

Annex

Written questions following the LIBE Committee meeting 1 December

Political group	No.	Question	Answer
S&D	1.	In our opinion, the transparency of the activities of the Agency in this matter has been inadequate and poor. In which aspects and how exactly are you planning to improve the insufficient transparency without affecting operational capabilities?	There are a number of ongoing initiatives to enhance the transparency with due consideration of the needs of operational activities. The newly established Working Group will be presented with all information necessary to facilitate its work. The Agency is also exploring the possibility to revise the Standard Operating Procedures (SOPs) guiding the Serious Incident reporting.
Renew	2.	In your replies to the LIBE Committee you referred to the difficult security situation at the Greek-Turkish border and you specifically mentioned incidents with F-16s. In the LIBE committee, you mention the emergence of new hybrid threats at the borders and at sea. Can you describe these threats and how they affect the activities and missions of Frontex? You appeared to imply that this changes what is legally permissible in terms of operational actions. In that light you also mentioned that you would ask advice from the newly established Working Group to provide for the interpretation of EU law on this matter.	Frontex operations are a balancing act between internal and external security, protecting the external European Union border, while at the same time facilitating legitimate travel and cross-border activities. In a world of increasing complexities where the importance of the geopolitical circumstances inevitably has an impact on the Agency's operations, we remain mindful of relevant political and socioeconomic developments in the pre-frontier area. During the hearing in front of the LIBE Committee I stated that since March 2020, it is not an exceptional situation that shootings are coming from the Turkish side of the land border, where Frontex patrols operate. There have also been cases where Turkish military jet fighters have surrounded Frontex aerial assets. I escalated some of these cases further, providing the information to the European

		<p>Does this mean that you consider that "national security" or "hybrid threats" considerations would justify pushbacks at sea and could change the obligations concerning <i>refoulement</i> and the respect for the right to seek asylum for your Agency?</p> <p>If not, why would you request such an opinion? Can you share with us the detailed working mandate of the Working Group as decided by the Management Board, i.e. which specific legal questions have been put to them?</p>	<p>Commission. In addition, the Greek authorities had said that they are facing hybrid threats, and that national security is at stake.</p> <p>I decided to escalate this to the relevant minister in the form of SIR, on the 08/05/2020 responded on 10/07/2020.</p> <p>I assume that there has been a misunderstanding as at no point during the hearing I had mentioned that hybrid threats could be used to justify any violation of fundamental rights - I am simply trying to present to LIBE Committee all elements that are part of the operational environment of Frontex in the area. This geopolitical and security environment explains why in some circumstances operational information has to be handled more cautiously, at least temporarily before it may be spread to a wider audience.</p> <p>In regards to the mandate of the Management Board (MB) Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (FRaLO), please refer to the annexed MB Decision no 39/2020 dated 26 November 2020.</p>
Renew	3.	<p>The LIBE Committee of the European Parliament has repeatedly heard about complaints against the Agency or Member States participating in the Agency's operations, allegedly being involved in fundamental rights violations, including in Bulgaria, Greece, Hungary and Croatia. This has</p>	<p>Whilst Frontex understands the LIBE Committee request, as a new Agency structure has been approved by the Management Board on 9 December 2020 (MB Decision no 43/2020), it seems premature to commission any external independent audit in 2021 on the Agency's accountability structures (in the sense of audit of the organizational</p>

		<p>been the case for the past few years, and reports continue to surface. So far, the predominant response has been to either deny involvement or to point to a limitation of competences and monitoring capabilities. At the same time, the Agency has acquired - due to Parliament's loyal cooperation - substantial additional funding and competences. However, it appears that the accountability of the Agency is not catching up with these new resources and competences. In the coming years, when the Agency will start to implement its enhanced mandate further and acquire increasing numbers of staff, including armed staff, this question will only become more pertinent.</p> <p>In this light, will the Executive Director commit to commission an external and independent audit of the Agency's accountability structures?</p>	<p>framework that includes an outline of the roles and responsibilities, describing the processes and the support necessary to function effectively).</p> <p>The new Agency's structure is in the process of implementation and among others it foresees the creation of an independent Internal Audit Capability which in the future will be empowered to conduct such audit.</p> <p>Moreover, the Internal Audit Service (IAS) will soon propose a draft Strategic Internal Audit Plan. At this stage it is not possible to state the potential audit topics however, Frontex as an auditee will be able (during the contradictory procedure) to propose to IAS to include specific audit topics (e.g. Agency's accountability structures).</p> <p>Additionally, in 2021 the Inspection and Control Office of the Agency will grow in size and responsibilities in order to be able to deal with a foreseen increasing number of administrative inquiries and to conduct inspections/controls in the field related to the operational deployment of the standing corps.</p>
Renew	4.	<p>Do you share the view that more regular reporting and exchange of views with the members of the European Parliament would allow for more efficient democratic control over the activities of Frontex?</p>	<p>The Agency always stands ready to report to the European Parliament (EP). As for sharing sensitive information Frontex would welcome the setting up of duly accredited and specialised group of the EP to exchange restricted information at a rhythm that would suit the EP.</p>

		In particular, by sharing sensitive information to a restrictive and specialised group of MEPs on a regular basis?	
Renew	5.	<p>One of the key elements of accountability concerns transparency. While acknowledging the operational nature of the information held by the Agency and the CJEU judgement regarding Frontex and transparency, how would the Executive Director explain the decision of the Agency to pursue before the EU General Court the payment of 23,700 EUR in legal costs from two individuals?</p> <p>Would you not consider this to be a real discouragement for citizens that may want to pursue legal action related to the transparency of the Agency?</p> <p>Should EU Agencies not welcome rather than penalise requests for transparency?</p>	<p>In addition to our answer to the LIBE Committee of 24 July 2020, Frontex would like to recall that following the Court’s dismissal of the applicants’ five pleas in law and its order that the applicants bear Frontex’s costs in line with Article 134(1) of the Rules of Procedure of the General Court, Frontex’s legal team was in contact with the applicants to reach a solution with the applicants in regard to its legal costs. While Frontex has reduced these costs, the applicants repeatedly publicly criticised this judgment and maintained that they would not pay any costs. Transparency obligations are an important but not the only obligation Frontex has to adhere to and by implementing the General Court’s order on the applicants, Frontex acts in accordance with its duty to ensure sound financial management, to protect the financial interests of the EU and to responsibly implement its budget. Being part of the European public administration, Frontex has a legal obligation to respect the applicable legal framework including rulings and orders of the Court in this regard. It has thus to be emphasised that at no juncture did or does Frontex penalise requests for transparency or deter any individual from initiating or continuing the pursuit of legal actions. Frontex must respect the cost regime for proceedings before the Court of Justice of the European Union.</p>

On the implementation of the fundamental rights provisions of the EBCG Regulation

