental Rights Officer of the Agency of any substantiated allegation that would come to his knowledge.

The Management Board expects also that, in case such allegations would involve staff of the Agency, the Executive Director will take without delay all appropriate action.

The Management Board calls on the Executive Director and the Fundamental Rights Officer ad interim to complete as soon as possible all the necessary steps to operationalize the fundamental rights framework as provided for in Regulation (EU) 2019/1896.

The Management Board has asked the Executive Director to reply in writing, ahead of the next Management Board meeting on 25-26 November, to any questions that members of the Board may ask by Friday, 13 November 2020.

Letter:	Dear Vice-President, dear Commissioner,
Executive Director notification to Commission Vice President Promoting the European Way of Life and	Following the Extraordinary Management Board meeting on 10 November dedicated to the issue of alleged pushbacks as reported by several media outlets and in reply to the subsequent questions received from the Commission, Germany and Switzerland, I would like to share with you the attached ‘fact finding report’ encompassing the Agency’s answers. In addition, please find attached a copy of letters received from Romania and Portugal in response to my letters sent on 9 November inviting the respective Management Board Members to assess the operational situation in the described by the media alleged incidents. The replies from both Romania and Portugal provide a lot of valuable insights and could provide a good start for the works of the MB Working Group planned to be established at the upcoming 82nd MB meeting on 25-26 November.

Commissioner for Home Affairs.
24-11-2020

Moreover, taking into account the seriousness of the allegations of the Management Board Member of Sweden during the Extraordinary MB, I would like to inform you that I have entrusted Frontex's Inspection and Control Office (ICO) with a fact-finding mission to investigate that matter further and analyse the facts in a fair and professional way.

I hope you will find these answers satisfactory and I remain at your disposal for any further clarification as needed.

Yours sincerely,
Fabrice Leggeri
Executive Director

Statement of the Chairperson of Frontex Management Board from its 82nd meeting.
25/26-11-2020

The Management Board of the European Border and Coast Guard Agency (Frontex) met yesterday and today for its 82nd meeting. Among other topics, the Board followed up on the fundamental-rights related discussions from its extraordinary meeting held on 10 November 2020 and in particular on the allegations of so-called pushbacks in the Eastern Mediterranean recently reported in the media. These discussions were held in the presence of the Agency's Fundamental Rights Officer, the Agency's Consultative Forum, the Agency's Fundamental Rights Agency and an expert from the LIBE Committee of the European Parliament.

The Executive Director reported on the questions received from several members of the Board and provided some preliminary replies. On request by the European Commission, the Board will hold a further extraordinary meeting within the next two weeks in order to consider in more detail the replies provided by the Agency. As concluded in the extraordinary meeting of 10 November, the Management Board adopted the mandate of its dedicated working group. It shall support the Board in its conduction of inquiries in relation to the allegations of so-called alleged pushbacks in the Eastern Mediterranean in 2020 but also contribute to the interpretation of some provisions of Union regulations related to operational activities at sea and to discuss possible operational responses to situations related to "hybrid threats" to

Member States' national security at the external borders which may arise in the context of maritime operations of the Agency. The Working Group was requested to report to the Management Board at the 83rd meeting of the Management Board on 20-21 January 2021.

The Management Board was also updated on the state of play for the preparation of the EBCG Standing Corps for their first deployment as of 1 January 2021. The Chair called on the Agency and Member States to make all the efforts to complete their contributions to the Standing Corps in accordance with the capacities indicated in Annex 1 of the EBCG Regulation for year 2021.

Letter: Dear Minister,
Executive Dear Vice-President,
Director Dear Commissioner,
notification Dear Chair,
to German In the context of yesterday's media reports including the leaks of parts of the
Federal report prepared by Frontex for the 82nd Management Board, I would like to
Minister of share with you the full version of this document along with my letters to the
the Interior, Greek authorities to ensure transparency and provide you with a full picture as
Commission regards the situation related to the process of inquiring the media allegations on
Vice-Preside the so-called pushbacks in the Eastern Mediterranean.
nt for As you are well are, as a response to allegations as reported by several media
Promoting outlets, the Agency has launched an internal inquiry to provide adequate
the information on the incidents in a transparent manner. The whole process has
European been divided into three phases due to its complexity and scope.
Way of Life, The first stage was completed on 10 November during the Extraordinary
Commission Management Board meeting when I provided a comprehensive overview of the
er for Home incidents reported by the media. The second stage included a follow-up report
Affairs, and on the questions received by the Agency from the Commission, as well as
Committee Germany and Switzerland, which I presented during the 82nd Management
on Civil Board meeting on 25 – 26 November 2020. Parts of this document were
Liberties, published by at least one journalist on social media.

Justice, and Home Affairs. 27-11-2020

The third stage of the process will be a further inquiry conducted by the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations that has just been established during the 82nd MB meeting and that will review all the documents available to bring further transparency and clarity of the process.

At the same time, I would like to highlight the fact in regards to the specific case on 19 April cited by journalists – in that particular situation, I have reacted by addressing officially the Minister of Maritime Affairs and Insular Policy of Greece to express my concerns and asked for the Greek authorities to investigate the matter further, which was a necessary step taking into account that Frontex, under its current mandate, does not have the power to investigate on such matters. In his reply which I also attach for transparency, the Minister wrote that Greece had investigated the incident and assured me that the Hellenic Coast Guard had not violated the principle of non-refoulement.

I hope you will find these answers satisfactory in the process of further clarification of the allegations and I remain at your disposal for any further clarification as needed.

Yours sincerely,
Fabrice Leggeri
Executive Director

Letter: Dear Patrick,

Executive Director response to Management Board Member of Sweden. 20-11-2020

During the extraordinary MB meeting held on the 10 November, you brought up an issue related to the reprimanding by a Frontex Coordinator of the Swedish officer commanding a patrol boat participating in the JO Poseidon. You indicated that this reprimanding was motivated by the fact that the Swedish officer decided to lodge a Serious Incident Report (SIR) directly to Frontex Situation Centre (FSC) following an interception of dinghy in Greek territorial waters in the vicinity of Chios on the 30th October 2020.

Following this, you stated that “there may be a problem in investigating allegations based on incident reports that do not exist because they had never

been lodged, because there is an understanding from the operational management that SIRs should not be done.”

Given the seriousness of your allegations, I would like to inform you that immediately after the MB meeting I have entrusted Frontex’s Inspection and Control Office (ICO) with a fact-finding mission to establish whether procedures have been followed and to clarify what was the exact nature and content of the communications between the Poseidon JO Coordinating officer and the Commanding officer of the patrol boat.

In order to fully shed light on the events, I would highly appreciate it if you could allow your Swedish officer to be heard by the assigned investigators from the ICO. Should this prove to be unattainable in our respective legal frameworks, I would be grateful if you could share with Frontex your findings following any internal investigation you might have conducted.

As a token of Frontex commitment to reach a full understanding of the issues and in order for this situation not to tarnish our common strive to protect our European external borders while fully upholding fundamental rights, please find enclosed the Handbook on the Operational Plan -Joint Maritime Operations, chapter 11 pertaining to serious incident reporting.

Best regards,
Fabrice Leggeri
Executive Director

Testimony Executive Director	Thank you very much Chair, and good afternoon honorable members of the Parliament.
to European Parliament Committee on Civil Liberties,	So, I would like to first set the scene and the operational environment in order to answer the questions regarding alleged pushbacks in the Eastern Mediterranean in the context of Frontex operational activities. First, I would like to say that in the beginning of March we had to launch two Rapid Border Interventions, Rapid Border Intervention Evros at the land border between Greece and Turkey, and Rapid Border Intervention Aegean, the maritime operation that started on the

Justice, and Home Affairs. 12th of March, and there was a great support of well all member states and the EU institutions that encouraged also Frontex to quickly deploy these Rapid Border Interventions.

1-12-2020 The Rapid Border Intervention Aegean is the maritime one. And the purpose of this was to top-up joint operation Poseidon with more staff, more technical equipment, and it lasted until the 6th of September, and we had 27 member states participating in these activities. We also had the possibility as Frontex, as an agency, to contribute with our own technical equipment, meaning the possibility to have a plane for border surveillance. The operational plan and the operational objectives were the same as joint operation Poseidon, so there was no separate operational objective, the commanding structure was the same, so that means that the operational command, tactical command lies with the host member state, which in this case is Greece. We have the International Coordination Center located in Aegion, where the Hellenic Coast Guard has its seat, which is in fact the International Commanding Structure, coordinating structure, for this. On the vessels that we deploy, we have liaison officers which are deployed by the host member state, so Greek liaison officers on the vessels, deployed for example by Portugal, Romania, etcetera. We have of course commanders, national commanders, there on the vessels, and Frontex is represented in the international coordination center, we have our Project Coordination Officer, we also have at the level of the local coordination centers on the islands, our own coordinators, but Frontex has not the command on the operation.

Then, what are the operational objectives? And in particular, I would like to highlight that there is regulation 656/2014, which is relevant for this operation, as this is a maritime operation conducted by Frontex. The objectives, as set by the operational plan of Poseidon, that remain the same for the Rapid Border Intervention Aegean, is all about detection of irregular crossings, border surveillance, support to search and rescue if there are search and rescue cases, it's all about otherwise let's say cross border crime, prevention- detection of

cross border crime, cross border crime at the border, as well as let's say the fight against smuggling activities, trafficker in human beings. So that's the objective of the operational plan.

Regulation 656/2014 is very important to understand. Two cases, two different situations are indicated here: Either they are search and rescue cases. If this is search and rescue then this reason prevails and then everything is done in accordance and coordinated by the search and rescue Maritime Coordination Center. If no search and rescue case is declared by the competent authorities, then there is a possibility to carry out interception at the borders. So interception, and this is regulated by the article- the articles of 656/2014 regulation, interception can take place when there's a case of boat trying to circumvent border crossing points at sea, I mean that they try to escape from the border checks, or if there are good reasons to think that a boat is engaged in smuggling of migrants by sea. So, in this case the possibility is that the host member state, so in this case Greece, but it would be the same in other places, that the host member state of Frontex operation can order either to apprehend or that the vessel- the suspicious boat, could be, let's say invited, to change its course. So that's the regulation. What are the reporting lines in Frontex operations in general and in particular in this one. We have the Joint Operation Report Application, the so called JORA. This is a report compiled by the host member state, based on mission reports, for example that are shared by participating member states, participating vessels, and then this is sent by the host member state, so in this case by Greece, to Frontex headquarters, in Warsaw, where this is screened by the Frontex Situation Center. Then either validate or we don't validate the Daily Joint Operation Report, if we don't validate it means that we ask additional questions because either there are technical details which are missing or are wrong or confusing, and this is an important step, as I will explain you later. So this is not just about rubber stamping, but we have evidences that we do exercise scrutiny on that.

