

**Emily O'Reilly**  
**European Ombudsman**  
1 avenue du Président Robert Schuman  
CS 30403  
F - 67001 Strasbourg Cedex

Dear Ms O'Reilly:

Thank you for your letter on the Strategic Inquiry OI/5/2020/MHZ, European Ombudsman, concerning the functioning of the European Border and Coast Guard Agency's (Frontex) Complaints Mechanism for alleged breaches of fundamental rights'.

We very much welcome such initiative of evaluating the complaints mechanism within Frontex since the transparency and accountability of the system is crucial to investigate alleged breaches of fundamental rights within REG (EU) 2019/1896.

The European Ombudsman stated in its Special Report of the own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex, the need for creating a first line administrative remedy. The complaints mechanism was set up by the Regulation (EU) 2016/1624 of 14 September 2016 and further developed by the Regulation (EU) 2019/1896 of 13 November 2019. Within the independent and effective complaints mechanism any person, who is directly affected and considers to have been a victim of fundamental rights violations by the action or failure to act on the part of staff involved in a Frontex activity, may complain to the Agency.

This mechanism significantly reinforced the fundamental rights safeguards to be addressed by the Agency and expanded the mandate of the Fundamental Rights Officer (FRO) for the handling and follow up of individual complaints.

In this regard, the FRO, in the inception phase, started actions and reached out to establish a network of authorities in Member States that have the mandate to handle the complaints at national level concerning border authorities and the relevant fundamental rights bodies. A workshop, in cooperation with FRA and EO, on the setting up and implementation of the Frontex individual complaints mechanisms, as well as strengthening the channels between Frontex and those institutions, was held on 6 December 2016.

Furthermore, a case management system as a customized SharePoint tool has been set up for managing the processing of complaints to ensure compliance with confidentiality, data security and safety, document retention and data protection legislation. Among other efficiency functionalities, the application uses case management functionalities to process each complaint: for each complaint a new case is created in the tool and all documents of the case are stored under one Case ID number. Complaints submitted electronically from the Frontex website are received directly into this application.

Important steps were also taken in the course of 2017-2020 in the field of dissemination of and accessibility to the complaints mechanism by producing information material and awareness material, including complaint forms, in the most common languages of potential complainants during the Agency's operations. Materials have been made available on Frontex website as well as distributed throughout the operational areas in which Frontex is operating.

These efforts were coupled with awareness raising sessions, e-learning portals, webinars, briefings and inclusion of the complaints mechanism information to the operational plans and respective implementation, in close cooperation with Frontex business entities, national authorities as well as with external stakeholders. In order to ensure better dissemination of the complaints mechanism, the FRO team designed information booklets and a communication plan focusing on the duty to inform potential complainants on their rights and how to file a complaint.

Since 2020, an animated video is available about the Frontex complaints mechanism providing basic information to the general public and potential complainants, which will also be used for awareness sessions (available at: <https://frontex.europa.eu/accountability/complaints-mechanism/>).

In 2019, the FRO team initiated cooperation with EU neighbouring countries in the framework of Agency's operational activities (Albania, Montenegro) following the conclusion of a Status Agreement with the EU, to agree on modalities for a coordination between the Frontex complaints mechanism and the national complaint mechanism, which will be implemented soon.

Since the inception of the complaints mechanism, the Agency publishes information on the complaints mechanism in its annual report. The Fundamental Rights Officer also presents a yearly report on the complaints mechanism to the Management Board, including specific references to the Agency's and Member States' findings and the follow-up to complaints.

The complaints mechanism will also constitute an essential element of the FRO's public report on the Agency's progress of the implementation of the Fundamental Rights Strategy, which will be issued annually, as per Article 109(4) of the Regulation (EU) 2019/1896.

While the number of complaints received under the framework of this mechanism has been low in the beginning, experience on dealing with the cases has been enlarged, with the number steadily increasing in the recent years (see below table), also in view of the enhanced dissemination and awareness raising activities.

