

BVMN  
SUBMISSION  
TO THE  
EVALUATION  
OF THE  
FRONTEX  
REGULATION



# Border Violence Monitoring Network

3 October 2022

Border Violence Monitoring Network (BVMN; <https://www.borderviolence.eu/>) is an independent network of NGOs and collectives based on the so-called Balkan Route, Greece, and Turkey, which monitors human rights violations at the borders of the European Union and advocates to end the violence exerted against people on the move (POM)<sup>1</sup>. BVMN came into existence in 2016, with the closure of the Balkan Route and the signing of the EU-Turkey Agreement, when several grassroots organisations started reporting on violent pushbacks of POM along the Balkans and Greece and began to document such cases. The Network has developed a common methodology for the recording of testimonials and supporting evidence which, after going through a process of fact-checking, are published on our website (see our [database](#)).

Since its inception, BVMN has collected 1,575 pushback testimonies, affecting an estimated 24,990 people (BVMN, 2022). During pushbacks, BVMN has noticed a trend of ongoing and systematic violations of fundamental rights of people on the move, constituting serious violations of the EU Charter of Fundamental Rights in Frontex operational areas. BVMN seeks to bring to the Commission's attention information with regards to potential fundamental rights violations perpetrated with the acquiescence, complicity, or knowledge of Frontex. Through this submission, BVMN seeks to show that Frontex's mandate is not in full compliance with its 2019 Regulation and that an expansion of its mandate at the expense of accountability mechanisms has provided the Agency with more powers and a toxic culture of impunity.

The European Commission will address at the end of the consultation process, in particular, the evaluation criteria of effectiveness, efficiency, coherence, relevance, and EU added value. In the absence of a criteria of respect for fundamental rights, BVMN seeks to submit evidence that Frontex is not compliant with its fundamental rights obligations and the Regulation leaves a large margin to the Agency to act with impunity.



# Table of contents

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Introduction	2
Article 46 in Relation to Fundamental Rights	4
Returns	9
Officers in Breach of the Regulation by Not Wearing Identifiable Insignia	12
Serious Incident Report Mechanism	13
Search and Rescue in the Aegean	14
Accountability: Legal, Civil, Criminal, Democratic	16
Culture of Frontex	19
Data Protection Concerns	20
Violations of National Criminal Law and Procedure - debriefing interviews	21
Frontex and Data Gathering	22
Transparency	23
Annexes	

# Abbreviations

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BVMN - Border Violence Monitoring Network  
POM - people on the move  
EBCG - European Border and Coast Guard Agency  
ED - Executive Director  
ED a.i. - Executive Director ad interim  
FRO - Fundamental Rights Officer  
FRM - Fundamental Rights Monitor  
SIR - Serious Incident Report  
CF - Frontex Consultative Forum on Fundamental Rights  
SaR / SAR - Search and Rescue  
MB - Management Board  
HCG - Hellenic Coast Guard  
TCG - Turkish Coast Guard  
EU - European Union  
EP - European Parliament  
EC - European Commission  
EO - European Ombudsman

MS - Member State/s of the European Union  
LIBE - European Parliament's Committee on Civil Liberties, Justice and Home Affairs  
TEU - Treaty on the European Union  
TFEU - Treaty on the Functioning of the European Union  
OLAF - European Anti-Fraud Office  
PAD - Public Access to Documents  
FOI - Freedom of Information request/inquiry  
CJEU - Court of Justice of the European Union  
ECJ - European Court of Justice of the European Union  
PeDRA - Personal Data for Risk Analysis  
GDPR - General Data Protection Regulation  
EDPS - European Data Protection Supervisor  
DPO - Data Protection Officer  
FSWG - Frontex Scrutiny Working Group  
ECHR - European Convention on Human Rights  
ECtHR - European Court of Human Rights

## 1



### Article 46 in Relation to Fundamental Rights

Article 46 of Regulation 2019/1896 legislates when Frontex has the obligation to suspend, terminate, or not launch operations. The obligation existed in the previous Frontex Regulation from 2016 under Article 25<sup>2</sup>. However, the 2019 Regulation made the obligation more stringent and extended the pool to two more options: not to launch an operation and to withdraw financing from an existing operation.

The obligations described in Article 46 are to be triggered when “there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist<sup>3</sup>”. Article 46 has only

been triggered once in the history of the Agency in 2021 when the Agency terminated operations in Hungary, however keeping return operations active, in contravention with the Regulation. Frontex triggered Article 46 only after the CJEU ruled that Hungarian legislation infringed EU asylum law<sup>4</sup>.

With pushbacks and other human rights violations being perpetrated by EU Member States at their external and internal borders, more calls have been made to Frontex to trigger Article 46 and suspend or terminate operations. Since 2016 and earlier, Frontex has been active in border areas from where civil society organisations, including Border Violence Monitoring Network, has report-

ed on atrocious violations committed against people on the move.

In January 2022, the Executive Director of Frontex adopted for the first time Standard Operating Procedures (SOPs) on the mechanism on withdrawing the financing of, or suspending or terminating, or not launching Frontex activities. The SOPs “aim to clarify the applicable criteria and the key sources of information to be taken into consideration before the Executive Director takes a decision in line with Articles 46(4) and (5) of the Regulation<sup>5</sup>”.

The SOPs apply in the same way to operations in EU MS and in third countries. The document details that a gradual and proportional approach shall be adopted. Corrective measures would be put in place before deciding on triggering Article 46. Also, every case would be assessed individually based on the specific circumstances. Furthermore, the assessment that “violations of fundamental rights or international protection obligations of a serious nature or likely to persist” must meet a minimum of severity.

The SOPs extend the initiation of triggering Article 46 to other Frontex entities or staff, such as the Coordinating Officer(s), the Fundamental Rights Officer and the Fundamental Rights Monitor by reporting or providing information on persistent violations of fundamental rights. However, the decision to trigger Article 46 remains fully in the hands of the sitting Executive Director.

The mechanism to withdraw in case of violations of fundamental rights or international protection obligations lays down the following:<sup>6</sup>

- After the reporting and with the support of the initiator, the Director of the Division responsible, the Coordinating Officer(s), and the Fundamental Rights Officer should conduct an assessment of the situation with regard to the potential violations of fundamental rights or international protection obligations;
- The ED may create a Working Group if “the situation is of a complex nature and requires additional clarifications”
- The Working Group should prepare an assessment of the situation, including sources of information available to the Agency, within a deadline established by the ED
- To ensure the above-mentioned assessment, the Executive Director “may decide to invite other EU institutions, offices and agencies, such as the European Commission, the European External Action Service, the EU Agency for Fundamental Rights, the European Union Agency for Asylum and other relevant entities including international organisations to support the Work-

ing Group”

- The Working Group then should prepare a detailed assessment. Then, if the Director of the Division responsible for the Working Group concludes that there are concerns of fundamental rights violations shall issue a recommendation: resolve a potential disagreement with regards to the operational plan; recommend that the ED to withdraw the financing of, or suspend or terminate the activity, in whole or in part of the operation, or recommend to further consult other EU institutions, bodies, offices or agencies if the situation requires additional clarification. Alternatively, the assessment may also propose corrective measures, if the situation does not elicit to trigger Article 46.
- Corrective measures may include but not be limited to: deployment of additional resources to enhance capacity to monitor the correct implementation of the operational plan in regard to fundamental rights obligations; increased information exchange; increase the number of on-site visits of the FRO, possibly together with FRA and EUAA; deployment of more fundamental rights monitors to the operational area.

Recommendations to develop SOPs in triggering Article 46 were expected to address and mitigate the power the ED has over the initiation, the procedure, and the final decision-making. While some of the matters were seemingly addressed, for example that other Frontex staff can initiate the mechanism, the ED continues to have a discretionary role over the procedure. The creation of a Working Group remains at the discretion of the ED as well as he or she setting the deadlines for the procedure. The Consultative Forum is mentioned once in the SOPs, and only in the role as a reliable source of information on potential fundamental rights violations.

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The European Ombudsman (EO) initiated an investigation into the Agency’s fundamental rights obligations and ensuring accountability. The in-

vestigation of the EO was finalised five days before the SOPs were adopted. However, the results remain pertinent even more so since Frontex was obliged to take into account the Decision of the EO. With regards to activating Article 46, operational plans contain relevant information. However, operational plans are not made public and almost always rejected disclosure under freedom of information access. Without knowing the content of the plan and considering the discretionary powers held by the ED in the process, proper scrutiny of the implementation of the SOPs cannot be performed.

The European Ombudsman suggested that Frontex proactively publishes summaries of operational plans and of parts of the handbooks to operational plans. It also recommended that summaries of the Fundamental Rights Due Diligence Procedure are also made public. SOPs on triggering Article 46 and the ED's decisions to implement (or not implement) the Article should also be public (implemented), as well as the director's responses to negative responses by the FRO. Frontex should also "publish on its website an anonymised version of the reports of forced return monitors after each return operation".

The ED retains the right to invite other EU insti-

tutions to the Working Group. This discretion afforded might prevent relevant EU institutions from scrutinising the procedure and might be prevented from contributing to the assessment. The ED may also decide which international organisations may support the Working Group. This allows Frontex to carry on and actively ignore and deem unworthy of news, information originating from researchers, journalists, grass-roots organisations, and other experts. Additionally, it seems that international organisations comprising the Consultative Forum are not afforded special rights nor particular regard in being extended an invitation.

None of the corrective measures are coercive in any manner. On the contrary, Frontex proposes the deployment of additional resources to states that are violating fundamental rights. In order to shed more light on the matter, it is important to mention that human rights violations at borders are perpetrated with funding, surveillance technology, equipment, and staff provided by Frontex. The Agency seems to disconsider that by continuing missions in operational areas where national authorities are violating fundamental rights it becomes responsible and accountable by aiding criminal acts that might amount to crimes against humanity and war crimes.<sup>7</sup>

## Case Study: Frontex at the Evros border

Over the last two years, the Border Violence Monitoring Network (BVMN) submitted to Frontex an abundance of evidence of pushbacks, loss of life and practices amounting to torture and inhuman and degrading treatment perpetrated at the Evros land border which is also Frontex operational area. Since 2020, new trends of abandoning people stranded on islets in the river as well as refusing to comply with interim measures issued by the European Court of Human Rights were recorded which displayed consistent disregard for the rule of law by the Greek state. Visual investigations from Lighthouse Reports<sup>8</sup>, der Spiegel<sup>9</sup>, le Monde<sup>10</sup> and other media outlets confirm BVMN documentation of people on the move being coerced by the Greek police to push people back.

Frontex has been operating in an EU Member State where the rule of law, the respect for fundamental rights and EU law compliance have been severely eroded. Frontex has been either unable or unwilling to proactively safeguard fundamental rights in its operational area at the Greek-Turkish land border. Fundamental rights monitors conducting field visits at Evros were overall restricted in their monitoring activities, according to the 2021 FRO Annual Report. Fundamental rights abuses and violence has been taking place with Frontex present at Evros for years therefore, Frontex presence evidently does not prevent violations nor does it facilitate compliance.

BVMN recommended that Frontex should trigger Article 46 and, effective immediately, terminate operations in Greece<sup>11</sup>.

The Border Violence Monitoring Network (BVMN) began taking first-hand testimonies of illegal cross-border pushbacks in the Greek mainland, in 2019. Since then, BVMN has recorded 163 testimonies pertaining to the Evros land border, a Frontex operational area, which have affected a total of approximately

10,800 persons. Up to 90% of all Greece-Turkey pushback testimonies contained one or more types of torture or inhuman and degrading treatment.

Of the 163 testimonies collected since 2019, a total of 35 (21.5%) refer to people on the move being intentionally stranded on islets in the Evros river. Multiple incidents recorded that people were left for days, in freezing temperatures and without access to food or water. These cases elucidate a new trend by which Greek border authorities only force people halfway across the Evros river and abandon them on small uninhabitable islets, or force them to jump into the water.

In the absence of effective national remedies, civil society organisations have turned to the European Court of Human Rights to safeguard the rights of people on the move. Since March 2022, interim measures have been indicated in 14 Evros islet cases, which have affected a total of 509 individuals. Of these cases, only five groups were actually rescued by Greek authorities, while in the other cases people were pushed back to Turkey or their whereabouts are unknown. In one of the cases for which interim measures were indicated, four-year-old boy Ayman Saleh fell into the water, and was carried away by the current. In another case, a woman with serious kidney problems died on the island as she could not access lifesaving dialysis medication. In a recent case, a little girl died as a result of a scorpion bite<sup>12</sup>.

The Border Violence Monitoring Network has submitted 4 letters of concern to Frontex since 2020 and over 10 urgent calls for intervention in cases of people on the move at Evros, struggling to access shelter, food, water, medical care, and asylum and at risk of their fundamental rights being violated. BVMN and other civil society organisations have shared the coordinates with Frontex and requested that Frontex actively safeguards fundamental rights in its operational area<sup>13</sup>.

On April 1st, BVMN sent an application to the European Court of Human Rights to grant interim measures to 34 people stranded on an Evros islet, after the Greek authorities refused to rescue them. BVMN notified the Greek authorities and Frontex firstly. Frontex replied that the information had been relayed to the Greek authorities. The Greek authorities did not reply. In a follow-up email, Frontex clarified that “in addition to relaying the information to the relevant National Authorities, Frontex proactively took action by offering its availability to support national actors in the search and rescue operation in question. Soon after, the Hellenic Police declined the operational support offered and informed Frontex that the group of people was found and that all persons will be transferred to Orestiada Border Crossing Unit for further legal procedures which will be undertaken by local Authorities”. In fact, it took the Greek authorities more than 48 hours and an order from the European Court of Human Rights to engage in search and rescue. In June 2022, Lighthouse Reports<sup>14</sup>, Le Monde<sup>15</sup>, der Spiegel<sup>16</sup>, the Guardian<sup>17</sup>, and other media outlets, released an exposé on Greek authorities coercing asylum seekers into pushing other transit groups back to Turkey. The findings of their investigation confirmed BVMN reports from June 2020 and September 2021 that Greek border guards use third country nationals to facilitate pushbacks.

To this day, Article 46 has not been triggered for Frontex to withdraw from Greece, despite similar reports on pushbacks, inhuman and degrading treatment, and loss of life caused by the Greek authorities in the Aegean Sea, another Frontex operational area.

In its SOPs, Frontex lays down the criteria for decisions based on considerations related to fundamental rights or international protection obligations by defining the “serious nature” of an obligation and setting the limits of “likely to persist” as legislated in Regulation 2019/1896.

The SOPs refer back to the ECHR on what constitutes “serious human rights violations” and enumerates: Art. 2 (rights to life); Art. 3 (the prohibition of torture and inhuman or degrading treatment or punishment); Art. 4 (the prohibition of forced labour and slavery); Art. 5(1) (the right to liberty and security); Art. 8 (the right to respect for private and family life)<sup>18</sup>.

The Agency has restrictively enumerated articles from the ECHR, ignoring relevant . At the same time it has ignored that countries in which they operate and the countries of nationality of their officers are bound by additional international human rights instruments such as the UN Convention on Enforced Disappearances, the UN International Covenant on Civil and Political Rights, the UN Convention on the Elimination of Discrimination Against Women, among others. These instruments contain “serious human rights violations”. This is particularly significant in the context of Frontex’s expansion to non-European countries, such as the African states Senegal and Mauritania<sup>19</sup>, where the

ECHR does not apply. Therefore, the SOPs cannot and should not restrictively interpret Regulation 2019/1896 “violations of fundamental rights or international protection obligations [...] that are of a serious nature”.

The SOPs iterate that the Agency “also exercises vigilance regarding the following fundamental rights principles and standards” prescribed in the EU Charter of Fundamental Rights: prohibition of trafficking in human beings (Article 5(3) of the EU Charter of Fundamental Rights – the Charter); protection of personal data (Article 8 of the Charter); right to asylum (Article 18 of the Charter) and to protection against removal and expulsion and non-refoulement (Article 19 of the Charter); non-discrimination (Article 21 of the Charter); the rights of the child (Article 24 of the Charter).

The Regulation should be interpreted in line with primary legislation including the Treaties and the EU Charter of Fundamental Rights. The Agency cannot “exercise vigilance” with regards to fundamental rights prescribed by the EU Charter as it is bound in all its activities to abide by it. More so, rights enumerated such as the right to asylum is an enforceable right upon which the CJEU can find a violation, rather than a “principle” or a “standard”. In 2020, after infringement proceedings were initiated by the European Commission against Hungary, the CJEU did find that Hungary had violated EU asylum law in combination with EU Charter, including Article 18 protecting the right to asylum<sup>20</sup>. The principle of non-refoulement is customary international law and both states and agencies are bound by it.

