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Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea

Preliminary Report of the Frontex Management Board
Working Group

19 January 2021

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Foreword

In light of recent media reports regarding the incidents at the Greek-Turkish maritime borders in the Aegean Sea with the alleged knowledge and/or even involvement of Frontex operatives migrants were stopped trying to reach the EU shores and sent back to Turkish Territorial Waters, the Frontex Management Board in its extraordinary meeting on 10 November 2020, agreed to the establishment of a sub-group (Working Group) to carefully examine the situation.

By decision No. 39/2020 of the Management Board the “Management Board working group on fundamental rights and legal and operational aspects of operations” was established. Within its mandate -which included to inquire what happened and to examine the applicable legal framework and the Frontex reporting system - the Working Group actively involved the Frontex Fundamental Rights Officer ad interim (FRO), the Fundamental Rights Agency of the EU (FRA) and the Consultative Forum in order to provide further input for improvements. The Working Group consists of members/alternate members and/or duly empowered experts from the Member States (MS) as well as Schengen Associated Countries (SAC) as follows:

Composition of the Working Group

GERMANY:	████████ ██████████ (Spokesperson)	NORWAY:	████████ ██████████ (Expert)
	████████ ██████████ (Assisting Expert)	ROMANIA:	████████ ██████████ (MB Alternate Member)
	████████ ██████████ (Assisting Expert)	SWITZERLAND:	████████ ██████████ (MB Alternate Member)
		SWEDEN:	████████ ██████████ (MB Alternate Member)
FRANCE:	████████ ██████████ (Expert)	EUROPEAN COMMISSION:	████████ ██████████ (MB Alternate Member)
GREECE:	████████ ██████████ (MB Alternate Member)	HUNGARY:	████████ ██████████ (MB Alternate Member)

LIMITE/LIMITED

Content

Foreword	2
1. Mandate, Methods of work	5
1.1 Mandate of the Working Group	5
1.2 Methods of work.....	5
2. Examined Incidents.....	6
2.1 SIR 11095/2020, 18/19 April 2020.....	6
2.2 Incident, 28 April 2020	8
2.3 R 406283, 29 April 2020	9
2.4 R 406393, 13/14 May 2020.....	9
2.5 R 407256, 8 June 2020.....	10
2.6 R 407206, 8 June 2020.....	10
2.7 R 407258, 8 June 2020.....	11
2.8 SIR 11860/2020, 27 July 2020.....	11
2.9 SIR 11934/2020, 5 August 2020	13
2.10 Incident, 10 August 2020	14
2.11 Incident, 15 August 2020	14
2.12 SIR 12604/2020, 30 October 2020	15
2.13 SIR 12790/2020, 9 November 2020.....	16
3. Legal Framework	18
3.1 Distress at Sea.....	18
3.1.1 United Nations Convention on the Law of the Sea.....	18
3.1.2 International Convention for the Safety of Life at Sea.....	18
3.1.3 Resolution Maritime Safety Committee (MSC) 167(78) Annex 34	18
3.1.4 Article 9 of the Regulation (EU) 656/2014.....	18
3.2 Access to asylum	19
3.3 Non-refoulement	19
3.3.1 European Convention on Human Rights.....	19
3.3.2 Geneva Refugee Convention Relating to the Status of Refugees	20
3.3.3 Resolution Maritime Safety Committee (MSC) 167(78)	20
3.3.4 Article 4 of the Regulation (EU) 656/2014.....	21
3.4 Case Law of the Court of Human Rights.....	21
3.4.1 Judgement in the case of Hirsi Jamaa and Others (23.02.2012)	21
3.4.2 Judgement in the case of N.D. and N.T. v. Spain (13.02.2020)	22

LIMITE/LIMITED

3.4.3	Judgement in the case of M.K. and others v. Poland (23.07.2020).....	23
3.5	Border Control.....	24
3.5.1	Art. 6 of the Regulation (EU) 656/2014	24
4.	Frontex Reporting Scheme in Joint Operations.....	25
4.1	Joint Operations Reporting Application (JORA)	25
4.1.1	Prevention of Departure	25
4.1.2	Refusal of Entry in the context of JORA-Guidelines.....	26
4.1.3	Third Country Action	26
4.1.4	Daily reporting package	26
4.1.5	Frontex structures in the operational area	26
4.1.6	Operational Manager	27
4.1.7	FSC Senior Duty Officer (SDO)	27
4.2	Serious Incident reporting	27
4.3	Serious Incidents with alleged violation of Fundamental Rights	28
4.3.1	Exceptional reporting	28
4.3.2	Frontex internal follow up procedure/serious incident coordinator	29
4.4	Serious Incident Catalogue	29
5.	Conclusion & Recommendations	30
5.1	Clarification of the incidents	30
5.2	Legal Framework	32
5.3	Findings and Recommendations in the context of reporting	34

1. Mandate, Methods of work

1.1 Mandate of the Working Group

A series of reported incidents related to Frontex coordinated activities at the Greek-Turkish maritime border in the Aegean Sea indicate the assumption of alleged misconduct with the involvement of deployed assets of European Member States. On 23 October 2020 German news media outlet *Der Spiegel*, German television outlet *ARD* published in cooperation with the online investigative network *Bellingcat* and *Lighthouse Reports* extensive reports on so called “pushbacks”. According to those media reports assets deployed by Frontex have allegedly been complicit to those incidents by “deliberately looking away against better judgement”.

Against this backdrop, the Frontex Management Board (MB) established on 26 November 2020 a Working Group on Fundamental Rights and Legal and Operational Aspects of Operations, pursuant to Article 2 (1) of the MB decision. Keeping this decision in mind, the Working Group’s assignment was to inquire about the true events with regard to the so called “pushbacks” in the Eastern Mediterranean in 2020, including what actions had been taken by Frontex, examine the corresponding applicable legal framework especially regarding the fulfilment of obligations on fundamental rights and the right for asylum. In addition, the Working Group aimed to provide further input on future improvements in particular with regard to Frontex’ current reporting system. Pursuant to Article 4 of the MB Decision, the Working Group’s mandate provided access to all relevant information, including information in databases, held by Frontex. The Working Group was entitled to produce a copy of, and obtain extracts from, any document or the content of any data medium held by the Agency. The Working Group mandate furthermore allowed to request information from any staff of the Agency in oral or written form.

The Working Group’s mandate was understood to refer to “inquiries” within maritime aspects of Joint Operation Poseidon, Rapid Border Intervention Aegean or other operational activity by Frontex in the Eastern Mediterranean.

1.2 Methods of work

According to its mandate and main tasks the MB’s Working Group divided itself into three sub-working groups (SWG) for the subjects ‘*clarification of the reported incidents*’, ‘*analysis of the legal framework*’ and ‘*revision of the current reporting system*’. During multiple online consultations in December 2020 and January 2021, the SWG collaboratively identified and assessed available data on incident reports provided by Frontex, relevant media reports on related pushbacks, reporting mechanisms and corresponding applicable law and jurisdiction. The analysed data included written statements by Frontex, following questions submitted by the European Commission on 13 November and by the European Parliaments LIBE committee on 14 December 2020, as well as the agencies report on questions received from the Working Group on 11

LIMITE/LIMITED

December 2020¹. Once prepared by the respective SWG the processed data formed the basis for further internal consultation in order to determine whether incidents in question could be fully clarified or should be subject to further inquiries within the scope of the mandate. Elucidated incidents were then crosschecked with the current applicable law and jurisprudence as well as Frontex' current reporting mechanisms in order to identify possible deficits and room for further improvement. During its sessions, the Working Group actively involved the Frontex Fundamental Rights Officer ad interim (FRO), the Fundamental Rights Agency of the EU (FRA) and the Consultative Forum of the Management Board.

2. Examined Incidents

Due to the severity of the allegations that are subject to this report, the European Commission (EC) on 13. November 2020 and European Parliaments (EP) Committee on Civil Liberties, Justice and Home Affairs at its meeting on 1st December, 2020 furtherly inquired on operational and legal aspects of Frontex-coordinated operations in the Eastern Mediterranean Sea. The Working Group identified from the information at its disposal -13- relevant incidents that were subject to a further examination:

2.1 SIR 11095/2020, 18/19 April 2020

Structured Facts Capture:²

18.04.2020

- At 22:58 LT: Hellenic Sea Border Expert, based in the International Coordination Centre Piraeus, informed Frontex Team Leader in the European Monitoring Room at Frontex Head Quarter about an incident north of Lesbos asking to reach the point by Frontex Surveillance Aircraft (FSA).
- At 23:05 LT: FSA spotted a rubber boat with approx. 20-30 people on board, stopped, and one Greek Patrol vessel was very close.
- At 23:22 LT: Frontex Situational Centre (FSC) sent the Early Warning report to the competent Greek Authorities
- The incident took place inside Greek Territorial Waters - Two Hellenic Coast Guard patrol boats and one Turkish Coast Guard boat were in the vicinity of the target.
- At 23:38 LT: HCG Sea Border Expert cleared FSA to resume normal patrolling.

19.04.2020

- At 00:03 LT: FSA observed and sent FSC a picture of the Greek patrol boat towing an empty rubber boat. The people were on board of the patrol boat.
- At 00:06 LT: HCG Sea Border Expert asks FSA to fly south, contrary to flight schedule to fly south-east.

¹ Unfortunately, the Agency missed to provide information on three incidents identified by the working group in time, so that the group cannot draw any conclusions with a view to one of these cases.

² Sources: Formal SIR 11095/2020, Fact Finding Report by Frontex, p. 8/18 on 24 Nov. 2020, Answers by Frontex to the LIBE-Committee and questioning Greece as an involved partner.

