



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels
HOME/MP

Fabrice Leggeri
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Subject: Your letter of 4 December 2020 (ref: CAB/KARO/10563/2020)

Dear Mr Leggeri,

I have been asked by Commissioner Johansson to reply to your note of 4 December 2020 updating the Commission on the state of play of the Agency's framework for fundamental rights protection and monitoring in line with Regulation 2019/1896 on the European Border and Coast Guard (the EBCG Regulation).

The Agency's new framework on fundamental rights protection and monitoring

I am glad that you acknowledge that the role and responsibilities of the Fundamental Rights Officer have increased over the years, as has the need for the corresponding human and financial resources to support its duties. This need was reflected in the legal financial statements put forward by the Commission to accompany the 2016 and 2019 EBCG Regulation proposals.

However, the new EBCG Regulation has not only provided for new resources for Frontex in the area of fundamental rights. The new legislation also puts in place a new comprehensive internal independent mechanism designed to monitor the compliance of the Agency's operational activities with fundamental rights. This mechanism is based on the reinforced role and the independence of the Agency's Fundamental Rights Officer reporting to the Management Board but also becoming a delegated appointing authority for his or her own staff. The Fundamental Rights Officer is to be assisted by the deputy Fundamental Rights Officer and at least 40 Fundamental Rights Monitors acting under the hierarchical supervision of the Fundamental Rights Officer as his or her "eyes and ears" on the ground.

The EBCG 2.0 Roadmap, which the Agency and the Commission set up in July 2019, stressed the need to bring the relevant framework for fundamental rights monitoring in line with the letter and spirit of the 2019 Regulation, in particular as regards the recruitment of 40 Fundamental Rights Monitors by 5 December 2020.

While taking note of the Agency's stated commitment to implement the new fundamental rights monitoring framework, I am compelled to correct a number of important points which were presented in misleading manner your note, especially considering the fact that you also made some of them during your public hearing in the LIBE committee of the European Parliament on 1 December 2020.

The recruitment process of the Fundamental Rights Officer and 40 Fundamental Rights Monitors

You refer to your efforts to speed up the implementation of the new fundamental rights framework, illustrated by the publication of two vacancy notices for the recruitment of a new Fundamental Rights Officer and a Deputy Fundamental Rights Officer on 19 November 2019 which – as you correctly point out - the Commission asked you to withdraw¹. However, this withdrawal request was not due to the managerial nature of the post, but due to the fact that, in the absence of the Management Board’s approval acting as Appointing Authority in line with the EBCG Regulation, the publication of these two vacancies was plain and simply unlawful. Furthermore, the EBCG Regulation requires the involvement of the Fundamental Rights Officer for the publication of the vacancy notice of the Deputy Fundamental Rights Officer, yet that involvement was absent. It is the duty of the Commission as a member of the Management Board, to intervene to prevent serious irregularities which could jeopardise the well-functioning and the reputation of the Agency.

The principle of independence versus a managerial post

In December 2019, you expressed concerns regarding the ability of Ms Inmaculada Arnaez to perform the duties of Fundamental Rights Officer, in particular related to the management of around 50 staff members, given that her managerial competences were not checked prior to her initial appointment in 2012.

Upon request from the Chair of the Management Board, the Commission clarified in February 2020² that the European Parliament and the Council decided not to define any transitional arrangements in relation to the Fundamental Rights Officer. Therefore, the management Board’s opinion is that EBCG Regulation did not put into question the recruitments made pursuant to the former Regulation of 2016. At the same time, a balance must be struck between the independence of the Fundamental Rights Officer and the necessity to upgrade the job description and status of this function. Against this background, the Commission proposed a clear action plan to be rolled out to ensure the implementation of all the new features of its function. In particular, to enhance the status of Ms Arnaez in line with new powers of the Fundamental Rights Officer and tasks as a middle management post, the Agency was required to adopt as soon as possible the decisions on middle management staff and on the temporary occupation of management posts. The Commission also invited the Agency to modify the Management Board decision on the delegation of the appointing authority’s powers to reflect the changed situation under the new EBCG Regulation.