Renew	6.	<p>We also saw (Frontex website has now vacancy notice for AD 7 posts and AST 4) that only a share of the monitors will be recruited at AD level. Let's be clear that the Regulation requires 40 monitors, i.e. 40 persons able to conduct the tasks laid down in Article 110 of the EBCG Regulation. By definition, persons recruited at "assistant" level cannot conduct these tasks as envisaged by the Regulation (given that in formal terms no university degree is required but only a post-secondary education attested by a diploma). We request that all monitors recruited must be able to fulfil the tasks of Article 110 so they must be recruited at administrator level equivalent to a coordinating officer of an operation.</p> <p>Can you explain how you see the implementation of the fundamental rights monitors' mandate on the field, and how concretely will they ensure strong monitoring and alert mechanisms, especially to prevent pushbacks?</p> <p>Can you precise the exact timetable for the recruitment and deployment of the fundamental rights monitors?</p>	<p>Two selection procedures were published in November 2020 (AD7 level and AST4 level - comparable to the levels of Advanced and Intermediate European Border and Coast Guard Officers).</p> <p>The publications could have been made only after the Management Board adopted the necessary set of (complex) legal instruments so that it is the independent Fundamental Rights Officer (appointed by the Management Board as a middle manager) who approves all the details of the selection procedure.</p> <p>The Fundamental Rights Monitors (FRMs) will perform their duties as per Article 110 of Regulation 2019/1896 and from the point of view of organisation, the Fundamental Rights Officer decided (in an agreement with the Executive Director) that there will be two 'levels of seniority' of FRMs (c.f. there are three levels of seniority of standing corps category 1: AD7 + AST4 + CA FGIV). The AD7 FRMs should, indeed, be a counterpart and equivalent of coordinating officers (or of the Advanced-level of standing corps Category 1) while the AST4 FRMs activities (predominantly) in the field should ensure strong monitoring and alert mechanisms in line with the tasks of Assistants as described in Annex I to the Staff Regulations: "<i>Carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions ...</i>". Additionally, the choice of the AST4 grade</p>
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<u>On serious incident reports</u>			
Renew	7.	<p>In your letter to us of 24 November you reply to our questions regarding the incident of 8 June reported in the press. Your replies contain what looks like a contradiction, namely you first write that “no suspicious incidents have been reported” to start the next sentence by saying “Incident reported as a prevention of departure”.</p> <p>Can you better explain this passage? <i>On the 07-08.06.2020 the Romanian Coastal Patrol Vessel (CPV) MAI 1103 performed the scheduled patrol at the sea area North of Lesbos</i></p>	<p>Near the time and location of the reported incident in the press there has been “Incident reported as a prevention of departure” within the Frontex Joint Operation (JO). Nonetheless, the mentioned vessels in the press article did not report nor were engaged in any incidents.</p> <p>“Prevention of departure” is defined as an incident type whereby the DETECTION is made by an EU Member State or Frontex-deployed asset, upon which the Host Member State authorities notify the third country counterparts who, (based on their own decision) may follow up on the call and intercept the migrants. Given that the Host Member State authorities are involved in the detection, they are able and</p>

		<p><i>between the hours 07.06.2020 22:00 and 08.06.2020 10:00. In the mission report issued by the Romanian CPV, <u>no suspicious incidents have been reported.</u></i></p> <p><i><u>Incident reported as a prevention of departure</u> corresponds with the timing, location and number of migrants in a claimed pushback incident. Neither the claimed active involvement of the assets deployed under Frontex Joint Operations nor a pushback itself can be confirmed in relation to the reports in the media. The videos posted by the media do not show the full data (such as dates) nor the whole context. The images of the locations of the assets and dinghies are only presumable, based on what cannot be confirmed from the article only. XXX</i></p> <p>Could you explain what you consider precisely as a “prevention of departure” incident? Given that the Rapid Border Intervention Aegean takes place in Greece and not in Turkey how can there be an “Incident reported as a prevention of departure”?</p>	<p>bound by the Operational Plan to report such incidents to Frontex, even though the migrants will stay on the territory of the third country. Naturally, by the nature of the incident type, details about such cases (including details on the migrants themselves) are very limited.</p> <p>It should be highlighted that all incidents are reported and classified in the JORA system by the Hellenic Coast Guard (International Coordination Centre).</p>
Renew	8.	<p>It seems according to “Annex: Report on the questions received following the Extraordinary MB contains the following also transmitted as Annex 1 to the letter of 27 November” on 08 June 2020 three incidents were classified by Greek</p>	<p>Greek authorities reported the incident (407206) as a ‘prevention of departure’.</p> <p>There have been three incidents in total reported as a prevention of departure in the operational area in different locations on 8 June 2020. Reportedly, MAI1103 did not</p>

		<p>Authorities as preventions of departure. Does this include the incident reported in the press involving the ship MAI1103?</p> <p>If not who reported that incident and classified it as “prevention of departure”?</p>	<p>engage directly in those incidents on 08 June, but Romania has confirmed in recent correspondence that their vessel has detected and monitored the migrant boat, that was responded to and reported by the Hellenic asset and linked with one of the mentioned prevention of departure incidents.</p> <p>However, at the time when Frontex reported on the three incidents there was no operational information, corresponding to the alleged involvement of any Frontex deployed vessels.</p> <p>It should be highlighted that all incidents are reported and classified in the JORA system by the Hellenic Coast Guard (International Coordination Centre).</p>
Renew	9.	<p>Besides the report made available to the Management Board of 10 November has there been so far or will there be any further assessment by Frontex and/ or the Fundamental Rights Officer in order assess the specific case?</p>	<p>As already mentioned an MB Working Group FRaLO has been established and a detailed description of the role and mandate of the Working Group can be found in the annexed MB Decision no 39/2020 dated 26 November 2020.</p> <p>It should however be made clear that the Working Group is completely independent and Frontex Executive Director has no mandate to interfere in its work and decisions.</p>
Renew	10.	<p>By letter of 27 November you send us your letter to Mr Ioannis Plakiotakis, the Minister of Maritime Affairs and Insular Policy of Greece, of 8 May as regard the sighting of a migrant boat by Frontex contracted aircraft operating in the Aegean Sea on 18 April, and the reply you received on 10 July. You have indeed written a</p>	<p>First of all, the SIR referred in your question is a Category 2 one and not Category 4 - violation of fundamental rights. Additionally, after an exchange of letters between Frontex Executive Director and the relevant Greek authorities, the SIR was closed (please also see the answer to question 13). Based on the above, the incident was not included among the ones considered for the list.</p>

		<p>letter expressing concern about a situation which looks like a push-back and subsequently you seemed to have been satisfied by the replies of the Greek authorities. But this raises some serious questions:</p> <p>There was a serious incident and a report about it report but this incident is not listed by you in the list of serious incidents report we have requested (we have requested by letter of 4 November the list of serious incidents reports regarding the operation in Greece since the information sent to us by your letter of 4 May this year and this case is not listed; it is also not listed in your letter of 4 May in which had asked about all serious incidents reports received this year regarding any of the operations in Greece in 2020).</p> <p>Why was this incident not included in the lists in your letters of 4 May and 24 November?</p>	
Renew	11.	<p>Can you please share with us a detailed report about what on 18 April 2020, the Frontex contracted aircraft operating in the Aegean Sea observed?</p>	<p>Please find below a detailed report of the events on 18-19 April:</p> <p>18.04.2020</p> <ul style="list-style-type: none"> • At 22:58 Hellenic Coast Guard (HCG) Sea Border Expert, based in International Coordination Centre (ICC) Piraeus informed Frontex Situation Center (FSC) Team Leader about an incident north of Lesbos asking to reach the point.

