

FRONTEX



EUROPEAN BORDER AND
COAST GUARD AGENCY

ELEVENTH ANNUAL REPORT

Frontex Consultative Forum on Fundamental Rights 2023



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Frontex

**Consultative Forum
on Fundamental Rights
2023**

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1 EXECUTIVE SUMMARY



Port of Pozzallo by the disembarkation area of the Hotspot

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This report provides an overview of the activities undertaken by the Frontex Consultative Forum on Fundamental Rights in 2023. It outlines the main observations and recommendations shared with the European Border and Coast Guard Agency (Frontex or Agency) and its Management Board in order to strengthen the protection of fundamental rights across all areas of the Agency's activities. In 2023, the Consultative Forum conducted the following key activities:

- Formulated an opinion in the context of the European Border and Coast Guard Regulation evaluation upon request by the European Commission (*see Annex III*)
- Provided advice on the identification of vulnerable persons in Frontex's VEGA operations
- Visited Frontex operations in Italy and Serbia to better understand the operational context and shared its observations on potential fundamental rights-related risks with Frontex and its Management Board
- Provided fundamental rights advice within the Fundamental Rights Guidance Board of the European Travel Information and Authorisation System (ETIAS).

What does the Annual Report contain?

An overview of all Consultative Forum activities is provided in Annex I; Annex II lists requests for information submitted to Frontex; Annex III presents the Consultative Forum's submission to the European Commission concerning the 2022-2023 evaluation of the European Border and Coast Guard Regulation (also referred to as EBCG Regulation, Frontex Regulation or Regulation 2019/1896); Annex IV presents the Programme of Work of the Consultative Forum; Annex V outlines the Consultative Forum's budget expenditure for 2023. From 2023 on, the Annual Report will provide an overview of Frontex-related case law, relating to Frontex and fundamental rights, which can be found in Annex VI of this report.

In March 2023, the Frontex Management Board appointed a new Executive Director following the resignation of the previous Director in 2022 and an 8-month interim period served by the Deputy Executive Director, Aija Kalnaja. The new Executive Director, Hans Leijten, engaged constructively with the Consultative Forum and stressed the need for increased transparency concerning Frontex's activities.

The fundamental rights monitoring mechanism at Frontex is well-established, assessing the risks and advising on mitigating measures to Frontex operations. In 2023, the Fundamental Rights Officer recommended to Frontex the suspension of activities in Greece in line with provisions of Article 46 of the EBCG Regulation.¹ The European Parliament then issued a resolution in December 2023 calling for the application of Article 46.² In September 2022, Frontex agreed with Greece on an implementation plan to address fundamental rights risks and gaps. A dedicated working group, established within Frontex to review the applicability of Article 46 of the EBCG Regulation concerning possible suspension of operations, discussed progress in implementing the plan for Greece. However, this working group, which Frontex established for the first time, did not have clear working modalities and it is unclear to what extent Greek authorities are effectively complying with Frontex and FRO recommendations.

The Consultative Forum further observed with concern that the Fundamental Rights Officer encountered limited collaboration by certain Member States in the gathering and verification of information concerning investigations of serious incident reports. Constructive

¹ The European Border and Coast Guard Agency (Frontex) (2023), *The Fundamental Rights Officer Annual Report 2022*, 23 June 2023, https://www.frontex.europa.eu/assets/fundamental/FRO_annual_report_2022.pdf.

² European Parliament (2023), Resolution on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny, 2023/2729(RSP), 14 December 2023, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0483_EN.html.

cooperation with the Fundamental Rights Officer by the respective Member State authorities is crucial for the effectiveness of the overall fundamental rights monitoring and reporting system.

Fundamental rights protection at Frontex can only be effective when supported by a conducive environment, with effective investigations of allegations of fundamental rights violations by Member States' justice systems and independent monitoring mechanisms. Suspension of operations is the strongest fundamental rights safeguard foreseen in the Frontex Regulation against serious and repeated violations; however, it is not certain whether such measure would automatically improve the fundamental rights situation on the ground. One of the main arguments made by Frontex is that the Agency's presence can add value to oversight and improve the fundamental rights situation at borders; however, this is conditional on the regular presence of Frontex personnel and their unhindered access to frontline operational areas, as well as the timely, accurate and systematic reporting of all incidents.

Given that the authorities of the Member States are primarily responsible for the organisation and implementation of the operations to which Frontex contributes with its personnel and assets, the work of the Agency and its ability to adhere to its mandate responsibilities might be affected when national legislation and practices are not fully consistent with the EU acquis. When actions contrary to the applicable legislation are proved and documented, it is of paramount importance that measures be taken to ensure accountability and remedial action for which systematic reporting and thorough investigation are essential preconditions. At this point it is important to look at the broader landscape of fundamental rights monitoring and the respective oversight mechanisms, including the European Commission's role as the guardian of the treaties in the transposition of EU legislation in the Member States.

The Frontex Scrutiny Working Group (FSWG),³ which was established at the European Parliament's LIBE Committee in January 2021, continued its regular exchange with Frontex within its oversight mandate. Frontex was invited to hearings and regularly reported to the FSWG concerning the follow-up on previously issued recommendations, including those concerning fundamental rights. In a positive development towards greater transparency, the Consultative Forum started receiving these reports in November 2023.

The Consultative Forum presented its 2024 Programme of Work to the Frontex Management Board in November 2023. The Eleventh Annual Report of the Consultative Forum will, upon request, be presented to stakeholders in 2024, particularly to the European Parliament's LIBE Committee and the Council Working Party on Frontiers.

The current year will see further challenges, with an increase in the number of Standing Corps, continual growth of the Agency and the diversification of its activities, which will all require assessment against their fundamental rights compliance and impact. In parallel, the implementation of the European Integrated Border Management Strategy, the adoption of new procedures in the context of the EU Pact on Asylum and Migration and the expansion of activities in third countries are likely to place additional responsibilities on Frontex to support the implementation of EU policies, in compliance with the relevant acquis. In this regard, the Consultative Forum looks forward to engaging constructively with the Agency in identifying priorities and addressing emerging, as well as long-term concerns around the protection of fundamental rights in the context of border management operations.

³ European Parliament (2023), European Parliament scrutiny of Frontex, Think Tank European Parliament, 27 November 2023, [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)698816](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698816).

2

GENERAL CONTEXT



IOM at Pristina Airport in the context of VEGA Activity

© Frontex Consultative Forum on Fundamental Rights

The previous year, 2023, witnessed rapidly evolving asylum and migration policy developments in the European Union, both at a legislative and border management level. The increasingly tense geopolitical fractures surrounding the European Union, including Russia's invasion of Ukraine, the ongoing dire humanitarian situation in Syria and Afghanistan, as well as the consequences of the war in Gaza, led to a large number of arrivals in the Central Mediterranean with increased loss of life at sea, as did persistent economic fragility and instability in North Africa and the Sahel region.

Against this background of conflict, political instability, poverty and inequality, people will continue embarking on deadly journeys seeking safety and a more stable and dignified existence in the EU. The critical lack of legal and safe migration pathways towards the EU, as well as limited resettlement opportunities for the most vulnerable of refugees, put further strain on national asylum systems and reception facilities and expose people on the move to severe risks. While the new EU Pact on Asylum and Migration intends to address the issue of reception and redistribution of migrants and refugees, there is no plan yet to coordinate and improve Search and Rescue (SAR) capacities.

By November 2023 more than 2,480 migrants and refugees lost their lives or had gone missing in the Mediterranean Sea, surpassing the total for 2022.⁴ Major incidents marked the year, such as the one in Cutro, Italy, and the massive shipwreck off the coast of Pylos, Greece, where up to 700 people lost their lives.

Regarding legal developments, negotiations took place on the EU Pact on Asylum and Migration. In December, the European

⁴ Euronews-EFE (2023), 'UN says number of migrant deaths and disappearances in Mediterranean highest for five years', 23 November 2023, <https://www.euronews.com/2023/11/23/un-says-number-of-migrant-deaths-and-disappearances-in-mediterranean-highest-for-five-year>.

Parliament and the Council reached a political agreement on the five remaining regulations of the Pact.⁵

According to the European Union Agency for Asylum (EUAA), 1.14 million applications for international protection were lodged in EU+ countries in 2023, an increase of 18% compared to 2022.⁶ Germany continued to receive the most applications (334,000, +45% from 2022) accounting for about 30% of the total. In 2023, France (167,000, +7%), Spain (162,000, +38%) and Italy (136,000, +63%) all received record number of applications⁷ and jointly accounted for an additional two fifths of the total. Syrians, Afghans and Turks remained the largest applicant groups, followed by Venezuelans and Colombians. At the same time, over one million decisions granting temporary protection to persons fleeing Ukraine were issued throughout the year. Following extreme levels at the outset of the war, temporary protection decisions have been declining and remained relatively stable at a lower level from the summer of 2023 onward.

The latest Frontex data indicated a rise in the number of irregular entries into the EU, approximately 380,000. In comparison with 2022, Frontex reported an increase of 17% and overall, the highest value recorded since 2016.⁸

⁵ Council of the European Union (2023), 'The Council and the European Parliament reach breakthrough in reform of EU asylum and migration system', 21 December 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>.

⁶ See: EUAA (2024), 'EU received over 1.1 million asylum applications in 2023', 28 February 2024, <https://euaa.europa.eu/news-events/eu-received-over-1-million-asylum-applications-2023>.

⁷ Since at least 2008, based on a combination of Eurostat (2008-2014; last update on 18 January 2024) and EPS (since 2015) data.

⁸ The European Border and Coast Guard Agency (Frontex) (2024), 'Significant rise in irregular border crossings in 2023, highest since 2016', 26 January 2024, <https://www.frontex.europa.eu/media-centre/news/news-release/significant-rise-in-irregular-border-crossings-in-2023-highest-since-2016-C0gGpm>.

In the Central Mediterranean the situation has become increasingly complex, with a surge in arrivals throughout the year posing challenges to Italian authorities, both in terms of Search and Rescue and border management activities, but also as regards reception conditions, especially on the island of Lampedusa,⁹ as well as in Sicily and other facilities on the mainland.

The controversy that followed the shipwreck off the coast of Cutro,¹⁰ including the role of Frontex in alerting the maritime authorities in time for a SAR intervention,¹¹ prompted legislative initiatives, with the so-called “Decreto Cutro” promulgated into law. The new national legislation introduced provisions as regards access to protection such as subsidiary or humanitarian return procedures and differentiated access to reception measures.¹²

Throughout this period, Frontex continued to support Italy with aerial surveillance, maritime patrols, as well as screening and identification procedures at different hot spots in Sicily and Lampedusa and in *ad hoc* reception centres in Calabria.

⁹ In a Lampedusa related case of *J.A. and Others v. Italy*, the European Court of Human Rights found that Italy had violated Art. 3 (inhumane and degrading treatment), Art. 5 §§ 1 (f), 2 and 4 (arbitrary deprivation of liberty, detention without clear and accessible legal basis and in absence of reasoned decision, applicants not informed of legal reasons of detention, inability to challenge lawfulness of de facto detention owing to lack of sufficient information) and Art. 4 of Protocol No. 4, Prohibition of collective expulsion of aliens. See: European Court of Human Rights (ECtHR), *J.A. and Others v. Italy*, No. 21329/18, 30 June 2023, <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2221329%22%22itemid%22%3A%22001-223716%22%7D>.

¹⁰ UN News (2023), ‘Deadly shipwreck in Italy must trigger action to save lives, UN officials say’, 26 February 2023, <https://news.un.org/en/story/2023/02/1133917>. See also: France 24 (2024), ‘Italy probes deadly shipwreck as new rescue saves hundreds’, 03 March 2024, <https://www.france24.com/en/live-news/20230303-italy-probes-deadly-shipwreck-as-new-rescue-saves-hundreds>; The European Border and Coast Guard Agency (Frontex) (2023), ‘Frontex statement following tragic shipwreck off Crotone’, 01 March 2023, <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-statement-following-tragic-shipwreck-off-crotone-gKRXcg>.

¹¹ Vasques, E. (2023), ‘Frontex aveva avvertito l'Italia di un possibile “gran numero di persone” prima del naufragio’, *Euractiv*, last modified 05 March 2023, <https://euractiv.it/section/migrazioni/news/frontex-aveva-avvertito-italia-di-un-possibile-gran-numero-di-persone-prima-del-naufragio>.

¹² European Council on Refugees and Exiles (ECRE) (2023), *ECRE briefing, Italy: Legal developments*, May 2023, <https://ecre.org/wp-content/uploads/2023/05/Italy-Briefing.pdf>.

The situation at the Western Mediterranean EU sea border section mirrored largely that of the Central Mediterranean, seeing an increase in arrivals and large numbers of fatalities at sea. The year saw a new trend in routes towards the Canary Islands, resulting in longer and riskier journeys, with increased departures of boats heading towards that region.¹³

According to Frontex data, up to mid-November 2023, there were over 27,700 attempted irregular crossings in the Western Mediterranean. The number of arrivals, 13,000 in October 2023, was the highest monthly total on record since Frontex began collecting data. Overall, arrivals via the maritime route to Spain increased by 70.3% in comparison to 2022.¹⁴ Meanwhile, in 2023, the number of crossings of the land border in Melilla and Ceuta decreased by 44.7% compared to the previous year.

On 14 June 2023, off the coast of the town of Pylos in south-western Greece, there occurred one of the largest recorded shipwrecks in the Mediterranean. The vessel that had departed from the coasts of eastern Libya was carrying between 500 and 700 persons on-board, including up to 100 children stowed under the deck together with their mothers and guardians.¹⁵ This incident exposed a critical

¹³ Sánchez, G., Vargas N., and Sánchez, R (2023), 'La crisis política de Senegal provoca un pico en las llegadas de cayucos a Canarias', *el Diario.es*, last modified 11 September 2023, https://www.eldiario.es/desalambre/crisis-politica-senegal-provoca-pico-llegadas-cayucos-canarias_1_10499754.html. See also: Vega, G., Martín M. (2023), 'El repunte en la ruta migratoria canaria pulveriza todos los récords mientras se multiplican los muertos', *El País*, 07 November 2023, <https://elpais.com/espana/2023-11-07/el-repunte-en-la-ruta-migratoria-canaria-pulveriza-todos-los-records-mientras-se-multiplican-los-muertos.html#?rel=mas>.

¹⁴ EuropaPress (2023), 'Un total de 46.862 migrantes han entrado en España de forma irregular, 32.436 a Canarias, el año con más llegadas', 16 November 2023, <https://www.europapress.es/epsocial/migracion/noticia-total-46862-migrantes-entrado-espana-forma-irregular-32436-canarias-ano-mas-llegadas-20231116191320.html>.

¹⁵ European Union Agency for Fundamental Rights (FRA) (2023), *Preventing and responding to deaths at sea: what the European Union can do*, 07 July 2024, <https://fra.europa.eu/en/publication/2023/fra-deaths-sea-paper>.

breakdown of SAR protocols and operational guidelines.¹⁶ Questions were also raised about Frontex's role in the incident. Prior to the incident, clear recommendation had been given to Frontex, resulting from the 2021 scrutiny process (concerning operations in the Aegean region),¹⁷ that Frontex vessels and/or aerial surveillance assets should remain on site after the handover to the national authorities following detections and/or apprehensions at sea. To date, this does not appear to be the case.

Multiple allegations of collective expulsions (also known as push-backs) at Greece's land and sea borders continued emerging from multiple sources throughout the year.¹⁸ Similar allegations also emerged concerning Bulgaria's border with Türkiye.¹⁹

¹⁶ Beake, N. and Kallergis, K. (2023), 'Greece boat disaster: BBC investigation casts doubt on coastguard's claims', *BBC News*, 18 June 2023, <https://www.bbc.com/news/world-europe-65942426>. See also: Fallon, K., Christides G., Busch, J., and Emmanouilidou, L. (2023), 'Greek shipwreck: hi-tech investigation suggests coastguard responsible for sinking', *The Guardian*, 10 July 2023, <https://www.theguardian.com/global-development/2023/jul/10/greek-shipwreck-hi-tech-investigation-suggests-coastguard-responsible-for-sinking>; European Ombudsman (2024), *How the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations in the context of its search and rescue activities*, 26 February 2024, <https://www.ombudsman.europa.eu/en/opening-summary/en/172812>; The European Border and Coast Guard Agency (Frontex) (2023), 'Frontex statement following tragic shipwreck off Pylos', 16 June 2023, <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-statement-following-tragic-shipwreck-off-pylos-dJ5l9p>.

¹⁷ European Parliament LIBE Committee on Civil Liberties, Justice and Home Affairs (2023), *Working Document - Report on the fact-finding investigation on Frontex concerning alleged fundamental rights*, 14 July 2024, https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf. See also, The European Border and Coast Guard Agency (Frontex) (2021), *Roadmap addressing the recommendations of the preliminary report of the Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operation*, 2021, https://www.frontex.europa.eu/assets/Key_Documents/MB_Documents/Frontex_Roadmap_WG_FRALO_Recommendations.pdf; The European Border and Coast Guard Agency (Frontex) (2021), 'Conclusions of the Management Board on the follow up of the reports from the WG FRaLO, the Frontex Scrutiny Working Group, the European Ombudsman, ECA and IAS', 07 October 2021, <https://www.frontex.europa.eu/media-centre/news/management-board-updates/conclusions-of-the-management-board-on-the-follow-up-of-the-reports-from-the-wg-fralo-the-frontex-scrutiny-working-group-the-european-ombudsman-eca-and-ias-Dqym0w>.

¹⁸ The New York Times (2023), 'Greece Says It Doesn't Ditch Migrants at Sea. It Was Caught in the Act', 19 May 2023, <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>. See also: Joyner, E. (2023), 'EU Border pushbacks: A 'shadow' migration policy?', *Deutsche Welle*, 19 July 2023, <https://www.dw.com/en/eu-border-pushbacks/a-66259471>.

¹⁹ von der Brèlie, H. (2023), 'Border Violence: What is going on in Bulgaria?', *Euronews*, 20 July 2023, <https://www.euronews.com/2023/07/20/border-violence-what-is-going-on-in-bulgaria>. See also, France

In Lithuania, on 3 May 2023, the Government adopted a resolution confirming an emergency situation, which provides border guards with executive powers to proceed with non-admission measures.²⁰ On 28 November 2023, Finland announced the closure of its border with Russia.²¹ In both cases, the adoption of temporary legislation has had a major impact on the ability of persons potentially in need of international protection, as well as vulnerable persons, to seek necessary assistance. Frontex Joint Operation Terra is being implemented in both countries.

24 (2023), 'Bulgaria accused of brutal border pushbacks', 02 August 2023, <https://www.france24.com/en/live-news/20230208-bulgaria-accused-of-brutal-border-pushbacks>.

²⁰ Lithuanian Seimas (2023), *Nutarimas dėl Lietuvos respublikos valstybės sienos apsaugos esant paskelbtai valstybės lygio ekstremaliajai situacijai (Decision on The Protection of the State Border of the Republic of Lithuania in the Extreme Situation of the State Level Declared)*, No. 315, 03 May 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/11c81520e9ae1eda305cb3bdf2af4d8?fwid=-17d3otps01>.

²¹ Bryant M. and O'Carroll, L. (2023), 'Finland closes entire border with Russia after tensions over asylum seekers', *The Guardian*, 28 November 2023, <https://www.theguardian.com/world/2023/nov/28/finland-closes-entire-border-with-russia-after-tensions-over-asylum-seekers>.

3

ROLE AND COMPOSITION



Screening procedure in Catania

The Frontex Consultative Forum was established in October 2012 and has been in operation since January 2013. Pursuant to Article 108 of Regulation 2019/1896, the Consultative Forum provides independent advice to Frontex on the respect, protection and promotion of fundamental rights in the Agency's activities.

Regulation 2019/1896 highlights specific areas²² where the Agency should seek the Consultative Forum's views but also enables the Consultative Forum to work on any matter related to fundamental rights upon request made by the Agency, the Management Board, the Fundamental Rights Officer, or on its own initiative.²³

However, the Consultative Forum does not have the mandate to monitor Frontex activities. The Fundamental Rights Officer and the Fundamental Rights Monitors have the responsibility "to constantly assess the fundamental rights compliance of Frontex operational activities."²⁴

While the Consultative Forum issues recommendations upon its own initiative or upon request and provides its views on the fundamental rights implications of certain processes, operations or policies, the Consultative Forum has limited capability to assess the impact of the advice provided. The Consultative Forum welcomed the adoption of a Frontex Management Board decision in 2022 which established mechanisms for following up on the Consultative Forum's and Fundamental Rights Officer's recommendations,

²² The European Border and Coast Guard Agency (Frontex) (2020), *Consultative Forum on Fundamental Rights, Seventh Annual Report 2019*, 02 October 2020, pp. 19-22, https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf.