LIMITE/LIMITED

- At 02:37 LT: The people were transferred on board of the rubber boat previously towed from the patrol boat, the second patrol boat, a Rigid Hull Inflatable Boat (RHIB), awaited in the vicinity.
- At 02:43 LT: Frontex Surveillance Aircraft affirms that the rubber boat with people on board was nearby. There were no Turkish vessels, just Hellenic Coast Guard vessels.
- At 02:46 LT: FSA took a picture of a Greek patrol vessel towing the rubber boat with people on board towards Turkish Territorial Waters with course 051°. HCG Sea Border Expert requested FSA to fly north.
- At 02:57 LT: HCG Sea Border Experts sent instructions to fly northbound for the remaining 30 min of flight, when the Frontex Team Leader in the European Monitoring Room at Frontex Head Quarter asked HCG Sea Border Expert (Greek Liaison Officer exceptionally acting remotely from ICC Piraeus due to COVID-19 restrictions) if there was any specific reason to fly north, the reply from HCG Sea Border Expert was “negative”.
- At 03:21 LT: Frontex Surveillance Aircraft communicated that the rubber boat had no engine and it was adrift at 39°16'N 026°35'E. Greek assets left the area leaving the rubber boat adrift.
- At 04:48 LT: Frontex Team Leader in the European Monitoring Room at Frontex Head Quarter proposes to HCG Sea Border Expert to divert FSA, (aerial asset already airborne), to check the rubber boat. HCG Sea Border Expert replies: “Negative. FSA will continue its normal route”.
- Once Frontex Surveillance Aircraft had landed, Frontex Team Leader offered a second flight to Greek authorities to collaborate with the mentioned Search and Rescue case, Greek authorities rejected the aid, because the Turkish Coast Guard had assumed the coordination of the incident.
- At 15:55 LT: Greek Authorities inform that according to information received, that same morning the rubber boat landed safely on the Turkish shores under the monitoring of a Turkish Coast Guard vessel.

Abstract:

The available data show that the rubber boat in question was first sighted by the Hellenic Coast Guard (HCG) in Turkish Territorial Waters (TTW) and then later visually confirmed by a requested Frontex Surveillance Aircraft (FSA) in Greek Territorial Waters (GTW). According to Greek authorities, the Hellenic Coast Guard vessel at scene assessed the situation on board of the rubber boat and then conducted border control measures under which no demands on the part of the migrants for asylum/ international protection were recognized. The migrants on board were refused entry and taken on board of the HCG vessel in order to be transferred along with the rubber boat to GRC/TUR sea border where the migrants were retransferred to the rubber boat. Despite Frontex final SIR, that there might have been a distress situation, the incident was at no point classified as a Search and Rescue (SAR) case by the responsible Hellenic Coast Guard.

LIMITE/LIMITED

Assessment:

According to the statements by the Hellenic Coast Guard the migrants had the possibility to apply for asylum and that the refusal of entry (under national law) was in accordance with the international and European law. Whether or not there was a distress situation can only be conclusively determined by the responsible authorities and in particular via the competent MRCC in cooperation with the Commanding Officer of the Hellenic Coast Guard vessel. According to the statement by the Hellenic Coast Guard, there was no SAR case at any time.

However, for the Working Group it remains unclear what exactly happened after the migrants were retransferred on the rubber boat. Hence, it cannot be ruled out completely that there might have been a violation of international legal obligations. In this case, the Executive Director has personally requested further clarification from the Greek authorities on 8 May 2020. It can be stated that Frontex acted accordingly to its current reporting mechanism.

However, in view of the outstanding lack of verifiable evidence at the time, it is not clear whether the Agency could have deployed additional efforts to make sure that the reported course of actions did not result in a serious violation of fundamental rights or of international protection obligations related to the Agency's activities.

2.2 Incident, 28 April 2020³

Structured Facts Capture:⁴

- A boat with approximately 20 people on board was early detected by a Hellenic Coast Guard vessel inside Turkish Territorial Waters (South/East of Samos Island).
- Joint Rescue Coordination Centre Piraeus informed Maritime Rescue Coordination Centre Ankara and a Turkish Coast Guard boat arrived at the area and took over responsibility of the incident.
- No Frontex Surveillance Aircraft sighting in relation to this incident.

Assessment

Frontex did not provide any further evidence in time that would allow to assess whether this case is linked to any incident reported by the media. The data of the incident available at this stage gives no reason for further examination by the Working Group, especially because there was no evidence that the boat with people on board left Turkish Territorial Waters at any time. Therefore a violation against fundamental rights within the mandate of the Working Group could not be confirmed. However, given that this information was only provided in the final stage of the group's work, it should be further examined which incident is being referred to in the media reports on that day.

³ Questioned by LIBE Committee and reported by the media (Bellincat/UK)

⁴ Source: According to the Fact Finding Report by Frontex, p. 8/18 as of 24 Nov. 20 and on 28 April, JORA Report,

2.3 R 406283, 29 April 2020⁵

Structured Facts Capture:⁶

- A boat with approximately 40 people on board was early detected by a Hellenic Coast Guard vessel and subsequently by a Bulgarian Coastal Patrol boat at the sea area by Akra Korakas, North/East of Lesvos Island, inside Turkish Territorial Waters.
- Joint Rescue Coordination Centre Piraeus informed the Maritime Rescue Coordination Centre Ankara.
- A Turkish Coast Guard vessel arrived at the area and took over responsibility of the incident. No Frontex Surveillance Aircraft flight took place on this date.

Assessment:

According to the data provided by Frontex, no assets of Greece or Frontex was involved in the incident. Frontex confirms that there were three different Frontex Surveillance Aircrafts and a German helicopter operating on 29 April, at different time and outside the geographical area, whereas none of them were covering the area of the concerned detection. No incidents was detected during their flights. Data provided gives no reason for further questions by the Working Group.

2.4 R 406393, 13/14 May 2020

Structured Facts Capture:⁷

- A boat with approximately 40 people on board was early detected by Hellenic Coast Guard (HCG) vessel and subsequently by Frontex Surveillance Aircraft (FSA) at the sea area Akra Korakas, North of Lesvos Island inside Turkish Territorial Waters.
- The Joint Rescue Coordination Centre Piraeus informed Maritime Rescue Coordination Centre Ankara.
- The HCG vessel headed towards the location of the rubber boat, which altered its course towards the Turkish coastline on its own initiative.
- Due to an indication of the HCG, the incident was under control. The FSA was instructed to continue its patrol on the tasked route.
- The Frontex Surveillance Aircraft did not record the entire incident.

Assessment:

According to the information provided by Frontex, the incident was early detected inside Turkish Territorial Waters by a HCG vessel and shortly afterwards by a Frontex Surveillance Aircraft. The incident was not classified as a Search and Rescue case inside Turkish TTW. There is no indication that the rubber boat was inside the Greek Territorial Waters and no action were taken by the Greek or Frontex assets, except for the visible presence of the Hellenic Coast Guard vessel. Data provided gives no reason for further questions by the Working Group.

⁵ Question by the LIBE Committee on 1 December 2020.

⁶ Source: Fact Finding Report by Frontex, p. 7/18 on 24 Nov. 2020, Answer by Frontex to the LIBE-Committee and questioning Greece as an involved partner.

⁷ Source: Fact Finding Report by Frontex, p. 7/18 on 24 Nov. 2020 and questioning Greece as an involved partner.

2.5 R 407256, 8 June 2020⁸

Structured Facts Capture:⁹

- A boat with one (1) migrant on board was early detected by Hellenic Coast Guard Vessel 1043 at the sea area North/East of Kos Island, inside Turkish Territorial Waters.
- A Turkish Coast Guard Boat which was already patrolling in the area was called via Very High Frequency Radio communication with negative results.
- An arriving Hellenic Coast Guard vessel observed that the rubber boat altered course on its own and headed back towards the Turkish coasts.
- No Frontex Surveillance Aircraft sighting in relation to this incident.
- The incident was classified by Greek Authorities as prevention of departure.

Assessment:

According to the information provided by Frontex the incident took place in Turkish Territorial Waters and was reported as a "Prevention of Departure" in Frontex Joint Operations Reporting Application (JORA). The incident was not classified as a Search and Rescue case. After reviewing the information provided by Frontex, it appears that apart from the detection, there has not been any interaction between the Hellenic Coast Guard and other involved Frontex units and the migrants on the boat.

Bases on the data provided by Frontex the incident gives no reason for further questions within the mandate of the Working Group at this point.

2.6 R 407206, 8 June 2020¹⁰

Structured Facts Capture:¹¹

- A boat with approximately 50 people on board was early detected by a Hellenic Coast Guard vessel at the sea area "Skala Sykamnia" North of Lesvos Island, inside Turkish Territorial Waters.
- After detection the Joint Rescue Coordination Centre (JRCC) Piraeus informed the Maritime Rescue Coordination Centre (MRCC) Ankara and a Turkish Coast Guard Boat which was already patrolling in the area took over responsibility of the incident.
- Frontex Surveillance Aircraft (FSA) sighted a rubber boat with approx. 20 people on board, sailing 5 knots, course 270. One Turkish Coast Guard patrol vessel nearby.
- At 04:23 LT: Frontex Surveillance Aircraft (FSA) observed the rubber boat with approx. 20 people on board, trying to evade the Turkish Coast Guard vessel. A second patrol boat nearby was probably from Hellenic Coast Guard.

⁸ Question by the LIBE Committee on 1 December 2020.

⁹ Source: Fact Finding Report by Frontex, p. 7/18 on 24 Nov. 2020, Answer by Frontex to the LIBE-Committee, JORA Report 407265 and questioning Greece as an involved partner.

¹⁰ Question by the LIBE Committee on 1 December 2020.

¹¹ Source: Fact Finding Report by Frontex, p. 7/18 on 24 Nov. 2020, Answer to the LIBE-Committee by Frontex, JORA Report 407206 and questioning Greece as an involved partner.

LIMITE/LIMITED

Assessment:

The situation was not at any time classified as a Search and Rescue Situation. According to Frontex, a Romanian (ROU) Coast Guard vessel patrolled on this day in the area of the incident. Frontex did not give evidence whether the ROU Coast Guard vessel witnessed the incident. In conclusion the limited data available related to the incident does not indicate an influence by the Hellenic Coast Guard on the incident. Therefore, there is no evidence, which indicates a possible violation of legal obligations.