Against this background, I cannot agree with your assessment that the delays in setting up the new framework, including the timely recruitment of 40 Fundamental Rights Monitors, were unavoidable. It clearly appears from the timeline attached to this letter that if the Agency had followed the Commission’s timely guidance and suggestions, the main milestones of this process could have been completed on time.

The process leading to the adoption of the Management Board decision on middle management on 10 November 2020 is a clear example that this, unfortunately, has not been the case. On 4 February 2020, the Commission asked the Agency to present the draft for such a decision, based on a model decision authorised by the Commission in 2018 for all decentralised agencies. The very first draft was only sent to the Commission on 30 April 2020, to which the Commission provided its positive feedback on 9 June 2020. On that occasion, it also recommended a technical modification to reflect the specific selection

¹ Mr Oel’s note of 3 December 2019 addressed to the Chairperson of the Management Board, Ares(2019)7449751.

² Mr Oel’s note of 4 February 2020 addressed to the Chairperson of the Management Board, Ares(2020)700964.

process for the Fundamental Rights Officer where the Management Board acts as appointing authority, as opposed to the regular selection of middle managers organised and concluded by the Frontex Executive Director. Despite the clarity of this guidance, and due to the your insistence on an arrangement which would not have been compatible with the EBCG Regulation, it took another five months to have the decision adopted.

The principle of independence and the Agency's discharge procedure

Regarding your concerns on how to reconcile the independence of the Fundamental Rights Officer with the Agency's regulatory framework, I have already provided you on 4 March 2020 with a comprehensive note addressing all your questions in the area of human resources, budget, and operational aspects³. This comprehensive guidance followed an extensive internal consultation between the Commission services. In particular, as regards your concerns as to the Executive Director's responsibility as the Agency's authorising officer, in my note I confirmed that all the necessary arrangements are already provided for in the Agency's financial regulatory framework. Despite this clear guidance, you have continued to raise concerns which contributed to the delays of some important parallel processes (i.e. the Management Board decision on middle management), without clarifying why my reply did not meet your concerns.

Recruitment of 40 Fundamental Rights Monitors

I was also dismayed to hear your observations and comments during the European Parliament's LIBE Committee public hearing on 1 December 2020 on the lack of posts for 40 Fundamental Rights Monitors in the Agency's establishment plan. While my services are still looking at your proposal of 19 November 2020 to modify the establishment plan, I want to reiterate some elements already clarified in my note of 27 May 2020⁴ and Mr Oel's note of 20 November 2020⁵.

Back in 2018 when the Commission tabled the EBCG 2.0 proposal, the structure of the Agency's staffing for Headquarters in Warsaw was adapted. However, this change (swap from 100 AD to 100 AST) only concerned the Agency's Headquarters and the "old" mandate of the Agency. Since the adoption of the Commission's EBCG 2.0 proposal and the accompanying Legal Financial Statement in September 2018, the Agency had sufficient time to consider the necessary adaptations of the recruitment plans for Headquarters according to the new staffing reality.

At the same time, that adjustment did not affect any staffing requirement related to the new mandate. Consequently, in addition to the 1000 posts in the Headquarters (275 AD, 275 AST, 230 CA and 220 SNE), the Agency's establishment plan for 2020 (and for 2021) provides for additional 1000 posts (out of which 250 AD, 250 AST and 500 CA) in order to cater for all recruitments related to the new mandate.

The 40 posts to recruit Fundamental Rights Monitors are clearly provided for in the Legal Financial Statement. Pursuant to Article 54(7) of the EBCG Regulation, the Fundamental Rights Monitors fall within the "4% support staff" and, for the purpose of the establishment plan, are counted within the numbers of category 1 staff of the standing corps, as indicated in Annex 1 to the EBCG Regulation.