²³ Art. 108(1) and Art. 108(3) of 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, OJ L 295.

²⁴ Art. 110 of 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, OJ L 295.

although currently Frontex rarely provides feedback on the extent to which the Consultative Forum's advice is considered. Nevertheless, the Consultative Forum anticipates that measures indicated in the decision will be systematically applied by the Agency in the future.²⁵

In 2023, the Consultative Forum convened three meetings in Warsaw. The Consultative Forum co-chairs attended all Frontex Management Board meetings in 2023 for those agenda items concerning fundamental rights.

In May 2023, Frontex launched an open call for expression of interest from relevant civil society organisations for membership of the Consultative Forum in years 2024-2026, which resulted in two new civil society members joining the Consultative Forum as of January 2024: the Global Campus of Human Rights and the Rule of Law Institute Foundation (Poland).

The Red Cross EU Office did not renew its Consultative Forum membership, which expired at the end of 2023.

In 2023, the Consultative Forum was composed of twelve organisations which contributed with their expertise and resources on a voluntary basis. UNHCR, EUAA and FRA are statutory members of the Consultative Forum as per Regulation 2019/1896. CoE, IOM, OSCE/ODIHR and OHCHR were invited by Frontex to become members of the Consultative Forum.²⁶

²⁵ The European Border and Coast Guard Agency (Frontex) (2022), *Management Board Decision 43/2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer*, 20 July 2022, <https://prd.frontex.europa.eu/document/management-board-decision-43-2022-adopting-the-rules-for-the-executive-director-and-the-management-board-to-inform-the-consultative-forum-of-the-follow-up-to-its-recommendations-and-to-ensure-that-act/>.

²⁶ The European Border and Coast Guard Agency (Frontex) (2020), *Management Board Decision 4/2020 of 29 January 2020 amending Management Board Decision 29/2019 of 2 December 2019 on the composition of the Consultative Forum on Fundamental Rights*, 29 January 2020, <https://prd.frontex.europa.eu/>

The 12 organisations comprised:

Two European Union agencies:

- European Union Agency for Asylum (EUAA)
- European Union Agency for Fundamental Rights (FRA)

Five international organisations:

- Council of Europe (CoE)
- International Organisation for Migration (IOM)
- Organization for Security and Co-operation in Europe — Office for Democratic Institutions and Human Rights (OSCE/ODIHR)
- UN High Commissioner for Human Rights Regional Office for Europe (OHCHR)
- United Nations High Commissioner for Refugees (UNHCR)

Five civil society organisations:

- Churches' Commission for Migrants in Europe (CCME)
- Council of Bars and Law Societies of Europe (CCBE)
- Jesuit Refugee Service Europe (JRS)
- Red Cross EU Office
- Save the Children

UNHCR and FRA co-chaired the Consultative Forum in 2023 with the support of the Consultative Forum Secretariat, which is facilitated by the Fundamental Rights Office.²⁷

[wp-content/uploads/mb_decision_4_2020_amending_management_board_decision_292019_of_2_december_2019_on_compositionof_cf.pdf](https://www.fundamentalrights.eu/wp-content/uploads/mb_decision_4_2020_amending_management_board_decision_292019_of_2_december_2019_on_compositionof_cf.pdf).

²⁷ Article 109(2)h of 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, OJ L 295.

Since May 2022, the OSCE/ODIHR has represented the Consultative Forum in the ETIAS Fundamental Rights Guidance Board.²⁸

Note on data processing and protection

Personal data is processed by the Consultative Forum Secretariat for the purpose of providing administrative support for the preparation, implementation and management of the work of the Consultative Forum.²⁹

Please contact: consultative.forum@frontex.europa.eu

²⁸ The European Border and Coast Guard Agency (Frontex) (2021), *Consultative Forum on Fundamental Rights' Working Methods 2021*, 01 November 2021, https://www.frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_on_Fundamental_Rights_2021.pdf.

²⁹ The European Border and Coast Guard Agency (Frontex) (2023), *Record of Processing Activity on Personal Data for Data Controllers - Consultative Forum*, 28 September 2023, https://www.frontex.europa.eu/assets/Data_Protection/Records/184_Consultative_Forum.pdf.



4 FUNDAMENTAL RIGHTS ADVICE TO FRONTEX

Kelebija Border Crossing Point – On-the-spot visit to JO Serbia Land 2023

© Frontex Consultative Forum on Fundamental Rights

4.1 ON-THE-SPOT VISITS

According to Article 108(5) of Regulation 2019/1896, the Consultative Forum may “without prejudice to the tasks of the fundamental rights officer, carry out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas and to return operations and return interventions, including in third countries.” Observation missions allow the Consultative Forum to tailor its recommendations to Frontex’s operational context.

The locations for on-the-spot visits are proposed by the Consultative Forum members in consultation with the Fundamental Rights Officer, based on emerging challenges concerning the protection of fundamental rights. In follow-up to these visits, the Consultative Forum shares its observations at focus group meetings with the Frontex Management Board Chair and member(s) of the respective Member States, representatives of relevant Frontex divisions and representatives of the Fundamental Rights Office.

In 2023, two focus group meetings took place following on-the-spot visits to Italy (Joint Operation Themis) and Serbia (Joint Operation Serbia).

4.1.1 Joint Operation Themis - Italy

In May 2023, the Consultative Forum conducted an on-the-spot visit to Joint Operation Themis in Italy.

The delegation met with Italian authorities, the Representation of the European Commission, Frontex-deployed staff, as well as international and civil society organisations in Rome, Catania, Pozzallo, Augusta and Lampedusa.

The Consultative Forum delegation acknowledged the extraordinary circumstances under which national authorities, in cooperation and coordination with international and civil society organisations, carry out disembarkation, reception, registration and referral activities. Reception of unaccompanied children and their prolonged stay in the hotspots remains particularly problematic, together with the identification and referral of vulnerable persons. Furthermore, access to basic needs such as food, water, sanitary facilities and health care constitute a challenge in all overcrowded reception facilities.

Given its operational support to Italy, Frontex should consider how further aid, assistance and advice can be provided to establish standards that are fully compliant with EU regulations and humanitarian principles. Frontex should consider adopting an “emergency” mode that can be quickly activated in cases of unforeseeable surges in the number of arrivals. Such modality should also consider a permanent presence of Fundamental Rights Monitors in some locations. Frontex should use its expertise and crucial support role to formulate suggestions and proposals to host states aimed at improving the overall operational response. The Agency should also play a catalytic role within the Management Board to facilitate discussions among Member States and promote the introduction of higher operational standards.

4.1.2 Joint Operation Serbia Land and Coordination Points

In June 2023, the Consultative Forum undertook an on-the-spot observation mission to Joint Operation Land Serbia and to a Co-ordination Points location – Belgrade Nikola Tesla Airport.

The mission included meetings with national authorities, the EU Delegation in Belgrade, border guard officers, civil society and international organisations, as well as the Ombudsman. The Consultative



Hotspot of Pozzallo

© Frontex Consultative Forum on Fundamental Rights

Forum delegation noted the reports by different organisations concerning the violence that migrants and refugees in Serbia experience at the borders.

The Consultative Forum delegation expressed concern regarding challenges stemming from frequent lack of interpreters, cultural mediators and concerning especially the identification and referral of unaccompanied children, vulnerable persons and those in need of international protection. Interpretation and cultural mediation remain indispensable tools for efficient border management, access to protection and proper handling of individual cases, including the collection and distribution of accurate information.

4.2 IDENTIFICATION OF VULNERABLE PERSONS – VEGA OPERATIONS

Seventeen Consultative Forum experts joined Frontex VEGA activities in 2023 in eleven locations. The participants in the activities visited three airports (Chişinău, Pristina and Skopje), as well as eight border crossing points in six countries (Croatia, Lithuania, Moldova, Poland, Romania and Slovakia). Overall, the experts spent a combined thirty-one weeks in the field. Although Frontex had announced several times that VEGA would be activated also in sea operations, this did not materialise in 2023.

Major observations in the context of VEGA operations concern low levels of competence in the identification of vulnerable persons, limited safeguards for children travelling alone, as well as (similarly to the observations made in the context of the on-the-spot visits) a persistent lack of interpretation, which poses an obstacle to the identification of vulnerable persons.

The Consultative Forum observed a lack of disaggregated data collection by Frontex on identified vulnerable cases and referrals. While the objective of VEGA operations is the identification of vulnerable people, children in particular, Frontex neither collects relevant data nor does it seem to cross-check, verify or follow up with the national authorities on identified cases. These shortcomings also pose a challenge in the context of potential complaints or serious incident reports, as lack of information would make it difficult for Frontex to contribute to investigations and to track its own records.

Targeted training provided to national authorities to improve awareness, knowledge and skills relevant for the identification of vulnerable persons could be a way to address these specific issues. The

Consultative Forum remains available to advise and support the Agency in this regard.

In 2023, the Consultative Forum submitted an overview of detailed observations and proposals to Frontex as part of the annual evaluation of Frontex VEGA operations.

4.3 FUNDAMENTAL RIGHTS GUIDANCE BOARD OF THE EUROPEAN TRAVEL INFORMATION AND AUTHORISATION SYSTEM

Starting from mid-year 2025, people from more than 60 visa-free countries will require travel authorisation before coming to Europe for a brief stay. Regulation 2018/1240 established ETIAS, an automated IT system created to identify any security, irregular immigration and high epidemic risks posed by visa-exempt visitors prior to travelling to the Schengen Area.

As per Article 10(1) of Regulation (EU) 2018/1240, the ETIAS Fundamental Rights Guidance Board comprises of representatives of:

- The Fundamental Rights Officer of the European Border and Coast Guard Agency
- Consultative Forum on Fundamental Rights of Frontex
- European Data Protection Supervisor (EDPS)
- European Data Protection Board (EDPB), and
- European Union Agency for Fundamental Rights (FRA).

The Fundamental Rights Guidance Board is mandated to issue recommendations, appraisals and advice for the implementation of the ETIAS screening rules and watchlist. As part of its work on the establishment of the ETIAS system and its relevant entities, in 2023 the Fundamental Rights Guidance Board collected information and maintained a high level of awareness regarding related



Simulation of forced-return flight with Monitors

© European Border and Coast Guard Agency

systems, algorithmic profiling, the development of specific risk indicators predominantly relating to security and irregular migration.

In 2023, the ETIAS Central Unit provided regular updates at the Fundamental Rights Guidance Board meetings on the state of play of the ETIAS system's development. This ensured engagement and timely feedback, for example on auditing methodologies of ETIAS screening processes.

The Fundamental Rights Guidance Board provided further advice on ETIAS National Units, Risk Screening Operations, Risk Analysis, Security Risks and on the setting up and governing of the ETIAS Screening Board. Going forward, the Fundamental Rights Guidance Board aims to publicise more of its work to make the ETIAS process—and the fundamental rights obligations that apply to this process—clear to the public. This includes highlighting ways in which reliance on proxy data might inadvertently lead to discrimination, for

example how risk profiles that rely heavily on location data might lead to discrimination based on religion or ethnicity.

4.4 INPUT INTO FRONTEX PROCEDURES AND TOOLS

4.4.1 Serious Incidents Reporting³⁰

In 2023, the Consultative Forum provided comments to the latest revision of the Frontex Standard Operating Procedures on Serious Incident Reporting (SIR).

Main observations and comments concerned:

- FRO access to all SIRs and the possibility to potentially reclassify SIRs
- In case participants in Frontex activities learn of or witness incidents, or otherwise have grounds to believe that serious incidents took place, they shall immediately report to the coordinating staff of Frontex and, as a rule, to the Fundamental Rights Office
- The coordinating staff should collect any additional information and report the incident, with an initial assessment, to the Frontex Situation Centre and – if not done so by the participant – to the FRO
- Regarding Data Protection, only data relating to health, including data of physical injury and medical measures shall be collected, limited to what is strictly necessary and in as minimal amounts as possible, considering the nature of the incident.

³⁰ The Consultative Forum on Fundamental Rights issued a recommendation to Frontex on the reform of its Serious Incident Reporting (SIR) mechanism in 2021: The European Border and Coast Guard Agency (Frontex) (2022), *Consultative Forum on Fundamental Rights, Ninth Annual Report 2021*, 17 October 2022, https://www.frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_Annual_Report_2021.pdf.

- Collection of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data such as fingerprints, or data related to a person's sexual orientation or gender identity is strictly forbidden and should not be included in the SIR. If such data is accidentally collected (e.g. in a witness statement), it shall be removed without undue delay.

4.4.2 Children in return

The Consultative Forum provided comments on a policy document on 'Voluntary Return of Unaccompanied Minors – Requirements for Frontex support'. The Consultative Forum was concerned with the assessment of the best interests of the child and the "voluntary" character of returns, particularly from detention. In this context, the Consultative Forum advised to use the term "children" instead of "minors", "irregular" instead of "illegal" and "best interests" instead of "best interest". Further advice concerned differentiation of various return categories (forced/voluntary/charter/national/scheduled flights) and the category-specific procedures for children concerned. As for forced returns more broadly, the Consultative Forum advised Frontex to carry out a legality check of respective return decisions and, in the context of children, an equal check concerning an assessment of the best interests of children.

In 2023, the Consultative Forum further provided comments to the 'My Guidebook on Return – Unaccompanied Children Version' which is part of the 'Toolbox for Children in Return' published by Frontex.³¹

³¹ The European Border and Coast Guard Agency (Frontex) (2023), *Toolbox for children in return*, 2023, <https://op.europa.eu/en/publication-detail/-/publication/d6ea7345-9297-11ee-8aa6-01aa75ed71a1/language-en/format-PDF/source-304333518>.

Reference to the best interests of children feature in the majority of the Consultative Forum's past recommendations.³²

4.4.3 Frontex International Cooperation Strategy

In 2023, Frontex invited the Consultative Forum to comment on its International Cooperation Strategy. The Consultative Forum issued advice about the mainstreaming of fundamental rights as an essential component of all Frontex external engagement activities supporting border management, capacity building, and technical cooperation. Further advice included strengthening cooperation with international organisations, NGOs and civil society organisations on the ground, especially regarding Frontex activities in third countries about reintegration measures. As a steady increase of Frontex cooperation with third countries is expected in the incoming years, this area of attention will remain relevant for the Consultative Forum, which issued a recommendation on this matter in 2019.³³

4.4.4 Observations and comments on the Fundamental Rights Officer's strategic and operational documents

In 2023, the Consultative Forum held quarterly bilateral meetings with the Fundamental Rights Officer and Monitors in addition to the regular exchanges of views at the three Consultative Forum meetings.

³² The European Border and Coast Guard Agency (Frontex) (2017), 'Recommendation on a child protection strategy for Frontex' in *Frontex Consultative Forum on Fundamental Rights, Fifth Annual Report 2017*, 14 May 2018, pp. 19-21, https://www.frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2017.pdf.

³³ The European Border and Coast Guard Agency (Frontex) (2020), *Consultative Forum on Fundamental Rights, Seventh Annual Report 2019*, 02 October 2020, pp. 46-54, https://www.frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2019.pdf.

Moreover, at the request of the FRO, the Consultative Forum reviewed and provided advice on:

- Fundamental Rights Due Diligence Procedure on Frontex Cooperation with Third Countries
- Standard Operating Procedures on Roles and Responsibilities of Fundamental Rights Monitors (FROMs) in Frontex operational activities
- Working methods of the Fundamental Rights Office on Investigations.

4.4.5 Fundamental rights advice provided within Frontex training activities

In 2023, Consultative Forum members attended training development workshops on fundamental rights for multipliers. The focus of these workshops was primarily on the expansion of training materials for subsequent “train the trainers” or “multipliers” sessions, upon which attendees would disseminate acquired knowledge on fundamental rights to border authorities in their home countries.

Furthermore, Consultative Forum members attended several workshops, observed training design techniques, and offered input on integrating a fundamental rights dimension into the developed modules, as well as assisting in the creation of training scenarios for potential violations of fundamental rights at borders.

While Consultative Forum members can only occasionally attend Frontex training related workshops, Frontex’s training mandate stands to benefit from a comprehensive assessment and systematic integration of a fundamental rights dimension into the design, development and delivery of its training modules. Although Frontex had carried out an assessment of its training material in the past to analyse gaps in the coverage of fundamental rights (following the

Consultative Forum's advice), it is not clear whether and to what extent there was any follow-up action from Frontex. The Consultative Forum does not have sufficient insight as to whether the training currently provided to the Standing Corps considers fundamental rights standards (e.g. as part of the common core curriculum) or integrates fundamental rights more broadly throughout all modules. The Consultative Forum co-chairs shared these observations in an evaluation meeting concerning Frontex training in January 2023.³⁴

³⁴ The European Border and Coast Guard Agency (Frontex) (2021), *Consultative Forum on Fundamental Rights, Eight Annual Report 2020*, 20 October 2021, pp. 85-92, https://www.frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_Annual_Report_2020.pdf.

5 CONSULTATIVE FORUM MEMBERS' PROJECTS AND PUBLICATIONS



UNHCR staff meet refugees from Ukraine crossing into Italy at the Ferneti border crossing between Slovenia and Italy. They provide information on asylum procedures and identify people with specific needs

The Churches' Commission for Migrants in Europe (CCME)

The Churches' Commission for Migrants in Europe (CCME) is a Europe-wide umbrella organisation of Churches (mainly Protestant and Orthodox), as well as church-related organisations and Councils of Churches. The 39 current members of CCME are based in 19 countries. CCME addresses issues of asylum, migration, integration and anti-discrimination/inclusion by acting as a platform for learning and information and knowledge exchange for its members, as well as articulating positions of its members towards European institutions. CCME serves as one of the two co-chairs of the European NGO platform on asylum and migration, EPAM.

During 2023, one of the areas of focus was advocacy on the EU Pact on Asylum and Migration. CCME articulated the demand for fair, individual and accessible asylum procedures and expressed concern about the plans of keeping persons seeking protection outside or at the borders of the EU.³⁵

CCME continued its advocacy for safe passages, both into protection and into the labour market. Joint statements on the need for increased resettlement³⁶ and swift labour market access under the single permit³⁷ were published with other NGO actors.

³⁵ Churches' Commission for Migrants in Europe (CCME) (2023), *An open letter to negotiators in the European Commission, the Spanish Presidency of the Council of the European Union, and the European Parliament ahead of the final negotiations on the EU Pact on Migration*, 18 December 2023, <https://ccme.eu/wp-content/uploads/2023/12/Open-letter-Jumbo-Trilogue-pact-FINAL-23-12-18.pdf>.

³⁶ Churches' Commission for Migrants in Europe (CCME) (2023), *Seven Priorities to Expand Resettlement and Safe Pathways to Europe*, September 2023, https://ccme.eu/wp-content/uploads/2023/09/JS_7-priorities-to-expand-resettlement-and-safe-pathways-to-Europe_FINAL_signatories_3.pdf.

³⁷ Churches' Commission for Migrants in Europe (CCME) (2023), *Break the chain of dependency and promote equal treatment of migrant workers*, November 2023, https://ccme.eu/wp-content/uploads/2023/11/Joint-Statement_Revision-of-the-SPD_15-Nov.pdf.

As part of the global community of churches, CCME intensified its cooperation with its sister organisation the All Africa Conference of Churches AACC, holding the 1st Africa Europe Ecumenical Forum on Migration in Hamburg, Germany, in March 2023.³⁸ The cooperation with churches in Africa also informed CCME's stand against the EU-Tunisia agreement.³⁹ The General Assembly of AACC and the participants of a workshop on migration and trafficking in Abuja, Nigeria in November provided other important occasions for exchange between AACC and CCME.

Together with partners from other regions and other faiths, CCME contributed to the meeting and common declaration of faith leaders prior to the Global Refugee Forum GRF in December in Geneva.⁴⁰

Apart from policy and exchange activities, CCME promoted best practice in interviewing asylum applicants with religion-based claims. The respective practical guide published by the EUAA in 2022⁴¹ was the basis for regular exchange between CCME and EUAA, in addition to CCME's membership in EUAA's consultative forum. A CCME online event in June 2023 deepened the exchange, also involving reactions from the CCME membership.⁴² The interest

³⁸ Churches' Commission for Migrants in Europe (CCME) (2023), 'Africa - Europe Ecumenical Forum on Migration – Communiqué', 22 March 2023, <https://ccme.eu/wp-content/uploads/2023/03/Communique-22.03.2023-Final.pdf>.