2.7 R 407258, 8 June 2020¹²

Structured Facts Capture:¹³

- A boat with approximately 16 people on board was early detected by a Hellenic Coast Guard vessel at the sea area East of Farmakonisi Island, inside Turkish Territorial Waters.
- After detection, the Joint Rescue Coordination Centre Piraeus informed Maritime Rescue Coordination Centre Ankara. A Turkish Coast Guard boat arrived on the scene and took over responsibility of the incident.
- No Frontex Surveillance Aircraft (FSA) sighting in relation to this incident.

Assessment:

According to the information of the Hellenic Coast Guard, the incident took place in Turkish Territorial Waters and was reported as a “Prevention of Departure” in Frontex Joint Operations Reporting Application (JORA). There are no indications about the further actions taken by Turkish Coast Guard (TCG) or the whereabouts of the people on board. The incident was not classified as a Search and Rescue case. After reviewing the information provided by Frontex, it appears apart from the detection, there has not been any interaction between Hellenic Coast Guard or other involved Frontex units (ROU vessel) and the migrants on the boat.

2.8 SIR 11860/2020, 27 July 2020

Structured Facts Capture:¹⁴

- On 27 July 2020 a Danish Helicopter deployed to JO Poseidon 2020 detected during a patrol near Chios Island inside Greek Territorial Waters a rubber boat with people on board.
- After the detection, the boat was intercepted by a Hellenic Coast Guard Patrol boat.
- After the Hellenic Coast Guard vessel arrived at the scene, the Danish helicopter left the area to continue border surveillance tasks.
- Joint Rescue Coordination Centre Piraeus informed Maritime Rescue Coordination Centre Ankara.

¹² Question by the LIBE Committee on 1 December 2020.

¹³ Source: Fact Finding Report by Frontex, p. 7/18 on 24 Nov. 2020, Answer by Frontex to the LIBE-Committee and questioning Greece and Romania as an involved partner.

¹⁴ Source: Fact Finding Report by Frontex, p. 12/18 on 24 Nov. 2020; SIR 11860/2020 and questioning Greece as an involved partner.

LIMITE/LIMITED

- According to the information provided by Greek Authorities, a Turkish (TUR) patrol boat took over the responsibility of the incident inside TUR Territorial Waters.
- According to the mission report of the Danish helicopter, the Hellenic Coast Guard vessel passed the rubber boat at relative high speed while the rubber boat was laying still, which was recorded by a Danish helicopter.
- The mission report of the Danish helicopter and the Serious Incident Report point out that there has been a communication between the Danish helicopter and the Hellenic Coast Guard (International Coordination Centre Coordinator), in which the Coordinator asked to change the reported coordinates of the incident, in order to indicate that the incident took place outside Greek Territorial Waters.
- This request was refused by the Danish detachment.
- According to the DNK mission report, the request from the Hellenic Coast Guard to change the reported coordinates of the incident was not a case of misunderstanding.
- After receiving the respective Serious Incident Report and those accusations, the ICC Piraeus referred to a misunderstanding and stated that the request to change the location was only meant additionally including to the initial detection in the Turkish Territorial Waters.
- According to the answers provided by Frontex, the incident was classified as an SIR Category 4.
- The incident was never classified as a Search and Rescue case, but reported as a "Prevention of Departure" in JORA.

Assessment:

After reviewing the data provided by Frontex the incident undoubtedly took place inside Greek Territorial Waters. The data also clearly state that the incident in question was not classified as a Search and Rescue case at any time. No available data points to a different suggestion.

According to the Hellenic Coast Guard, the migrant boat altered its course by its own will in the direction of Turkish Territorial Waters upon arrival of the Hellenic Coast Guard vessel on the scene. Since the rubber boat with the migrants had already altered its course towards Turkish Territorial Waters there was no opportunity for border police measures and therefore no opportunity for the migrants to ask for asylum.

In the discussion of the SWG, the Hellenic Coast Guard repeated their statement of miscommunication regarding the change of the coordinates.¹⁵

After reviewing all received information provided by Frontex, there is no further information available about any measures taken by the crew of HCG vessel and the whereabouts of the boat with migrants. Regardless of the aforementioned, the incident shall be subject to further examinations by the Working Group especially against the backdrop that the status of the incident is still ongoing (which means that it has not been closed in Frontex yet).

¹⁵ The Danish authorities were not asked by the Working Group to give further evidence on the case.

2.9 SIR 11934/2020, 5 August 2020

Structured Facts Capture:¹⁶

- On 5 August 2020, at 01:41 LT, a Frontex Surveillance Aircraft (FSA) reported a sighting of a boat with approximately 30 people on board, East of Lesbos in Greek Territorial Waters, towed by a Greek Coast Guard vessel eastward towards Turkish Territorial Waters.
- At the time of the sighting, the convoy was located approximately 1.2 Nautical Miles inside Greek Territorial Water.
- The event has been registered as a “Prevention of Departure” by the International Coordination Centre Piraeus.
- The FSA asked the Greek Sea Border Expert whether further assistance was needed followed by a negative response. The FSA was instructed by the Greek Sea Border Expert not to monitor the event and to continue the patrol in a South Eastern direction.
- According to the JORA report the boat had approx. 60 migrants on board and did not comply with Hellenic Coast Guard commandos, namely not to enter Greek Territorial Waters.
- According to the Hellenic Coast Guard, the HCG vessel only temporarily tied the migrant boat within the framework of police measures to put it under control.

Abstract:

According to the Hellenic Coast Guard (HCG) the boat with the migrants was temporarily tied within the framework of police measures to put it under control for subsequent assessment. due to the fact that the HCG patrol vessel was very small. There was no cooperation on behalf of the migrants as their aim was to escape border police measures.. Finally the migrant boat left Greek Territorial Waters by its own will for Turkish Territorial Waters. It was then intercepted by the Turkish Coast Guard, which took over the incident. The Hellenic Coast Guard declared the case as “Prevention of Departure” inside Turkish Territorial Waters. The circumstances of the respective incident left no room for the opportunity to apply for asylum.

Assessment:

After reviewing the data provided by Frontex, it can be concluded that the incident took place inside Greek Territorial Waters and was classified as SIR Cat. 4 (Situations of alleged violations of Fundamental Rights or international protection obligations). The data provided by Frontex clearly state that the incident in question was not classified as a Search and Rescue case. No available data point to a different suggestion. The contradicting statements regarding the reported number of people on board of the boat in question (60 or 30) could not be clarified.

The incident is still under further review by Frontex. After finalisation of the incident’s review, Frontex shall provide the outcome to the Working Group.

¹⁶ Fact Finding Report by Frontex, p. 13/18 on 24 Nov. 2020; SIR 11934 and questioning Greece as an involved partner.

LIMITE/LIMITED

2.10 Incident, 10 August 2020

Structured Facts Capture:¹⁷

- At 06:00 LT: Greek Navy Observation Point detected an object in position 37°50, 0' N 027°01,0' E in Greek Territorial Waters.
- At 06:15 LT: German Coast Guard vessel reached position 37°49,9' N; 027°02,1' E (Greek Territorial Waters) and stopped a rubber boat with approx. 40 people on board. The German crew informed the Hellenic Coast Guard on Samos.
- According to the respective mission report of the German vessel, the situation upon their arrival on the scene was not classified as a Search and Rescue case.
- At 06:45 LT: The Hellenic Coast Guard vessel arrived in the area and took over responsibility of the incident.
- The German Coast Guard vessel remained on location until the Hellenic Coast Guard vessel took over responsibility.
- While the German Coast Guard vessel left the scene, the German crew observed the crew of the Hellenic Coast Guard vessel taking the migrants on board.
- According to the Hellenic Coast Guard, the Hellenic Coast Guard vessel took the migrants on board. The migrants had the opportunity to ask for asylum. No request for asylum was expressed in any case. After completion of the border police measures, including refusal of entry, the migrants were retransferred on the rubber boat and returned to Turkish Territorial Waters within the meaning of Art. 6 of the regulation (EU) 656/2014.

Assessment:

The crew of the German vessel stated that no migrants arrived on Samos Island on that day which led to initiate further inquiries about the migrant's whereabouts at the International Coordination Centre in Piraeus.

The available data provided by Frontex do not indicate what measures were undertaken by the crew of the Hellenic Coast Guard vessel that took over the respective incident in question. The measures taken by the Hellenic Coast Guard were presented very seriously and were plausible.

2.11 Incident, 15 August 2020¹⁸

Structured Facts Capture¹⁹

- On 15 August 2020 at 20:00 LT a rubber boat with approximately 30 people on board was early detected by a Romanian Coastal Patrol vessel at the sea area North of Lesbos Island inside Turkish Territorial Waters.
- After detection, the Joint Rescue Coordination Centre Piraeus informed the Maritime Rescue Coordination Centre Ankara.

¹⁷ Source: Fact Finding Report by Frontex, p. 4/18 on 24 November 2020 and questioning Greece and Germany as involved partners.

¹⁸ The incident is declared as a Prevention of Departure in JORA

¹⁹ Source: Fact Finding Report by Frontex, p. 8/18 on 24. Nov. 2020, Answer by Frontex to the LIBE-Committee and questioning Greece and Romania as an involved partner.

LIMITE/LIMITED

- At the sighting of the Romanian Coastal Patrol vessel the rubber boat altered its course on its own initiative and headed towards the Turkish coast where all people were safely disembarked.
- No Frontex Surveillance Aircraft sighting in relation to this incident.