Your affirmations on the lack of posts for the 40 FRMs are even more disconcerting in light of the information on the recruitment of Category 1 staff that the Agency provided in the Management Board meeting held on 9 December 2020 and according to which it has

³ My note of 4 March 2020 to the Frontex Executive Director.

⁴ Ref. Ares(2020)2755852

⁵ Ref. Ares(2020)6978146

not been possible yet to recruit all category 1 standing corps staff provided for under the Regulation. The Commission asked several times for precise information and the accurate data on posts which were only provided the evening before the meeting of 9 December 2020.

Indeed, out of the 1000 posts for the new mandate, the Agency decided to reserve 700 posts for the recruitment of category 1 staff to be deployed as future team members of the standing corps. However, only 425 such staff members (out of which 85 AD, 157 AST and 183 CA) have been recruited in 2020, and additional 47 recruitments for category 1 team members are expected to be completed in Q1 2021. This will bring the total number of category 1 staff to 472 staff, i.e. 228 staff members less than the target of 700 operational staff ready for deployment. In addition, the Agency will still need to start in the course of 2021 the recruitment of 250 staff (mainly CA) for the operation of the ETIAS Central Unit.

Therefore, the Agency should, at this stage, still have between 230 and 270 free posts out of the 1000 posts provided for by the new mandate. I believe that given the relatively low recruitment in the AD category (only 85 AD out of 425 have been recruited so far and only 20 AD posts are needed for ETIAS), the Agency should be in a position to recruit all 40 Fundamental Rights Monitors in AD posts without any further delay.

Cooperation with the Fundamental Rights Agency

The cooperation with the Fundamental Rights Agency, proposed in your letter, is welcome as it can reinforce the monitoring of compliance with fundamental rights obligations in coming weeks, particularly while the recruitment of 40 fundamental rights monitors within Frontex remains ongoing.

However, as I already indicated during the Management Board meeting of 9 December, such cooperation cannot replace ensuring that the internal monitoring mechanism required by the EBCG Regulation is put in place as soon as possible.

Conclusions

Since the political agreement was reached on the EBCG Regulation in March 2019, the Commission representatives, including myself, have continuously flagged in all the Management Board meetings and bilateral encounters the necessity for the Agency to comply in good time with the clear requirements of the EBCG Regulation, and in particular those in the area of the protection of fundamental rights. Furthermore, as shown above and in the timeline in Annex, the Commission has consistently and swiftly provided all necessary guidance in order to allow the Agency to reach that objective.

The development of the fundamental rights monitoring framework has been a complex and challenging process, especially given the prolonged absence of the Fundamental Rights Officer since March 2020. However, the Agency's surprising reluctance to implement the guidance provided by the Commission has further obstructed and delayed this important process. As a result, the Agency has not complied with several of the obligations which are set out in clear and precise terms in the EBCG Regulation. For example, while the EBCG Regulation explicitly states that '[t]he Agency shall ensure that by 5 December 2020 at least 40 fundamental rights monitors are recruited by the Agency', today, 18 December 2020, 0 recruitments have been made.

Therefore, it is of utmost importance that the Agency without any further delay now puts in place all the arrangements provided for in the EBCD Regulation and, in particular,

recruits at least 40 Fundamental Rights Monitors at the appropriate level in order to attract candidates with suitable profiles and ensure that the future monitors have the necessary standing to perform their duties independently. I also consider it as absolutely essential that a cornerstone of the Agency's fundamental rights monitoring framework, namely the special rules to guarantee the full independence of the Fundamental Rights Officer and his or her staff, is in line with both the letter and the spirit of the EBCG Regulation.

I therefore expect that the Agency takes in account all the Commission's suggestions while finalising the preparation of the draft Decision for adoption at the next Management Board on 20-21 January 2021. I also expect that the Management Board receives all the necessary information and documentation in a timely and proper manner, in order to enable it to perform its duties under the EBCG Regulation.