			<ul style="list-style-type: none"> • At 23:05 Frontex Surveillance Aircraft (FSA) spots a rubber boat with approx. 20-30 persons on board (POB), stopped, and one Greek Patrol vessel is very close. • At 23:22 FSC Team Leader sends the Early Warning report to the competent Greek Authorities (incident inside Greek Territorial Waters - Two Hellenic Coast Guard patrol boats and one Turkish Coast Guard are in the vicinity of the target). • At 23:38 Hellenic Coast Guard Sea Border Expert cleared Frontex Surveillance Aircraft to resume normal patrolling. <p>19.04.2020</p> <ul style="list-style-type: none"> • At 00:03 Frontex Surveillance Aircraft observes and sends to FSC the picture of the Greek patrol boat towing an empty rubber boat. The migrants are on board the patrol boat. • At 00:06 Hellenic Coast Guard Sea Border Expert asks Frontex Surveillance Aircraft to fly south, contrary to flight schedule to fly south-east. • At 02:37 the migrants are transferred on board the rubber boat previously towed from the patrol boat, the second patrol boat, a Rigid Hulled Inflatable Boat (RHIB), awaits in the vicinity. • At 02:43 Frontex Surveillance Aircraft affirms that nearby the rubber boat with migrants on board there
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			<p>are no Turkish Coast Guard vessels, only Hellenic Coast Guard.</p> <ul style="list-style-type: none">• At 02:46 Frontex Surveillance Aircraft takes a picture of a Greek patrol vessel towing the rubber boat with migrants on board towards Turkish Territorial Waters with course 051°. Hellenic Coast Guard Sea Border Expert requests to fly north.• At 02:57 Hellenic Coast Guard Sea Border Expert sends instructions to fly northbound for the remaining 30 min of flight, when the Frontex Team Leader in the European Monitoring Room at Frontex HQ asks Hellenic Coast Guard Sea Border Expert (Greek LO exceptionally acting remotely from ICC Piraeus due to COVID-19 restrictions) if there is any specific reason to fly north the reply from Hellenic Coast Guard Sea Border Expert is “negative”.• At 03:21 Frontex Surveillance Aircraft communicates that the rubber boat has no engine and it is adrift at 39° 16’N 026° 35’E. Greek assets are departing the area leaving the rubber boat adrift.• At 04:48 Frontex Team Leader in the European Monitoring Room at Frontex HQ proposes to Hellenic Coast Guard Sea Border Expert to divert TASTY, aerial asset already airborne, to check the rubber boat. Hellenic Coast Guard Sea Border Expert replies: “Negative. Tasty will continue its normal route”.
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			<ul style="list-style-type: none"> • Once Frontex Surveillance Aircraft had landed, FSC Team Leader offers a second flight to Greek authorities to collaborate with the mentioned SAR being rejected the aid on the grounds that the Turkish Coast Guard had assumed the coordination of the incident. • At 15:55 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.
Renew	12.	Do you not consider inappropriate the instructions received from the Hellenic authorities which - as it seemed - ordered Frontex assets systematically to leave the area?	The tactical command of the assets is in the hands of the International Coordination Centre (Hellenic authorities) after consultation with the National Officials (NO). Further information lies with the relevant Member States authorities.
Renew	13.	You repeatedly said that Frontex must rely on the assessments of Member States and that Frontex cannot investigate MS activities but at the same time you have yourself information that a violation of fundamental rights most likely happened. But given that this incident happened during a Frontex operation, you have obligations under the EBCG Regulation (Art. 46.). How do you do you intend to assume your role in such situations?	<p>While Frontex has no investigative powers on Member States' activities according to the European Border and Coast Guard Regulation, letters have been sent by the Executive Director respectively and Greece has clarified its position. It can be highlighted that all the relevant EU agencies (such as Europol and EASO) are continuing their support for Greece as well as the Commission in support of migration management and reception facilities. NATO has also an ongoing activity in the geographical area.</p> <p>It should also be underlined that operational activities of the Agency are closely monitored and, when necessary,</p>

	<p>Given the high reputational risk for Frontex and the entire EU can you be satisfied by a letter only?</p>	<p>subject to action by the Executive Director in accordance with Article 46(4) of the Regulation which provides that</p> <p><i>“The Executive Director shall after consulting the Fundamental Rights Officer and informing the Member State concerned, withdraw the financing for any activity by Frontex, or suspend or terminate any activity by Frontex, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist”.</i></p> <p>Furthermore, according to Article 46(6) of the Regulation:</p> <p><i>“The decisions referred to in paragraphs 4 [...] shall be based on duly justified grounds. When taking such decisions, the Executive Director shall take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The Executive Director shall inform the Management Board of such decisions and provide it with justifications therefor”.</i></p> <p>So far, no duly justified grounds have been found. The Executive Director considers that based on the provisions</p>
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			above, there were no violations of fundamental rights or international protection obligations related to the activity concerned that were of a serious nature or were likely to persist, and thus it has not been considered to suspend or terminate, or withdraw financing for any of the Agency's activities.
Renew	14.	<p>We have asked in the letter of 4 November in question no 9 whether you consider that the Agency requires additional powers to investigate incidents in case of joint operations or interventions. In your answer you seemed to have interpreted the question in a different manner than intended and referred to the matter a supervisory mechanism on the use of force by standing corps staff while the question related to the assessment of MS' claims in operation.</p> <p>So coming back to the question raised in our letter: is something missing in your mandate to investigate claims made by MS, such as contained in the letter of the Greek Minister of 10 July?</p>	The opinion previously given by the Agency on this question was voiced in the framework of the current mandate. It belongs to the EU legislator to decide whether the Agency should have powers to investigate claims of Member States.
		Fundamental Rights Officer and Fundamental Rights Monitors	
Greens/EFA	15.	According to the EBCG Regulation, the Agency shall ensure that by 5 December 2020 at least 40	Two selection procedures were published in November 2020 (AD7 level and AST4 level - comparable to the levels of