In addition to above-mentioned instruments, the Rome Statute regulates international criminal law. Crimes against migrants and refugees in Libya are currently investigated by the Office of the Prosecutor of the International Criminal Court<sup>21</sup>. Crimes committed in Libya against migrants and refugees might amount to crimes against humanity and war crimes. In 2021, investigations conducted by journalists and researchers uncovered the crucial role Frontex plays in the interception and return of people fleeing Libya by the so-called Libyan coast-guard. A joint investigation by Lighthouse-Report<sup>22</sup>, Der Spiegel<sup>23</sup>, Libération<sup>24</sup>, and ARD<sup>25</sup> has revealed cases “where Frontex planes were present in the vicinity, and likely aware, of boats in distress that were later intercepted by Libyan patrol boats, despite data showing that commercial or NGO vessels were present in the area and could have conducted a faster rescue. This also included interceptions deep in the Maltese SAR zone”<sup>26</sup>.

The SOPs further state that “not all violations of these articles would necessarily reach the “seri-

ous nature” threshold”. Once again, there is established case-law with regards to the interpretation of the Articles of the Convention as well as the EU Charter and the SOPs cannot and should not restrict the interpretation of international human rights law, established through the case-law of the European Court of Human Rights, the UN Human Rights Council, UN Committees, and the CJEU, among others.

Lastly, the SOPs mention a non-exhaustive list of sources of information that “should be taken into consideration aiming to identify and assess the potential violations of fundamental rights or international protection obligations which are of serious nature or likely to persist”. Information originating from open source investigations, Independent reporting, journalists or non-relevant non/international organisations might not be considered, at the discretion of the ED. Taking into account that most reports of human rights violations initially stemmed from reporters, experts, and journalists, the choice not to include those in the SOPs is most discouraging and reflective of the culture of the Agency.

In January 2021, the Frontex Scrutiny Working Group was established by the LIBE Committee (FSWG) to monitor all aspects of the functioning of the Agency, including compliance with fundamental rights, and transparency and accountability towards the European Parliament. The FSWG conducted a fact-finding investigation, collected evidence and presented its final report in July 2021<sup>27</sup>. In the report the members of the Working Group demanded that Frontex commit to a “change of culture, but also measures to ensure that fundamental rights expertise and awareness are guaranteed at all levels and units of the Agency, and during all stages of the decision making processes”<sup>28</sup>.

The report reads further that Frontex should set up criteria for triggering Article 46. The criteria should “as a minimum, include a strong role of the FRO, 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”<sup>29</sup>. The language of the SOPs adopted do not indicate a strong commitment from the Agency to a change in practices, better accountability, transparency nor adopting a fundamental rights culture.



# 2

## Returns

Regulation 2019/1896 governing Frontex's current mandate has enlarged the Agency's competence with regards to return operations. The Preamble states that the key role of the Agency should be, among others "to organise, coordinate and conduct return operations and return interventions". With its 2019 Regulation, Frontex became the main tool to return third country nationals<sup>30</sup>. In October 2021, the first Deputy Executive Director for Returns and Operations was appointed<sup>31</sup>. In January 2022, the first fully-fledged Frontex-led return operation was initiated and organised solely by Frontex<sup>32</sup>.

The Regulation also increased the Agency's responsibilities in the area of voluntary returns. By mid -2022 Frontex took over the activities of the European Return and Reintegration Network<sup>33</sup>. The Consultative Forum of Frontex raised concerns about the lack of a definition and implementation for "voluntary returns". Reportedly, a definition was not developed and the Agency is acting outside a legal basis<sup>34</sup> since the 2019 Regulation refers to the 'return' definition set by the 2008 Return Directive and this does not cover 'voluntary returns'. By September 2022, Frontex announced it had supported the voluntary return of 5,327 third-country nationals. In 2021, Frontex assisted with the voluntary return of 4,589 people.<sup>35</sup>

The Consultative Forum made recommendations to Frontex to ensure that the mandate of the return monitors ensures that a return monitor can effectively prevent fundamental rights violations<sup>36</sup>. The recommendations have not been implemented into the code of conduct for return operations; on the contrary, Article 16(3) of the Code of conduct specifies that the forced return monitors "may not interfere with the planned execution" of the return operation<sup>37</sup>. The CF 2019 Annual Report reads that: "reporting obligations cannot suffice to ensure effective enforcement of fundamental rights".

The FRO 2021 report described shortcomings in return operations observed by forced-returns monitors, among which "incidents harming the privacy or integrity of the person during searches, insufficient numbers of female escorts, sometimes disproportionate use of force, not always sufficient attention paid to the needs of children". However, forced-returns monitors do not have the mandate to terminate a return operation or prevent a returnee from boarding in the event of a fundamental rights violation.

Significantly, the CF made recommendations towards providing returnees with the possibility to call their family members or lawyers, without having to rely on the good will of escorts or return monitors<sup>38</sup>. Reportedly, no improvements in this department have been made.

### Case Study: Violence exerted against third-country national pending return

In January 2022, BVMN requested information through a freedom of information request on an incident reported through the SIR mechanism (serious incident report) concerning a German officer deployed to Frontex assaulting a returnee. The request was initially rejected due to the fact that the investigation into the incident was still pending. According to the report the incident had occurred in July 2021 and BVMN's request was requested 5 months later. Standard Operating Procedures for SIRs state that an investigation should be concluded within a month.

Eventually, the final report was released to BVMN. The facts of the incident are that a German officer assaulted a Ghanian returnee upon landing in Ghana. The officer alleged that the returnee had resisted being moved from his seat to the back of the plane and initially physically assaulted him. The officer proceeded to punch the returnee in the torso three times. The monitor did not directly witness the events but filed a SIR. The FRO referred the case to the German authorities. The incident was assessed by independent judicial authorities who found the actions of the German officer to be legitimate and proportionate under German Law. At the same time, the authorities opened a case against the returnee under the Criminal code. The authorities did not confirm that they had taken into consideration in their investigation the report of the Frontex monitor. However, the monitor and the German authorities disagreed on the lawfulness of the use of force by the officer against the returnee.

The final report of the SIR does not mention that the returnee was interviewed at any stage of the process.

The returnee was not questioned by the monitor nor was he invited to be part of the judicial proceedings related to the matter where the returnee could have testified to the fact; Additionally, he could not respond when he was charged with a criminal offence in Germany. (See Annex 1 for the full version of Final SIR Report).

Concerns on Frontex conducting return operations from Member States where access to asylum is not sufficiently guaranteed as well as where the rule of law has been eroded. Frontex continues to support Greece with returns despite reports from civil society organisations stating that access to asylum in Greece has been severely restricted since 2020. In March 2020, Greece also suspended the access to asylum, an unlawful measure in violation of the Member State's compliance with fundamental rights as well as the 1951 Geneva Convention, the ECHR, and applicable UN Conventions<sup>39</sup>. Lack of access to asylum in Greece causes people to live in well-founded fear of detention, deportation and pushbacks. If detained, asylum seekers do not have access to sufficient information for their asylum case and in very rare occasions access to legal representation. This puts under scrutiny the fairness of asylum proceedings in Greece, subsequent rejections of claims, lack of access to information to appeal a rejection, and deportation measures<sup>40</sup>. More so, restrictions to lodge an asylum application further restricts applicants' access to services, leading to homelessness, destitution, worsening medical conditions among other, which should lead to scrutiny of decisions of voluntary return when Greece is violating the human rights of migrants<sup>41</sup>.

The Consultative Forum made recommendations that Frontex "should not plan any return operation from Member States with serious deficiencies in their national asylum and return system (including where asylum applications are not duly assessed or effective remedies are absent) which give rise to substantial grounds for believing that returnees would face a real risk of treatment in violation of Articles 4, 18 or 19 of the Charter"<sup>42</sup>.

Significant on this matter is the case of Hungary and Frontex operations in this Member State. The Agency has failed to ensure the respect for fundamental rights in the border management and return activities of the Agency by continuing return operations from Hungary despite serious deficiencies in the Hungarian asylum law. A two-page document / disclaimer that the authorities are being requested to sign for each returnee is insufficient. The document/disclaimer is not governed by a clear legal basis and cannot be enforced and therefore is an insufficient safeguard that returnees have had access to asylum and the right to an effective remedy has been ensured. The document might constitute an attempt at absolving the Agency from accountability. However that would clearly be in contravention with respect for the EU Charter of Fundamental Rights and its Regulation as the Agency has to monitor, promote and safeguard fundamental rights in its return operations. The Agency cannot continue operating in an EU Member State where access to international protection, non-refoulement and decent reception conditions are not guaranteed. Similarly, Frontex should inquire about its compliance with EU Charter in return operations from other EU Member States such as Greece, that have severe deficiencies in its asylum system.

## RETURNS FROM HUNGARY

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In December 2020, the Court of Justice of the European Union (CJEU) issued a judgement finding that the Hungarian legislation is inconsistent with EU law on asylum. The judgement came as a result of an infringement proceeding initiated by the Commission. The Court found that Hungary had failed its obligations under the Qualifications Directive, the Reception Directive, and the Return Directive in combination with the right to liberty and security, the right to asylum and the right to a fair trial enshrined in the EU Charter of Fundamental Rights<sup>43</sup>.

The judgement came after years of concerns raised by civil society organisations and independent journalists, as well as EU institutions, about the erosion of safeguards for asylum seekers in Hungary. The issuance of the judgement came as an important final confirmation that asylum was inaccessible after the 2018 law that restricted migrants to lodge an asylum application on the Hungarian territory. Without denying its impact and importance, the judgement came last in a long line of denunciations against Frontex operations in Hungary. Significantly, since 2016, both the Consultative Forum and the Fundamental Rights Officer of Frontex had repeatedly made recommendations about suspending or terminating operations<sup>44</sup>. The Agency had not taken into consideration the recommendations of its own watchdog over the years and the judgement of the CJEU in 2020 had not raised a reaction either. The Hungarian Helsinki Committee, a non-governmental human rights organisation, released a statement in January 2021 and demanded from the Executive

Director to trigger Article 46 and terminate operations in Hungary, in accordance with Regulation 2019/1896<sup>45</sup>. By the end of January 2021, Frontex would suspend operations in Hungary seemingly ignoring the judgement of the Court and reacting only at the public call of the Hungarian Helsinki Committee.

These practices by the Agency fit in a long line of disregard of recommendations also made by the Consultative Forum in 2019 regarding Frontex operational activities in Hungary.

*The CF highlighted the Commission infringement procedure against Hungary concerning its asylum laws, and recommended that Frontex refrain from supporting returns from Hungary and suspend any return-related activities from the country. This recommendation was motivated by the direct responsibility of the Agency to ensure respect for the principle of non-refoulement in all its activities. Against the Consultative Forum's repeated advice, the Agency maintained its operational support to Hungary, suggesting that its presence on the ground could improve the situation. The Consultative Forum noted, however, that even though the situation did not improve, the Agency increased the number of staff deployed at the Serbia-Hungary border.<sup>46</sup>*

A 2019 UNHCR report [report](#) that "two families, four adults and seven children, who had been detained since January in a transit zone on the Hungarian-Serbian border, were escorted to a border gate with Serbia [and] were presented with a choice of entering Serbia or being flown back to Afghanistan on a flight organised by Frontex<sup>47</sup>". Eventually, Serbian authorities accommodated the families in a reception centre. UNHCR called on Frontex "to refrain from supporting Hungary in the enforcement of return decisions which are not in line with International and EU law<sup>48</sup>".

However, Frontex continued to support Hungary in return operations and, to this day, it has not suspended operations fully<sup>49</sup>. More so, the Agency continued return operations in secret and purposefully left it out from the initial statement and therefore concealed it from public debate<sup>50</sup>. This decision is clearly incompatible with the principle of transparency that EU agencies and bodies must abide by. Additionally, the Agency has acted inconsistently with Article 15 TEU stating that EU bodies "shall conduct their work as openly as possible" to promote good governance and participation from civil society<sup>51</sup>.

In its 2021 Annual Report, the Fundamental Rights Officer mentioned that monitors to Hungary, who conducted 18 missions between June and December 2021, a reduced Frontex operational area, assessed "that both law and practices at the Hungarian border remained insufficiently aligned with EU legislation"<sup>52</sup>. The FRO recommended that Frontex upholds the suspension of operational activities in Hungary<sup>53</sup>.

Relevant for the fundamental rights record of the Agency is the mention of 8 cases between 2017 and 2020 pending at the European Court of Human Rights alleging that Hungary collectively expelled asylum seekers to Serbia, while Frontex had active operations in the country. Over 10 cases were brought against Hungary on reception conditions or access to asylum and are currently pending. Border Violence Monitoring Network recorded between 2017 to this day, 127 testimonies of pushbacks from Hungary, affecting 1,436 people<sup>54</sup>.

In July 2022, in the Committee on Budgetary Control of the EP, questions about the continuation of return operations from Hungary were addressed to the ad interim Executive Director Aija Kalnaja. The ED stated return operations from Hungary are limited and that the Hungarian authorities are required to sign agreements that guarantee that the returnees' fundamental rights have been complied with before a return decision was issued. That agreements are not publicly available and the legal basis or enforcement cannot be established. According to information obtained through freedom of information access, the agreement is a two-page check-list that the authorities are required to fill in and hardly seem sufficient to ensure respect for the rights of the returnee while the Hungarian asylum system is non-compliant to EU law; including the Charter of Fundamental Rights.

In the same session in EP in July 2022, the ED a.i. stated that the manner in which Article 46 is triggered should be reconsidered with regards to Hungary, as the absence of Frontex operations from the Member State is not providing support to an EU MS nor is ensuring respect to fundamental rights<sup>55</sup>. The ED a.i. proceeded in recommending increased Frontex presence. However, the ED failed to show how Frontex is ensuring respect for fundamental rights in its other operational areas such as the Greek-Turkish land and sea borders, the Albanian-Greek border, the Greek-N.Macedonian border, among others. In her recommendations the ED a.i. seems to disregard the findings of the CJEU and the fact that the Commission had announced multiple infringement proceedings to the CJEU against Hungary on matters of discrimination, LGBTQI rights and press freedom<sup>56</sup>. The

state of the rule of law is dire in Hungary to the extent that the EP passed a Resolution proposing to the Council to trigger Article 7 TEU<sup>57</sup> in September 2022, which would entail suspending Hungary's rights in the EU<sup>58</sup>.

# 3

## Officers in Breach of the Regulation by Not Wearing Identifiable Insignia

Regulation 2019/1896 prescribed in Article 82 (6) the following:

*All members of the teams shall wear visible personal identification and a blue armband with the insignias of the Union and of the Agency on their uniforms, identifying them as participating in a joint operation, migration management support team deployment, pilot project, rapid border intervention, return operation or return intervention. For the purposes of identification vis-à-vis the national authorities of the host Member State, members of the teams shall at all times carry an accreditation document, which they shall present upon request.*

The Article existed in the previous Frontex Regulation 2016/1624 (see Article 40(4)). However, the Article has not found its way into the Code of Conduct of All Personnel Participating in Frontex Operational Activities<sup>59</sup>.

Respondents identified in their accounts the presence of foreign officers, whether during apprehension<sup>60</sup>, while being detained<sup>61</sup> and when pushed back<sup>62</sup>. Testimonies of pushbacks from Greece to Turkey identify foreign speaking officers wearing unidentifiable clothing and balaclavas. The respondents identify that these officers communicate in languages other than Greek among themselves. They often recognize commandos, as respondents refer to them, addressing one another in English or German.

One respondent states: "commandos speak all the languages, speak English, speak German, if you raise your eyes they will beat you, we were like animals, only look down and if you try to do anything they beat you<sup>63</sup>". Respondents refer as "commando" to officers wearing either military cam-

ouflage uniform or unidentifiable black clothes, wearing balaclavas, at times.

In another account, the respondent stated that the police wore black clothes and balaclavas and the respondent could hear them speak different languages. One of the men said that he is German and from Frontex. However, that could not be confirmed by any flags or logos<sup>64</sup>.

BVMN has been collecting testimonies of pushbacks from Greece to Turkey since 2019. Frontex's first operation in Greece at the borders with Turkey dates from 2006<sup>65</sup>. In 2010, the first rapid border intervention operation was deployed at the Greek/Turkish land borders<sup>66</sup>. Since then Frontex has increased presence at Greek borders. The accounts of pushbacks BVMN has collected indicate that Frontex officers apprehending people on the move, or present while people are detained, as well as potentially involved in pushbacks are not wearing identifiable insignia or uniforms.

Testimonies recording the involvement of foreign officers date at least back to 2019. Holding Frontex officers accountable for fundamental rights violations is a challenge when deployed officers are concealing their insignia or refusing to wear it.

A respondent's account of the pushback from Greece over the land border:

*The respondent had previously lived in Germany for four years and is fluent in German (the testimony was taken in German). He recounts that at least two of the masked men who caught them in the forest spoke German with each other. The other four spoke Greek.*

*One of the masked men asked the group*

where they were from. When one of the people replied saying he was from Palestine, one of the other masked men (Greek speaker) approached him aggressively and said "I'm a Jew. I hate Palestine!". The masked man then proceeded to kick the Palestinian man in the face.