³⁹ Churches' Commission for Migrants in Europe (CCME) (2023), 'Safe Passage Instead of Shady Migration Deals', 19 September 2023, <https://ccme.eu/wp-content/uploads/2023/09/SAFE-PASSAGE-SHADY-MIGRATION-DEALS-TUNISIA-23-09-19.pdf>.

⁴⁰ Bohol, J.E. (2023), 'CCME to GRF 2023: welcoming the stranger and upholding refugee rights is in our 'Christian DNA'', 2023, <https://ccme.eu/wp-content/uploads/2023/12/CCME-to-GRF-2023-2.pdf>.

⁴¹ European Union Agency for Asylum (EUAA) (2022), *Practical Guide on Interviewing Applicants with Religion-based Asylum Claims*, 30 November 2022, <https://euaa.europa.eu/publications/practical-guide-interviewing-applicants-religion-based-asylum-claims>.

⁴² Churches' Commission for Migrants in Europe (CCME) (2023), 'The EUAA "Practical Guide on Interviewing Applicants with Religion-based Asylum Claims" – content, opportunities and challenges from churches' perspectives', 08 June 2023, <https://ccme.eu/wp-content/uploads/2023/05/Agenda-CCME-event-EUAA-practical-guide-June-2023.pdf>.

of CCME members in this area is related, in particular to cases of asylum seekers who convert to Christianity during the procedure – an area where the practice of interviewing asylum applicants has led to controversies between churches and states.

Council of Bars and Law Societies of Europe (CCBE)

In 2023, the CCBE continued to monitor developments regarding the New Pact on Migration and Asylum and kept pressuring EU institutions for a fundamental right-compliant framework, guaranteeing free and effective access to legal assistance for asylum seekers.

Moreover, on 16 February 2023, the CCBE published a position paper⁴³ on the proposal addressing situations of instrumentalisation in the field of migration and asylum. The CCBE expressed its general concerns about derogations that this proposal would allow and was critical about adopting such an approach. The CCBE also formulated suggestions for improvements of specific provisions with regard to the issue of access to justice and access to a lawyer, which are matters within the particular field of activity of the CCBE. In this regard the CCBE found the lack of any provisions in the proposal regarding legal assistance for people subject to the special procedures to be a striking omission. At the end of the year, the CCBE again expressed its concerns towards the legislators when this proposal was being incorporated into the Crisis Regulation.

⁴³ Council of Bars and Law Societies of Europe (CCBE) (2023), *CCBE Position Paper on the proposal addressing situations of instrumentalization in the field of migration and asylum*, 16 February 2023, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_MIG_20230216_CCBE-position-paper-on-the-proposal-addressing-situations-of-instrumentalisation-in-the-field-of-migration-and-asylum.pdf.

On 28 July 2023, the CCBE issued a statement⁴⁴ following the shipwreck off Pylos. The CCBE called for a thorough and transparent investigation into the circumstances of this disaster in order to establish the facts and responsibilities. The CCBE also called on Frontex to enact its internal procedures to duly investigate the incident and take steps to improve operations and cooperation with national authorities and make their respective and joint actions fundamental rights-compliant beyond any doubt. More generally, the CCBE called on the Member States to stop the dangerous tendency of developing practices at the EU external borders that lead to fundamental rights violations and put the lives of migrants at risk. Finally, the CCBE urged Member States to respect the right to asylum and recalled that it is a fundamental right guaranteed under international and EU law, which can only be effectively ensured by providing adequate access to legal assistance to all people potentially in need of international protection.

The CCBE continued to act as a shareholder of European Lawyers in Lesbos (ELIL), a foundation providing free legal assistance to asylum seekers in Greece and in Poland.

Council of Europe (CoE)

In the course of 2023, the Special Representative of the Secretary General on Migration and Refugees (SRSG) conducted two fact-finding missions: to Hungary⁴⁵ and Bulgaria.⁴⁶

⁴⁴ Council of Bars and Law Societies of Europe (CCBE) (2023), 'CCBE statement following the shipwreck off Pylos regarding unacceptable practices at EU borders', 28 July 2023, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2023/EN_20230728_CCBE-statement-following-the-shipwreck-off-Pylos-regarding-unacceptable-practices-at-EU-borders.pdf

⁴⁵ Council of Europe, Special Representative of Secretary General on Migration and Refugees (2023), *Report of the fact-finding mission to Hungary by Ms Leyla Kayacik Special Representative of the Secretary General on Migration and Refugees 21-23 March 2023*, 21 August 2023, <https://rm.coe.int/0900001680ac512a>.

⁴⁶ Council of Europe, Special Representative of Secretary General on Migration and Refugees (2023), *Report of the fact-finding mission to Bulgaria by Ms Leyla Kayacik Special Representative of the*

On 1 March 2023 the first interim report⁴⁷ on the implementation of the CoE Action Plan on Protecting Vulnerable Persons in the context of Migration and Asylum in Europe (2021-2025) was published. In addition to the activities outlined in the Action Plan, the report provides an overview of additional activities carried out in response to Russia's aggression against Ukraine. Furthermore, the report offers insights into lessons learnt and identifies priorities for the upcoming period.

A CoE guide for practitioners on the administrative detention of migrants and asylum seekers,⁴⁸ which codifies existing international standards and offers a coherent and clear set of international rules on administrative detention, was published in November 2023.

The CoE European Programme for Human Rights Education for Legal Professionals (HELP) launched the HELP course on Asylum and Human Rights in Croatia,⁴⁹ Poland, as well as an EU-CoE-UNHCR thematic seminar on the Implementation of the Temporary Protection Status in Europe for people from Ukraine fleeing the war,⁵⁰ held in Bratislava. HELP also published two new courses on their online platform in 2023.⁵¹ The HELP course on LGBTI Persons in

Secretary General on Migration and Refugees 11-14 September 2023, 30 January 2024, <https://rm.coe.int/0900001680ae3ac0>.

⁴⁷ Council of Europe (2023), *First Interim Report on the Implementation of the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)*, 10 February 2023, <https://rm.coe.int/first-interim-report-on-the-implementation-of-the-action-plan/1680aa29bb>.

⁴⁸ Council of Europe (2023), *Administrative Detention of Migrants and Asylum Seekers – Guide for Practitioners*, June 2023, <https://rm.coe.int/administrative-detention-of-migrants-and-asylum-seekers-guide-for-prac/1680ad4c43>.

⁴⁹ Council of Europe (2023), 'Croatian judges and court staff start training on the HELP/UNHCR course on Asylum and Human Rights', 22 September 2023, <https://www.coe.int/en/web/help/-/croatian-judges-and-court-staff-start-training-on-the-help/unhcr-course-on-asylum-and-human-rights>.

⁵⁰ Council of Europe (2023), 'Implementation of the Temporary Protection Status in Europe for people from Ukraine fleeing the war: Council of Europe, EU and UNHCR seminar in Bratislava', 16 June 2023, <https://www.coe.int/en/web/help/-/implementation-of-the-temporary-protection-status-in-europe-for-people-from-ukraine-fleeing-the-war-council-of-europe-eu-and-unhcr-seminar-in-bratislava>.

⁵¹ Platform available here: <https://www.coe.int/en/web/help/home>.

the Asylum Procedures⁵² offers a better understanding of the rights of LGBTI asylum – seekers in different stages of their asylum-claim, covering both substantive and procedural aspects. The module on Transition of Migrants and Refugee Children to Adulthood⁵³ focuses on presenting the existing standards and guidelines designed to ensure that young refugees and migrants can enjoy their fundamental rights after the age of 18, both in law and in practice.

The CoE and EU FRA published a joint guidance note on ‘Children in migration: fundamental rights at European borders’, summarising the main safeguards of European law as they apply to migrant children at the external borders of the EU and of the Council of Europe, covering both the European Convention on Human Rights (ECHR) and EU law.⁵⁴

The CoE Steering Committee for the Rights of the Child (CDENF) prepared, for adoption by the Committee of Ministers, a Recommendation on strengthening reporting systems on violence against children (CM/Rec(2023)8),⁵⁵ and made progress on the implementation review report on the Recommendation on effective guardianship for unaccompanied and separated children in the context of migration.⁵⁶ It also finalised the first implementation review of the CoE

⁵² Course available here: <https://help.elearning.ext.coe.int/course/view.php?id=6573>.

⁵³ Course available here: <https://help.elearning.ext.coe.int/enrol/index.php?id=6587>.

⁵⁴ Council of Europe (2023), *Protecting children at Europe's borders – new guidance for border officials and other authorities*, 18 December 2023, <https://www.coe.int/en/web/portal/-/protecting-children-at-europe-s-borders-new-guidance-for-border-officials-and-other-authorities>.

⁵⁵ Council of Europe (2023), Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children, 06 September 2023, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680ac62b1.

⁵⁶ Council of Europe (2019), Recommendation CM/Rec(2019)11 of the Committee of Ministers on Effective Guardianship for Unaccompanied and Separated Children in the Context of Migration, 11 December 2019, <https://rm.coe.int/cm-rec-2019-11-guardianship-en/16809ccfe2>.

Strategy for the Rights of the Child (2022-2027)⁵⁷ which identifies the protection of children's rights in crisis and emergency situations as one of the six pillars.

Regarding the protection of children's rights including in the context of migration, following the 4th Summit⁵⁸ of Heads of State and Government of the Council of Europe (Reykjavik Summit, 16-17 May 2023), a Consultation Group on the Children of Ukraine (CGU)⁵⁹ was launched in November 2023 for member States to exchange information on legal and policy frameworks regarding Children of Ukraine.

The Committee of Ministers of the CoE is monitoring the execution of several judgments of the ECtHR on migration issues concerning a number of Member States including Italy and Serbia.⁶⁰ The CoE Commissioner for Human Rights continued to address human rights issues in CoE member states, in particular reports on pushbacks, externalisation and rescue at sea.⁶¹

⁵⁷ Council of Europe (2022), *Strategy for the Rights of the Child (2022-2027)*, 23 February 2022, <https://www.coe.int/en/web/children/strategy-for-the-rights-of-the-child>.

⁵⁸ Council of Europe (2023), *Summits of Heads of State and Government of the Council of Europe*, 16-17 May 2023, <https://coe.int/en/web/cm/summits>.

⁵⁹ See Council of Europe, *Consultation Group on the Children of Ukraine* (CGU).

⁶⁰ Regarding Italy, European Court of Human Rights (ECtHR), *J.A. and Others v. Italy*, No. 21329/18, 30 March 2023, <https://hudoc.echr.coe.int/eng/#/%22itemid%22:%22002-14042%22>. The case concerns the detention in the Lampedusa hotspot of Tunisian sea migrants without clear and accessible legal basis and in poor conditions, as well as their subsequent collective expulsion; European Court of Human Rights (ECtHR), *Darboe and Camara v. Italy*, No. 5797/17, 21 July 2022, <https://hudoc.echr.coe.int/fre#/%22itemid%22:%22002-13747%22>. The case concerns the placement in an adult migrant centre and in poor conditions of an unaccompanied minor and the age-assessment procedure that ensued. Regarding Serbia, European Court of Human Rights (ECtHR), *S.E. v. Serbia*, No. 61365/16, 11 July 2023, <https://hudoc.echr.coe.int/fre#/%22itemid%22:%22002-14148%22>. The case concerns the refusal of the Serbian authorities to issue a travel document to the refugee applicant in Serbia, owing to a failure by the respective Ministers of the Interior to enact, since 2008, any regulations, as subsidiary legislation, governing the content and design of the travel document for refugees, despite being required to do so by the Asylum Act.

⁶¹ See [Council of Europe, Commissioner for Human Rights](#).

European Union Agency for Asylum (EUAA)

The European Union Agency for Asylum (EUAA) is tasked to support Member States with the implementation of the Common European Asylum System (CEAS). EUAA support is structured around three main pillars:

- Operational support to Member States, especially those experiencing disproportionate pressure on their asylum and reception systems;
- Training and professional development of national asylum and reception officials to ensure a common, high-quality application of CEAS standards, and;
- Asylum knowledge support including information collection and analysis, development of guidance and practical tools, exchange of expertise and good practices.

The below provides a summary of EUAA activities/publications in 2023, relevant to the work of Frontex on borders.

In 2023, EUAA continued to provide operational support to countries under pressure, including to Austria, Bulgaria, Belgium, Cyprus, Greece, Italy, Lithuania, Malta, the Netherlands, Romania, Spain and Slovenia. Operations in Czechia were concluded in December 2023.

The Agency cooperates, where relevant, with Frontex on data analysis and research. Through the Early Warning and Preparedness System (EPS), EUAA continued to foster an effective exchange on a set of indicators which quantify the asylum and reception situation in EU+ countries. Whereas most of the analytical outputs by EUAA serve to inform evidence-based policy-making at EU and international levels, some information is also publicly available and

can be consulted on the EUAA's latest asylum trends webpage⁶² including the annual analysis of asylum trends in 2023.⁶³

In the context of its support following the Russian invasion in Ukraine, the EUAA together with OECD and Gradus Research released "the Voices report"⁶⁴ in March 2024 analysing the experiences, hopes and aspirations of forcibly displaced Ukrainians, based on 1,500 testimonies from the SAM-UKR⁶⁵ survey.

EUAA collects information and analyses developments in legislation, policies, practices and jurisprudence related to asylum. Relevant examples include:

- Who is Who in International Protection⁶⁶
- EUAA's case-law database⁶⁷

EUAA produced ten Country of Origin Information reports in 2023, which are all available on the COI Portal.⁶⁸ These include, amongst others, reports on Venezuela, Afghanistan, Peru, Syria, Iraq, Iran,

⁶² European Union Agency for Asylum (EUAA) (2024), *Latest Asylum Trends*, March 2024, <https://euaa.europa.eu/latest-asylum-trends-asylum>.

⁶³ European Union Agency for Asylum (EUAA) (2024), *Latest Asylum Trends – Annual analysis*, February 2024, https://euaa.europa.eu/sites/default/files/publications/2024-02/EUAA_Latest_Asylum_Trends_.pdf.

⁶⁴ European Union Agency for Asylum (EUAA) (2024) <https://euaa.europa.eu/publications/voices-europe-experiences-hopes-and-aspirations-forcibly-displaced-persons-ukraine>

⁶⁵ European Union Agency for Asylum (EUAA) (2024), *Voices in Europe: Experiences, hopes, and aspirations of forcibly displaced persons from Ukraine*, March 2024, [Voices in Europe: Experiences, hopes, and aspirations of forcibly displaced persons from Ukraine | European Union Agency for Asylum \(europa.eu\)](https://euaa.europa.eu/publications/voices-in-europe-experiences-hopes-and-aspirations-forcibly-displaced-persons-from-ukraine)

⁶⁶ European Union Agency for Asylum (EUAA) (2024), *Surveys on Asylum-related Migrants (SAM)*, 2023, https://tellusyourstorysurvey.eu/index_lp.php.

⁶⁷ European Union Agency for Asylum (EUAA) (2024), *Who is Who in International Protection in the EU+ platform*, 2024, <https://whoiswho.euaa.europa.eu/>.

⁶⁸ European Union Agency for Asylum (EUAA) (2024), *EUAA Case Law Database*, 2024, <https://caselaw.euaa.europa.eu/Pages/default.aspx>.

etc. To enhance convergence in EU+ decision-making, the Agency updated country guidance⁶⁹ on Afghanistan, Syria, and Somalia.

Finally, the EUAA also produced a total of 23 practical guides and tools in 2023. Relevant examples include:

- Practical Guide: Access to the Asylum Procedure⁷⁰
- Practical tools for first contact officials - poster;⁷¹ leaflet on frequently asked questions;⁷² pocketbook⁷³
- Practical Guide on information provision – access to the asylum procedure⁷⁴
- Let's Speak Asylum Portal⁷⁵
- EUAA COI Report Methodology⁷⁶
- The future of international protection in the EU+ in the next ten years⁷⁷

⁶⁹ European Union Agency for Asylum (EUAA) (2024), *EUAA COI Portal*, 2024, <https://coi.euaa.europa.eu/>.

⁷⁰ European Union Agency for Asylum (EUAA) (2024), *Country Guidance*, 2024, <https://euaa.europa.eu/asylum-knowledge/country-guidance>

⁷¹ European Union Agency for Asylum (EUAA) (2024), *Access to Asylum Procedures – Poster*, 2023, <https://euaa.europa.eu/sites/default/files/publications/2023-08/practical-tools-first-contact-officials-poster.pdf>.

⁷² European Union Agency for Asylum (EUAA) (2024), *Practical tools for first-contact officials - leaflet on Frequently Asked Questions*, 2023, <https://euaa.europa.eu/publications/practical-tools-first-contact-officials-leaflet-frequently-asked-questions>.

⁷³ European Union Agency for Asylum (EUAA) (2024), *Practical guide – Access to Asylum Procedures*, 2023, <https://euaa.europa.eu/sites/default/files/publications/2023-11/practical-tools-first-contact-officials-practical-guide.pdf>.

⁷⁴ European Union Agency for Asylum (EUAA) (2024), *Practical Guide on Information Provision – Access to the Asylum Procedure*, February 2023, <https://euaa.europa.eu/sites/default/files/publications/2023-02/practical-guide-information-provision-access-to-procedure.pdf>.

⁷⁵ European Union Agency for Asylum (EUAA) (2024), *Let's Speak Asylum – Homepage*, 2024, <https://lsa.euaa.europa.eu/>.

⁷⁶ European Union Agency for Asylum (EUAA) (2024), *Country of Origin Information (COI) Report Methodology*, February 2023, https://euaa.europa.eu/sites/default/files/publications/2023-02/2023_02_EUAA_COI_Report_Methodology_Rebranded.pdf.

⁷⁷ European Union Agency for Asylum (EUAA) (2024), *The Future of International Protection in the EU+ in the Next 10 Years – Comprehensive Report*, December 2022, https://euaa.europa.eu/sites/default/files/publications/2023-02/2022_12_EUAA_Scenarios_Analysis_Comprehensive_Report_EN.pdf.

- An innovative framework for analysing asylum-related migration⁷⁸
- JHAAN: Joint Paper on JHA Agencies' contribution to EU's solidarity with Ukraine⁷⁹
- Providing Temporary Protection to Displaced Persons from Ukraine: A Year in Review.⁸⁰

European Union Agency for Fundamental Rights (FRA)

In 2023, FRA continued to respond to the emerging fundamental rights challenges at the EU's external borders through its targeted analysis and advice.

- Following multiple tragic shipwrecks and loss of life in the Mediterranean, the report "Preventing and responding to deaths at sea: what the European Union can do" set out examples of actions the EU could take to meet its obligations to protect the right to life and prevent more deaths at sea.⁸¹ As part of the work that the EU Agency for Fundamental Rights (FRA) does on upholding fundamental rights in asylum and return procedures, the report called for better protection for shipwreck survivors, as well as prompt and independent investigations. It set out measures that EU Member States should take to improve search and rescue efforts and provide legal pathways to safety to prevent deaths at sea.

⁷⁸ European Union Agency for Asylum (EUAA) (2024), *An Innovative Framework for Analysing Asylum-Related Migration*, May 2023, https://euaa.europa.eu/sites/default/files/publications/2023-05/An_innovative_framework_analysing_asylum-related_migration.pdf.

⁷⁹ European Union Agency for Asylum (EUAA) (2024), *JHA Agencies' Contribution to EU Solidarity with Ukraine – Joint Paper*, March 2023, https://euaa.europa.eu/sites/default/files/publications/2023-03/20230331_JHAAN_Joint%20Paper_on_JHA_Agencies_Contribution_to_EU_solidarity_with_Ukraine.pdf.

⁸⁰ European Union Agency for Asylum (EUAA) (2024), *Providing Temporary Protection to Displaced Persons from Ukraine – A Year in Review*, March 2023, https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_temporary_protection_year_in_review_EN.pdf.

⁸¹ European Union Agency for Fundamental Rights (FRA) (2023), *Preventing and responding to deaths at sea: what the European Union can do*, 06 July 2023, <https://fra.europa.eu/en/publication/2023/fra-deaths-sea-paper>.

