

The Fundamental Rights Officer **ANNUAL REPORT 2022**



FRONTEX



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List of acronyms

CATE(s)	<i>Centros de Atención Temporal de Extranjeros</i> / Temporary Attention Centres for Aliens
CJEU	Court of Justice of the European Union
EBCG (Regulation)	European Border and Coast Guard (Frontex) Regulation
ECRET	European Centre for Returns (a Frontex entity)
EIBM	European Integrated Border Management
ETIAS	European Travel Information and Authorisation System
EU	European Union
EUAA	European Union Agency for Asylum
FRaLO	Working Group on Fundamental Rights, Legal and Operational Aspects of Operations
FRESO	Frontex Return Escort and Support Officers
FSWG	Frontex Scrutiny Working Group
NGO(s)	Non-Governmental Organisation(s)

Foreword by the Fundamental Rights Officer



Twenty twenty-two witnessed seismic changes and brutality on the European continent, impacting also operations at the external borders of the European Union. Upholding the universal values emphasised by the European Union, which remain at the core of European integrated border management, appears even more essential and obvious at this time.

Frontex's independent Fundamental Rights Office, mandated under EU law to monitor and advise on fundamental rights, developed its work against this backdrop. In 2022 we completed another round of recruitment of Fundamental Rights Monitors and headquarters staff, bringing the total capacity to over 60 staff members. We spent substantial time in the field – some 1,000 days at land, air and sea borders – and continued to ensure effective and sustainable working methods. We also welcomed the appointment of a Deputy Fundamental Rights Officer.

Seeking greater synergies among the various partners and actors in the European border management system is one of the cornerstones in instilling respect for fundamental rights. Promoting and monitoring the implementation of a Fundamental Rights Action Plan for the European Border and Coast Guard community is another pivotal pillar of our work. We have also improved the coordination of our work with that of the Agency's Consultative Forum.

We have maximised the impact of our work through increased collaboration with Frontex operational units, enhancing monitoring work and building on lessons learnt during the last year. We have streamlined and systematised the advice provided through various processes within the Agency and enhancing consistency and follow-up on recommendations – tracking work and impact. This report covering actions and activities is an expression of our determination and commitment.

Looking at the current year (2023), we continue to support the Agency in fulfilling its fundamental rights obligations. It is certain that the demand for the Agency's support will keep growing and we will continue working with partners to reinforce the various actors – national, European and international – monitoring and advising on border management operations.

Twenty twenty-three marks five years since the adoption of the Global Compact for Safe, Orderly and Regular Migration, which includes among its 23 Objectives to manage borders in an integrated, secure and coordinated way, but also to address and reduce vulnerabilities in migration. Human rights are among the guiding principles of the Global Compact on Migration. As we publish this report, we are also halfway from when the global Sus-

tainable Development Goals were set (2015) and when they should be delivered on (2030). It is important to also link the work of the EU's border management to this process. Goal 10, dealing with reduced inequalities, includes in Target 7 to facilitate 'orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies'. Of the four indicators, under this Target, one (10.7.2) is about the '[n]umber of countries with migration policies that facilitate orderly, safe, regular and responsible migration and mobility of people'. Another indicator is on the '[n]umber of people who died or disappeared in the process of migration towards an international destination'.

Finally, 2023 also commemorates the 75th anniversary of the Universal Declaration of Human Rights. When the United Nations adopted the Declaration in 1948, one of the 30 provisions established 'the right to seek and to enjoy in other countries asylum from persecution' (Article 14), a right that is reflected in the Charter of Fundamental Rights of the European Union, which was adopted 50 years later, and is binding EU primary law since 2009. The Charter recalls the Universal Declaration of Human Rights by securing that '[t]he right to asylum shall be guaranteed' (Article 18). For the European integrated border management to be effective and secure, a genuine right to seek asylum is essential, as is border management in full compliance with fundamental rights. Frontex's Fundamental Rights Office is proud to reinforce this dimension.

Jonas Grimheden

Fundamental Rights Officer, Head of
the Fundamental Rights Office
European Border and Coast
Guard Agency

Introduction

The European Border and Coast Guard Regulation (2019/1896) requires that Frontex's Fundamental Rights Officer publishes annual reports on the activities of the Fundamental Rights Office and 'the extent to which the activities of the Agency respect fundamental rights', including 'information on the complaints mechanism and the implementation of the fundamental rights strategy' (Article 109(4)).

The European Border and Coast Guard Regulation is an essential legal instrument to strengthen border management and security within the European Union (EU). The Regulation establishes the European Border and Coast Guard Agency (Frontex) with an expanded mandate and resources to effectively protect the EU's external borders, while upholding the fundamental rights of individuals.

The Fundamental Rights Office (FRO) is an integral, albeit independent, part of Frontex, responsible for monitoring and advising on all activities carried out by the Agency to ensure compliance with EU fundamental rights and international human rights standards.

This Annual Report outlines the main observations and recommendations provid-

ed to the Agency, including the Executive Director and the Management Board throughout the year. The recommendations are increasingly informed by the various tools, including monitoring in the field, complaints,¹ and serious incident reporting;² as well as desk research. This Annual Report also provides an update on the implementation of the Fundamental Rights Strategy and its Action Plan, both adopted in 2021 by the Agency's Management Board.

The Annual Report consists of six chapters. Beginning with a brief overview of positive developments and main areas of concern, the first chapter then presents the findings of fundamental rights monitoring, including country-specific monitoring, conducted within the Agency's operational activities in the reporting period.

The second chapter focuses on the reporting and accountability mechanisms, and the fundamental rights safeguards guiding the work of the Fundamental Rights Office. It outlines the most recent developments and provides a statistical overview of the number and type of the received serious incident reports and

complaints. The third chapter aims to inform on capacity building activities.

The fourth and fifth chapters give accounts of the internal process strengthened during the year and the cooperation of the Fundamental Rights Office with internal units for the purpose of enhancing the fundamental rights compliance of the Agency, as well as an update on the collaboration with the Consultative Forum and with third countries. Lastly, the work of the Fundamental Rights Office, in line with the Fundamental Rights Action Plan is presented, following up on the recommendations from different entities and advisory working groups.

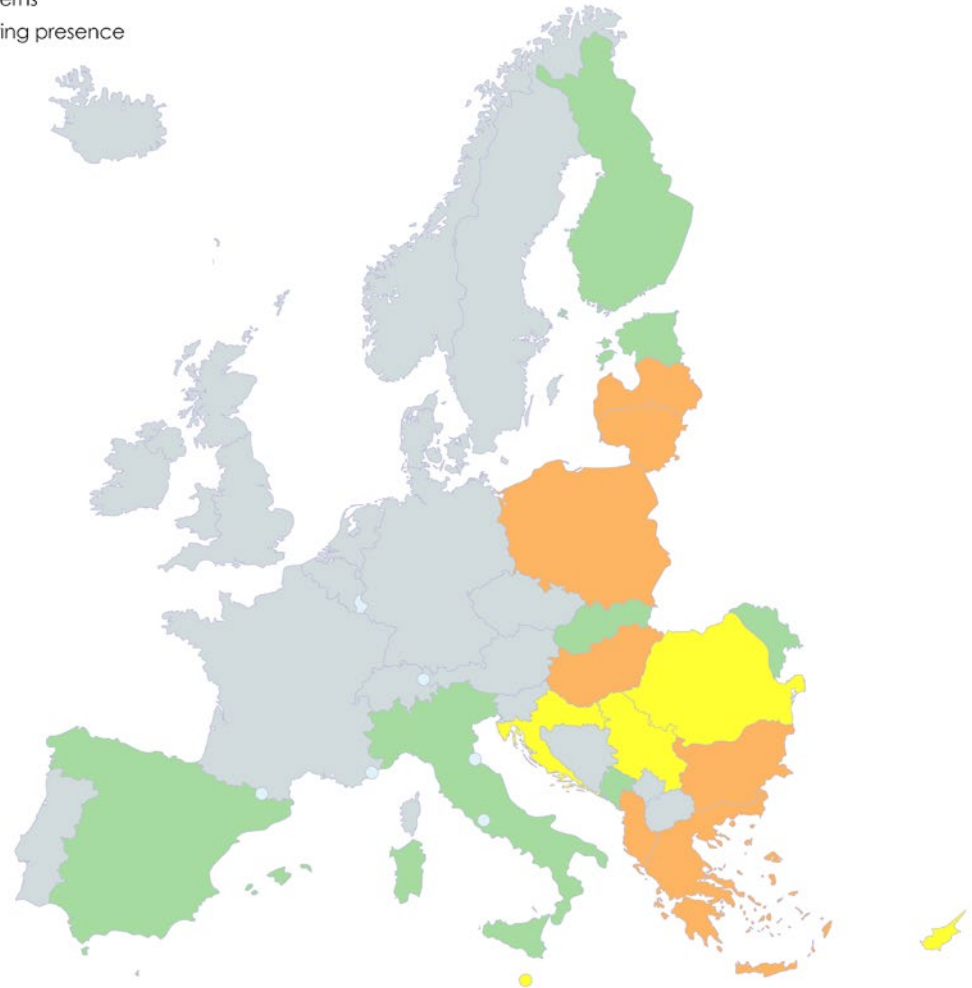
The sixth chapter provides an overview of the Fundamental Rights Office recommendations in border management as well as of recommendations issued by the European Ombudsman, the Frontex Scrutiny Working Group of the European Parliament (FSWG) and the Working Group on Fundamental Rights, Legal and Operational Aspects of Operations (FRaLO) of relevance to fundamental rights. The seventh and concluding chapter includes the Fundamental Rights Officer's planned actions and priorities for 2023.

¹ Frontex Complaints Mechanism was established in 2016 with the purpose to monitor and ensure respect for fundamental rights in all the activities of the Agency. It is an administrative mechanism where the Fundamental Rights Officer is responsible for handling complaints in accordance with the right to good administration.

² The Serious Incident Reporting is an Agency-wide mechanism that obliges participants in Frontex activities to report, inter alia, potential violations of fundamental rights directly to the Fundamental Rights Office. In its capacity as designated handler for such cases, the Office will then follow up and, where reported information meets the threshold of a Serious Incident, launch investigations into cases.

Fundamental rights situation in European countries as assessed by the fundamental rights officer within integrated border management³

- Serious fundamental rights concerns
- Moderate fundamental rights concerns
- Minor fundamental rights concerns
- No presence or limited monitoring presence



The Fundamental Rights Officer is particularly concerned about persisting fundamental rights challenges in the Central Mediterranean

³ The chart provides an overview of the fundamental rights situation in European countries within the context of integrated border management. It provides indications on the countries with a substantial presence of Frontex operational activities, specifically where the Agency supports Member States in border surveillance activities and migration management. The categorisation is based on continuous assessment from the Fundamental Right Office substantiated by its monitoring and advisory activities conducted in 2022. The fundamental rights issues considered do not solely refer to those occurring at the borders *stricto sensu*, but also in respective areas where Frontex conducts operational activities. They might also relate to other factors such as conditions of detention and shortcomings in the asylum procedure.

CHAPTER 1.

Fundamental rights monitoring



1.1. Positive developments

Twenty twenty-two was a year of rapid growth for the Fundamental Rights Office. By the end of the year, 46 Fundamental Rights Monitors (Monitors)⁴ had been recruited, six more than the minimum number required in the European Border and Coast Guard (EBCG) Regulation. Sixteen additional staff were contributing and supporting the monitoring and other tasks of the Office.

During the year, the Fundamental Rights Office developed its working methods further and enhanced its cooperation with the Frontex entities responsible for the operational activities of the Agency, as well as with the national authorities. Close cooperation with the Frontex Coordinating Officers and their receptiveness are foreseen in the EBCG Regulation in order to advice on fundamental rights at the borders. The Fundamental Rights Office is also pleased with the engagement of the National Frontex Points of Contact who

supported the work and facilitates interaction with the various operational actors in the field.

The Fundamental Rights Office interacted well in the field, also with the Frontex deployed Standing Corps Officers. Overall, especially Frontex staff – Category One Standing Corps Officers, are aware of the main Frontex instruments to ensure fundamental rights compliance; in particular, the role of the Monitors, and their obligation to report incidents of possible fundamental rights violations through the serious incident report mechanism and the complaint mechanism. The Fundamental Rights Office's regular participation in operational briefings⁵ have significantly contributed to raising awareness about these instruments among deployed staff.

An important development in 2022 was that the Fundamental Rights Office, with the cooperation of all relevant Frontex

entities, finalised the draft of the Standard Operating Procedure on the roles and responsibilities of the Monitors in Frontex operational activities. This document was formally approved by the Executive Director and the Fundamental Rights Officer in March 2023. Based on the procedures agreed in this document, the Fundamental Rights Office had the opportunity in December 2022 to participate and observe a sea patrol (*pictured above*) in the Central Mediterranean, departing from the island of Lampedusa in Italy. Participation in such operational activities such as land and sea patrolling are positive development in line with the EBCG Regulation.

Twenty twenty-two was marked by the Russian military aggression against Ukraine that led to millions of people leaving their homes and many of them fleeing towards the EU. All countries in the region showed remarkable solidarity in this tragedy, opening their borders and welcoming



⁴ Fundamental rights monitors, employed as statutory staff, shall constantly assess the fundamental rights compliance of operational activities, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of European integrated border management.

⁵ Operational briefings are provided to participants in Frontex operational activities before or during the first days of deployment, including a presentation on fundamental rights and the Agency's fundamental rights mechanisms.

people. The European Border and Coast Guard community, including Frontex and the national authorities, proved to be up to the task with measures and examples of how border authorities can support people in need at the borders of the EU. Drawing on this experience, the Fundamental Rights Officer issued an Opinion on the fundamental rights implications on European Integrated Border Management of the war against Ukraine. While acknowledging some shortcomings in the referral and protection mechanisms in place, this Opinion highlighted the positive measures taken to accommodate the needs of persons fleeing the war. These are measures that must inspire future action by the European Border and Coast Guard community in similar cases of mass influx of people to the EU seeking international protection.

More concretely, countries in the region showed flexibility and openness in admitting Ukrainian nationals as they were allowed to cross the border, even without valid travel documents, through the official border crossing points. People crossing the green border irregularly were also welcomed. The Fundamental Rights Office documented practices such as provision of extensive information to people seeking protection in the form of leaflets and posters on legal procedures, transportation possibilities, as well as the possibility to report war crimes to the competent authorities.

Many countries put in place special procedures for addressing the cases of unaccompanied and separated children. They also developed information material and provided training to border guards related to the risk of trafficking in human beings. In Romania (pictured on the right - Romania, Sighetu Marmatiei Border Crossing Point, 2022), for instance, unaccompanied and separated children are registered in a database and information is collected through a special form about the child's and accompanying adult's identity details, their destination, and whether they plan to remain in the country, or are in transit. To prevent trafficking in human beings, authorities have put in place several mechanisms, in particular more police presence at crossing points; vetting of persons offering transport to migrants through a registrar and docu-

ments checks; establishment of dedicated bus lines from the crossing points to other cities.

Other positive developments and good practices were identified where the Agency is operating in support of national authorities.

In Greece, the authorities, following fundamental rights concerns raised by the Fundamental Rights Officer, in the form of Opinions submitted to the Executive Director of the Agency, adopted an 'Implementation Plan' with commitments on certain operational and procedural measures to address these concerns (See also below p. 13). These measures refer to, for example:

- more active engagement of Frontex staff and/or assets in front line activities,

- Frontex assets remaining, as by principle, in the location of a detected incident until the operation is completed,
- provision of information and feedback by the national authorities to Frontex on their follow-up actions when Frontex staff and/or assets are involved in incidents such as apprehensions of migrants,
- designation of liaison officers by the national authorities (Hellenic Police and Coast Guard) responsible to ensure regular exchange and cooperation with the FRO,
- appointment of a national Fundamental Rights Officer and fundamental rights training to national border and coast guard officers.



The Fundamental Rights Office will be monitoring and evaluating the implementation of this plan and will assess its impact beyond procedural arrangements and improvements.

In Italy, the authorities invited the Agency, with the support of the Fundamental Rights Office, to provide input to the Inter-institutional Working Group on Vulnerabilities, set up with the purpose of developing Guidelines (Vademecum) for vulnerable persons. As shown by this initiative, the close engagement and cooperation of the national authorities with

Frontex, international organisations and non-governmental organizations (NGOs)/ civil society operating in the field brings significant positive results in migration/ border management.