The respondent did not reveal his German language skills to the masked men out of fear, but he remembers them talking about him and the others, referring to them as rats and terrorists. He describes that they were laughing while hitting them, seeming to take enjoyment from the episode.<sup>67</sup>

A respondent who was pushed back in the Aegean Sea, between Greece and Turkey, testifies:

Soon after, the respondent saw a small boat approaching very fast. It was dark grey and had a German flag on it. [...] On it were three men with black clothes and balaclavas who were speaking German to each other.

Two of them went aboard the larger vessel with the EU flag and proceeded to prepare two orange life rafts. They made the women and children get onto them first, then all the others. One of the German-speaking men pushed the respondent into the life raft forcefully.

When the whole group was on the life rafts, the German speaking men threw all their bags and possessions overboard from the big ship, got onto their small boat, and left. The larger vessel with the EU flag then left as well. Then 20 or 30 min later, a TCG [Turkish Coast Guard] vessel came and took them back to Karaburun in Turkey.<sup>68</sup>

In February 2022, BVMN's monthly report reported that Frontex officers gave out their insignia to civilians. BVMN reporters noticed in a gas station near the official border crossing between Greece and Turkey, on the wall, a collection of foreign insignia of various law enforcement departments from different countries, some Frontex insignia and an armband on display<sup>69</sup>. BVMN notified the Fundamental Rights Officer and requested the initiation of an inquiry into the matter. Months later BVMN was informed that the FRO was not competent on the matter and that the complaint was forwarded to the competent office. However, the competent office was not communicated to BVMN despite follow-up.

Ensuring that Frontex officers are wearing their insignia at all times and are recognizable is a vital matter, as the Regulation clearly states that all Frontex personnel should "wear visible personal identification and a blue armband with the insignias of the Union and of the Agency on their uniforms"<sup>70</sup>. Behaviour contrary to the Regulation should not be taken lightly by the Agency. The Agency should investigate accounts of Frontex officers not wearing identifiable insignia. The Code of Conduct should also be amended to include the obligation prescribed by the Regulation.

Frontex describes "serious incidents" as "an event or occurrence, caused by natural or human action, which may affect, or be relevant to, the Frontex mission, its image, the safety and security of the participants on the operation, or any combination thereof including violations of Fundamental Rights and of EU or international law rules related to the access to international protection and infringements of the Frontex Code of Conduct".<sup>71</sup> The serious incident report (SIR) mechanism allows Frontex personnel to inform Frontex of any such serious incidents.



## 4 Serious Incident Report Mechanism

The SIR mechanism was mentioned in the Preamble of Regulation 1168/2011 as being a mechanism that should be used to report, in particular, any information regarding violations of Regulation 2007/2004, the Schengen Borders Code, in-

cluding fundamental rights.<sup>72</sup> However, the recent 2019 Regulation does not include this Preamble. The functioning of the SIR mechanism is left up to the Executive Director (ED) of Frontex regarding the Standard Operating Procedures (SOPs), and

these decisions are not available to the public. This means that the ED has total control, which is undesirable in such a sensitive area as this. With total control, the ED can recategorise and suppress unflattering SIRs, with no mechanism to hold them accountable.

SIRs can be filed under four categories, the fourth of which being suspected fundamental rights violations. From April 2020, SIRs under category four are filed directly with the FRO, meaning there is some third-party oversight in these sensitive cases. This is a step in the right direction; the ED having complete competence in this area is untenable; however it does not go far enough. Frontex has circumvented this by either misclassifying fundamental rights violations under a different category, or with the ED reclassifying a SIR's category after its been filed. This reclassification has occurred at least once, and after reclassification the former ED ordered the FRO to remove all information it had gathered about the SIR, meaning that not only did the FRO no longer have any competence, but also it could not release any information about the incident.<sup>73</sup>

The category system itself of the SIR mechanism is flawed. While category four SIRs are supposed to encompass suspected violations of fundamental rights, category two SIRs can also be related to this in some situations. A category two SIR can encompass suspected violations of fundamental rights regarding international protection if they do not involve Frontex staff, members of the European Border Guard, or members of the host state's coast guard.<sup>74</sup> However suspected violations regarding the principle of non-refoulement, as well

as the use of force by national guards has also been reported under category two.<sup>75</sup> ECRE has recommended that the scope of these categories has to be clarified and streamlined, in order to avoid legal uncertainty.<sup>76</sup> Reclassification is simply a method Frontex is using to conceal violations of fundamental rights. Through the new SOPs of SIR, the FRO was granted powers to participate in the classification of SIRs.

The FSWG have found that border guards who wish to submit a SIR through the chain of command are actively discouraged from doing so.<sup>77</sup> In another case examined by the FSWG, after a deployed officer submitted an SIR the host member state ordered them to operate in another area.<sup>78</sup> Just three category four SIRs were filed in 2018, despite far more being reported from NGOs.<sup>79</sup> There are no repercussions for not reporting fundamental rights violations.<sup>80</sup>

The prerogative of the FRO participating in classification of SIRs should be legislated in the Regulation and not left at the discretion of the ED. It is imperative that SIRs cannot simply be reclassified by the ED to fall outside of the FRO's remit. Additionally, we recommend that the SIR mechanism has to be specifically outlined in the Regulation, and not decided by SOPs that are not available to the public. Finally, there must be an internal monitoring mechanism within Frontex to protect whistleblowers and ensure SIR reporting regarding violations of fundamental rights is encouraged, rather than shunned. The mechanism should be prescribed by the Regulation.

# 5

## Search and Rescue in the Aegean

Recital 19 of the Regulation states that one of the key roles of Frontex is to “provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea”. Frontex has been wholly ineffective in this obligation, especially regarding its operations in the Aegean Sea. Since 2006 Frontex has been in-

involved heavily with the Hellenic Coast Guard in the Aegean Sea, in what has been dubbed “Operation Poseidon”.<sup>81</sup>

Asylum seekers entering Greek territorial waters are being pushed back by the Hellenic Coast Guard and left adrift in small dinghies without any

form of propulsion.<sup>82</sup> In July 2020, BVMN collected a testimony involving a pushback directed by two ships, one with an EU flag and one with a German flag.<sup>83</sup> The respondent stated that the group was told to board the boat with the EU flag, where all their belongings were taken from them. They were subsequently forced into liferafts by the crew of the German flag's boat, and were left stranded as the boats both withdrew. The Turkish Coast Guard arrived 30 minutes later to bring them back to Karaburun in Turkey. While the two boats were never directly identified as Frontex assets, Frontex ships would fly those flags and patrol the waters in that area. Additionally, the German interior ministry's parliamentary secretary has stated that "the German government is aware that the 'Uckermack' was deployed in the Aegean Sea on the 13 May 2020 as part of the Frontex operation 'Poseidon'".<sup>84</sup>

These accounts corroborate with reports from Der Spiegel and Lighthouse Reports, which claim that Frontex is cooperating with the Hellenic Coast Guard in pushing back asylum seekers.<sup>85</sup> Video footage from an incident in the Aegean on July 11 2020 has been analysed by BVMN. This footage clearly shows masked members of the Hellenic Coast Guard engaging in a pushback<sup>86</sup>. The analysis has even identified the vessel as the HCG's "ΛΣ-618". In February 2022, the European Anti Fraud Office (OLAF) presented their report on Frontex to a meeting of the LIBE Committee and the Committee on Budgetary Control. Following this the European Parliament refused to approve the Agency's budget, owing partly to the fact that they had not received the full report.<sup>87</sup> The report has not been published, but leaked extracts illustrate how Frontex has been complicit in pushbacks in the Aegean. Der Spiegel reports that Frontex have covered up pushbacks and in at least one case withdrawn their air surveillance "so not to witness Greece's violations". This surveillance should be used to facilitate the Agency's search and rescue obligations, but is instead doing the opposite and facilitating pushbacks.

The deviation from search and rescue by Frontex can also be witnessed at the personal level. Interviews with Frontex officers deployed in the Aegean have shown a huge shift in their mindsets. Prior to 2020, most officers that were interviewed considered "safety at sea" and "rescue" as their main objectives<sup>88</sup>. One officer is quoted as saying "it was pretty clear that our mission was to pick them [refugees] up at all times". This account is a sharp contrast to officers that were deployed after mid-2020, with one stating "It's very clear that under no circumstances are any migrants to arrive here in this island".<sup>89</sup> Another officer explained "The mission has changed from helping people, the immigrants, bringing them safe to shore, to more like

early warning for the Hellenic Coast Guard. So, we [Frontex] work as an early warning for them [Greek authorities], calling them and then they take care of it."<sup>90</sup>

Frontex themselves have noted in the past the danger that migrants face when crossing the Aegean, stating "with unstable weather conditions and overcrowded and unseaworthy boats the death toll is high".<sup>91</sup> With Frontex now simply acting as an early detection method for the Hellenic Coast Guard, and then observing as people are pushed into life rafts and left adrift with no propulsion or equipment, it is inconceivable to say that Frontex are currently fulfilling their search and rescue obligations under the regulation.

Article 9(2)(f) of Regulation 656/2014 outlines the factors that are to be considered when deciding if a vessel is in need of search and rescue. Some of these factors include the seaworthiness of the vessel, whether the vessel is overcrowded, the presence of a qualified crew, the presence of supplies and the needs of those on board.<sup>92</sup> All of these factors support rescuing those on liferafts being left adrift by Greece in the Aegean, yet instead of rescuing Frontex is withdrawing their assets. This issue is specifically outlined in Recital 38 in the 2019 Regulation, which states "The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants, including in the framework of search and rescue operations".<sup>93</sup> Neither Greece nor Frontex are using their surveillance to rescue these migrants, and thus the regulation is simply not achieving the goal it has set out.

We recommend that the Agency begin using its surveillance mechanisms to facilitate search and rescue operations in the Aegean immediately. Frontex should not merely be an early warning mechanism for the Hellenic Coast Guard, just to then bear witness to illegal pushbacks, but must fulfil its search and rescue obligations under the Regulation.<sup>94</sup> Additionally, we recommend that the FRO should have the competence to trigger investigations into these incidents to decide whether search and rescue should have been given or not. Non-assistance at sea should be punishable according to national and international law. Non-assistance at sea that leads to loss of life should also be punishable in line with national laws and international law.

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# 6

## Accountability: Legal. Civil. Criminal. Democratic.

Frontex has a notorious history of breaching fundamental rights in border zones within the scope of their operations, both within the EU and in third countries, as is evidenced throughout this submission. Examples range from the use of excessive force,<sup>95</sup> to taking part in, covering up, and financing illegal pushbacks.<sup>96,97</sup> The rampant disregard for fundamental rights obligations has recently led to the European Parliament freezing part of the Frontex budget until the situation improves.<sup>98</sup> In spite of clear evidence of these violations, it has proved challenging to hold Frontex and its staff accountable. The new regulation proposed does not include enough elements to establish the Agency's accountability. Despite the rapid expansion of the duties, budget and powers of the Agency, an accountability gap persists which allows violations to occur with impunity.

This chapter will analyse concerns around Frontex's accountability from four angles. Firstly, there are criminal and civil immunities for Frontex staff which allow them to act with impunity within the remit of their operations. Secondly, there are challenges in holding Frontex as an institution accountable as the Agency is shielded from the scrutiny of domestic courts and the European Court of Human Rights (ECtHR). The only forum with jurisdiction to review Frontex is the European Court of Justice (ECJ). Additionally, the Frontex internal complaint mechanism is severely limited and inadequate for remedying complaints in its current formulation. Thirdly, the increasing numbers and variety of actors participating in Frontex activities causes obstacles to establishing true accountability and pursuing judicial remedies. The chapter will close by analysing the political accountability of Frontex.

### **Criminal and civil legal accountability of Frontex staff**

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First we will address the criminal and civil immunities of Frontex staff, with a special focus on its standing corps. Standing corps refers to the new body of border guards reporting directly to the Frontex Headquarters in Warsaw.<sup>99</sup> The corps has four different types of personnel: statutory staff, staff seconded to the agency by Member States

for long-term deployments, staff seconded by Member States for short-term deployments, and staff forming part of the reserve for rapid border interventions (RABITs).<sup>100</sup> The 2019 regulation gave the standing corps executive powers, granting them the jurisdiction to verify a person's identity and/or nationality and to allow or deny them entry into the EU.<sup>101</sup>

Frontex standing corps benefit from criminal and civil immunity from domestic prosecution in host countries when they operate in third states (i.e. non-EU Member States).<sup>102</sup> For standing corps operating within the EU's borders, the 2019 regulation states that all personnel should be treated in the same manner as their host states' officials "with regard to any criminal offences that might be committed against them or by them".<sup>103</sup> The regulation also states that Protocol No 7 on the Privileges and Immunities of the European Union applies to Frontex and its statutory staff.<sup>104</sup> The said protocol issues criminal immunity to EU officials and servants<sup>105</sup> which would grant the first group of the Frontex standing corps (i.e. Frontex statutory staff) immunity for their transgressions in border management even inside EU borders.

In spite of this, the criminal immunities of the standing corps are not absolute. The Frontex Executive Director, or the competent national authorities of the seconded staffs' home states, can waive these immunities. Protocol No 7 on the Privileges and Immunities of the European Union restricts the criminal and civil immunities of the Frontex statutory staff further. Any immunity granted is limited only to tasks performed by staff in their official capacity as Frontex officials.<sup>106</sup> Furthermore, the immunity of EU officials must only be waived when the act of waiving them is not considered contrary to the interest of the Union.<sup>107</sup> It is evident that, in cases where Frontex staff are taking part in fundamental rights violations at the border, ensuring the enforcement of international and EU law, holding perpetrators accountable and bringing justice to victims should fundamentally be in the interest of the EU. However, the decision to waive immunities is ultimately at the discretion of the Frontex Executive Director without proper mechanisms for reviewing the decisions made.



The immunity of Frontex standing corps is not problematic in and of itself, it follows a well-established theory of international institutional law whereby international organisations must benefit from certain privileges in order to carry out their functions without unnecessary obstacles.<sup>108</sup> In many ways, it is logical that the host state surrenders their ability to hold Frontex personnel legally liable, especially when they hold a supervisory role and fulfil the function of ensuring border management is in line with international human rights law. Without these immunities, Member States could easily use criminal or civil proceedings to interfere with Frontex's ability to ensure full respect for fundamental rights. Indeed, there are cases in which host states' border guards have pressured Frontex staff to ensure that transgressions in border operations are not reported.<sup>109</sup>

However, whilst these immunities are justified on paper, this submission evidences how Frontex has not been fulfilling its role of safeguarding human rights law and its implementation by border guards in host states, nor has it been able to ensure that human rights law is upheld even in its own activities.<sup>110</sup> Frontex has positive obligations to ensure respect for fundamental rights in border operations,<sup>111</sup> however this is routinely breached. In light of this, it is not justifiable to grant criminal and civil immunities to the standing corps when they are actively committing crimes in the host state or aiding and abetting criminal activities of domestic authorities in joint border operations. The granted immunities, therefore, only add to the impunity of Frontex operations.

As a result, we recommend that Frontex prioritises its obligations to ensure respect for fundamental rights in border operations, both within EU Member States and in third countries. An independent monitoring mechanism must be implemented that has the power to waive immunities where it is required to justify reparations to the victims. Furthermore, this mechanism must have access to Frontex operational areas and offices where they must be facilitated to make unannounced visits and have access to all documentation available at these sites.

## Frontex Legal Accountability

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In addition to the impunity of Frontex staff, the Agency itself also lacks mechanisms for accountability. As an EU institution, Frontex cannot be subject to judicial review in domestic courts or at the ECtHR. The only forum that can be accessed for this purpose is the ECJ which allows for two main remedies: action for annulment and action

for damages.<sup>112</sup> The specific nature of Frontex's activities means it rarely issues decisions or adopts legally binding acts.<sup>113</sup> Operational acts, such as restricting access to EU territory or engaging in illegal pushbacks, occur in the field and thus Frontex rarely issues any decisions that the ECJ could annul.<sup>114</sup> This renders the first remedy largely inapplicable. The action for damages poses challenges in its application due to the disproportionately high burden of proof it places on applicants and the fact that a direct, exclusive causal link between the wrongful act and the damages must be established.<sup>115</sup> The mere participation of a Member State or a third state in the Frontex operations can break this causal link. Difficulties related to proceedings at the ECJ are further demonstrated by the fact that only three cases have been submitted to the Court.<sup>116</sup>

Another avenue for redress is through the Frontex complaint mechanism, where individuals can report to Frontex directly about breaches of their fundamental rights.<sup>117</sup> Before the competent bodies can investigate violations of fundamental rights, the FRO must find them admissible.<sup>118</sup> Amongst other qualifications, the complaints must be substantive. This obliges the FRO to analyse the factual situation and substance of the complaint.<sup>119</sup> However, the independence of the FRO has also been called into question as these officers are hired directly by the Executive Director and employed by the Agency.<sup>120</sup> Whilst the Frontex complaint mechanism has improved since the implementation of the 2016 regulation, it is still inadequate in its function of fully securing and safeguarding fundamental rights. The EU Ombudsman started proceedings against the complaints mechanism, finding that only 22 admissible complaints had been filed by January 2021. In spite of this finding, the Ombudsman's office did not continue its investigation further as they were satisfied with Frontex's positive replies to their recommendations.<sup>121</sup> This does not, however, equate to the complaints mechanism functioning adequately at present. There is no appeal mechanism for decisions taken by the FRO on whether complaints are admissible or not. The only possibility to appeal an inadmissibility decision is to return to the FRO and demonstrate the presence of new evidence on the case.<sup>122</sup> Furthermore, there are doubts over how well the complaint mechanism works in third states and if FROs are fully capable of fulfilling their mandate. For instance, Frontex FROs drafted a Memorandum of Understanding between the FRO and the Albanian Ombudsman to "coordinate the coexistence of Frontex Complaints Mechanism with the national mechanisms used during operational activities in Albania."<sup>123</sup> Its timing raises multiple questions. Why was it drafted only in 2021, when

Frontex became operational in Albania in 2019? What were the shortcomings the MoA was aiming to solve?