- Fundamental rights are an important consideration in European border management. Virtually all activities can have an impact on rights – from risk analysis to training, border checks and border surveillance. Safeguards in laws regulating European border management aim to protect rights. “The European Border and Coast Guard and fundamental rights report” was FRA’s contribution to the first review of the European Border and Coast Guard Regulation (EU) 2019/1896 that offered an opportunity to reflect on how best to improve the fundamental rights situation at the external borders of the EU.⁸²
- Forced return monitoring overview for 2022: Since 2014, FRA has been publishing annual updates of the forced return monitoring systems that EU Member States have set up under Article 8 (6) of the EU’s Return Directive (2008/115/EC). These overviews describe different indicators for an effective forced return monitoring system. They include information about the organisation responsible for monitoring forced returns, the number of operations monitored in the given year, the phases of monitored return operations, the number of staff trained and working as monitors and whether the monitoring body issued public reports on the monitoring. The overviews do not cover monitoring by the European Border and Coast Guard Agency (Frontex) pool of forced return monitors.⁸³
- The International Organization for Migration has estimated that from 2014 to 1 September 2023, over 28,100 people died or went missing while attempting to cross the Mediterranean Sea to reach Europe to escape war or persecution, or to pursue a better life. Since 2018, national authorities have launched

⁸² European Union Agency for Fundamental Rights (FRA) (2023), *The European Border and Coast Guard and fundamental rights*, 31 October 2023, <https://fra.europa.eu/en/publication/2023/european-border-coast-guard>.

⁸³ European Union Agency for Fundamental Rights (FRA) (2023), *Forced return monitoring systems – 2023 update*, 22 November 2023, <https://fra.europa.eu/en/publication/2023/forced-return-monitoring-systems-2023-update?page=1#read-online>.

numerous administrative and criminal proceedings against crew members or vessels involved in SAR operations at sea. The 2023 FRA publication titled “Search and rescue operations in the Mediterranean and fundamental rights” provided an overview of criminal investigations and other legal proceedings in selected European Union (EU) Member States against both civil society organisations deploying search and rescue (SAR) vessels and aircraft in the Mediterranean, and/or against individual crew members.⁸⁴

- ♦ Russia’s unprovoked war of aggression against Ukraine has resulted in massive internal and external population displacement. The European Union (EU) rapidly activated its Temporary Protection Directive for the first time since it was adopted in 2001. This entitled nearly four million people to legal residence and access to work, housing and legal assistance, education and healthcare. FRA’s annual report on fundamental rights in 2023 focused on the Fundamental rights implications of the war in Ukraine for the EU.⁸⁵
- ♦ “Fleeing Ukraine: Displaced people’s experiences in the EU” publication focused on the impact of Russia’s military aggression against Ukraine in Europe. The war has caused death, immense destruction, unspeakable suffering, and set in motion a mass movement of people not seen in the region since World War II. To protect people fleeing war, the EU activated the Temporary Protection Directive for the first time, providing

⁸⁴ European Union Agency for Fundamental Rights (FRA) (2023), *Search and rescue operations in the Mediterranean and fundamental rights – June 2023 update*, 11 October 2023, <https://fra.europa.eu/en/publication/2023/2023-update-ngo-ships-sar-activities>.

⁸⁵ European Union Agency for Fundamental Rights (FRA) (2023), *Fundamental rights implications for the EU of the war in Ukraine*, 08 June 2023, <https://fra.europa.eu/en/publication/2023/frr-2023-focus-war-in-ukraine>.

all EU Member States with the obligation to protect those displaced from Ukraine.⁸⁶

International Organization for Migration (IOM)

IOM supports member states in enhancing their capacities to address a vast array of diverse migration challenges. In its endeavours to improve border management, it provides technical and advisory support including on policy, legislation, operational systems, human resources and administrative and technical structures. As the UN Agency for Migration, IOM is steadfast in its commitment to ensuring that the principle of humane and orderly migration is upheld across the entire spectrum of its activities. Through targeted programmatic interventions, IOM endeavours to embed a rights-based approach in all phases of the migration process, thereby supporting states in achieving effective and human rights-compliant border management.

Activities and Projects:

- In the Return and Reintegration realm and in close collaboration with Member States and other partners, in 2023 IOM assisted over 71,500 migrants to voluntarily return to their country of origin, including around 4,000 migrants in vulnerable situations such as victims of trafficking, migrants with physical or medical needs, victims of gender-based violence and others. In the European Economic Area (EEA), a total of 21,387 migrants were supported by IOM to safely return home from 24 sending countries to 131 third countries.
- Return counselling continues to be a key feature of the IOM's Assisted Voluntary Return and Reintegration (AVRR) programme,

⁸⁶ European Union Agency for Fundamental Rights (FRA) (2023), *Fleeing Ukraine: Displaced people's experiences in the EU*, 28 February 2023, <https://fra.europa.eu/en/publication/2023/ukraine-survey>.

based on the Return Counselling Toolkit⁸⁷ which proposes a harmonised and coherent case management approach. Its Module on Return Counselling of Children and Their Families⁸⁸ promotes rights-based and child-sensitive return counselling. On this basis, IOM joined Frontex's workshops to return counsellors through the EEA region, focusing on how to integrate the Best Interests of the Child during the return counselling processes.

- IOM designed a Monitoring and Evaluation Tools for Return and Reintegration⁸⁹ package of tools aiming at systematising the collection and analysis of data to better shape programming and maximise the positive impacts of AVRRO programming in the long term.
- To promote co-responsibility and ownership of return and re-integration, IOM connects with Member States from sending and receiving Missions through regular inter-regional online briefings. In 2023, more than 340 representatives attended the five sessions from roughly 110 different countries globally.
- In 2023, IOM successfully concluded the project *Mainstreaming Human Rights into Immigration and Border Management, funded by the Swiss Federal Department of Foreign Affairs*. The initiative focused on enhancing IOM's ability to integrate human rights into its Immigration and Border Governance (IBG) programs, in line with international standards.
- At the close of 2023, IOM launched the project *Rightlines: Drawing fundamental rights policies and actions at the Greek*

⁸⁷ International Organization for Migration (IOM) (2022), *Return Counselling Toolkit*, July 2022, <https://publications.iom.int/books/return-counselling-toolkit>.

⁸⁸ International Organization for Migration (IOM) (2022), *Return Counselling of Children and Their Families*, December 2022, <https://publications.iom.int/books/return-counselling-children-and-their-families>.

⁸⁹ International Organization for Migration (IOM) (2022), *Monitoring and Evaluation Tools for Return and Reintegration Programmes*, 2022, <https://migrantprotection.iom.int/en/resources/guideline/monitoring-and-evaluation-tools-return-and-reintegration-programmes>.

and Cypriot borders,⁹⁰ funded by the European Commission. Implemented in coordination with the Fundamental Rights Officer of the Ministry of Migration and Asylum of Greece and involving the Cyprus Police, the project will contribute to strengthening and streamlining the protection and promotion of fundamental rights in border management activities in Greece and Cyprus.

Publications, Studies and Reports:

- In July 2023, IOM released its *Global Report: Mapping and research to strengthen protection and assistance measures for migrants with diverse SOGIESC*.⁹¹ This report delves into the risk factors, protection and assistance needs facing migrants with diverse SOGIESC to strengthen protection and assistance within programming and institutional training, including in the context of return and reintegration.
- In August 2023, IOM published the *Toolkit for Front-line Workers: Working with Migrant Children at the Borders of the European Union, Iceland, Norway, Switzerland and the United Kingdom*.⁹² The toolkit has been designed to support front-line workers to address the needs of migrant children at borders to realise their fundamental rights and includes examples of promising practices from within the Region.
- In October 2023, IOM and UNODC launched the first *Global technical guidance for administrative data on trafficking in persons*.⁹³

⁹⁰ International Organization for Migration (IOM) (2023), *Rightlines: Drawing fundamental rights policies and actions at the Greek and Cypriot borders*, November 2023, <https://greece.iom.int/rightlines-drawing-fundamental-rights-policies-and-actions-greek-and-cypriot-borders>.

⁹¹ International Organization for Migration (IOM) (2023), *Mapping and research to strengthen protection and assistance measures for migrants with diverse SOGIESC*, July 2023, <https://publications.iom.int/books/mapping-and-research-strengthen-protection-and-assistance-measures-migrants-diverse-sogiesc>.

⁹² International Organization for Migration (IOM) (2023), *Working with Migrant Children at the Borders of the European Union, Iceland, Norway, Switzerland and the United Kingdom: A Toolkit for Front-line Workers*, November 2023, <https://eea.iom.int/resources/working-migrant-children-borders-european-union-iceland-norway-switzerland-and-united-kingdom-toolkit-front-line-workers>.

⁹³ International Organization for Migration (IOM) (2023), *IOM and UNODC release new guidance to help combat human trafficking through data*, 5 October 2023, <https://www.unodc.org/unodc/en/>

Through the International Classification Standard for Trafficking in Persons Administrative Data (ICS-TIP)⁹⁴ and its accompanying guidance manual, “Making each case count”,⁹⁵ IOM and UN-ODC aim to support governments and other counter-trafficking stakeholders to collect and analyse high-quality, internationally comparable data, which can be used to significantly enhance the evidence base for the response to trafficking in persons.

- In November 2023, IOM published the IOM Counter-Trafficking Theory of Change,⁹⁶ which consolidates lessons learned of a quarter century of IOM work in the field. This document offers guidance for designing and implementing effective counter-trafficking projects, outlining eight intervention models with the potential to generate meaningful change.
- In January 2024, IOM published *Inner Journeys: Mental Health and Psychosocial Perspectives on the Migration, Return and Reintegration Experiences of Ethiopian, Somali and Sudanese Migrants in Vulnerable Situations*.⁹⁷ The study examines the consequences that migration, return and reintegration experiences have on the mental health and the psychosocial well-being of returning migrants, with the primary purpose of informing policies, programmes and advocacy initiatives that promote sustainable reintegration.

frontpage/2023/October/iom-and-unodc-release-new-guidance-to-help-combat-human-trafficking-through-data.html.

⁹⁴ International Organization for Migration (IOM) (2024), *International Standard and Guidance for Human Trafficking Administrative Data (ICS-TIP)*, 2024, <https://www.ctdatacollaborative.org/relatedresources/tools/icstip>.

⁹⁵ International Organization for Migration (IOM) (2023), *Making each case count: Leveraging Administrative Data on Trafficking in Persons*, 28 September 2023, <https://publications.iom.int/books/making-each-case-count-leveraging-administrative-data-trafficking-persons>.

⁹⁶ International Organization for Migration (IOM) (2023), *The IOM Counter-Trafficking Theory of Change*, 2023, <https://migrantprotection.iom.int/en/resources/guideline-manual/iom-counter-trafficking-theory-change>.

⁹⁷ International Organization for Migration (IOM) (2024), *Inner Journeys: Mental Health and Psychosocial Perspectives on the Migration, Return and Reintegration Experiences of Ethiopian, Somali and Sudanese Migrants in Vulnerable Situations*, 11 January 2024, <https://publications.iom.int/books/inner-journeys-mental-health-and-psychosocial-perspectives-migration-return-and-reintegration>.

Jesuit Refugee Service Europe (JRS)

In 2023, JRS Europe focused its advocacy on negotiation of the EU Pact on Asylum and Migration, in frequent cooperation with other (informal) civil society networks. In discussions with different EU and national institutions, JRS highlighted, among others, the risks posed by the enhanced use of border procedures, both in asylum and returns, and their inherent risk, resulting in the (de facto) detention of migrants and asylum seekers. JRS also continued coordinating the work of its Detention Visitors network, resulting in publications such as *Visiting Detention: how it is and how it should be*⁹⁸ and the series *Detention under the Spotlight*,⁹⁹ elaborated by a network of JRS detention visitors in 11 countries. When visiting detention centres, JRS visitors regularly meet and accompany people that are threatened with return orders even though they run the risk of serious harm in their home countries.

Office for the High Commissioner for Human Rights (OHCHR)

The Regional Office for Europe of the UN Human Rights (OHCHR) is placed in Brussels and operates through policy advice, advocacy, and liaison between the OHCHR Headquarters and UN Human Rights Mechanisms and the EU institutions. Its work covers multiple areas of human rights and a wide range of partnerships. Migration remains one of the areas of interest in the OHCHR-EU annual strategic engagement, both at a policy- and country/territory-specific level.

⁹⁸ Jesuit Refugee Service Europe (JRS) (2023), *Visiting Migrants in detention: How it is and how it should be*, 27 April 2023, <https://jrseurope.org/en/resource/visiting-migrants-in-detention-how-it-is-and-how-it-should-be/>.

⁹⁹ Jesuit Refugee Service Europe (JRS), 'Detention under the spotlight', <https://jrseurope.org/en/project/detention-under-the-spotlight/>.

In August 2023, OHCHR held its regular annual expert meeting on migration, partnering with the European External Action Service (EEAS) and the European Commission's Directorate General Migration and Home Affairs, focusing, among other things, on increased regular cooperation between two organisations, issues of returns, application of human rights expertise in search and rescue, nexus of migration and environment, as well as developments in countries and territories of interest.

The Regional Office has continued to actively monitor developments connected to national and EU legislation on asylum and migration, in support of the High Commissioner's engagement and of the work of UN Human Rights Mechanisms. In February 2023, the High Commissioner expressed serious concerns about new legislation in Italy that could hinder the provision of life-saving assistance by humanitarian search and rescue organisations in the Central Mediterranean. In August, UN experts urged¹⁰⁰ Greece to adopt safe and impartial border protection policies and practices and condemned the lack of accountability for violations involving Greek law enforcement personnel, emphasising the need for compliance with human rights guidelines¹⁰¹ and special protection measures for vulnerable migrants. In December, the Special Rapporteur on the human rights of migrants, jointly with the Working Group on Arbitrary Detention, the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on trafficking in persons addressed a letter¹⁰² to the President of the European Commission, the President of the

¹⁰⁰ United Nations Human Rights Office of the High Commissioner (OHCHR) (2023), *Greece: UN experts call for safe, impartial border policies and practices*, 23 August 2023, <https://www.ohchr.org/en/press-releases/2023/08/greece-un-experts-call-safe-impartial-border-policies-and-practices>.

¹⁰¹ United Nations Human Rights Office of the High Commissioner (OHCHR) (2024), *Recommended Principles and Guidelines on Human Rights at International Borders*, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

¹⁰² United Nations Human Rights Office of the High Commissioner (OHCHR), *Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special*

European Parliament and the President of the European Council raising a number of concerns as regards the possible negative impact on the human rights of migrants, including children and those with vulnerabilities, of the proposals contained in the EU Pact on Migration and Asylum.

Under the “Human Rights 75” initiative, marking the 75th anniversary of the Universal Declaration of Human Rights adoption, OHCHR prioritised migration globally, collecting over 800 pledges¹⁰³ from its Member States and non-State actors feeding into the “Human Rights 75” high-level event in December 2023. Addressing the European Parliament on the occasion of the anniversary commemorations, the High Commissioner emphasised¹⁰⁴ the need for international cooperation and solidarity, especially in addressing the situation of migrants and refugees. He called for an end to divisive rhetoric and unlawful pushbacks and noted the worrying trend of externalisation, advocating for accountability and safer migration pathways and urging for the negotiations on the EU Pact on Migration and Asylum to be firmly underpinned by respect for human rights and justice for all.

Over 2023, OHCHR increased its focus on the impact of digital technologies on people on the move, as an emerging risk faced by migrants. In September 2023, OHCHR published a study¹⁰⁵ carried out jointly with the University of Essex on a human rights-based approach to digital border governance, emphasising the need to

Rapporteur on trafficking in persons, especially women and children, 15 December 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28674>.

¹⁰³ United Nations Human Rights Office of the High Commissioner (OHCHR) (2023), *The ‘Pledging tree’: concrete commitments to human rights*, 2023, <https://www.ohchr.org/en/human-rights-75/pledge>.

¹⁰⁴ United Nations Human Rights Office of the High Commissioner (OHCHR) (2023), *Türk says EU has a key role to play in ‘reinvigorating global consensus’ on human rights*, 29 November 2023, <https://www.ohchr.org/en/statements-and-speeches/2023/11/turk-says-eu-has-key-role-play-reinvigorating-global-consensus>.

¹⁰⁵ United Nations Human Rights Office of the High Commissioner (OHCHR) (2023), *Digital Border Governance: a Human Rights Based Approach*, 18 September 2023, <https://www.ohchr.org/en/documents/tools-and-resources/digital-border-governance-human-rights-based-approach>.

address potential harms, while harnessing opportunities for safe migration and offering recommendations for a human rights-based approach to using digital technologies at borders. In an open letter¹⁰⁶ addressed in November 2023 to the EU regarding the proposal for the EU Artificial Intelligence (AI) Act's implications for human rights, the High Commissioner expressed concern about self-assessment in high-risk AI classifications and advocated for stringent limits on biometric surveillance, highlighting the context of migration control, among others, as one which requires enhanced safeguards and due process guarantees.

In 2023, OHCHR took part in on-the-spot visits to Serbia and Italy.

Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

ODIHR assists OSCE participating States in meeting their commitments in the field of migration and freedom of movement. ODIHR offers, upon request, expertise to participating States for the development and reform of legal and regulatory frameworks relevant to migration, migrant rights and migrant integration, as well as capacity building for both national and local officials, and civil society. ODIHR also provides support to OSCE participating States in upholding their commitments in the use of new technologies, in particular new technologies in law enforcement.

In 2023, ODIHR's work relevant to the border context included:

- ♦ Training sessions on human rights monitoring and advocacy for human rights defenders active at international borders

¹⁰⁶ United Nations Human Rights Office of the High Commissioner (OHCHR) (2023), *Türk open letter to European Union highlights issues with AI Act*, 08 November 2023, <https://www.ohchr.org/en/open-letters/2023/11/turk-open-letter-european-union-highlights-issues-ai-act>.

- Awareness raising on human rights implications of new technologies used in migration and border management
- Exchanging good practices on addressing statelessness
- Providing expert advice on freedom of movement in all phases of the conflict cycle.

Events and training in 2023:

- Training on human rights at international borders: Human rights principles, monitoring, safety and security, in Greece, for human rights defenders from the Northern Mediterranean region¹⁰⁷
- Training on human rights at international borders: Human rights principles, monitoring, safety and security, in Poland, for human rights defenders from the Southern Mediterranean region¹⁰⁸
- OSCE-UNHCR Regional Conference on Access to Civil Documentation and Prevention of Statelessness in South-Eastern Europe | OSCE,¹⁰⁹ in North Macedonia, with participants representing national authorities, civil society and international organisations
- Expert Roundtable on Human Rights and New Technologies, in Poland, with participants representing civil society and international organisations.

Publications and videos in 2023:

- New Technologies in border management and human rights | OSCE¹¹⁰

¹⁰⁷ Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *Training on human rights at international borders: Human rights principles, monitoring, safety and security*, March 2023, <https://www.osce.org/odihr/534678>.

¹⁰⁸ Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *Training on human rights at international borders: Human rights principles, monitoring, safety and security*, June 2023, <https://www.osce.org/odihr/541683>.

¹⁰⁹ Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *OSCE-UNHCR Regional Conference on Access to Civil Documentation and Prevention of Statelessness in South-Eastern Europe*, 17 October 2023, <https://www.osce.org/chairpersonship/555012>.

¹¹⁰ Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *New Technologies in border management and human rights*, 18 May 2023, <https://www.osce.org/odihr/543904>.

- Enhanced Understanding on Freedom of Movement in all Phases of the Conflict Cycle | OSCE¹¹¹
- Border police monitoring in South-Eastern Europe: New opportunities | OSCE.¹¹²

Red Cross EU Office

The Red Cross EU Office (RCEU) is a membership office representing the 27 National Red Cross Societies in the EU, the Norwegian Red Cross, the Icelandic Red Cross, and the International Federation of Red Cross and Red Crescent Societies (IFRC). The organisation helps coordinate relations between its members and EU decision-makers and stakeholders, as well as sharing the extensive experience and expertise the Red Cross has in supporting vulnerable people and communities within and outside the EU.

Working with and for migrants in situations of vulnerability is one of the long-standing commitments of the Red Cross movement. Red Cross National Societies provide unconditioned assistance, which is strictly humanitarian and focused on migrants' needs, vulnerabilities and potential – irrespective of their legal status. The RCEU strategy for 2022-2027¹¹³ recognises, among others, the need for continued work on improving access and humanitarian space¹¹⁴ for activities

¹¹¹ Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *Enhanced Understanding on Freedom of Movement in all Phases of the Conflict Cycle*, 07 November 2023, <https://www.osce.org/odihr/543012>.