		<p>fundamental rights monitors are recruited by the Agency. The Executive Director stated that this number will not be met on the 5th of December. When does he expect this obligation to be fulfilled?</p>	<p>Advanced and Intermediate European Border and Coast Guard Officers).</p> <p>As of mid-December 2020, Frontex received more than 20 and 30 applications respectively and the application period will finish in early January 2021. The selection process will take (depending on number of applications received) at least two months. Consequently, the first new Fundamental Rights Monitors are expected to join Frontex in March/April 2021 with additional ones to follow in Q2 and Q3 of 2021 (also depending on the period of notices the appointed candidates will be obliged to honour with their current employer) [for further details, please refer to Q6].</p>
Greens/EFA	16.	<p>The Executive Director explained in the hearing that the delay in the recruitment of the fundamental rights monitors was caused by the order to withdraw the vacancy for the Fundamental Rights Officer by the end of last year. Was this withdrawal not grounded in the fact that the Executive Director does not have the mandate to recruit the Fundamental Rights Officer, as this is the competence of the Management Board? Does the Executive Director agree that it was not the order to withdraw the vacancy, but the unlawful act of recruitment that caused this delay?</p>	<p>The original selection procedure RCT-2019-00075 published a year ago foresaw that the final selection and the appointment to be made by the Management Board based on a final list of three candidates presented by the Executive Director (and after consultation with the Consultative Forum).</p> <p>While there was no ‘unlawful act of recruitment’, the Management Board decided to increase the principle of independence of the Fundamental Rights Officer in a sense that the Executive Director will play effectively no role in preparation of the selection process. This approach differs significantly from the approach that prevailed previously. The Executive Director was asked to complete all preparatory works related to the recruitment of the</p>

			<p>Frontex Accounting Officer which is another sensitive and independent function appointed by the Management Board. The new publication could have been made only after the Management Board adopted the necessary set of (complex) legal instruments.</p>
Greens/EFA	17.	<p>What were the reasons for the Executive Director to not include the Fundamental Rights Officer's suggested amendments to the RBI EVROS 2020 operational plan, specifically to Annex 2 - General Instructions on how to ensure the safeguarding of fundamental rights during the operational activity including complaints mechanism?</p>	<p>Fundamental Rights safeguards in Rapid Border Intervention (RBI) Evros 2020 operational activity were in place and they did not differ from any other operational activity implemented simultaneously in Greece (i.e. Joint Operation (JO) Poseidon, JO Flexible Operational Activities (FOA) Land, JO Focal Points Land/Air) or elsewhere. RBI Evros 2020 was launched and implemented as a complementary activity to the JO FOA Land 2020 i.e. it provided additional resources to a joint operation which was already ongoing in the region by using the rapid border intervention mechanism. The implementation, command and control, as well as all fundamental rights safeguards, were in place by the ongoing operation (JO FOA Land 2020). Measures to safeguard fundamental rights as well as the establishment of complaints mechanisms are standard parts of the operational plans and systematically implemented in all joint operations of the Agency. Both operational plans (FOA Land and RBI Evros) were subject to agreement with the host Member State (Greece) in accordance with the EBCG Regulation.</p> <p>By its activities Frontex provides technical and operational support to border management and return activities and gets its legal powers from the Host Member State</p>

			legislation. Apart from ensuring that persons are referred to appropriate national processes by competent national authorities, including the identification of person's possible need for international protection and subsequent asylum procedure is outside the competencies of the JOs and RBIs.
Greens/EFA	18.	What were the reasons for the Executive Director to not adopt the Fundamental Rights Officer's recommendation to reconsider the launch and continuation of RBI EVROS 2020 as per Article 46(4) and (5) of the Regulation 2019/1896?	<p>According to article 46 (6) such a decision shall be based on duly justified grounds and, when taking such decisions, the Executive Director shall take into account relevant information.</p> <p>According to the Frontex Regulation, the information that should be taken into account is: the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation.</p>
On operational matters			
Greens/EFA	19.	How many migrants did Frontex assets rescue and bring ashore during each of the months of 2019 and 2020?	Please refer to the statistical figures in the attached excel spreadsheet "SAR in 2019/2020".
Greens/EFA	20.	The Executive Director mentioned in the hearing that the tactical command lies with the host member state, which in the case described is Greece. He then mentioned that if no search and rescue case is declared by the Greek authorities, what remains is the possibility to carry out interception at the borders. The host member	Pursuant to the European Border and Coast Guard Regulation, all the Agency's operations are carried out based on the Operational Plan (OPLAN) (Article 38 of the Regulation) which shall be agreed between the Executive Director and the respective host Member State (MS) in close and timely consultation with the participating MS. The

	<p>state can order the participating units to apprehend or that the “suspicious boat” could be “invited to change its course”, in accordance with Regulation 656/2014. Do you agree that in the case of such interceptions in the territorial sea, Frontex still has to comply with Article 4 of Regulation 656/2014 and “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 <i>non-refoulement</i>.”? In other words, do you agree that authorization of a measure to order a boat to change its course outside of or towards a destination other than the territorial sea or the contiguous zone can never take place without an individual assessment of the personal circumstances, needs and vulnerabilities, including the wish to apply for asylum, of the people on board?</p>	<p>OPLAN is binding on the Agency, the host MS and the participating MS (Article 38(3) of the Regulation). Regarding sea operations, OPLANs shall include specific information on the application of the relevant jurisdiction and applicable law in the geographical area where the joint operation takes place, including references to national, international and Union law regarding interception, rescue at sea and disembarkation; in that regard the OPLAN shall be established in accordance with Regulation (EU) No 656/2014.</p> <p>Regulation (EU) 656/2014 contains, <i>inter alia</i>, specific rules on detection (Article 5), interception (Articles 6-8), and search and rescue (Article 9).</p> <p>On a general note, the suspicious vessels are not necessarily apprehended or intercepted before they may alter their course towards other direction than Greece. In these situations it can be concluded that the persons cannot be identified nor assessed, since they have not been intercepted, but only detected and monitored. However, again as general remarks, if 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, interceptions, based on national and EU law - which include ordering the vessel to alter its course - are possible in the MS territorial sea based on Article 6 of 656/2014 (EU) Regulation.</p>
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Greens/EFA	21.	Does Frontex consider an overcrowded dinghy with women and children on board per se as being in distress?	<p>The Commanding Officer of the patrolling asset makes a decision in each case individually, preferably in consultation with the respective Rescue Coordination Centre (RCC). Frontex deployed assets have an obligation to rescue every person in distress at sea. For each incident, RCC decides whether it will be considered a rescue incident as such.</p>
Greens/EFA	22.	The Executive Director confirmed that Frontex plains detected suspicious movements between Turkish vessels and vessels from the Hellenic Coastguard on the night of the 18-19th of April and livestreamed this suspicious incident in the Frontex command centre. Following this “strange situation”, the “suspicion that something could be wrong regarding	<p>Please see the answer to Question 13.</p>