There are other reporting lines, the Serious Incident Report. Here, I have to say

that, according to our Frontex procedures, which are recognized by all participating member states, every participating member state has a duty to issue a Serious Incident Report if he or she believes for example, that there is a violation of fundamental rights happening in the context of the operations. We have evidences, examples, that this mechanism has worked, for example there was in July a Danish helicopter pilot, who issued, wanted to issue a serious incident report, and then we heard about this, were informed about this, in Frontex, and so this is one example. Another recent example was that the crew of a Swedish vessel end of October issued directly a Serious Incident Report. There are four categories of Serious Incident Reports, one of them, category four, is related to violation of fundamental rights. There are other categories, which are related either to incidents involving or not involving staff of Frontex or deployed by Frontex, or involving a crisis situation, political situation, of interest. There is also an ad hoc reporting which is always possible. So let's say that this is the translation of the whistleblowing procedure into the operational environment. It is not called whistle blowing, but the mechanism is the same, it's a little bit outdated, it was before we had in the Agency a whistle blowing mechanism, but the result is the same, it is that anybody can directly report in any form. We have seen during our enquiry that we are able to retrieve records, so that it's possible to trace, to a certain extent, the activities, operational activities, conducted by the vessels and the assets and the staff participating in Frontex operation.

Now coming to the alleged pushbacks and Frontex inquiry, and Frontex action in other cases that were not reported by the media. In the six cases that were reported by media on the 23rd of October, I'm referring to Der Spiegel, RAD, Bellingcat, and the media participating with this group. In fact we have, based on the report that was shared, we have not found evidence that there were active, direct or indirect participation of Frontex staff or officers deployed by Frontex in pushbacks during either Poseidon or Rapid Border Intervention Aegean, so we were able to trace the dates and confirm to that in the time slots,

on the days, the assets that were mentioned, in particular the Romanian vessels and the Portuguese vessels were indeed deployed, but there is no evidence that they were engaged in push backs activities. In one occurrence this was a Frontex flight, on the 28 and 29 of April, so this was an alleged contribution to pushbacks, in fact the flight was no Frontex flight on that night it was the night before, but I will come back to the flight.

Because it is important to know that in fact we were able to detect autonomously two suspicious situations that I reported to Greek authorities. The first one occurred in the night from the 18th / 19th of April, a Serious Incident Report was issued, a Frontex surveillance flight let's say spotted, and we have live streaming so we can from the headquarters in Warsaw, also see what is going on. And we detected suspicious situations, so we could see suspicious movements, unusual movements, migrants, Turkish vessels, Hellenic coast guard vessels, we were not participating at sea in this, so there was no maritime asset deployed by Frontex there, but thanks to the fact that Frontex planes, the ones we lease directly, have live streaming possibility, we could spot this and otherwise it would not have been possible event to know about that. I was reported this because there was a Serious Incident Report and because the situation there was a little bit strange. And so in the context where there were many confrontations, geopolitical confrontations, I just would like to say that a few days before, a couple of months before, two F-16 Turkish military fighters had surrounded a Danish plane working for Frontex in the Greek airspace. We had as of end of April, almost daily shootings coming from Turkey at the land border when Frontex patrol were operating. So in that context and given the fact that Greek authorities said that they are facing a hybrid threat, and that national security is at stake in some occurrence, I decided to escalate this suspicious case that we spotted to the Greek minister in charge of maritime affairs, the letter was signed, my letter was signed 8th of May, and his reply was dated 10th of July. I escalated because there was a very strange situation. Suspicion that there was something wrong regarding fundamental rights, and also that perhaps something

was wrong regarding the security or the military incidents that was ongoing. There was another case that was not reported by the media, and this was the Danish helicopter. On the 27th of July, The Danish pilot of this helicopter wanted to issue a serious incident report, as I told you, and there was a discussion in the International Coordination Center, so the one that has the command imperatives, they had a discussion during the briefing, to know whether it is worth it or not to issue a serious incident report. But the Agency was informed, the headquarters were informed, and my decision was to sign a letter to the commander of the Hellenic Coast Guard to ask him what is this .So in both cases I asked the Greek Minister and the Hellenic Coast Guard Commander to investigate and to let me know what is the result of this investigation.

Then what are the next steps after the first inquiry about the situations that were reported by the media. We further reviewed Serious Incident Reports we had received since the beginning of the year, as well as JOAR, so you know these reports, Joint Operational Report Application. And in particular we focused on JOAR reports that were not finalized because an answer was still pending, we were waiting for Greek authorities to reply to some questions.

What we identified is that there are some notions like prevention of departure. The common factor in all these incident reports, which are not Serious Incident Reports, but are the daily report the JOAR report, the common factor is that there is a description of prevention of departure. And that there are interceptions, but that not were reported, no search and rescue situation was declared. So if you remember back to this regulation 656/2014, two cases, two situations, either it is search and rescue and so we follow that situation, if it is not search and rescue, if it is nothing else, it's an interception at the border, and then there is a possibility either to apprehend or to legally invite the boat not to cross irregularly the border, but to change its course and not to stay or to enter to the national waters. So what is- in fact we have now set of operational-

Speech terminated by LIBE Committee Chair.

Thank you, thank you very much mister Chairman so I will conclude in saying that because of this situation, this operational situations, that we cannot qualify, and we don't know how to qualify them legally, I requested from the Commission and the Management Board also is involved, to analyze and give legal interpretation of this regulation 656/2014 on the one hand, and also because there were some situations where security of the host member state and defense was invoked, or we had let's say some kind of unusual situation, with as I said F-16 surrounding our vessel, our vessels deployed by Finland and Romania being surrounded and harassed by well coast guards, from the neighboring third country, shootings at the land border from the side of the third country, to us, so because of all this situation I also asked the commission but also the EU institutions to give me political guidance and legal interpretation and guidance. On how to take into account, so-called hybrid threats, when security or defense is at stake where we are physically deployed. So I would simply say that concerning fundamental rights, we are developing and improving of course the monitoring of fundamental rights.

I have to explain, and you remember that one year ago I published the vacancy for Fundamental Rights Officer and Deputy Fundamental Rights Officer, which would have allowed to then recruit the fundamental rights at the managerial posts, and then to recruit on time the 40 Monitors, Fundamental Rights Monitors. I was asked to withdraw the vacancy for Fundamental Rights Officer and Deputy Fundamental Rights Officer, and then it took many months of discussion with let's say Commission services, in order to determine whether this is a managerial post or not, and how to organize all the setting in the Agency to ensure the full independence of the Fundamental Rights Officer and its staff, and on the other hand the full compliance with the financial regulatory framework of an EU agency where the Executive Director is the authorizing officer where the Executive Director needs to get the discharge procedure for the EU budget authorization, and this was a lengthy discussion. And I regret that because of this we were not able to pick up on time the Fundamental Rights

Monitors and the Fundamental Rights Office and in order to mitigate these shortcomings, and I am fully aware that they are shortcomings, I decided to propose to the Fundamental Rights Agency, in close cooperation with the Fundamental Rights Officer ad interim that we have, I proposed to have monitors deployed as soon as possible, so make available that we would pay and that would be managed by the Fundamental Rights Officer by the Fundamental Rights Agency ad interim. We also identified improvement in the training for sure, and I'm ready to answer questions, I'm sure there will be questions. So sorry I was too long. I am ready to answer any questions. So thank you mister chairman and sorry again I was too long.

Question and Answer:

Thank you very much mister Chairman and thank you very much to all the members of the Parliament for the questions. I will try to focus on some points. First the command, the command and control. Tactical command lies with the member states. Which means that in any activity in real time, only the host member state authorities can decide what has to be done. And for example, when I hear from some members of the Parliament, that they wonder why a plane deployed by Frontex or a vessel deployed by Frontex is instructed to leave the area because the Hellenic Coast Guard is taking over the situation, the question was if I find this normal. According to our mandate, according to the existing legislation, this is the normal way to operate. Because we, I mean the vessels, the assets, all of the operations that are deployed by the host member state are under the command of the host member state. The operational plan is agreed by the Agency and the host member state, and then it is binding on all participants. So that's an important point to understand.

When it comes to the legal framework, I hear that some of the members of the Parliament say they are pushbacks, but there are questions about interception. Search and rescue is not a question, when there is a search and rescue case, or when a search and rescue situation is declared, either because there is a call or

because the Coordination Center or the Coast Guard say that this is a search and rescue, then of course then it is a search and rescue and nothing else. But this is not the case in the operational situations that were discovered today in the six cases reported by the media or the two cases that I brought to the attention of the members of the Parliament and the Members of the Management Board, and that this is what we are looking at because this is crucial to understand if regulation 656 is clear or if we need additional guidance either legal interpretation or if in some kind of extended operating procedure, things should be clarified. I think this is extremely important, because what is at stake is the ability to perform the border surveillance at sea, and border surveillance is not only about migrants or refugees, it is also about criminal activities, it is also about risk of terrorism. So this is important to keep in mind, important to clarify.

When it comes to the ability in the Agency to change the culture, and in particular I would focus particularly on the fundamental rights in the Agency. I would simply like to say that 5 years ago we had only 2 persons in the Fundamental Rights Office, now we have 10, and the budget that was proposed this year was 500,000 euro and I proposed an increase to 1.3 million for next year. Why are we late in recruiting the Fundamental Rights Officer? For one simple reason. One year ago I published the vacancies. I was forced to withdraw it because it was said it was not a managerial post, while I had the opportunity one year ago to explain this to your assembly, honorable members of the Parliament, I explained that a person who has to manage up to 50 people and 2 million Euro per year is a managerial post. Now, it took months for Commission services to understand the situation and then there is- there was a set of Management Board decisions to be adopted, that I proposed, that were rejected in discussions, with some legal services interpreting it in a different way, and never heard given me an answer, on how we could articulate properly on the one hand the independence of the Fundamental Rights Officer and his or her staff on the one hand, and on the other hand, the financial regulations.

