

Explanatory note for the Management Board on the Fundamental Rights Strategy - state of play

1. Legal basis and procedure

Pursuant to Article 80 (1) of the European Border and Coast Guard Regulation¹ (EBCG Regulation), the European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks in accordance with relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement.

For that purpose, the Agency shall, with the contribution of and subject to the endorsement by the Fundamental Rights Officer, draw up, implement and further develop a Fundamental Rights Strategy and Action Plan, including an effective mechanism for monitoring respect for fundamental rights in all activities of the Agency.

2. Actions proposed to the Management Board

The Management Board is invited to take note of the process of finalizing the Fundamental Rights Strategy and of the envisaged further steps.

3. Objectives

The aim is, after finalization of the Consultation process, to adopt the Fundamental Rights Strategy.

4. Summary of Key points

4.1. Preparations and Consultation process

The drafting process for the Fundamental Rights Strategy was initiated in Q4 2019 with a three-column document, which comprised the following elements:

- the current Fundamental Rights Strategy
- proposed changes submitted by the Fundamental Rights Office
- an overview of the requirements in accordance with the EBCG Regulation

After a collaborative drafting -process with the Fundamental Rights Office, an internal consultation-process and the alignment of the draft with the strategic principles of the Agency, an external consultation process was initiated, which covered the following entities:

- the Management Board (after a call of interest AT, CH, SK and SWE declared their participation)
- the European Commission
- the Fundamental Rights Agency
- the European Asylum Support Office
- the European Institute for Gender Equality
- the Consultative Forum

¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1-131).

The consultation on the draft Fundamental Rights Strategy rendered very positive and comprehensive feedback. The comments received contained several constructive edits as well as calls for additions to amend or broaden the scope of the Strategy. None of the reviewers raised any major red flags. The comments have yet raised the need for - once again - crosschecking and aligning with the provisions of the EU treaties and/or the provisions of applicable EU Regulations and this procedure was successfully concluded by end of September 2020.

A final consultation of the Chairs of the Consultative Forum was initiated by the Executive Director with a letter to the CF Chairs on 6 October 2020. As soon as feedback is received from the Consultative Forum - last contacts have shown that the consultation process within the Consultative Forum is still ongoing - the draft will once again be revised and then presented to the Fundamental Rights Officer for endorsement (Article 80 (2) EBCG Regulation) and subsequently submitted to the Management Board for approval.

Immediately afterwards, work will begin on the action plan - the draft to be elaborated in the same collaborative approach and again to be consulted.

4.2. Core elements of the Draft Fundamental Rights Strategy

The Draft Fundamental Rights Strategy starts with presenting the legal framework that underpins Frontex' commitment to fundamental rights. The following objectives of the Fundamental Rights Strategy outline the tenets of rights-based performance of the Agency:

- Respect for fundamental rights by ensuring the Agency's compliance with the EU Acquis and in particular the Charter of Fundamental Rights of the EU (the Charter) as well as international fundamental rights standards and principles, especially non-refoulement.
- Protection of fundamental rights of all persons regardless of their age, gender, colour, ethnic or social origin, migration status, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, gender identity and sexual orientation. Ensure prompt identification and protection of persons in a vulnerable situation in the Agency's operational activities.
- Fulfilment of fundamental rights through proactive and strict compliance with obligations stemming from international law and the Union acquis on fundamental rights, as a shared responsibility of the Agency and the Member States.
- Promotion of fundamental rights, including through shaping a fundamental rights culture within the EU border management and returns community and expanding its knowledge, skills and competences on fundamental rights.

The strategy follows with the operationalisation of fundamental rights in the context of Agency's activities, specifically the analysis based planning, joint operations and return, the responsibilities of participants in Frontex operational activities as well as the further overarching elements of EIBM - education and training and research and innovation.

The strategy then covers the role of fundamental rights in cooperation covering all elements of the EIBM four-tier access control model and closes with a chapter on implementation, monitoring and evaluation.

The Fundamental Rights Strategy will be implemented within the framework of an Action Plan, intended to draw up practical fundamental rights safeguards that guide the implementation of the Agency's operational activities, integrated into the Agency Annual Work Programme, towards the achievement of its mission and operational goals within European Integrated Border Management. After finalisation of the Fundamental Rights Strategy, the draft of the Action Plan will be revised accordingly to be aligned with the final version of the Fundamental Rights Strategy.