In Spain, the Spanish Red Cross provided systematically (under an agreement with the authorities) comprehensive emergency socio-sanitary services to migrants and asylum seekers at disembarkation points. In addition to providing medical assistance/triage, food items or clothing, this included conducting a pre-identification and pre-assessment of vulnerable persons

(including those in need of international protection). This information was collected and processed on the spot and then transmitted to the competent authorities (although it seems that it was not always passed on to the police authorities on the ground). Furthermore, access to free legal assistance to all migrants and asylum seekers in the Temporary Attention Centres for Aliens (CATE⁶, at the initial stage of their arrival in Spain, also made a significant contribution to the protection of fundamental rights.

1.2. Main areas of concern

Aerial surveillance / search and rescue - Central Mediterranean

The situation in the Central Mediterranean continues to remain of concern for the Fundamental Rights Office. Providing Multipurpose Aerial Surveillance services to Member States is a complex activity. It must contribute to saving lives in the Central Mediterranean, in line also with the Search and Rescue Convention and at the same time, does not lead to disembarkation of migrants in unsafe ports.

To facilitate the Agency tackling this complexity, the Fundamental Rights Officer issued in 2022 an Opinion stressing the challenges related to the implementation of the Agency's aerial surveillance, particularly when operating in the pre-frontier area corresponding to the Libyan Search and Rescue Region. The Opinion suggested also the adoption and implementation of certain mitigating measures to decrease the fundamental rights risks for the Agency, acknowledging, however, that actions are required by all actors of the European border and coast guard community, and not only the Agency, while some of the solutions fall outside the Agency's mandate.

The Fundamental Rights Officer, taking into consideration numerous reports, findings and recommendations by international organisations, reiterated that Libya cannot be considered a port of safety for migrants and potential asylum seekers who are rescued at sea.

National legislation restricting access to international protection

Concerns persist over national legislation in Latvia, Lithuania, and Poland introduced in 2021 and effectively applied throughout 2022, according to which, in emergencies caused by mass immigration, border guard officers may refuse to accept applications for international protection from migrants who have crossed the border in an irregular manner and may return them to the country from where they have arrived. These laws significantly restrict access to international protection and legalize practices that may amount to collective expulsions and violation of the principle of non-refoulement. Since 2021, the Fundamental Rights Officer has issued several opinions on the legal situation in Lithuania, pointing to the incompatibility of these provisions with EU and

international law. On 30 June 2022, the Court of Justice of the European Union (CJEU) found that Lithuanian legislation is contrary to EU law (C-72/22 PPU).⁷ Following the Court's decision, the Fundamental Rights Officer issued (15 July 2022) an additional Opinion, stating that the requirements for triggering the procedure concerning the enactment of Article 46(4) of the EBCG Regulation are fulfilled, suggesting three possible options for the Agency: i. suspending only border surveillance activities; ii. suspending border surveillance and return activities; iii. suspending all operational activities. Meanwhile, Lithuania requested the termination of the deployment of Frontex Standing Corps Officers related to border surveillance activities stating that the national authorities, considering the low detection number of migrants at their borders, can ensure surveillance activities with their own forces.

In 2022, other countries of the region – Estonia and Finland – amended their national legislations in a similar direction, significantly restricting access to protection in the event of national emergencies. However, neither of the two declared in 2022 a national emergency that would trigger the application of these laws. In

⁶ Centros de atención temporal de extranjeros

⁷ European Court of Human Rights, Judgment of the Court (First Chamber) of 30 June 2022, *M.A. v Valstybės sienos apsaugos tarnyba*, <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-72/22&jur=C>

addition, no allegations of violations of fundamental rights at the borders have been reported to the Fundamental Rights Office linked to these laws. Nevertheless, the Fundamental Rights Officer considers that the legal changes in question provide grounds for the implementation of procedures that could lead to a violation of international and EU law.

War against Ukraine

The war against Ukraine and its border management implications were throughout 2022 a major source of concern. As mentioned, the overall reaction of the Agency and the Member States helped alleviate the difficulties of people fleeing the war. However, the Fundamental Rights Office also identified gaps and shortcomings. For example, the Fundamental Rights Office was alerted about cases of differential treatment of non-Ukrainian third-country nationals fleeing Ukraine during border procedures. In addition, due to a heightened risk of trafficking in human beings, a need for additional training for

border guards and systematic collection of data on presumed and identified victims of trafficking among persons fleeing the war in Ukraine have been identified.

Collective expulsions and ill-treatment of migrants at the borders

Collective expulsions and so called 'push-backs',⁸ may amount to a violation of the principle of non-refoulement and of the right to asylum. Ill-treatment of migrants is against the obligation to respect human dignity in all circumstances and core fundamental rights such the right not to be tortured and not to be treated in an inhuman and degrading manner, and the right to integrity of the person.

The Fundamental Rights Office continued receiving information and allegations of such practices in 2022, from several borders where the Agency is operating, including numerous Serious Incident Reports pertaining to such practices (see below p. 35).

In 2022 the Fundamental Rights Officer raised particular concerns about the situation in Albania (borders with Greece), Bulgaria (borders with Türkiye), Greece (borders with Türkiye), Latvia (borders with Belarus) and Lithuania (borders with Belarus, where Frontex provided support with border surveillance activities until July 2022).

The situation in Greece led the Fundamental Rights Officer to submit three consecutive Opinions in 2022 to the Executive Director of the Agency, escalating concerns and detailing needed measures. In the third Opinion, taking into account the existence of strong indications about persisting fundamental rights violations of a serious nature, reached the conclusion that in the case of Greece, the Agency's activities should be suspended or terminated in line with the provisions of Article 46 of the EBCG Regulation – while also underscoring a range of mitigating measures that would be essential. Following these Opinions, the Fundamental Rights Officer participated in an advisory capacity to a Working Group on Article 46 set



Monitoring mission to Albania.

⁸ See European Court of Human Rights, *Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights*, Updated on 31.08.2022, https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_4_ENG.pdf



up by the Agency to examine the way forward. In the context of this process the Fundamental Rights Officer took note of the efforts made by the Greek authorities to put in place and start implementing certain actions to address the situation. In

2023, the Fundamental Rights Office will closely be monitoring their implementation and outcome.

For the concerns raised as regards the situation in Lithuania (see above p. 11)

Reception conditions

In 2022, the Fundamental Rights Officer raised concerns about overpopulation in the Pournara Reception Centre (*pictured on the right*) in Cyprus, which leads to poor reception conditions and limited resources to respond to the high number of vulnerable persons, including unaccompanied minors and victims of trafficking in human beings. This situation is a result of the high number of arrivals, but also the limited number of facilities where asylum applications are accepted from persons who arrived in Cyprus irregularly. Migrants and asylum seekers had to stay in facilities without proper reception conditions for long periods.

Concerns with reception conditions were also identified in Italy, especially in the Lampedusa Hotspot, as well as in some facilities in Spain in which Frontex conducted operational activities, particularly in periods of high numbers of migrant arrivals.

Debriefing activities

The Spanish Ombudsman voiced concerns over the conduct of debriefing activities and other operational activities for risk analysis purposes in Spain.⁹ The European Ombudsman opened an inquiry into how the Agency handled a complaint concerning the rights of migrants in debriefing interviews.¹⁰ Only at the end of 2022 did the Fundamental Rights Office secure an agreement to systematically monitor debriefing activities by being present and directly observing debriefing interviews.¹¹

⁹ Defensor del Pueblo, *Decision on Planes operativos de las actuaciones de Frontex en España* [Operational plans of Frontex activities in Spain], <https://www.defensordelpueblo.es/resoluciones/planes-operativos-de-las-actuaciones-de-frontex-en-espana/>

¹⁰ European Ombudsman, *Inquiry on How the European Border and Coast Guard Agency (Frontex) handled a complaint concerning the rights of migrants in 'debriefing' interviews*, Case 1452/2022/MHZ, 21.09.2022, <https://www.ombudsman.europa.eu/en/opening-summary/en/60908>

¹¹ The "Standard Operating Procedure Roles and Responsibilities of Fundamental Rights Monitors (FROMs) in Frontex Operational Activities" adopted by the Fundamental Rights Officer and the Executive Director on 21 March 2023, provides a legal basis for FROMs to monitor debriefing interviews.

1.3. Field monitoring

In 2022, the Fundamental Rights Office spent almost 1,000 days in the field.¹²

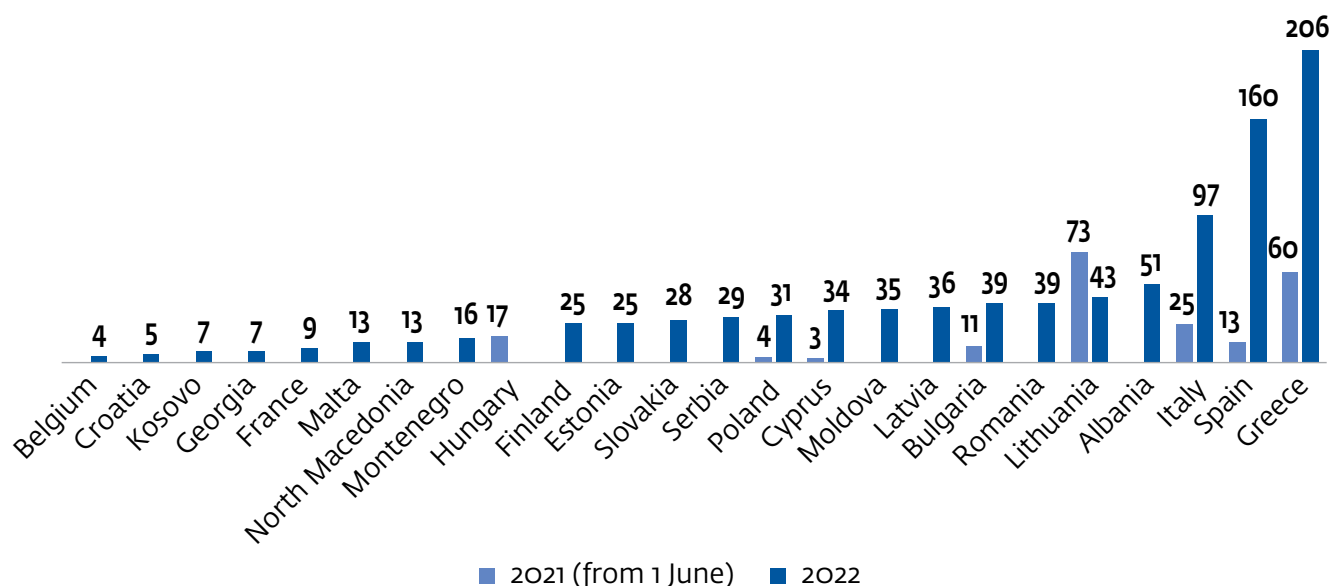
The following sections provide an outline of the main findings from fundamental rights monitoring activities, by country. The findings refer to countries where

Frontex had a more extensive presence in 2022 and where the Fundamental Rights Office conducted monitoring visits.

Monitoring of operational activities and field days per country and year

Number of field days per country

June - December 2021, January - December 2022



1.3.1. Albania

No allegations were reported involving Frontex deployed staff as perpetrators in incidents that could be considered violations of fundamental rights. On the other hand, the Fundamental Rights Office received continuous allegations of collective expulsions at the Albanian-Greek border and/or ill-treatment against migrants by national authorities. The Albanian authorities generally denied these allegations and declared as an isolated case one incident in which the Fundamental Rights Office gathered concrete evidence of one illegal return of migrants across the green border.

Moreover, gaps were reported as regards ensuring information and access to asy-

lum procedures. Specifically, when migrants would express to the border police their will to continue their journey to the EU, no follow-up question about need for international protection in Albania would be asked. The Fundamental Rights Office believes that such interpretation of the border police duties may result in the non-respect of the rights of potential asylum seekers. The national authorities assured the Fundamental Rights Office that they will change this practice to include in the relevant form a question regarding international protection needs.

As regards activities carried out by Frontex deployed staff, the Fundamental Rights Office identified room for improvement as

regards a more proactive approach towards the identification of persons in need of international protection and vulnerable groups (including potential asylum seekers) during screening procedures.

In 2022, the Fundamental Rights Office offered to organise for national authorities sessions to raise awareness among their staff on fundamental rights standards in border management. The Fundamental Rights Office also signed a Memorandum of Understanding with the Albanian Ombuds institution (People's Advocate) on the handling of complaints by alleged victims of fundamental rights violations in connection to border management activities involving Frontex.

¹² The field days do not include the monitoring of returns. For returns, see Chapter 1.4 Return Operations below.

1.3.2. Bulgaria

The Fundamental Rights Office received credible information concerning allegations of collective expulsions, as well as of ill-treatment of migrants by Bulgarian border guards, especially at the borders with Türkiye. The Fundamental Rights Office repeatedly communicated concerns about these allegations to the Bulgarian authorities, including in the framework of serious incident reporting underlining the need for more thorough investigations on their part.

Moreover, Frontex staff deployed in the operational area continued to be assigned to places further from the actual border line or high-pressure areas, and therefore, are not directly involved in land patrolling of those border sections where apprehension of migrants, collective expulsions or preventions of entry take place. In the view of the FRO, this practice increases the risk of the Agency being indirectly implicated in fundamental rights violations without having the possibility to collect all

relevant information, prevent or react in a timely manner.

Inconsistencies concerning the reporting of the total number of apprehended migrants are noted. That would possibly suggest that some incidents of apprehensions by the national authorities might not be reported.

1.3.3. Croatia

Several allegations of collective expulsions and claims of ill-treatment against migrants and/or asylum seekers have been brought to the attention of the Funda-

mental Rights Office. Currently, with Frontex's presence limited to border crossing-points, those allegations are not linked to any activity conducted by the

Agency. The establishment of an independent border monitoring mechanism (IBMM) in the country is a positive development.

1.3.4. Cyprus

No cases of ill-treatment or use of force against migrants have been reported or witnessed by the Fundamental Rights Office. No Serious Incident Reports or Complaints on Cyprus were lodged in 2022. However, overpopulation of the Pournara Reception Centre, which results in poor reception conditions, has an impact on access to fundamental rights, including the right to liberty, security and access to asylum. In addition, there are limited resources available to address the high number of vulnerable persons, particular-

ly, cases of sexual and gender-based violence and other violent incidents reported in the camp. Such conditions pose security threats for migrants and staff, as tensions exist among certain ethnic communities. This situation results from the high number of arrivals and the limited number of facilities where asylum applications are accepted from persons who arrived irregularly. The possibility for migrants to apply for asylum or any other form of international protection only in Pournara First Reception Centre raise concerns, as this

may lead to restrictions related to the right to asylum.

The Fundamental Rights Office believes that information provision concerning the registration procedure should be improved. More specifically, it would be an improvement if Frontex staff introduce themselves and present their role and the purpose of the registration procedure to the migrants and asylum seekers. This may also have a positive impact on the right to seek asylum.

1.3.5. Estonia

In August 2022, Estonia adopted an amendment to the State Border Act, significantly restricting access to international protection in the event of national emergencies. Under the amendment, in emergencies caused by mass immigration, border guard officers can refuse to accept

international protection applications from aliens who crossed the border in an irregular manner, and they can return them to the country that they entered Estonia from, without issuing a substantiated decision to refuse entry. If implemented, these provisions may significantly limit

access to international protection, potentially leading to violations of EU law and infringement of the principle of non-refoulement.¹³ In 2022, no such practices were reported, and a national emergency was not declared.

¹³ Council of Europe, Letter of the Commissioner for Human Rights, Estonia: Parliament must ensure that bill amending the State Borders Act complies with human rights obligations, 23.05.2022, <https://www.coe.int/en/web/commissioner/-/Estonia-parliament-must-ensure-that-bill-on-migrants-complies-with-human-rights-obligations>; United Nations High Commissioner for Refugees (UNHCR), UNHCR observations on the draft Amendments to the State Borders Act and Other Related Acts of the Republic of Estonia (577 SE), 23.05.2022, <https://www.refworld.org/docid/628f496c4.html>

Estonia made remarkable efforts to receive and protect persons fleeing the war in Ukraine. Estonia granted a right to enter and stay to Ukrainian citizens and to persons who had been granted international protection in Ukraine, provided that they lived in Ukraine before 24 February 2022 and left Ukraine on or after 24 February 2022. Ukrainian nationals who fled the war and had no valid travel documents were allowed to cross the border; second lines checks were conducted to confirm their identity and the purpose of travel.