		<p>fundamental rights” led the Executive Director to send a letter to the Greek minister of Maritime Affairs on the 8th of May to investigate the situation. The Greek minister replied on the 10th of July. Did the Greek government perform an investigation into this incident, as requested by the executive director, and if so, what was the outcome of this investigation? Did the outcome of this investigation ensure the Executive Director that all fundamental rights obligations applicable to Frontex were fulfilled? What standards does an investigation of a national authority need to meet in order to be sufficient for the Executive Director to not invoke article 46 of the EBCR Regulation and suspend or terminate activities?</p>	
Greens/EFA	23.	<p>In case a participant of Frontex witnesses, is involved, or has grounds to suspect about the occurrence of an incident representing a possible violation of fundamental rights or international protection obligations, he/she shall report immediately serious incidents (Category 4). Why was a Serious Incident Report not submitted in the suspicious situation observed by a Frontex plane on the night of the 18-19th of April mentioned above?</p>	<p>Please see the answer to Question 24.</p>
Greens/EFA	24.	<p>Considering the detailed info Frontex possesses on the incident on the 18-19th of April, does the</p>	<p>The Agency is committed to putting the respect of fundamental rights at the core of its activities. Serious</p>

		<p>Executive Director consider this incident to be a pushback/a violation of fundamental rights?</p>	<p>Incident Report (SIR) on 18-19 April 2020 was created based on a sighting of an incident by aerial surveillance where people were transferred on a rubber boat from a vessel, and later on rescued by Turkish authorities. The issue has been addressed to the Hellenic authorities, and they have replied back to the Agency.</p> <p>The Agency strives to discharge its mandated duties with highest standards and in full compliance with fundamental rights.</p> <p>Furthermore, the Working Group FRaLO has been granted the mandate (by the Management Board) to look further into any cases that it considers relevant. As already mentioned, due to the independent nature/statute of the Working Group, Frontex Executive Director cannot interfere in its work and decisions.</p>
Greens/EFA	25.	<p>During the hearing, the Executive Director stated that there was no Frontex aerial surveillance operation on the night of the 28-29th of April across the Greek-Turkish border area in the Aegean Sea. Yet, following the hearing, a Frontex press officer stated that there was an aerial surveillance flight on this night, but that this plane did not register any incidents. Can you clarify this statement and explain whether it is correct that the Frontex operation did not</p>	<p>Frontex Surveillance Aircraft was not deployed on 28 April 2020 after 1:00 am and has not flown on 29 April 2020 therefore, there are no registered records by the plane.</p>

		witness any incident or detected any irregular cross border crossing on the night of 28-29th of April ? Can you confirm that during this night, Frontex did not receive or validate any Joint Operations Reporting Application (JORA) from the Hellenic Coastguard?	
Greens/EFA	26.	Do you not consider inappropriate the instructions received from the Hellenic authorities, which - as it seemed - ordered Frontex assets systematically to leave the area?	In line with the EBCG Regulation, tactical command of the assets is in the hands of the ICC (Hellenic authorities) after consultation with the National Officials (NO).
Greens/EFA	27.	Considering all available evidence, does the Executive Director possess information on any incident that could be considered a pushback? If so, which cases?	<p>Yes, and where this was the case, either an Incident Report or a Serious Incident Report (SIR) was produced/initiated. Please find further information below.</p> <p>Serious Incident Reports:</p> <ul style="list-style-type: none"> a. 18-19 April 2020 - Frontex Surveillance Aircraft (FSA) sighting resulting in the creation of Cat 2 SIR (11095/2020) b. 27 July 2020 - SIR Danish Helicopter sighting - Cat 4(11860/2020) c. 04-05 August 2020 - Frontex Surveillance Aircraft sighting resulting in the creation of SIR - Cat 4 (11934/2020) d. 30 October 2020 - SIR Cat 4 (12604/2020) <p>Pending Incident reports (Frontex Situation Center requested clarifications to the Hellenic Coast Guard)</p>

			<p>a. 09 June 2020 - Frontex Surveillance Aircraft sighting - Incident number: 4074011</p> <p>b. 12 June 2020</p> <p>c. Frontex Surveillance Aircraft sighting - Incident number: 407466</p> <p>d. Frontex Surveillance Aircraft sighting - Incident number: 407467</p> <p>e. 28 July 2020: Frontex Surveillance Aircraft sighting related to SIR 11860 - incident number: 410811</p> <p>f. 05 August 2020: Frontex Surveillance Aircraft sighting - Incident number: 411632</p> <p>In addition, 2 other incidents were identified as they could be relevant in this context:</p> <p>A. 10 August 2020- DEU CPB 62 deployed in Samos</p> <ul style="list-style-type: none"> • In DEU Coastal Patrol Boat (CPB) 62 mission report no.19 dated 10 August the Commanding Officer reported: At 06:00AM, GRC Navy Observation Point PRASO detected an object in position 37°50,0' N 027°01,0' E in Greek Territorial Waters (TW). At 06:15AM, DEU CPB reached position 37°49,9' N; 027°02,1' E and stopped a rubber boat with approx. 40 migrants on board. DEU CPB informed Hellenic Coast Guard (HCG) Samos. At 06:45AM, HCG with asset 604 arrived at the area and took over responsibility of the incident.
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			<ul style="list-style-type: none"> • The mission report no.105 dated 10 August of the HCG CPB 513 co-financed by Frontex reported that: at 07:50 SAR 513 spotted a rubber boat with illegal immigrants in Turkish TW in position: 37 55.1 N; 027 05.9E. SAR 513 informed Joint Rescue Coordination Centre (JRCC) Piraeus and port authority of Samos and remain present in the area of Greek border line to provide assistance, if needed. 08:40 Turkish Coast Guard patrol boat arrived in position adjacent to the rubber boat. 09:20 CPB 604 arrived in area to replace SAR 513. Informed JRCC Piraeus - port authority of Samos and departed from area. • The DEU National Officials (NO) sent an email to the ICC Piraeus asking for clarification about the outcome of the incident. • The HCG authorities informed that after the arrival of the HCG CPBs the rubber boat moved in Turkish TW and Turkish Coast Guard vessel took the responsibility of the incident. ICC Piraeus added that the concerned incident will be categorized as prevention of departure since, upon the sight of the HCG CPB the migrant vessel altered its course and headed to the Turkish Coasts. • Additionally clarifications were provided by the Hellenic Coast Guard: • The migrant boat was detected by the DEU asset in the Greek TW;
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			<ul style="list-style-type: none"> • The sea state at the time of the incident was calm, no threat for the lives of the migrants; • The DEU asset was instructed not to take action and leave the responsibility to the HCG assets arriving at the scene; • HCG assets took up border control measures prohibiting the landing to Samos; • The migrant boat performed manoeuvres after some time changed direction and return back to the TTW; • According to HCG these were border control activities and do not provide any ground to initiate a SIR procedure. <p>B. On 14th of May 2020</p> <ul style="list-style-type: none"> • 00:17LT, Frontex Surveillance Aircraft (FSA) METIS observed a migrant boat with approx. 40 persons on board (POB) heading due south towards the Lesvos coast 39° 25' 25" N 026° 19' 54' E in Greek TW. While the Greek Liaison Officer (LO) is usually located at Frontex HQ within the European Monitoring Team, due to COVID-19 restrictions the Greek LO following the flight in live streaming was exceptionally located at ICC Piraeus. The Greek LO located at ICC Piraeus passed information to HCG and instructed FSA METIS to continue on tasked route. HCG informed that the incident is under control.
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			<ul style="list-style-type: none"> • On the same day, at 00:45LT, CZE Thermo Vision Vehicle (TVV) received a message from HCG that a migrant boat might be located near of the Turkish/Greek border - sector C Lesvos. CZE TVV found this boat in cooperation with HCG and passed the information to the HCG LO. • During the next day's Join Coordination Board (JCB) which is established within the International Coordination Centre (ICC) and runs the operation and carries out daily meetings, the incident has been presented (within the official Power Point presentation) as follows: "On 14 May at 00:10 LT a boat with approximately 40 migrants on board was early detected by HCG CPB 602 and subsequently by FWA METIS at the sea area Akra Korakas, North of Lesvos island. The information passed to CZ TVV and JRCC Piraeus informed (Maritime Rescue Coordination Centre (MRCC) Ankara. At the view of HCG CPB 602 boat altered her course on own initiative/will and headed towards Turkish coastline. Eventually two Turkish Coast Guard patrol boats arrived at the place and took over responsibility of incident." • The incident has been presented as a Prevention of Departure by the ICC Piraeus (HCG).
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Greens/EFA	28.	Romanian authorities confirmed having stopped the migrant boat on June 8; how does the Executive Director explain that there is no mention of this in the mission report?	Romanian authorities confirmed having detected and monitored the migrant boat on 8 June 2020, not having stopped one. Since the response following the detection was performed by the Hellenic asset, the incident was consequently reported only by that asset.
Greens/EFA	29.	Has Frontex received recommendation from the European Commission regarding actions in its missions in Greece?	There are consultations between Frontex and the European Commission on a regular basis. During the meeting of Frontex Management Board held on 03-04 March 2020, the Commission representatives proposed a declaration supporting the Rapid Border Interventions (RBIs) in Greece which was adopted unanimously. Since the beginning of the RBIs, the Agency has not received any specific recommendations from the European Commission regarding the ongoing operational activities in Greece.
Greens/EFA	30.	Knowing what happens to migrant boats after they have been turned over to Greek authorities, will Frontex continue to stop boats and hand them over to Greek authorities? Can the Executive Director assure that none of those migrant boats will be pushed back into Turkish waters?	Frontex will consequently apply the binding legal provisions and in particular its mandate, making the best possible use of the available legal and operational tools and duly examining each and every operational situation, in consultation with relevant stakeholders.
Greens/EFA	31.	Are there any Officials not working for Frontex, from Member States other than Greece, present at the Greek land border?	Within the frame of the Joint Operations coordinated by Frontex and implemented at the Greek land borders officials from the EU/SAC MSs are deployed. To Frontex knowledge no other deployments from the EU Member States e.g. within the frame of a bilateral agreement takes place at the Greek land borders.