Ultimately, when the FRO does find a complaint admissible, it is referred to other departments to complete an accountability assessment. This results in Frontex statutory staff and the Executive Director taking overall responsibility for complaints.<sup>124</sup> In the case of seconded personnel or host state border guards, complaints are the responsibility of the relevant state authorities<sup>125</sup> and the Agency holds little to no jurisdiction on the matter.

Furthermore, it is important to note that the mechanism does not accept anonymous complaints which constitutes a further obstacle for people-on-the-move who, especially whilst undocumented, live in fear of reprisals and illegal pushbacks if they are to speak out against human rights violations perpetrated by Member States.

We recommend the establishment of a fully independent authority to initiate and carry out fundamental rights violations investigations with the Executive Director completely removed from the process. Moreover, there should be an avenue for appeals of the FROs inadmissibility decisions, such as a new independent board of appeals and actors from CSOs should be able to submit complaints on behalf of POM who are at risk of reprisals based on their engagement with the mechanism.

## **Problems related to multiple actors and interoperability**

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The highly complicated nature of Frontex operations and the involvement of multiple different actors further enhances the accountability gap in Frontex operations. Any deployment can involve Frontex staff, seconded staff, the host states' border guards, private parties and other EU bodies.<sup>126</sup> Each of these have diverse legal obligations and are subject to the jurisdictions of various courts and tribunals.<sup>127</sup> This creates an added barrier for victims of fundamental rights violations in the process of allocating responsibility for the violations and beginning proceedings to the correct forum and against the correct subject.<sup>128</sup> This is further escalated by the lack of transparency within the Agency, highlighted most recently by the events leading to Leggeri's resignation. The powers, authorities and tasks of the different departments of Frontex are unclear, and materials on the topic are scarce.<sup>129</sup> Similarly, information about which parties are present during violations

is not always publicly available.<sup>130</sup> This becomes even more problematic in third states, for example the status agreements between the EU and Albania and the EU and Serbia state that Frontex officials are not obliged to give evidence as witnesses in criminal or civil cases.<sup>131</sup> This creates a further obstacle towards gathering the evidence required for judicial remedies.

In addition, interoperability of the different actors in operations throws up questions regarding the attribution of responsibility for Frontex operational activities. As researcher and academic Dr. Fink argues, the different actors involved are "passing the buck" between each other, shielding themselves by blaming other actors.<sup>132</sup> As a result, it is even more difficult to establish accountability for violations. Whilst the 2019 regulation attributes liability for damages occurring under Frontex operations to the host state,<sup>133</sup> this preserves the option of deniability for different actors and allows Frontex to deflect criticism over its conduct with the argument that misconduct is not attributed to the Agency<sup>134</sup> as operational staff are working under the tactical command and control of the host state.<sup>135</sup> This presents further obstacles to addressing fundamental rights violations at the borders<sup>136</sup> and, at the same time, completely disregards Frontex's duty to ensure that host states are acting in compliance with fundamental rights law.

We recommend that clearer accountability mechanisms are established at the EU level for Frontex staff that are present in host states and engaging in policing activities. Tracing mechanisms must be established in which responsibility can be attributed and subsequent methods of redress can be identified and followed in each case of human rights violations that concern actors on the EU level i.e. Frontex staff.

## **Political accountability**

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On a political level, Frontex is accountable to the European Parliament and to the Council.<sup>137</sup> The Agency also has a management board that offers some political oversight over the Executive Director. As an EU body, Frontex is subject to OLAF and the Ombudsman's scrutiny, and both bodies have started proceedings against Frontex<sup>138</sup> which have yielded limited results. The final report of OLAF's year-long investigation has not been disclosed to the public, and it was only shared with the LIBE committee of the European Parliament.<sup>139</sup> However, the report led to the resignation of the Frontex Executive Director.<sup>140</sup> The European Ombudsman has issued recommendations to Frontex to increase its accountability and

transparency. While Frontex has also cooperated with the European Ombudsman, its record is far from perfect. Frontex refused to implement the ombudsman's recommendations on its complaint mechanism or publish certain confidential documents.<sup>141</sup> Insofar, these mechanisms for political accountability have not been sufficient to deal with Frontex's misconduct. Ultimately, any real accountability mechanisms that Frontex is currently facing from EU bodies are the result of external reports and investigations by CSOs and the media that have brought violations to light through FOIs and leaked information.

Most attempts to initiate investigations or establish accountability go through the Frontex management board which consists of one representative of each Member State and two representatives of the Commission, each with a right to vote.<sup>142</sup> The board may also opt to invite experts from the European Parliament to its meetings.<sup>143</sup> The functions of the board include appointing Frontex staff, adopting decisions, exercising disciplinary actions of the Executive Director and acting as a link between Frontex and its supervisory bodies. I.e. the European Parliament and the Council.<sup>144</sup> As a result, the board should be in a prime position to ensure that the Executive Director follows fundamental rights obligations as they are prohibited from seeking or taking "instructions from any government or from any other body" apart from the management board and the appropriate supervisory bodies of the European Union.<sup>145</sup> However, evidence of repeated fundamental rights violations has shown that the management board is not acting adequately to promote the cessation of operations that incur vi-

olations. Furthermore, the Executive Director has refused to suspend Frontex activities in countries where there are ongoing, systematic fundamental rights violations, as obligated by Article 46 of the 2019 regulation.<sup>146</sup>

The other accountability bodies have also proved to be limited with their role mostly budgetary.<sup>147</sup> After the widespread breaches of fundamental rights came to light, the European Parliament established the Frontex Scrutiny Working Group to increase its scrutiny over Frontex.<sup>148</sup> The Working Group found serious shortcomings in the protection of fundamental rights that was exacerbated by the culture of secrecy and confidentiality within Frontex.<sup>149</sup> Although the Parliament has now used its budgetary powers to hold Frontex accountable,<sup>150</sup> this is not sufficient in and of itself to ensure the cessation of violations and abuses. Other mechanisms the Parliament might use would be through Frontex's annual report and other information provided by Frontex.<sup>151</sup> However, this proves difficult in that Frontex has intentionally misrepresented information to the European Parliament to whitewash its own image<sup>152</sup> meaning that any investigations launched in response to the reported information will collapse if that information is found to be false.

We recommend an increased mandate for all institutions at the EU level that have oversight over Frontex operations. These cannot be limited only to budgetary control, and should be able to trigger investigation and issue binding recommendations to the Agency that must be followed and will be routinely reviewed during their implementation.

# 7

## Culture of Frontex

The professional and operational culture of Frontex poses a serious threat to the overall respect of fundamental rights by the Agency. Gil Arias Fernández, former deputy director at Frontex, has expressed alarm at the possible extremist right-wing infiltration of Frontex.<sup>153</sup> This should be taken into consideration, as the domination of extremist views in Frontex would undoubtedly lead to even more harm to its capacity to ensure respect for fundamental rights. As argued in this submission, there is a lack of external oversight over the work of Frontex which requires rigorous internal safeguards and monitoring mechanisms. Without either of these, Frontex is at risk of being

corrupted from the inside.

Whilst the change of the Executive Director was welcomed, it cannot be expected that a shift in leadership will remedy the issues plaguing the institution. Leggeri's dismissal was fundamental in promoting a wide range of different approaches within the Agency, but the evidence makes clear that Leggeri did not act alone in enforcing a culture of impunity and extremism in Frontex. Media reports suggest that Frontex officials were more afraid of the reputational damage that pushbacks could cause to the agency rather than the potential of endangering human lives with

their illegal conduct.<sup>154</sup> Furthermore, Frontex staff were reported to have claimed that FROs are not “real Frontex colleagues”.<sup>155</sup>

The lack of transparency is another salient issue inherent to Frontex’s working culture. The culture of secrecy is another problem inherent to Frontex’s working culture. They have a notorious history of declining Freedom of Information requests.<sup>156</sup> Even when the information is released, documents are often redacted to be unusable.<sup>157</sup> The problems of secrecy do not only exist towards external actors. Frontex is also shielding information from its FROs.<sup>158</sup> It seriously endangers FROs’ capabilities of fulfilling their mandate and keeps Frontex’s illegal conduct hidden. Additionally, Frontex is using external private lawyers to fight appeals against their decisions to decline access to their documents.<sup>159</sup> Private lawyers are expensive, and their use can intimidate others from trying to fight the Frontex refusals. Losing the appeal in the European Courts for access to documents can leave the applicant with enor-

mous legal bills from Frontex lawyers.<sup>160</sup> These can be impossible to cover by small grass-root activist organisations or NGOs, further contributing to the Frontex culture of unaccountability and secrecy.

We recommend that Frontex hold an official investigation into the culture that was revealed in the findings of the OLAF report so that significant individuals engaging with and perpetuating this culture are removed from the Agency to ensure it does not slide further towards extremism. Frontex must ensure transparency and to the best of their possibilities access to their documents. When confidentiality justifies the restriction of the information the FROs must still get access to all the necessary documents. Finally, Frontex must stop using high legal fees as a punitive measure against transparency requests and appeals.

# 8



## Data Protection Concerns:

### Photographing people on the move without consent with personal mobile phones

In at least 12 of its testimonies, BVMN respondents stated that they were photographed after being apprehended by Frontex officers. They stated that Frontex officers took photos of them on the officers’ smartphones, without asking for consent or communicating the purpose for collection and the manner of processing the data. Upon inquiries, the photographing was not part of an identification or registration procedure, as the photos were sometimes taken of a whole group of people. Photos were also taken immediately after apprehension in an informal setting. When photos taken were of individuals, the process was not accompanied by registration (see Annex 2 for a table of testimonies when respondents were photographed by Frontex officers).

Frontex, as an EU Agency, is bound by the Regulation 2018/1725 on the processing of personal data by the Union institutions, bodies, offices and agencies<sup>161</sup>. Under Article 86(1), Frontex shall apply the Regulation when processing personal data. The Regulation prescribes how data is collected, stored, processed and transmitted by EU institu-

tions, agencies, bodies, offices. Its main purpose is to ensure the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Union institution or body.

According to its data protection obligations, Frontex officers should not be allowed to take photographs of people on the move with their smartphones, potentially their personal mobile devices. More so, they should not store, or transmit the photographs. Regulation 2018/1725 states that data can be lawfully processed in “the performance of a task carried out in the public interest or in the exercise of official authority vested<sup>162</sup>”. Frontex officers have to justify that the practice is a task regulated by an EU act, that it is carried out in public interest, as well as that it has to be in full respect of other conditions, such as consent, information provision, ensuring access for the data subject.

Recording people’s faces without their consent is also not in line with the Regulation. Article 5 states that in order for the processing of data to be law-

ful, the subject must have given his or her consent. People on the move were also not informed on the available pathways for them to have access to their data, including the ability to request its deletion.

Based on the data of the testimonies collected by BVMN, this practice is not localised in one operational area. The practice has been recorded at the Greek-Turkish land and sea borders, Bulgarian-Turkish border, Hungarian-Serbian border, and at the Albanian-Greek border (see Annex 2). This demonstrates that photographing people on the move upon apprehension, without consent and information as to how the data will be processed and how the data subjects can access it. More so, the photographs are potentially taken with the private mobile phones of the officers’.

In order to ensure the Agency is complying with its obligation, BVMN notified the Frontex Data Protection Officer (DPO). Frontex has a designated Data Protection Officer<sup>163</sup>. Regulation 2018/1725 spe-

cifically states that “each Union institution or body shall designate a data protection officer” (Article 43)<sup>164</sup>. On October 29, 2021 the DPO was made aware and commenced its own investigation into the matter one month later. To this day, the investigation has not been concluded. The DPO notified BVMN that due to the scarce resources made available to her office, the DPO was unable to finalise the investigation as other matters had to be prioritised. It is concerning to assess that yet another office within Frontex in charge of ensuring respect for fundamental rights has been allocated insufficient resources and staff and cannot fully perform its tasks. Introduced by the 2016 Regulation, the Fundamental Rights Officer is meant to supervise the Agency’s compliance with fundamental rights. Since its creation and until 2021 with the Frontex Scrutiny Working Group providing scrutiny over the Agency, the FRO’s work was hampered by Frontex by intentionally failing to provide sufficient staff and resources to ensure its functioning<sup>165</sup>.

# 9

## Violations of National Criminal Law and Procedure - debriefing interviews

On September 21, 2022, the European Ombudsman (EO) commenced an investigation into Frontex’s respect for migrants rights in the context of debriefing interviews. The EO will scrutinise how Frontex organises and conducts debriefings of migrants detained in Spain, in Centros de Atención Temporal de Extranjeros. The EO investigation will also extend to the manner in which the Fundamental Rights Officer’s dealt with concerns regarding debriefing raised previously to them and the activities of the Fundamental Rights Monitors<sup>166</sup>. The investigation was commenced after being prompted by a Frontex expert and a Spanish lawyer.

Debriefings are alleged voluntary interviews conducted by Frontex officers with people on the move upon arrival. They record the personal data of the persons, from name, nationality, data of birth, family composition, ethnic group, level of education, languages spoken. Questions cover reasons for fleeing the country of origin, the journey traveled and interactions with smugglers, including amounts paid for the journey and the identity of the smuggler. A Frontex debriefing officer provides support to national authorities to understand smuggling networks through volun-

tary interviews with migrants<sup>167</sup>. Debriefing officers work closely with the host authorities and with Europol, and routinely pass on data of individuals suspected of ‘cross-border crimes’<sup>168</sup>. The information collected is meant to feed the risk analysis reports comprised by the Agency.

Inquiries made by experts might indicate that debriefings might not be as “voluntary” as proclaimed and that they are in fact covert interrogations. Claims also indicate that the debriefing interviews have become means for identifying suspects of smuggling. Specifically, in Spain, debriefing interviews seem to be used in criminal prosecutions against boat drivers charged with smuggling. During the interviews, declarations by people on the move becomes ‘evidence’ to incriminate others travelling on the same boat, or even themselves<sup>169</sup>. More so, in Spain, people are detained for 72 hours post arrival in Centros de Atención Temporal de Extranjeros, indicating that as detainees they might be unaware that they are not obligated to participate in a debriefing interview<sup>170</sup>.

Equally, people do not have access to legal aid

as their detention is not as a result of a criminal charge. In Spain, as well as in other jurisdictions, people are entitled to access legal aid or have a lawyer present when questioned by the police. This safeguard, including the right to remain silent, also extends to “voluntary police interviews”. Debriefing interviews are not conducted with full respect for such safeguards. In Spanish law detainees are entitled to legal aid. Therefore, whether Frontex is interviewing a potential suspect of a criminal act, a witness, or a victim, the right to legal aid must be guaranteed as the law does not restrict legal aid on profile nor types of statements, but on the detainee’s condition. The experts who submitted the complaint detail the protection offered in Spain to detainees:

*The Spanish Constitutional Court details three key functions that lawyers play in the context of detention. First, their mere physical presence ensures that “detainees’ constitutional rights are respected, that they are not subject to coercion or any treatment against their dignity.” Second, lawyers confirm the veracity of the statement as taken by the authorities. Third, they have an essential defence role when providing “technical advice during the interrogation, including the detainee’s right to remain silent.” In addition, the Supreme Court specifies that the function of the lawyer in this area is to be “guarantor of the physical integrity of the detainee, and to avoid self-incrimination due to ignorance of the rights that assist him.”<sup>171</sup>*

The inquiries revealed that Frontex acts outside of the laws of the national states where they operate. Most importantly, Frontex officers are non-compliant with national criminal law and the safeguards guaranteed to suspects of a crime and detainees. While experts were able to uncover the situation in Spain, debriefing interviews are deployed in various border areas exercising the same mandate. Debriefers also work close to and in registration and reception centres where people on the move are detained for a period of time until identified and registered.

Frontex is in violation of its Regulation that states the following:

Article 82(3): While performing their tasks and exercising their powers, members of the teams shall fully ensure respect for fundamental rights and shall comply with Union and international law and the national law of the host Member State. [emphasis added]

An investigation into all cases that resulted in criminal prosecution of people on the move as a result of debriefing interviews should immediately be conducted. Frontex officers must refrain from conducting covert interrogations under the guise of debriefings effective immediately. Frontex debriefing officers who have breached the national law of the host Member State should be subjected to sanctions.