However, some practices may have negatively impacted the outcome of the entry decision process for certain categories of

Ukrainian nationals, especially those holding dual Ukrainian and Russian citizenships. This is likely due to several factors, including: i. difficulties proving residence in Ukraine before the 2022 Russian invasion; ii. perceived national security threat posed by Russian nationals or persons with strong ties to Russia; and iii. low credibility attributed by border guards to people who try to conceal their Russian nationality.

As of 19 September 2022, Russian nationals with short-term Schengen visas were no longer allowed to enter Estonia regardless of their country of destination or visa issuing country. Exceptions applied to

specific categories or on humanitarian grounds.

Frontex staff in operational areas reported no fundamental rights concerns or challenges throughout 2022. No Serious Incident Reports or Complaints on Estonia were lodged in 2022. No major concerns regarding trafficking in human beings were reported by the national authorities. Estonian border guards provided information on available services to persons identified as being at risk of trafficking. In cases of unaccompanied migrant children, child protection services were informed, and their representatives assisted in the procedures.

1.3.6. Finland

In response to a threat of instrumentalization of migration movements by other states, Finland adopted amendments to the Emergency Powers Act and the Border Guard Act which entered into force on 15 July 2022. The Emergency Powers Act now incorporates the notion of a 'hybrid threat' where a foreign actor seeks to advance its military-strategic objectives through non-military means that could destabilise the economy and security. Such hybrid threat is now added to the list of grounds for declaring emergency conditions.¹⁴ The Border Guard Act provides, among others, for the temporary closure of border crossing points, restrictions on border crossings and limiting applications for international protection at one or more border crossing points when there is a 'serious threat to public order, nation-

al security, or public health'.¹⁵ These amendments raise concerns about possible future practices which could lead to violations of international and EU law. No such practices were reported in 2022.

On 29 September 2022, Finland decided to bar most Russian citizens from entering the country. The resolution came into effect on 30 September and is valid until further notice. The aim of the restrictions was to prevent Russian citizens from traveling to Finland with tourist visas and transit to other countries.¹⁶

There were no fundamental rights issues identified regarding access to territory and asylum. Most refusals of entry at external borders were issued with regard to Russian citizens on the ground of harm to

international relations when the purpose of the visit was not compliant with the list of reasons foreseen by the legislation. No Serious Incident Reports or Complaints on Finland were lodged in 2022. Female and Russian-speaking officers were usually present on every shift to better respond to the needs of persons fleeing the war in Ukraine, and information was provided on the difference between temporary protection and asylum procedures. However, lack of appropriate vulnerability assessments regarding Ukrainian displaced persons and in forced return operations was identified as a matter of concern.¹⁷ Lastly, Finland began construction of a fence of about 200 km at the eastern border.¹⁸ The impact of the fence on fundamental rights and access to asylum is yet to be determined.

1.3.7. France and Belgium

The Fundamental Rights Office conducted a first on-site visit to the Joint Operation¹⁹ covering France and Belgium, which

included visits to the locations in/from which the Agency conducted their operational activities, as well as meetings with

the national authorities of the Host Members States, Frontex teams and external stakeholders. Given the particularity of the

¹⁴ Emergency Powers Act 1552/2011 with amendments, <https://www.finlex.fi/fi/laki/ajantasa/2011/20111552>

¹⁵ Border Guard Act 578/2005 with amendments, <https://www.finlex.fi/fi/laki/ajantasa/2005/20050578>

¹⁶ Resolution UM/2022/199, <https://valtioneuvosto.fi/paatokset/paatokset/decisionId=0900908f807e2ad3>

¹⁷ Non-Discrimination Ombudsman, Annual Report 2021, p. 34, [https://syrijinta.fi/documents/25249352/141221512/Yhdenvertaisuusvaltuutetun+vuosikertomus+2021+\(PDF.+1772+kt\).pdf?version=1.1&t=1669274746795](https://syrijinta.fi/documents/25249352/141221512/Yhdenvertaisuusvaltuutetun+vuosikertomus+2021+(PDF.+1772+kt).pdf?version=1.1&t=1669274746795)

¹⁸ Itärajan esteita -hankkeen rakentaminen aloitettu | Rajavartiolaitos, <https://raja.fi/-/itarajan-esteita-hankkeen-rakentaminen-aloitettu>

¹⁹ Frontex supports France and Belgium in patrolling their coastline. The Agency helps the national authorities detect unauthorised border crossings towards the United Kingdom, dismantle criminal activities such as migrants smuggling, prevent people from putting lives at risk as well as support in search and rescue activities.

operational activities, the visit mainly focused on becoming acquainted with the operational area, national procedures, Frontex activities and all actors involved.

The Fundamental Rights Office also conducted one monitoring mission to Joint Operation dedicated to the activities at the European air border crossing points,

particularly in France and visited the Roissy Charles de Gaulle and Paris-Orly airports. Since this was the first visit to these airports, the main objective was to familiarize with the operational environment.

No major concerns regarding victims of trafficking in human beings or the identification of unaccompanied children were

reported nor observed. Frontex officers seemed aware of various instruments to ensure fundamental rights compliance and their obligations to report incidents. Frontex officers provide support to the national authorities working in passport booths and performing mainly document checks.

1.3.8. Georgia

The Fundamental Rights Office conducted a monitoring mission in Georgia, at the Tbilisi airport. The scope was to familiarize with the operational environment and Frontex activities within Joint Operation Coordination Points Air with a specific focus on Georgia and simultaneously to increase awareness of national counterparts and operational actors about the

role, mandate and tasks of the Fundamental Rights Office. The Fundamental Rights Office made observations related to procedures concerning arrival and exit, was invited to observe a second-line interview and visited all the facilities at the airport relevant for migration management.

Since Standing Corps Officers have a role of EU Experts in Georgia, monitoring also focused on identifying challenges and good practices related to fulfilling this special role and effectively support the mandate and tasks of the Agency, with special focus on the protection and promotion of fundamental rights.

1.3.9. Greece

During the monitoring missions of 2022 the Fundamental Rights Office enjoyed a good level of cooperation with the respective actors involved both at the Frontex and national level. However, no access to land patrolling, sea patrolling and debriefing interviews was possible during the reporting period; but this should be possible in 2023.²⁰

Throughout the year, the Fundamental Rights Office continued to receive information about allegations of collective expulsions of migrants both at sea and land, as well as of ill-treatment, separation of children from their parents and collective expulsion of asylum seekers or persons granted international protection. Based on the information collected during the monitoring missions, such practices were allegedly conducted often by masked men wearing uniform, which raises further concerns as to the identification and accountability of the alleged perpetrators. Notwithstanding the reporting of the above-mentioned practices, no allegations involving Frontex staff/assets in

these incidents were reported and observed by the Fundamental Rights Office. However, concerns persisted over the possible indirect involvement of Frontex in these allegations. In this regard, the Fundamental Rights Officer issued three Opinions on Greece, invoking the application of Article 46 of the EBCG Regulation. The three Opinions included a set of mitigating measures to be adopted by the Agency and the national authorities to ensure compliance with fundamental rights obligations (see above p. 13).

With reference to Frontex activities, the Fundamental Rights Officer expressed concerns over the limited access of Frontex staff and assets to front line surveillance operations. Lack of efficient use of Frontex deployed officers and assets was reported in both land patrolling and sea patrolling activities in areas mostly affected by migratory pressure where allegations of fundamental rights violations were likely to be reported. In the opinion of the Fundamental Rights Officer, Frontex officers and assets limited involve-

ment in operational activities, from detection to apprehension, continued to be an obstacle to awareness of the actual situation in the operational area. This practice further limited the possibility to contribute expertise to border surveillance operational needs, including guarantees of compliance with fundamental rights.

The Fundamental Rights Office also identified some issues related to screening and fingerprinting procedures conducted by Frontex and national authorities. In this respect, the Fundamental Rights Office highlighted the need to better ensure confidentiality during the procedures (for example, not allowing other migrants to be present during a screening interview) and the necessity to provide complete information to migrants on both procedures in a language they understand with the support of official interpreters/cultural mediators.

The Fundamental Rights Office also insisted on the importance of ensuring a duly appointed guardian for unaccompa-

²⁰ This was the case not only in Greece, but in all countries and locations where Frontex was operating in 2022. The "Standard Operating Procedure Roles and Responsibilities of Fundamental Rights Monitors (FROMs) in Frontex Operational Activities", adopted by the Fundamental Rights Officer and the Executive Director on 21 March 2023, provides the legal basis for FROMs to monitor land patrolling, sea patrolling and monitor debriefing interviews.

nied children during the screening, registration and fingerprinting procedures, particularly for those below the age of 15, due to their limited legal capacity. In this regard, the Fundamental Rights Officer issued an Opinion in 2022 focused on the screening and registration activities related to unaccompanied minors conducted by Frontex in Greece. The Opinion underlined that Frontex should refrain from conducting any screenings of unaccom-

panied minors below the age of 15 without the presence of a legal guardian.

Furthermore, the Fundamental Rights Office indicated the need to further develop the skills of the deployed staff, including interviewing skills, especially as regards their ability to identify vulnerable persons.

Lastly, the Fundamental Rights Office regularly participated in Frontex opera-

tional briefings to deliver presentations on fundamental rights to Frontex staff deployed in the operational area. The aim was to improve the awareness of the Frontex deployed officers as regards their obligation to report possible fundamental rights violations and to stress how important this is to ensure border management compliant with fundamental rights.

1.3.10. Italy

The Fundamental Rights Office had access to all areas in which operational activities of the Agency took place and had the opportunity to take part in a maritime patrol for the first time. However, the Monitors were not provided access by the Agency to monitor debriefing activities and to be present in debriefing interviews. This significantly limited the capacity of the Fundamental Rights Office to appropriately monitor compliance of operational activities with fundamental rights as mandated by the EBCG Regulation. Notwithstanding this, no allegations involving Frontex staff/assets in incidents that could be regarded as violations of fundamental rights were identified in the activities effectively monitored by the Monitors. The Fundamental Rights Office also participated in monthly operational briefings²¹ and provided advice and support to the Frontex Coordinating Officers²² on fundamental rights matters. As noted above, at the end of 2022 access to debriefings has been secured.

During 2022, Italy witnessed a sharp increase in the number of migrants arriving in an irregular manner. National authorities, with the support of Frontex assets,

have made notable efforts to rescue people at sea and disembark them in ports of safety in Italy. However, the increase of arrivals has resulted in considerable challenges, significantly affecting reception conditions of migrants. This was particularly noteworthy in the Lampedusa Hotspot, where protection concerns have arisen particularly for children, women, families and vulnerable persons. In this respect, the Fundamental Rights Officer recommended that, in the absence of an increase of capacity in the reception facilities, more regular transfers from Lampedusa should be considered to release pressure from the Hotspot.

At the same time, the FRO acknowledged the efforts made by the Italian authorities to improve the conditions of reception by opening new facilities in Pantelleria and conducting improvement works in the Pozzallo Hotspot. The Fundamental Rights Office also visited Calabria region, where Frontex stepped up its presence due to the increased migration flows towards this area. The Fundamental Rights Office reported on the challenging reception conditions and identified certain shortcomings in one disembarkation in

which the Fundamental Rights Office took part in Reggio Calabria. In subsequent visits to the area, however, the Fundamental Rights Office attended disembarkations which were very well organised and conducted smoothly.

In 2022, the Fundamental Rights Office also received information alleging that migrants arriving in Bari and Brindisi had been refused entry and were immediately transferred to the country of departure, without any formal decision and any individual assessment of their particular circumstances. A report by the Commissioner for Human Rights of the Council of Europe also described instances of collective expulsions in the Adriatic Sea.²³ However, the Fundamental Rights Office was unable to verify such allegations.

Lastly, the Fundamental Rights Office supported Frontex in the Inter-institutional Working Group on Vulnerabilities set up by the Italian authorities (See above) with the purpose of developing Guidelines (Vademecum) for the identification and referral of persons with vulnerabilities.²⁴

21 Operational briefings are provided to participants in Frontex operational activities before or during the first days of deployment, including a presentation on fundamental rights and the Agency's fundamental rights mechanisms.

22 Frontex Coordinating Officer understood as outlined in the Regulation (EU) 2019/1896 of the European Parliament and of The Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896>

23 Council of Europe, Commissioner for Human Rights, *Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe's borders*, 04.2022, <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>

24 See the "Vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità in arrivo sul territorio ed inserite nel sistema di protezione ed accoglienza".

1.3.11. Kosovo^{*25}

The Fundamental Rights Office made one field visit to Kosovo in 2022. No cases of mistreatment of migrants by Frontex staff have been reported. No Serious Incident Reports or Complaints on Kosovo^{*} were

lodged in 2022. Frontex staff that the Fundamental Rights Office met with were aware of fundamental rights challenges related to border management and the Frontex fundamental rights monitoring

mechanisms. The Fundamental Rights Office identified a lack of information material on Frontex complaints mechanism in operational areas where Frontex is present.

1.3.12. Latvia

The Fundamental Rights Office received persisting allegations of collective expulsions at Latvia's borders with Belarus under the amended national legislation, which in the FRO's view is not compliant with EU and international law. Some allegations were accompanied by claims of ill-treatment and/or multiple collective expulsions of persons in poor health condition, often due to the harsh weather and to several days spent in the forest. The Fundamental Rights Office launched a Serious Incident Report in a case of a migrant who allegedly went missing in Lat-

via. Moreover, the Fundamental Rights Office took note of the low number of asylum applications lodged in Latvia, which refers predominantly to Belarusian citizens.

Furthermore, the Fundamental Rights Office observed increased refusals of entry affecting certain categories of Ukrainian nationals coming from Russia and Belarus.²⁶ Such refusals were based on security concerns and/or potential abuses of the EU temporary protection system.

In 2022, some amendments were introduced to the ministerial order allowing for the submission of applications for international protection at the crossing points located in the state of emergency area, as well as at the Daugavpils detention centre. The Fundamental Rights Office assesses positively the material conditions in detention centres. However, poor identification procedures and protection mechanisms might result in migrants and asylum seekers' detention and their accommodation in centres with inadequate support.

1.3.13. Lithuania

Several allegations of collective expulsions at the borders with Belarus and, on occasions, claims of ill treatment against irregular migrants have been made by international and national independent stakeholders. As of July 2022, with Frontex presence limited to border crossing-points, such allegations had no direct link the Agency's activities.

Given that Frontex stopped its border surveillance activities as of July 2022, the Fundamental Rights Office has a limited scope of action in this area. However, it continued throughout the year to collect information about the situation at the borders, especially with Belarus. In this context, the Fundamental Rights Office

identified cases of frostbite and limbs amputation of migrants allegedly trapped for many days in the forest between the borders of Lithuania and Belarus reported by media and NGOs. The national authorities informed the Fundamental Rights Office about their efforts to alleviate the difficulties of migrants stranded at the borders with Belarus by providing them with winter/humanitarian packages.²⁷ In any case, though, the national authorities made it clear that migrants are not allowed to enter Lithuania through the green borders nor to request asylum there.²⁸ In Lithuania, applications for international protection are being accepted only at border crossing points, but are low in number, presumably because Belarus does not

permit potential asylum seekers to reach the official crossing points but rather re-directs them to the green border.

Furthermore, the Fundamental Rights Office observed increased refusals of entry affecting certain categories of Ukrainian nationals coming from Russia and Belarus.²⁹ Such refusals were based on security concerns and/or potential abuses of the EU temporary protection system.

The Fundamental Rights Office did not find evidence of Frontex Standing Corps officers' direct involvement in practices that could qualify as unlawful collective expulsions. As of July 2022, the risk of such involvement was further reduced since no

²⁵ This designation is without prejudice to positions on the status of Kosovo, and in line with United Nations Security Council Resolution 1244/1999, <http://unsct.com/en/resolutions/1244>, and the International Court of Justice Advisory Opinion, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, 22.07.2010, <https://icj-cij.org/case/141/advisory-opinions>

²⁶ E.g., holders of double Russian/Ukrainian citizenship or persons who had stayed for some time in Russia, residents of Crimea.