Table: Number of complaints received/year

<i>Year</i>	<i>all complaints</i>	<i>inadmissible</i>	<i>admissible</i>
<b>all</b>	<b>69</b>	<b>47</b>	<b>22</b>
2016	2	2	/
2017	15	10	5
2018	10	7	3
2019	18	11	7
2020	24	17	7

With regards to the efficiency and effectiveness of the complaints mechanism, shortcomings are yet to be addressed as also raised by the Frontex Consultative Forum in its Annual Reports.

In this regard, a revision of the Rules on the Complaints Mechanism is undertaken to make necessary improvements and - in line with the the Regulation (EU) 2019/1896 - to include several adaptations to the complaints mechanism within the framework of the reinforced mandate of the Agency and its operational context.

More specifically, the FRO would like to point out that several weaknesses have been identified throughout the existence of the complaints mechanism. Need is seen to take those into consideration for a well functioning system, notably:

- to ensure that national authorities involved, as well as Frontex in case of complaints regarding Frontex staff, reply in a comprehensive, transparent and timely manner, and provide an appropriate follow-up with detailed information on the investigation and/or measures taken and on how all the pertinent issues brought up in a complaint have been tackled;
- FRO to have at her/his disposal tools for effectively overcoming the main difficulties within the complaints mechanism enabling her/him within FRO mandate: to require a response by the competent authorities or to ask the Agency to follow up and provide the necessary information in case no response by competent national authorities is obtained. This would help address effectively inapt follow-up by competent authorities.
- to facilitate processes and get advanced support by national fundamental rights bodies/authorities being able to adress forwarded complaints within their mandate.

The FRO further aims at tackling these issues through strengthening its cooperation and networking frameworks with the relevant stakeholders as well as through robust and detailed provisions reflected in the new Rules on the Complaints Mechanism currently being drafted.

Likewise, we would very much appreciate your support in issuing any possible recommendation towards enhancing the Agency's complaints mechanism.

We look forward to our future cooperation and remain available for further discussions.

Kind regards.

  
Annegret Kopter  
Fundamental Rights Officer a.i.

Ms Emily O'Reilly  
European Ombudsman

Your ref: Strategic inquiry OI/5/2020/MHZ  
Our ref: ICO/MIJU/9766a/2020  
Please quote when replying.

Warsaw, 29 January 2021

**Subject: Frontex's reply as regards strategic inquiry OI/5/2020/MHZ**

Dear Ms O'Reilly,

With reference to your strategic inquiry OI/5/2020/MHZ concerning the functioning of the European Border and Coast Guard Agency's (Frontex) Complaints Mechanism for alleged breaches of fundamental rights, I would like to provide you with Frontex's reply and its Annexes (5) to the questions addressed by you.

Please let me emphasize that the document was prepared in collaboration with and endorsed by the Fundamental Rights Officer (FRO) prior to its submission.

Allow me to reiterate that a separate letter to you was issued by the FRO in executing her independent function on 25 January 2021.

Additionally, as regards your request to organise an electronic inspection of documents related to the Complaints Mechanism, we are in the phase of setting up the (remote) electronic inspection in cooperation with your business entities.

Yours sincerely,



Fabrice Leggeri  
*Executive Director*

Appendix:

- Frontex's reply to the strategic inquiry OI/5/2020/MHZ concerning the functioning of the European Border and Coast Guard Agency's (Frontex) Complaints Mechanism for alleged breaches of fundamental rights