Finally, for full transparency, I would like to inform you that the Commission will submit to the LIBE Committee this letter and the attached timeline on the main steps in the recruitment of Fundamental Rights Officer, deputy Fundamental Rights Officer and Fundamental Rights Monitors as well as the development of the new fundamental rights framework, to set the record straight.

The preparation of the standing corps

Please let me also take this opportunity to express my disappointment regarding some aspects of the Agency's preparatory process for the standing corps, in particular, as regards the unclear numbers of the operational staff. Regretfully, also the essential parts of the implementing framework, including the draft rules for the authorisation by the Executive Director on the carry and use of weapons, were submitted to the Management Board, for the very first time only at the end of November 2020, triggering the well justified need for the consultation of the Member States.

Similarly, for the draft Management Board Decision on the supervisory mechanism, despite the authorisation received already at the end of May 2020 to seek the Commission's agreement in accordance with Article 110 of the Staff Regulations, the formal submission was on 23 October 2020. Unfortunately, this draft had to be again, this time in its full version, consulted with the Member States. Most of these last minutes delays could have been easily avoided if the Agency would have earlier worked for the preparation of these measures in a more proactive way with Member States' experts and Commission services.

I expect that the Agency will ensure that all these measures are effectively ready for the adoption at the Management Board meeting in January 2021. Equally, I would expect that the Agency will make the necessary efforts to recruit as soon as possible all the 700 Category 1 staff identified in the respective Management Board decision of 3 April 2020, so they could be deployed as team members of the Standing corps in 2021.

Yours sincerely,

Monique PARIAT

Cc: Marko Gašperlin, Chair of the Management Board

Annex

Timeline regarding the development of the Frontex's fundamental rights monitoring framework under the EBCG Regulation

The EBCG Regulation has reinforced Frontex's internal independent mechanism to monitor the compliance of the Agency's operational authorities with fundamental rights, in order to take account of the extended mandate, capabilities and resources of the Agency. This mechanism is based on the reinforced role of the already existing Fundamental Rights Officer of the Agency (FRO) to be assisted by additional staff: a deputy FRO and at least 40 Fundamental Rights Monitors (FRMs) acting under the FRO's hierarchical supervision. Article 110(6) of the EBCG Regulation provides that the FRMs should have been recruited by 5 December 2020. The FRO's independence is the cornerstone of the Agency's independent fundamental rights monitoring system

Ms Inmaculada Arnaez was appointed by the Frontex Management Board as the Frontex's FRO in November 2012, and her second 5 year contract started in 2017. Since March 2020, Ms Arnaez has been mostly absent and not able to perform her duties, including to participate in the appointment procedures for the Deputy FRO and the FRMs, as provided for in the Regulation. At the end of August 2020, Ms Arnaez initiated an administrative procedure which can lead to ending her assignment as the Agency's Fundamental Rights Officer.

In accordance with Article 109(4) of the EBCG Regulation, the Agency's Management Board must *"lay down special rules applicable to the fundamental rights officer in order to guarantee that the fundamental rights officer and his or her staff are independent in the performance of their duties"*.

- **July 2019: EBCG 2.0 Roadmap (agreed between the Director-General of DG HOME and the Executive Director)**, specifying that the recruitment of the Deputy FRO and 40 FRMs needs to be prioritised, together with all the new arrangements reinforcing the FRO's independence (i.e. special rules guaranteeing his or her independence). Deadline Q4 2019.
- **6 November 2019: The Frontex Executive Director (ED)** enquires in writing with DG HOME how the FRO's independence can be compatible in particular with the role of the Frontex ED as delegated authorising officer under the Financial Regulation, in view of the significant budget at the disposal of the FRO's Office.
- **19 November 2019: The ED** publishes the vacancy notices for the posts of the FRO and the deputy FRO.
- **20-21 November 2019: The Chairperson (MB Chair)** states at the Management Board (MB) meeting that the vacancy notice for FRO and Deputy FRO could not be published without agreement of the MB as appointing authority.
- **22 November 2019: The MB Chair** requests the Commission's legal opinion on the matter.
- **3 December 2019: Note from COM (Director Oel)** to the ED, clarifying that the publication of these two vacancy notices was indeed unlawful due to the lack of the appointing authority's (MB) approval and, for the deputy FRO, without involvement of the FRO as required by the EBCG Regulation. Moreover, the fact that the publication was made more than a year prior to the end of the term of office of the then FRO could be considered as an attempt to discredit or weaken the holder of the FRO's post, and give rise to an action for damages. Finally, request to launch a modification of the MB