²⁷ Containing food, water, clothes and personal hygiene products.

²⁸ Due to the state of emergency in place in Lithuania, which is aimed at ensuring border protection in situations of mass influx of migrants (and in response to what has been defined "instrumentalized migration"), migrants who try to enter illegally the country outside designated areas (such as through the so called "green-border"), are not considered to be in the territory of Lithuania and are automatically "returned" to Belarus; in addition, asylum applications cannot be submitted.

²⁹ E.g., holders of dual Russian/Ukrainian citizenship or persons who had stayed for some time in Russia, residents of Crimea.

Frontex Standing Corps officers participate in border surveillance activities. However, an indirect risk remained in 2022 since the use of Frontex assets/equipment

(i.e., smart-deck cameras) could have been part of a chain of actions leading to collective expulsion of migrants.

The Fundamental Rights Office acknowledged that information on Frontex's complaints mechanism was displayed in operational areas.

1.3.14. Moldova

Moldova has been one of the main refugee-hosting and transit countries for persons arriving from Ukraine. No fundamental rights concerns were identified regarding the situation of Ukrainians and other third country nationals at land border crossing points. No returns to Ukraine were reported. Ukrainian nationals fleeing conscription were also admitted to the country. International organisations and the Ombudsman continued to report challenges on access to international protection of non-Ukrainian nationals at the Chisinau International Airport.³⁰ They also asserted issues regarding the treatment of

border officials towards asylum seekers from the Russian Federation.³¹

Information provided by border authorities on support for victims of trafficking in human beings, as well as information on where survivors of war-related violence could seek psychosocial and legal assistance was reported as constantly improving. Unaccompanied migrant children entering from Ukraine were transferred to related facilities under the responsibility of the social services as soon as they were identified.

Despite the risks caused by the war, during 2022 national authorities did not identify any victims of trafficking in human beings detected at the borders. Therefore, concerns persist as to the accuracy of the indicators used during border checks in order to identify potential victims of trafficking.

In 2022, the Fundamental Rights Office and the Ombuds institution of Moldova concluded and signed a Memorandum of Understanding on the handling of complaints concerning possible violations of fundamental rights in the context of Frontex activities in the country.

1.3.15. Montenegro

The Fundamental Rights Office did not identify major fundamental rights challenges as regards border management activities involving Frontex in Montenegro in 2022. Moreover, no Serious Incident Reports or Complaints on Montenegro were lodged in 2022.

Monitoring the overall picture, however, the Fundamental Rights Office notes that independent resources reported in 2022 cases of migrants being detected at the Montenegrin side of the border with Albania and later being returned without proper assessment of their individual case.

In 2022 the Fundamental Rights Office and the Ombuds institution of Montenegro worked on the conclusion of a Memorandum of Understanding on the handling of complaints concerning possible violations of fundamental rights in the context of Frontex activities in Montenegro.

1.3.16. North Macedonia

In 2022 Frontex's presence in North Macedonia was limited to providing advisory support at border crossing points. At the end of 2022, the Fundamental Rights Office took part in a scoping mission organised by the Agency and participated in a follow-up online meeting organised with the national authorities in preparation of the implementation of a fully-fledged Frontex joint operation there.

Frontex staff deployed in North Macedonia in 2022 at border crossing points reported no cases of mistreatment of migrants. No Serious Incident Reports or Complaints on North Macedonia were lodged in 2022. During a field visit to North Macedonia the Fundamental Rights Office noted insufficient informational materials on the Frontex complaints mechanism in the locations where Frontex was present.

The Fundamental Rights Office also notes that independent stakeholders reported in 2022 the lack of a proper registration system for migrants crossing irregularly the borders and incidents of alleged collective expulsions to Greece.

³⁰ People's Advocate (Ombudsman), *Thematic Report*, 12.2022, <https://shorturl.at/kuxl7>; United Nations High Commissioner for Refugees, *Moldova 2022, Participatory assessment*, <https://shorturl.at/BDJMU>

³¹ People's Advocate (Ombudsman), *Thematic Report*, 12.2022, <https://shorturl.at/kuxl7>; United Nations High Commissioner for Refugees, *Moldova 2022, Participatory assessment*, <https://shorturl.at/BDJMU>

1.3.17. Poland

In 2022, the Polish border authorities faced an unprecedented influx of people fleeing the war in Ukraine. Since the Russian invasion, over 11 million Ukrainian refugees crossed the Polish borders. The authorities swiftly put in place legislation and procedures to facilitate their entry. Ukrainian nationals were allowed to enter Polish territory, even without valid documents. More thorough checks applied with respect to non-Ukrainians third-country nationals, but, by principle, they were also admitted into the country. Later in the year increased restrictions on entries from Russia and Belarus of certain categories of Ukrainian nationals were

justified by the authorities on security grounds and/or potential abuses of the EU temporary protection system.

During its field visits, Frontex deployed staff did not report to the Fundamental Rights Office any major fundamental rights concerns. In addition, no Serious Incident Reports or Complaints on Poland were lodged in 2022. The Fundamental Rights Office did not identify any major concerns about unaccompanied children and trafficking in human beings either. The Fundamental Rights Office also observed that basic information on access to international protection was available at

the border crossing points. However, material about the Frontex complaint mechanism (posters or leaflets) was not always visibly displayed in the operational areas.

To complement the situational picture, although Frontex is not directly involved in border surveillance activities in Poland, the Fundamental Rights Office remained concerned in 2022 about restricted access to asylum and allegations of collective expulsions of migrants and the violation of the non-refoulement principle, especially at the borders with Belarus, based on current national legislation, as reported by several international and national actors.

1.3.18. Romania

In 2022, due to the outbreak of the war in Ukraine the Fundamental Rights Office's monitoring activities focused on the situation at the borders with Ukraine and Moldova. The Fundamental Rights Office welcomed the fact that the Agency provided effective operational support to Romania in a short period of time. The FRO also positively assesses the temporary lifting of the rules on deployment to allow for the participation of Romanian Standing Corps officers in the operation, which allowed for more effective support to the authorities. In addition, VEGA experts³² were deployed to Border Crossing Points at the border with Ukraine, to support the identification of children on the move at risk of trafficking.

The fundamental rights situation at the borders with Ukraine and Moldova was generally good. The authorities put in place several mechanisms aimed at protecting vulnerable persons. Child protection services registered and assisted unaccompanied and separated children immediately after their arrival. Mechanisms for the prevention of trafficking in

human beings were also established, in particular through the vetting of persons offering transport to migrants, launching of dedicated bus lines from the crossing points to larger cities and more police presence at border crossing points and surrounding areas.

Ukrainian males fleeing conscription who crossed the borders irregularly were subjected to medical check-ups, fingerprinting, interviewing and had the possibility to be accommodated in dedicated centres. They did not face criminal charges and were provided information and assistance. They had also access to international protection and temporary protection. Lastly, their personal data were not shared with the Ukrainian authorities.

During 2022, concerns were raised by external actors regarding the rules of entry of non-Ukrainian third-country nationals, with alleged restrictions and arbitrary assessment of the reason why the migrants departed from Ukraine. While there is a clear need to counteract abuses of the temporary protection framework, it is also

necessary to ensure that migrants are not sent back to territories where they may be at risk.

Some concerns persisted about the effectiveness of the trafficking identification and protection system, in the light of very low number of cases identified. Potentially this is due to insufficient expertise and understaffing of relevant national authorities. The protection of children who were in transit remained a concern, as authorities could not follow up on separated children who crossed to other country/-ies³³ due to the lack of an international exchange information system.

Although the Romanian border with Serbia was not subject to field monitoring by Monitors in 2022, the FRO collected reliable information from external sources pointing to the possible restriction on access to international protection, collective expulsions and violations of the principle of non-refoulement regarding migrants crossing the green border. These concerns will be subject to field monitoring in 2023.

³² Members of Frontex own staff as well as experts of organisations—members of the Consultative Forum who join Frontex teams to advise on the identification of vulnerable persons and potential victims of trafficking, including children. Initially a separate operation (Joint Operation VEGA Children launched in 2015 and aimed at combating child trafficking at European airports), VEGA is not a stand-alone project anymore, but VEGA components can be activated in all Frontex operations.

³³ EU or non-EU.

1.3.19. Serbia

The main finding as regards the situation in Serbia is that many migrants or asylum seekers entering irregularly the country in 2022 were not properly registered. Such a practice has an impact as regards vulnerability assessment to ensure timely referrals to the competent authority, including the authorities responsible for asylum procedures. Despite the heightened risk of trafficking in human beings, no cases have been identified. Allegations of denied access to asylum during border checks (second line control) at Belgrade Airport have also been reported.

Towards the end of 2022, Frontex operational activities have been expanded to the border between Serbia and Hungary. The Fundamental Rights Office took part in a scoping mission preceding this expansion, which resulted in a set of recommendations. Among them, the need to ensure the active and effective participation of the Frontex deployed officers in front-line operational activities, including land patrolling and registration of migrants.

The major challenge from a fundamental rights perspective for future Frontex op-

erations in Serbia is the well-documented practice of the Hungarian authorities to return migrants to Serbia, based on the application of Hungarian national legislation that has been declared to be in breach of EU law by the EU Court of Justice (C-808/18).³⁴

In 2022, the FRO and the Ombuds institution of Serbia concluded and signed a Memorandum of Understanding on the handling of complaints concerning possible violations of fundamental rights in the context of Frontex activities there.

1.3.20. Slovakia

The Fundamental Rights Office considers that good cooperation between the national authorities and Frontex had a positive impact and facilitated activities at the border with Ukraine during the war emergency in 2022. The Fundamental Rights Office also notes that the national au-

thorities launched in 2022 a campaign to counteract trafficking in human beings.³⁵ Moreover, the Fundamental Rights Office found in 2022 that basic information about access to international protection was available at the border crossing points both in Ukrainian and English language.

The Fundamental Rights Office did not identify, nor receive reports or complaints about fundamental rights violations concerning Frontex or national authorities' activities at the borders between Slovakia and Ukraine.

1.3.21. Spain

The Fundamental Rights Office had access to all areas in which operational activities of the Agency took place in Spain. However, access to monitor debriefing activities and to be present in debriefing interviews (save for some exceptions) was only secured at the end of the year.³⁶ This significantly limited the capacity to appropriately monitor compliance of this type of activities with fundamental rights. Notwithstanding this, no allegations involving Frontex staff/assets in incidents that could be regarded as violations of fundamental rights were identified in the activ-

ities effectively monitored by the Fundamental Rights Office.

The Fundamental Rights Office has recommended the Spanish authorities, in cooperation with Frontex, to adopt a Standard Operating Procedure on migration management support activities.³⁷ The absence of harmonised procedures in the different locations in which Frontex is present may eventually impact fundamental rights. The adoption of such a procedure would facilitate the implementation of best practices and mitigate possible

fundamental rights risks. Those include issues reported during the operational year by the Fundamental Rights Office.³⁸

External stakeholders, the Spanish Ombuds institution and the European Ombudsman, have expressed concerns over the conduct of debriefing activities and other operational activities for risk analysis purposes in Spain.³⁹ The Fundamental Rights Office considers it important to strengthen the safeguards applicable with the purpose of mitigating possible risks affecting fundamental rights.

³⁴ Court of Justice of the European Union, Judgment of the Court (Grand Chamber) of 17 December 2020, *European Commission v Hungary*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CJ0808&qid=1684821568305>

³⁵ At the border crossing points and the reception facilities, as well as in Slovak and Ukrainian media.

³⁶ This has changed since the adoption of the FROMs SOP in early 2023.

³⁷ Such SOP could set out the tasks and responsibilities of all actors involved, working methods, steps in the performance of activities upon disembarkation, safeguards, as well as guidelines on identification and referral of vulnerable persons and those who may need international protection.

³⁸ Such as the need to systematically give priority to children, families and other vulnerable persons when performing Frontex activities; to strengthen effective access to international protection, ensuring the availability of informational materials in the facilities in which the Agency operates (also on the Frontex complaints mechanism); or to provide clear guidelines on the activities conducted at disembarkation points, ensuring that Frontex activities are only initiated after the migrants have received assistance.

³⁹ The concerns are mainly in relation to activities at disembarkation points, procedures to ensure informed consent of interviewees, effects and legal consequences of debriefing, effective access to legal assistance, sharing of information and personal data, and other safeguards.

Moreover, the Fundamental Rights Office continued receiving information of inappropriate detention conditions in some Temporary Attention Centres for Aliens (CATE) in which Frontex conducted operational activities, particularly in periods of high numbers of migrant arrivals. Various organisations, including the Spanish Ombuds institution, have also raised concerns about the material detention conditions of migrants in some CATEs. Notwith-

standing this, the Fundamental Rights Office acknowledges the efforts made by the Spanish authorities by opening new facilities in Lanzarote or Cartagena. Other CATEs (such as Malaga or Gran Canaria) have been noted as examples of good practices and standards. It is also important to note that with the current number of arrivals, the registration and applicable procedures for migrants in the CATE are conducted swiftly (sometimes within

hours or one day) and the migrants do not exhaust the 72-hour time-limit in detention.

Lastly, the Fundamental Rights Office also noted some best practices, for instance in relation to the assistance provided to migrants immediately upon disembarkation (see above p. 10).

1.4. Return operations

Monitoring of return operations

In 2022 the Fundamental Rights Office monitored almost 40 return flights. Out of these, about half (17) were return operations as part of the general fundamental rights monitoring mandate under the EBCG Regulation. The remaining flights were monitored on request from Member States where Fundamental Rights Moni-

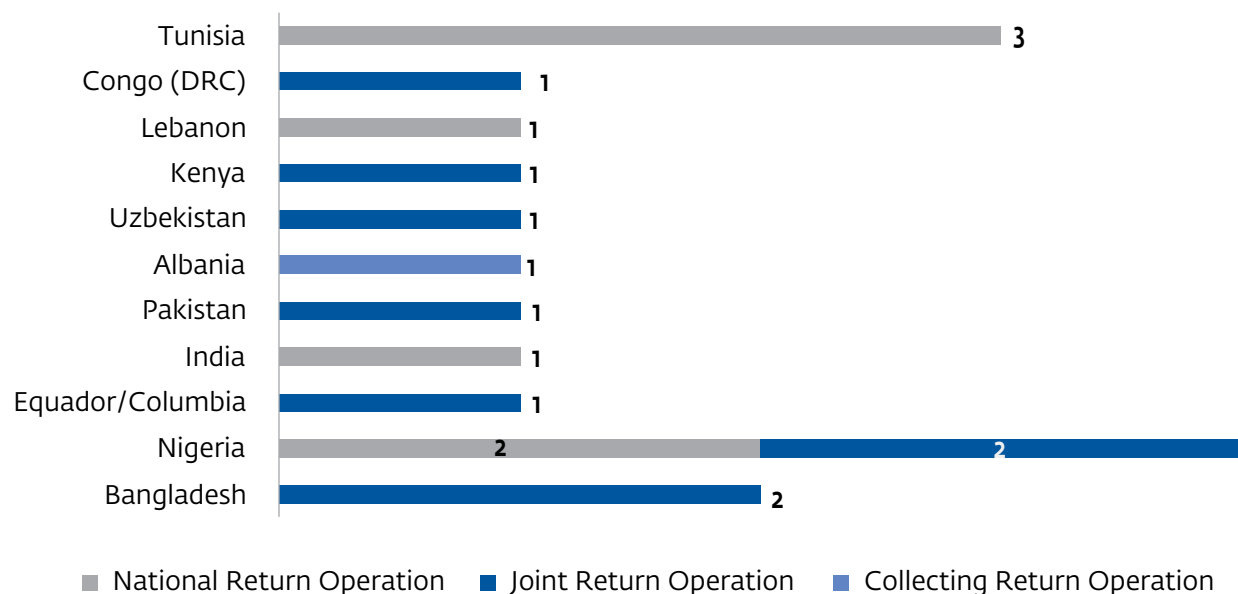
tors from the Fundamental Rights Office serve in a pool of forced return monitors, in addition to national monitors (as per Article 51(4) of the EBCG Regulation).