So I'm sorry that we are so late with the 40 Monitors, and on top of that, our

establishment plan was reduced, meaning that over 100 posts were taken away from Frontex, and were replaced by ASG posts. Which explains why also why we have to recruit a mix of AB and ASP posts. Concerning the geopolitical dimension. I explained the examples, when some vessel for example at sea, deployed by Frontex, one Finnish vessel one Romanian vessel, these were incidents that lasted between one hour and two hours, and this happened in the Greek territorial waters, as we all know there is a border dispute between Greece and Turkey, which makes things even more complicated, because they don't use the same maps. But there are also unilateral declarations of different groups of countries, you may remember that Turkey and Libya concluded an agreement regarding a specific zone at sea, and Greece and Egypt concluded a similar agreement. If you look at the map you understand that there is a problem. There are different zones overlapping. This is not easy to be operational in this kind of area, which concerns by the way also the search and rescue zone. According to Turkey, Lesbos, and all the areas where we are deployed, are completely in the search and rescue zone of Turkey. While Greece says well this is in the Greek search and rescue zone. So I think this gives some indication of the geopolitical complexity of this situation.

Now, what I would like to say about the Serious Incident Report, and the reporting mechanism, we have within the mandate the headquarters and I consider that a grip I have on what is going on in the field and the best example is precisely the one that is used to accuse that the Agency tries to cover a situation. The incident that happened in the night between the 18th and 19th of April, was the Frontex plane, with the live streaming, detecting suspicious situation at night. And normally, if we had here instead of our plane we had a plane deployed by a member state, without live streaming, we would have not only paid for that but we would never know what was really the situation that was developing. And because the footage was sufficiently worrying, from different perspectives, from the perspective of fundamental rights, risk of refoulement, maritime refoulement to a third country, or from the perspective of

lets say an incident, military incident because there were military vessels on both sides, and if the migrants are squeezed in between, I fully agree with all of you that they are the victims. The migrants are the victims, they are victims of traffickers, and perhaps to a certain extent they are victims of a geopolitical situation. And this is what I could document with this Frontex plane, in the night from the 18th to the 19th of April. And that's why I send the letter to the Greek Minister.

I fully agree that letters are not enough, but I got a reply, and when we had the hearing on the 16th of July with you in the LIBE Committee, I was still waiting for the reply from the minister that came four days later. So that's why I mention on the 6th of July, that there was a suspicious situation, I had in mind this case, because the answer was still pending and I could not conclude, let's say there was an illegal situation or not while I was waiting for the reply. And then on the 24th of July I also replied to written questions and this was the day after I visited Greece and had different levels of Greek authorities, and I mentioned also the need, the absolute need, to comply with fundamental rights in any activities and in particular I insisted on the non-refoulement rights by sea or at land. So what we can do to increase, and not only rely on letters and the reply, and I'm sorry but in the system of the European Union, if a government, a national government, if a minister sends a letter to the director of an EU agency, and says everything was according to the law, I cannot say I don't trust you because you are the government of this member state. Perhaps, there are other mechanisms to investigate, and I'm not sure that the Fundamental Rights Officer is sufficient.

Why shouldn't we have, and I really welcome for example that the European Union Ombudsman started a strategic inquiry, this is extremely positive from my perspective. Because for example the complaint mechanism can hardly work if there is no involvement of the European Ombudsman, in order to press somehow national Ombudsman. So this is just an example. Monitoring, I propose to the Fundamental Rights Agency in order to also have some

independent, fully fledged independent, that would not raise any question, I'm fully with the members of the parliament that would say that perhaps some monitoring should be done by external entities which are not embedded at Frontex. When it comes to reports, there are some questions whether I would be ready to share reports, I am ready, as I wrote to the chairman of LIBE Committee. If documents are classified or if they are restricted or if Frontex is not the originator of these documents, I have to ask and we have to comply with the procedure, but I have no problem, for me the members of the parliament are the authorities that make-

Interrupted by Chair.

Yes, my final statement is that Frontex is fully committed to enhance the Fundamental Rights Monitoring, that we will do with the means we get, the means were reduced as I said in the establishment plan 100 posts were withdrawn. This has an impact on all services and all activities, including the fundamental rights and what I can say is that when we are deploying the Standing Core, we are putting in place the mechanism and also the supervisory mechanism, will be also a tool to make sure that with more staff and category one staff on the ground we will know even more and we will get even more reports about the situation on the ground. Because for the time being, out of the 600 people who were deployed in Greece for the Rapid Border Interventions, hardly 10 were Frontex staff. The rest was staff deployed by the member states. So that's my final statement and I remain of course available to answer in written form the questions that unfortunately I would not answer right now today. Thank you very much mister chairman and thank you very much to all the members of the Parliament.

Conclusions The Management Board thanks the Working Group Fundamental Rights and of the Legal Operational Aspects of Operations for swift delivery of findings and takes Managemen note of its preliminary report. It welcomes in particular that the Working Group t Board's has involved also Frontex's Fundamental Rights Officer, as well as the meeting on Fundamental Rights Agency and the Consultative Forum in its discussions.

the preliminary report of its Working Group on Fundamenta l Rights and Legal Operational Aspects of Operations in the Aegean Sea. 20/21-1-202

The Management Board takes note that five out of 13 incidents that have been examined still require further inquiry by the Working Group and additional clarifications.

The Management Board takes note that on the eight incidents that the Working Group could close at this stage and, on the basis of the information provided, it could not establish evidence of fundamental rights violations.

The Management Board is very concerned that the Agency missed to provide information on three incidents identified by the Working Group in time, so that the Working Group could not yet draw any conclusions with a view to certain cases.

The Management Board invites the Executive Director of the Agency to immediately provide the missing information and to implement the recommendations made in the report for the improvement of the Agency's internal process and procedures, in particular:

1 To apply its current reporting system and to revise it in order to make it more efficient, including by

>> clearly documenting a detailed allocation of responsibilities within the Agency and ensuring that all staff responsible (including the Fundamental Rights Officer and the members of the Management Board) can fully exercise their duties;

>> setting minimum requirements as to the qualification of the experts in the Frontex Situation Centre (FSC),

>> ensuring that Serious Incident Reports on alleged violation of Fundamental Rights are always reported to the Fundamental Rights Officer,

>> providing that every Operational Plan should include a transparent reporting mechanism, inviting the Host Member States to involve in this transparent approach all assets which are acting in the operational area, with the objective that every incident in the operational area is reported.

To establish a systematic monitoring of the reporting mechanism;

To clarify the relation between its system of protecting whistleblowers and the exceptional reporting under the Serious Incident Reports mechanism, ensuring that confidential reports from Frontex employees and team members are handled in an appropriate way, given prompt follow-up and that the protection of the identity is guaranteed;

To ensure clear communication to staff and team members on these mechanisms, including mandatory training sessions;

To establish transparent rules on the Frontex-internal process to follow-up on serious incidents that have been established, including on the application of Art. 46 of the EBCG Regulation;

To recruit immediately the 40 Fundamental Rights Monitors (in accordance with the Regulation), which should have been in place by 5 December 2020 under the EBCG Regulation.

The Management Board agrees with the Working Group that there is no reason to establish the principle that any Serious Incident Report should be classified automatically as RESTREINT UE/EU RESTRICTED.

The Management Board requests the Executive Director to report, by 19 February 2021, on the state of implementation of the above recommendations and to submit a roadmap developed in cooperation with the Fundamental Rights Officer on any further steps that the Agency needs to take in this respect, with a view to guarantee their swiftest possible implementation.

The Management Board notes, furthermore, that the European Commission has accepted the request of the Working Group to elaborate on a number of questions that concern in particular the interpretation of certain legal provisions and application of jurisprudence of the ECtHR to the sea borders and the impact of that jurisprudence on the interpretation of provisions of Regulation (EU) 656/2014.

For its next extraordinary meeting, the Management Board asks the Working Group to complete the examination of the incidents and to submit, by 26 February 2021, its final report on its work.

Final report Foreword

of the Frontex Management Board Working Group: Fundamental rights and legal operational aspects of operations in the Aegean Sea. 1-3-2021

Following the conclusions of the Frontex Management Board meeting on 20-21 January 2021 on its preliminary report, the Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea followed up on the matters of still pending incidents and further legal questions on operational aspects of the Agency's Joint Operations.

In this regard, the Working Group further inquired on five remaining incidents by means of multiple Working Group meetings, expert interviews and additional documents provided by Frontex, EU Member States, the European Union Agency for Fundamental Rights and the Management Board's Consultative Forum to receive further clarification.

Taking up the Working Groups recommendations set out in the preliminary report, the Agency initiated several actions as part of its roadmap to fully implement all necessary measures. These measures have been subject of further consideration by the Working Group and are also addressed in this report.

The Working Group furthermore welcomes the European Commissions' elaboration on a number of legal questions previously addressed in the Workings Group's preliminary Report.

Key findings of the preliminary report

The Working Group's assignment was to inquire what has happened regarding the alleged so-called "pushbacks" in the Aegean Sea. In this context, -13-relevant incidents with a potential link to Frontex deployed assets were identified, which were subject to further examination.

The Working Group fully acknowledges the special circumstances such as factors at sea, environmental influences, currents, waves and weather and a possible hybrid threat, which can all have an influence on the actions of the responsible officers in each individual case. Additionally, the behaviour of the facilitators and the people in the boats need to be borne in mind when assessing an incident. At the Greek/Turkish maritime border, the behaviour of the Turkish

border authorities must also be taken into account. In light of these circumstances, it is difficult to retrospectively reconstruct each incident. It is the common legal understanding of the Working Group that not every detected boat with migrants on board per se qualifies as a distress case, in addition, not every detected attempt of illegal border crossing by circumventing official Border Crossing Points can automatically be considered as an asylum case not even at sea. A precise analysis of the specific circumstances of each individual case is therefore of utmost importance.

In total -8- out of the examined incidents were clarified to the effect that no third-country nationals were turned back in contravention of the principle of non-refoulement, or otherwise in violation of Article 80(2) of Regulation (EU) 2019/1896.

In particular, 6 out of these 8 incidents took place entirely in Turkish Territorial Waters. Part of the debate in the Working Group was on how access to the asylum system and respective individual assessment of protection needs can be guaranteed during border police measures at sea. The Fundamental Rights Officer took also note of the often quite difficult circumstances in such events. As a result, this question can only be answered by the officers in charge on the spot and depends on the suitability of the respective available assets.

Any measures taken should be in proportion to the objectives pursued, non-discriminatory and fully respect human dignity, fundamental rights and the rights of refugees and asylum seekers, including the principle of non-refoulement. Each application for asylum has to be assessed individually.