## EO Strategic inquiry OI/5/2020/MHZ

### Questions

#### Procedural issues

- 1) How is Frontex preparing for the expected increase of complaints due to its reinforced border management tasks?
  - Case management system is in place being under the responsibility of the complaints team within the Fundamental Rights Office (FRO).
  - Since 2016 Frontex has received until this moment 69 complaints, but only 22 have been declared admissible by the FRO. Which on average is four/five admissible complaints a year.
  - The complaints team is handling correspondence and follow up for all the complaints in the case management system; other part of their work consists of the elements explained in the annual Complaints Mechanism reports to the Management Board (Annex 1-3) including the production and dissemination of material (video, different languages, user-friendly) and networking with national authorities and other stakeholders, trainings and briefings, etc.
  - With the increased tasks of FRO - in accordance with Regulation 2019/1896 any incidents involving the use of force shall be immediately reported through the chain of command to the fundamental rights officer. As a side effect of the deployment of fundamental rights monitors, the number of complaints might grow and increased interest from public on the Agency's work can to a certain extent be expected. A staff who is trained and involved in the investigation part within FRO should be considered.
- 2) Bearing in mind that Regulation 2019/1896 entered into force on 4 December 2019, what is the process for drafting and implementing rules to update the Complaints Mechanism? Please set out who or what is involved in this process.
  - Article 111(1) provides that it is the Agency, in cooperation with the Fundamental Rights Officer, which draws up the implementing rules updating the Complaints Mechanism.
  - Those rules are made by Executive Director Decision.
  - A draft of such rules exists and is in the process of being consulted with the Fundamental Rights Officer. Prior to the final adoption the rules will be shared with Frontex Consultative Forum for consultations. It should be brought in early 2021.
  - The stakeholders involved in the process of adopting the rules are the following entities: the Fundamental Rights Office, the Legal and Procurement Unit, the Executive Director, the Management Board and Frontex Consultative Forum.
- 3) What, if any, action can Frontex take if a forced return is scheduled for an individual whose complaint to the Fundamental Rights Officer is pending?
  - The European Centre for Returns, which is a Unit of Frontex, has established a direct communication mechanism with FRO (24/7) in order to facilitate to FRO the information gathering for complaints or expressions of concern received prior or during the implementation of a return operation, that might lead to risks of serious and irreparable damage for the complainants.
  - Frontex provides assistance to Member States at all stages of the return process without entering into the merits of return decisions (including legal and judicial decisions), which remain the sole responsibility of the Member States in line with the applicable regulation. It

means that the Complaints Mechanism, and the pending issues, have no effect on the national return decisions.

- The Executive Director could decide to ‘suspend’ or ‘not to launch’ the return operation, see Article 46(4), (5) and (6) of Regulation 2019/1896. But the fact that a complaint to the Fundamental Rights Officer is pending, is not a reason under 46(4), (5) or (6) to ‘suspend’ or ‘not to launch’ the entire return operation that usually involves several returnees. In accordance with Article 12 of the current Rules on the Complaints Mechanism, in cases where there exists an imminent risk of irreparable harm to the complainant the Agency will consider undertaking immediate action until the risk subsides or ends. Where there is an imminent risk of irreparable harm regarding returns of third country nationals, and related alleged violations of their fundamental rights in case they are returned, there may be a complaint.
- 4) Do complainants try to appeal decisions taken by the Complaints Mechanism? If so, using what means?
- There were no appeal possibilities within the Complaints Mechanism under Regulation 2016/1624 and the applicable Rules on the Complaints Mechanism.
  - A novelty under the current Regulation - Article 111(5) of Regulation 2019/1896 which provides for a limited appeal: *“The Fundamental Rights Officer shall reassess the complaint if the complainant submits new evidence in situations where the complaint has been inadmissible or unfounded”*.
- 5) Does Frontex consider it useful to set a specific timeframe for the Executive Director to examine the complaint forwarded to him by the Fundamental Rights Officer, reach a preliminary view and ensure follow-up?
- No such specific timeframe is set out in Regulation 2019/1896.
  - However, the applicable Rules on the Complaints Mechanism set out the timeframe - six months, from the date the FRO forwarded a complaint to the competent authority for findings and follow-up.
  - FRO needs to ensure that national authorities, as well as Frontex in case of complaints regarding Frontex staff, reply in a comprehensive, transparent and timely manner. An appropriate follow-up with detailed information on the investigation and/or measures taken is essential for an effective mechanism. A set of guidelines will be envisaged in the new Complaints Mechanism rules for these purposes when dealing with national authorities mainly. In fairness to date there has been cooperation from Frontex with only limited issues.
- 6) Should the Fundamental Rights Officer also have a set timeframe within which to deal with a complaint?