The mandate beyond the pool of monitors allows for Fundamental Rights Office to assess strategically important operations in order to get a more comprehensive overview of return operations. Such operations are identified based on several fac-

tors, including security risk assessment of returnees' behaviour, probability of the use of force, or in the case of operations conducted by less experienced actors. The following two figures provides details on the destination and the organising countries respectively, for the 17 flights that were monitored under the strategic mandate.

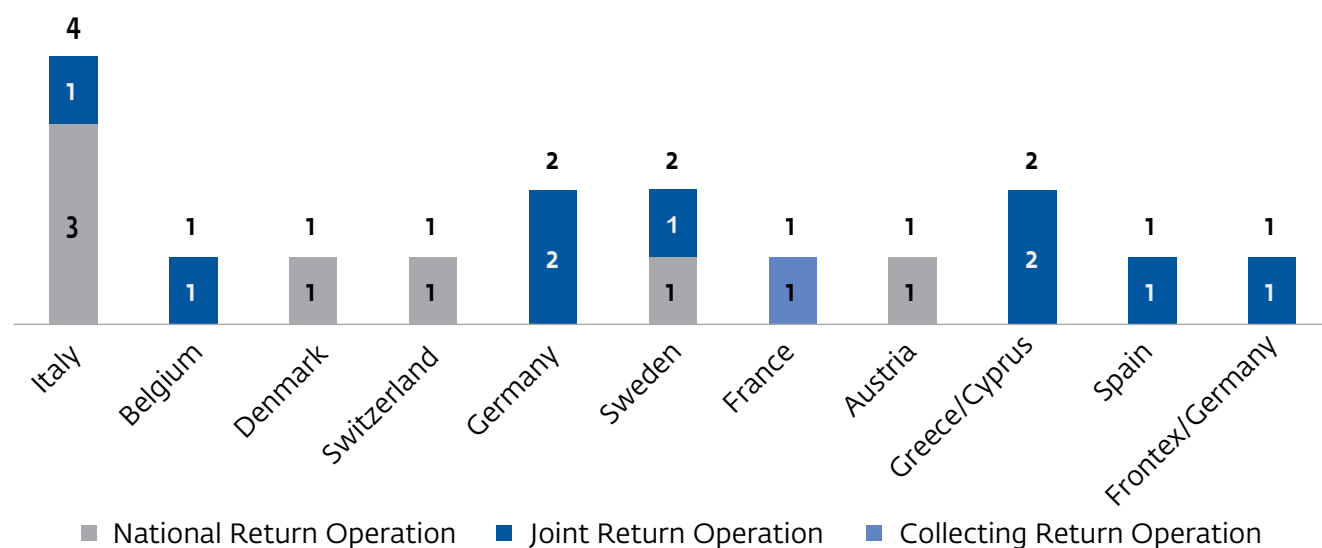
Monitored return operations, by country of destination and type of operation

Return operations monitored in 2022 beyond those serving in the pool of forced return monitors



Return flights monitored, by organising Member State and by type of operation

Number of return flights monitored by Monitors divided by type of return operation



Other return-related activities

In addition to the direct monitoring activities, the Fundamental Rights Office conducted a range of other activities in the area of returns:

- Issued observations to return operations on the first and second half of 2022. Observations to Return Operations as of 2022 are published on the Frontex Website.⁴⁰
- Provided Observations to the Frontex Operational Activity Plan for Return 2023 and the evaluation on return activities 2022, also contributed to the Frontex Return Escort and Support Officers (FRESO) implementation plans for 2023 and other return relevant documents.
- Provided a preliminary assessment on the current human rights situation in Iran in relation to Frontex supported return operations, as well as an Opinion on Sudan, Somalia, Pakistan, Iraq.
- Provided briefings for Return Specialists/Return Counsellors and Frontex Return Escort and Support Officers as well as Return Liaison Officers, focusing on fundamental rights aspects.
- Visited FRESO activities at the airports in Paris and Vienna, providing advice on fundamental rights aspects.
- Contributed, in cooperation with the Agency's European Centre for Returns (ECRET), to the development of a Toolbox for Children in Return, as well as cooperated with the Agency's Training Unit to develop an online course related to returning families with children, dedicated to participants of return operations, aiming at increasing the special attention paid to families with children in the return process.
- Provided comments on a workplan on return and reintegration roadmap for 2022-2024 and participated in an awareness briefing regarding the work of return specialists.
- Organised with the Agency special training on monitoring of forced-return flights.
- Regular newsletters issued for the pool of forced return monitors, providing relevant information and an overview of ongoing and planned activities, including a network meeting with monitors and key stakeholders in return (monitoring) management to be held in Warsaw in 2023.⁴¹
- Regular feedback provided to Member States as well as to respective monitoring institutions, including information concerning return and monitoring activities, also in view of harmonizing standards and procedures.
- Monitoring missions to Lithuania to assess the national legislation and respective procedures and to Cyprus to become acquainted with the work of the national authorities in the area of returns and the support provided by Frontex staff, including in return counselling.

⁴⁰ Fundamental Rights Officer's Observations to Return Operations (RO) conducted in the 1st half of 2022, 1 January – 30 June 2022, 31.08.2022, https://frontex.europa.eu/assets/fundamental/fro-observations_return-operations-1st-half-2022.pdf; Observations to Return Operations conducted in the 2nd half of 2022 by the Fundamental Rights Officer, 02.03.2023, <https://frontex.europa.eu/assets/fundamental/observations-to-return-operations-conducted-in-the-second-half-of-2022-by-the-fundamental-rights-officer.pdf>

⁴¹ Held in March 2023. To be included in next year's annual report.

Main recommendations of the Observations to Return Operations by the Fundamental Rights Office in 2022

1. Monitoring institutions in different Member States need to increase the number of national monitors and to ensure effective monitoring systems.
2. Member States should consider increasing the number of return operations with the Agency's support. In countries with no effective national monitoring system, Frontex may support with monitors from the pool or through the engagement of FRO Monitors.
3. The Fundamental Rights Office, together with Member States, monitoring institutions and pool monitors shall aim to monitor every single forced-return operation supported by the Agency.
4. Member States should refrain from using restraints as a preventive measure when conducting return operations and encourage the introduction of relevant changes in the national legislation in this regard.
5. Whenever Member States provide national monitors to return operations coordinated by Frontex, they should also ensure that monitoring reports are submitted to the Fundamental Rights Office as required by Article 50 (5) of the EBCG Regulation.

6. Frontex should ensure information to all Member States about the existing post-return and post-arrival support available for returnees (Joint Reintegration Services programme), and to ensure harmonisation with national reintegration programmes.
7. Member States should inform returnees about the complaints mechanism more actively and provide information and relevant forms in a language they understand.
8. Frontex should consider introducing a requirement of at least one interpreter present during each return operation supported by the Agency.
9. The Fundamental Rights Office, in cooperation with the Agency's training entity, to organise regular training sessions and meetings for monitors in the pool, in order to ensure and further improve fundamental rights in return operations.

Forced-Return Monitoring System (FRMS)

In 2022, the core work on the new reporting framework for the pool of forced-return monitors via an IT system has been completed. The application was made available to the monitors and reporting via this IT tool will facilitate regular reporting and follow-up of monitors' reports. By the end of 2022, monitors from the pool had the opportunity to practise on the application in a training environ-

ment. The Fundamental Rights Office, together with relevant Agency's services, provided additional training sessions and individual counselling adjusted to the needs and availability of the monitors.

Since the beginning of 2023, the use of the application has been mandatory.

Frontex Reintegration Programme

Frontex provides reintegration assistance as part of its Reintegration Programme through the so-called Joint Reintegration Services from 1 April 2022. The quality of the services of the reintegration partners will be overseen through a dedicated quality monitoring framework developed in cooperation with the European Commission. The services cover all activities of the Agency in the area of post-arrival and post-return and is available for persons returning from any Member State, either voluntarily, voluntarily in compliance with an obligation to return or enforced. The Fundamental Rights Office was involved in the consultation processes.

The objective of reintegration assistance is to facilitate return by supporting the reintegration process in a way that addresses direct needs upon return and encourages sustainable reintegration activities, in accordance with the respect for fundamental rights and the best interest of the child. Monitoring of these activities will be conducted as of 2023.

1.5. Aerial surveillance

Since September 2021, the Fundamental Rights Office has been monitoring and providing advice on the Agency's Multi-purpose Aerial Surveillance services delivered within the framework of the EBCG Regulation (Article 28), including those operating in the Central Mediterranean

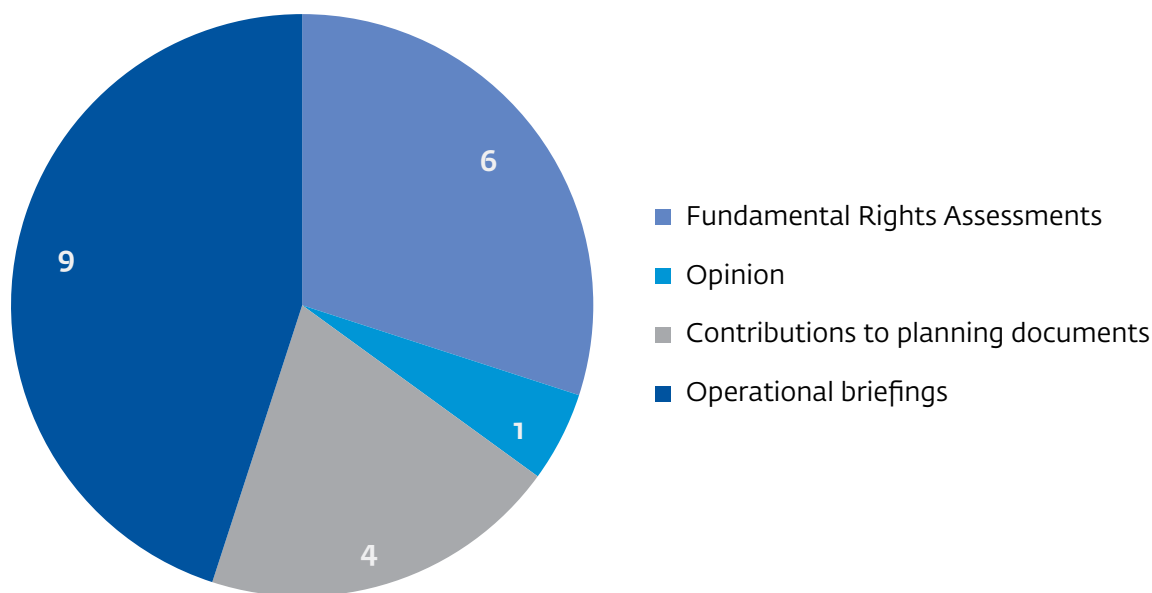
Sea,⁴² as well as for services operating under a Frontex Joint Operation.

At the request of the Agency and in coordination with relevant Frontex entities, the Fundamental Rights Office provided fundamental rights assessments for every

new service or renewal of ongoing services. In the assessments, the Fundamental Rights Office highlighted the risks and the fundamental rights concerns related to the service, as well as a general assessment of the situation regarding the requesting EU Member States and possible

⁴² In the Central Mediterranean Sea, the aerial surveillance service provides real-time surveillance in the so-called pre-frontier area (defined as the geographical area beyond the EU external borders), outside Frontex Joint Operations.

Fundamental Rights Office inputs to operational and planning documents related to Multipurpose Aerial Surveillance in 2022



associated third countries. The Fundamental Rights Office assessments are in relation to border management/surveillance activities and practices, as well as other potential risks for the Agency. The assessments are part of the process informing the Agency's decision to provide the service, and include a level of risk, in line with a due diligence procedure of the Fundamental Rights Office, and a set of non-exhaustive recommended mitigating measures to ensure that specific safeguards are in place when implementing the service. In 2022, the Fundamental Rights Office provided a total of six fundamental rights assessments for the Agency's aerial surveillance services.

The Fundamental Rights Office proposes mitigating measures such as the following:

- Fundamental rights monitoring, including by ensuring the presence of monitors in the surveillance centre to follow the live streaming of aerial assets and engage with the actors;
- Notify the Fundamental Rights Office of any new service request to the Agency (including renewals) by a Member State in order to enable timely and thorough fundamental rights assessments;
- Strengthening the cooperation among Member States and the Fron-

tex entities to ensure that possible Serious Incident Reports are launched in line with the Frontex duty to report and followed up on with thorough and diligent investigations;

- Participation of the Fundamental Rights Office in the operational briefings to crew members, Frontex staff and relevant stakeholders from the Member States, ahead of the deployment of the aerial assets;
- Inclusion of fundamental rights safeguards into the planning and operational documents, in particular in relation to protection of the right to life, prohibition of non-refoulement, the right to access to asylum and the protection of personal data.

Throughout the year, the Fundamental Rights Office also held regular meetings with the relevant Frontex entities to discuss ongoing deployments and fundamental rights challenges in the operational areas where aerial surveillance assets operate.

In 2022, the Fundamental Rights Office participated with fundamental rights presentations in nine operational briefings provided to crew members, Frontex staff and Member States relevant actors, ahead of deployment of the assets.

In 2022, the Fundamental Rights Office conducted three missions to Member States (Italy, Malta and Croatia) where aerial assets are deployed, meeting with national authorities involved in border surveillance/management activities and in search and rescue operations.

FRO Opinion on Multipurpose Aerial Surveillance service in the Central Mediterranean

In June 2022, the FRO issued an Opinion on the aerial surveillance activities supported by Frontex in the Central Mediterranean Sea. The Opinion highlighted several fundamental rights concerns, including concerns linked to sharing information about boats in distress with Libyan authorities in the context of the Search and Rescue Convention, and the possible implications of the Agency in terms of compliance with its fundamental rights obligations, taking into account that Libya cannot be considered a port of safety.

As a result of the monitoring and advisory activities provided in the context of aerial surveillance in the Central Mediterranean Sea, the Fundamental Rights Officer highlighted several challenges, including related to:

- The applicable legal framework - legal grey zone.

- The designation of Libya as a place of safety.
 - The capacities and reaction time of the Libyan Joint Rescue Coordination Centre and other search and rescue actors operating in the Libyan Search and Rescue Region, and the documented cases of excessive use of force⁴³ during rescue operations.
 - The lack of EU and limited presence of EU Member States maritime assets in the Central Mediterranean Sea.
 - Insufficient procedures concerning the communication and/or coordination with non-governmental rescue vessels operating in the Central Mediterranean Sea.
 - The increasing number of legal proceedings against non-governmental vessels involved in search and rescue in the Central Mediterranean Sea⁴⁴ which limit their work.
 - Data protection concerns, specifically in relation to sharing information with third countries.
 - The communication and coordination of search and rescue operations in the area, and follow-up actions.
- In 2023, the Fundamental Rights Office will continue: i. monitoring the activities conducted under the Agency's aerial surveillance services; ii. bringing forward the internal consultation with other Frontex entities to implement the identified mitigating measures, specifically to follow up on the Central Mediterranean situation; iii. strengthening the training aspects on technical and reporting tools. The Fundamental Rights Office is also planning to increase on-the-spot visits to operational areas where Frontex aerial assets operating within the aerial surveillance services are deployed.

⁴³ Since 2021, the Fundamental Rights Officer has launched four Serious Incident Reports related to excessive use of force perpetrated by the Libyan Coast Guard during rescue operations and was able to prove ill-treatment based on video-evidence in three cases. The analysis of these cases tends to show that the modalities used by the Libyan Coast Guard to rescue migrants make it difficult to classify such operations as ones aiming to save peoples' lives. In this context, several elements should be taken into consideration, including the fact that migrants on board of these vessels are *de facto* escaping from a situation of abuse in Libya and they have the right not to be returned in a place where their life is at risk, in line with the principle of non-refoulement; and they are *prima facie* classified as persons entitled to international protection. Therefore, they are protected by a range of international human rights instruments, including the United Nations Refugee Convention of 1951, the Charter of Fundamental Rights of the EU, the European Convention of Human Rights as well as the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air.

⁴⁴ European Union Agency for Fundamental Rights, *June 2022 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights*, 20.06.2022, <https://fra.europa.eu/en/publication/2022/june-2022-update-ngo-ships-sar-activities>, accessed: 22.05.2023

CHAPTER 2.