The European Commission accepted the request from the Working Group, to elaborate on a number of legal questions of certain legal provisions and application of jurisprudence of the European Court of Human Rights to the sea borders and the impact of that jurisprudence on the interpretation of provisions of Regulation (EU) 656/20141.

The Working Group has been informed that the reply by the Commission will be delivered directly to the Management Board for its information.

Considering all necessary requirements and practical terms, the Working Group identified deficiencies in the monitoring and reporting system of Frontex and suggested further necessary improvement. Furthermore, with regard to the draft conclusion of the Management Board from 21 January 2021, the reporting system should be combined with a newly introduced culture, in which failure is acknowledged and addressed, in order to create awareness of and sensitiveness towards possible misconduct.

Based on the preliminary findings, -5- incidents (SIR 11095/2020, 11860/2020, 11934/2020, 12604/2020, 12790/2020) were found in the preliminary Report plus another possible incident, to merit further examination by the Working Group.

Working methods

The Working Group maintained the confirmed division into sub-working groups, in which especially the further examination of -5- incidents plus another incident reported by the media continued. During multiple online consultations in February 2021, the Working Group drafted a questionnaire, which focussed on missing information and details that were necessary for the further clarification and final assessment of the incidents in question.

In this context, the Working Group reached out to further sources beyond the Agency itself and addressed the Member States having been involved or potentially able to contribute to the process, namely Denmark, Greece and Sweden. In addition, the Member States and the Agency supported the Working Group by providing several experts, including the Agency's Executive Director, who participated in the online consultations. In view of the aforementioned sources, the Working Group considered all data received until the completion of the final report.

Furthermore, the European Union Agency for Fundamental Rights and the Management Board's Consultative Forum provided substantial contributions to the Working Group with regard to the applicable legal framework and fundamental rights challenges

at borders. In addition, the Agency's Fundamental Rights Officer supported the Working Group's continuous work and provided valuable information, documents and other useful comments.

Examined incidents

The Working Group inquired on the aforementioned so far unresolved incidents occurring in Frontex-coordinated activities in the Eastern Mediterranean Sea. All but one have been filed as Serious Incident Reports (SIR) within the Agency's reporting scheme. The SIR in question were:

SIR 11095/2020,
SIR 11860/2020,
SIR 11934/2020,
SIR 12604/2020 and
SIR 12790/2020.

Additionally, the Working Group examined an incident, reported by the investigative media outlet Bellingcat that allegedly occurred on 29 April 2020, with regard to a possible link or interconnection to incidents that had been reported to the Agency.

It is important for the Working Group to emphasize that in the following clarification and assessments the statements of all involved partners are taken into consideration equally. Furthermore, no general distinction is made between material evidence and personal evidence in the following consideration.

SIR 11095/2020, 18/19 April 2020

Compressed facts of the case:

In the night of 18 April 2020, a Frontex Surveillance Aircraft observed a rubber boat in Greek Territorial waters. The rubber boat was empty and being towed by a Hellenic Coast Guard vessel towards Turkish Territorial waters. Approximately 20-30 people were on board the Hellenic Coast Guard vessel that was towing the rubber boat. After some time, these people were retransferred onto the rubber boat at the Greek-Turkish border. Afterwards, the Hellenic Coast Guard left the location. According to the statement by the

Hellenic Coast Guard, the Turkish Coast Guard took over responsibility of the incident.

Final clarification and assessment:

The Agency wrote both, a preliminary and a final Serious Incident Report, in which the chronological sequence of events was described as stated above. Among other documents, the final Serious Incident Report was provided to the Working Group. The Agency clarified and finalised the Serious Incident Report on 30 April 2020. The data available shows that the rubber boat in question was sighted by a Frontex Surveillance Aircraft in Greek Territorial waters. At the time of detection, a Turkish Coast Guard vessel was nearby as reported in the mission report.

According to Greek authorities, the Hellenic Coast Guard intercepted the rubber boat and took the people on board of the Hellenic Coast Guard vessel. The Hellenic Coast Guard states that they assessed the personal circumstances of the people on board the vessel, categorized the situation as an irregular border crossing and ordered the rubber boat to alter its course to leave Greek Territorial waters in accordance with national law. In addition, the Hellenic Coast Guard provided people on board with information regarding their destination in Turkey. According to further statements of the Hellenic Coast Guard, there were no indications to dissuade their return back to Turkey and no claims for asylum or international protection were brought forward, even though such an opportunity was provided.

Thus, the Hellenic Coast Guard vessel took course towards the Greek-Turkish borderline towing the empty rubber boat. After reaching the Greek-Turkish borderline, the people on board were retransferred onto the rubber boat by the Hellenic Coast Guard. The Hellenic Coast Guard further stated that two vessels of the Turkish Coast Guard were involved in the coordination of the incident, even though this claim could not be corroborated and documented by the Frontex Surveillance Aircraft sightings due to its merely partial involvement in the incident. According to the statement of the Hellenic Coast Guard, they asked

the Turkish Coast Guard to take over responsibility for the people on board of the rubber boat. On the photographic material made by the Frontex Surveillance Aircraft, there is no engine recognizable at the time the empty rubber boat was towed by the Hellenic Coast Guard vessel. According to the statement of the Hellenic Coast Guard, this could be either due to the angle and distance of the aircraft or because the engine was temporarily unmounted. The Working Group cannot conclusively assess, if and where an engine could have been stashed while the empty rubber boat was towed by the Hellenic Coast Guard.

Furthermore, on the photographic material made by the Frontex Surveillance Aircraft there is no engine recognizable outside of the rubber boat by the time the people were retransferred. Whether an engine had been stowed inside the rubber boat at the time when the Hellenic Coast Guard, as the Hellenic Coast Guard state, left the spot could not be clarified by the Working Group.

There were also no Turkish Coast Guard vessels recognizable in the pictures at the moment in time the rubber boat was left at the borderline, though one of them was spotted by the Frontex Surveillance Aircraft earlier on. The Hellenic Coast Guard reiterates that the rubber boat was sea-worthy, able to navigate, equipped with a working engine and that the Turkish Coast Guard was at the scene.

In full support of the final Serious Incident Report, the Working Group welcomes the measures taken by the Agency after the incident was examined, namely addressing an official letter to the Hellenic Coast Guard, requesting to launch an internal investigation and to coordinate the possible follow-up measures stemming from the Serious Incident in cooperation with the respective Member State authorities.

As the involved Hellenic Coast Guard assets were not co-financed by the Agency, incidents relating these assets are not covered by the Agency's reporting scheme.

SIR 11860/2020, 27 July 2020

Compressed facts of the case:

On 27 July 2020 at 06:21 LT, a Danish helicopter deployed to Joint Operation Poseidon 2020 detected a rubber boat with people on board during a patrol near Chios Island within Greek Territorial waters.

After the detection by the Danish helicopter, the rubber boat was intercepted by a Hellenic Coast Guard Patrol boat. The Joint Rescue Coordination Centre Piraeus informed the Maritime Rescue Coordination Centre Ankara about the incident.

Final Clarification and assessment:

A disagreement between involved European entities concerning the first sighting coordinates in the Turkish Territorial waters did not influence the actual handling of the incident.

After reviewing the data provided by the Agency, Denmark and Greece, the incident took place inside Greek Territorial waters. The data also clearly shows that the incident in question was not classified as a Search and Rescue case at any point in time within Greek Territorial waters.

Information provided by the Hellenic Coast Guard indicates that the migrant boat altered its course on its own towards Turkish Territorial waters upon arrival of the Hellenic Coast Guard vessel. This statement has not been refuted by the examined data (in particular mission reports). Furthermore, the data provided does not substantiate the assumption that Turkish Coast Guard authorities did not fulfil their responsibilities and obligations regarding the safe return of all people on board the boat in question.

According to the Danish helicopter's mission report, the Greek patrol boat passed the rubber boat at relatively high speed when reaching the scene. The Greek authorities confirmed this statement and state that this had never effected or jeopardized the state of the migrant's safety.

The Greek side stated that the post-operational communication between them and the Danish detachment was a misunderstanding. The Hellenic Coast Guard expressed their regrets about any misconception their communication might have triggered, stressing that their request for an additional position in Turkish

Territorial waters was based on the assumption that the Danish helicopter should have detected the boat within Turkish Territorial waters sooner, given that the latter came from Turkish Territorial waters.

The Hellenic Coast Guard underlined the role of the Joint Coordination Board as the competent forum for resolving any misunderstandings and the provision of clarifications when needed.

After examination, the available data could not resolve the contradiction between the Danish and Greek presentations of their mutual communication. Operational documentation, inquiries – beyond the scope of the Danish mission report – and the still pending final incident assessment by Frontex did not allow an extensive clarification of the incident. The process of reporting, crosschecking and validating the operational data, at all levels, shall be carried out in an effective and transparent manner that leaves no room for interferences and misunderstandings.

SIR 11934/2020, 5 August 2020

Compressed facts of the case:

On 8 August 2020 during the night, a Frontex Surveillance Aircraft reported the sighting of a rubber boat in Greek Territorial waters, which had been intercepted and presumably towed by a Hellenic Coast Guard Patrol Boat eastward towards Turkish Territorial waters. Initial information on the incident was contradictory as to the number of migrants on board (30 or about 60).

Final clarification and assessment:

After a detailed examination and further discussions, the Working Group concludes that the actual amount of people on board was more likely to be at 60 rather than 30. This conclusion is based on the fact that the number provided by maritime assets are preferred over those provided by aerial assets as they are considered more accurate due to the closer distance to the incident.

According to the statement by Greek authorities, Hellenic Coast Guard vessels did not tow the rubber boat, since the rubber boat had a working engine. Ropes/lines were utilized to set the migrant vessel under control. These attempts

of taking control over the vessel did not succeed.

In the further examination by the Working Group, the Hellenic Coast Guard asserts that the two involved Hellenic Coast Guard Patrol Boats undertook efforts to intercept the vessel in the context of border surveillance measures to prevent illegal border crossings. According to the statement of the Hellenic Coast Guard, these measures were conducted in accordance with corresponding legal obligations.

Greek authorities state that the people on board behaved non-cooperatively. In particular, they attempted manoeuvres to avoid border control measures and cut or discard the ropes, which were used in an attempt to put the rubber boat under control. Therefore, the interception by the Hellenic Coast Guard was unsuccessful. The Hellenic Coast Guard explained that the circumstances of the incident left no possibility for asking for international protection. Following the failed attempts to approach the Greek coast, the rubber boat with people on board returned to Turkish Territorial waters on their own. After contacting Turkish authorities, the Turkish Coast Guard arrived on scene and took over responsibility of the incident.