# 10 Data Gathering

In 2016, Frontex began collecting the personal data of those suspected of smuggling in EU Member States.<sup>172</sup> Named the Processing Personal Data for Risk Analysis (PeDRA), it was a way for Frontex and Europol to share data after the 2015 attacks in Paris by Islamic extremists.<sup>173</sup> In November 2021 it was proposed that this operation be expanded greatly, to include additional data from asylum seekers, including sexual orientation as well as genetic data to be shared with Europol. Furthermore, this would target not only those suspected of cross-border crime, but also witnesses and victims of these crimes.<sup>174</sup> Frontex has been heavily

criticised for this, with some legal experts stating this change will have little to no effect on crime, and will only further impede people’s right to seek asylum.<sup>175</sup>

Processing this type of personal data falls under the ‘special categories’ to which processing is prohibited, outlined in Article 9 GDPR<sup>176</sup>. Frontex has not made it sufficiently clear as to why one of the exceptions to this should arise.

Frontex has allegedly sidelined the EDPS, failing to consult them in the matter of expanding PeDRA as it was not “mandatory”.<sup>177</sup> Additionally, concerns

raised by the DPO seemed to have been ignored by the agency. When BIRN asked for the EDPS's opinion on the matter, they responded they were "concerned that the rules adopted do not specify with sufficient clarity how the intended processing will be carried out, nor define precisely how safeguards on data protection will be implemented."<sup>178</sup> Furthermore, it said that there may be "severe risks for fundamental rights" when processing the data of such vulnerable categories of people.

On 17 August 2022, a parliamentary question was

raised under Rule 138 to the Commission raising concerns regarding this expanded surveillance procedure and asking for clarification as to whether data protection laws are actually being complied with.<sup>179</sup> A reply is still pending.

We recommend that this expansion of PeDRA be halted. The agency has not cooperated with either the DPO or the EDPS, and the legality of the proposed changes as well as how effective it will be in its reported purpose of combating cross-border crime remains to be seen.

# 11 Transparency

Frontex has been engulfed in issues of transparency since its foundation in 2004, and has only recently begun to conform to the most basic of transparency principles under EU law. This chapter will outline Frontex's shortcomings regarding transparency, firstly discussing the Agency's public access to documents (PAD) procedure, then the European Ombudsman's ongoing investigation into Frontex, and finally making recommendations so the Agency can fulfil its transparency obligations.

The principle of the transparency and the rights of individuals to access public documents is set out both in Article 15 TFEU<sup>180</sup> and in Article 42 of the Charter of Fundamental Rights of the EU.<sup>181</sup> This was implemented by Regulation 1049/2001<sup>182</sup>, to which Frontex is currently bound, as emphasised by Article 114 of the European Coastguard Agency Regulation in question.

On 2 March 2022, Frontex launched its public register of documents<sup>183</sup>, after a complaint made by Statewatch to the European Ombudsman in 2019.<sup>184</sup> Article 11 of Regulation 1049/2001 requires every EU institution to have a public register of documents available in electronic form, with emphasis on the need to establish one as soon as possible.<sup>185</sup> Frontex was 18 years late in this obligation. Statewatch has reported that this current public register is incomplete, and that some documents that were available on the previous register cannot be found in the new one.<sup>186</sup> Additionally, many documents that were made available through public access requests cannot be found on the register either<sup>187</sup>, which is in conflict with the decision given by the European Ombudsman in February 2021. The decision emphasised that the register be "complete", and should "at least refer to the existence of other types of documents not

listed. This also implies that no documents should be excluded from the register automatically".<sup>188</sup> Furthermore, the Ombudsman found that Frontex is "legally required" to publish an annual report on the "number of sensitive documents it holds that are not recorded in its register of documents" referencing Article 17 Regulation 1049/2001.<sup>189</sup> Frontex has not fulfilled this obligation. The Agency responded that they would include this in their "Consolidated Annual Activity Report of 2020". In this report, it is stated "Detailed information is provided in the Annual report on public access to documents (Annex 10)", however no such annex is attached.<sup>190</sup>

Frontex has had a repeated history of denying PAD, or heavily redacting them so the contents cannot be deciphered in any meaningful way.<sup>191</sup> Regulation 1049/2001<sup>192</sup> refers to exceptions for PAD in the name of "protection of public interest as regards public security", which Frontex frequently uses as reasoning for not providing documents, however it seems the Agency is not applying this principle consistently, or even correctly. In May 2020 a request from Statewatch to access a certain document was denied supposedly due to this principle, however in June of the same year the document was given (with redactions) to another NGO who submitted a similar request.<sup>193</sup> The Agency may be using these redactions and denials to hide their own misconduct and violations of fundamental rights. In 2016, Frontex accidentally released the unredacted version of a serious incident report involving the use of firearms during Operation Poseidon in the Aegean in 2014.<sup>194</sup> The report described the Hellenic Coast Guard using firearms; first firing warning shots, then shooting the engine of the migrant vessel.<sup>195</sup> The redacted version of the report hid all mentions of firearms, even redacting the subject of the report, 'Use of

firearms’.

Frontex as an organisation has been systematically designed to be intransparent. This is evident even in the Agency’s so-called “Transparency Office”, which the management board has been referring to since 2016.<sup>196</sup> In 2020, a year where the Agency attempted to recruit over 700 border personnel<sup>197</sup>, a Frontex spokeswoman confirmed that the Transparency Office “ has no budget allocation” and “relies on the entire Agency to contribute”.<sup>198</sup>

On 15 July 2022, the European Ombudsman opened an own-initiative inquiry into how Frontex handles the PAD procedure.<sup>199</sup> The Ombudsman called on Frontex to clarify on its repeated late registration of document requests, as well as the suspension of statutory time limits set out in Regulation 1049/2001.<sup>200</sup> Frontex replied on 20 September 2022, and in their letter essentially blamed the public for the Agency’s violations, stating that requests are not “precise” enough to deal with them in a manner harmonious with the Regulation.<sup>201</sup> The Ombudsman replied the same day, stating that the Agency did not include any specifics in their letter, and asked the Agency to cite the relevant case law that they refer to.<sup>202</sup> Further correspondence is pending.

We recommend that the Agency immediately updates its register of public documents to include all those required by Regulation 1049/2001. Additionally, public access to documents requests should be handled by trained members of the Transparency Office, and not divided between members of different departments of the Agency with varying degrees of competence in the area.<sup>203</sup> To achieve this, the Transparency Office should receive its own budget as well as additional resources so that the Agency has a team whose sole purpose is to comply with transparency obligations under EU law.

Frontex Scrutiny Working Group to increase its scrutiny over Frontex.<sup>204</sup> The Working Group found serious shortcomings in the protection of fundamental rights that was exacerbated by the culture of secrecy and confidentiality within Frontex.<sup>205</sup> Although the Parliament has now used its budgetary powers to hold Frontex accountable,<sup>206</sup> this is not sufficient in and of itself to ensure the cessation of violations and abuses. Other mechanisms the Parliament might use would be through Frontex’s annual report and other information

provided by Frontex.<sup>207</sup> However, this proves difficult in that Frontex has intentionally misrepresented information to the European Parliament to whitewash its own image<sup>208</sup> meaning that any investigations launched in response to the reported information will collapse if that information is found to be false.

We recommend an increased mandate for all institutions at the EU level that have oversight over Frontex operations. These cannot be limited only to budgetary control, and should be able to trigger investigation and issue binding recommendations to the Agency that must be followed and will be routinely reviewed during their implementation.



# Endnotes

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1 The term “people on the move”, includes all people who, for various reasons, leave their country of origin and flee from circumstances there. It seeks to broaden the definition of refugees taking into account the dramatic impacts of climate change, economic and social inequality, political authoritarianism, terrorism and organized crime. Furthermore, the term specifically recognizes people in the process of fleeing who are in transit or stranded. Looking specifically at the situation in the Western Balkans, a majority of people having fled their country of origin, seek to continue their journey to seek safety in the European Union.

2 Regulation (EU) 2016/1624 of the European Parliament and the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC. OJ L 251, 16.9.2016, p. 1–76. Available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1624>>. Accessed 03/10/2022.

3 Regulation 2019/1896, Article 46 (4)

4 CJEU. Judgment of the Court (Grand Chamber) of 17 December 2020. European Commission v Hungary. Available at:<<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0808&from=en>> Accessed 03/10/2022

5 Frontex. Frontex Executive Director Decision on Standard Operating Procedure - mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities. 25/01/2022. Available at < <https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=10781> > Accessed 03/10/2022

6 Frontex. Frontex Executive Director Decision on Standard Operating Procedure - mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities. 25/01/2022. Available at < <https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=10781> > Accessed 03/10/2022

7

8 Lighthouse Reports. “We were slaves”. The Greek police are using foreigners as “slaves” to forcibly return asylum seekers to Turkey. 28/06/2022. Available at: < <https://www.lighthousereports.nl/investigation/we-were-slaves/> > Accessed on 03/10/2022

9 Giorgos Christides, Klaas van Dijken, Bashar Deeb, Steffen Lüdke, Mohannad al-Najjar, Maximilian Popp, Jack Sapoch, Tomas Stadius and Nicole Vögele for der Spiegel. Systematic Abuses at EU External Border Greek Police Coerce Refugees to Commit Illegal Pushbacks. Available at: < <https://www.spiegel.de/international/europe/systematic-abuses-at-eu-external-border-greek-police-coerce-refugees-to-commit-illegal-pushbacks-a-32988662-06c8-420d-a2c9-fde426bef1b1> > Accessed on 03/10/2022

10 By Tomas Stadius , Thomas Eydoux , Arthur Weil-Rabaud , Marceau Bretonnier , Elisa Bellanger , Adrien Sahli , Marina Rafenberg (Athens (Greece) correspondent) and Le Monde’s video desk for Le Monde. Video investigation: Greek police uses ‘slave’ migrants to push back other migrants. Available at: <[https://www.lemonde.fr/en/international/article/2022/06/28/video-investigation-into-the-greek-police-s-use-of-slave-migrants-to-push-back-other-migrants\\_5988235\\_4.html](https://www.lemonde.fr/en/international/article/2022/06/28/video-investigation-into-the-greek-police-s-use-of-slave-migrants-to-push-back-other-migrants_5988235_4.html) > Accessed 03/10/2022

11 BVMN. Letter to Frontex. 01/07/2022. Available at < <https://www.borderviolence.eu/letter-of-concern-to-frontex-2/> > Accessed on 03/10/2022

12 BVMN. Briefing for Policymakers: Illegal pushbacks from islets in the Evros River continue. 27/07/2022. Available at < <https://www.borderviolence.eu/20664-2/> > Accessed 03/10/2022

13 BVMN. Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece. 01/07/2022 Available at < <https://www.borderviolence.eu/20548-2/> > Accessed on 03/10/2022

14 Lighthouse Reports. “We were slaves”. The Greek police are using foreigners as “slaves” to forcibly return asylum seekers to Turkey. 28/06/2022. Available at: < <https://www.lighthousereports.nl/investigation/we-were-slaves/> > Accessed on 03/10/2022

15 By Tomas Stadius , Thomas Eydoux , Arthur Weil-Rabaud , Marceau Bretonnier , Elisa Bellanger , Adrien Sahli , Marina Rafenberg (Athens (Greece) correspondent) and Le Monde’s video desk for Le Monde. Video investigation: Greek police uses ‘slave’ migrants to push back other migrants. Available at: <[https://www.lemonde.fr/en/international/article/2022/06/28/video-investigation-into-the-greek-police-s-use-of-slave-migrants-to-push-back-other-migrants\\_5988235\\_4.html](https://www.lemonde.fr/en/international/article/2022/06/28/video-investigation-into-the-greek-police-s-use-of-slave-migrants-to-push-back-other-migrants_5988235_4.html) > Accessed 03/10/2022

16 Giorgos Christides, Klaas van Dijken, Bashar Deeb, Steffen Lüdke, Mohannad al-Najjar, Maximilian Popp, Jack Sapoch, Tomas Stadius and Nicole Vögele for der Spiegel. Systematic Abuses at EU External Border Greek Police Coerce Refugees to Commit Illegal Pushbacks. Available at: < <https://www.spiegel.de/international/europe/systematic-abuses-at-eu-external-border-greek-police-coerce-refugees-to-commit-illegal-pushbacks-a-32988662-06c8-420d-a2c9-fde426bef1b1> > Accessed on 03/10/2022

17 Katy Fallon, Klaas van Dijken, Bashar Deeb, Jack Sapoch and Mohannad Al-Najjar for The Guardian. Revealed: Greek police coerce asylum seekers into pushing fellow migrants back to Turkey. Available at <<https://www.theguardian.com/global-development/2022/jun/28/greek-police-coerce-asylum-seek->

ers-pushbacks-migrants-turkey > Access on 03/10/2022

18 [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

19 Statewatch. EU: Tracking the Pact: Plan for Frontex to deploy "vessels, surveillance equipment, and carry out operational tasks" in Senegal and Mauritania. 21/07/2022. Available at <<https://www.statewatch.org/news/2022/july/eu-tracking-the-pact-plan-for-frontex-to-deploy-vessels-surveillance-equipment-and-carry-out-operational-tasks-in-senegal-and-mauritania/>> Accessed on 03/10/2022

20 CJEU. Judgment of the Court (Grand Chamber) of 17 December 2020. European Commission v Hungary. Available at:< <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0808&from=en> > Accessed 03/10/2022

21 The International Criminal Court. Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya. 07/09/2022. Available at <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint-0>> Accessed on 03/10/2022

22 Lighthouse Report. Frontex in the Central Mediterranean. The EU borders agency plays a direct role in the Libyan coast guard's interception operations contrary to previous denials. 12/04/2021. Available at: < <https://www.lighthousereports.nl/investigation/frontex-in-the-central-mediterranean/> > Accessed on 03/10/2022

23 By Sara Creta, Bashar Deeb, Klaas van Dijken, Emmanuel Freudenthal, Steffen Lüdke and Maximilian Popp for Der Spiegel. How Frontex Helps Haul Migrants Back To Libyan Torture Camps.29/04/2021. Available at < <https://www.spiegel.de/international/europe/libya-how-frontex-helps-haul-migrants-back-to-libyan-torture-camps-a-d62c3960-ece2-499b-8a3f-1ede2eaefb83> > Accessed on 03/10/2022

24 Liberation. Migrants. Le jeu trouble de Frontex en Méditerranée. 29/04/2021. Available at: [https://www.liberation.fr/international/europe/le-jeu-trouble-de-frontex-en-mediterranee-20210429\\_TDJB7XEF5HLRAA-JKULIQHNI2U/](https://www.liberation.fr/international/europe/le-jeu-trouble-de-frontex-en-mediterranee-20210429_TDJB7XEF5HLRAA-JKULIQHNI2U/) > Accessed on 03/10/2022

25 Von Shafagh Laghai und Lara Straatmann for tagesschau. Die EU-Grenzschutzagentur Frontex spielt eine entscheidende Rolle bei den Rückführungen von Flüchtlingen nach Libyen. Das geht aus gemeinsamen Recherchen des ARD-Magazins Monitor mit "Lighthouse-Report", dem "Spiegel" und der Zeitung "Libération" hervor. Available at <<https://www.tagesschau.de/investigativ/monitor/frontex-rueckfuehrungen-libyen-101.html> > Accessed on 03/10/2022

26 ECRE. Med: Investigations Reveal Frontex' Complicity in Interceptions and Returns to Horrors in Libya. 30/04/2021. Available at <<https://ecre.org/med-investigations-reveal-frontex-complicity-in-interceptions-and-returns-to-horrors-in-libya/>> Accessed on 03/10/2022

27 The European Parliament. Briefing. European Parliament scrutiny of Frontex. September 2022. Available < [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf) > Accessed on 03/10/2022.

28 European Parliament. LIBE Committee on Civil Liberties, Justice and Home. Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. Rapporteur: Tineke Stri. 14/07/2021. Available at < [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf) > Accessed on 03/10/2022

29 European Parliament. LIBE Committee on Civil Liberties, Justice and Home. Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. Rapporteur: Tineke Stri. 14/07/2021. Available at < [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf) > Accessed on 03/10/2022

30 Frontex. Returns and Reintegration. < <https://frontex.europa.eu/we-support/returns-and-reintegration/> > Accessed 03/10/2022.

31 Management Board Decision 57/2021 on the appointment of the Deputy Executive Director for Returns and Operations in the European Border and Coast Guard Agency < <https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=9315> > Accessed 03/10/2022.