On investigations and evaluation			
Greens/EFA	32.	Will the Management Board Working Group on Fundamental Rights investigate the continuous allegations of pushbacks and other violations of fundamental rights at the Greek-Turkish land border in the context of JO Flexible Operational Activities 2020 Land and RBI Evros 2020? If not, what are the reasons for this decision?	Please refer to the attached MB decision no 39/2020 on the establishment of the Management Board Working Group.
Greens/EFA	33.	What is the composition of the Management Board Working Group on Fundamental Rights? Are the Fundamental Rights Officer and the Consultative Forum involved in the Working Group? Is the Management Board willing to involve the Fundamental Rights Agency and an expert from the European Parliament in this Working Group? Will the Working Group also report back to Parliament and how will the transparency of the outcomes of this Working Group be ensured?	<p>Please refer to the annexed MB Decision no 39/2020 dated 26 November 2020.</p> <p>The Fundamental Rights Officer (FRO) and Consultative Forum (CF) are not involved per se but each member of the Working Group may be supported by one expert in legal or in operational matters.</p>
Greens/EFA	34.	The Executive Director mentioned in the hearing that so far, Serious Incident Reports and Joint Operation Report Applications related to the alleged push backs by investigative journalists were examined. In some of these Joint Operation Report Applications (JORA), mentions of	Although the question is not fully clear, what needs to be highlighted is that the relevant Agency services performed thorough enquiries and crosschecked the information published in the media with the incidents reported in JORA. The findings show that none of the incidents claimed by the

		<p>preventions of departure were identified. To which operations (date and place) did the JORA where these preventions of departure were identified apply?</p>	<p>media have been reported as a SIR within Frontex operations.</p>
Greens/EFA	35.	<p>What is the timeframe for the Fundamental Rights Officer's investigation on 'activities in Greece based on reports and information received from different external and internal sources' and visit to Evros region? What is the remit of this investigation?</p>	<p>Fundamental Rights Officer's (FRO) team within its monitoring tasks is currently working on further analysing the activities in Greece based on reports and information received from different external and internal sources (regarding land and sea borders). With this analysis and the FRO visits to Evros region and islands which are planned in the coming weeks, the FRO will take further actions in monitoring the Agency's compliance with fundamental rights, including by conducting investigations (Reg Art. 109).</p>
Greens/EFA	36.	<p>Are there any individual complaints filed to the Fundamental Rights Officers against either Frontex or Member State Officers active in any of the cases reported on 23 October 2020 by Der Spiegel, Lighthouse Reports, Bellingcat, "Report Mainz" -- a program on ARD, the German public broadcaster -- and Japanese broadcaster TV Asahi?</p>	<p>There were no complaints received in relation to pushbacks in Greece reported on 23 October 2020.</p>
Greens/EFA	37.	<p>How many individual complaints does the Fundamental Rights Officer of Frontex currently handle?</p>	<p>Since January until the end of November 2020, the Fundamental Rights Officer received 23 complaints; out of those 6 admissible.</p>

			A video has been produced, available on Frontex webpage serving as audio-visual tool to make aware of the complaints mechanism in a simple manner and other languages will be added.
Greens/EFA	38.	What actions will Frontex take now to enhance the accessibility of Serious Incident Reports? What steps did it take to implement Directive 2019/1937 on the protection of persons who report breaches of EU law?	<p>Part 1 Same answer as for Q1</p> <p>Part 2 In the Agency, whistle blowing guidelines have been set out by the Management Board Decision no17/2019 adopted on 18 July 2019. Frontex offers protection to whistle blowers comparable to the protection referred to in the Directive (EU) 2019/1937. The Directive is addressed to the Member States only.</p>
<u>On legal obligations</u>			
Greens/EFA	39.	The Executive Director repeatedly said that Frontex must rely on the assessments of Member States and that Frontex cannot investigate MS activities but at the same time you have yourself information that a violation of fundamental rights most likely happened. Given that this incident happened during a Frontex operation, you have obligations under the EBCG Regulation (Art. 46.) to. How do you do you intend to assume your role in such situations?	Please see the reply to question 13.