¹¹² Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR) (2023), *Border police monitoring in South-Eastern Europe: New opportunities*, 26 October 2023, <https://www.osce.org/odihr/556554>.

¹¹³ Red Cross EU Office (2022), *Red Cross EU Strategy 2022-2027*, 26 April 2022, <https://redcross.eu/positions-publications/red-cross-eu-strategy-2022-2027>.

¹¹⁴ Red Cross EU Office (2021), *Protecting the humanitarian space to access and support migrants*, 03 March 2021, <https://redcross.eu/positions-publications/protecting-the-humanitarian-space-to-access-and-support-migrants>.

undertaken with and for migrants (especially at the borders), the persistent difficulties in accessing services and rights, respect of fundamental rights at borders, and the increased use of immigration detention. Throughout 2023, the RCEU focused its migration work on upholding migrants' fundamental rights in the negotiations of the European Pact on Migration and Asylum and promoting the strengthening and growth of safe pathways to international protection and family reunification in the EU. In addition, a particular focus was placed on the humanitarian needs coming from the protracted displacement situation in Ukraine. In the area of cooperation with the European Commission, an important area of work covered private hosting¹¹⁵ under the Safe Homes programmes.

A specific focus on migrants at borders was initiated in 2023, towards the elaboration of a strategy entailing actions aimed at upholding fundamental rights of migrants at borders, ensuring access to humanitarian services and human-rights compliant use of EU funding in border management.

Relevant RCEU public statements in 2023:

- ♦ May 2023, Ukraine Response and Red Cross views on the implementation of the TPD¹¹⁶
- ♦ May 2023, Safe Pathways to international protection in the EU¹¹⁷
- ♦ May 2023, Upholding the right to family reunification for beneficiaries of international protection in Europe¹¹⁸

¹¹⁵ Red Cross EU Office, 'Safe Homes', <https://redcross.eu/projects/safe-homes>.

¹¹⁶ Red Cross EU Office (2023), *Ukraine Response and Red Cross views on the implementation of the TPD*, 10 May 2023, <https://redcross.eu/positions-publications/ukraine-response-and-red-cross-views-on-the-implementation-of-the-tpd>.

¹¹⁷ Red Cross EU Office (2023), *Safe pathways to international protection in the EU*, 30 May 2023, <https://redcross.eu/positions-publications/safe-pathways-to-international-protection-in-the-eu>.

¹¹⁸ Red Cross EU Office (2023), *Upholding the right to family reunification for beneficiaries of international protection in Europe*, 30 May 2023, <https://redcross.eu/positions-publications/upholding-the-right-to-family-reunification-for-beneficiaries-of-international-protection-in-europe>.

- September 2023, Seven priorities to expand resettlement and safe pathways to Europe¹¹⁹
- September 2023, Making family reunification a reality. 20 years of the EU family reunification directive¹²⁰
- October 2023, Putting trafficked persons at the centre of the EU anti-trafficking response¹²¹
- December 2023, EU decision makers reach political consensus on the Pact: humane implementation of new rules is paramount.¹²²

Save the Children (SC)

Save the Children champions the rights and interests of children worldwide, putting the most vulnerable children first. With 25,000 dedicated staff across 116 countries, Save the Children responds to major emergencies, delivers innovative development programmes and ensures children's voices are heard through our campaigning to build a better future for and with children. Save the Children works to ensure children have healthcare, food and shelter, as well as learning and child protection services when children need it most.

¹¹⁹ Red Cross EU Office (2023), *Seven priorities to expand resettlement and safe pathways to Europe*, 30 May 2023, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewik3yGsoqaFAxUuQ_EDHskPDEoQFnoECBMQAQ&url=https%3A%2F%2Fredcross.eu%2Fpositions-publications%2Fsafe-pathways-to-international-protection-in-the-eu.pdf&usq=AOvVaw0QtDU5LNHFzefQZR2UxPxX&opi=89978449.

¹²⁰ Red Cross EU Office (2023), 'Making Family Reunification a Reality', 22 September 2023, <https://redcross.eu/latest-news/making-family-reunification-a-reality>.

¹²¹ Red Cross EU Office (2023), 'Putting trafficked persons at the centre of the EU anti-trafficking response', 03 October 2023, <https://redcross.eu/latest-news/putting-trafficked-persons-at-the-centre-of-the-eu-anti-trafficking-response>.

¹²² Red Cross EU Office (2023), 'EU decision makers reach political consensus on the Pact: humane implementation of new rules is paramount', 20 December 2023, <https://redcross.eu/latest-news/eu-decision-makers-reach-political-consensus-on-the-pact-humane-implementation-of-new-rules-is-paramount>.

In Europe, Save the Children operates in 20 countries: Albania, Bosnia and Herzegovina, Denmark, Finland, Germany, Iceland, Italy, Kosovo, Lithuania, Montenegro, Norway, Poland, Romania, Serbia, Spain, Sweden, the Netherlands, Ukraine, the UK, and Switzerland. In 2023, Save the Children implemented around 155 projects in Europe, which were dedicated to strengthening child protection, combating child poverty and social exclusion, supporting children on the move, helping children into education, strengthening children's rights and child participation, fostering mental health through psychosocial support, as well as working on digital issues, climate and gender equality. In Brussels, Save the Children Europe ensures EU decision-making puts children first, and that funding supports those children most in need.

In 2023, Save the Children supported children on the move and their families, by providing life-saving aid, information, mediation and more at borders, in camps and in our centres. The advocacy work focused on ensuring that children are protected, healthy and have access to education in national systems, and that the legislation negotiated within the European Pact on Migration and Asylum respects children's rights, family unity and includes improved safeguards for unaccompanied children¹²³. In February, Save the Children published a report entitled *Safe for Some: Europe's selective welcome to children on the move*,¹²⁴ highlighting the successful strategies adopted to support refugees from Ukraine, how this contrasts with the poor protection offered to others, and how a positive approach could be extended to all children migrating in Europe. In July, it published *Without papers, there is no life: Legal barriers*

¹²³ Save the Children (2022), *A Pact That Works Is a Pact That Works For Children - Five things on which EU Pact on Migration and Asylum should deliver*, 2024, <https://savethechildren.eu/exposure/co/eu-migration-asylum-pact>.

¹²⁴ Save the Children (2023), *Safe for Some: Europe's selective welcome to children on the move*, 2023, <https://resourcecentre.savethechildren.net/document/safe-for-some-europes-selective-welcome-to-children-on-the-move/>.



in access to protection for unaccompanied children in Greece,¹²⁵ in partnership with the Greek Refugee Council. Save the Children also raised concern with the situation of children at EU borders, including on the transfers of vulnerable children from Poland¹²⁶ to areas under conflict in Ukraine (with IRC and CARE), on the situation of the hotspot in Lampedusa¹²⁷ and in the Canary Islands.¹²⁸

United Nations High Commissioner for Refugees (UNHCR)

UNHCR, the UN Refugee Agency, is a global organisation dedicated to saving lives, protecting rights, and building a better future for refugees, forcibly displaced communities and stateless people.

¹²⁵ Save the Children (2023), *Without papers, there is no life.": Legal barriers in access to protection for unaccompanied children in Greece*, 2023, <https://resourcecentre.savethechildren.net/document/without-papers-there-is-no-life-legal-barriers-in-access-to-protection-for-unaccompanied-children-in-greece/>.

¹²⁶ Save the Children (2023), *NGOs Call for Halt to Returning Children In Institutional Care Centres From Poland to Ukraine*, 15 May 2023, <https://www.savethechildren.net/news/ngos-call-halt-returning-children-institutional-care-centres-poland-ukraine/>.

¹²⁷ Giovanna di Benedetto, Media Officer for Save the Children (2023), *Lampedusa's tragedies remind us we need urgent action from the EU*, 03 October 2023, <https://www.aljazeera.com/opinions/2023/10/3/lampedusas-tragedies-remind-us-we-need-urgent-action-from-the-eu>.

¹²⁸ Save the Children (2023), *Save The Children Calls on the EU To Take Responsibility to Save Lives at Sea, Following Reports That a Boat Carrying Children Missing Off Canary Islands*, 10 July 2023, <https://www.savethechildren.net/news/save-children-calls-eu-take-responsibility-save-lives-sea-following-reports-boat-carrying>.

UNHCR leads international action to protect people forced to flee their homes because of conflict and persecution. Across the world, UNHCR delivers life-saving assistance such as shelter, food and water; helps safeguard fundamental human rights; and develops solutions that ensure people have a safe place to call home where they can build a better future. UNHCR also works to ensure that stateless people are granted a nationality.

- **UNHCR's 2024 Recommendations for the Belgian and Hungarian Presidencies of the Council of the European Union (EU).**¹²⁹

In its recommendations for 2024, UNHCR calls on Belgium and Hungary to use their European Union (EU) Presidencies as an opportunity to finalise the EU Pact on Migration and Asylum and to ensure the proper implementation of protection-sensitive reforms that respect and protect the right to seek asylum in the EU.

- **UNHCR's 2023 Mid-Year Trends Report.**¹³⁰

UNHCR's 2023 Mid-Year Trends report found that at the end of June 2023, 110 million people worldwide were forcibly displaced from their homes due to persecution, conflict, violence, human rights violations and events seriously disturbing public order. This represents an increase of more than 1.6 million people compared to the end of 2022 (108.5 million). More than one in 73 people worldwide were forcibly displaced as a result, with the majority – almost nine in 10 – living in low- and middle-income countries.

¹²⁹ United Nations High Commissioner for Refugees (UNHCR) (2024) *UNHCR calls on EU to ensure Asylum Pact is implemented with protection at its core*, 10 January 2024, <https://www.unhcr.org/europe/news/press-releases/unhcr-calls-eu-ensure-asylum-pact-implemented-protection-its-core>.

¹³⁰ United Nations High Commissioner for Refugees (UNHCR) (2023), *Mid-Year Trends*, 2023, <https://www.unhcr.org/mid-year-trends>.

- **UNHCR's 2023 Refugee Education Report.**¹³¹

The 2023 UNHCR Refugee Education Report draws on data from over 70 refugee-hosting countries to provide the clearest picture yet of the state of education among refugees globally. It reveals that by the end of 2022, the number of school-aged refugees jumped nearly 50 per cent from 10 million a year earlier. An estimated 51 per cent – more than 7 million children – are not enrolled in school.

- **Emergency Preparedness and Response in 2023 Report.**¹³²

In 2023, UNHCR responded to a sharply higher number of new or deepening humanitarian crises – the highest annual number of declared emergencies in the last 10 years. According to the Emergency Preparedness and Response in 2023 report, UNHCR issued 43 emergency declarations to scale up support in 29 countries and dispatched 7.4 million relief items to serve up to 16.7 million people around the world.

¹³¹ United Nations High Commissioner for Refugees (UNHCR) (2023), *UNHCR Education Report 2023 – Unlocking Potential: The Right to Education and Opportunity*, September 2023, <https://www.unhcr.org/media/unhcr-education-report-2023-unlocking-potential-right-education-and-opportunity>.

¹³² United Nations High Commissioner for Refugees (UNHCR) (2024), *UNHCR: Number of humanitarian emergencies in 2023 the highest in a decade*, 19 January 2024, <https://www.unhcr.org/news/press-releases/unhcr-number-humanitarian-emergencies-in-2023-highest-in-decade>.

6 ANNEXES¹³³



The IOM Moldova's mobile team, protection unit, assists Ukrainian refugees in transit by providing ground transportation assistance to Romania

© International Organization for Migration

¹³³ On public access to documents: The Consultative Forum has – in line with the principle of good administration – no objection to releasing its documents. Frontex is ultimately in charge of releasing the respective documents to applicants, in line with Regulation (EC) 1049/2001.

ANNEX I: Consultative Forum Activities in 2023

OVERVIEW OF ACTIVITIES IN 2023	
Annual Report & programme of work	
• Publication of the Frontex Consultative Forum on Fundamental Rights – Tenth Annual Report 2022	26/06
• Publication of the Programme of Work 2024	06/11
VEGA engagement	
• 17 Consultative Forum experts participated in VEGA activities at four airports and nine Border Crossing Points in Albania, Croatia, Kosovo, Moldova, North Macedonia, Poland, Romania, and Slovakia with 31 weeks presence in total.	January-November
• The Consultative Forum co-chairs conducted debriefing and briefing meetings with the participating experts.	13/01 06/06 04/10
• The Consultative Forum co-chairs shared their fundamental rights related observations in VEGA operations with Frontex via a letter.	20/11
On the spot visits	
• Joint Operation Themis 2023 – Italy	15-19/05
• Joint Operation Serbia Land 2023 and Joint Operation Coordination Points 2023 (Belgrade Airport)	12-19/06
• Focus Group meetings with Frontex and respective Management Board members following on-the-spot visits	
• JO Terra 2022 – Bulgaria	03/02
• Joint Operation Themis 2023 – Italy	19/06
• Joint Operation Serbia Land 2023 and Joint Operation Coordination Points at Nikola Tesla Airport – Serbia	26/07
Review & provision of comments	
• Standard Operating Procedure – Serious Incident Reporting to Frontex	30/01
• Voluntary return of unaccompanied minors - Requirements for Frontex support	28/04
• Toolbox for Children in Return submitted to the European Centre for Returns Division	16/06
• Frontex International Cooperation Strategy for 2024-26	30/06

OVERVIEW OF ACTIVITIES IN 2023	
• Standard Operating Procedures for the Fundamental Rights Office in the context of investigations	14/07
• Fundamental Rights Due Diligence Procedure on Frontex Cooperation with Third Countries (for FRO)	28/07
• Compilation of the Consultative Forum's previously issued recommendations to Frontex concerning transparency (submission of a letter to Frontex)	14/11
• Standard Operating Procedures on the Role and Responsibilities of the Fundamental Rights Monitors in Frontex Operational Activities	15/12
• Submission to the European Commission in the context of the European Commission's evaluation of the EBCG Regulation	02/06
Input to Frontex activities	
• Co-chairs participation in an evaluation meeting of the Frontex Training Unit with an external contractor	16/01
• Presentation at a workshop on fundamental rights at borders in Africa jointly organised by AFRIPOL and Frontex	15/05
• Participation in the Operational Heads of Airports Conference in Riga organised by the Frontex Operational Response Division	26-27/09
• Participation in the launch event of the Toolbox - Children in Return by the Frontex European Centre for Returns	27/10
• Fundamental Rights training modules organised by the Frontex Training Unit (4)	24-28/04 11-15/09 23-27/10 27/11-01/12
• Forced-Return Monitors Network Meeting organised by FRO	15-16/03
European Travel Information and Authorisation System (ETIAS) – Fundamental Rights Guidance Board	
• Participation in ETIAS Fundamental Rights Guidance Board Meetings to advise on fundamental rights considerations in related processes and activities (6)	03/02 20/03 17/05 12/06 04/08 04/09 21/11
Engagement in preparation of the Consultative Forum's re-establishment in 2024	
• Information session on the Consultative Forum with interested civil society organisations (organised by CCME and FRO)	19/04

OVERVIEW OF ACTIVITIES IN 2023	
• Co-chairs joined an information session for organisations interested in joining the Consultative Forum in 2024 (organised by FRO)	07/06
• Co-chairs held a preparatory meeting with the new members – the Rule of Law Institute Foundation and the Global Campus for Human Rights	29/11
Working level meetings	
• Consultative Forum meetings (3)	21/02 11/05 18/10
• Co-chairs' participation in Frontex Management Board Meetings (5)	25/01 23/04 20/06 21/09 23/11
• Consultative Forum meetings with the Fundamental Rights Officer (3)	26/04 07/06 06/12
• Meeting among Consultative Forum Members to discuss the evaluation of the EBCG Regulation	23/05
• Meeting with the Deputy Executive Director on Standing Corps Management	28/11
• Meeting with the Deputy Executive Director for Returns and Operations	18/12
Informal Meetings	
• Consultative Forum co-chair's participation in the working lunch organised by the LIBE Committee of the European Parliament	21/06
New composition of the Consultative Forum (2024-2026)	
Publication of the Call for expression of interest from relevant civil society organisations to become members of the Frontex Consultative Forum on the Frontex website	31/05
• Frontex Management Board issued decision (32/2023) adopting the composition of the Consultative Forum on Fundamental Rights for the period 2023-2026	21/09

ANNEX II: Requests for information by the Consultative Forum

Requests for information submitted in 2023			
Information requested	Request Date	Response Date	Content of the response ¹³⁴
<p>1. Greece implementation plan:</p> <ul style="list-style-type: none"> Any actions undertaken, progress or constraints encountered in the context of the monitoring of the Greece implementation plan (in addition to the progress report of January 2023, which the Consultative Forum already has). <p>2. Frontex Working Group on Article 46:</p> <ul style="list-style-type: none"> Any information about actions, reports, recommendations or other deliberations by the Working Group originally established in November 2022 and terminated in February 2023, according to the letter (Ref.ARES(2023)1206765-20/02/2023) by the Working Group chair to the Consultative Forum (apart from the 'Outcome of the procedure related to the Article 46 of the European Border and Coast Guard Regulation' which the Consultative Forum already has). <p>3. Frontex activities in Hungary:</p> <ul style="list-style-type: none"> Whether Frontex will carry out a fundamental rights assessment in line with Article 46 (5) prior to potentially launching activities in Hungary, and, if so, how this assessment will be conducted. 	07/06	29/06	Information provided. The Consultative Forum did not consider the response as satisfactory as it merely referred to the procedures established under the Regulation without any substantial information concerning the actual activities.

¹³⁴ When requesting information, the Consultative Forum should receive a response within 15 working days starting from the registration of the request.

Requests for information submitted in 2023			
Information requested	Request Date	Response Date	Content of the response ¹³⁴
1. Frontex activities in Greece <ul style="list-style-type: none"> How does Frontex follow up on the recently issued Greece related opinions of FRO? What are Frontex' considerations in relation to partially implemented, delayed or not implemented actions as regards the Greece implementation plan and how does the Agency intend to act? Is the Article 46 Working Group still active or terminated? If still active, what are its monitoring/evaluating methodologies and resulting conclusions? If the Working Group was terminated what are its written conclusions, including its recommendations/follow up actions? 2. Frontex activities in Hungary <ul style="list-style-type: none"> Which operations does Frontex carry out in Hungary? Was a fundamental rights assessment conducted and what were the conclusions? 	30/08	22/09	Information provided

ANNEX III: Submission to the European Commission Concerning the Evaluation of the European Border and Coast Guard Regulation

INTRODUCTION

The Consultative Forum has prepared this submission following a request of the European Commission to provide its views in the context of the evaluation of the European Border and Coast Guard (EBCG) Regulation 2019/1896¹³⁵ (hereinafter ‘the Regulation’). Article 121 of this Regulation requires the European Commission to seek the Consultative Forum’s input.¹³⁶

The present input is based on the Consultative Forum’s overall mandate of providing independent fundamental rights advice to Frontex.¹³⁷ In the past ten years, the Consultative Forum issued recommendations to Frontex on a variety of matters. The full list of recommendations is annexed to this submission. They provide further background and elaboration on many of the points raised in this submission.

This submission intends to contribute to the evaluation of the Regulation from the fundamental rights perspective. Chapter 1 analyses the specific fundamental rights safeguards under the Regulation, whereas Chapter 2 reviews selected Frontex activities.

¹³⁵ [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.](#)

¹³⁶ Article 121 [Evaluation]: “When carrying out the evaluation, the Commission shall seek input from relevant stakeholders, including the consultative forum and FRA.”

¹³⁷ Article 108 of [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.](#)



The challenges Frontex faces to fully comply with fundamental rights are often not the result of gaps in the Regulation itself, but results of gaps in the implementation of its fundamental rights provisions such as the establishment of a Fundamental Rights Monitoring mechanism, which was severely delayed. Therefore, the evaluation of the Fundamental Rights Monitoring mechanism is premature and should be conducted at a later stage (e.g. two years after its entry into force). Moreover, the Agency is currently undergoing an important phase of transition in management which might lead to addressing at least some of the implementation concerns. For these reasons, the Consultative Forum's overall evaluation of the Regulation is that the instrument as such is in no need of immediate revision and that priority should be given to improving its implementation.

However, should the European Commission initiate the recast of the Regulation, amendments might be considered to further strengthen fundamental rights compliance. Therefore, the submission contains two types of suggestions:

- Considerations for the enhanced implementation and
- Potential amendments to the Regulation.