Reporting mechanisms



2.1. Serious Incident Reports (SIRs)

A European Border and Coast Guard framework on serious incident reporting foresees that all possible fundamental rights violations shall be reported by deployed officers directly to the Fundamental Rights Office. Such initial reporting will then be subject to a preliminary assessment where the Office decides on whether the threshold for launching a serious incident is met. The Office equally maintains the possibility to initiate such a procedure based on information obtained through other channels (i.e., from NGOs, international organizations, or other open sources). The launch of a serious incident triggers the distribution of an initial report summarising allegations and is then followed by a fact-finding exercise that includes enquiries with the Agency and with national authorities involved. Cases are closed with a final report summarising the

findings and concluding with recommendations on measures to be implemented to address identified issues.

The number of Serious Incident Reports launched depends on a variety of factors, including the occurrence of fundamental rights violations, the number of Frontex officers and the type of profiles deployed, the number of Monitors' visits, as well as their access to key locations and/or relevant activities. Throughout investigations, the Fundamental Rights Office attempts to corroborate or disprove allegations and concludes on the likelihood that fundamental rights violations occurred based on the information obtained. While important to map and provide insights into the fundamental rights challenges observed, the number of Serious Incident Reports, therefore, does not conclusively

reflect the number of fundamental rights violations, their distribution or overall level specific to a region or activity.

With the growth of the Agency and its activities, the Fundamental Rights Office has allocated more resources to Serious Incident investigations. A designated team (six persons) of case handlers started on 1 March 2022, with the bulk of the work being done by Fundamental Rights Monitors. In addition to their handling of cases, the team has been engaged in the development of procedures standardising how the Office evaluates and processes information on incidents both above and below the threshold of Serious Incidents. More tools and guidance are currently being developed in the areas of investigation methods as well as the mapping and systematic follow-up to recommendations.

2.1.1. Challenges ahead

In 2022, the Fundamental Rights Office took note of the following challenges as regards submission and following up of Serious Incident Reports:

- Access to certain data useful for investigations remains an obstacle, with national authorities reluctant to share information.
- National authorities denying by default in any involvement in fundamental rights violations and being reluctant to investigate or follow up on cases.
- Significant underreporting of cases due to lack of awareness or knowledge, peer pressure or fear of retaliation.
- Limited Frontex presence in certain locations may also have as a result underreporting of possible fundamental rights violations.

2.1.2. Serious Incident Reports launched during 2022

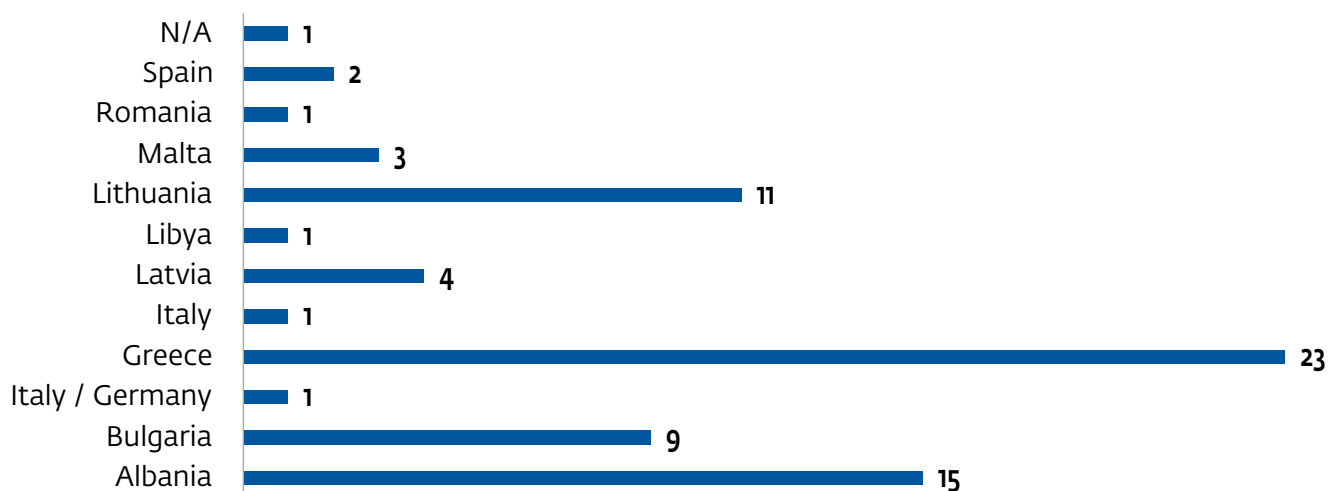
In 2022, the Fundamental Rights Office launched 72 Serious Incident Procedures, of which 67 have been closed with a final

report in the meantime. The following three charts disaggregate these cases by country, type of reported fundamental

rights violation and initial information that triggered scrutiny of the case.

Serious Incident Reports in 2022

Data disaggregated by country



Serious Incident Reports related to fundamental rights

Number of Serious Incident Reports launched in 2019, 2020, 2021, 2022



While the Serious Incident Reports Standard Operating Procedures put emphasis on deployed officers' reporting as the primary source of information, the Fundamental Rights Office retains the possibility to launch a Serious Incident also based on other types of information. To this end, the Fundamental Rights Office incident handlers review not only possible serious incidents received, but proactively screen

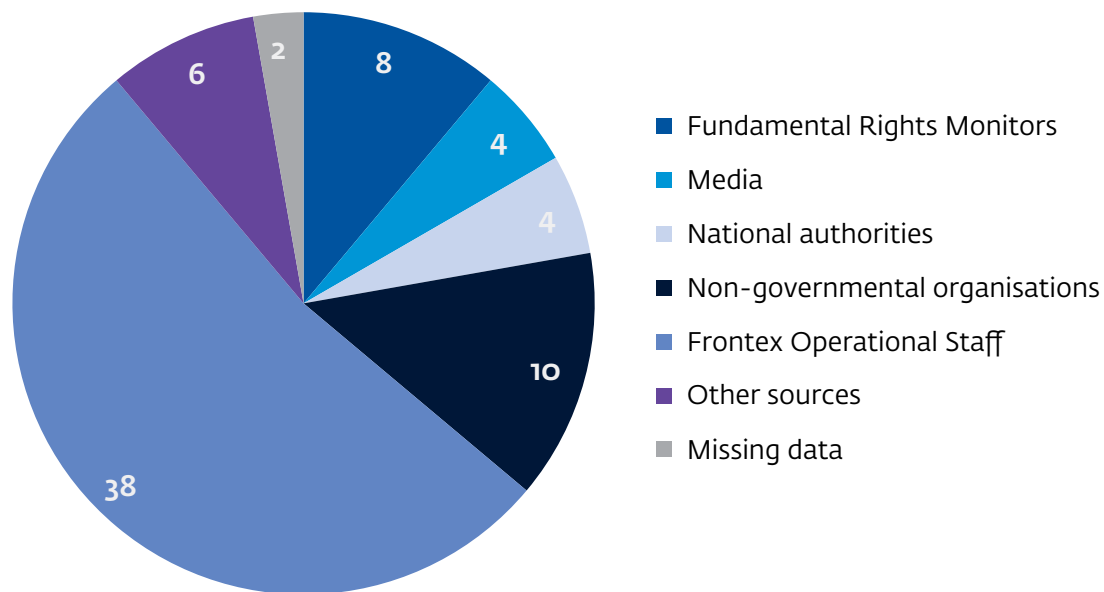
for relevant cases, e.g., among SOS messages, Frontex internal reports, as well open-source data. All information is then checked against a unified set of criteria to decide whether a Serious Incident should be launched.

The following graph provides an overview of the initial sources of information that triggered scrutiny from the Fundamental

Rights Office, resulting in the launch of a Serious Incident Report. Preliminary assessments before such a launch include data triangulation where attempts to identify additional sources of information to assess the general reliability of allegations raised.

2022 Serious Incident Reports

Source of initial information about the incident



2.1.3. Important findings and recommendations across cases of 2022

While details of individual cases differ, the Fundamental Rights Office reiterated the following findings on multiple occasions in the final conclusions of Serious Incident Reports:

- Frontex staff is often allocated/ tasked by host state authorities in a manner seemingly designed to keep them away from locations or situations where fundamental rights violations are reportedly taking place. In addition, the Fundamental Rights Office also noted allegations about Frontex staff's re-assignment following their reporting of possible Serious Incident Reports. The Office advocates for Frontex officers' integration in operational activities in a compre-

hensive manner that allows for their contribution to border management that is in line with fundamental rights.

- Officer's ability to recognise indications of fundamental rights violations should be strengthened alongside a culture of reporting not only evidence but also suspected cases.
- Protection of reporting persons and their possibility of exclusive reporting to the Fundamental Rights Office remains essential.
- Whenever Frontex officers and assets are involved in the detection, interception and/or apprehension of migrants whom they subsequently

handover to national authorities, Frontex should ensure that strong safeguards are applied by Member States/Third countries, especially in contexts of frequent reports about collective expulsion and/or ill-treatment.

- Serious Incident Report enquiries, in particular whenever allegations are substantiated and/or verified, do not diminish the responsibility of Member States/Third countries to carry out independent and thorough investigations. National authorities remain equally obliged to follow up on cases but often fail to do so when allegations concern their officers.

2.2. Complaints Mechanism

Complaints received via the Complaints Mechanism in 2022

Number of complaints received (indicated by status)



In 2022, the Fundamental Rights Office received a total of 69 complaints. After an admissibility review of those complaints, nine were declared admissible and forwarded to the relevant Member States' competent authorities for further handling, as well as to Frontex Executive Director, for information. Ten complaints are currently under admissibility assessment.⁴⁵

The following figure provides an overview of the complaints received in 2022.

The admissible and inadmissible complaints, regarding land, air and sea activities, are regularly reported by the Fundamental Rights Officer to the Management Board. An annual overview of the com-

plaints mechanism is presented in the Annex to this annual report, including references to the Agency's and Member State's findings and follow-up to the complaints (as per Articles 109(4) and 111(9) of the EBCG Regulation).

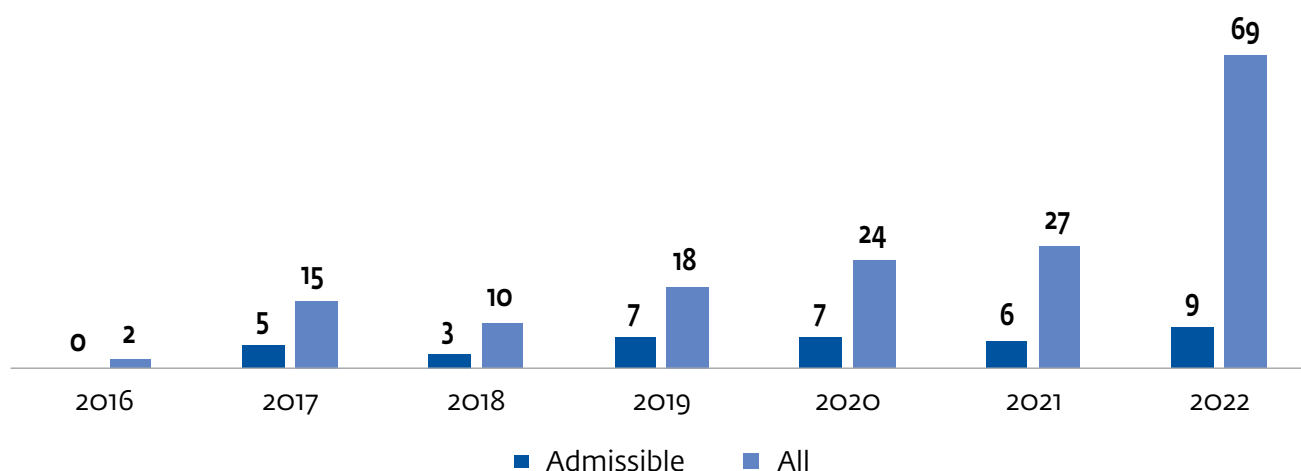
When compared to 2021, the number of admissible complaints is higher (2021: 6; 2022: 9). The total number of incoming complaints also displays a significant growing trend (2021: 27; 2022: 69). The following figure provides an overview from 2016 through to 2022.

The admissible complaints submitted in 2022 concerned alleged violations of the following fundamental rights: the right to

life; prohibition of torture and inhuman or degrading treatment or punishment; protection in the event of removal, expulsion, or extradition; right to an effective remedy and to a fair trial; right to liberty and security; right to non-discrimination; right to health care and right to property. The admissible complaints concerned Frontex operational areas in the following member states: Greece, Lithuania, and Cyprus. One complaint concerned third-country staff (Albania) and was forwarded to the People's Advocate institution of the Republic of Albania for further handling, as provided for in the Memorandum of Understanding between the Fundamental Rights Officer and the People's Advocate institution.

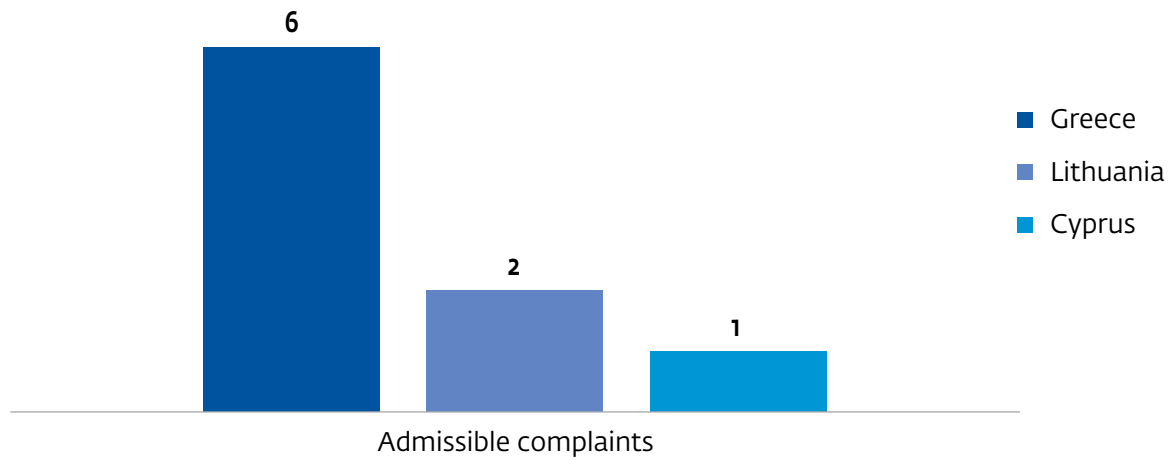
Overall complaints received via the Frontex complaints mechanism

October 2016 - January 2022



⁴⁵ In nine of these 10 complaints, the complainants are not responding to FRO's request for information. Due to the lack of crucial information, the admissibility assessment cannot proceed. If contact with the complainants cannot be established and obtain the relevant information in one year, these cases may be considered discontinued (Art 6(3) of the Agency's rules on the complaints mechanism).

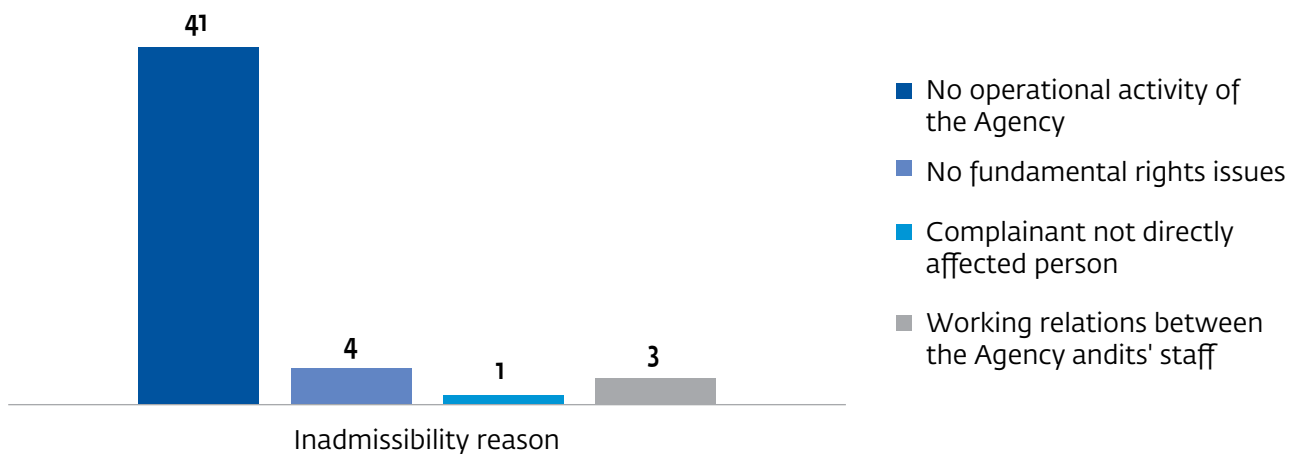
Admissible complaints in 2022, by country



In 2022, work also included:

- Raising awareness on the complaints mechanism by updating the information materials (complaint poster and booklet) and facilitating their distribution in various Frontex operational areas, as well as by providing information sessions to the European Union Agency for Asylum (EUAA) and to UNHCR, Greece.
- Capacity building activities in the form of training to Frontex Standing Corps Officers and the European Travel Information and Authorisation System (ETIAS) within their basic training, as well as in ad hoc awareness raising sessions to Frontex deployed team members and local partners during visits to Frontex operational areas.