Assessment:

According to the geographical coordinates in the mission report, the migrant boat was clearly inside Turkish Territorial Waters near the Turkish Coast when it was detected by a Frontex unit (Romanian Coast Guard vessel) and never entered Greek Territorial Waters. According to the answers provided by Frontex, the incident was not classified as a Search and Rescue case and reported as a “Prevention of Departure” in JORA. After reviewing the received information provided by Frontex, there has not been any interaction between Hellenic Coast Guard or the involved Frontex unit (Romanian Coast Guard vessel) and the migrants on the boat. Frontex acted accordingly to its current reporting mechanism.

2.12 SIR 12604/2020, 30 October 2020

Structured Facts Capture:²⁰

- On 30 October 2020 at 04:50 LT, a Swedish Coast Guard vessel detected a rubber boat, with an outboard engine, transporting around 20 people (men, women and children) and intercepted it. The rubber boat was fully operational and there was no distress situation. Furthermore, the rubber boat disregarded the stop orders given by the Swedish Coast Guard vessel and tried to continue its course towards the Greek Coast line until it got intercepted 1.5 Nautical Miles from the border line inside Greek Territorial Water.
- The Greek Liaison Officer on board contacted the Hellenic Coast Guard (HCG), which dispatched a Greek patrol boat to the scene.
- The Swedish Coast Guard vessel remained at the scene until a HCG vessel took over.
- The Hellenic authorities informed the crew of the Swedish Coast Guard vessel that it was released from the scene, once the HCG was taking over the situation. Afterwards the Swedish Coast Guard vessel was then ordered to continue its patrol in northern direction.
- While leaving the scene the Commanding Officer of the Swedish Coast Guard vessel witnessed that one crew member of the HCG vessel stood on the foredeck handling ropes/mooring lines, and another crew member stood on the aft deck on the HCG vessel also handling ropes/mooring lines to fasten the rubber boat.
- After leaving, the Swedish crew continued to monitor the situation on radar and saw the radar echo of the Hellenic Coast Guard Patrol boat, which was moving towards the Turkish border line, where it stopped moving.

²⁰ Source: Fact Finding Report by Frontex, p. 13/18 on 24 Nov. 2020 and questioning Greece and Sweden as involved partners.

LIMITE/LIMITED

- According to the data made available by Frontex, no rubber boat with people on board has arrived to Chios during the day of the incident.

Abstract:

After reviewing the data provided by Frontex the incident undoubtedly took place inside Greek Territorial Waters and was classified as SIR Category 4 (Situations of alleged violations of Fundamental Rights or international protection obligations).

The data provided by Frontex, furthermore clearly states that the incident in question was not classified as a Search and Rescue case at any point. No available data points to a different suggestion. According to the Hellenic Coast Guard, the Hellenic Coast Guard Boat attempted to control the rubber boat to clear the situation on scene. During the border police measures the migrants behaved uncooperative and the migrant boat continued its movement by its own will in the direction of Turkish Territorial Waters. Due to the uncooperative behaviour, the Hellenic Coast Guard vessel accompanied the rubber boat very closely. The Hellenic Coast Guard vessel stops at GRC/TUR Border. The migrant boats left the Greek Territorial Waters independently.

According to the statement by the Hellenic Coast Guard there was no opportunity for the migrants to apply for asylum due to their non-cooperative behaviour since the situation was dominated by the efforts of the migrants to escape the border police measures.

Assessment:

However, due to the poor amount of available data provided by Frontex it is not possible to establish whether Fundamental Rights or international protection obligations might have been violated. The available data provided by Frontex do not indicate what measures have been taken by the crew of the Hellenic Coast Guard vessel that took over the respective incident in question. In sum, it remains unclear for the Working Group whether the Greek authorities refused the migrants entry according to Greek national legislation and if the migrants had the opportunity to ask for asylum.

For that reason of the aforementioned, the incident shall be subject to further examinations by the Working Group especially against the backdrop that the incident is still under review by Frontex.

2.13 SIR 12790/2020, 9 November 2020

Structured Facts Capture²¹:

On 20 November 2020, Frontex had registered 36 migrants arriving from three different incidents. In one of the incidents, several of the migrants told the Frontex Team Member on the scene that upon entering Greek waters on Monday 9th of November:

- They were met by the Hellenic Coast Guard who sailed around them creating large waves making the boat rock from side to side. One of the Greek officers even took

²¹ Sources: Fact Finding Report by Frontex, p.15/1824 Nov. 2020; SIR 12790/2020 and questioning Greece as an involved partner.

LIMITE/LIMITED

out a large pointy object and gesticulated with his hands for them to turn back to Turkey.

- The Hellenic Coast Guard stopped after approximately 40 minutes when the Turkish Coast Guard came sailing towards the Greeks and asked them to stop.
- After that, the Hellenic Coast Guard escorted the boat to Kos Island where the migrants were taken into custody.

The information was verbally communicated to Frontex by several of the 31 migrants on the boat. They, of course, feared for their lives. These are not documented incidents but merely the migrant's view of the incident. The Migrants provided no videos or pictures supporting their allegations, only their testimonies.

Official data by the Greek authorities:

- The migrants in subject were rescued in the incident below: One Incoming Flow Incident occurred in the sea area of Kos Island involving -30- migrants and an arrest of -1- (TBC) facilitator.
- On 9 November 2020, at 05:20 LT, a rubber boat with -30- migrants on board was detected by Hellenic Coast Guard Patrol Boat (CPB) 150 and Czech Thermo-Vision-Vehicle, at the sea area North/East of Kos island inside Turkish Territorial Waters.
- After detection, the Joint Rescue Command Centre (JRCC) Piraeus informed the Maritime Rescue Command Centre (MRCC) Ankara and simultaneously a Turkish Coast Guard (CG) vessel, which was close to the boat of migrants, was informed but did not respond to the incident at all.
- Afterwards the Turkish CG vessel escorted the above-mentioned rubber boat towards the Greek Territorial Waters, obstructing the actions of the Hellenic Coast Guard vessel and exposing the lives of the migrants in danger. Subsequently, the Turkish Coast Guard vessel left the area and all migrants were safely disembarked to Kos Island under the close monitoring of Hellenic Coast Guard. One facilitator was arrested.

Assessment:

According to Hellenic Coast Guard (HCG) Authorities, their vessel arrived at the scene, conducted (border) control measures, escorted the boat, and disembarked all migrants to Kos Island. According to GRC authorities, they are in possession of video evidence of the incident and the measures taken by the Hellenic Coast Guard. However, the evidence was not presented to the Working Group for further review. The agency followed its current reporting procedures and filed an SIR upon suspicion of possible violation of legal obligations by GRC authorities. However, the corresponding SIR does not fully clear up the incident. Against the backdrop of the existence of the video evidence offered by the Hellenic Coast Guard, that has yet to be analysed. The incident shall be subject to further examination by the Working Group. The corresponding Final Report by Frontex is still pending.

3. Legal Framework

In the analysis of the respective incidents, a large number of different legal provisions have to be considered, which makes the process of evaluation very complex.

3.1 Distress at Sea

The main sources of law that were considered are the United Nations Convention on the Law of the Sea (UNCLOS) 1994, International Convention for the Safety of Life at Sea (SOLAS) 1974, International Convention on Maritime Search and Rescue (SAR-Convention) 1979, Annex Resolution MSC 167(78) and the Regulation (EU) 656/2014 of the European Parliament and of the Council of 15 May 2014.

3.1.1 United Nations Convention on the Law of the Sea

Article 98 – Duty to render assistance

1. (b) (...) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him (...).

3.1.2 International Convention for the Safety of Life at Sea

Chapter V – Safety of navigation; Regulation 33

1. The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so (...).

3.1.3 Resolution Maritime Safety Committee (MSC) 167(78) Annex 34

(...) is to ensure that in every case (Distress at Sea) a place of safety is provided within a reasonable time. It is further intended that the responsibility to provide a place of safety, or to ensure that a place of safety is provided (...).

(...) If there is a SAR incident, the Rescue-Coordination-Centre (RCC) having responsibility for the SAR-area (...) should provide a place of safety for the rescued person(s) in accordance with the associated regulations, especially the provisions of SAR Convention.

3.1.4 Article 9 of the Regulation (EU) 656/2014

- (1) Member States shall observe their obligation to render assistance to any vessel or person in distress at sea and, during a sea operation, they shall ensure that their participating units comply with that obligation, in accordance with international law and respect for fundamental rights. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.
- (2 e) A vessel or the persons on board shall be considered to be in a phase of distress in particular: (i) when positive information is received that a person or a vessel is in danger and in need of immediate assistance (...).

3.2 Access to asylum

Everyone fleeing persecution or serious harm in his or her own country has the right to ask for international protection. Asylum is a fundamental right and granting it to people who comply with the criteria set in the 1951 Geneva Convention relating to the status of refugees is an international obligation for States parties, which include EU Member States.

The right to asylum is guaranteed by Article 18 of the EU Charter of Fundamental Rights and article 78 of the TFEU. Article 19 prohibits collective expulsions and protects individuals from being removed, expelled or extradited to a state where there is a serious risk of death penalty, torture or other inhuman or degrading treatment or punishment. The EU Member States have agreed to a common European asylum policy, including subsidiary and temporary protection.

In accordance with all relevant regulations, each application for asylum has to be assessed individually. However the ECHR ruled in its N.D and N.T judgment of 13 February 2020, in which (potential) asylum seekers have failed, without cogent reasons, to use legal avenues (**such as to apply at existing border crossing points or via embassies and consulates**) and seek to cross the border illegally at different locations in large numbers.

3.3 Non-refoulement

3.3.1 European Convention on Human Rights

Non-refoulement is a fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in danger of persecution based on "race, religion, nationality, membership of a particular social group or political opinion." Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on the grounds set out in the Geneva Convention, non-refoulement refers to the generic return of people to the above mentioned countries. It is a principle of customary international law, as it applies even to states that are not parties to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol.

Art. 3 - Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Protocol No. 4 Art 4. Prohibition of collective expulsion of aliens: Collective expulsion of aliens is prohibited.