decision on the delegation of the appointing authority's powers (AIPN) to clarify the roles of actors within the Agency, in accordance with the EBCG Regulation.

- **10 December 2019:** At a video-conference held with the MB Chair and COM, the **ED** questions the eligibility of the then FRO to continue in the post under the terms of the EBCG Regulation, as managerial experience was not a criterion when the then FRO had been selected. He therefore calls for Ms Arnaez's replacement in the FRO's position.
- **7 January 2020:** The **MB Chair** requests COM's advice on the ED's concerns.
- **4 February 2020:** The **COM [Director Oel]** replies in writing that a balance must be struck between the FRO's independence and the necessity to upgrade the job description and the status of the FRO, and recommends that:
 - The status of the job holder of the FRO post [Ms Arnaez] is enhanced in line with FRO's new powers and tasks as a middle management post. The MB should consequently adopt a decision on the temporary occupation of a management post by the FRO, in accordance with Article 7(2) of the Staff Regulations (up to 1 year maximum);
 - In order to allow the abovementioned upgrade of the FRO's functions, that the MB adopts as soon as possible the model decisions on middle management staff and on temporary occupation of management posts⁶;
 - The MB prepares the future FRO's vacancy notice and publishes it sufficiently early before the end of the temporary posting of the then FRO job holder as a middle manager;
 - To adapt, as a matter of urgency, the MB decision on AIPN to the EBCG Regulation, including by clarifying that it is for the MB to exercise all the AIPN powers in respect of the FRO and delegating some of those powers to the FRO as regards his/her staff, in particular the FRMs.
- **4 March 2020:** Following extensive internal consultations (DG BUDG, LS, DG HR, DG HOME) and taking into account the exchanges on the appointment of the FRO, **COM [DG Pariat]** replies to the ED's enquiry of **6 November 2019** providing detailed guidance regarding the function of FRO (and his/her staff) as regards his/her status, relations and interactions with the Management Board and the function of the ED. The guidance comprehensively addressed all of the ED's questions in the area of human resources, budget, and operational aspects.
- **6 March 2020:** **ED** submits the very first draft of the revised MB Decision *on delegation of appointing authority powers (AIPN Decision)*. Following the informal consultations of COM services, the **COM [Director Oel]** provided on **10 March 2020** preliminary comments on the draft MB Decision on AIPN, indicating that the proposed provisions regarding FRO and FRO's staff are not fully in line with the Agency's founding regulation that directly sets out the respective AIPN powers.
- **26 March 2020:** The **MB Chair** informs the MB members that, due to the COVID-19 crisis, the adoption of two MB decisions on middle management staff and on the temporary occupation of management posts, will follow shortly via written procedure.

⁶ Unfortunately, despite the fact that the Commission authorised all the decentralised agencies in 2018 to adopt respective decisions on middle management and on temporary occupation of management posts based on the models agreed by the Commission, Frontex did not do so until mid-2020.