**We agree that setting such a timeframe for the Fundamental Rights Officer, and making that timeframe transparent to complainants, is a good idea.**

- 7) According to Regulation 2019/1896, the Fundamental Rights Officer’s annual report must now include “specific references to Member States’ findings and the follow-up to complaints”. What action can and does Frontex take if no report is received from the authority in question or if the report is delayed, after it has been referred by the Fundamental Rights Officer?

In line with Article 111(7) of the Regulation 2019/1896 , where the relevant Member State, within the determined time period, does not report back or provides only an inconclusive response, the FRO informs the Executive Director and the Management Board. Further, the Agency follows up on the matter if no report is received from the relevant Member State.

- 8) How does Frontex intend to follow up on the requirement in Regulation 2019/1896 that it should provide for an appropriate procedure in cases where a complaint is declared inadmissible or unfounded?
- It should build on the provisions of Article 111(5) of Regulation 2019/1896 and be covered by the implementing rules being drawn up under Article 111(1). But there can be no further appeal procedure other than that set out in the final sentence of Article 111(5).<sup>1</sup>

### The Fundamental Rights Office

9) What provisions does Frontex have in place to ensure that its Fundamental Rights Officer can operate independently? What capacity and resources are made available to enable the Fundamental Rights Officer to conduct thorough and prompt investigations based on evidence?

- Frontex fully adheres to the provisions of Regulation 2019/1896 on the independence of the FRO.
- In addition to Article 109(4) of Regulation 2019/1896 the Management Board has laid down special rules in order to guarantee that the Fundamental Rights Officer is independent in the function of his/her duties<sup>2</sup>.
- As to the Frontex complaints mechanism in general and the handling by FRO of the complaints within this mechanism, the FRO has monitoring tasks on the Agency's compliance with fundamental rights, including conducting investigations related to fundamental rights. The complaints are followed up with Frontex or the respective Member States which provide replies or statements of their investigations but there has been no FRO investigations until now on the content of the submitted complaints.
- The rules of FRO independence permits carrying out investigations, including the ones on incidents involving use of force by the statutory staff and on complaints received (supported by the reports of the incidents involving the use of force by the statutory staff). FRO shall adopt the working methods of conducting investigations related to fundamental rights in consultation with the Executive Director and Management Board, and in relation to those, shall consult the Consultative Forum.
- The Staffing of the Fundamental Rights Office grew from one (1) post allocated in 2012 to ten (10) positions available and filled in the Fundamental Rights Office in 2019 - out of them two (2) of which are handling complaints. Additionally, in 2020, the new posts of Fundamental Rights Officer at middle management level, of the Deputy Fundamental Rights Officer, of 40 Fundamental Rights Monitors and of two Seconded National Experts were allocated to FRO - vast majority of these newly allocated posts is envisaged to be effectively filled in 2021.
- The operational budget allocated to the FRO amounted 1 million € in 2020 and was increased to 1,3 million € in 2021 (staff costs are not included)
- The Executive Director has granted a budget delegation to the FRO in line with applicable financial regulations.

10) Could Frontex clarify the ongoing procedure for appointing a new Fundamental Rights Officer?

- The Management Board Decision 35/2020 of 10 November 2020 (Annex 5) approved the publication of the Vacancy Notice "Fundamental Rights Officer" and Management Board Decision 38/2020 of 25 November 2020 approved the composition and principles of the Pre-selection and Selection Committee for the selection of the Fundamental Rights Officer. There is no role for the Executive Director in the selection and appointment process (Management Board being the Appointing Authority).
- The Vacancy Notice - RCT-2020-00078 (Annex 6) was published on 19 November 2020, followed by a technical corrigendum with reviewed closing date for applications on 29

<sup>1</sup> The Fundamental Rights Officer shall reassess the complaint if the complainant submits new evidence in situations where the complaint has been declared inadmissible or unfounded.