Art. 14 - Prohibition of discrimination: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3.3.2 Geneva Refugee Convention Relating to the Status of Refugees

Article 3 - Non-discrimination: The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 31 - Refugees unlawfully in the country of refuge:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 – Expulsion: (1) The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order (...)

Article 33 - Prohibition of Expulsion or Return:

1. No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

3.3.3 Resolution Maritime Safety Committee (MSC) 167(78)

The Refugee Convention's prohibition of expulsion or return "refoulement" contained in Article 33.1 prohibits Contracting States from expelling or returning a refugee to the frontiers of territories where his or her life or freedom would be threatened (...). Other relevant international law also contains prohibition on return to a place where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

3.3.4 Article 4 of the Regulation (EU) 656/2014

1. No person shall, in contravention of the principle of non-refoulement, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened (...).
2. When considering the possibility of disembarkation in a third country, in the context of planning a sea operation, the host Member State, in coordination with participating Member States and the Agency, shall take into account the general situation in that third country.

(...) Intercepted or rescued persons shall not be disembarked, forced to enter, conducted to or otherwise handed over to the authorities of a third country when the host Member State or the participating Member States are aware or ought to be aware that that third country engages in practices as described in paragraph 1.
3. During a sea operation, before the intercepted or rescued persons are disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a third country and taking into account the assessment of the general situation in that third country in accordance with paragraph 2, the participating units shall (...) use all means to identify the intercepted or rescued persons, assess their personal circumstances, inform them of their destination in a way that those persons understand or may reasonably be presumed to understand and give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of non-refoulement.

3.4 Case Law of the Court of Human Rights

3.4.1 Judgement in the case of Hirsi Jamaa and Others (23.02.2012)

122. (...) It does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. It is particularly aware of the difficulties related to the phenomenon of migration by sea, involving for States additional complications in controlling the borders in southern Europe. However, having regard to the absolute character of the rights secured by Article 3, that cannot absolve a State of its obligations under that provision.
123. The Court reiterates that protection against the treatment prohibited by Article 3 imposes on States the obligation not to remove any person who, in the receiving country, would run the real risk of being subjected to such treatment. (...) It notes that the numerous reports by international bodies and non-governmental organisations paint a disturbing picture of the treatment meted out to clandestine immigrants in Libya at the material time.

LIMITE/LIMITED

126. Those same reports clearly show that clandestine migrants disembarked in Libya following their interception (...), such as the applicants, were exposed to those risks.
129. Furthermore, the Court (...) assumed that those agreements made express provision for the return (...) of migrants intercepted on the high seas, the Contracting States' responsibility continues even after their having entered into treaty commitments (...).
133. (...) the Court considers that it was for the national authorities, faced with a situation in which human rights were being systematically violated, as described above, to find out about the treatment to which the applicants would be exposed after their return (...). Having regard to the circumstances of the case, the fact that the parties concerned had failed to expressly request asylum did not exempt Italy from fulfilling its obligations under Article 3.
135. That non-refoulement principle is also enshrined in Article 19 of the Charter of Fundamental Rights of the European Union. (...) the Court attaches (...) importance of compliance with the principle of non-refoulement in the context of operations carried out on the high seas by Member States of the European Union (...).

3.4.2 Judgement in the case of N.D. and N.T. v. Spain (13.02.2020)

201. (...) In this context, however, in assessing a complaint under Article 4 of Protocol No. 4, the Court will importantly take account of whether, in the circumstances of the particular case, the respondent State provided genuine and effective access to means of legal entry, in particular border procedures. Where the respondent State provided such access but an applicant did not make use of it, the Court will consider, in the present context and without prejudice to the application of Articles 2 and 3, whether there were cogent reasons not to do so which were based on objective facts for which the respondent State was responsible.
209. (...) **the effectiveness of Convention rights requires that these States make available genuine and effective access to means of legal entry (...).** Those means should allow all persons who face persecution to submit an application for protection, based in particular on Article 3 of the Convention, under conditions which ensure that the application is processed in a manner consistent with the international norms, including the Convention. In the context of the present case, the Court also refers to the approach reflected in the Schengen Borders Code. (...)
210. (...) Consequently, they may refuse entry to their territory to aliens, including potential asylum-seekers, who have failed, without cogent reasons (...), to comply with these arrangements by seeking to cross the border at a different location, especially, as happened in this case, **by taking advantage of their large numbers and using force.**
211. (...) In the event that this was the case and **the applicants did not make use of these legal procedures, but instead crossed the border in an unauthorised manner** (in this instance taking advantage of their large numbers and using force),

LIMITE/LIMITED

only the absence of cogent reasons (as described in paragraph 201 above) preventing the use of these procedures could lead to this being regarded as the consequence of the applicants' own conduct, justifying the fact that the Spanish border guards did not identify them individually.

212. In this regard, the Court notes that Spanish law afforded the applicants several possible means of seeking admission to the national territory, either by applying for a visa or by applying for international protection (...) **but also at Spain's diplomatic and consular representations in their countries of origin or transit** or else in Morocco. (...)

3.4.3 Judgement in the case of M.K. and others v. Poland (23.07.2020)

167. (...) The Court's main concern in cases concerning the expulsion of asylum seekers is "whether effective guarantees exist that protect the applicant against arbitrary refoulement, be it direct or indirect, to the country from which he or she has fled" (...).

168. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (...). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment breaching Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to return the person in question to that country (...) there can be no derogation from that rule (...).

172. Consequently, the Court has indicated that where a Contracting State seeks to remove an asylum-seeker to a third country without examining the asylum request on the merits, the main issue before the expelling authorities is whether or not the individual will have access to an adequate asylum procedure in the receiving third country (...).

173. The Court has further clarified that in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum request on the merits, regardless of whether or not the receiving third country is an EU Member State or a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement (...).

207. (...) They attempted to cross a border in a legal manner, using an official checkpoint and subjecting themselves to border checks as required by the relevant law. Hence, the fact that the State refused to entertain their arguments concerning justification for their applications for international protection cannot be attributed to their own conduct (compare N.D. and N.T. v. Spain).

3.5 Border Control

General rules governing border control (i.e. border checks and border surveillance) are set out by Regulation (EU) 2016/399 (Schengen Borders Code). In accordance with Art. 5(1) of the Code, external borders may be crossed only at border crossing points.

Art. 7 of the Code requires that border guards should, in the performance of their duties (border checks and border surveillance), fully respect human dignity, in particular in cases involving vulnerable persons. Moreover, Art. 3(b) (on the scope of the Regulation) states that the provisions of the Schengen Borders Code are to be applied without prejudice to the rights of refugees and persons requesting international protection, in particular as regards the principle of non-refoulement.

Art. 13 provides for the rules applicable to border surveillance, in between border crossing points. The purpose of surveillance is to prevent or discourage persons from circumventing the checks at border crossing points (see Art. 13 SBC, paragraphs 1 and 2).

As far as border surveillance activities in the framework of Frontex coordinated Joint Operations at sea are concerned, Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) has to be considered.

3.5.1 Art. 6 of the Regulation (EU) 656/2014

1. In the territorial sea of the host Member State or a neighbouring participating Member State, that State shall authorise the participating units to take one or more of the following measures where there are reasonable grounds to suspect that a vessel may be carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea:
 - b) stopping, boarding and searching the vessel, its cargo and persons on board, and questioning persons on board and informing them that persons directing the vessel may face penalties for facilitating the voyage.
2. If evidence confirming that suspicion is found, that host Member State or neighbouring participating Member State may authorise the participating units to take one or more of the following measures:
 - a) **seizing the vessel** and apprehending persons on board;
 - b) **ordering the vessel to alter its course outside of or towards a destination other than the territorial sea** or the contiguous zone, including escorting the vessel or steaming nearby until it is confirmed that the vessel is keeping to that given course;
 - c) conducting the vessel or persons on board to the coastal Member State in accordance with the operational plan.

LIMITE/LIMITED

3. Any measure taken in accordance with paragraph 1 or 2 shall be proportionate and shall not exceed what is necessary to achieve the objectives of this Article.
4. For the purposes of paragraphs 1 and 2, the host Member State shall instruct the participating unit appropriately through the International Coordination Centre.

The participating unit shall inform the host Member State, through the International Coordination Centre, whenever the master of the vessel requests that a diplomatic agent or a consular officer of the flag State be notified.

4. Frontex Reporting Scheme in Joint Operations

Frontex' self-concept of an intelligence driven organization implies the need for a streamlined and efficient reporting scheme. At all border types, relevant information should be effectively channelled to Frontex as well as to national authorities conducting border checks and surveillance or criminal investigations linked to facilitation and organized crime networks.

4.1 Joint Operations Reporting Application (JORA)

One of the main tools for collecting information is the web application JORA. The information is collected within the framework of the Joint Operation via JORA by officers assigned by the host Member States (MS) or deployed in the operation by other participating MS, as follows:

- Border-related incidents occurred in the operational areas are reported via the Incidents template,
- Preventions of departure.,
- Screening, registration, fingerprinting and documents forgeries' detections are reported via the Identification and Registration template,
- Debriefing interviews are reported via the debriefing template.

All reported incidents also undergo the JORA validation process executed by the Frontex Situation Centre (FSC).

The three following types of incidents are of special interest in the context of reporting

4.1.1 Prevention of Departure

Third-country nationals intercepted at sea by third-country authorities in their territorial waters when attempting to enter illegally the territory between sea border crossing points (BCPs) at the EU's external borders or in international waters, and migrants are returned to the port of departure. Prevention cases are observed by Frontex or Member States assets or informed by the responsible Maritime Rescue Coordination Centre (distress call or third country alert), and can be reported indiscriminately by Frontex, Member States or Third countries assets participating in the Frontex operation.²²

²² Source: JORA Guidelines for reporting

LIMITE/LIMITED

4.1.2 Refusal of Entry in the context of JORA-Guidelines

Incident shall be reported as “refusal of entry” if third-country nationals do not fulfil the entry requirements. This concerns only those third-country nationals who are refused entry by Member States authorities according to the Schengen Borders Code (Regulation (EU) 2016/399) for not fulfilling all the entry conditions laid down in Article 6 (Schengen Borders Code). Not affected by that, Art. 14 of the SBC provides for the rules applicable to refusal of entry and precises that entry may only be refused by a substantiated decision stating the precise reasons for the refusal by means of a standard form, filled in by the authority empowered by national law to refuse entry.