- **30 April 2020:** The **Agency** submits the very first draft MB decisions on middle management staff and on the temporary occupation of management posts to the **COM** for informal consultation.
- **April-May 2020:** Intensive exchanges between the **COM** services and **Frontex** to translate the AIPN arrangements set out in the EBCG Regulation on the FRO and his/her staff as well as other Agency's staff (Deputy Executive Directors, Security Officer) into the revised MB decision on AIPN. Following the exchanges and clarifications, on 25 May 2020, COM provided the final comments to the Agency on the draft AIPN decision.
- **9 June 2020:** By email, following internal consultations, **COM, at technical level,** provides positive feedback on these two model MB decisions. However, COM recommends a technical modification in the model Decision on middle management in order to reflect the specific selection process for the FRO where the MB acts as AIPN, as opposed to the regular selection of middle managers organized and concluded by the Frontex ED acting as the delegated AIPN.
- **10 June 2020: Frontex and the European Union Agency for Fundamental Rights (FRA)** sign a Service Level Agreement (SLA) on the establishment and recruitment of the Frontex Fundamental Rights Monitors. In the framework of this SLA, the agencies will design a framework for the operationalisation of the Fundamental Rights Monitors through, amongst others, developing a manual of monitoring tools and setting up a training curriculum.
- **17-18 June 2020:** In the MB meeting, the **MB Chair** informs the Board about the prolonged absence of Ms Arnaez and the recruitment plans for the future FRO, the Deputy FRO and FRMs. **ED** also informs that the Agency is closely cooperating with the FRA, which should facilitate the recruitment of FRMs. **COM** insists that the two essential decisions [on the middle management function and on temporary occupation of the middle management] as well as the decision on the appointment of the FRO ad interim are adopted as soon as possible, especially, as the latter is required to organise the selection process for FRMs, to be recruited by 5 December 2020. Also, **ED** presents the general concept of the special rules on the FRO's rules on independence and accountability. **COM** highlights that the Agency's financial regulation already provides for detailed rules on the FRO's accountability in his or her capacity as delegated Authorising Officer. In order to speed up the process and have the decision soon in place, the **COM** encourages the Agency to already consult the COM on the draft text of the special independence rules informally.
- **13 July 2020: ED** submitted a revised draft MB Decision on AIPN for the Commission's review. **On 21 July 2020, COM replied** on the revised draft, mostly recalling the outstanding comments to ensure its full compliance with the Regulation.
- **13 July 2020: ED** informally consults the COM on a very first fully-fledged draft of the rules to guarantee the FRO's independence in accordance Article 109(4) of the EBCG Regulation. **COM** provides its preliminary comments on 16 July 2020, pointing out in particular to the missing elements, especially on the role and independence of the FRMs , and to that the proposed framework to control the FRO seems excessive.
- **15 July 2020: Frontex MB secretariat** launches the adoption of two MB Decisions via written procedures.
- **16 July 2020:** The **MB Chair** organises a dedicated meeting with the participation of the COM [Director Oel], ED, a representative of FRO's office, the Consultative Forum Chair and a representative of the FRA to take stock of the different activities regarding the fundamental rights, including the relevant recruitments.
- **17 July 2020:** By email, after an analysis by the competent COM services, **COM** [Director Oel] communicates to the Agency that the draft MB Decision on middle management envisages the consultation of the ED in the FRO's selection process and

that such an arrangement would be clearly against the EBCG Regulation. This addition would also contradict the COM's legal opinions on the FRO's independence provided to the Agency in December 2019, February 2020 and March 2020. Furthermore, it would not reflect the latest discussions on the MB decision on AIPN.