The 2019 Regulation broadened and diversified the Agency's tasks and competence. The Regulation explicitly mentions the need for balancing these increased powers with fundamental rights safeguards including accountability and liability.¹³⁸ To achieve this, the Regulation contains strong provisions on the protection and promotion of fundamental rights, and the respective roles of Frontex and the Member States, as the following examples show.

Recital (42)¹³⁹ of the Regulation mentions that "the role of the Agency should be to monitor regularly the management of the external borders, including the respect for fundamental rights". Article 1 refers to managing "borders efficiently in full compliance with fundamental rights". Fundamental rights are equally a horizontal element of European integrated border management (Article 3 (2)). These provisions put the respect of fundamental rights clearly as one of the crucial, cross-cutting components of Frontex's mandate.

Furthermore, Article 10 (1)(e) stresses that monitoring compliance with fundamental rights in all its activities at the external borders and in return operations is part of the Agency's task, on an equal footing with other tasks, such as monitoring migratory flows and carrying out risk analysis on all aspects of integrated border management

¹³⁸ Recital (24).

¹³⁹ "(42) In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders, including the respect for fundamental rights in the border management and return activities of the Agency." Article 1: This Regulation establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing those borders efficiently in full compliance with fundamental rights and to increasing the efficiency of the Union return policy.

or assisting Member States in circumstances requiring increased technical and operational assistance at the external borders.

The specific references to the rights and principles of the EU Charter for Fundamental Rights (Charter)¹⁴⁰ and the requirement to contribute to continuous and uniform application of Union law, “including the Union acquis on fundamental rights, in particular the Charter (...)” constitute additional safeguards highlighting the applicable legal framework.

Article 80 is the core provision on the protection of fundamental rights and applies to the Agency as well as to the Member States. It requires Frontex and Member States’ authorities to guarantee the protection of fundamental rights in the performance of its tasks under the Regulation in accordance with relevant Union and international law. The provision is unambiguous as it states that Frontex has a positive obligation to protect fundamental rights in all its tasks.

Article 46 is another key fundamental rights safeguard. It requires Frontex to not launch, to suspend or to terminate operations in case of fundamental rights violations which are serious or likely to persist. This entails the need to constantly assess the risks for fundamental rights violations on the ground.

The Regulation also foresees a set of tools to guarantee the protection of fundamental rights, such as the fundamental rights strategy

¹⁴⁰ “(103) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 TEU and by the Charter of Fundamental Rights of the European Union (the “**Charter**”), in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child.” Article 5 (4): “The Agency shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, in particular the Charter of Fundamental Rights of the European Union (the “**Charter**”), at external borders. Its contribution shall include the exchange of good practices.”

and action plan or a mechanism for monitoring respect for fundamental rights in all the activities of the Agency.

Moreover, in addition to the general fundamental rights safeguards, there are several provisions on fundamental rights with regards to particular categories of staff and persons.¹⁴¹ Fundamental rights are thus mainstreamed across the Regulation.

1. FUNDAMENTAL RIGHTS SAFEGUARDS: ANALYSIS AND RECOMMENDATIONS

The Regulation frames the respect and monitoring of fundamental rights on equal footing with the other tasks of the Agency. However, the implementation of the applicable safeguards was slow, as the considerable delay of recruiting the fundamental rights monitors illustrates. This delay caused a gap in the monitoring and accountability of Frontex activities up to 2022 as there were not enough monitors to ensure fundamental rights monitoring.¹⁴²

Several external inquiry and oversight mechanisms were activated and issued reports¹⁴³ showing that Frontex faces challenges in complying with its fundamental rights obligations. Their findings

¹⁴¹ See for example Article 55 on statutory staff part of the teams, or Article 77 (3) for liaison officers.

¹⁴² See [Eight Consultative Forum Annual Report 2020](#), pp. 35-37.

¹⁴³ See: Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violation, https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf; Why DER SPIEGEL Is Publishing the EU Investigative Report on Pushbacks, <https://www.spiegel.de/international/europe/why-der-spiegel-is-publishing-the-eu-investigative-report-on-pushbacks-a-5218398a-5c1e-414e-a477-b26515353f3e>; Discharge for the 2020 budget: European Border and Coast Guard Agency (Frontex) [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/733694/EPRS_ATAG\(2022\)733694_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/733694/EPRS_ATAG(2022)733694_EN.pdf).

and recommendations complemented numerous reports of international and civil society organisations¹⁴⁴ and investigative media.¹⁴⁵

To achieve a more comprehensive implementation of Article 80 by the European Border and Coast Guard, provisions requiring Member States to comply with fundamental rights should be strengthened. Operational support by the Agency must be contingent on compliance with EU law, including the EU Charter, and international human rights and refugee law.

Under EU law, any decision affecting a person's right must be taken on an individual basis. Collective expulsions are prohibited (Article 19 of the Charter). Individuals must have effective access to asylum and be informed about their right to seek asylum in accordance with EU law requirements. Any return must fully respect the safeguards of the Return Directive 2008/115/EC and of other applicable EU legislation and relevant international human rights law. Measures must be in place to prevent, report on and investigate any instances of abuse and violence. The Charter of Fundamental Rights of the European Union further guarantees the right to an effective remedy and to a fair trial (Article 47).

1.1. Consultative Forum

The Consultative Forum is governed by Article 108. The Consultative Forum welcomes that Frontex has an obligation to consult the Consultative Forum on the further development and implementation

¹⁴⁴ "Their Faces Were Covered" Greece's Use of Migrants as Police Auxiliaries in Pushbacks, <https://www.hrw.org/report/2022/04/07/their-faces-were-covered/greeces-use-migrants-police-auxiliaries-pushbacks>; News Comment: UNHCR warns of increasing violence and human rights violations at European borders, <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>.

¹⁴⁵ Frontex Involved in Illegal Pushbacks of Hundreds of Refugees, <https://www.spiegel.de/international/europe/frontex-involved-in-illegal-pushbacks-of-hundreds-of-refugees-a-9fe90845-efb1-4d91-a231-48efcfa53a0>.

of the Fundamental Rights Strategy, on the functioning of the Complaints Mechanism, on Codes of Conduct and on the Common Core Curricula. This is in addition to the possibility for the Frontex Executive Director and the Management Board to consult the Consultative Forum on any matter related to fundamental rights. In other words, the scope for the Consultative Forum to provide advice on fundamental rights to Frontex is not limited to Article 108 (3) but is broader based on Article 108 (1). The Consultative Forum has in practice, issued to date some of its recommendations at its own initiative.

A major gap in the implementation of Article 108 emerged in relation to the limited or delayed follow up by Frontex management on the Consultative Forum's Recommendations. Despite an obligation to that effect,¹⁴⁶ the Agency's Management Board only recently introduced a procedure to inform the Consultative Forum on how it follows up on the Recommendations received.¹⁴⁷

Considerations for the enhanced implementation

- ➔ While a procedure to inform the Consultative Forum of the follow up to its recommendations has been in place since July 2022, a gap in the provision of such information remains. It is necessary that information is provided within a defined timeframe and that this information also contains explanations in cases of non-consideration of specific recommendations.
- ➔ The requirement introduced by Frontex for the Consultative Forum members to sign a 'professional secrecy' statement might pose an obstacle for the members to fully exhaust their organisations' expertise, because documents cannot be circulated

¹⁴⁶ Article 108 (3).

¹⁴⁷ [Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.](#)

broadly within the respective organisations to seek expert input. Additionally, the secrecy principle could undermine Frontex' commitment to more transparency. The Consultative Forum recommends moving from a 'secrecy' requirement to a 'confidentiality-based' relationship allowing for more flexibility. Clear guidance to the confidentiality principle should be provided in the declaration of adherence.

- ➔ The Consultative Forum's access to Frontex information could be improved by introducing a timeframe by which the Agency must respond to the request and by simplifying the procedure for information request. As a minimum timeframe the EU rules for public access to documents should be considered,¹⁴⁸ which is 15 working days.

Potential amendments to the Regulation – Article 108

- ➔ The European Parliament's Frontex Scrutiny Working Group (FSWG) called for a timely distribution of the Consultative Forum's recommendations. The Forum has been publishing since 2019 all its Recommendations as annexes to its Annual Reports. To improve timely accessibility and visibility, the Consultative Forum should be tasked to make its recommendations publicly available upon issuance. Such practice would ease the work of external oversight mechanisms and enhance the Agency's accountability and transparency.¹⁴⁹ Thus, Article 108 (3) could be amended accordingly.
- ➔ While the tasks of the Consultative Forum are increasing (such as additional tasks for the ETIAS Fundamental Rights Board and possibly the VIS Fundamental Rights Board in the future),

¹⁴⁸ [Regulation \(EC\) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.](#)

¹⁴⁹ This was also suggested by the FSWG.

the Secretariat's capacities and additional substantive expertise needs to be strengthened.

Therefore, the following suggestions should be considered:

- The Consultative Forum should have a distinct budget line;
- Introducing empowerment schemes for civil society organisations to compensate their time and to motivate for chairpersonship.

1.2. Codes of conduct

The adoption of a Code of Conduct by Frontex is regulated in Article 81 of the Regulation. The Consultative Forum has cooperated with the Agency to draw up a general Code of Conduct and a Code of Conduct for returns.¹⁵⁰ The relevant provisions of the Regulation require that the codes of conduct should foresee procedures that respect fundamental rights and expressly enumerates such rights.

Potential amendments to the Regulation – Article 81

- ➔ Article 81 should contain a requirement to evaluate and assess the impact of the codes of conduct after their entry into force and following a given period of time.

¹⁵⁰ For example, Recommendations on the "Code of Conduct for all Border Control Operations and all Persons Participating in the Activities of Frontex" and "Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex" issued to Frontex on 19 November 2021 (Not publicly available)

1.3. Complaints mechanism¹⁵¹

The complaints mechanism foreseen by Article 111 is an important component of the fundamental rights safeguards in the Regulation.¹⁵² It contains several positive elements that can turn it into an effective and robust tool if properly implemented.

The Regulation gives a prominent role to the Fundamental Rights Officer (FRO) in the handling of the complaints. It states that the FRO should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency. It is clear from the Regulation that Frontex staff do not need to obtain any prior authorisation from the Executive Director or the hierarchy to provide information to the FRO. It is also welcome that the provisions of the Regulation insist on the effectiveness of the mechanism, which is clearly a requirement to have a meaningful tool that leads to safeguarding respect for fundamental rights in practice.¹⁵³ The Regulation also underlines that the mechanism must be independent.¹⁵⁴ Moreover, activating the complaints mechanism is without prejudice to access to administrative and judicial remedies and does not constitute a requirement for seeking such remedies, which means that the latter can be used in parallel.

On the other hand, the Consultative Forum sees room for improvement of the complaint mechanism. Since 2016, the Consultative

¹⁵¹ The Consultative Forum issued two Recommendations on the complaints mechanism: Consultation of the Consultative Forum on the Frontex complaints mechanism, on 26 September 2016; and, Draft rules on the complaints mechanism, including two Annexes, The Consultative Forum's recommendations to the 'Draft rules on the complaints mechanism, and Draft rules on the complaints mechanism' containing concrete alternative text proposals, on 29 November 2021 (not publicly available).

¹⁵² The Consultative Forum has issued in the past, e.g. for example Recommendations on the "Draft rules on the complaints mechanism" provided to Frontex within a consultation requested on 12 November 2021

¹⁵³ Recital (104) and Article 111 (1).

¹⁵⁴ Recital (104) and Article 111 (1).

Forum has regularly invited the Agency to reform the rules on the complaints mechanism to align them with procedural changes introduced in 2019, including the need for independent and effective complaints mechanisms.¹⁵⁵ To date Frontex receives a very low number of complaints, which could be an indication that the complaints mechanism is not sufficiently known, accessible or attractive.¹⁵⁶

The European Ombudsman has opened two own initiative inquiries¹⁵⁷ about the Frontex complaints mechanism, which should be considered in the reform of the mechanism.

Considerations for the enhanced implementation

➔ Article 111 (3) requires that “only complaints that are substantiated and involve concrete fundamental rights violations shall be admissible”. The Consultative Forum considers that this wording establishes a high threshold that may constitute an obstacle to reporting and creates a risk for complainants who might not be aware of the concrete right that was violated in their case. Therefore, some flexibility and margin of discretion should be left to the FRO. It should be specified that FRO considers all the elements presented to him and the “concrete violation” does not have to be indicated by the complainant at the time of lodging the complaint but rather must be found based on elements indicated by him/her. This would also be in line with the provision requiring the accessibility of the complaints mechanism and the requirement that complaints be considered by the FRO

¹⁵⁵ Annual Report 2021: “In 2021, the European Ombudsperson (EO) launched an inquiry on its own initiative in which it regretted the delay by Frontex in implementing the changes introduced by Regulation 2019/1896. In this regard, the EO made nine suggestions for improvement, most of which echoed the Consultative Forum’s long-standing advice. The Consultative Forum issued a recommendation to Agency on the complaints procedure at the end of 2021 (see Annex 11).”

¹⁵⁶ In 2021, the Office received a total of 27 complaints. See [The Fundamental Rights Officer Annual Report 2021, The Complaints Mechanism, Chapter 2, Section 2.2, Page 26](#).

¹⁵⁷ [European Ombudsman – Inquiry to assess Frontex Complaint Mechanisms, November 2020; Special Report of the European Ombudsman concerning Frontex, March 2012](#).

even when they have not been submitted in the standardised complaint form.¹⁵⁸ Also, FRO must have the possibility to treat any inadmissible complaint as an expression of concern.

- ➔ FRO's scope of sources of information should be diversified, broadened to reinforce its investigative power. National Human Rights Institutions, National Preventive Mechanisms, international, humanitarian, and civil society organisations and trustworthy media outlets are credible sources of data and information where Frontex operates. FRO should legitimately consider these for fact finding and/or testimony purposes.
- ➔ The low number of complaints shows that the awareness about the complaints mechanism remains limited, including among the professionals working on the ground and thus, a fortiori, among potential victims of fundamental rights breaches. Frontex should actively provide information on the mechanism to strengthen its effectiveness both among Frontex staff and among everyone Frontex interacts with. Such active provision of information would be in line with Article 10 (ad) and Article 110 (1) which refer to the 'promotion' of fundamental rights.
- ➔ It should be considered that children and vulnerable persons may require a different mode for accessing the complaints mechanism. An "emergency and easy to trigger" mode should be introduced to facilitate their access.
- ➔ To comply with requirements of transparency, complaints-related decisions should be justified in writing and complaints related findings and trends should be made publicly available, similar to the treatment of complaints by the European Ombudsman and some of the respective national mechanisms.

¹⁵⁸ Article 111 (9).

Potential amendments to the Regulation – Article 111

- ➔ An explicit reference to the possibility for persons to anonymously lodge a complaint or for a third party to lodge a complaint on behalf of them should be introduced, as an important tool to alleviate fear of retaliation and encourage reporting.
- ➔ Frontex staff should have an obligation to actively provide information on the complaints mechanism. This could be introduced in Article 111 (10) and could potentially enhance the visibility and accessibility of the complaints mechanism.
- ➔ Although the handling of complaints requires a follow-up by the Agency and Member States, in practice there were obstacles such as late response or insufficient follow up. Article 111 (6) and (7) should contain safeguards for preventing the lack of effective follow-up by the Member States and the Executive Director.
- ➔ A reference to a remedy must be introduced in Article 111. In cases where the complainant is not satisfied with the outcome of the complaint, there should be a possibility to appeal against it.¹⁵⁹

1.4. Fundamental Rights Officer

Article 109 of the Regulation assigns an extensive list of tasks to the FRO.¹⁶⁰ According to Article 109 (4), the Management Board must ensure that action is taken on the FRO's recommendations. The FSWG also urged the Management Board and the Executive Director to “ensure that the FRO and Consultative Forum are included actively from the very start of relevant processes, actively involve the recommendations and opinions from the FRO and

¹⁵⁹ [European standards on legal remedies, complaints mechanisms and effective investigations at borders](#), p. 2.

¹⁶⁰ Article 109 (2).

Consultative Forum in their decision-making and justify their follow-up to respective actors”¹⁶¹

Pursuant to Article 109 (7), the FRO shall have access to all information concerning respect for fundamental rights in all the activities of the Agency. The Consultative Forum observed with concern that in practice, the access by the FRO to core Frontex activities, such as debriefing and patrolling was limited in the past. Negotiating access to activities and documents was partly left to the FRO.

Considerations for the enhanced implementation

- ➔ The Frontex Executive Director should ensure with the Member States default access for FRO and Fundamental Rights Monitors to operations, including debriefing and patrolling.
- ➔ Member State authorities should be required to respect the obligation to cooperate with Frontex and the FRO in the follow up of complaints and serious incidents reports as provided in Article 111 (7).
- ➔ The Agency should seek the FRO's views ahead of planning operational activities to assess the potential risks of serious violations of fundamental rights. The FRO should regularly (eg. annually) assess the situation in Member States and in third countries.
- ➔ Frontex should operationalise its procedure for the follow up to the FRO's recommendations.

Potential amendments to the Regulation – Article 109

- ➔ Article 109 should be strengthened by expressly stating that the FRO must be granted access to all Frontex activities, including debriefing and patrolling.

¹⁶¹ See [Ninth Consultative Forum Annual Report 2021](#).

- ➔ Member State authorities should have a clear obligation to co-operate with Frontex and with the FRO in relation to the follow up to complaints and serious incidents reports which should be anchored into the Regulation.
- ➔ In addition to the Management Board, the European Parliament should ensure the independence of the FRO (f.e. through regular interaction and reporting).

1.5. Fundamental Rights Monitors (FROMs)

The recruitment of the FROMs was significantly delayed, beyond the deadline established by the Regulation.¹⁶² The recruitment of at least 40 Fundamental Rights Monitors was only achieved in 2022.

Under Article 110 (3) of the Regulation, the FROMs must have access to all areas in which operational activities of the Agency take place and to all its documents relevant for the implementation of that activity. In practice, access to key Frontex operational activities such as patrolling and debriefing was extremely limited.

Article 3 of the Regulation outlines the concept of European integrated border management. It does not include monitoring of fundamental rights obligation.

Considerations for the enhanced implementation

- ➔ Member States and Frontex must ensure that the Fundamental Rights Monitors should have access to Frontex activities by default;
- ➔ The obligation for Member States to cooperate with the Fundamental Rights Monitors should be anchored in the operational

¹⁶² Article 110 (6): The Agency shall ensure that by 5 December 2020 at least 40 fundamental rights monitors are recruited by the Agency.

plan to ensure their access to all relevant areas and types of activities where Frontex staff and assets (including co-financed ones) are involved and operating. This would guarantee the required transparency and facilitate an objective assessment of the fundamental rights situation.

Potential amendments to the Regulation – Articles 3 and 110

- The scope of monitoring should expressly cover technical assistance and capacity building activities in third countries. To ensure that fundamental rights compliance and respective monitoring is integral to the European integrated border management, **Article 3** should be amended by adding a reference to fundamental rights monitoring.

1.6. Serious Incidents Reporting (SIR) mechanism

The SIR mechanism is an important reporting tool of the Agency that ensures the immediate reporting of deviations from the operational plan and other risks for the operations. This reporting tool is also a major fundamental rights safeguard in the overall Frontex fundamental rights infrastructure and can be transformed into a strong tool that helps the Agency to detect potential violations of fundamental rights.

However, the SIR mechanism is not expressly mentioned in the Regulation and thus only governed by Agency's internal Standard Operating Procedures.¹⁶³ Having it anchored in the Regulation itself would give it more visibility strengthening the obligation to report fundamental rights violations.

¹⁶³ [Frontex Executive Director Decision No R-ED-2021-51 on Standard Operating Procedure - Serious Incident Reporting.](#)

Considerations for the enhanced implementation

- ➔ The Consultative Forum maintains its recommendations¹⁶⁴ that FRO's role in relation to the categorisation and handling of cases under SIRs should be further strengthened in all phases of the mechanism, including the possibility to challenge previously made decisions on the categorisation. For the mechanism to be effective, fundamental rights expertise must be present at all steps of the process. The identification, categorisation and handling of reports require the involvement of FRO appointed staff with a sound fundamental rights expertise.
- ➔ Barriers to lodge a fundamental rights-related SIR have to be removed – for example, participants in the Frontex activities must be allowed to directly lodge a report without a prior assessment/pre-assessment by local coordinating officers and by the Frontex Situational Centre (FSC) and there should be no admissibility check. The margin of discretion left to Operational Coordinators / FSC should be limited to avoid the risk of discouraging reporting. Staff's obligation to cooperate with the FRO in facilitating his/her access to information concerning relevant SIRs should be strengthened.
- ➔ Reporting on fundamental rights issues should, furthermore, be encouraged through training and awareness raising measures, in addition to incentives and practical guidance on how to report.