Greens/EFA	40.	Between Greece and Turkey, the geographical proximity and lack of international waters means that the Asylum Procedures Directive of EU is applicable. How do Frontex operations ensure the effective access to asylum for third country nationals arriving?	<p>Frontex refers to respective national authorities and provides initial information to persons who are in need of, or wish to apply for, international protection.</p> <p>Frontex has developed various handbooks, such as “VEGA Handbook: Children at Sea Borders - Children at Risk on the Move. Guidelines for Border Guards” and Handbook on Risk Profiles on Trafficking in Human Beings.</p>
Greens/EFA	41.	According to international maritime law, the obligation to save lives is not dependent on the local MRCC but an imperative for all, including Frontex. How do you evaluate the proximity of Frontex vehicles and the lack of access to asylum provided to arriving third country nationals?	Asylum procedures are not within Frontex’s mandate. Ensuring access to asylum is in line with Art 43 of Regulation 2019/1896 within the framework of the overall respect of fundamental rights.
Greens/EFA	42.	Regulation 656/2014 is clear concerning fundamental rights and the deriving obligations of international refugee law for Member States as well as Frontex, even between Member States with safe country agreements. How could so called hybrid threats or national security concerns ease the fundamental rights obligations of any actors implementing the Regulation?	Please see the reply to question 2.
ECR	43.	Can you explain in more detail how the sea border dispute between Turkey and its EU neighbours affects Frontex Operation Poseidon?	It often occurs that Turkish assets are operating in the Greek Territorial Waters, thus in the Operational area of the Frontex joint operation, partly due to different Search and Rescue Region interpretations.

			<p>Frontex deployed aerial assets are frequently warned by the Turkish aerial surveillance controllers, although the EU assets are operating inside the Operational area.</p> <p>There are also indication of Turkish assets escorting migrant vessels towards Greece.</p> <p>All this increases the risk for confrontation between the Turkish and EU Member States assets operating in this geographical area.</p>
ECR	44.	Can you elaborate on the presence and activities of criminal networks in the operational area of Frontex Operation Poseidon?	<p>It is important to clarify, that the operational areas of the JO Poseidon are in Greek territorial waters, whereas the activities of the human smugglers are mostly carried out in Turkey. Intelligence concerning activities of human smugglers is derived from migrant interviews. However, due to COVID-19 restrictions (migrants are placed in 2-week quarantine upon interception) and due to an extremely low number of arrivals on the Hotspot islands in 2020, the intelligence has been very limited.</p> <p>At the time of the sudden change of the Turkish migration policy in February 2020, the criminal networks in Turkey did not stand ready to supply a large number of migrants with boats and engines, therefore the overall flows remained relatively low.</p> <p>With stricter patrolling introduced by the Hellenic Coast Guard in spring 2020, human smugglers started to target smaller islets and islands where the risk to encounter with local authorities was minimal. They sometimes offered trips on board speed boats which could evade the patrol vessels.</p>

			<p>Since July 2020 a gradual re-routing has been reported from the Hotspot islands to the Italian corridor, and the criminal networks in Turkey started to offer alternative routes demonstrating flexibility to adapt to the situation.</p> <p>As a result, the maritime corridor to Italy got active, the maritime corridor to Cyprus became intensified, and even the Black Sea route was reactivated after 3 years of no incidents.</p>
GUE/NGL	45.	<p>On the incident of 18-19 April: At the hearing we had with you in July, you told us there were no cases reported to you of push-backs except the "isolated" Danish crew one, described by you as a "misunderstanding". During LIBE hearing of last week, you mentioned that this was because you had not received the answer of the Greek authorities, however the question asked to you back then was on other reported incidents and not having received an answer of the Greek authorities cannot justify the fact you deliberately hid this incident from members on that day. This case is also not listed in your letter of 4 May in which we had asked about all serious incidents reports received this year regarding any of the operations in Greece in 2020, nor in your recent letter of 24 November. Can you explain to us why?</p>	<p>Please see the reply to question 10.</p>
GUE/NGL	46.	<p>During the mission of Left members to the island of Lesbos on 18-19/09/2020, the Coordinating</p>	<p>The referred incident with the Danish crew (patrol boat) did not result in a so-called push-back, but there only</p>

		Officer for the Frontex operational activities implemented in Greece at the sea borders, when asked about reported push-backs, told members that they had not seen anything. Members had to remind him of the incident with the Danish crew, but he told them no further incidents had been occurring or seen. Could you explain to us why such a statement was made to our members despite the existence of reports?	conflicting order was given by the Hellenic Liaison Officer on board to relocate persons embarked back to their craft. The order was later called back by the ICC and the incident resulted in disembarkation of the persons in Greece.
GUE/NGL	47.	Reports have been made to us about allegations of Frontex involvement at land borders as well in push-backs. We are aware that these reports have been sent to you. Is there any ongoing investigation of these reports and possible involvement of FRONTEX officers in push-backs at the Greek-Turkish and Greek-Albanian border? Will these reports be also investigated in the working group? Have any incidents been reported to you at land borders?	<p>Altogether, 11 SIRs (category 4 - Situations of alleged violations of fundamental rights or international protection obligations) were launched in 2019 and 2020 as regards alleged “pushbacks”. Out of the 11 SIRs 3 are closed while the remaining 8 SIRs are still on-going.</p> <p>As regards the border areas, there are:</p> <ul style="list-style-type: none"> • 3 SIRs - Greek-Turkish border • 2 SIRs - Greek - Albanian border • 3 SIRs - Bulgarian - Greek border • 1 SIR - Hungarian - Serbian border • 2 SIRs - Croatian - BiH/Serbian border. <p>There was no involvement of Frontex in these SIRs. One SIR was reported by the German Border Surveillance Officer who witnessed the alleged pushback.</p> <p>As already mentioned, a Management Board Working Group FRaLO has been established and a detailed description of</p>

			<p>its role and mandate can be found in the Annexed MB Decision no 39/2020 dated 26 November 2020.</p> <p>It should however be made clear that the Working Group is completely independent and Frontex Executive Director has no mandate to interfere in its work and decisions.</p>
GUE/NGL	48.	<p>Serious incident reports: The issue of the inefficiency of the SIR mechanism was raised multiple times by FRONTEX consultative forum, yet, as they reported in their various annual reports, no action has yet been taken by the agency to revise this mechanism. Can you describe to us what concrete steps are being taken to revise it in light of the concerns raised over the years and the recent allegations that demonstrate that this should have been taken up much earlier?</p>	<p>The revision of the SIR SOP has already started. Some of the envisaged amendments in brief are:</p> <ul style="list-style-type: none"> • all stakeholders in the SIR process, including Frontex Situation Centre, Senior Management, the Serious Incident Coordinator are identified and assigned with a clear role; • A SIR Handler will be assigned to every SIR; • In order to streamline the process, a list of a pre-agreed Serious Incident handlers / coordinators from the various entities (Fundamental Rights Office, Operational Response Division, Situation Awareness and Monitoring Division etc.) is identified already in the SOP; • All SIR are treated as classified information (restricted/confidential) and handled with the proper procedure in order to monitor the handling and to restrict the access of the SIRs on the basis of a need to know principle; • For each SIR, the SIR Handler will submit a final report with recommendations and lesson learned. • Regular reporting to MB on SIRs e.g. every quarter