<sup>2</sup> Management Board Decision 6/2021 of 20 January 2021 adopting special rules to guarantee the independence of the Fundamental Rights Officer and his or her staff.

December 2020. In line with Point 7 of the aforementioned Vacancy Notice, the selection procedure includes the following steps:

- All the applications are evaluated by an appointed Pre-selection Committee based on a combination of certain selection criteria defined in the vacancy notice (some criteria will be assessed/scored only for shortlisted applicants during interviews and/or tests). Certain selection criteria may be assessed/scored jointly and some criteria may be assessed/scored in two or more steps of the selection procedure. Indicated criteria are assumed to be fully met by eligible applicants applying for internal or inter-agency mobility. The Pre-selection Committee shall shortlist the best suited eligible applicants matching the profile and conduct oral and written tests with shortlisted external applicants, where appropriate conduct interviews with shortlisted internal and interagency applicants. Applicants who are best matching the evaluated selection criteria will be invited for an interview with the Selection Committee;
- The potential, managerial skills, adaptability and other core competencies of all applicants invited to the interview will be assessed in an assessment centre, unless the applicant has taken part in such assessment centre in the course of the two years preceding the closing date for receipt of applications. If an applicant has taken part in an assessment centre within this two-year period, but not within the 18 months preceding the closing date for the receipt of applications, s/he may at her/his request be admitted to the assessment centre. The result of the assessment centre shall be taken into consideration by the appointing authority;
- The names of the Pre-selection and of the Selection Committee members will be disclosed to the applicants invited for the interview/test;
- Following the interview with the Selection Committee, the list of three candidates will be established and proposed to the Management Board.
- The Management Board will appoint the Fundamental Rights Officer, on the basis of the list of three candidates selected by the Selection Committee, after consultation with the consultative forum;
- The other two suitable applicants will be proposed for a reserve list. The reserve list will be valid for 2 years (the validity period may be extended).
- Appointment of the Fundamental Rights Officer is envisaged for the Management Board meeting of March 2021.

### Accessibility of the CM

11) What steps has Frontex taken to ensure that its Complaints Mechanism is accessible in practice?

- Article 5(1) of the current Rules of the Complaints Mechanism stipulates that *‘the Agency makes the complaint form available in the most common languages that third country nationals understand or are reasonably believed to understand’*. The Agency therefore determines the need to have the complaint form available in a specific language after collecting data from the relevant operational units. This process entails compiling the nationalities of people arriving at the EU’s external borders wherever the European Border and Coast Guard Agency operates, as well as the countries to which people are most commonly returned with the support of the Agency. Following this assessment, a list of the most common languages of potential complainants during the Agency’s operations is internally established. By not adopting a closed list and by adjusting it regularly to the challenging diverse realities experienced in the operational areas, the Agency remains flexible to address new or changing language requirements. So far, it was assessed that the most common languages spoken during the Agency’s joint operations were Arabic, English, French, Urdu, Tigrinya, Pashtu, Farsi, Spanish, German, Russian, Kurdish, Serbian and Albanian.
- A complaint must be made in writing and may be made using the official complaint form. Although the use of the complaint form is preferable, complaints can be submitted in any format, provided that the complaint is in writing.
- Complaints can be submitted and the necessary attachments found:
  - via email ([complaints@frontex.europa.eu](mailto:complaints@frontex.europa.eu));
  - the Frontex website <https://microsite.frontex.europa.eu/en/Complaints> ;
  - directly to Frontex staff where the activity takes places; or
  - by post:



Frontex Fundamental Rights Officer, Complaints Frontex  
 Plac Europejski 6  
 00-844 Warsaw  
 Poland