Potential amendments to the Regulation – Article 55

- ➔ The obligation to report potential violations of fundamental rights should be introduced into the Regulation, for example by amending Article 55 (4).¹⁶⁵

¹⁶⁴ Recommendation to Frontex on the reform of its Serious Incidents Reporting (SIR) mechanism, see [Ninth Consultative Forum Annual Report 2021](#), pp. 89,92.

¹⁶⁵ Article 55 (4) "Throughout their employment, the Agency shall ensure that its statutory staff discharge their duties as members of the teams in accordance with the highest standards and in full compliance with fundamental rights. The staff should have an obligation to report the violations of fundamental rights."

1.7. Not launching, suspending or terminating operations

Article 46 of the Regulation requires Frontex, to suspend, to terminate or not to launch operations in case of fundamental rights violations which are serious or likely to persist. This entails the need to assess the risks for fundamental rights violations.

Article 46 presents two non-cumulative conditions related to the violations of fundamental rights: they must either be of a serious nature, or they must be likely to persist. The wording of Article 46 (5) indicates that the decision not to launch an activity must be taken when there are serious reasons to believe that the activity could lead to violations of fundamental rights or international protection obligations of a serious nature. In other words, a duly justified risk of such violations is a sufficient reason not to launch the activity.

In the event of a recast of the Regulation, it should be ensured that a provision remains enabling Frontex to suspend or withdraw operations in cases of emerging fundamental rights violations in the operational area.

Considerations for the enhanced implementation

- ➔ Carrying out regular assessment of fundamental rights risks in the operational area should become an integral element of operational plans, as part of the “general instructions on how to ensure the safeguarding of fundamental rights” envisaged in Article 38 (3) (I) of the Regulation. This would avoid that Article 46 considerations operate only as an optional emergency tool.
- ➔ A standard operating procedure for the operationalisation of Article 46 was adopted in 2022.¹⁶⁶ Only once, in the context

¹⁶⁶ [Frontex Executive Director Decision No R-ED-2022-12 on Standard Operating Procedure – mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.](#)

of Greece, a Working Group to engage with the Greek authorities to assess the fundamental rights situation and to advise the Executive Director was established. The Working Group was in place for a short period and its objectives and results remain unclear to the Consultative Forum. The Consultative Forum welcomes the initiation of such Working Groups and suggests for the future that the Working Group's terms, objectives, methods of engagement and information gathering should be transparently defined at the beginning of the process and the ultimate conclusions or advice to the Executive Director should be made public.

- ➔ To give concrete implementation to Article 46, it is paramount that fundamental rights impact assessments and due diligence procedures are set up to adequately cover all activities that the Agency is involved in.

Potential amendments to the Regulation – Article 46

- ➔ Article 46 (6) requires the Executive Director to base his/her decisions on duly justified ground, considering relevant information “such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, ...”. Depending on the national context, National Human Rights Institutions, National Preventive Mechanisms, international, humanitarian, and civil society organisations provide well-documented reports on the fundamental rights situation at borders or collect testimonies by migrants. The list of sources listed in Article 46 (6) should therefore also include relevant national and civil society organisations.
- ➔ Article 46 might be amended to introduce an obligation for the Executive Director to make his decisions and their motivation on launching or not, withdrawing or suspending and information concerning the required assessment as per Article 46 (5)

publicly available, which would also increase transparency.¹⁶⁷ The decision should list the sources of information used.

- ➔ Article 46 should require the Agency to adopt an adequate methodology to assess “persistence” and “seriousness” of fundamental rights violations.¹⁶⁸ The methodology used should be made publicly available.

2. SELECTED FRONTEX ACTIVITIES: ANALYSIS AND RECOMMENDATIONS

This section highlights selected Frontex activities with regards to which the Consultative Forum has issued specific recommendations in the past, considering them as core activities of the Agency with a fundamental rights dimension.

2.1. Operational Plans

Articles 9, 38, 39 (8), 53 (3) and 74 (3) require operational plans for integrated planning, joint operations, rapid border interventions, return interventions and technical and operational assistance to third countries. Article 47 requires evaluating operational activities. Operational plans must also cover several fundamental rights related aspects. These include, for example, benchmarks – also covering fundamental rights – for reporting and evaluation, general instructions to safeguard fundamental rights during operational activities and procedures to receive and transmit complaints.

These are crucial safeguards that need to be adequately reflected in individual operational plans. For example, the Consultative Forum

¹⁶⁷ See [Ninth Consultative Forum Annual Report 2021](#), pp 69-72.

¹⁶⁸ Recommendations on the draft “Standard Operating Procedure – setting up the mechanism to suspend, terminate, withdraw the financing or not to launch Frontex activities”, see [Ninth Consultative Forum Annual Report 2021](#), pp 100-104.

observed gaps in relation to the integration of the FRO's and FROMs findings and proposed mitigating measures into the operational plans. Operational plans did not anchor adequately the default presence of FROMs. Moreover, the FRO was not always consulted in a timely manner before finalising operational plans or their evaluations.

The Consultative Forum welcomes that the duty to monitor fundamental rights compliance of each joint operation or rapid border intervention and to cooperate with a fundamental rights monitor is explicitly included in the role of coordinating officer.¹⁶⁹ Frontex staff's obligation to report to the Executive Director in case of non-compliance with fundamental rights and the possibility for staff to suggest to the Executive Director on the triggering of Article 46 are positive elements. However, there is a risk that these could be hampered in practice, because of fear of reaction from the hierarchy for example.

While Frontex has the obligation to refer persons in need of international protection, vulnerable persons, and children to the responsible authorities, Frontex does not record respective data (number of identified vulnerable persons, gender, age, number of persons referred to national asylum procedures) regarding persons so referred, which would be useful in establishing a baseline.

The current Regulation does not include any specific provisions on stateless persons, except a brief reference to the 1954 United Nations Convention relating to the Status of Stateless Persons and other relevant international instruments in Recital (20).

Frontex is increasingly outsourcing certain services such as interpretation, mediation and reintegration related. Yet, Frontex remains

¹⁶⁹ Article 44 of [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](#).

liable for those activities. Fundamental rights related safeguards should be introduced to specifically cover fundamental rights compliance of outsourced activities and services.

Considerations for the enhanced implementation

- ➔ New operational plans should consider the results of the fundamental rights evaluation of the previous operational cycle carried out based on Article 47 of the Regulation as well as reports from the FRO and the Consultative Forum, in line with Article 80 (4).
- ➔ Any practical obstacles to Frontex staff's obligation to report (e.g. fear of reaction from the hierarchy and Member States) should be removed.
- ➔ For transparency and accountability reasons, any activity, operational as well as support activities (such as training or awareness raising measures), carried out or financed by the Agency should be included in the operational plans.
- ➔ All operational plans should provide for the unhindered access by the FROMs to all operational areas and activities (see recommendation in relation to the Fundamental Rights Monitors).
- ➔ Procedures/guidelines to detect stateless persons must be implemented in the identification and screening phase.¹⁷⁰ An effective referral mechanism must equally be put in place.

Potential amendments to the Regulation – Article 38

- ➔ The Regulation should introduce an obligation for Frontex to collect fundamental rights relevant and disaggregated data on the number of vulnerable people identified and referred as per Article 38 (3) (m), including by gender, age (children) and type of vulnerability/protection needs. This should also include data on identified and referred cases of statelessness. Any such data

¹⁷⁰ Consultative Forum Recommendation on Statelessness in the activities of the European Border and Coast Guard Agency, see [Sixth Consultative Forum Annual Report 2018](#) (not publicly available).

collection should be in full compliance with EU data protection rules and personal data protection.

2.2. Return activities¹⁷¹

Returns may seriously interfere with fundamental rights enshrined in the EU Charter, such as Article 18: right of asylum; Article 19: the principle of non-refoulement and the prohibition of collective expulsions, Article 4: the prohibition of torture, inhuman or degrading treatment or punishment, Article 6: the right to liberty; Article 24: rights of the child; and Article 47: the right to an effective remedy. Therefore, references to the necessity to respect fundamental rights in return processes and return-related activities are positive elements of the Regulation.¹⁷²

Fundamental rights considerations are not only relevant for forced returns but also for other return activities, such as voluntary returns, return counselling and reintegration measures.

The Consultative Forum welcomes the importance that the Agency is giving to forced return monitoring. However, it observed that monitoring was lowest in the category of national return operations financed by Frontex, while the objective should be to monitor all Frontex return operations.

Considerations for the enhanced implementation

- ➔ The Agency 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

¹⁷¹ See Consultative Forum Recommendation on return in the activities of the European Border and Coast Guard Agency, [Seventh Consultative Forum Annual Report 2018](#), pp. 55-66.

¹⁷² Recital 81, Article 48 (1), and Articles 50-51.

duly assessed, effective remedies are absent and a lack of individualised non-refoulement assessments) 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.¹⁷³ The Agency has an obligation to ensure respect for the principle of non-refoulement. In the event of violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist, the Agency must suspend or terminate its activities pursuant to Article 46 (see above under section 1.7). This also applies to return operations.

- ➔ The Agency should consider developing guidelines and minimum standards for the protection of fundamental rights relating to voluntary returns, return counselling and reintegration measures.
- ➔ The Agency should take further steps to increase the number of return operations monitored.

Potential amendments to the Regulation

- ➔ A requirement could be added to Article 50 (in addition to the existing reference to training of forced return monitors in Article 62) requiring that the Agency ensures adequate training on fundamental rights tailored to the responsibilities and challenges for all members of the pool of forced return escorts, for the cultural mediators and for all other participants in return operations, such as medical staff and interpreters as well as third country officials.
- ➔ Although constituted from competent bodies of the Member States who carry out forced-return monitoring activities under Article 8 (6) of the Return Directive, the pool of forced-return monitors established under Article 51 is under Frontex governance. The Consultative Forum considers that the pool

¹⁷³ Consultative Forum Recommendation on return in the activities of the European Border and Coast Guard Agency, [Seventh Consultative Forum Annual Report 2018](#), p. 37.

of forced-return monitors should be independent from Frontex, hence Article 51 should be amended accordingly.¹⁷⁴

- ➔ The Agency's good practice of not returning unaccompanied children in forced return operations, should be anchored in the Regulation. Returns of children should be carried out only when it is in their best interests.¹⁷⁵
- ➔ The Agency's good practice of requesting information on the existence of enforceable return decisions from the Member States should be a legally binding prerequisite for the Agency's support to the forced return of an individual.
- ➔ Recital (82) of the Regulation, which foresees cooperation with the European Committee for the Prevention of Torture to conduct visits to where Frontex carries out return operations, should be reinforced and clearly included as a new provision under Article 51 including a duty for the Agency to facilitate such visits.

2.3. Cooperation with third countries¹⁷⁶

The Frontex Regulation requires the Agency to cooperate with third countries in compliance with the protection of fundamental rights.¹⁷⁷ When defining with whom and how to cooperate, the risks of violations of fundamental rights, which should be a primary consideration for the Agency, must be properly weighted against potential benefits. In 2019, the Consultative Forum has issued recommendations¹⁷⁸ on

¹⁷⁴ See [Eight Consultative Forum Annual Report 2020](#), pp 72.

¹⁷⁵ For more, see FRA, [Returning unaccompanied children: fundamental rights considerations](#), Luxembourg, Publications Office of the EU, September 2019.

¹⁷⁶ Recommendations on the fundamental rights implications of the Agency's engagement with third countries, see [Seventh Consultative Forum Annual Report 2019](#), pp. 46-66.

¹⁷⁷ Article 73 (2).

¹⁷⁸ Consultative Forum Recommendations on the fundamental rights implications of the Agency's engagement with third countries on 14 October 2019. See [Seventh Consultative Forum Annual Report 2019](#), pp. 46-54.

the fundamental rights implications of the Agency's engagement with third countries – they remain valid.

Considerations for the enhanced implementation

- ➔ Frontex should request the FRO to carry out a fundamental rights impact assessment prior to engaging with a third country through technical or financial assistance or capacity-building activities and prior to concluding a working arrangement.
- ➔ Where the Agency's assessment reveals fundamental rights violations or risks for fundamental rights violations in the respective operational context which cannot be mitigated, it should not engage in operational cooperation until the third country has taken the necessary measures to prevent serious human rights violations.
- ➔ The Agency should introduce measures to avoid a direct or indirect contribution (aid or assistance) to fundamental rights violations. The Agency's accountability mechanisms should be applicable to engagement in third countries.
- ➔ To increase transparency, all third country-related activities of the Agency should be made public (for example, including a detailed list of activities by third country, working arrangements, the fundamental rights impact assessments conducted, the relevant Management Board Decisions, status agreements etc.).

Potential amendments to the Regulation – Article 73

- ➔ The requirement for the Agency to carry out a fundamental rights assessment should be added to Article 73; an assessment is currently required from the European Commission only as per the Recital (88) of the Regulation.

2.4. Debriefing

The term debriefing refers to anonymous interviews with third-country nationals to collect information for risk analysis and law-enforcement purposes, particularly looking at routes, trafficking and smuggling related information. Frontex debriefings have raised concerns at the EU level when it comes to their compliance with fundamental rights. While debriefings are a core activity of most Frontex joint operations, they are not sufficiently regulated in the Regulation. Debriefing activities entail interviews with migrants and asylum seekers which might risk violating the individual's right to privacy, dignity or access to asylum.

At the national level, the Spanish Ombudsman reviewed debriefings conducted in the context of the JO Indalo in Spain and noted that migrants were not offered the opportunity to give an informed consent and did not receive legal assistance within this process although the identification of suspects of cross-border crimes in debriefings might result in criminal proceedings. The Spanish Ombudsman called for ceasing the debriefing interviews until the right to legal assistance is ensured. Following this, the European Ombudsman opened an inquiry addressing Frontex with a set of questions aiming at understanding the role of Frontex in debriefing interviews and particularly inquiring about safeguards such as consent and legal assistance.¹⁷⁹

¹⁷⁹ See [Decision on how the European Border and Coast Guard Agency \(Frontex\) dealt with a request for data concerning the resources deployed in two joint operations \(case 1087/2022/SF\)](#); and "Exchange of personal data between Frontex and Europol - Processing of Personal Data for Risk Analysis (PeDRA) project" Hearing at Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Considerations for the enhanced implementation

- ➔ The FROMs should be given unimpeded access to debriefing interviews and related documents. (see respective considerations for the fundamental rights monitors).
- ➔ If criminal proceedings are initiated as a result of the debriefing interview, procedural safeguards laid out in domestic law, including the requirement for the provision of legal aid should apply.
- ➔ Children should not be interviewed for debriefing purposes and must be referred to competent national authorities or organisations. People who have signs of health issues, trauma or vulnerability should not be subject to debriefings and should be referred to competent authorities which can provide the necessary protection and assistance. Frontex should collect disaggregated and anonymised data on referred persons in full compliance with EU data protection framework and personal data protection.
- ➔ Evaluations and impact assessments should cover fundamental rights compliance of debriefing activities.

Potential amendments to the Regulation

- ➔ The Regulation should contain clear rules and safeguards for debriefing activities, including for example on:
 - their voluntary, anonymous and confidential nature;
 - the need for providing information in a language interviewees understand;
 - recorded consent of the interviewee
 - guarantees for anonymity and clear rules in case personal data are further processed;
 - right to legal assistance;
 - mandatory presence of a cultural mediator or interpreter;
 - guaranteeing privacy and the provision of necessary equipment;

- the obligation to refer people, who ask for asylum and other persons during debriefings to the respective procedures and authorities;
- provision of information on the Frontex complaints mechanism;
- debriefings should only be conducted after the screening and identification process and not upon disembarkation.¹⁸⁰

2.5. Aerial surveillance¹⁸¹

Frontex's border surveillance activities have expanded significantly in recent years, in terms of both capabilities and assets. Central to the Agency's border surveillance activities is the Multipurpose Aerial Surveillance (MAS) service that Frontex provides to Member States in its various operations. The Consultative Forum has for some years expressed concerns about the potential fundamental rights impact of Frontex aerial surveillance activities operations and issued recommendations in 2022.¹⁸²

MAS is a service delivered within the framework of Eurosur Fusion Services (EFS). Under Article 28 of the Regulation, EFS enhance the situational awareness by providing information on the external borders and on the pre-frontier area.

When delivering MAS services, the Agency remains bound by the fundamental rights safeguards included in the Regulation. The Consultative Forum emphasizes that international maritime law

¹⁸⁰ Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants on his mission to Greece", A/HRC/35/25/Add.2, 24.04.17, para 41.

¹⁸¹ The Consultative Forum issued Recommendation on Frontex Aerial Surveillance activities on 24 November 2022 which will be made publicly available in the Tenth Consultative Forum Annual Report 2022

¹⁸² See *Ibid.* See also [Consultative Forum Seventh Annual Report 2019](#), pp. 24-25; [Consultative Forum Eight Annual Report 2020](#), pp. 64-70; and [Consultative Forum Ninth Annual Report 2021](#), p. 25.

cannot override international human rights and refugee law nor set aside obligations under the EU Charter, which Frontex is bound by.¹⁸³ Frontex must interpret its legal obligations relating to search and rescue at sea set out in the Frontex Regulation in a way that is informed by and consistent with its fundamental rights law obligations, preventing that the Agency's engagement could lead to human rights violations. This requirement of harmonious interpretation is also recognized in the Frontex' Fundamental Rights Action Plan, stressing that the Agency must "[c]ommunicate sightings and initial actions regarding distress situations to the competent and other relevant Rescue Coordination Centres, in line with the International Convention on Maritime Search and Rescue and in compliance with international human rights and EU law including the principle of non-refoulement and the EU Charter of Fundamental Rights."

Considerations for the enhanced implementation

- ➔ Frontex should continue to regularly monitor the implementation of MAS services and how they may impact on fundamental rights.
- ➔ a range of mitigation measures could be introduced to ensure that Frontex activities do not involve conduct that contributes to fundamental rights violations with the ultimate option of not launching, suspending or terminating its activities.
- ➔ Frontex should document and monitor sensitive events. Frontex surveillance flights or other Frontex assets could in future remain at the location of detected incidents to document border police measures until they have been completed.¹⁸⁴
- ➔ When MAS assets are deployed at sea and the impact assessment indicates that it may involve disembarkation in places

¹⁸³ The Consultative Forum issued Recommendation on Frontex Aerial Surveillance activities on 24 November 2022 which will be made publicly available in the Tenth Consultative Forum Annual Report 2022.

¹⁸⁴ A provision that is also included in the Frontex Fundamental Rights Action Plan and was it was recommended by Frontex Management Board Working Group, Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea: Final Report, 1 March 2021.

that do not meet the definition of “safety” under international and EU law,¹⁸⁵ Frontex should condition its approval and implementation of the service upon the adoption of any mitigation measures, including actions to be performed by either Frontex itself, or Member States, that may be necessary to ensure the protection of fundamental rights, and the respect of the principle of non-refoulement.

Potential amendments to the Regulation

- ➔ It is paramount that Frontex introduces a human rights impact assessment and applies the Fundamental Rights Officer’s due diligence procedure ahead of establishing a service agreement with a Member State or a third country for the provision of MAS services. This requirement should be anchored into the Regulation.

2.6. Training¹⁸⁶

Article 3 (2) of the Regulation establishes that fundamental rights, education and training are overarching components in the implementation of European integrated border management.¹⁸⁷ Article 62 – and Article 55 (3) – foresee that the Agency must provide training to its staff to be deployed, including on fundamental rights, access to international protection, guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of children, including unaccompanied children, victims of trafficking

¹⁸⁵ [International Convention for the Safety of Life at Sea, Regulation 33, as amended by \[MSC.167\(78\)\] of 2004, para 6.12\], International Maritime Organization \(IMO\), Resolution MSC.167\(78\), Guidelines on the Treatment of Persons Rescued at Sea, 20 May 2004.](#)

¹⁸⁶ Consultative Forum Recommendation on training activities of the European Border and Coast Guard Agency, see [Eight Consultative Forum Annual Report 2020](#), pp 85-92

¹⁸⁷ [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.](#)

in human beings, persons in need of urgent medical assistance and other particularly vulnerable persons.