- **22 July 2020: Frontex MB secretariat** withdraws this draft proposal from written procedure by indicating that further modifications are needed.
- **4 August 2020: The Agency** sent another revised draft MB Decision on AIPN. **On 20 August 2020, COM** commented on the revised draft MB Decision recalling the outstanding comments to ensure its full compliance with the Regulation.
- **12 August 2020:** By email, the **MB Chair** informs the COM that the ED resubmitted the proposal for the MB decision on middle management, but that also the new draft still provides for a consultation of Frontex ED before the appointment of FRO. The ED's involvement is justified by the need of “(...)having a well-functioning cooperation between the ED and the FRO appointed by the MB”.
- **18 August 2020:** By email, **COM [Director Oel]** re-confirms the COM's interpretation that the ED's involvement in the FRO's selection would be against the EBCG Regulation.
- **24 August 2020:** In the preparatory meeting ahead of the September 2020 MB meeting, the **ED** insists that he needs to be involved in the selection of FRO with a view to his responsibility for the FRO's budget in his function as the Agency's authorising officer.
- **31 August 2020:** The **ED** submits to the Commission a slightly redrafted version of the MB Decision on middle management including, again, the ED's involvement in the FRO's selection process.
- **4 September 2020: The MB** authorized the ED by MB Decision 22/2020 to request the COM's agreement on the MB decision on AIPN. **On 21 September 2020, the ED** submitted a draft MB Decision on AIPN for the COM's agreement in accordance with Article 110 of the Staff Regulations.
- **7 September 2020:** By email, **COM [Director Oel]** re-confirms the COM's interpretation that the ED's involvement in the FRO's selection would be against the EBCG Regulation. To facilitate the launch of the written procedure, COM prepares itself a final draft of the MB decision on middle management and provides it to the members of the MB.
- **23-24 September 2020:** During the 81st MB meeting the **MB** discusses the process of the FRO's recruitment, including the urgent need to adopt the MB decision on middle management. **ED** indicates that his interactions with FRO as regards the financial management need to be addressed. **COM** clarifies that the MB on the middle management setting the FRO's selection process is not the right place to address financial management issues. As already advised in March 2020, the special rules to be established on the FRO's independence would be the better place. **MB Chair** instructs the ED to submit the final version for an adoption by the MB via written procedure.
- **23-24 September 2020:** At the same meeting, the **MB** appoints Ms Annegret Kohler as Fundamental Rights Officer ad interim, as a temporary solution in order to secure the continuity of the FRO's function until the new Fundamental Rights Officer is in place, in particular the timely implementation of the relevant provisions of the EBCG Regulation, including the recruitment of 40 Fundamental Rights Monitors.
- **7 October 2020 (extraordinary meeting): MB Chair** enquires with the ED about the state of play of the urgent file of the MB Decision on middle management. Frontex ED replies that some important points made by the COM during that 81st MB meeting on 23-24 September need to be reflected in the meeting minutes, and only once it would be confirmed that the minutes contain proper statements the respective written procedure would be processed.

- **10 November 2020:** At the request of **COM**, an extraordinary MB meeting is held; the **MB** adopts the Decision on middle management defining the rules for the selection of FRO and the respective vacancy notice (the vacancy notice is then published on 13 November with a deadline for applications on 18 December 2020). The **Frontex ED** presents the state of play on the preparation of the special rules on FRO's independence.
- **14 November 2020:** On the same day as circulated to the MB, **ED** sends the revised draft rules to **COM**. Unfortunately, the revised draft does not address many of the **COM**'s essential comments provided on 16 July 2020. **COM** replies on **23 November 2020** with another round of comments on the MB decision setting the special rules to guarantee the FRO's independence to ensure the decision's compliance with the regulatory framework, including the Financial Regulation and Staff Regulations. It specified that the document seems to be focussed on imposing duties and obligations of the FRO, rather than supporting the FRO's functions, in particular when it comes to the access to the information/documents as well as to the operational areas for FRO and his/her staff.
- **20 November 2020:** **FRO ad interim** publishes the vacancy notices for the selection of 15 Fundamental Rights Monitors (5 AD +10 AST).
- **25-26 November 2020:** In the 82nd MB meeting, where the draft rules on FRO's independence are presented for the very first time to the MB, **COM** recalls the main concerns provided in writing on 23 November 2020 and urges the Agency to revise the draft rules accordingly. **COM** also stresses the MB's responsibility to make sure that the fundamental rights arrangements and the independence of FRO and her/his staff provided in the EBCG Regulation are really secured and properly reflected in the special rules.
- **25 November 2020:** The **MB** decides on the composition of the selection panel for the recruitment of the FRO.