- To ensure better accessibility and visibility of the complaints mechanism on the Agency's website a new specific section was created to enhance public access to the information on how to lodge a complaint. Frontex has also worked on having an online system for submission of complaints directly from the website. During the first year of the complaints mechanism, the forms were only available in PDF format and needed to be downloaded, filled in and then submitted either in hard copies or by email to FRO. Since October 2017 Frontex supported the creation of a system that allows submission of complaints through a microsite located in the website of the Agency (<https://microsite.frontex.europa.eu/en/Complaints>). This microsite includes features to ensure the safety and the confidentiality of the information.
- Following the principle of good administration and the subsequent need to ensure dissemination, the Frontex has focused on the duty to inform potential complainants on their rights and on how to file a complaint. While in 2017 the complaints team developed the first awareness material for the complaint mechanism, the information booklet on the individual complaints mechanism has been updated and translated into the twelve (12) languages previously mentioned. In 2018, a poster on the complaints mechanism was also designed. The poster is meant to be allocated in visible places in operational areas along with hard copies of the information booklet.  
 As part of the awareness raising campaign, over nine thousand (9.000) copies of the booklet and almost one hundred (100) posters were distributed in operational areas during summer 2018 and in 2019 over 5000 copies of the new booklet were printed. The printable versions are uploaded in FOSS and FAR, two internal databases, to be at hand for all deployed officers for all operations.  
 Likewise, as part of the internal awareness raising campaign, the individual complaints mechanism was introduced as a new topic in all briefings and training sessions for staff of the Agency and deployed officers. With the aim to provide a better understanding of the mechanism, Frontex produced a recording seminar on the complaints mechanism. The videos are part of the training materials for Frontex staff, to be stored in FOSS, FAR and used in pre-deployment briefings.  
 Frontex complaints team has conducted field visits to operational areas to introduce the complaints mechanism to the Agency's deployed officers, International Organisations and Civil Society Organisations. The visits also provided a platform for assessing the level of awareness among officers and other relevant stakeholders about the complaints mechanism and discussing challenges. FRO regularly answers queries, Public Access to Documents (PAD) requests as well as requests for information from European institutions, researchers and individuals about the complaints mechanism.
- Article 38(3)(n) of Regulation 2019/1896 states that the Operational Plan contains procedures setting out a mechanism to receive and transmit a complaint to the Agency complaints against any person participating in an operational activity of the Agency, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency.
- Hard copies of the complaint form, privacy statement and leaflets are available in different languages (9 languages other than English) and accessible to everyone in the operational areas.
- Persons who want to file a complaint using the hard copy of the form, will be granted the form by the Frontex staff or members of the teams, the privacy statement and leaflets on the complaints procedures.
- A complaint must be made in writing and may be made using the official complaint form. Although the use of the complaint form is preferable, complaints can be submitted in any format, provided that the complaint is in writing.

12) Regulation 2019/1896 requires that the standardised complaint form “be easily accessible, including on mobile devices”, and obliges Frontex to provide “further guidance and assistance” to complainants. What has Frontex done to comply with this obligation?

- The form along with general guidance regarding the mechanism and the data protection privacy statement is available on Frontex’s website in all the aforementioned languages.
- As mentioned above, the complainant has three (3) possible ways to submit a complaint (electronically, e-mail or post).
- On further guidance and assistance, Frontex staff and members of the teams have the obligation stated in the operational plans to provide information about the complaints mechanism (“duty to inform”). In addition, for further information, FRO has created a leaflet on the complaints procedures, which is available on the website and also available in the operational areas.
- Frontex operational plans mention that a booklet in several key languages and a poster will be available for distribution to be displayed in operational areas. The booklet explains how the complaint procedure works, who can submit a complaint and how the mechanism works. In addition, a printable PDF version of the booklet is available in Frontex website at [www.frontex.europa.eu/complaints](http://www.frontex.europa.eu/complaints) and upon request to [complaints@frontex.europa.eu](mailto:complaints@frontex.europa.eu).
- In line with Regulation 2019/1896, the form has been recently updated and shared with Frontex Senior Management for their consideration and further publication.
- Furthermore, the complaints team has been working on a video about the complaints mechanism for the general public to be informed. The video is to be available in operational areas where potential complainants can view it.
- The FRO is now considering the development of child friendly material.
- Finally, in accordance with Regulation 2019/1896, the FRO is working on a tool for submission of complaints directly from smartphone devices. The tool is in testing production phase and it will be available in early 2021. The prototype is on a test stage and the first prototype in English is planned to be available in the first quarter 2021.