4.1.3 Third Country Action

Information received from third-country authorities concerning incidents, which have occurred on their territory without any observation/involvement of Frontex or Member States assets.

4.1.4 Daily reporting package

Type of report	Description	Responsibility	To be sent to
ICC Daily report and/or JCB minutes	Operational overview on daily basis, covering the last 24 hrs (00-24.00)	ICC	Hellenic Coast Guard
Standard Patrolling Schedule	Activities performed by the deployed technical equipment including host MS patrolling assets financed by Frontex	ICC	Hellenic Coast Guard
IO Daily Report	Updated information from the operational scene for intelligence purposes	Intel Officer (IO)	Hellenic Coast Guard
Technical Equipment Mission Report	Information about the activity performed by the aerial, maritime assets and TVV	Commanding Officer (CO), National Official (NO)	Shall be sent to respective LCC and NO; NO shall forward to ICC via e-mail
(Initial) serious incident report	Alert message in certain cases (see SI catalogue)	Every participant in Frontex-related activities	FSC (within 2 hours)

4.1.5 Frontex structures in the operational area

Responsible contact points in the operational area between the involved participants in the field are the host coordination centres e.g. Local Coordination Centre, International Coordination Centre.

4.1.6 Operational Manager

The operational manager is the responsible Frontex officer tasked to coordinate further information gathering from the actors in the field, if needed, in close cooperation with Frontex Situation Centre (FSC).

4.1.7 FSC Senior Duty Officer (SDO)

The SDO is responsible for assessing the serious incident related to its severity, coordinating the information exchange, processing and distributing the serious incident report without personal data and further monitoring the situation based on the serious incident. The information shall nonetheless be made available immediately to the respective operational team and in case of alleged violations of fundamental rights or Frontex code of conduct, additionally to the fundamental rights officer and/or pooled resources unit for further handling. The senior duty officer distributes the initial Serious Incident Report without delay to the senior management, and to other Frontex stakeholders, if needed.

4.2 Serious Incident reporting

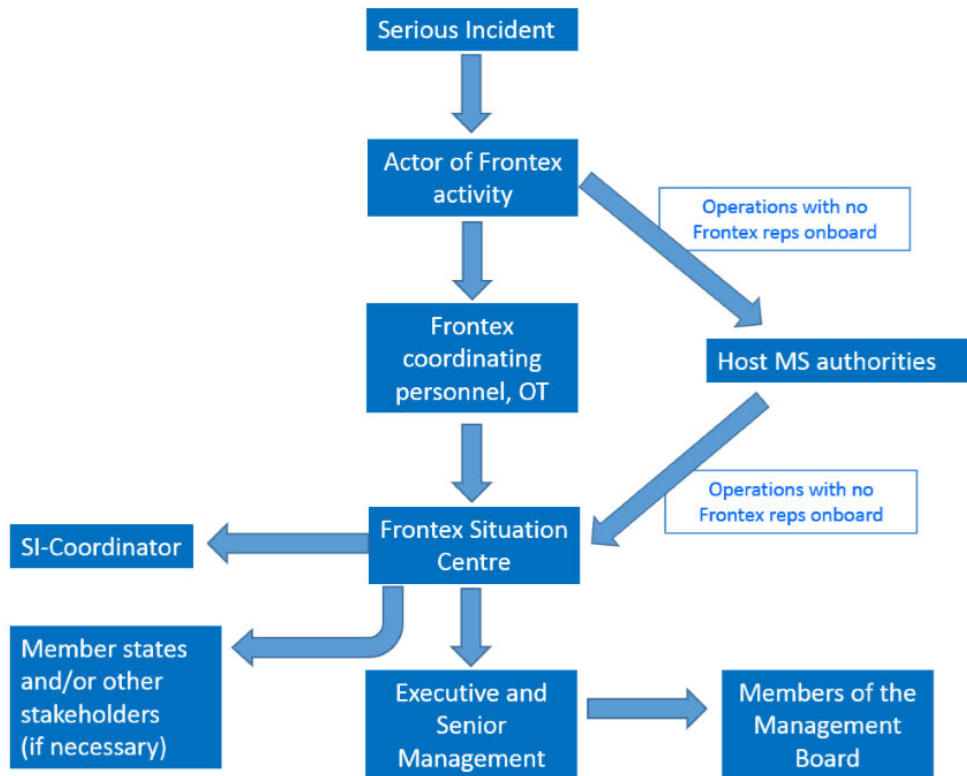
The reporting on Serious Incidents within the Frontex operational activities is regulated by a Management Board Decision. According to Frontex' own terms a Serious Incident is an event or occurrence, natural or caused by human action, which may affect, or be relevant to a particular Frontex activity, the safety and security of participants in Frontex activities, the agency's mission and reputation, or any combination thereof. Serious Incidents also including situations of alleged violations of fundamental rights and of EU acquis or international law, particularly related to international protection obligations and of the Frontex Code of Conduct for all persons participating in Frontex activities and for Joint Return Operations coordinated by Frontex.

A Serious Incident Report is a product aimed at informing Frontex senior management, Member States, the Management Board and other relevant stakeholders, as soon as possible, about the occurrence of a serious incident as defined in the "Frontex serious incident catalogue". The production and timely dissemination of a serious incident report contributes to improve situational awareness and increases Frontex reaction capabilities related to incidents occurred in the frame of Frontex activities. The issuance of a serious incident is the first internal step for possible follow-up measures and eventual official statements to be taken by Frontex senior management, if needed.

Every participant related to or involved in Frontex activities is under an obligation to report immediately a serious incident report to FSC (In line with the reporting structure of the particular joint operation or by using the exceptional reporting), in case he/she obtains the knowledge of such an incident.

LIMITE/LIMITED

Frontex's Serious Incident Reporting scheme can be summarised in the following graph:



4.3 Serious Incidents with alleged violation of Fundamental Rights

In case a participant in Frontex activities witnesses, is involved or has grounds to suspect the occurrence of an incident representing a possible violation of fundamental rights or international protection obligations (category 4 of the serious incident catalogue), he/she is obliged to report this case immediately to Frontex (Frontex Situation Centre).

4.3.1 Exceptional reporting

In case the reporting actor has concerns that the disclosure of such sensitive information on alleged violation of fundamental rights via the SIR mechanism could have consequences on his/her or others integrity, reputation or deployment he can make use of the exceptional reporting. After acknowledgement of such information, the operational manager/Frontex support officer/Frontex operational coordinator/Frontex coordinating officer shall immediately report such incidents to Frontex Situation Centre (FSC).

4.3.2 Frontex internal follow up procedure/serious incident coordinator

Due to the possible dimension and further circumstances of a serious incident a Frontex internal follow up on the incident may be proposed after senior duty officer's assessment. Therefore, a Frontex internal SIR-coordinator should be proposed by FSC senior duty officer in order to take up the responsibility for further follow up measures related to the respective incident.

4.4 Serious Incident Catalogue

Frontex has listed a number of examples in this catalogue which should facilitate the identification of a serious incident but the catalogue does not represent an exhaustive list:

Category 1 - Situations of high political and/or operational relevance especially with the potential to affect EU border management of one or more MS9 including international crisis situations.

Category 2 - Incidents occurring in Frontex activities/joint operations and not related to Frontex staff, or other participants in Frontex activities.

Category 3 - Incidents involving Frontex staff and participants in Frontex activities

Category 4 - Situations of suspected violations of Fundamental Rights or international protection obligations such as:

- Suspected or alleged violations of fundamental rights enshrined in the Charter of Fundamental Rights of the European Union or other relevant international law
- Observed or witnessed potential violations of fundamental rights, in particular against human dignity or other fundamental rights

5. Conclusion & Recommendations

5.1 Clarification of the incidents

It is the common legal understanding of the Working Group members that not every detected boat with migrants on board automatically qualifies as a distress case. Instead, the concrete circumstances of each case (in particular the weather and the weather forecast, the state of the boat, the number of people that the boat is carrying etc.) need to be taken into account. In addition, not every detected attempt of illegal border crossing by circumventing official Border Crossing Points - not even at sea - can automatically be considered as an asylum case, i.e. that the persons on board have a well-founded fear of persecution. A precise analysis of the concrete circumstances of each individual case is therefore of most importance. If the migrants claim for asylum, the necessary measures should be done back on the territory of the Host Member State.

This Working Group fully acknowledges the special circumstances - such as factors at sea, environmental influences, currents, waves, weather, and hybrid type of threats as for example indicated by Frontex strategic risk analysis - influencing the actions of the responsible officers in each individual case. In addition, the volatile behaviour of the facilitators and the migrants on the migrant boats needs to be borne in mind when assessing an incident. At the Greek/Turkish maritime border, the behaviour of the Turkish border authorities must also be taken into account. However, within the scope of the mandate of the Working Group a retroactive assessment of the incidents, these concrete circumstances can only be judged to the extent that they have been recorded, either in the incident reports, in video recordings or through other means.

- Based on the provided and reviewed data most of the doubts in the majority of the examined incidents were clarified regarding the involvement of Frontex. Especially in those incidents, where Turkish Coast Guard took over responsibility for the situation inside the Turkish Territorial Waters the allegations were cleared up. This was the case for the following **-7-** incidents:

- JORA Report no. 407256, 407206, 407258, 406283 and 406393 as well as in the incidents on 28 April 2020 and on 15 August 2020.

In these incidents, the migrant boats either altered their course on their own initiative or by intervention of the Turkish Coast Guard and therefore never reached Greek Territorial Waters. With a view to the date of 28 April 2020, the group however, still needs to examine further whether the media reports on this day could have referred to another incident that could not be identified yet.