Breakdown of reasons for inadmissibility of complaints in 2022



CHAPTER 3.

Capacity building and ETIAS guidance board



3.1. Training

Capacity building activities, particularly training delivery, is one of the core activities of the Fundamental Rights Office. Almost half of the Fundamental Rights Monitors participate in training delivery and development activities to ensure participants proactively respect and protect fundamental rights in their border and coast guard activities, especially when use of force is exercised. The Fundamental Rights Office provides training to Frontex staff and national authorities, within the EU and externally (at times in cooperation with the UNHCR).

In 2022, the Fundamental Rights Office participated in the following training courses and awareness raising sessions (selected examples):

- All the pre-deployment and operational briefings organised for Frontex Joint Operations, providing presentations on fundamental rights and Frontex fundamental rights mechanisms;
- Sessions on fundamental rights during border guard activities and other relevant sessions, for example access to asylum and identification of vulnerable persons were delivered to two groups of newly recruited Standing Corps Officers;
- Workshop on Search and Rescue (SAR) within the framework of two maritime Joint Operations in 2022;
- A Fundamental Rights Workshop for all Frontex Liaison Officers. During this training program eight sessions were organised related to fundamental rights in EU Integrated Border Management. At the end of the workshop, the Monitors and the Liaison Officers of the region covered by the Monitors discussed the specific fundamental rights challenges and the planning of the upcoming visits;
- A fundamental rights session for the Frontex Focal Points for the implementation of the Frontex Fundamental Rights Action Plan;
- An online learning course for Lithuanian Border Guards.

3.2. The ETIAS Fundamental Rights Guidance Board

With the European Travel Information and Authorisation System (ETIAS), travellers from more than 60 visa-free countries will be required to apply for an ETIAS travel authorisation to enter 30 European countries. ETIAS will reduce control procedures on arrival and shorten the time needed to cross EU's external borders.

The ETIAS Fundamental Rights Guidance Board was established by the ETIAS Regulation (2018/1240), with a mandate to perform regular appraisals and issue recommendations on the impact on fundamental rights (Article 10(2)). The process of setting up the Guidance Board started

in 2021. Fundamental Rights Office, in the capacity of a host of the secretariat, facilitated the process by bringing together representatives of a number of entities, outside and inside Frontex, for joint preparatory work, including the definition of the Guidance Board's mandate, rules of procedure, participation and other working modalities.

On 14 November 2022, the first meeting of the Guidance Board was organized, during which Rules of Procedure were adopted, as well the members elected a Chair and Deputy (for a two-year term with possible re-election). Sebastian Hümmler from

the European Data Protection Board was elected chairperson, and Jonas Grimheden, Frontex's Fundamental Rights Officer, deputy.

The Guidance Board is composed of representatives of the Frontex' Fundamental Rights Office, the Agency's Consultative Forum on Fundamental Rights, the European Data Protection Supervisor, the European Data Protection Board and the European Union Agency for Fundamental Rights. This composition is stipulated in the ETIAS Regulation (Article 10(1)).

3.3. Other activities of the fundamental rights office

Certain other activities of the Fundamental Rights Office are listed below:

- Study visit to Strasbourg at the Council of Europe and the European Ombudsman;
- Exchange in Geneva with the Office of the United Nations High Commissioner for Human Rights (OHCHR); International Organization for Migration (IOM), EU Delegation, and academic institutions;
- Presentation of the European Integrated Border Management (EIBM) policy and practice in case of future crises and mass inflows of persons into the EU - FRO checklist of good fundamental rights practices in the EIBM response to the war in Ukraine, which constitutes a collection of good border management practices in response to the war, at the 10th Meeting of the department for migration and home affairs (DG HOME) Expert group on children in migration;
- Participation at the OSCE/ODIHR Warsaw Human Dimension Conference and an exchange with ODIHR;
- Joint Workshop on human rights at borders in Cairo, Egypt, organised by Frontex and the Arab Interior Ministers' Council;
- Separate chapter on [Frontex 2022 in brief](#) report available to the public at the Frontex website.⁴⁶

⁴⁶ [Chapter 6 Fundamental Rights in Focus of the 2022 in brief](#)

CHAPTER 4.

Policy and Strategy



In 2022, the Fundamental Rights Office worked to better embed fundamental rights in an ever-increasing number of procedures and processes that accompa-

ny the expansion of the Agency's mandate. The insight of the Office, along with the findings of the field monitoring, allowed the Fundamental Rights Office to

provide advice and issue concrete recommendations to the Agency towards the alignment of its activities with fundamental rights.

4.1. Fundamental Rights Office input and advice

4.1.1. Operational Plans and Evaluation reports

In accordance with the EBCG Regulation (Article 109(2)(e)) of, the Fundamental Rights Officer provides opinions on the Operational Plans drawn up for the operational activities of the Agency. In line with Article 110(2) of the Regulation, the Monitors shall follow the conduct of the operational activities and report to the FRO.

In 2022, the Fundamental Rights Office was consulted on the drafts and the finalized versions of the Operational Plans for 2023 in line with the two-stage consultation process foreseen in the *Standard Operating Procedure: Operational Plans for Operational Activities*. In 2022, the Fundamental Rights Office provided opinions on all 2023 Operational Plans. Using a newly developed template for the review allowed the classifications of recommendations by topic, address them to implementing entities in the Agency's and follow-up on their status of implementation (whether first-time or recurring). The Fundamental Rights Office highlights the good cooperation with other Frontex entities responsible for operational planning allowing for practical solutions and to further define practical outcomes of the recommendations. In 2022 the Fundamental Rights Office also submitted observations to amendments of a number of Operational Plans, taking note and informing the Operational Response Division of the fundamental rights implications of the planned changes to the Joint Operations, as relevant.

Furthermore, based on Article 47 and Article 110 (2)(a) of the EBCG Regulation, the Fundamental Rights Office submits observations to the Frontex evaluation reports of the operational activities. In 2022, the Office submitted 17 observations on Frontex Evaluation Reports (FERs) of Joint Operations implemented by the Agency in 2021, and provided tailored recommendations. Among those, the Fundamental Rights Office highlighted longstanding concerns identified over time in previous and present Frontex operations, as well as specific issues related to operations conducted in the past year.

In 2022, the Fundamental Rights Office identified issues within the European Integrated Border Management policy and practice that had implications on fundamental rights of those on the move across borders in the EU and other countries where Frontex operates. The contribution of the Office materialised in Opinions or through the review and contribution to reports, policies, and strategies from other units of the Agency.

An example is an analysis on the Fundamental Rights implications on European Integrated Border Management (EIBM) of the Russian military aggression against Ukraine. As a high number of vulnerable persons were crossing EU borders, the Fundamental Rights Office, based on the findings of the Monitors during their missions to Member States and the third countries bordering Ukraine (Poland, Slo-

vakia, Romania and Moldova), identified procedural shortcomings that could render some of the persons more vulnerable to traffickers or exclude them from the protection mechanisms of the Member States, especially as they are on the move across the EU.

The Fundamental Rights Office drafted a second Note taking stock of the commendable reaction of the EIBM community in the aftermath of the invasion of the Russian Federation against Ukraine, collecting good border management practices put in place by state authorities and Frontex. The Note highlighted practices protecting those entering the EU from Ukraine adopted by the border management community. Such practices could inform the EIBM policy and practice in future crises of a similar nature and/or scale.

Other examples of Opinions by the Fundamental Rights Officer have been provided above, including on Greece and Lithuania.

In addition, the FRO was consulted on and contributed to Standard Operating Procedures of the Agency, among them, those pertaining to the Mobile Surveillance System (MSS). Given that the employment of new technological solutions such as the MSS can have fundamental rights implications, the FRO proposed several mitigating measures in this respect, including access to the data collected during the use of the MSS for monitoring purposes.

4.1.2. Cooperation on Risk Analysis

In 2022, cooperation with the parts of the Agency working on risk analysis was further strengthened. Ahead of monitoring missions, the Risk Analysis Unit provided briefings and shared relevant information with the Fundamental Rights Monitors. In turn, based on their findings, the Monitors provided advice to the Risk Analysis Unit. The Fundamental Rights Office contributed to the Africa Frontex Intelligence Community (AFIC) Annual Report 2022 and performed a human rights impact assessment in view of a collaboration with eight Risk Analysis Cells (RAC) beyond the project. The assessment was based on the

human rights situation in the eight countries where the RACs are situated, the Republic of Cote d'Ivoire, The Gambia, Ghana, Mauritania (Islamic Republic of), The Niger, Nigeria, Senegal and Togo. The Fundamental Rights Office contributed to mainstream a fundamental rights perspective in various products of the Risk Analysis Unit such as the Annual Risk Analysis Report and the Strategic Risk Analysis Report. As regards the operational activities of the Unit, the Office commented on the chapters regarding debriefing and screening activities of the Handbook to the Operational Plan. The

Fundamental Rights Office pushed for the Handbook to specifically mention that in addition to their main objectives, debriefing activities should also contribute to the collection of data related to vulnerable persons. The FRO provided observations on the reviewed screening template, welcoming that most of the recommendations from an earlier consultation round had been considered and highlighted more detailed considerations regarding the collection of data related to ethnicity and religion in a note.

4.1.3. A Standard Operating Procedure (SOP) on the roles and responsibilities of Fundamental Rights Monitors in Frontex operational activities

The above was developed in close consultation with the relevant business entities of the Agency. The SOP lays down the procedures for the work of the Monitors in assessing the compliance with fundamental rights of operational activities of Frontex and other tasks entrusted to

them by the Fundamental Rights Officer insofar as they are directly related to operational activities. This is pursued within the framework of the Regulation. Considering the need for smooth cooperation between the Monitors and all participants in Frontex operational activities, including

staff members of the Agency responsible for the successful implementation of those activities under Frontex' mandate, this Decision is foreseen to be jointly agreed upon by the Executive Director and the Fundamental Rights Officer.⁴⁷

4.2. Collaboration with third countries

In engaging in cooperation with the non-EU countries, Frontex must 'act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment'.⁴⁸ Depending on the fundamental rights situation in the third country and the scope of cooperation, Frontex may risk being implicated – whether directly or indirectly – in fundamental rights breaches.

In 2022, the Fundamental Rights Office developed and adopted an internal Fun-

damental Rights Due Diligence Procedure to provide the Agency with preliminary assessments on fundamental rights issues of Frontex ongoing and planned structured cooperation with non-EU Countries. The Procedure applies to various contexts of Frontex-third country cooperation, including Working Arrangements, pilot projects and technical assistance projects, return-related activities as well as the Frontex activities based on Status Agreements, in respect of which the European Commission also assesses the fundamental rights situation in the third country (Recital 88 of the EBCG Regulation). In the reporting period, the Fundamental Rights Office assessed the funda-

mental rights implications for Frontex in cooperating to a varied degree with Sudan, Cote d'Ivoire, Ghana, Mauritania (Islamic Republic of), Senegal, Togo, Canada, Nigeria, Cabo Verde, Moldova, Somalia, Sudan, Pakistan, Iraq, The Gambia, The Niger, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia (Republic of), Serbia, Morocco (Kingdom of), Türkiye and Ukraine. The overview of each third country refers to the human rights matters relevant for its migration management practices and their potential implications on the Agency once a (new) Working Arrangement is

⁴⁷ This Decision was adopted in March 2023.

⁴⁸ Regulation (EU) 2019/1896, article 73 (2).

concluded or the foreseen activities are conducted. The Fundamental Rights Office offered recommendations relevant to the activities foreseen and the stage of the negotiations. If significant fundamental rights concerns were identified, the Office also advised to apply safeguards and mitigating measure, for example to include fundamental rights related training for third country authorities and to ensure the possibility for the Monitors to monitor the fundamental rights compliance of Frontex activities in the third country.

In September 2022, Frontex together with the Arab Interior Ministers' Council (AIMC) organised a workshop on human rights at the borders at the Police Academy in Cairo. Representatives of Arab League member states responsible for human rights, the Frontex Fundamental Rights Office and the President of the Association of Mediterranean Ombudsmen discussed external and internal oversight mechanisms to monitor human rights at the borders. During the event, the Fundamental

Rights Office presented its mandate and role, and described the role and functions of the Monitors. The fundamental rights challenges faced by the EIBM due to the extensive influx of refugees from Ukraine were also covered, as well as the good practices that have emerged towards the protection of vulnerable persons crossing the border, and which could serve as an example for future similar crises. As a follow-up to this event, a delegation of the Human Rights Department of the League of Arab States visited Frontex Headquarters in December. During the visit, several Frontex entities gave an overview of their work and the delegation benefitted from an in-depth presentation of the work of the Fundamental Rights Office. On this occasion, possible ways to further strengthen collaboration were discussed.

Based on the different Status Agreements negotiated between the European Union and Albania, Moldova, Serbia and Montenegro, on the actions carried out by the Agency in the territories of the aforemen-

tioned third countries, the Fundamental Rights Office concluded in 2022 Memoranda of Understanding (MoUs) with the Ombuds institutions of Albania, Moldova and Serbia, and advanced the conclusion of the MoU with the Ombuds institution of Montenegro. The purpose and scope of these MoUs is on the one hand to ensure effective compatibility and cooperation between the national complaints mechanisms and of the FRO within the scope of their respective mandate, and on the other hand, to establish an exchange of information based on complaints for allegations of fundamental rights violations related with the activities of the Agency in these third countries.

Lastly, the Fundamental Rights Office developed a brief explanatory note on the role of the Monitors in the framework of a Status Agreement/Working Arrangement with third countries or in the context of technical assistance or pilot projects in third countries, based on the EBCG Regulation.

4.3. Fundamental Rights Action Plan

In accordance with Article 80(1) of the EBCG Regulation, the Agency, with the contribution of and subject to the endorsement by the FRO, has drawn up and implements, a Fundamental Rights Strategy and Action Plan.⁴⁹ As foreseen in the Action Plan, the Fundamental Rights Office reports on the progress made in the implementation in its Annual Report.

The Fundamental Rights Action Plan (FRAP) is divided into two sections. The first section covers an overarching component applicable to the entire European Border and Coast Guard, consisting of 10 objectives and 27 corresponding activities, aiming at incorporating fundamental rights aspects into Member States' national Integrated Border Management (IBM) strategies.

The second section of the FRAP relates to the Agency's tasks, aiming at increasing the alignment of Frontex entities with fundamental rights. This Agency's component follows the principles of results-based planning, linking concrete activities with qualitative or quantitative indicators and outcomes, as well as the suggested means of verification. This component includes 17 objectives with 87 corresponding activities. The overall timeline for the implementation of the Fundamental Rights Action Plan is aligned with the Agency's multiannual programming cycle.

The Fundamental Rights Office commends the excellent collaboration among the different entities of the Agency and the major progress achieved to imple-

ment the FRAP. Out of the 87 activities, 18 have been fully implemented, which means that no further action is required for them to be completed; 62 have been implemented and are on-going,⁵⁰ which means that they are implemented on a systematic manner and on a rolling-basis; one is partly implemented, this refers to activities initiated and still in implementation process; and 6 are delayed, which means that their implementation status is delayed.⁵¹

At the beginning of 2022, in line with Activity 77 of the Action Plan, each Frontex Division designated a Focal Point for the implementation of the FRAP. The Focal Points received a training on fundamental rights from the Fundamental Rights Office, while the reporting cycle and report-

⁴⁹ The Management Board adopted the Fundamental Rights Strategy on 14 February 2021 by Decision 12/2021.