Even after the further examination by the Working Group, the actual events in the respective incident cannot be conclusively clarified. Evidence provided by the Agency (videos, photos and reports) does not clarify the circumstances in relation to the statements of the Hellenic Coast Guard. The respective Frontex Surveillance Aircraft only reported a limited sequence of the entire incident.

According to the Serious Incident Report in question, the Frontex Surveillance Aircraft which reported the incident “was instructed by the Greek Sea Border Expert not to monitor the event and to continue the patrol in south-eastern direction”. The request by the Hellenic Coast Guard to continue the patrol is part of an established operational process used to ensure the effective surveillance of other areas which otherwise remain unattended during incidents. Maritime and aerial assets, both of the Host Member State or Participating Member State may be cleared to continue their patrol in cases as soon as

appropriate capacities are able to respond to an incident. The Working Group attaches importance to the operational needs and tactical methods in the context of an effective external border management and a consistent border surveillance. The International Coordination Centre Piraeus has declared the event as “Prevention of Departure”, even though the incident occurred in Greek Territorial waters, which in the opinion of the Working Group is inconsistent.

According to the Agency, the Serious Incident Report has not been finalised due to their ongoing correspondence with the Hellenic Coast Guard. According to the announcement by the Agency, the finalisation of the Serious Incident Report is expected very soon. The involved Hellenic Coast Guard asset was not co-financed by the Agency. Hence, the Agency exhausted its (limited) possibilities to clarify the facts of the case. In summary, the presentations of both sides differ considerably from one another. The statements and allegations could neither be substantiated nor dispelled by the Working Group.

SIR 12604/2020, 30 October 2020

Compressed facts of the case:

On 30 October 2020, a Swedish Coast Guard vessel detected a rubber boat inside Greek Territorial waters. After intercepting the rubber boat, the Swedish Coast Guard Vessel handed the incident over to Hellenic Coast Guard. Upon departing the scene to continue on their border surveillance patrol, the crew of the Swedish Coast Guard vessel followed the incident on the radar screen and perceived a singular echo, despite the presence of two vessels that were moving towards the Turkish Territorial waters.

The Swedish Coast Guard requested to launch a Serious Incident Report via the Frontex reporting mechanism, which was then allegedly hampered but eventually initiated by the responsible Frontex officer at that time.

Final Clarification and assessment:

After reviewing the data provided by Frontex, Greece and Sweden, the incident took place inside Greek Territorial waters and was classified as SIR Category 4. Following an internal investigation, Frontex denied the accusations of

hampering the transmission of the report. According to Frontex, the respective staff in question only explained that it was not possible to initiate a Serious Incident Report via the internal reporting system JORA and referred the case to the exceptional reporting procedure and the proper line of command.

The data provided clearly states that the incident in question was not classified as a Search and Rescue case at any point in time within Greek Territorial waters. According to the statement by the Hellenic Coast Guard, the Turkish Coast Guard took over the incident after the boat returned to Turkish Territorial waters.

In the Joint Coordination Board of 30 October 2020, the incident was categorized as Prevention of Departure despite the fact that the rubber boat entered Greek Territorial waters. In the view of the Working Group, this classification is inconsistent.

The rubber boat was first intercepted by a Swedish vessel, which then requested a Hellenic Coast Guard vessel to take over. The latter reached the scene. The Hellenic Coast Guard statements described the rubber boat in question as seaworthy, able to navigate, and equipped with a functioning engine. Swedish and Greek data describe the behaviour of the people on board as non-cooperative, meaning that they did not obey the instructions and orders given by Swedish and Hellenic Coast Guard officers. Sweden furthermore stated in their report that the behaviour of the people on board of the rubber boat eventually shifted towards a cooperative manner once they had realized that it was a Swedish vessel. Sweden states that the people on board “started to call thanks, put their hands together as a grateful gesture.”

According to the statement by the Hellenic Coast Guard, after taking over responsibility of the incident, the Hellenic Coast Guard tried to take control over the rubber boat by using ropes and mooring lines in order to clear the situation on scene. Upon releasing the ropes and lines, the facilitator started the engine and tried to evade police measures by the Hellenic Coast Guard. The rubber boat continued its movement powered by its own engine towards Turkish

Territorial waters and was closely accompanied by the Hellenic Coast Guard vessel. The Hellenic Coast Guard authorities emphasised in their statement that the situation was dominated by the efforts of the rubber boat to escape the border police measures and therefore a possibility for the people on board to demand international protection was not feasible.

Furthermore, the Hellenic Coast Guard explained that the proximity between their patrol vessel and the rubber boat might have caused the Swedish vessel to receive a singular echo on the radar screen. However, Hellenic Coast Guard authorities ruled out the possibility that the boat was towed towards Turkish Territorial waters at any point in time. Observations and statements given by Swedish authorities did not refute statements given by the Hellenic Coast Guard.

Information provided by Frontex, Greece and Sweden did not allow to close all remaining information gaps in the case, in particular regarding the measures taken by Hellenic Coast Guard. The Agency's assessment of the incident is yet to be finalized by the Frontex Serious Incident reporting mechanism.

The Working Group appreciates the unwavering commitment by the Swedish Coast Guard crew to follow-up on the clarification of the circumstances of this incident. An adequate control mechanism must be in place to thoroughly address cases in which there are reasonable doubts with regard to the fulfilment of obligations of International and European Law.

SIR 12790/2020, 21 November 2020

Compressed facts of the case:

During a screening procedure on Kos Island, migrants reported to Frontex Team Members that on 9 November 2020, upon their arrival with a rubber boat in Greek territorial waters, a Hellenic Coast Guard Patrol Boat arrived on scene, created large waves and made the rubber boat rock from side to side. One Border Guard Officer from the Hellenic Coast Guard made gestures with a large pointy object to imply their return back to Turkey. The Hellenic Coast Guard presented a different chronology of events. Final clarification and assessment:

Within the further examination by the Working Group, the corresponding Screening and Debriefing Reports were reviewed. The Screening Reports describe that these allegations were made against the Hellenic Coast Guard. The Debriefing Reports do not refer to any of those allegations. In total, these reports were not able to shed light on the actual events.

In order to provide some background information, the Hellenic Coast Guard presented video footage to the Working Group. The video footage documents the circumspect behaviour of the Hellenic Coast Guard and the methods of Turkish Coast Guard in dealing with such situations. Additionally, the video highlights the systematic difficulties at Greek-Turkish sea border areas and the problems to evaluate the overall situation in a reliable manner, in view of the real conditions and influences, which have an effect on everyone involved, both the Border Guard Officers and the people on board the rubber boat.

The allegation of threatening behaviour in the case in question by Hellenic Coast Guard officers could not be substantiated for the timeframe depicted in the video. In summary, there is a difference in presentation of facts with regard to this case. The statements and allegations could neither be substantiated nor dispelled by the Working Group. Due to the fact that there have been recent exchanges of information between the Agency and Greek authorities regarding the validation of the incident, the Serious Incident Report is still ongoing. The Working Group acknowledges that further information are pending.

Incident of 28/29 April 2020

Facts of the case:

According to the information provided by the Agency, an incident, which involved a boat with approx. 20 persons on board, was reported on 29 April 2020 by the Agency.

Whether or not the incident is the same incident reported by the investigative network Bellingcat on 20 May 2020, which was located in the vicinity of Samos and labelled by Bellingcat as a “maritime pushback” in the Aegean Sea was subject to a further examination by the Working Group.

Final clarification and assessment:

After reviewing all available data and considering a number of different sources, the Working Group comes to the conclusion that the Agency has not been notified about an incident nor has it received any information linked to the respective incident of 28/29 April 2020 reported on by Bellingcat on 20 May. The Agency stated that the sole reported incident that occurred in the period in question was incident No 406283, which had previously been deemed as not raising any specific concerns by the Working Groups preliminary report and which took place in the vicinity of Lesvos.

To completely exclude a connection and as the Bellingcat report stated that a surveillance aircraft flew twice over the area while the alleged pushback took place, the Working Group examined the routings of all possible Frontex coordinated assets. Additionally, the Working Group examined the routings of all possible Frontex coordinated assets that had been on duty within the operational area of Joint Operation Poseidon on 28-29 April 2020.

The following Frontex assets were deployed on 28-29 April 2020: -1- German Helicopter, -1- Latvian Offshore Patrol Vessel, -2- German Coastal Patrol Boats, -1-Portuguese Coastal Patrol Boat, -1- Portuguese Thermal Vision Vehicle. In conclusion, none of the mission reports of the aforementioned assets under Frontex presence provide any indications of an incident similar to the one reported on by Bellingcat on 20 May 2020.

Legal Aspects

In its preliminary report on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea, the Working Group pointed out how complex the practical implementation of the legal provisions actually is, with regard to applicable international law (in particular the European Convention of Human Rights), EU law (in particular the EU asylum acquis, the Schengen Borders Code and the Charter) and national law of Greece as the respective Host Member State for Frontex coordinated Joint Operations.

Any measure taken in the course of Joint Operations should be adequate to the objectives pursued, non-discriminatory and should fully respect human dignity, fundamental rights and the rights of refugees and asylum seekers, including the principle of non-refoulement.

However, this Working Group fully acknowledges the special circumstances at the Greek/Turkish maritime border (without high seas) – such as factors at sea, individual behaviour of facilitators/offenders and hybrid threats– affecting actions of responsible officers in each individual case.

The Working Group believes that guidance is needed in order to come to a conclusion for reconciling the following legal provisions: the European Court of Human Rights (ECHR) judgment in the case N.D and N.T of 13 February 2020; Regulation (EU) 656/2014; special circumstances following the agreement between the EU and Turkey (on the readmission of persons residing without authorization) from 2014 and the EU-Turkey statement from 2016.

This Working Group asked the European Commission to elaborate on the practical implementation of applicable law if facts lead to the assumption of a detected illegal border crossing attempt into (sea) territory of a European Union Member State (not a distress situation). Guidance is needed on possible circumstances at sea borders, under which migrants can be immediately returned to a third country without individual assessment.

It needs to be clarified, to what extent the key messages of the 13 February 2020 N.D and N.T judgment (ECtHR applications 8675/15 and 8697/15), regarding the possible return of migrants directly to (safe or not safe) a third country without an individual assessment, can be applied at the maritime borders in light of Art. 6 of EU Regulation 656/2014, taking into account international and EU fundamental rights obligations. The need for ensuring common rules for land and sea borders should also be taken into account.