32 Frontex. News. First Frontex-led return operation. 29/01/2022. <<https://frontex.europa.eu/media-centre/news/news-release/first-frontex-led-return-operation-hVqUXN>> Accessed 03/10/2022

33 Statewatch. "Regaining control": new powers for Frontex. <<https://www.statewatch.org/deportation-union-rights-accountability-and-the-eu-s-push-to-increase-forced-removals/frontex-the-eu-s-deportation-machine/regaining-control-new-powers-for-frontex/>> Accessed 03/10/2022

34 Frontex Consultative Forum on Fundamental Rights. Eighth Annual Report. 2020 <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_Annual\\_Report\\_2020.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_Annual_Report_2020.pdf) > Accessed 03/10/2022

35 Frontex. News. EU Commissioner Johansson opens first High Level Network for returns. 09/09/2022. <<https://frontex.europa.eu/media-centre/news/news-release/eu-commissioner-johansson-opens-first-high-level-network-for-returns-BGbbHm> > Accessed 03/10/2022

36 Frontex Consultative Forum on Fundamental Rights. Eighth Annual Report. 2020 <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_Annual\\_Report\\_2020.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_Annual_Report_2020.pdf) > Accessed 03/10/2022

37 Frontex. Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex. 01/07/2021. <<https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog>.

php?card-post-id=2722&document-post-id=6436 > Accessed 03/10/2022

38 Frontex Consultative Forum on Fundamental Rights. Seventh Annual Report. 2019. <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_annual\\_report\\_2019.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf)> Accessed 03/10/2022

39 Refugee Support Aegean. Analysis: Rights denied during Greek asylum procedure suspension. April 2020. <<https://rsaegean.org/en/analysis-rights-denied-during-greek-asylum-procedure-suspension/>> Accessed 03/10/2022

40 ECRE. Asylum Information Database . Available at <[https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR\\_2021update.pdf](https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf)> . Accessed on 03/10/2022

41 Mobile Info Team. Lives on Hold. Access to Asylum on Mainland Greece, Crete and Rhodes. November 2021. Available at < [https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR\\_2021update.pdf](https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf)> . Accessed on 03/10/2022

42 Frontex Consultative Forum on Fundamental Rights. Seventh Annual Report. 2019. <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_annual\\_report\\_2019.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf)> Accessed 03/10/2022

43 CJEU. Judgment of the Court (Grand Chamber) of 17 December 2020. European Commission v Hungary. Available at:< <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0808&from=en>> Accessed 03/10/2022

44 Frontex. Situation at the Hungarian - Serbian border. 2016. Published by the HUngarian Hel-sinki Monitor. October 2016. Available at: <<https://helsinki.hu/wp-content/uploads/10.-FRO-observations-HU-SR-border-October-2016-Redacted.pdf>> Accessed 03/10/2022

45 Hungarian Helsinki Committee. Letter addressed to Frontex ED Fabrice Leggeri. Subject: Pres-ence of Frontex in Hungary. 07/01/2022. Available at <[https://helsinki.hu/wp-content/uploads/HHC\\_Fron-tex\\_07012021.pdf](https://helsinki.hu/wp-content/uploads/HHC_Fron-tex_07012021.pdf)> Accessed on 03/10/2022

46 Frontex Consultative Forum on Fundamental Rights. Seventh Annual Report. 2019. <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_annual\\_report\\_2019.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf)> Accessed 03/10/2022

47 UNHCR. Press Releases. Hungary's coerced removal of Afghan families deeply shocking. 08/05/2019. Available at <<https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-fam-ilies-deeply-shocking.html>> Accessed on 03/10/2022

48 UNHCR. Press Releases. Hungary's coerced removal of Afghan families deeply shocking. 08/05/2019. Available at <<https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-fam-ilies-deeply-shocking.html>> Accessed on 03/10/2022

49 Nikolaj Nielsen for the EU Observer.Frontex keeps return operations in Hungary secret. 24/06/2022. Available at < <https://euobserver.com/migration/155320>>. Accessed on 03/10/2022

50 "I can confirm that Frontex has decided to suspend operational activities in Hungary," the spokesper-son said. "Our common efforts to protect the EU external borders can only be successful if we ensure that our cooperation and activities are fully in line with EU laws." Jacopo Barigazzi for POLITICO. EU border agency suspends operations in Hungary. 27/01/2021. Available at < <https://www.politico.eu/article/eu-border-Agency-frontex-suspends-operations-in-hungary-migration/>> Accessed 03/10/2022

51 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016ME/TXT&from=EN>

52 Frontex. The Fundamental Rights Officer's Annual Report provides an overview of the activities carried out by the Fundamental Rights Office – including the Fundamental Rights Monitors – in 2021. 17/06/2022. Available at <<https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=10583>> Accessed on 03/10/2022

53 Frontex. The Fundamental Rights Officer's Annual Report provides an overview of the activities carried out by the Fundamental Rights Office – including the Fundamental Rights Monitors – in 2021. 17/06/2022. Available at <<https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=10583>> Accessed on 03/10/2022

54 Border Violence Monitoring Network. Testimony Database. Filter: Pushbacks from Hungary. Availa-ble at: <[https://www.borderviolence.eu/violence-reports/?ri-incident-location-geo-radius=50&ri-pushback\\_from=Hungary&ri-pushback\\_to=all&ri-underage-involved=all&ri-intention-asylum-expressed=all&ri-page=1](https://www.borderviolence.eu/violence-reports/?ri-incident-location-geo-radius=50&ri-pushback_from=Hungary&ri-pushback_to=all&ri-underage-involved=all&ri-intention-asylum-expressed=all&ri-page=1)> Accessed 03/10/2022

55 [https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-budgetary-con-trol\\_20220713-1630-COMMITTEE-CONT](https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-budgetary-con-trol_20220713-1630-COMMITTEE-CONT)

56 European Commission. July Infringements package: key decisions. 15/07/2022. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/inf\\_22\\_3768](https://ec.europa.eu/commission/presscorner/detail/en/inf_22_3768)> Accessed on 03/10/2022

57 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the Eu-ropean Union - signed on 13 December 2007 -. Official Journal C 326 , 26/10/2012 P. 0001 - 0390. Available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M007&from=EN>> Accessed 03/10/2022

58 The European Parliament. Briefings. Hungary can no longer be considered a full democracy, MEPs set to declare. 12-15/09/2022. Available at: <<https://www.europarl.europa.eu/news/en/agenda/brief->

ing/2022-09-12/3/hungary-can-no-longer-be-considered-a-full-democracy-meps-set-to-declare > Accessed 03/10/2022

59 Frontex. Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex. 01/07/2021. Available at < <https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=6436> > Accessed on 03/10/2022

60 BVMN. "If anyone can speak English, you can come work for them [Greek police] for six months and then you will be given papers for asylum". 08/04/2021. Available at <

<https://www.borderviolence.eu/violence-reports/april-8-2021-0600-island-near-karayusufllu/> >

BVMN. "Violent Chain Pushback - "They beat only me and my Moroccan friend so much until I fainted, as they thought we were smugglers. Now, any time I sneeze or cough, blood comes out of my mouth"". 13/08/2021. Available at <

<https://www.borderviolence.eu/violence-reports/august-13-2021-0000-unknown-location-in-bg-but-near-to-ormenio-nea-vyssa-gr-to-uyuklutatar-tr/> > Accessed on 03/10/2022

61 BVMN. "They were laughing while they were hitting us. Laughing so much. No normal person can do that. ". 02/09/2022. Available at <<https://www.borderviolence.eu/violence-reports/september-6-2020-1700-alexandropouli-bus-station/> >

BVMN. "I got drunk for the first time in my life to have the courage to tell them, but I can't. How can I tell them their son is dead!?". 06/09/2022. Available at <

<https://www.borderviolence.eu/violence-reports/september-2-2020-0700-30min-drive-outside-alexandropouli/> > Accessed 03/10/2022

62 BVMN. "Female members of the group were totally naked and searched by male officers and the officers beat the children". 02/07/2021. Available at < <https://www.borderviolence.eu/violence-reports/july-2-2021-0000-mikrochori-kerimtecisalih/> >

BVMN. "We were screaming is this Europe? Where is Europe? Where is the humanity?". 19/08/2020. Available at <

<https://www.borderviolence.eu/violence-reports/august-19-2020-0400-greek-waters-off-of-skala-sikamineas-lesvos/> >

BVMN. "They were laughing while they were hitting us. Laughing so much. No normal person can do that. ". 02/09/2020. Available at <

<https://www.borderviolence.eu/violence-reports/september-2-2020-0700-30min-drive-outside-alexandropouli/> >

BVMN. "I was scared because I didn't know what made them bring me here or what they were going to do next". 01/04/2021. Available at <

<https://www.borderviolence.eu/violence-reports/april-1-2021-2100-soufli-meric/>

BVMN. "They spent 8 hours in the detention cell, being denied food and water throughout this time. More people were brought so that in total 160 persons were held in a cell 8 by 4 metres in size." 10/07/2021. Available at <

<https://www.borderviolence.eu/violence-reports/july-10-2021-0000-dilofos-kapikule/> >

BVMN. "In the middle of the river they [just] told us to jump...". 05/09/2021. Available at <

<https://www.borderviolence.eu/violence-reports/september-5-2021-1000-neo-cheimonio-elcili/> > Accessed on 03/10/2022

63 BVMN. "they were beating them with the stick when they passed near them you hear the sound of the electric gun". 25/04/2020. Available at <

<https://www.borderviolence.eu/violence-reports/april-25-2020-0000-evros-delta/> >

BVMN. "We did not want to put our children through all that so to protect them, we preferred to return directly. The ship chased us until we had returned to Turkish waters.". 24/08/2020. Available at <

<https://www.borderviolence.eu/violence-reports/august-24-2020-0230-greek-waters-off-of-kos/> > Accessed on 03/10/2022.

64 BVMN. "You can't imagine how someone is sleeping and then someone took me by force from this place". 30/09/2020. Available at <

<https://www.borderviolence.eu/violence-reports/september-30-2020-0700-evros-border/> > Access on 03/10/2022

65 Frontex. Frontex Annual Report 2006. Coordination of intelligence driven operational cooperation at EU level to strengthen security at external borders. Available at <[https://frontex.europa.eu/assets/Key\\_Documents/Annual\\_report/2006/annual\\_report\\_20061.pdf](https://frontex.europa.eu/assets/Key_Documents/Annual_report/2006/annual_report_20061.pdf) > Accessed on 03/10/2022

66 Frontex. News. Frontex deploys Rapid Border Intervention Teams to Greece. 25/10/2010. Available at < <https://frontex.europa.eu/media-centre/news/news-release/frontex-deploys-rapid-border-intervention-teams-to-greece-PWDQKZ> > Accessed on 03/10/2022

67 BVMN. "They were laughing while they were hitting us. Laughing so much. No normal person can do that. ". 02/09/2020. Available at < <https://www.borderviolence.eu/violence-reports/september-2-2020-0700-30min-drive-outside-alexandropouli/> > Accessed on 03/10/2022

68 BVMN. "We were screaming is this Europe? Where is Europe? Where is the humanity?". 19/08/2020. Available at < <https://www.borderviolence.eu/violence-reports/august-19-2020-0400-greek-waters-off-of-skala-sikamineas-lesvos/> > Accessed on 03/10/2022

- 69 BVMN. Balkan Regional Report – February 2022. 22/03/2022. Available at: < <https://www.borderviolence.eu/balkan-regional-report-february-2022/> > Accessed on 03/10/2022
- 70 Article 82(6), regulation 2019/1896.
- 71 Frontex, “Annex 14 Serious Incident Reporting” <<https://www.statewatch.org/media/documents/news/2016/aug/frontex-serious-incident-reporting.pdf>> accessed on 28 September 2022
- 72 Council Regulation (EC) 1168/2011 [2011] OJ L304 Recital 16
- 73 SIR 11095/2020
- 74 Frontex, “Annex 14 Serious Incident Reporting” <<https://www.statewatch.org/media/documents/news/2016/aug/frontex-serious-incident-reporting.pdf>> accessed on 28 September 2022
- 75 Lena Karamanidou and Bernd Kasperek “Fundamental Rights, Accountability and Transparency in European Governance of Migration: The Case of the European Border and Coast Guard Agency Frontex, Respond Working Papers” (2020) Respond Working Papers <<https://respondmigration.com/wp-blog/fundamental-rights-accountability-transparency-european-governance-of-migration-the-case-european-border-coastguard-Agency-frontex>> accessed 28 September 2022
- 76 European Council on Refugees and Exiles, Holding Frontex to Account (2021) <<https://ecre.org/wp-content/uploads/2021/05/Policy-Papers-07.pdf>> accessed 28 September 2022
- 77 Frontex Scrutiny Working Group, Working Document 14/07/2021 (2021) <[https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)> accessed 28 September 2022
- 78 See the minutes of a hearing with a NO on 8 December 2020, on SIR no. 12604/2020
- 79 Frontex, Frontex Consultative Forum on Fundamental Rights, Seventh Annual Report (2020) <[https://frontex.europa.eu/assets/Partners/Consultative\\_Forum\\_files/Frontex\\_Consultative\\_Forum\\_annual\\_report\\_2019.pdf](https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf)> accessed on 1 October 2022
- 80 Lena Karamanidou and Bernd Kasperek “Fundamental Rights, Accountability and Transparency in European Governance of Migration: The Case of the European Border and Coast Guard Agency Frontex, Respond Working Papers” (2020) Respond Working Papers <<https://respondmigration.com/wp-blog/fundamental-rights-accountability-transparency-european-governance-of-migration-the-case-european-border-coastguard-Agency-frontex>> accessed 28 September 2022
- 81 Frontex, Joint Operation Poseidon (2016) <<https://frontex.europa.eu/media-centre/news/focus/joint-operation-poseidon-greece--3lmFxd>> accessed 26 September 2022
- 82 Human Rights Watch, “Greece: Investigate Pushbacks, Collective Expulsions” (2020), available at <<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>> accessed 26 September 2022
- 83 BVMN, “They had no mercy at all. Isn’t it against all mercy and humanity what they Do?” (2020) <<https://www.borderviolence.eu/violence-reports/july-11-2020-0000-coast-off-lesvos/>> accessed 26 September 2022
- 84 Statewatch, “Plenarprotokoll 19/188” (2020) <<https://www.statewatch.org/media/1445/de-questions-sitzung-188-pushback-poseidon-11-2020.pdf>> accessed 26 September 2022
- 85 Der Spiegel, “EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign” (2020) <<https://www.spiegel.de/international/europe/eu-border-Agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7>> accessed on 26 September 2022
- Lighthouse Reports, “Chapter II: Frontex Complicit in Pushbacks” (2021) <<https://www.lighthousereports.nl/investigation/frontex-chapter-ii-complicit-in-pushbacks/>> accessed 26 September 2022
- 86 BVMN, “Analysis Of Video Footage Showing Involvement Of Hellenic Coast Guard In Maritime Pushback” <<https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback/>> accessed 1 October 2022
- 87 European Parliament, “Discharge: MEPs delay signing off on accounts of EU border control agency Frontex” (2022) <<https://www.europarl.europa.eu/news/en/press-room/20220429IPR28235/discharge-meps-delay-signing-off-on-accounts-of-frontex>> accessed 1 October 2022
- 88 Covadona Bachiller López, “Border policing at sea: Tactics, routines and the law in a Frontex patrol boat” (2022) The British Journal of Criminology <<https://academic.oup.com/bjc/advance-article-abstract/doi/10.1093/bjc/azac009/6546429?redirectedFrom=fulltext>> accessed 1 October 2022
- 89 Ibid
- 90 Ibid
- 91 Frontex, Profiting from misery - How smugglers bring people to Europe (2016) <<https://frontex.europa.eu/media-centre/news/focus/profitting-from-misery-how-smugglers-bring-people-to-europe-aUYy2f>> accessed 27 September 2022
- 92 Council Regulation (EC) 656/2014 (2014) Article 9(2)(f)
- 93 Council Regulation (EC) 2019/1896 [2019] OJ L295 Recital 38
- 94 Frontex Regulation (EC) 2019/1896 [2019] OJ L295 Article 30(1)
- 95 “Then They Started Beating Them Up, the 3 of Them. It Was a Long Stick, It Was Very Hard and They Beat Everybody Like 4 or 5 Times” Border Violence Monitoring Network, 27.06.2022, available at: <<https://www.borderviolence.eu/violence-reports/june-27-2022-0000-gevgelija/>> accessed 29.09.2022 regarding a testimony of migrants being pushed back from Northern Macedonia to Greece
- 96 Nick Waters, Emmanuel Freudenthal, Frontex at Fault: European Border Force Complicit in ‘Illegal’ Push-

backs. Bellingcat, 23.10.2020, available at: <<https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>> accessed 29.09.2022

97 Giorgos Christides, Steffen Lüdke, Cover-Ups, Concealment and Lies: Classified Report Reveals Full Extent of Frontex Scandal, Spiegel, 29.07.2022, available at: <<https://www.spiegel.de/international/europe/frontex-scandal-classified-report-reveals-full-extent-of-cover-up-a-cd749d04-689d-4407-8939-9e1bf55175fd>> accessed 29.09.2022

98 Press release, EP asks for part of Frontex budget to be frozen until key improvements are made. European Parliament, 21.10.2021, available at: <<https://www.europarl.europa.eu/news/en/press-room/20211014IPR14931/ep-asks-for-part-of-frontex-budget-to-be-frozen-until-key-improvements-are-made>> accessed 29.09.2022