13) How does Frontex ensure that individuals in non-EU countries, who wish to complain about possible fundamental rights violations in the context of Frontex operations, can effectively use the Complaints Mechanism? This issue has become even more pertinent now that Frontex’s mandate has been expanded, and includes operations in non-EU countries. How will Frontex ensure the dissemination of information on fundamental rights protection procedures, notably in these non-EU countries?

- In third country operations, as in EU/Schengen Associated Countries (‘SAC’) operations, members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and freedoms.
- The status agreements between the EU and the Third Country (so far, these agreements are between the EU and Albania, and the EU and Montenegro), state that *“each Party shall have a complaint mechanism to deal with allegations of a breach of fundamental rights committed by its staff in the exercise of their official functions in the course of an action carried out under this Agreement”*.
- Accordingly, based on the status agreement, the Agency and the host Third Country agree on the operational plan, which shall detail the organisational and procedural aspects of the operation, including, *inter alia*, the provisions in respect of fundamental rights including personal data protection.
- In third country operations, the same provision applies: Article 38(3)(n) of Regulation 2019/1896 states that the operational plan contains procedures setting out a mechanism to receive and transmit a complaint to the Agency complaints against any person participating in an operational activity of the Agency, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency.
- Whilst the Frontex Complaints Mechanism is fully in place in Third Country operations, the Agency is in process of negotiating a memorandum of understanding with Albanian authorities (including their ombudsman) on the interaction between the two complaints mechanisms.

- Please note that the answers on the dissemination of the information (“duty to inform” by Frontex staff and the members of the teams, leaflets/booklets in different languages), in 12) above is applicable also in third country operations.

14) What arrangements does Frontex have in place to deal with complaints drafted in the language of the individual in question?

- Significant efforts have been made to translate the complaints form and supporting material into different languages (9 languages other than English).
- The complaints team of FRO has direct access to the Translation Centre for the Bodies of the European Union online platform to request all necessary translations from any language the complaint may be submitted.

How Frontex ensures respect for fundamental rights in joint return operations?

Fundamental rights are integrated into the Frontex Codes of Conduct, the Common Core Curricula for border guards, and more specialised training, such as courses designed specifically for sea or land border surveillance officers as well as for forced return monitors. A number of fundamental rights monitors to be recruited by the Fundamental Rights Officer on the basis of Article 109(3)(c) of the Regulation, may also be nominated to the Frontex pool of forced-return monitors.

Forced return monitors are deployed by MS in accordance with Article 8(6) of Directive 2008/115/EC. Upon MS request, the Agency also deploys forced return monitors from the pool established based on art 51 of the regulation. In 2020, 182 monitors participated in return operations by charter flights coordinated by the Agency, of which 120 were deployed from the Frontex pool. At least one monitor was physically present on board the 92% of the Frontex coordinated joint return operations.

These raise understanding of fundamental rights and enable officers to identify potential violations. As part of the awareness raising campaign, 12500 copies of the booklet and 100 posters were distributed in joint return operations areas and 7400 copies of the new booklet were printed. The printable versions are uploaded in FOSS and FAR, two internal databases, to be at hand for all deployed officers for all operations. Likewise, as part of the internal awareness raising campaign, the individual complaints mechanism was introduced as a new topic in all briefings and training sessions for staff of the Agency and deployed officers. With the aim to provide a better understanding of the mechanism, Frontex produced a recording seminar on the complaints mechanism. The videos are part of the training materials for Frontex staff, to be stored in FOSS, FAR and used in pre-deployment briefings.