- Furthermore, **-1-** more incidents (incident on 10 August 2020), that occurred in Greek Territorial Waters, was deemed, based on the data available, clarified to the extent justifying no further discussions by the Working Group.
- In sum, **-8-** incidents were clarified.

LIMITE/LIMITED

A detailed review of the -6- cases that were located in Greek Territorial Waters resulted in the following clustering²³:

- In -3- incidents, inter alia based on the statement of the Hellenic Coast Guard, the boats with migrants had already reached Greek Territorial Waters. However, due to the border control measures by the Hellenic Coast Guard the respective migrant boats altered their course and headed back towards Turkish Territorial Waters. This was the case in the following incidents:
 - SIR 12604/2020, SIR 11860/2020 and SIR 11934/2020.
- Not affected by that there were -2- incidents, where the Greek authorities stated that no desire for asylum had been expressed by the migrants during the border police questionings:
 - SIR 11095/2020 and incident of 10 August 2020.
- In -2- incidents, the Greek authorities stated that the special situation at sea and the behaviour of the migrants did not allow border police questionings and that an opportunity to apply for asylum was therefore not possible:
 - SIR 12604/2020 and SIR 11860/2020.

Incidents from this group for a further review:

- -5- incidents have not been yet fully clarified, partly due to unclear data provided by Frontex. Based on the -partwise- unclear data provided by Frontex it is common understanding of the Working Group that these incidents shall be subject for further review. These incidents will be reported to the Management Board at its next meeting in March 2021:
 - SIR 11934/2020, SIR11860/2020, SIR11095/2020, SIR12604/2020 and SIR 12790/2020.

Part of the debate in the Working Group was whether the principal access to the asylum system has to be guaranteed during border police measures at sea. The Frontex Fundamental Rights Officer did not reject this in general.

In view of the Working Group the examined cases point out, the border police authorities in principle are quite capable of conducting such an interview (i.e. on board of a vessel). However, this should be reflected in each individual case.

The inquiry of the Working Group could not substantiate that in the context of any of these incidents third-country nationals, were turned back in contravention of the principle of non-refoulement, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their life or freedom would be threatened on account of reasons enlisted in the 195 Geneva Convention. (cf. Art. 4(1) of Regulation (EU) 656/2014). The inquiry of the Working Group also could not substantiate, that the Turkish Authorities did not take over the safe returns of the migrants.

²³ Due to the clustering, multiple listings of the incidents appear.

LIMITE/LIMITED

However, it must be emphasized that based on the available information, not all cases could be finally clarified. Contradictory statements by the involved parties remain open (SIR 11860/2020 and SIR 11934/2020). Frontex internal inquiry in these cases have not yet been completed and also other SIR are still ongoing (SIR 11095/2020, SIR 12604/2020 and SIR12790/2020). These incidents need to be subject to further examination by this Working Group and will be reported to the Management Board at its next meeting. The Working Group remains ready to further examine them by resuming its work provided that further evidence will be submitted through the ongoing Frontex investigations. Finally, as regards the incident of 28 April 2020, the Working Group notes that, despite repeated requests, Frontex provided some information only at the last stage of the group's work. Therefore, the further examination whether another incident can be identified for 28 April can only be concluded for the next meeting of the Management Board, too.

Furthermore, as a main result it can be stated, that the presence of the European Border and Coast Guard is a safeguard for humanity and has a preventive dimension

5.2 .Legal Framework

Frontex was established by Council Regulation (EC) 2007/2004. Since taking up its responsibilities on 1 May 2005, it has been successful in assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions. The purpose of border surveillance is to prevent unauthorised border crossings and to apprehend or take other measures against those persons who have crossed the border in an irregular manner.

Border surveillance is not limited to the detection of attempts to cross the border in an unauthorised manner but equally extends to steps such as intercepting vessels suspected of trying to gain entry to the Union without submitting to border checks. Frontex is responsible for the coordination of operational cooperation between Member States in the field of external border management, including as regards border surveillance, taking into account the fact that some situations may involve humanitarian emergencies and rescue at sea.

Despite the aforementioned legal aspects it should finally be noted that there is no common and conclusive legal definition of the term "Distress at Sea".

"Distress at Sea" and the corresponding Search and Rescue operation can be understood as an imperative obligation for every master of a vessel, regardless of causes und liability, to undertake the necessary urgent action. It occurs when a ship and the people on board cannot get to safety without outside help and are threatens to lose their life at sea. The decisive factor for assessing this need for protection is, for example weather, the number of people on board is in a seaworthy proportion to the type and condition of the ship; whether necessary supplies such as fuel and drinking water are available; what the swell or weather conditions are; whether pregnant women and/or children and medical assistance are required on board

LIMITE/LIMITED

To distinguish between a Search and Rescue-Operation (SAR) and the mandate of border surveillance in Frontex Operations, is difficult but necessary. The classification whether the event is a matter of SAR or not, always depends on the specific circumstances of each individual case. The responsibility for coordination of an incident, that is declared as a SAR incident, belongs solely to the responsibility of the Rescue Coordination Centre (RCC) of the competent Coastal State. This includes the obligation to ensure coordination so that the rescued persons are disembarked in a place of safety in accordance with the associated regulations. Frontex is obliged to support all measures of the responsible Coastal State.

A place of safety in the meaning of the international maritime law sense may well be a port in Turkey.

According to the general principles of international regulations, any measure taken in the course of Joint Operations should be proportionate to the objectives pursued, non-discriminatory and should fully respect human dignity, Fundamental Rights and the rights of refugees and asylum seekers, including the principle of non-refoulement. The Member States and Frontex are bound by the provisions of the asylum acquis, and in particular of Directive 2013/32/EU of the European Parliament and of the Council, with regard to applications for international protection made in their territory, including at the border or in the territorial waters of the Member States. In accordance with all relevant regulations, each application for asylum has to be assessed individually.

Furthermore, in its judgment in the case N.D and N.T of 13 February 2020, the Grand Chamber of the European Court of Human Rights (ECHR) pointed out, that asylum seekers who have failed, without cogent reasons, to use legal avenues (such as to apply at existing border crossing points or via embassies and consulates) and seek to cross the border illegally at different locations in large numbers and in a violent manner, can be immediately refused without an individual assessment to a safe third country. In this context, the Working Group acknowledges that the agreement between the EU and Turkey on the readmission of persons residing without authorization from 2014 and the EU-Turkey statement from 2016, is based on the assumption that Turkey fulfils the requirements of a safe third country in accordance with article 38 of the Directive 2013/32/EU. The directive and the EU-Turkey statement nevertheless provide for the registration and individual assessment of every asylum claim.

According to the aforementioned decision by the European Court of Human Rights and the discussed difficulties in the Aegean Sea underline the necessity for an establishment of a pre-screening mechanisms for asylum seekers.

The practical implications in light of these legal statements, in relation with the examined incidents, amplify the need for a common understanding in terms of appropriate practical implementation of Article 4 in conjunction with Article 6 of Regulation (EU) 656/2014 at sea borders, such as in the Aegean Sea.

LIMITE/LIMITED

Furthermore, the European Commission has accepted the request of the Working Group to elaborate on a number of legal questions concerning certain legal provisions and application of jurisprudence of the ECtHR to the sea borders and the impact of this jurisprudence on the interpretation of provisions of Regulation (EU) 656/2014. Therefore, the aforementioned aspects provide only a preliminary analysis that will be completed in time for the next meeting of the Management Board.

5.3 Findings and Recommendations in the context of reporting

Frontex has developed its reporting system starting out in 2006. Frontex had identified, that it was crucial to have a common platform for the reporting of incidents. JORA was developed and installed as a common platform for reporting. The Incident Reports and the Serious Incident Reports (except the so-called Initial SIR) are reported by designated Team Members and appointed persons of the Host Member State. Every Team Member of a Joint Operation is obliged to report Serious Incidents (Category 1-4) directly to the Frontex Situation Centre as an Initial Serious Incident Report. Technical Equipment Mission Reports (TE-MR) are not included in JORA. These reports are to be sent to the National Official and/or Local Coordination Centre and from the National Official to the respective International Coordination Centre (ICC). A further distribution is not foreseen.

All Incident Reports need to be validated by appointed experts in the Frontex Situation Centre (FSC) under the supervision of the Senior Duty Officers (SDO) in the FSC. Member States deploy the experts in FSC dealing with the validation of incidents usually for one to three months and most of them are already experienced in the domain since they are involved to some extent in validation procedures in their countries of origin. As soon as their deployment in FSC starts, they receive specific mandatory training on the tasks that they will execute as part of the incident reporting mechanism. There is no obligation to have a certificate of competence or other previous training for this task.

The Working Group has identified a lack of monitoring in the reporting system of Frontex. In fact, there is no mechanism installed in Frontex which would have the purpose of identifying problems in the reporting practice (i.e. reports that are incomplete or not conclusive, frequent (need for) re-classification of reports, inconsistencies in the follow-up given to the reports, etc). For this reason, it is crucial to install such a monitoring system at least in two stages.

- The first stage should be in the ICC. The monitor should have access to all Technical Equipment Mission Reports, Incident report, Serious Incident Report as well as to the Joint Coordination Board-Meetings. The monitor has to check every incident in relation to assumed violation of fundamental rights, assumed serious incidents and the responsible person should be able to validate the incident reports (especially wrong primary incident type). There should be clear guidelines by Frontex.
- The second stage of monitoring should be installed in the Frontex Situation Centre. The experts should fulfil clearly defined requirements in advance and should check

LIMITE/LIMITED

every incident report in relation to an assumed violation of fundamental rights, assumed serious incidents and validity of the incident reports (especially wrong primary incident type).