99 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art 54

100 Ibid Art 54

101 About, Frontex, available at: <<https://frontex.europa.eu/careers/standing-corps/about/>> accessed 29.09.2022

102 Model status agreement as referred to in 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, COM(2021) 829 final, 21.12.2021, Art 12. Model status agreement regarding the immunities has been mirrored in the status agreements in place, see for example analysis in: 'Briefing: External action: Frontex operations outside the EU' (Statewatch, 11 March 2021) <<https://www.statewatch.org/analyses/2021/briefing-external-action-frontex-operations-outside-the-eu/>> accessed 29.09.2022

103 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art 85

104 Ibid. Art 96

105 Protocol 7 On the Privileges and Immunities of the European Union, 26.10.2012, C 326/1, Art 11(a)

106 Ibid Art 11(a)

107 Ibid Art 17

108 C. F. Amerasinghe, Principles of the Institutional Law of International Organizations (2nd edition, Cambridge University Press, 2005) 315-316

109 Giorgos Christides, Steffen Lüdke, Cover-Ups, Concealment and Lies: Classified Report Reveals Full Extent of Frontex Scandal, Spiegel, 29.07.2022, available at: <<https://www.spiegel.de/international/europe/frontex-scandal-classified-report-reveals-full-extent-of-cover-up-a-cd749d04-689d-4407-8939-9e1bf55175fd>> accessed 29.09.2022

110 Melanie Fink, The Action for Damages as a Fundamental Rights Remedy: Holding Frontex Liable. German Law Journal (2020), 21, 544-545

111 Ibid

112 Ibid

113 Ibid, 533

114 Ibid

115 Mariana Gkliati, Herbert Rosenfeldt, 'Accountability of the European Border and Coast Guard Agency: Recent developments, legal standards and existing mechanisms' RLI Working Paper No. 30 (2017), 14

116 Micaela Del Monte, Katrien Luyten, European Parliament scrutiny of Frontex. European Parliamentary Research Service, PE 698.816, 09.2022, available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)> accessed 30.09.2022, 3-4

117 Marco Stefan, Leonhard den Hertog. Frontex: Great Powers but No Appeals in Merijn Chamon, Annalisa Volpato, Mariolina Eliantonio (eds.) Boards of Appeal of EU Agencies Oxford University Press, 2022, 153

118 Ibid 161

119 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art 111(3)

120 Marco Stefan, Leonhard den Hertog. Frontex: Great Powers but No Appeals in Merijn Chamon, Annalisa Volpato, Mariolina Eliantonio (eds.) Boards of Appeal of EU Agencies Oxford University Press, 2022, 162

121 EU Ombudsman, 'How the European Border and Coast Guard Agency (Frontex) deals with complaints about alleged fundamental rights breaches through its 'Complaints Mechanism'' CASE OI/5/2020/MHZ, Opened on 10.11.2020

122 Marco Stefan, Leonhard den Hertog. Frontex: Great Powers but No Appeals in Merijn Chamon, Annalisa Volpato, Mariolina Eliantonio (eds.) Boards of Appeal of EU Agencies Oxford University Press, 2022, 162

123 Frontex, The Fundamental Rights Officer Annual Report 2021, 10.05.2022, 26-27

124 Marco Stefan, Leonhard den Hertog. Frontex: Great Powers but No Appeals in Merijn Chamon, Annalisa Volpato, Mariolina Eliantonio (eds.) Boards of Appeal of EU Agencies Oxford University Press, 2022, 162

125 Ibid

126 Melanie Fink, Why it is so Hard to Hold Frontex Accountable: On Blame-Shifting and an Outdated Remedies System. EJIL:Talk!, 26.11.2020, available at: <<https://www.ejiltalk.org/why-it-is-so-hard-to-hold-frontex-accountable-on-blame-shifting-and-an-outdated-remedies-system/>> accessed 29.09.2022

127 Ibid

128 Ibid

- 129 Ibid
- 130 Ibid
- 131 See Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, ST/10290/2018/INIT, Art. 6(5); Council Decision (EU) 2020/865 of 26 May 2020 on the conclusion of the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia, ST/15581/2018/REV/1, Art 6(5);
- 132 Melanie Fink, Why it is so Hard to Hold Frontex Accountable: On Blame-Shifting and an Outdated Remedies System. EJIL:Talk!, 26.11.2020, available at: <<https://www.ejiltalk.org/why-it-is-so-hard-to-hold-frontex-accountable-on-blame-shifting-and-an-outdated-remedies-system/>> accessed 29.09.2022
- 133 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art. 84(1)
- 134 Committee on Civil Liberties, Justice and Home Affairs, 01.12.2020, video available: <[https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-civil-liberties-justice-and-home-affairs\\_20201201-1345-COMMITTEE-LIBE](https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-civil-liberties-justice-and-home-affairs_20201201-1345-COMMITTEE-LIBE)>, starting at 14:45:45. accessed 29.09.2022
- 135 Ibid
- 136 Ibid
- 137 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art 6
- 138 Micaela Del Monte, Katrien Luyten, European Parliament scrutiny of Frontex. European Parliamentary Research Service, PE 698.816, 09.2022, available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)> accessed 30.09.2022, p 2-3
- 139 Laura Salzano, 'The Secretiveness Over the OLAF Report on Frontex Investigations. Verfassungsblog, 09.09.2022, available at: <<http://verfassungsblog.de/the-secretiveness-over-the-olaf-report-on-frontex-investigations/>> accessed 03.10.2022
- 140 Ibid
- 141 Marco Stefan, Leonhard den Hertog. Frontex: Great Powers but No Appeals in Merijn Chamon, Annalisa Volpato, Mariolina Eliantonio (eds.) Boards of Appeal of EU Agencies Oxford University Press, 2022, 158. Also, European Ombudsman: More Transparency and Fundamental Rights Training Needed at Frontex. Statewatch, 02.08.2022, available at: <<http://www.statewatch.org/news/2022/august/european-ombudsman-more-transparency-and-fundamental-rights-training-needed-at-frontex/>> accessed 03.10.2022
- 142 Regulation 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, 3 November 2019, Art 101
- 143 Ibid Recital 107
- 144 Ibid Art 100
- 145 Ibid Art 106(1)
- 146 Ibid Art 46
- 147 Tineke Strik, European Oversight on Frontex. Verfassungsblog, 08.09.2022, available at: <<https://verfassungsblog.de/european-oversight-on-frontex/>> accessed 30.09.2022
- 148 Ibid
- 149 Ibid
- 150 Ibid
- 151 Micaela Del Monte, Katrien Luyten, European Parliament scrutiny of Frontex. European Parliamentary Research Service, PE 698.816, 09.2022, available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)> accessed 30.09.2022, 7
- 152 Frontex Scrutiny Working Group, Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. LIBE Committee on Civil Liberties, Justice and Home Affairs, 14.7.2021 available at: <[https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)> accessed 30.09.2022, 16
- 153 José Bautista, Ana Rojas 'Frontex turning 'blind eye' to human rights violations, says former deputy' Guardian 11.06.2021, available at: <<https://www.theguardian.com/global-development/2021/jun/11/frontex-turning-blind-eye-to-human-rights-violations-says-former-deputy>> accessed 01.10.2022
- 154 Giorgos Christides, Steffen Lüdke, 'Cover-Ups, Concealment and Lies Classified Report Reveals Full Extent of Frontex Scandal' Spiegel 29.07.2022, available at: <<https://www.spiegel.de/international/europe/frontex-scandal-classified-report-reveals-full-extent-of-cover-up-a-cd749d04-689d-4407-8939-9e1bf55175fd>> accessed 01.10.2022
- 155 Giorgos Christides, Steffen Lüdke, 'Cover-Ups, Concealment and Lies Classified Report Reveals Full Extent of Frontex Scandal' Spiegel 29.07.2022, available at: <<https://www.spiegel.de/international/europe/frontex-scandal-classified-report-reveals-full-extent-of-cover-up-a-cd749d04-689d-4407-8939-9e1bf55175fd>> accessed 01.10.2022
- 156 Jane Kilpatrick and Mariana Gkliati, 'Frontex, secrecy and security: control of information as strategy for institutional preservation' Open Government in the EU 12.10.2021, available at: <<https://www.eu-opengovernment.eu/?p=2917>> accessed 01.10.2022
- 157 Melanie Fink, Why it is so Hard to Hold Frontex Accountable: On Blame-Shifting and an Outdated Rem-

- edies System. EJIL:Talk!, 26.11.2020, available at: <<https://www.ejiltalk.org/why-it-is-so-hard-to-hold-frontex-accountable-on-blame-shifting-and-an-outdated-remedies-system/>> accessed 29.09.2022
- 158 Frontex Scrutiny Working Group, Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. LIBE Committee on Civil Liberties, Justice and Home Affairs, 14.7.2021 available at: <[https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)> accessed 01.10.2022, 10
- 159 'EU General Court reduces the legal costs claimed by Frontex against transparency activists' Access Info, 19.04.2021, available at: <<https://www.access-info.org/2021-04-19/eu-court-legal-costs-frontex-activists/>> accessed 01.10.2022
- 160 'Ibid
- 161 Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. OJ L 295, 21.11.2018, p. 39-98. Available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>> Accessed on 03/10/2022
- 162 Regulation (EU) 2018/1725, Article 5 (1) (a)
- 163 Frontex. Management Board Decision 56/2021 adopting implementing rules on the application of Regulation (EU) 2018/1725 concerning the tasks, duties and powers of the Data Protection Officer as well as rules concerning Designated Controllers in Frontex. 15/10/2021. Available at <<https://prd.frontex.europa.eu/wp-content/themes/template/templates/cards/1/dialog.php?card-post-id=2722&document-post-id=9314>> Accessed on 03/10/2022
- 164 Regulation (EU) 2018/1725, Article 43
- 165 Statewatch. "Regaining control": new powers for Frontex. Available at <<https://www.statewatch.org/deportation-union-rights-accountability-and-the-eu-s-push-to-increase-forced-removals/frontex-the-eu-s-deportation-machine/regaining-control-new-powers-for-frontex/>> Accessed on 03/10/2022
- 166 Twitter. Cova Bachiller López. Available at <[https://twitter.com/c\\_bachi/status/1572965250114125825](https://twitter.com/c_bachi/status/1572965250114125825)> Accessed on 03/10/2022
- 167 Frontex. Debriefing Officer. 10/10/2019. Available at <<https://frontex.europa.eu/media-centre/our-officers/debriefing-officer-6SQs7p>> Accessed on 03/10/2022
- Frontex. Debriefing Officers 03/02/2022. Available at <<https://frontex.europa.eu/we-support/standing-corps/profiles/debriefing-officers-UtVORZ>> Accessed on 03/10/2022
- 168 Statewatch. Questioning the interviewers: Frontex's covert interrogations at the Spanish southern border. 03/08/2022. Available at <<https://www.statewatch.org/analyses/2022/questioning-the-interviewers-frontex-s-covert-interrogations-at-the-spanish-southern-border/>> Accessed on 03/10/2022
- 169 Statewatch. Questioning the interviewers: Frontex's covert interrogations at the Spanish southern border. 03/08/2022. Available at <<https://www.statewatch.org/analyses/2022/questioning-the-interviewers-frontex-s-covert-interrogations-at-the-spanish-southern-border/>> Accessed on 03/10/2022
- 170 Statewatch. Questioning the interviewers: Frontex's covert interrogations at the Spanish southern border. 03/08/2022. Available at <<https://www.statewatch.org/analyses/2022/questioning-the-interviewers-frontex-s-covert-interrogations-at-the-spanish-southern-border/>> Accessed on 03/10/2022
- 171 Statewatch. Questioning the interviewers: Frontex's covert interrogations at the Spanish southern border. 03/08/2022. Available at <<https://www.statewatch.org/analyses/2022/questioning-the-interviewers-frontex-s-covert-interrogations-at-the-spanish-southern-border/>> Accessed on 03/10/2022
- 172 Frontex, Frontex to begin collecting personal data in Greece on suspected criminals (2016) <<https://frontex.europa.eu/media-centre/news/news-release/frontex-to-begin-collecting-personal-data-in-greece-on-suspected-criminals-gJzx8D>> accessed 2 October 2022
- 173 Luděk Stavinoha, Apostolis Fotiadis and Giacomo Zandonini, "EU's Frontex tripped in its plans for 'intrusive' surveillance of migrants" (2022) <<https://balkaninsight.com/2022/07/07/eus-frontex-tripped-in-plan-for-intrusive-surveillance-of-migrants/>> accessed 1 October 2022
- 174 Ibid
- 175 Euro-Med, "Euro-Med Monitor at HRC: EU Commission must halt expansion of asylum seeker surveillance programme" (2022) <<https://euromedmonitor.org/en/article/5337/Euro-Med-Monitor-at-HRC:-EU-Commission-must-halt-expansion-of-asylum-seeker-surveillance-programme>> accessed 1 October 2022
- 176 Council Regulation (EC) 2016/679 (2016) OJ L119 Article 9
- 177 Luděk Stavinoha, Apostolis Fotiadis and Giacomo Zandonini, "EU's Frontex tripped in its plans for 'intrusive' surveillance of migrants" (2022) <<https://balkaninsight.com/2022/07/07/eus-frontex-tripped-in-plan-for-intrusive-surveillance-of-migrants/>> accessed 1 October 2022
- 178 Ibid
- 179 Parliamentary Question E-002825/2022 (2022) <[https://www.europarl.europa.eu/doceo/document/E-9-2022-002825\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2022-002825_EN.html)> accessed 1 October 2022
- 180 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326 Article 15
- 181 Charter of Fundamental Rights of the European Union [2012] OJ C326 Article 42
- 182 Council Regulation (EC) 1049/2001 [2001] OJ L145



- 183 Frontex, Frontex launches a new online register of public documents <<https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-a-new-online-register-of-public-documents-Br6TLI>> (2022) accessed 29 September 2022
- 184 Statewatch, "New transparency obligations for justice and home affairs following Statewatch complaints" (2021) <<https://www.statewatch.org/news/2021/january/eu-new-transparency-obligations-for-justice-and-home-affairs-agencies-following-statewatch-complaints/>> accessed 29 September 2022
- 185 Council Regulation (EC) 1049/2001 [2001] OJ L145 Article 1
- 186 Statewatch, "New transparency obligations for justice and home affairs following Statewatch complaints" (2021) <<https://www.statewatch.org/news/2021/january/eu-new-transparency-obligations-for-justice-and-home-affairs-agencies-following-statewatch-complaints/>> accessed 29 September 2022
- 187 Ibid
- 188 European Ombudsman, Decision in case 2273/2019/MIG on the European Border and Coast Guard Agency's (Frontex) public register of documents (2021) <[https://www.statewatch.org/media/1930/decision\\_201902273\\_20210203\\_133925.pdf](https://www.statewatch.org/media/1930/decision_201902273_20210203_133925.pdf)> accessed 29 September 2022
- 189 Ibid
- 190 Frontex, Consolidated Annual Activity Report 2020 (2020) <<https://www.statewatch.org/media/3291/frontex-consolidated-annual-activity-report-2020.pdf>> accessed 29 September 2022
- 191 Mariana Gkliati and Jane Kilpatrick, "Crying Wolf Too Many Times: The Impact of the Emergency Narrative on Transparency in FRONTEX Joint Operations" (2022) Utrecht Law Review <<https://www.utrechtlawreview.org/articles/10.36633/ulr.770/#n70>> accessed 1 October 2022
- 192 Ibid
- 193 Statewatch, "Frontex, secrecy and story-telling: control of information as super-strategy" (2021) <<https://www.statewatch.org/analyses/2021/frontex-secrecy-and-story-telling-control-of-information-as-super-strategy>> accessed 1 October 2022
- 194 The Intercept, "Shoot First, Coast Guard Fires at Migrant Boats, European Border Agency Documents Show" (2016) <<https://theintercept.com/2016/08/22/coast-guard-fired-at-migrant-boats-european-border-agency-documents-show/>> accessed 1 October 2022
- 195 Ibid
- 196 Frontex, MANAGEMENT BOARD DECISION No 25/2016 of 21 September 2016 (2016) <[https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2016/MB\\_Decision\\_25\\_2016\\_on\\_adopting\\_practical\\_arrangements\\_regarding\\_PAD.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2016/MB_Decision_25_2016_on_adopting_practical_arrangements_regarding_PAD.pdf)> accessed 2 October 2022
- 197 Statewatch, "EU: Recruitment of Frontex "standing corps" of border guards not going to plan" (2021) <<https://www.statewatch.org/news/2021/february/eu-recruitment-of-frontex-standing-corps-of-border-guards-not-going-to-plan/>> accessed 2 October 2022
- 198 Statewatch, "Frontex, secrecy and story-telling: control of information as super-strategy" (2021) <<https://www.statewatch.org/analyses/2021/frontex-secrecy-and-story-telling-control-of-information-as-super-strategy/>> accessed 2 October 2022
- 199 European Ombudsman, The time taken by the European Border and Coast Guard Agency (Frontex) to deal with requests for public access to documents (2022) <<https://www.ombudsman.europa.eu/en/case/en/62097>> accessed 1 October 2022
- 200 Ibid
- 201 Ibid
- 202 Ibid
- 203 Statewatch, "Frontex, secrecy and story-telling: control of information as super-strategy" (2021) <<https://www.statewatch.org/analyses/2021/frontex-secrecy-and-story-telling-control-of-information-as-super-strategy/>> accessed 2 October 2022
- 204 Ibid
- 205 Ibid
- 206 Ibid
- 207 Micaela Del Monte, Katrien Luyten, European Parliament scrutiny of Frontex. European Parliamentary Research Service, PE 698.816, 09.2022, available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS\\_BRI\(2021\)698816\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698816/EPRS_BRI(2021)698816_EN.pdf)> accessed 30.09.2022, 7
- 208 Frontex Scrutiny Working Group, Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations. LIBE Committee on Civil Liberties, Justice and Home Affairs, 14.7.2021 available at: <[https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf)> accessed 30.09.2022, 16



Warsaw, 13.07.2022

FINAL SIR REPORT

SIR – 12523/2021

SI-Handler: Fundamental Rights Office

**Key Points**

**Incident reported:**

On 13.07.2021, a National Return Operation (NRO) from Germany to Ghana was monitored by a member of the Frontex pool of forced-return monitors. According to the monitoring report, upon the landing of the plane in Ghana, one of the returnees attacked an escort. The assigned escort team brought the returnee back under control. When attempting to move the returnee from his seat to the back of the plane, he did resist. One escort then reportedly punched the returnee in the torso three times. This action was reported as non-compliant with the principles of necessity and proportionality.