Against the background of this new jurisprudence, the Working Group politely asked the European Commission to clarify under which conditions article 6 §2 b) of Regulation 656/2014 can be applied without infringing article 4 §3? To

what extent are the provisions and formal requirements for a refusal of entry (as stated in Art.14 (i.e. Annex V) Schengen Border Code or under national law) applicable during measures taken according to Art. 6 of Regulation (EU) 656/2014?

The aim of this consultation is to provide the basis for issuing clear operating instructions for practical use for the Team Members in Frontex operational activities.

As already stated in the preliminary report – and mentioned in the conclusions of the Management Board on 21 January 2021 – it needs to be clarified, to what extent the key messages of the 13 February 2020 N.D and N.T judgment (ECtHR applications 8675/15 and 8697/15), regarding the possible return of migrants directly to (safe or not safe) a third country without an individual assessment, can be applied at the maritime borders in light of Art. 6 of EU Regulation 656/2014. The Working Group there- As indicated by Frontex strategic risk analysis as well as pandemic and connected EU travel restrictions.

The sub-group therefore politely asked the European Commission – as the authors and responsible authority for the EU Regulation 656/2014 to clarify the questions of the Working Group formulated under point 4. Unfortunately, the Working Group has not received the reply from the EU Commission by the submission date. Therefore, the Working Group was not able to take the Statement by the European Commission on the legal aspects into consideration for the report.

Conclusions and recommendations

The Working Group once more emphasizes the difficult circumstances of conducting border police measures at the EU external maritime border in the Aegean Sea faced by all stakeholders. Jointly with the respective Host Member States, Frontex constitutes the main guarantor for strong and protected European external borders while upholding fundamental rights and international protection obligations. The outcome is underpinned by approx. 28,000 reported persons, who were rescued in the framework of Frontex coordinated joint

operations with the help of Frontex deployed assets in 2019. and despite a 85% annual decrease in arrivals in 2020 compared to 2019, 10,433 apprehended irregular migrants, 84 arrested people's smugglers, 97 Search and Rescue Operations and 2,954 rescued persons in 2020. This underlines the significance of the Joint Operations to promote a shared and coordinated European border management in the Aegean Sea. In the course of the Working Groups examination the Agency's positive effect and that of the contributing Member States became obvious through the strengthening of the European external borders upon high and harmonized standards in all aspects of Integrated Border Management, including fundamental rights.

An effective border protection and compliance with the associated legal requirements are mutually dependent. Wherever deficits are identified, targeted intervention must follow-suit with the aim of avoiding any misconduct in the future. Therefore, the Working Group had also included the incidents still under review in the continued examination as part of the extended mandate.

Main results and proposals of the incidents

After the continued examination of the -5- incidents (SIR 11095/2020, SIR 11860/2020, SIR 11934/2020, SIR 12604/2020, SIR 12790/2020) plus -1- incident (28/29 April 2020) it has not been possible to completely resolve the incidents beyond any reasonable doubt. At the same time, the continued efforts once more could not substantiate that the Turkish Authorities did not take over responsibility for the safe return of the migrants or that migrants did not reach the Greek shores safely. There is no indication of anybody injured, reported missing or having died in connection with the respective incidents.

Nevertheless, the Working Group comes to the following conclusions:

Not every detected attempt of illegal border crossing by circumventing official Border Crossing Points – not even at sea – can automatically be considered as an asylum case. However, the right of access to asylum must be guaranteed regardless of the circumstances. The EU Member States have agreed on a common European asylum policy, including subsidiary and temporary

protection. Article 4 of EU Regulation 656/2014 also underlines this right once again and points out that any measures under this Regulation may only be taken in accordance with this fundamental right. Especially this aspect has also been stressed by the Consultative Forum in their letter to the Working Group and the Chair of the Management Board.

Boats must not be left adrift unable to navigate regardless of other vessels in the vicinity. All stakeholders shall undertake the utmost to prevent such situations at any given time as well as any interference to the sea-worthiness to vessels at sea. This aspect has also been highlighted by the Consultative Forum in their letter to the Working Group and the Chair of the Management Board.

Any incident implying a possible violation of fundamental rights must be categorized in a Serious Incident Report category 4 and immediately allocated to the coordination of the Agency's Fundamental Rights Officer (or equivalent in a new system). Corresponding investigative measures must be carried out without any delay and finalized as soon as possible. Any retrograde interference to adjust operational data shall be avoided. Necessary measures by all parties shall be taken into consideration to prevent even the slightest indication of such behaviour in the future.

The deficits and the need for improvement of the reporting and monitoring system have already been described in the preliminary report. These shortcomings lead (inter alia) to the outcome that the Working Group was not able to clarify completely the five further examined incidents.

The Working Group welcomes that, based on the conclusions of the Management Board of 21 January 2021, the Agency has already undertaken efforts and actions to reform its reporting and monitoring mechanism, and has presented the intermediate results on 10 February 2021. It also welcomes the letter from the Head of Frontex's Operational Response Division to the Member States on ensuring incident reporting as well as the roadmap to include the proposed recommendations.

Acknowledging the recommendations already included in the Management Board conclusions of 21 January 2021 referring to the preliminary report, the Working Group makes the following additional recommendations:

It remains undisputed that the national authorities of the hosting Member States exercise the tactical command on the operations. However, the Working Group believes that the documentation and monitoring of such sensitive scenarios are worthwhile to be considered under the reporting mechanism. This would strengthen this process and introduce a two-entity integrity (“second set of eyes principle”). For example, Frontex surveillance flights or other Frontex assets could in future remain at the location of detected incidents to document border police measures until they have been completed, provided that operational activities are not weakened and no gap in the surveillance system occurs.

If feasible, all actions taken by Frontex assets or Frontex co-financed assets– in scope of Regulation (EU) 656/2014 – should be documented by video consistently.

Concerning the letter from the Head of Operational Response Division to the Member States on ensuring incident reporting, the Working Group once again invites the Host Member States to contribute to the Agency’s reporting scheme. The role of the Joint Coordination Board as the competent forum for resolving misunderstandings and the provision of clarifications should be highlighted. The fact that 4- out of 5- incidents are still under examination by Frontex gives reason to re-evaluate the Agency’s internal proceedings in cases of suspected fundamental rights violations. Having said that, the question of a proper implementation of Article 46 of the Regulation (EU) 2019/1896 must be taken into account. Article 46 provides the Executive Director of the Agency the possibility to suspend, terminate or not launch activities if the operational plan is not respected.

Measures in conjunction with Article 46 of Regulation (EU) 2019/1896

According to Article 46 (4) the “Executive Director shall, after consulting the Fundamental Rights Officer and informing the Member State concerned,

withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.”

Therefore, the application of Article 46 is tied to a certain minimum level of severity and continuity of detected fundamental rights violations and should not be based on a single incident.

Regardless of the specific application of Article 46 in individual cases, it should be noted that any decision in the context of a common European border management has a special scope, which also entails possible disadvantages. The fact that the Agency's presence at the external borders with human and technical resources has a deescalating and preventive effect and can implement uniform standards on site needs to be highlighted. Also, it is in particular the Agency which can contribute to participating authorities in the hosting countries complying with human rights on site and, in a certain way, embody a supervisory authority for entities and units involved. Against this background, talking about considering the application of Article 46 in this particular case, -8- out of the -13- examined incidents were clarified and none of the incidents could substantiate fundamental rights violations. In relation to the remaining -5- incidents, it has to be stressed that only -1- incident has been closed by the Agency. For all other incidents, a final assessment is still pending for various reasons. Therefore, in view of the Working Group it can be said that, in view of all the circumstances, an application of Article 46 would not be justified in this case. The existing legal framework only offers limited options for Frontex for action in the event of reported and established legal violations. The most important measure to name is the aforementioned examination of the applicability of Article 46. Due to the seriousness and scope of such a decision, it would be necessary to discuss which measures below the threshold of Article 46 could be taken – in the sense of proportionality and Article 46 as a measure

of last resort in the event of established legal violations. Such measures should be reflected in a tiered approach with a set of proceedings, made applicable for the Agency's operational activity.

Executive Thank you very much Madame Chair,

Director I would like first of all to thank you and to thank the members of the Scrutiny opening Group for inviting me at the very beginning of your work. I'm very happy to statement to have this opportunity to cooperate with the European Parliament, I'm fully first session aware that there will be first four month of an inquiry, and then I hope that we of the will also be able to develop a long standing cooperation between the Agency European and your work- scrutiny group.

Parliament I would like to repeat here that it is in the interest of the Agency, it's in the Frontex interest of all EU institutions to shed light and to have clarity on alleged Scrutiny accusations and different concerns expressed either by EU institutions or by Working other citizens. Probably, you will decide to issue recommendations, and this Group. would be helpful in the development of the Agency, as this has been helpful when the working group of the Management Board has already made some 4-3-2021 recommendations. I would say that I consider this also an opportunity for the Agency to learn also how to improve, how to make it better, and if there are things that have to be made differently, then of course we will do so.

I would like first to address the question regarding the allegation of pushbacks, maritime pushbacks, in Greece, in the context of Greece Operation Poseidon, and the Rapid Border Intervention. As you said Madame Chair, the Management Board working group will present and discuss tomorrow the final report. But what I can say also based on the preliminary report, was that there was no let's say, substantiated, or evidence based facts or conclusions saying that Frontex would have participated or would have carried out violation of fundamental rights. There are however many hints to complexity of the operational situation in the region there, and there is also a set of recommendations, that have been tabled already one month ago, and I'm also happy to report about what we have already done, in the report that was due on the 19th of February, and that was

delivered to the Management Board on the 19th of February, we explained for example that the Serious Incident Report, the draft renewed Incident Report is ready it's consulted, it's being consulted with the members of the working groups, also with the members of the Consultative Forum and the Fundamental Rights Officer. It will be less complex. We have one category which is for Serious Incident Reports related to violations of fundamental rights, and the rest will be clarified with a direct access or let's say that the Fundamental Rights Officer will be systematically in the chain of the exchange of information when there are serious incident reports.