Some reports such as Technical Equipment – Mission Report or the reports of the surveillance patrols are not registered in JORA. There is also more information regarding the operational performing during the Joint Coordination Board Meeting in the International Coordination Centre. The second stage is necessary because not every Joint Operation has an ICC. Some operations, especially Focal Points, Land and Air Operation are only bound to an Local Coordination Centre (LCC). The LCC will send the Incident Reports via JORA directly to the FSC. For this reason, it is necessary to have the second and final stage of monitoring in the FSC. Crucial for this monitoring system are very well trained monitors in the ICC and in the FSC. In accordance with the Regulation (EU) 2019/1896, the task should be fulfilled by a coordinating officer.

Regulation (EU) 2019/1896 puts in place an independent system for the monitoring of compliance with fundamental rights, with the central role of the Frontex Fundamental Rights Officer, supported by 40 fundamental rights monitors (FRM). In accordance with Article 110 (2) second paragraph letter (a) of the EBCG Regulation, the fundamental rights monitors must inform the coordinating officer and report to the Fundamental Rights Officer on any concerns related to a possible violation of fundamental rights within the Agency's operational activities. The reporting between FRO and FRMs should be independent from and complementing the SIR mechanism. Therefore, while fundamental rights monitors must be informed at the earliest possible stage of the preparation of Serious Incident Reports, they should not be part of the formal circuit within the SIR mechanism.

Also, in the same logic, while the Fundamental Rights Officer can be the addressee of Serious Incident Reports Category 4, he or she should follow up on them independently, in accordance with Article 109 (2) (b) of the EBCG Regulation, and report directly to the Management Board.

Serious Incident Reports will be also reported in JORA, except the initial Serious Incident Report. This report shall be reported directly to the Frontex Situation Centre within two hours after the incident occurred. The formal, the updated and the final SIR will be reported in JORA, although there is one exception.

An **exceptional reporting mechanism** takes place when the standard reporting mechanisms cannot be applied. This may be the case when:

- the reporting person has concerns that the disclosure of sensitive information on a possible violation of fundamental rights or Code of Conduct has negative consequences on the reporting person's integrity, reputation or deployment,
- when no specific reporting mechanism is in place or
- when the reporting mechanism is not specified in the respective Operational/Implementation Plan or another similar document.

LIMITE/LIMITED

The Frontex Situation Centre is the point of entry for such reports. However, the Working Group regrets that no information is provided on specific safeguard provisions on how such “exceptional reports” are followed up compared to the general rules.

According to Frontex, the whistleblowing system is mainly meant for financial wrongdoing. This limitation has however, no basis in the underlying rules (that refer to all “serious professional wrongdoings” which would include any infringement of fundamental rights). There is therefore a lack of clarity for the whistleblowing system and the exceptional reporting relate to each other.

Furthermore, Team Members are not included in the whistleblowing system and there is no “Compliance Centre” for the Team Members. For that reason, Team Members can only report Serious Incidents Category 4 (alleged violation of Fundamental Rights) to the Frontex Situation Centre. Frontex should install such a “Compliance Centre”, which, without prejudice to his or her independent functions set out in Article 109 of the EBCG Regulation, could be located at the Fundamental Rights Officer, directly or represented by a fundamental rights monitor assigned by him or her to this operational activity. Such a position could facilitate the reporting for all Team Members. The same can be applied for reporting other incidents than alleged violation of Fundamental Rights like i. a. bribery, illegal activities and corruption.

The catalogue of Serious Incidents is very widespread and divided into four categories. It is very difficult for the Team Members to categorize the incident correctly. As a result of that, the Team Members avoid to classify the incident as Category 1 or 2.

In principle, incidents of Category 1 and 2 should only be reported by Frontex staff, i.e. the Frontex Operational Coordinator and the Frontex Tactical Support Officer. Team Members should only report incidents of Category 3 and 4.

Frontex has recognised that the Serious Incident reporting has to be revised and streamlined and has already started this process. Despite the request from the working group, Frontex has not provided a draft of the new rules under discussion but only a summary of the main points that it intends to change. According to that information, Frontex plans to merge Categories 1 and 2 of Serious Incidents into one category. The new Category 2 covers the alleged violations of the Code of Conduct. Category 3 will be the Category for alleged violation of Fundamental Rights. Furthermore, Frontex intends to classify the SIR as RESTREINT UE/EU RESTRICTED. The single point of entry for all issues will be the Frontex Situation Centre. The FSC provides an assessment if an issue is a Serious Incident or not.

These envisaged changes call for a number of comments. Firstly, not every report should be classified as RESTREINT UE/EU RESTRICTED. This decision should be made on a case by case basis and should depend on the facts. A too restricted classification regime reduces the transparency. Furthermore, Serious Incidents regarding alleged violation of Fundamental Rights should not be reported to Frontex Situation

LIMITE/LIMITED

Centre but should be directly reported to the Fundamental Rights Officer, for follow-up in accordance with his or her competences, as set out in Article 109 (2) (b) of the EBCG Regulation. There should also be the possibility to report alleged Serious Incidents to the "Confidence Centre/Position of trust" (in case it is decided not to locate this centre at the FRO), especially if the reporting person chooses the exceptional way of reporting.

As concerns the qualification of cases, the definition of "**Prevention of Departure**" requires review, in the view of the Working Group. According to Frontex, this definition covers cases where third-country nationals are intercepted at sea by third-country authorities in their territorial waters when attempting to enter illegally in EU territorial, and the migrants are returned to the port of departure.

Furthermore, Prevention cases are situations with an active role (limited to observation and reporting) played by the Member States assets or Rescue Coordinating Centre or Frontex assets deployed, and can be reported indiscriminately by Frontex, Member States or Third countries patrols/assets participating in the Frontex operation.

A voluntary return is not included in this definition. If no Frontex assets and or other entity of the Host Member State are involved, the incident is called "Third Country Action".

Frontex understanding is, that the term "Prevention of Departure" in order to classify a type of incident is only used by the Host Member State, although compared to the definition no such limitation/restriction is envisaged. In line with the definition of "Prevention of departure" (see point 4.1.1) it should be noted, that the classification of an incident should be classified solely by the Host Member State and must not include incidents in the Territorial Waters of the respective Host Member State.

The Technical Equipment Mission Reports are only drafted by the Commanding Officer of the technical assets deployed or co-financed by Frontex. The incidents reports are created by the Local Coordination Centre or designated participants of the Host Member state. It was recognised that reports show a lack of information e.g. missing sighting of migrant boats or observed action by other assets. For the assessment of the incident, it is crucial to have as much as possible information in the report.

Recommendations of the Management Board to Frontex proposed by the Working Group:

The existing reporting and validation system should be reviewed, taking into account in particular the following elements:

- Improve quality and quantity standards regarding mandatory information in Technical Equipment Mission Reports and Incident Reports (e. g. require information justifying the qualification as "Prevention of Departure" or as Third Country action, on modalities of an interception of boats, justifications why a case is (not) considered a SAR case, how the possibility has been granted to apply for asylum),

LIMITE/LIMITED

- Ensure that every Operational Plan includes a transparent reporting mechanism. The minimum standards of such reports should be in compliance with Technical Equipment Mission Reports and Incidents reports and should include e.g. Refusal of Entry (under national law), Application for Asylum, redirection of migrant boats, and incidents involving Frontex-deployed assets and personnel outside of the pre-defined operational area. The WG invites the Host Member States to involve in this transparent approach all assets, which are acting in the Operational Area,
- Revise and enhance the minimum requirements for the experts in the Frontex Situation Centre (FSC) and provide additional training for the experts in order to allow them to detect e.g. incorrect use of incidents types and possible violations of Fundamental Rights,
- the Serious Incident Report Category 4 (alleged violation of Fundamental Rights) should be also directly reported to the Fundamental Rights Officer for his/her independent follow up in accordance with Article 109 (2) (b) of the EBCG Regulation and direct reporting to the Management Board,
- a function should be established which can handle confidential reports from Frontex employees and team members and can guarantee the protection of the identity (i.e. "Centre of Compliance"), in analogy to the already existing exceptional reporting system. This function could be assigned to the Frontex Fundamental Right Officer, without prejudice to his or her principal tasks defined in Article 109 (2) of the EBCG Regulation;
- A systematic monitoring of the reporting mechanism should be established, covering all levels of the Host Member State and all levels of Frontex. The monitoring system should ensure a control of the whole process, including fulfilment of reporting requirements of all involved stakeholders and efficient democratic control,
- The relation between whistleblowing procedures and exceptional reporting procedure should be clarified; clear communication to staff and team members on these mechanisms should be ensured, including through mandatory training sessions,
- No-blanket classification of Serious Incident Report as RESTREINT UE/EU RESTREINT. The decision has to be made conscientious on a case by case basis.
- Ensure the proper use of the term "Prevention of Departure" and "Refusal of entry" in the reporting system in conjunction with a very thorough monitoring of such incidents,
- Possibly, revise the definition of the primary incident types, especially "Prevention of Departure" as the current definition does not include the voluntary return of third country nationals on their own initiative,
- The aforementioned recommendations for improvements in the reporting system should be combined with a newly introduced culture, in which failure is acknowledged and addressed, in order to create awareness and sensitivity of possible misconduct.
- The 40 pending Fundamental Rights Monitors have to be recruited immediately in order to strengthen the monitoring system for Fundamental Rights.

LIMITE/LIMITED

If the Management Board provides the necessary mandate, the Working Group remains ready to further examine the documents, which were provided in the meantime by the agency.

GLOSSARY

Acronym	Full name	Authority/staff/process of
FSA	Frontex Surveillance Aircraft	Frontex
FSC	Frontex Situational Centre	Frontex
HCG	Hellenic Coast Guard	GR
ICC	International Coordination Centre	GR
JORA	Joint Operations Reporting Application	Frontex
JRCC	Joint Rescue Coordination Centre	GR
MRCC	Maritime Rescue Coordination Centre	GR
SIR	Serious Incident Reporting	Frontex
TCG	Turkish Coast Guard	TR