In 2019, the Consultative Forum issued recommendation on training activities of the European Border and Coast Guard Agency.¹⁸⁸

Considerations for the enhanced implementation

- ➔ Frontex should increase the transparency, efficiency and predictability of its processes for the development of new training courses and materials relating to fundamental rights. The training unit should develop a meaningful engagement plan with the Fundamental Rights Office and the Consultative Forum at the early stages of the process.
- ➔ The Consultative Forum also considers that a sound training methodology could significantly enhance the quality of training.¹⁸⁹ Involving FRO, consulting the Consultative Forum or external experts with a fundamental rights training expertise in the development of the quality assurance system under Article 62 (10) would be welcome. The Consultative Forum reiterates that fundamental rights expertise, including from external, independent sources, should be sought for in the design and development of training activities.

Potential amendments to the Regulation

- ➔ The mainstreaming of fundamental rights into all Frontex training should be considered. While the Regulation foresees the consultation of the Consultative Forum for the common core curricula, there is no reference for ensuring the mainstreaming

¹⁸⁸ Consultative Forum Recommendation on training activities of the European Border and Coast Guard Agency, see [Eight Consultative Forum Annual Report 2020](#), pp 85-92.

¹⁸⁹ See [Ninth Consultative Forum Annual Report 2021](#), p.35.

of fundamental rights into all Frontex training material and activities.

3. CONCLUSIONS

This submission aims at outlining the Consultative Forum's main observations with regards to both enhanced implementation of the fundamental rights safeguards of the Regulation and potential amendments in the event of a recast.

It will be important to observe how the Agency implements the procedure for the operationalisation of Article 46 and the extent to which it considers the FRO's advice ahead of decisions. It is also key that respective decisions are transparent and accessible.¹⁹⁰

The Consultative Forum observed a potential risk whereby the *effet utile* of the fundamental rights-related provisions of the Regulation might be limited through internal rules such as standard operating procedures. Frontex procedures should refrain from re-defining legal provisions of the Regulation but should rather embed the operationalisation of legal provisions into clear procedural *modus operandi*, without altering their scope. Revisions of the SOPs and their impact on fundamental rights compliance could be envisaged with a regular frequency based on the outcomes of evaluations and impact assessment.

Enhanced implementation of the current Regulation or potential changes to it should ultimately lead to avoiding gaps in responsibility and should avoid the creation of grey zones resulting in impunity.

¹⁹⁰ *Ibid.*

ANNEX IV: Consultative Forum Programme of Work 2024

FRONTEX CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS

PROGRAMME OF WORK 2024

CONTENT

- 1 Frontex Consultative Forum on Fundamental Rights composition & working methods
- 2 Introduction
- 3 Priorities in 2024

1. FRONTEX CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS COMPOSITION & WORKING METHODS

The Frontex Consultative Forum on Fundamental Rights brings together key European institutions, international and civil society organisations that are concerned with the fundamental rights of migrants and refugees.

The composition of the Consultative Forum for 2024 was renewed¹⁹¹ following a call for expression of interest in 2023 to include representatives from:

¹⁹¹ [Management Board Decision 32/2023 adopting the composition of the Consultative Forum on Fundamental Rights.](#)



Fundamental Rights Monitors at work - Lesbos 2023

© European Border and Coast Guard Agency

Two European Union agencies:

- European Union Asylum Agency (EUAA),
- European Union Agency for Fundamental Rights (FRA),

Five international organisations:

- Council of Europe (CoE),
- International Organization for Migration (IOM),
- Office of the High Commissioner for Human Rights (UN Human Rights – OHCHR),
- Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ ODIHR),
- United Nations High Commissioner for Refugees (UNHCR).

Six civil society organisations:

- Churches' Commission for Migrants in Europe (CCME),
- Council of Bars and Law Societies of Europe (CCBE),
- Global Campus of Human Rights (GCHR),
- Jesuit Refugee Service Europe (JRS Europe),
- Rule of Law Institute Foundation,
- Save the Children (SC).

While EUAA, FRA, and UNHCR are statutory members as anchored in Regulation (EU) 2019/1896, Article 108(1), the international organisations are members by invitation from Frontex and the civil society organisations are invited through an open call.

These organisations contribute their work on a voluntary basis in accordance with the principles of independence, transparency, mutual respect, informed participation, and collegiality. Given its diverse composition, the strength of the Consultative Forum is its ability to provide holistic analysis on respect for, protection, and fulfilment of fundamental rights based on collective knowledge and expertise.

Red Cross Europe's membership expired at the end of 2023.

UNHCR and FRA co-chaired the Consultative Forum in 2023 with the support of the Consultative Forum Secretariat, facilitated by the Fundamental Rights Officer.

Working methods of the Consultative Forum:¹⁹²

- Three meetings per year with the Chair of the Frontex Management Board and the Frontex Executive Director.
- Steering Group meetings held to facilitate timely provision of expertise with Frontex executive management in-between the Consultative Forum meetings.
- Regular meetings and exchange with Frontex business units.
- Regular exchange with the Fundamental Rights Officer and his office.
- Observation missions organised in line with the Consultative Forum's working methods, with due advance notice.

¹⁹² Frontex Consultative Forum, working methods 2021, available at: [Frontex_Consultative_Forum_on_Fundamental_Rights_2021.pdf \(europa.eu\)](https://frontex.europa.eu/Frontex_Consultative_Forum_on_Fundamental_Rights_2021.pdf).

The working methods will be revised in 2024.

The Consultative Forum publishes its annual report¹⁹³ which contains an overview of all recommendations and activities of the previous year. The Consultative Forum presents its Annual Reports to the Management Board, the European Parliament, the Council, and any other stakeholder upon request.

The Agency shall inform the Consultative Forum on the follow-up to its recommendations, as per Article 108(3) of the Regulation (EU) 2019/1896 and in line with the Management Board decision 43/2022. Furthermore, the Frontex Management Board should share the Consultative Forum's recommendations with the European Parliament in line with Art. 8 (1).

2. INTRODUCTION

In accordance with Article 108 of the Regulation on the establishment of a European Border and Coast Guard¹⁹⁴ (hereinafter referred to as “Regulation 2019/1896”), the role of the Consultative Forum is to assist the Agency “by providing independent advice in fundamental rights matters”. To this effect, the Consultative Forum may be consulted on any matter related to fundamental rights, including “on the further development and implementation of the fundamental rights strategy, on the functioning of the complaints mechanism, on codes of conduct and on the common core curricula”.

¹⁹³ In line with Article 108 of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624. [Consultative Forum Tenth Annual Report 2022](#).

¹⁹⁴ [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](#).

For the purpose of performing its duties, and in line with Regulation 2019/1896, “the Consultative Forum shall be provided with effective access in a timely and effective manner to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas, and to return operations and return interventions, including in third countries”.

With the adoption of its Programme of Work, the Consultative Forum sets its priorities for 2024. The Programme of Work also defines the specific results the Consultative Forum aims to achieve.

The Programme of Work reflects priorities and activities jointly identified with Frontex and its Management Board and it remains flexible for adjustments following ad-hoc consultations between the Consultative Forum and the Executive Director of Frontex, the Frontex Management Board, the Fundamental Rights Officer, as well as Frontex divisions and business units, in line with emerging needs. In addition to the outlined priorities, the Consultative Forum can also provide advice at its own initiative and can submit requests for information to Frontex for this purpose.

In the implementation of this Programme of Work, the Consultative Forum will continue working with and supporting the Frontex Fundamental Rights Officer and his team, while ensuring complementarity with his mandate and activities.

All activities and recommendations of the Consultative Forum must fully respect the right to protection of personal data.

3. PRIORITIES IN 2024:

A Advising on fundamental rights policies and processes of Frontex as they emerge

B Enhancing Frontex VEGA activities through advice on fundamental rights

C Advising within the ETIAS Fundamental Rights Governance Board

D Following up on the implementation of Consultative Forum Recommendations

Priority A: Advising on fundamental rights policies and processes of Frontex as they emerge

The Consultative Forum has to date provided advice in the setting up of an effective system to monitor, investigate, and address potential fundamental rights violations. In line with its mandate, and building on its work in previous years, the Consultative Forum will continue offering its support to the Agency as regards the implementation of the 2019 European Border and Coast Guard Regulation in relation to fundamental rights either at the request of the Agency, its Management Board, or at its own initiative.

Output: Continued advice on the effectiveness of the mechanism to monitor, investigate and address alleged fundamental rights violations in Frontex activities. Support to Frontex

Fundamental Rights Monitors as requested by the Fundamental Rights Officer.

Output: Conduct on-the-spot visits to selected Joint Operations and formulate specific observations to the attention of Frontex Management and MB members, in close consultation with the FRO.

Output: Contribute with expertise to inquiries on the external oversight mechanisms (upon request) in relation to fundamental rights.

Priority B: Enhancing Frontex VEGA activities through advice on fundamental rights

Consultative Forum members will continue joining VEGA deployments (on land, at airports, upon launch, and at sea) to support the Agency and its staff in the identification of vulnerable persons.

Output: Deployment of Consultative Forum members to Vega operations and an increase of awareness in relation to the identification of vulnerable persons with Frontex staff. Contribution with fundamental rights expertise to briefings and sharing of fundamental rights-related observations with Frontex.

Output: Contribution to standardised Terms of Reference to harmonise Consultative Forum deployments and ensure consistency of all support activities under the VEGA scheme

Priority C: Advising within the ETIAS Fundamental Rights Governance Board

Since 2022, the Consultative Forum has appointed one of its members, ODIHR, to represent the Consultative Forum in the ETIAS Fundamental Rights Guidance Board.¹⁹⁵

Output: Supporting the effective functioning of the ETIAS Fundamental Rights Guidance Board and continued fundamental rights advice in its set up and functioning.

Priority D: Following up on the implementation of Consultative Forum Recommendations

The Consultative Forum will continue observing the extent of the implementation of its Recommendations. According to the Regulation and MB decision 43/2022,¹⁹⁶ there is an obligation for Frontex to inform the Consultative Forum concerning the implementation of its recommendations.

Output: Exchange with Frontex and the Management Board concerning the follow up on Consultative Forum recommendations.

¹⁹⁵ [Regulation \(EU\) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System \(ETIAS\) and amending Regulations \(EU\) No 1077/2011, \(EU\) No 515/2014, \(EU\) 2016/399, \(EU\) 2016/1624 and \(EU\) 2017/2226.](#)

¹⁹⁶ [Management Board Decision 43/2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.](#)

ANNEX V: Overview of Consultative Forum expenses

The Consultative Forum covers its expenses from the Frontex Fundamental Rights office budget. The co-Chairs carry out an estimation at the end of each year for the upcoming year for the allocation of the resources required.

The Consultative Forum's expenses amounted to **48,899.92€** in 2023.

CONSULTATIVE FORUM BREAK DOWN OF EXPENSES IN 2023

Two on-the-spot visits to Italy and Serbia for 9 Consultative Forum members (including the car rental services)	14,821.43€	Total: 48,899.92€
Organisation of Meetings (Including travel, accommodation, catering, and conference rooms when needed)	34,078.49€	
Participation in Frontex Management Board meetings	2,628.07€	

In addition to the above, Consultative Forum members also participated in VEGA activities and attended training workshops. These expenses were covered by the Frontex Field Operation Unit and by the Frontex Training Unit respectively. As envisaged in Art. 108(4), the Consultative Forum issues an Annual Report concerning its activities. The Annual Report is jointly drafted by the Consultative Forum co-Chairs and Members, with the support of the Consultative Forum Secretariat. The costs for the publication and printing of the Annual Report are covered by Frontex Media and the Public Relations Office (MPR).

The Consultative Forum's expenses covered by various Frontex units amounted at 39,782.08€ in 2023.

**CONSULTATIVE FORUM BREAK DOWN OF EXPENSES WITHIN
VARIOUS FRONTEX ACTIVITIES IN 2023**

Participation of 17 Consultative Forum experts in Frontex VEGA activities for a total of 29 weeks of deployment at green and air borders in eight countries.	34,129.30€	Total: 40502.08€
Participation of 3 Consultative Forum experts in 4 different Frontex training activities	4,853.50€	
Publication of the Consultative Forum's Tenth Annual Report	1,519.28€	

ANNEX VI: Proceedings regarding Frontex accountability

1. JUDICIAL ACCOUNTABILITY: COURT OF JUSTICE OF THE EUROPEAN UNION

In 2023, the General Court dismissed three actions that had been brought against Frontex:

WS and Others v. Frontex (T-600/21)

WS and Others v. Frontex concerns Syrian applicants for international protection who fled to Greece in 2016, where they declared their wish to apply for asylum. However, several days after, they were returned to Türkiye as part of a joint return operation carried out by Frontex and the Hellenic authorities. In 2021, the complainants introduced an action for damages before the General Court. They argued that if Frontex had complied with its obligations under EU law (i.a. perform an adequate risk assessment, adopt measures to mitigate risks to fundamental rights, ensure effective monitoring), they wouldn't have been unlawfully returned to Türkiye and, instead, would have been granted international protection in the EU.

In its judgment of 6 September 2023, the General Court dismissed the action, finding that there was no direct causal link between the damage suffered by the applicants and Frontex's conduct. The Court based its reasoning on the fact that Frontex has no competence to decide on return matters nor on international protection

applications.¹⁹⁷ The applicants have introduced an appeal before the Court of Justice (C-679/23).¹⁹⁸

Hamoudi v. Frontex (T-136/22)

Hamoudi v. Frontex concerns a Syrian individual who fled to Greece in 2020 and was allegedly subjected to a collective expulsion during Frontex operation ‘Rapid Border Intervention Aegean’. In 2022, the applicant sought compensation before the General Court for the damages suffered as a result of Frontex’s infringements of EU law. Mainly, the applicant contended that Frontex should not have approved RBI Aegean, that it should have withdrawn the financing, suspended or terminated the operation, and that Frontex was responsible for the collective expulsion as it was carried out in accordance with the Operational Plan.

On 13 December 2023, the General Court dismissed the action considering that the applicant did not adduce sufficient evidence demonstrating the alleged damage.¹⁹⁹

ST v. Frontex (T-600/22)

In September 2022, the applicant, a Congolese national residing in Türkiye who wishes to seek asylum in Greece, introduced an action for failure to act against Frontex on account of the decision to refrain from suspending or terminating activities in the Aegean

¹⁹⁷ Court of Justice of the European Union (CJEU), T-600/21, *WS and Others v. Frontex*, 06 September 2023, <https://curia.europa.eu/juris/document/document.jsf?sessionId=C00A4B8754F87737E6A529256222F9B4?text=&docid=279446&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=4017249>.

¹⁹⁸ Court of Justice of the European Union (CJEU), C-679/23, *WS and Others v. Frontex*, pending.

¹⁹⁹ Court of Justice of the European Union (CJEU), T-136/22, *Hamoudi v. Frontex*, 13 December 2023, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=280687&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=4017456>.

Sea region. Alternatively, the applicant sought the annulment of the contested decision.

On 28 November 2023, the General Court declared the action for failure to act inadmissible for two reasons. First, the applicant had not demonstrated that the person who called upon Frontex to act was the same as the one bringing the action before the General Court. Second, Frontex defined its position after the call for action and therefore, there could be no further court action. The action for annulment was also deemed inadmissible as the applicant did not demonstrate a vested and present interest in having the decision annulled. The General Court considered that it is uncertain that the applicant could derive any advantage from the annulment. Amongst others, it rejected the applicant's argument that the annulment of the contested decision would lead to the reduction of the risk of exposure to fundamental rights violations during an inevitable future crossing attempt, as the prejudice to the applicant was future and hypothetical.²⁰⁰

2. NON-JUDICIAL ACCOUNTABILITY

In 2023, Frontex has also been under the scrutiny of the European Ombudsman and the European Parliament's Frontex Scrutiny Working Group (FSWG).

European Ombudsman

The European Ombudsman adopted five decisions in relation to Frontex's activities. It dealt with three cases concerning Frontex's

²⁰⁰ Court of Justice of the European Union (CJEU), T-600/22, *ST v. Frontex*, 28 November 2023, <https://curia.europa.eu/juris/document/document.jsf?docid=267891&doclang=EN>.

refusal to grant public access to documents. These concerned the time taken to respond to requests for access,²⁰¹ access to a report by the FRO,²⁰² and to detailed information about specific operations.²⁰³ The European Ombudsman also issued a recommendation to Frontex on how to ensure that interviewees in debriefing interviews are treated in compliance with the right to dignity.²⁰⁴ Another decision addressed how Frontex considers human rights risks before providing assistance to third countries for developing surveillance techniques.²⁰⁵

The European Ombudsman also opened five new cases in 2023. These concern requests for public access to documents²⁰⁶ and Frontex's fundamental rights obligations in the context of search and rescue.²⁰⁷

²⁰¹ European Ombudsman (2023), The time taken by Frontex to deal with requests for public access to documents, OI/4/2022/PB, 30 May 2023, <https://www.ombudsman.europa.eu/en/opening-summary/en/158399>.

²⁰² European Ombudsman (2023), Frontex's refusal to give public access to a report by its FRO concerning a Frontex operation in Albania, 652/2023/VB, 07 November 2023, <https://www.ombudsman.europa.eu/en/opening-summary/en/168535>.

²⁰³ European Ombudsman (2023), Decision on how Frontex dealt with a request for data concerning the resources deployed in two joint operations, 1087/2022/SF, 27 March 2023, <https://www.ombudsman.europa.eu/en/decision/en/167369>.

²⁰⁴ European Ombudsman (2023), Decision on how Frontex ensures respect of the rights of migrants in 'debriefing' interviews, 1452/2022/MHZ, 03 July 2023, <https://www.ombudsman.europa.eu/en/case/en/62217>.

²⁰⁵ European Ombudsman (2023), Decision on how Frontex assessed the human rights impact before providing assistance to non-EU countries for developing surveillance capabilities, 1473/2022/MHZ, 08 December 2023, <https://www.ombudsman.europa.eu/en/case/en/62240>.

²⁰⁶ European Ombudsman (2003), The refusal by Frontex to give public access to an opinion by its FRO concerning Greece, 1885/2023/ACB, <https://www.ombudsman.europa.eu/en/case/en/64948>; The refusal by Frontex to provide lists of documents it identifies as falling within the scope of requests for public access to documents, 1129/2023/OAM, <https://www.ombudsman.europa.eu/en/case/en/64187>; Frontex's refusal to give public access to a report by its FRO concerning a Frontex operation in Albania, 652/2023/VB, <https://www.ombudsman.europa.eu/en/decision/en/177520>; How Frontex dealt with a request for public access to documents concerning social media monitoring, 344/2023/PVV, <https://www.ombudsman.europa.eu/en/case/en/63400>.

²⁰⁷ European Ombudsman (2003), How Frontex complies with its fundamental rights obligations in the context of its search and rescue activities, OI/3/2023/MHZ, <https://www.ombudsman.europa.eu/en/case/en/63451>.

Frontex Scrutiny Working Group (FSWG)

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) established the Frontex Scrutiny Working Group (FSWG) in 2021 to monitor all aspects of the functioning of the agency, including compliance with fundamental rights, transparency, and accountability towards Parliament. The FSWG maintained an exchange of views with Frontex, the Commission²⁰⁸ and FRO (in 2022 also with the Consultative Forum) and organised a visit to Frontex headquarters²⁰⁹ following the Adriana shipwreck near Pylos, Greece in June. In December, the European Parliament adopted a resolution recognising the recent efforts of the Agency to change its culture, increase transparency, and commit to fundamental rights. However, the report also identifies shortcomings and suggests specific actions that the Agency needs to implement, such as suspending or repurposing operations in Greece and suspending the support for return operations in Hungary.²¹⁰

²⁰⁸ European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE) (2023), Exchange of views in the Adriana shipwreck, 06 July 2023, https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-civil-liberties-justice-and-home-affairs_20230706-0900-COMMITTEE-LIBE.

²⁰⁹ European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE) (2023), 'Frontex : MEPs conclude their visit to the Border Agency', 22 June 2023, <https://www.europarl.europa.eu/news/en/press-room/20230619IPR99111/frontex-meps-conclude-their-visit-to-the-border-agency>.

²¹⁰ European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE) (2023), 'Frontex: MEPs want an effective border agency compliant with fundamental rights', 14 December 2023, <https://www.europarl.europa.eu/news/en/press-room/20231208IPR15787/frontex-meps-want-an-effective-border-agency-compliant-with-fundamental-rights>.

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