So there are a lot of recommendations that can be implemented very quickly, already some of them have been implemented or in a couple of weeks they will be implemented. These recommendations for the time being from the working group deal with let's say information management. The way information is collected, the way it is shared, the way it is proceeded, and the consequences, the operational consequences, that are taken from this flow of information. I can expect that we will have probably tomorrow, I cannot preempt, a discussion about perhaps operational conduct of the operation, and here I would like to share with your Scrutiny Group some views, that with the standing core, and in particular with the coordinating officers which are deployed by Frontex, category one so EU staff, we will be able to have a better grip on the way operations are conducted. So that's why this is a category of staff that will be in my view very crucial.

We may also have some discussions about article 46 and know that this is something very important for the Parliament, and I also got some letters or reports from different let's say representatives of civil society but I know that for this institutions for the Parliament this is an important topic, and we are working on kind of SOP standard operating procedures for article 46. My personal views on that are that it should be viewed as a last resort, but what we certainly can do is to have a proportionate escalation with different kinds if I may say warning messages that could be sent to the host member states when

there are some concerns. On the fundamental rights framework as such we have made a lot of progress, the recruitment of Fundamental Rights Officers a managerial post is ongoing, and I expect the Management Board to appoint the Fundamental Rights Officer at the end of this month in March but again it's in the hands of the Management Board, but this is the time that I was notified.

The 40 Fundamental Rights Monitors, this is also a recruitment which is ongoing, the Fundamental Rights Officer ad interim told me, she expects at the end of March this year, this month, or at the beginning of April, that she would be able to announce the results to first successful candidates, which means that she will be able to offer jobs and contracts to the first wave. I know that it's also important for many members of the Parliament that they are recruited at the highest possible grade, and together with the Commission services we are working and we have already meetings planned next week to work the establishment plan so we can make it possible to have more AD post this year, so basically it would be a way to front load some posts that were foreseen this year, and of course we would make it budget neutral, I think this is also important for members of the Parliament.

I would like also to say that on the implementation of the organigram the new organigram, the recruitment that the DEDs contingency notes have been adopted by the Management Board on the 21st of January and I expect the vacancy notes to be published soon by the Commission, I expect the implementation to be published soon by the new organigram in the Management Board, we have already, and this was since 2018 a confidential Council policy, whistle blowing policy, so we have already a lot of tools but of course we have to perhaps implement them better. Regarding the Standing Core we have right now 500 category one staff which have contracts with the Agency, almost 300 of them are ready to be deployed, some of them have already been deployed or will be deployed next week on the field. Supervisory mechanism is in place, and the last mechanism on the use of force we are waiting for some feedback from some member states regarding the personal background of our employees.

Conclusions of the Management Board's meeting on the report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations

The Management Board thanks the Working Group Fundamental Rights and Legal Operational Aspects of Operations for the additional work done following the delivery of the Group's preliminary report at the end of January and takes note of the findings of the Group's final report. It also thanks Frontex' Fundamental Rights Officer, Fundamental Rights Agency and the Consultative Forum for their continued participation in the discussions of the Group.

The Management Board welcomes the explanations provided by the European Commission as concerns the legal framework governing Frontex's maritime operations. According to the Management Board, the recommendations and final conclusions of the Report of the Working Group with regard to Frontex's maritime operations in the Aegean Sea are coherent with these explanations.

The Management Board, being aware of the complex environment of the operational efforts of Frontex and host country assets respectively in the area, would like to underline the fact that approximately 28,000 persons were rescued in the Frontex coordinated joint operations, expresses its thanks, and acknowledges the professionalism of all border and coast guards officers that participated in these activities.

The Management Board takes note, that in total -8- out of the -13- examined incidents were clarified to the effect that no third-country nationals were turned back in violation of the principle of non-refoulement, or otherwise in violation of Article 80(2) of Regulation (EU) 2019/1896. In particular, -6- out of these -8- incidents took place entirely in Turkish Territorial Waters.

The Management Board also takes note that, despite the additional evidence gathered and reviewed by the Group, it has not been possible to establish the facts related to all five plus one incidents that still remained to be examined following the Group's preliminary report.

In this respect, the Management Board:

Takes note that there are indeed no indications that an incident as reported by the media for 28/29 April was observed by Frontex assets;

Welcomes that one Serious Incident Report was followed-up by a letter from the

Executive Director to the authorities of the host Member State, but regrets that no further follow-up was undertaken following the receipt of the letter from the host Member States authorities;

Encourages at the same time the Agency to close another Report as exchanges between the Agency and the host Member State's authorities have been ongoing until recently at the technical level;

Regrets that in the case of three other incidents some aspects in the presentation of facts by the different parties involved could not be clarified, but that the Agency, in these cases, also has not taken any decisive action to this end.

The Management Board notes with concern that the reporting systems currently in place are not systematically applied, do not allow the Agency to have a clear picture of the facts relating to (potential) serious incidents and do not allow for a systematic analysis of fundamental rights concerns. The Agency needs to make urgent improvements in this respect.

Also for that reason, the Management Board welcomes that Frontex has already undertaken work to implement the Board's recommendations from its meeting on 21 January 2021 as concerns Frontex' incident reporting system.

On that basis, the Management Board has drawn the following conclusions:

1. It reiterates its request to the Agency:

- to revise its reporting system in order to make it more efficient, including by: clearly documenting a detailed allocation of responsibilities within the Agency and ensuring that all staff responsible (including the Fundamental Rights Officer) as well as the members of the Management Board can fully exercise their duties;

setting minimum requirements as to the qualification of the experts in the Frontex Situation Centre (FSC);

ensuring that Serious Incident Reports (on alleged violation of Fundamental Rights) are always reported to and assessed by the Fundamental Rights Officer;

providing that every Operational Plan should include a transparent reporting

mechanism and reiterating the conclusions in this regard accepted at the Management Board meeting on 21st January 2021;

taking into account the recommendations of the Working Group, including the following:

✓ the documentation and monitoring of sensitive scenarios should be considered under the reporting mechanism. This would strengthen as well the idea of a "second set of eyes principle"

✓ except if not possible all action taken by Frontex assets or Frontex co-financed assets – within scope of Regulation (EU) 656/2014 – should be comprehensively documented by video footage;

- To establish a systematic monitoring of the reporting mechanism;

- To clarify the relation between its system of protecting whistle-blowers and the exceptional reporting under the Serious Incident Reports mechanism, ensuring that confidential reports from Frontex employees and team members are handled in an appropriate way, given prompt follow-up and that the protection of the identity is guaranteed;

- To ensure clear communication to staff and team members on these mechanisms, including mandatory training sessions;

- To recruit immediately the 40 Fundamental Rights Monitors (in accordance with the Regulation), which should have been in place by 5 December 2020 under the EBCG Regulation. In this respect, the Management Board welcomes the progress in the selection procedures led by the Fundamental Rights Officer.

2. The Management Board asks the Executive Director of the Agency, to submit a proposal for establishing a transparent process to follow-up on Serious Incident Reports on potential violations of fundamental rights.

In particular, there is a need to clarify:

- The process to establish a Final Serious Incident Report, that could be concluded in due time;

- The process to follow-up to a Final Incident Report establishing a potential violation of fundamental rights. While the Management Board welcomes that, in

the one incident where a Final Serious Incident Report was established, the Executive Director issued a letter to the authorities of the host Member State asking for an internal investigation into the incident, there is a need to establish proper internal procedures with a view to the further steps that should be taken, following such request and with the objective to increase transparency.

The Management Board requests the Executive Director to expand the roadmap submitted for today's meeting, in cooperation with the Fundamental Rights Officer, to include the above additional recommendations and to report, three weeks ahead of the Management Board meeting in May, on the state of implementation of these recommendations.

The Management Board agreed to monitor further the follow up on the report of the Working Group Fundamental Rights and Legal Operational Aspects of Operations.

Chairman Thank you Mr. Chairman, honorable members of the European Parliament, let
Managemen me introduce.
t Board So first my name is Marko Gasperlin, I'm the Assistant Director of Slovenian
statement of uniform police, I am representing Slovenia in the Management Board, and now
views to in the Management Board for the second mandate I am elected Chairperson of
European the Frontex Management Board. As you know, in the Management Board of the
Parliament Agency each member state and associated Schengen country has one
Civil representative expert from in the field of Border Management, and there were
Liberties, also two representatives of the Commission members of the Management
Justice, and Boards. That's in the line of accordance to the regulation Management Board is
Home responsible for taking strategic decisions of the Agency in the regulation and in
Affairs the regulation there are about over more than 30 quite concrete tasks for the
Committee. Management Board. Let me also emphasize also that more external border
16-3-2021 management is according to the EU a key shared responsibility of member
states and the Agency and this relation very much defines the work of the
Agency and also the dynamic in the Management Board of the Agency.
With the new regulation in 2019, the amount on the task of the Agency and

consequently also the Management Board increased enormously and additionally also with the Standing Corps I would say the paradigm of the work of the Agency or the operational activities have significantly changed. But for this changes for this we have complemented these changes quite short time. How big this change was let me illustrate only by one fact, a roadmark for the implementation of the EBCG 2 point regulation, the new regulation, which was prepared by the DigiHome and Executive Director of the Agency, in the road map there are more than 150 activities which should be more than less implemented by the end of 2020. It was very ambitious plan, however, or unfortunately, the implementation failed in the time of the pandemic crisis with the significant restrictions and additional challenges. So therefore I conceded that many of these tasks have been implemented, but there are still some impending issues or activities which should be implemented, but each and every delay I'm sure that the Executive Director or myself we can explain the reasons why for this delay.

Very brief about the Management Board, first, Management Board has to adopt the new rules of procedures, same as the old rules of procedures we wouldn't be able to manage the new tasks, we thankfully got to establish the Executive Board. For the first time in the history of Frontex Executive Board of the Management Board, was established in December, and this Executive Board is now taking a big part of responsibility and to say that is the way we can ensure the function of the Management Board. And beside this, we also decided to strengthen the secretariat of the Management Board, because we currently only have two administrative staff in the Executive Board, but in the future we will have 5 altogether 5 colleagues also able to advise the Chairperson and Executive Board of the Management Board.

One more fact maybe, in the regulation is the definition that the Management Board should hold at least two ordinary meetings in a year. I think the reality is that for the last year we planned 5 regular meetings of the Management Board but on the end we had 9 altogether 9 MB meetings besides these 5 ordinary, 4

extraordinary and you can imagine that the average number of the agenda items for the Board is between 20 and 30. A few more accents regarding the already today mentioned the strengthening of the role of the fundamental rights in the Agency and its activities yes. Regulation defines new position of the Fundamental Rights Officer as a managerial post, then the deputy Fundamental Rights Officer Fundamental Rights Monitors adoption of the mechanism to ensure the independence of the Fundamental Rights Monitor and Fundamental Rights Officer and the things that the implementation of this part of the regulation become either more complicated, the current Fundamental Rights Officer was is on sick leave for quite a long time so we have to appoint for what interim but now we are slowly coming to the final and desired results also in this area. I can explain more in detail also in this regard.