**Possible violation of fundamental rights enquired:** Possible violations of human dignity (Article 1 of the Charter of Fundamental Rights of the European Union), and the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter of Fundamental Rights of the European Union)

**Party allegedly involved in the incident:** German escorts (participant in the National Return Operation from Germany to Ghana)

**Conclusion and impact:**

The Fundamental Rights Office raised allegations with German authorities both in writing and orally on several occasions. It was informed that the incident had been reported through the chain of command and assessed by independent judicial authorities who found the actions to be legitimate and proportionate. The Fundamental Rights Office was not in a position to further corroborate timelines of actions of persons involved and in particular, those immediately preceding the reported punches. Considering the diligent follow up by German authorities, including review by the public prosecutor which found that the actions of the police officers were a "legitimate and proportionate enforcement that is permissible under German law", the Office will not proceed further in examining the case.

**Description of the event - Timeline**

On 13.07.2021, a National Return Operation (NRO) from Germany (Cologne) to Ghana (Accra) was monitored by a member of the Frontex pool of forced-return monitors. Based on her observations, the monitor reported the following incident:

1. Upon landing [at approximately 08:55], "one returnee physically attacked one of the escorts". In response, the escorts "had to apply bodily force to subdue him". The monitor did not directly witness this attack. When the monitor approached, "the returnee was bent over one of the aisle seats (facing down), his movement controlled by [a] min[imum] of 4 escorts. One of the escorts was holding [him] in guillotine hold (not choked), other escorts were controlling the legs and arms. one of them holding the returnee in guillotine hold (not choked), others controlling the legs and arms". Held like this, the returnee "did not appear to be attacking nor resisting". Then, "it was decided to move the returnee to the galley. The escorts who were still in the same position started to move the returnee of the seat and into the aisle. At this moment the returnee resisted the action of being moved. He did not attack, but struggled against the escorts"
2. "At this moment the escort who was holding the returnee in the guillotine hold, punched the returnee approx. 3 times to the side of his torso, hitting the ribcage of the returnee who grunted in reaction. The escorts continued and successfully transferred the returnee to the galley."
3. "The space at the galley was limited and there were several escorts with additional [back up team] members at this moment. Hence, the monitor was unable to see what was exactly happening and how. The monitor was able to hear some bangs which could be attributed to a person hitting the equipment of the galley, so it can be assumed that the struggle between the returnee and the escorts continued. The monitor got to see

the final result of this action at 08:55. The returnee was sitting on the floor with his arms tied with plastic tie wraps behind his back and leg[s] also tied with plastic tie wraps. One of the escorts was sitting on his legs controlling them, the second escort was behind the back of the returnee controlling his upper body with his arms wrapped along the side of his head, connected on top of the forehead.”

4. “The doctor arrived to the back of the plane to check up on the returnee (at 8:59). The returnee remained in this position until the representative from the country of origin arrived to assess the situation (at 9:06)” [...] The plastic tie wraps “were taken off after the representative of Ghana arrived to the galley and issued an order for them to be taken off. The returnee was still struggling against the escorts and had to be shouted at by the representative of Ghana.”

## Assessment

The Fundamental Rights Office takes note of the following elements.

As regards assessments of the incident

1. The monitor reported that “the returnee was resisting and struggling against the escorts during the whole incident - before, during and after the application of coercive measures”. She assessed the short-term use of plastic tie wraps around wrist and legs to be justified given “the aggressive behaviour of the returnee towards the escort”. The Fundamental Rights Office notes that the returnee was not handcuffed or otherwise restraint with ties at the moment of the punches.
2. At the same time, as regards the punches, the monitor reported that she did “not consider the punches to the ribcage of the returnee proportional and necessary at the moment when they occurred. She further specified that “the punches did not happen as an immediate reaction to the attack by a returnee, but [...] in the situation when he was already subdued and controlled by minimum of 4 escorts. The returnee's body was bend over one of the seats [...], his had was in a guillotine hold by one of the escorts, his legs and arms controlled by the rest of the escorts. The punches happened when the escorts wanted to move the subdued returnee to the back of the plane but he resisted to being moved. The escort was not in danger when he landed the punches.”
3. The Fundamental Rights Office notes that the monitor was not able to directly witness the entire event, from the attack to the application of coercive measures, as she was not present at the moment of attack and later had their view blocked by escorts and commotion making hearing difficult when coercive measures were applied in the back of the plane.
4. The Fundamental Rights Office notes the doctor immediately attending to the returnee after he was brought under control as an important safeguard to ensure the health of the patient after the application of bodily force and coercive measures.
5. In its correspondence with German national authorities, the Fundamental Rights Office was not able to obtain further information as to the precise sequence of actions by the returnee and escorts leading up to the reported punches. German authorities merely stated that “the use of force took place after the returnee suddenly and physically attacked the police officers accompanying him with his hands and head butts after the plane had landed in Accra. The person was taken to the rear of the aircraft and hand and foot cuffed to prevent continuation”.
6. German authorities underlined that the returnee did not sustain an injury from the measures used on him.
7. German national authorities stated that the matter in question was reported by German officers in their mission report. Following the collection of statements from the officials concerned and the questioning of possible witnesses, a legal assessment of the incident was carried out by German judicial authorities, involving the public prosecutor in Cologne, which found that the actions of police officers were a “legitimate and proportionate enforcement that is permissible under German law”. It was further stated that “there was no suspicion of criminal behaviour [on the part of the escort]”. At the same time, a case was opened against the returnee (Foreign offense according to § 114 STGB German criminal code). The Fundamental Rights Office enquired whether the monitoring report had been submitted as evidence to the prosecutor but did not receive a reply.

As regards the context and overall conduct of return operation,

1. With the exception of the incident under scrutiny, the monitoring report describes the national return operation as conducted in a “humane manner, respectful to the dignity of returnees and in compliance with [...] Fundamental Rights [...] [and] in accordance with [the] principle of legality, proportionality and necessity”. The report, furthermore, praises excellent escort-returnee relations and that escorts were respectful, communicative and managed to keep the atmosphere during the operation non-confrontational and calm.
2. The monitoring report mentions a series of alleged or witnessed resistant or violent behaviour by the returnee involved in the incident over the course of the return operation:

- The returnee arrived at the airport in handcuffs and metal chains around his legs as escorts had information about his previous aggressive behaviour. The monitor was informed about the returnee's physical resistance during body search and heard his verbal resistance in form of yelling when waiting outside the body search area at the airport. Coercive measures in form of body/leg cuffs which were applied and left on during embarkation and take off phase were assessed to meet necessity and proportionality criteria according to the monitor.
  - According to the monitoring report, the returnee displayed physical resistance to being seated approximately 14 minutes after being seated. The returnee was talked to in order for him to calm down.
  - It is reported that the returnee again attacked one of the escorts after the handover outside of the plane when being accompanied to the bus on the tarmac, causing the escort to fall and slightly injure himself. Personnel of the receiving state did use force against the returnee in response, however no coercive measures were applied.
3. As regards the treatment of the returnee involved in the incident, the monitoring report notes that coercive measures were applied only for as long as necessary and removed again on two occasions (after the take off phase and after the attack upon landing). Furthermore, it testifies to attempts to deescalate and the calm communication displayed by escorts, specifically during the body search and when the returnee was resistant to being seated.

As regards general considerations,

1. The Fundamental Rights Office underlines in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials that all use of force by police officers must adhere to the principles of necessity and proportionality.
2. The Office further emphasises the importance of effective reporting and review procedures for incidents involving allegations of unlawful and/or excessive use of force and for independent administrative or prosecutorial authorities to exercise jurisdiction where appropriate.
3. Persons to whom coercive measure have been applied, who are fully or partially demobilised, are in a particularly vulnerable state with actions and measures taken with regards to these persons to be adapted accordingly considering that they no longer / present (less of) a threat.
4. The Fundamental Rights Office underlines the importance of persuasion and of de-escalation techniques to obtain compliance of persons to be brought under control. Force may be used as a last resort (necessary) and must be graduated depending on the situation (proportional).

Final conclusion – Proposals – Lessons learned

In its assessment of the case, the Fundamental Rights Office was limited to analysing the observations by the forced return monitor and information provided by German national authorities both of whom disagree as to the lawfulness of the force used when bringing the returnee from his seat to the back of the plane. The Fundamental Rights Office took good note of allegations raised and has brought them to the attention of German authorities both in writing and orally on several occasions. Beyond, the Office was not in a position to further corroborate timelines of actions of persons involved and in particular, those immediately preceding the reported punches.

The Fundamental Rights Office is content with several aspects of the return operation, in particular with force graduation and de-escalation technics applied, as reported. This was reflected in the fact that coercive measures were applied and removed after they were considered no longer necessary on two occasions. Emphasis was given on conversation as well as on good returnee-escort relations. The Fundamental Rights Office takes note of the monitors' explicit assessment underlining the compliance of the return operation with fundamental rights, with the reported exception.

While the Fundamental Rights Office regrets not obtaining more information from German authorities as regards the details and their understanding of the event, it commends what appear to be robust reporting mechanisms (the incident was reported through mission reports) and follow up by independent judicial authorities.

Given the limited sources of further information and the thorough follow up of the German authorities, including through review by the public prosecutor, the Office considers that there is no scope for further examining the case on its end.

Going forward, the Fundamental Rights Office recommends:

1. For Frontex to continuously strengthen and sensitise officers to applicable reporting obligations, including through the serious incident reporting mechanism, as a prerequisite for follow up by the Fundamental Rights Office.
2. For national authorities and Frontex to continuously strengthen and sensitise offices that, in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials, all use of force by police officers participating in a return operation must adhere to the principles of necessity and proportionality and be applied with due respect to the returnees' human dignity and physical integrity.

updated version 01/02/2022

	From-to	Date	Location	Description	# of people involved	Natio nality	Quote	Other	Link
1	Greece-Turkey	03.09.2021	Evros River	One of the officers spoke Arabic in Syrian dialect. The Turkish, Arabic and Greek officers communicated with each other in sign language as they did not speak the same language.	100	?	The officers took pictures on their phone of all members of the group, but did not fingerprint them or register any asylum claim. After climbing out of the river on the Turkish side the group walked for 3 or 4km to the village of Yenikadin.	phones broken	<a href="#">Link</a>
2	Aegean Sea	24.08.2021	3km Samos Island	7 officers - all men, wearing black balaclavas, dressed in dark uniforms bearing the EU flag; some spoke English  medium-sized boat in gray and white colors, with no signs, just numbers	37	?	No fingerprints or individual pictures were taken at any time. The only information collected was one picture of the 37 people. The respondent personally expressed his intention to apply for asylum in Greece, but was only met with insulting and screaming words by the officers. <i>“Every time we tried to talk to them, they insulted us and screamed at us”</i> .  Almost everyone, apart from the minors, was subject to physical violence – except for one minor boy <b>who also was able to hide his phone between his legs</b> .	Sea push back, brought to detention cente afterwards	<a href="#">Link</a>
3	Greece-TurkeyEvros River	25.06.2021	Lavara/Alibey	eight officers wearing black uniforms and brown camouflage uniforms speaking English 3 white jeeps with “police” written on them in English	60	?	The respondent also said, <i>“When they caught us they took a picture of us with their smartphone. They took pictures of the whole group then one of each of us.”</i> The group was not told why they took the pictures.	brought to detention center after	<a href="#">Link</a>
4	Greece-Turkey	17.05.2021	Dilofos/Kapikule	One of the officers was wearing a black uniform and a balaclava. The other	55		Two other officers wearing all black came and asked the respondent and his friend to show their faces. They took a picture from them with their phone while		<a href="#">Link</a>

				one had jeans and a green jacket. There was nothing to suggest that they were police			they were still handcuffed in the trunk. Those two officers stayed there for about 30 minutes, laughing and smoking. The respondent asserted that those two officers talked to each other in English, and the officer wearing civilian clothes who apprehended them was also talking in English.		
5	Albania-Greece	30.05.2020	Trestenik	dark blue uniforms, wore a light blue band on the upper arm (visually identified as a Frontex accessory	9	Slovaninan; Albanian	The Frontex officials asked them why they had entered from Greece and told them that because of the COVID-19 pandemic it was not possible. The officers also took pictures of the groups faces. <i>"They make us photos 'come with us we take pictures, don't worry; why you came here? you know Albania is close now problem with corona'" (9 persons)</i>		<a href="#">Link</a>
6	Albania-Greece	31.05.2020	Trestenik	The Polish and Romanian officers had blue Frontex armbands worn over their national uniforms	9	Polish; Romanian	The respondent described how the officers questioned them for their identity and how they had crossed. They also took pictures of everyone in the transit group. (9 persons)		<a href="#">Link</a>
7	Bulgaria-Turkey	10.08.2021	Malko Tarnovo	At the pushback point, the respondent was handed over again to two other officers wearing sage green shirts and pants. They had a green Nissan car which had "border police" written on it in English.	1	Bulgarian	They took his bag and shoes and took pictures of him with their phones		<a href="#">Link</a>
8	Bulgaria-Turkey	18.07.2021	Vaysal	The one officer in black did not have the Bulgarian flag but a blue arm band	10	Bulgarian	The officers did not provide the group with any documents or take their fingerprints but took pictures of them with their phones. They asked the group in English 'Where are you from Where are you going? Who is the smuggler who is the driver?'		<a href="#">Link</a>

9	Bulgaria-Turkey	07.05.2021	Malko Tarnovo to Şükrüpaşa	14 officers wearing balaclavas & black uniforms - some had the Bulgarian flag on their arms, some were identified as German Frontex officers	14	German	The officers took pictures of the group with their phones but never asked them to sign any paper, and didn't take their fingerprints.		<a href="#">Link</a>
10	Hungary-Serbia	30.08.2021	Road 55	8 Police officers (including 2 German speakers), 2 vans (including one with German inscription/Blue emblem); vehicle as displaying a blue logo and the German inscription « Polizei »	50	German	Once they reached the border point, they were all asked to kneel down. A picture of each of them was taken. Each individual was then ordered to walk through the door that leads to the Serbian side of the border. A Hungarian Police officer filmed the whole process.		<a href="#">Link</a>
11	Hungary-Serbia	06.09.2019	Rösztke	van was driven by the same Hungarian police officers and the German officer who had detected, beaten and detained the transit group	8	German	Further, while the men were in the water, Hungarian police officers stood around the pool and recorded the transit group with small digital cameras and their cell phones.  <i>"They were standing around the pool and laughing at us and taking pictures."</i>  After what felt like 45 minutes, the people-in-transit were told to get out of the pool		<a href="#">Link</a>
12	Albania-Greece	12.06.2021	Bilisht	2 Frontex officers (declared nationalities: Slovakia and Poland)		Slovak ,Polish	The respondent states that he was apprehended by an Albanian officer. He then told them to follow him and they walked towards other officers. There were two foreign officers, identified as Frontex. After being asked by the respondent, one of the Frontex officers		



						<p>identified himself as Slovakian and the other one as Polish. The respondent remembers that the Albanian officers called one of the Frontex officers "Pablo" and addressed him in English.</p> <p>The respondent interacted with the foreign officers and spoke English with them while waiting for the operation to conclude. He states they talked about football and Slovakian players. The officers were wearing black t-shirts with 'Police' written on them. The Albanian officer was in civilian clothing, wearing a blue t-shirt. Asked if he recognized the Frontex armband, the respondent said that none of the officers he encountered wore the armband or other Frontex insignia. The respondent stated that the Frontex officer took photos of him with his phone. (see audio file attached)</p>		
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