⁵⁰ Useful to note that activities that are implemented and on-going might consist of actions that are completed and repeated; or actions that are completed (and repeated) and actions that are on-going.

⁵¹ Status as of February 2023.

Status of implementation of the Fundamental Rights Action Plan



ing scheme has been discussed and developed based on the requirements set in the FRAP. Over the year, the Fundamental Rights Office has been collaborating with and supporting the different entities of Frontex by providing relevant input based on his expertise and monitoring findings, but also in the form of opinions and recommendations. As an example, the Fundamental Rights Office has drafted a Concept Note to advise the Situational Awareness and Monitoring Division on which type of data should be collected regarding identification and referrals of

vulnerable persons to develop a comprehensive picture of the fundamental rights situation in specific operational areas (Activity 5). Furthermore, the Office supported the implementation of several activities related to providing training in fundamental rights. The Office has also been attributed the lead of several activities, for instance: the FRO's systematic recording of the positive practices of fundamental rights compliance, featured in the Monitors' monitoring reports and the Fundamental Rights Office Annual Report (Activity 23); the Monitors also provide

concrete advice to the Frontex Coordinating Officers, when visiting the operational areas and they cooperate with Civil Society Organizations and national human rights institutions, to acquire information (Activity 63); the Fundamental Rights Office ensures monitoring of the Frontex Situational Centre room through the presence of Monitors on an ongoing basis and has set up a specialised team for handling Serious Incident Reports (Activity 83).

4.4. Cooperation with the consultative forum for fundamental rights

Formed in 2013, the Consultative Forum brings together key European institutions, international and civil society organisations to advise Frontex on fundamental rights matters.

According to the EBCG Regulation, the Consultative Forum shall be consulted on the further development and implementation of the fundamental rights strategy, on the functioning of the complaints

mechanism, on codes of conduct and on the common core curricula.

Chaired by UNHCR and the European Union Agency for Fundamental Rights, the Consultative Forum, Frontex Management and the Fundamental Rights Office discussed the state of affairs of fundamental rights at the external borders of the EU during the Consultative Forum Meetings, which are held three times a

year. Regular exchanges among the Fundamental Rights Officer and the Consultative Forum take place throughout the year to reflect on the fundamental rights dimension of Frontex activities, including risks for violations and the identification of measures to mitigate them.

The activities of the Consultative Forum are presented in a separate Annual Report which is published yearly.⁵²

⁵² Ninth Annual Report, Frontex Consultative Forum on Fundamental Rights, 2021, <https://prd.frontex.europa.eu/wp-content/uploads/cf-annual-report-2021-final.pdf>

CHAPTER 5.

Recommendations



This chapter provides a summary of the recommendations by the Fundamental Rights Office in 2022, as well as provides an overview of recommendations made to Frontex by key external actors, and the level of implementation.

Summary of recommendations by the Fundamental Rights Office in 2022

The responsibility to comply with fundamental rights is for the European Border and Coast Guard community as a whole – Frontex and national authorities. In this context, aligning law and practice with EU and international law is key.

Ensuring compliance with EU and international law

Of outmost importance, national authorities should ensure that the principle of non-refoulement and the prohibition of collective expulsions, enshrined in EU law, are upheld and ensured in practice. More must be done to ensure proper identification, referral and protection of vulnerable persons. To this end, providing additional training and/or raising awareness sessions to national authorities and Frontex staff on identification of victims of trafficking in human beings; on vulnerable persons; on access to asylum/temporary protection; and the principle of non-refoulement and that significant capacity is devoted to this.

Presence and active involvement of Frontex staff and assets in front line activities, including in search and rescue operations both at land and sea, is a positive development and should be encouraged and enhanced. Additional mitigating measures are needed, to ensure that the European border and coast guard community is not

conducting or condoning so-called 'push-backs', effectively 'collective expulsions'.

The mandate of the Fundamental Rights Office

The Fundamental Rights Officer is concerned about the criticism expressed by some national authorities on the role and function of the Office in monitoring fundamental rights compliance of border activities in operational areas and countries where Frontex is present. The mandate includes investigating possible violations of fundamental rights with connections to the Agency's activities, especially in the context of the serious incident reporting procedure, and to advise the Agency on all fundamental rights issues related to border management, including in the context of the provisions of Article 46 of the EBCG Regulation.

Frontex and host States must ensure that the Fundamental Rights Monitors have access to all operational activities, including through observance of Standing Corps officers' work. Frontex in cooperation with the national authorities must ensure full access to locations and documents as required by the EBCG (articles 109 and 110). This includes access to debriefing, registration/screening and patrolling activities as well as to any persons apprehended by Frontex.

For the system to work properly, more efforts must also be made to ensure that serious incidents related to fundamental rights are reported without delay and in all contexts. Efforts to discourage such reporting cannot be accepted. Procedures need to be in place to ensure sufficient incentives for reports to be made. The European border and coast guard community could also do more to alert people at the borders to available complaint mechanisms,

including the one in the EBCG Regulation (Article 111).

Effective investigations

Impartial and effective investigations and genuine accountability for violations during national proceedings, as regards in particular allegations of ill-treatment and collective expulsions of migrants is essential. While state authorities conduct internal investigations into some allegations of violations brought to their attention by the Fundamental Rights Office, concerns remain regarding effective investigation and genuine accountability in some cases.

Recommendations by external key actors

Following the various recommendations provided to Frontex by different oversight entities and ad hoc Working Groups operating at the EU level, the FRO has worked since 2021 towards their implementation. The FRO has been acting upon them by developing activities together with the Agency. The table below provides an overview of recommendations issued by the European Ombudsman, the Frontex Scrutiny Working Group of the European Parliament (FSWG) and the Working Group on Fundamental Rights, Legal and Operational Aspects of Operations (FRaLO) where the FRO was among the responsible entities. It includes the actions taken to implement the relevant recommendations. In the green status are listed the 'implemented' recommendations, in yellow are those 'in progress'. Additionally, eight recommendations (FSWG – 8, European Ombudsman – 2) have already been implemented and reported during the previous reporting period in the 2021 Annual Report of the Fundamental Rights Officer of Frontex.

Entity	Recommendation	Action	Status
European Ombudsman	In its Memoranda of Understanding or other relevant documents concluded with non-EU country bodies, Frontex should stipulate that Frontex (via the Fundamental Rights Officer) is responsible for receiving all complaints on non-compliance with fundamental rights.	By the end of 2022, the Fundamental Rights Officer had concluded and signed Memoranda of Understanding with Ombuds institutions of Albania, Moldova, and Serbia. The Memorandum with the Ombuds institution of Montenegro is under preparation.	
	In its public information material, Frontex should make clearer to potential complainants the benefits of the complaints mechanism, notably that it is free of charge. Frontex should also draw attention to the fact that complainants are not supposed to be penalized for submitting complaints, and that submitting complaints should not prejudice other procedures, such as asylum applications.	New rules on the complaints mechanism were adopted by the Management Board in 2022. The communication materials and the complaint form have already been developed in 2021.	
FSWG	The FSWG urges the FRO and/or the Executive Director to ensure that complaints are not closed until Member States provide the Agency with an adequate response. This can either be done by addressing the complaint in the Management Board and/or by involving the relevant national Ombuds institution. The FSWG calls for more capacity to ensure adequate follow-up on complaints.	Rules on complaints provide for timelines and adequate follow-up to be enhanced. The decision adopting the revised complaints mechanism was adopted in the first quarter of 2022.	
FSWG	The FSWG emphasises the importance of an effective and independent investigation of Serious Incident Reports or other reported incidents. This implies that in its follow-up to a Serious Incident Report, the Fundamental Rights Officer or Executive Director should not only rely on responses by government authorities, but ensure a diversification of sources, and corroborate the information provided by national authorities with competent national human rights bodies and/or authorities such as national Ombuds institutions and relevant international organizations.	Since March 2022, the Fundamental Rights Officer increased information gathering to systematically include additional sources of information (NGOs and international organizations' reports, investigations, etc.) The Fundamental Rights Office final reports on Serious Incident Reports draw conclusions and recommendations that take into account multiple sources' analysis. The Fundamental Rights Officer finalised the working methods related to his investigative powers and has adopted it in 2022 as a Standard Operating Procedure. The document will be further revised.	
FSWG	The FSWG recommends that, in order to ensure effective border management and proper monitoring of the fundamental rights situation, further improvement in information sharing is necessary.	All business entities of the Agency engage with and involve the Office in relevant processes. The Office is also fully responsible for fundamental rights-related Serious Incident Reports.	
		Cooperation between the Fundamental Rights Officer and other entities has been strengthened to improve the data collection on fundamental rights. FRO provided its fundamental rights expertise to the strategic analysis in 2022.	
FSWG	The FSWG urges the Management Board and the Executive Director to ensure that the FRO and the Consultative Forum are included actively from the very start of relevant processes, actively involve the recommendations and opinions from the Fundamental Rights Officer and the Consultative Forum in their decision-making and justify their follow-up to the respective actors.	In 2022, the Management Board adopted a decision on the rules for the Executive Director and the Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer. The Fundamental Rights Officer is invited to all Management Board meetings, while the Forum and the EU Agency for Fundamental Rights are invited to meetings for the agenda points, dedicated to fundamental rights. Following the receipt of the recommendations, the MB discusses them and considers transmission to the European Parliament in accordance with Article 8(1) of MB Decision 43/2022.	
FSWG	The FSWG concludes that clearer criteria and procedures need to be established for the adequate application of Article 46 and supports that the Agency has set up an ongoing structured debate in cooperation with the Fundamental Rights Officer in order to develop a due diligence procedure and intermediate steps in this regard. These criteria should, as a minimum, include a strong role of the Fundamental Rights Officer, the need to take account of information received from external actors, risk indicators and objective early warning criteria, as well as a justification for the decision to suspend, terminate or withdraw funding, and transparency.	Standard Operating Procedure on setting up the mechanism to suspend, terminate, withdraw the financing, or not to launch Frontex activities pursuant to Article 46 of the EBCG Regulation was drafted in consultation with the Fundamental Rights Officer and the European Commission. The Procedure was adopted on 25 January 2022.	

Entity	Recommendation	Action	Status
FSWG	The FSWG calls upon the Executive Director to apply this due diligence procedure in the case of its activities in Greece, in a fully transparent, comprehensive and timely manner, and to share the conclusions with the European Parliament.	The Standard Operating Procedure on Article 46 was adopted in January 2022. Regarding the assessment of the situation in Greece, the FRO submitted to the Executive Director three Opinions. The third one suggested that the Agency should trigger the Article 46 procedure against Greece.	
FSWG	The FSWG underlines that effective fundamental rights impact assessments should be carried out by the Agency before engaging with third countries and asks the European Commission to monitor that those are actually performed before giving its prior approval to working arrangements.	The Fundamental Rights Officer is conducting a fundamental rights analysis and an assessment of the fundamental rights risk of Frontex engagement for the third countries where a Working Arrangement is to be concluded. The Fundamental Rights Officer provides preliminary fundamental rights risk assessment based on the due diligence procedure prior stipulation of a Working Arrangement with third countries.	
FSWG	The FSWG underlines the importance of further developing a structure and culture of cooperation between Frontex and the host Member State, which enables both effective border management and monitoring of fundamental rights compliance in full respect of national, EU and international law.	The Agency is effectively implementing the Fundamental Rights Strategy and the Fundamental Rights Action Plan. The Fundamental Rights Office has a stronger role in relation to Serious Incident Reports and Operational Plans.	
FSWG	The FSWG also calls on the Management Board to ensure sufficient resources for the Fundamental Rights Officer and sufficient funding for the secretariat of the Consultative Forum.	As of 2022 all Fundamental Rights Monitors have been recruited, including additional support staff members. The Fundamental Rights Office is at full capacity. The Executive Director is also conducting an annual review on the human and financial resource needs of the Office.	
FRaLO	Revise and enhance the minimum requirements for the experts in the Frontex Situation Centre (FSC) and provide additional training for the experts in order to allow them to detect e.g., incorrect use of incident types and possible violations of fundamental rights.	Frontex Situation Centre in close cooperation with the Fundamental Rights Office conducted such training in 2022.	
FSWG	The FSWG welcomes the provisions in the Agency, its new Standing Operational Procedure for Serious Incident Reports, which ensures that Serious Incident Reports concerning fundamental rights should be filed with the Fundamental Rights Officer directly. However, the FSWG recommends that regarding other categories, the Fundamental Rights Office is involved in the initial assessment and competent to decide whether a Serious Incident Report relates to fundamental rights issues.	The Fundamental Rights Officer has the right to request the takeover of the Serious Incident handling role and to propose recategorisation of a Serious Incident Report at any point, based on the Serious Incident standard operating procedure.	
FSWG	The FSWG calls for the immediate provision of a clear and short timeline for the employment and deployment of the remaining Fundamental Rights Monitors at AD level, complemented with supporting personnel at AST-level.	46 Fundamental Rights Monitors have been employed, trained and deployed. Out of these, 31 are at Administrator (AD) - level.	
FSWG	The FSWG endorses the recommendations made by the EU Ombudsman on the effectiveness and accessibility of the Complaints Mechanism, which can be found in the Annex. The FSWG welcomes the fact that some of these recommendations are already addressed in the Fundamental Rights Action Plan, which is almost finalized, e.g., by enhanced visibility and accessibility of the complaints mechanism.	A revised complaints mechanism procedure has been adopted. On-line submissions are possible.	

CHAPTER 6.

Priorities of work for 2023



REINFORCING THE TEAM

- Continuous training and field experience to ensure that Monitors understand the operational reality.
- Solidify efficient use of all staff to ensure the best possible monitoring and advice.

BRINGING TOOLS FURTHER TOGETHER

- Reinforce established processes: serious incident reporting, complaints mechanism, and the Consultative Forum.
- ETIAS Fundamental Rights Guidance Board, Use of force reporting and explore the establishment of an advisory body on return monitoring.
- Roll out and leaning of reporting tools for forced return and general monitoring.
- Explore quality certification for impact.
- Prepare for 2024 evaluation of fundamental rights framework.

ENHANCE TRACKING AND FOLLOW-UP

- Reinforced work on the Fundamental Rights Action Plan – within Frontex and support to Member States.
- Follow up to the advice and opinions provided to the Management Board and the Agency.
- Systematic tracking of response and action by national authorities in relation to Serious Incident Reports in particular.

Annex I



Complaints Mechanism

Annual Reports by the Fundamental Rights Officer shall include information on the complaints mechanism (EBCG Regulation Article 109(4) and 111(9)), including details on the findings and the follow-up to complaints by the Agency and national authorities.

In 2022, the Fundamental Rights Officer closed two admissible complaints, as summarised below. Other admissible complaints were pending and not ready for closure in 2022.

Complaint No. 2020-00013 and Complaint No. 2020-00024

Both complaints concerned the registration of unaccompanied children as adults in the Moria reception and identification

centre, despite the complainants claiming to be underage. Consequently, no appropriate measures were taken by the competent authorities to ensure the protection, care, and representation of the complainants as minors in line with the principle of the best interests of the child. Later in the age assessment procedures it was confirmed that the complainants were minors at the time of their registration.

In both complaints the Hellenic authorities responded that during the registration of the complainants standard operating procedures were followed.

Without prejudice to these conclusions, the Fundamental Rights Officer recommended that undocumented persons claiming to be minors should be treated as such and referred to the competent

authorities for proper assistance, irrespective if the declared age raised doubts.

The Fundamental Rights Officer also recommended that the instructions regarding the registration of unaccompanied children must be in line with all applicable legal provisions and that in the opposite case participants in the Agency's activities are obliged to report a possible violation of fundamental rights as a serious incident.

Furthermore, the Agency's Executive Director tasked competent staff to ensure the implementation of the Fundamental Rights Officer's recommendations regarding correct procedure in protection of unaccompanied children during registration and screening process, as well as to ensure that those recommendations are reflected in the Agency's future training activities.





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