A few sentences regarding the standing core, here as I already said the Standing Corps is something new in the framework of the regulation but I would say also for the EU. Beside the category 1 and 2 which was of the member states which was let's say in the past the only way for the Agency to operational activities now we get also the category 1, there is a statutory staff of the Agency, for which we should ensure the police powers, the trainings, the legal basis that they can become a real part of the Standing Corps since standing core cannot function if all three categories are on the same level. And what was let's say in the member states the result of several years of the development of the historical development, we had to ensure in the Agency within one year. So I can't say we implemented all the old tasks that we should according to the regulation, but first part of the Standing Corps is ready, is already operational, and for the procurement or the employment are going.

And the last segment I would like to mention is the new organizational structure of the Agency. Yes we had to in the Management Board adopt a new operational structure with three Deputy Executive Directors, we made significant progress also in this regard although the final stage of the implementation is still in front of us. So this is all from my side for the introduction but I would be happy to

answer all of your questions if I can, thank you.

Executive Director statement of views to European Parliament Civil Liberties, Justice, and Home Affairs Committee.
16-3-2021

Thank you very much Mr. Chairman and honorable members of the Parliament, Commissioner, dear Marku, Chair of the Management Board ladies and gentlemen.

I would like to first brief you on the implementation of the Standing Corps and then I will try to answer the questions that have already been raised. Currently we have approximately 1,200 people on the ground which are protecting the external borders of the European Union. Category one staff, so EU employees of the Agency, we have currently more than 500 staff, most of them have been already trained, though we still have some that remain to be trained in Barri, Italy and another one in Avila, in Spain. We have from the category 2 staff the member states accounted for 2 years, with the possibility to be extended up to 4 years, in this category we have up to close to 400 staff deployed. And in the category 3 we have 92% of the nominations that have been made by the member states. So we can say from that perspective we are not far from the objective. There is an objective to have 700 category 1 staff in place in 2021, that's why we are launching a recruitment from the reserves list that is that we have extensive reserve lists that were created between October 2019 and Spring 2020 and we will pick from the reserve lists the relevant categories and profiles. So up to 200 more will be picked as of March this year to complement the category 1 Standing Corps.

We also plan the training, for this category is supposed to start in June and they will be fully ready for deployment at the end of this year 2021. There is also for this year the recruitment of the ETIAS staff, you may know or you may remember that they are staff of that standing core as well, so far we have 9 but this is normal because the central unit of ETIAS is being built and so far we don't need to have more. What we need to have by the end of this year is 80 ETIAS staff in total and we are launching the recruitment for that.

We are also planning a second launch of the recruitment in que to 2021 with the objective to recruit up to 300 staff that will join the Agency in the course of

2022 with afterwards a training of 11 months. I would like also to say on the fundamental rights, Marku Gasperlin announced that the Monitors are being recruited right now, the Fundamental Rights Officer expects to offer the first contracts let's say end of March or beginning of April, the Fundamental Rights Officer will be appointed by the Management Board normally next week, and the fundamental rights, Deputy Fundamental Rights Officer is also in the phase of the recruitment. Will be recruited afterwards.

We also have when it comes to fundamental rights we have reinforced our fundamental rights framework, the Consultative Forum, we have also more focused group, we are considering how to reinforce the complaint mechanism, and to answer a question that has been raised to me we have with the Fundamental Rights Officer and their staff Fundamental Rights Officers that deliver trainings. So they are part of the training process of the category one staff and in general they are also training category two staff on fundamental rights.

Then about the deployment and the use of force. I think this is a very important topic also including in terms of accountability discipline that has to be established for the staff. I'm talking about the category one staff, so the EU employees wearing the blue uniform of the European Union and which are Frontex employees. We have indeed faced some legal difficulties because it was needed to finetune the legal framework to acquire weapons, it was clear for the non-lethal weapons but it was not clear for the firearms. So we got from the Commission in the end of 2020 a legal reply in between the Agency has also engaged in talks with our host member state Poland, and Poland accepted to amend its national law in order to combine it with the EU regulation so that without any doubt Frontex with a seat in Warsaw in Poland can acquire weapons, firearms.

We have also reached an agreement with Greece in terms of a bridging solution until the procurement can acquire the weapons we need and this should happen in summer 21 and we are sending letters to other hosting member states of our

operation to find a similar bridging solution until summer 21 to have the firearms for the category one staff. Here I want to say that the Management Board adopted the supervision mechanism which will supervise the use of force. The use of force is not an incident, it's any use of force and there are strict definitions in compliance with EU law. The inspection and compliance officer will play an important role, but the Fundamental Rights Officer will be in the loop of the information after any use of force. The training is ongoing on the supervision mechanism.

The Management Board also adopted the Management Board decision on the system for the Executive Director to grant the weapons permit. Here we are still in consultations with member states because we need background information about the nationals of their member states or the residents because we need to check if there are criminal records and so on. So we are in the process of vetting the category one staff so that we can deploy them with the use of force as soon as they are properly vetted by the member states.

But this shows that there is really a need to improve the accountability system, the fundamental rights I have already talked about it, the disciplinary framework, and we will definitely learn the lessons from the working group of the Management Board and your Scrutiny Group, definitely we have many lessons to learn and we are ready to implements them. There is a report on the implementation of the regulations that I tabled to the Management Board on the 19th of February and there will be an ongoing monitoring process on how the Agency is improving. For example the Serious Incident Report is ready, and will be implemented very soon.

Now how to use the standing crops. And I think this is a very important question aslo for political institutions also in terms of democratic control by the European Parliament. We have so far joint operations. We have so far operational plans but it's clear that with the ambition of having 10,000 staff in the European Standing Corps by the end of 2027, we have a lot of man power. And we proposed a catalog of services for the member states, and we have ongoing

meetings for member states to pick the services they would like to have. It's not only for the Front line member states such as Greece, Italy, Spain, Bulgaria, and maybe some others. It's for all member states of the European Union. And here I fully concur with what Commissioner Johansen said, it is not only about migration management, of course there is an important role in terms of migration management return, but it's also about fighting against criminal activities at the external borders, prevention of terrorism, and these are areas where definitely the Standing Corps can make a difference in particular in areas where we have spotted vulnerabilities in the context of the vulnerability assessment. And we can provide support to the member states who need support in order to have well functioning external borders.

With the Pact on Asylum and Migration, definitely Frontex and the Standing Corps will be able to support the member states with screening procedures, the use of databases, if the EU legislation are adjusted to give us the competences to do so, and of course with return.

As a conclusion, I can say we are rolling out the implementation of the European Coast Guard regulation 0.020 although there were some delays due to Covid-19 as this was said by Marko Gasperlin, and due to some legal uncertainties that we had to clarify first.

I would like to say here that what we observe is that we need more rules. We need to have a common understanding on certain implementing rules. The legal-the legislation is clear, it was adopted by the EU legislature. But we need implementing measures, that most of them are adopted by the Management Board, some of them are adopted by implementing acts from the Commission, but what is at stake, and I can see it daily now with the reporting system, with the disciplinary system that we need to have in place we need to have more implementing measures. Because what we have now is something completely new in a European administration. We are a fully fledged EU agency, no doubt about that, but we are also more and more a fully fledged law enforcement force. And we have to cope with those dual natures, and I think it's fortunate

and good that we have that the European Parliament have now dedicated to have a scrutiny group that in the long run will be able to feel better ownership, political ownership of this phenomenon, and I'm ready again as I said to implement the recommendations but also to seek guidance. Thank you very much mister Chairman.

Annual report
Fundamental Rights Officer,
section three
fundamental rights
compliance in Frontex
operational activities
and section four
Fundamental Rights
Monitoring.
25-6-2021

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 persons 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 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 cycle 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 "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 Monitors 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 incidents 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; 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.

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. 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, 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 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.

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. 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, 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 operation.

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. In November 2020, the Frontex Management

Board adopted its decision 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. 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 transparency and accountability gain particular importance with regard to the exercise of executive powers of Frontex statutory staff deployed as members of the teams.

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 exercised 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, 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. 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 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 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. 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.

Deployed to the operational areas on behalf of the FRO, the Fundamental Rights Monitors (FROMs) will monitor and assess 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 returns 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) and in the Frontex Standard Operating Procedure on Serious Incident Reporting, 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 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 containing a summary of its SIR-related 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 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. Complaints Mechanism

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. 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 registered 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 booklets 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.

Press release: Frontex welcomes report by the Scrutiny Working Group. 15-7-2021

Frontex welcomes report by the Scrutiny Working Group. 15-7-2021

Frontex welcomes the report by the Scrutiny Working Group and its conclusions which reaffirmed that there is no evidence of the Agency's involvement in any violation of human rights.

The agency has been working with the Parliament's scrutiny group in an open and transparent manner, sharing information and receiving the MEPs during an online visit to Frontex. The agency remains committed to cooperating with the European Parliament.

"I acknowledge the conclusion of Parliament's fact-finding scrutiny and its recommendations. Frontex is a bigger, more complex organisation than a couple of years ago, so a system that was designed in the past needs to undergo further transformation. The report underlined the challenges of the Agency's transformation in a more and more complex security environment," said Frontex Director Fabrice Leggeri.

"We are determined to uphold the highest standards of border control within our operations. We will look into the recommendations and see how we can implement them to further strengthen the respect of fundamental rights in all our activities," he added.

Frontex has completed two stages of the inquiry into last autumn's media allegations. Both an internal inquiry and the report by a special working group appointed by the Management Board (with Commission and Member states representatives) have found no evidence of any Frontex involvement in violation of human rights.

The agency has already taken on board many of the recommendations issued by the working group, upgraded its reporting mechanism and reinforced its operational coordination centres to improve information exchange. It will continue working towards an effective and transparent management of EU

external borders in full respect of fundamental rights.

Recent events at the European Union's external borders have shown that Frontex is an essential assistance for Member States and the whole EU in situations of increased migratory pressure. Our security environment is increasingly volatile and complex.

Today, Frontex has officially launched its Rapid Border Intervention at Lithuania's border with Belarus and deployed Standing Corps officers and equipment to help secure EU's common external border.