GUE/NGL	49.	Could you explain what you consider precisely as a “prevention of departure” incident?	Please see the answer to Question 7.
GUE/NGL	50.	In your letter to the President of the European Parliament on 11 November, you mentioned the proposal to set up a committee of inquiry made up of the Commission and representatives of the Member States. This idea was reiterated in the document you sent to this committee on 27 November, in which you stated your wish to set up the Working Group on Legal and Operational Aspects, whose aim is to carry out further investigations of the pushbacks, as well as to provide interpretation of EU regulations, and whose composition and mandate would fall to Frontex, that is, to whom it would be investigating. How will you ensure transparency in the investigations? Could you make public both the mandate and composition of this committee, as well as its reports and conclusions?	Please refer to the annexed MB Decision no 39/2020 dated 26 November 2020 on the establishment of the Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (FRaLO) . This Working Group reports to the Management Board which by itself ensures a fair degree of transparency in the inquiries.
GUE/NGL	51.	Regarding the recruitment of the 40 fundamental rights monitors that needed to be completed by the 5th of December 2020 as enshrined in the regulation. Frontex website has now a vacancy notice for AD 7 posts and AST 4. Could you tell us whom and why took the decision to not recruit 40 AD level posts ? Do you consider that AST posts actually	The Fundamental Rights Monitors (FRMs) will perform their duties as per Article 110 of Regulation 2019/1896 and from the point of view of organisation, the appointed Fundamental Rights Officer a.i. decided (in an agreement with the Executive Director) that there will be two ‘levels of seniority’ of FRMs (c.f. there are three levels of seniority of standing corps Category 1: AD7 + AST4 + CA FGIV). The AD7 FRMs should be a counterpart and equivalent of coordinating officers (or of the Advanced-level of standing

		<p>fulfil your duty to provide 40 monitors as agreed by co-legislators?</p>	<p>corps category 1) while the AST4 FRMs activities (predominantly) in the field should ensure strong monitoring and alert mechanisms in line with the tasks of Assistants as described in Annex I to the Staff Regulations: <i>“Carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions ...”</i>. Additionally, the choice of the AST4 grade will ensure that the FRMs will have strong professional experience (<i>we require at least 9 years of proven full-time professional experience after the post-secondary diploma</i>) which would not have been possible if we published the posts at AD5 or AD6 grades.</p>
<p>Question from more than one political group</p>	<p>52.</p>	<p>You did not respond to the first part of our question number 7 in your written replies: <i>Against the backdrop of your duties under Article 46 of the EBCR Regulation, what is your own assessment of the actions performed / incidents as published in the journalists’ investigation?</i> Article 46 gives you extremely important duties, namely the obligation to “withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if [you] consider that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.”</p>	<p>The Agency is committed to putting the respect of fundamental rights at the core of its activities. I make sure that operational activities of the Agency are closely monitored and, when necessary, subject to action by the Executive Director in accordance with Article 46(4) of the Regulation, which is elaborated in the reply to Question 13.</p>

		<p>a) If you do not have your own assessment of the cases how can you fulfil your duties under Article 46?</p> <p>b) If you have an assessment as Executive Director, could you please share it with us?</p>	
Question from more than one political group	53.	<p>You knew since the political agreement was reached on the new Regulation in March 2019 that the Agency would need to recruit 40 fundamental rights monitors by 1 year after the entry into force of the new Regulation which is now on 5 December this year. Now we understand that due to “uncertainties about the actual Frontex establishment plan” in light of budget constraints this deadline cannot be met. This is an extremely bad signal and unfortunately follows the pattern of the past in which action by you is only taken after we in the LIBE Committee insist. This pattern must end. Now, the vacancies have been published. Nonetheless, we would like to know why it was that you could not prioritise the posts for the 40 monitors and why you have not alerted this Committee about the risk of delays in a pro-active manner before?</p>	<p>The publications could have been made only after the Management Board adopted the necessary set of (complex) legal instruments so that it is the independent Fundamental Rights Officer appointed by the Management Board as a middle manager who approves all the details of the selection procedure.</p> <p>While the delays are indeed unfortunate and follow a long-term absence of Fundamental Rights Officer appointed prior to the entry into force of the current Regulation, the decision of the Management Board is that the Executive Director plays effectively no role in the selection and appointment (and tasking) of the Fundamental Rights Monitors.</p>

Question from more than one political group	54.	<p>There are indeed very few serious incident reports. We are aware that every participant of a Frontex operation has an obligation to produce such a report in case he/she witnesses, is involved, or has grounds to suspect about the occurrence of an incident representing a possible violation of fundamental rights or international protection obligations.</p> <p>Given also the remarks of the Swedish representative at the Management Board meeting of 10 November, do you consider that this obligation is really “lived up to” by all participants in Frontex operations? Are you confident that this obligation is really “embedded” in the culture of all operations</p>	The roles, responsibilities and processes related to serious incident reporting are included in the operational plans as well as briefed to every participant of the joint operation during the first days of deployments.
Question from more than one political group	55.	What is your assessment of the replies of the Romanian authorities in their letter of 19 November to you? How do you assess the fact that also in this case the Hellenic International Coordination Centre ordered the Romanian ship of the Frontex operation to leave the area and ordered Hellenic Authorities to take over?	In line with the EBCG Regulation, tactical command of the assets is in the hands of the ICC (Hellenic authorities) after consultation with the National Officials (NO).

<p>Question from more than one political group</p>	<p>56.</p>	<p>After you received the reply letter of Minister Plakiotakis 10 July, have you assessed the letter in substance? Looking at the information you shared as Annex 1 to your letter of 27 November on p. 9 are you convinced that there was no pushback or other unlawful action? What is your legal assessment of the claims made in point 7 and 8 of that letter? Don't you have obligations under Art. 46. in such situations?</p>	<p>A Serious Incident Report (SIR) was created based on a sighting of an incident by aerial surveillance where people were transferred on a rubber boat from a vessel, and later on rescued by Turkish authorities. The issue has been addressed to the Hellenic authorities (official letter 8 May 2020), and reply letter from Hellenic authorities was received on 10 July 2020.</p> <p>On the legal assessment of the claims made in that letter, and the establishment of the Management Working Group to inquire of the matter, I respectfully would like to refer to the question 24 and reply therein.</p> <p>On Article 46 of the European Border and Coast Guard Regulation (“decisions to suspend, terminate or not to launch activities”) I respectfully would like to draw your attention to the question 13 and the reply therein.</p>
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