Before they are deployed, all Frontex staff, as well as board guards and members of other relevant authorities from Member States that participate in Frontex operations receive training on fundamental rights, access to international protection, and, where appropriate, search and rescue. Fundamental rights are always included in operational briefings for officers deployed by Frontex. In addition, safeguards and obligations for reporting potential violations of fundamental rights are integrated into all operational plans.

#### Annexes:

1. CM Annual Report 2017
2. CM Annual Report 2018
3. CM Annual Report 2019
4. Management Board Decision 35/2020 of 10 November 2020 approving the publication of the Vacancy Notice “Fundamental Rights Officer”
5. CORRIGENDUM Vacancy Notice Fundamental Rights Officer- RCT-2020-00078

## COMPLAINTS MECHANISM

### FUNDAMENTAL RIGHTS OFFICER REPORT

#### TO EXECUTIVE DIRECTOR AND MANAGEMENT BOARD

Reporting period: 6 October 2016 - 31 December 2017

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1. INTRODUCTION
  2. THE COMPLAINTS MECHANISM FRAMEWORK
  3. DEVELOPMENT
- 

- 3.1 CONTACT POINTS IN MEMBER STATES
  - 3.2 ICT CASE MANAGEMENT SYSTEM
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- A. MOST COMMON LANGUAGES
  - B. AVAILABILITY OF COMPLAINTS FORMS
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- 3.4 INTERNAL REVISION OF THE RULES WITHIN FRO OFFICE
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5. CONCLUSIONS AND FUTURE PLANS
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## 1. INTRODUCTION

As the **European Ombudsman** stated in the Special Report of own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex, *“dealing with immigration, and in particular with the challenges presented by illegal entry, poses major legal and humanitarian challenges for the EU [...] Each institution in frequent contact with people who may have reason to complain should provide for a first line complaints mechanism allowing for their problems to be addressed and resolved rapidly, before, in the event that resolution is not successful, having to turn to other redress mechanisms, such as Ombudsman and courts.”* The step forward towards the **creation of a first line administrative**

<sup>1</sup> Only for use within the European institutions, other offices and agencies established by virtue or on the basis of the Treaties, Member States and other public administrations. Distribution on a need to know basis. Not for publication. If sent by e-mail encryption must be used.

remedy was undoubtedly taken with the *Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard*<sup>2</sup> (EBCG Regulation). This Regulation has significantly reinforced the fundamental rights safeguards to be addressed by the Agency and expanded the FRO mandate to include the handling and follow up of individual complaints.

Pursuant to Article 72(9) of the European Border and Coast Guard Regulation (EBCG) 2016/1624, the Fundamental Rights Officer (FRO) “shall report to the executive director and to the management board as to the Agency’s and Member States’ findings and follow-up made in response to complaints. The Agency shall include **information on the complaints mechanism in its annual report**”. The Regulation further foresees that the FRO has a task of monitoring the Agency’s compliance with fundamental rights and of promoting its respect (Article 71(1)). For these purposes, FRO regularly reports to the Management Board (MB), and as such contributes to the mechanism for monitoring fundamental rights.

Although separated from the fundamental rights monitoring system mentioned in Article 34, Article 72 of the Regulation establishes the main features of the Agency’s individual complaints mechanism: it is defined with the clear objective to monitor and ensure the respect of fundamental rights in the activities carried out by the European Border and Coast Guard Agency. The FRO has continued to provide advice and support the development of tools to promote fundamental rights in border management activities and continuously works on improving the effectiveness of this monitoring system as provided by the new Regulation.

The current report gives a comprehensive overview of the FRO activities on the complaints mechanism since its inception and its achievements until the end of 2017 and provides full information about the implementation of the individual complaints mechanism and its legal and practical functioning and challenges. It serves the additional purpose of the submission of the FRO to support the drafting of the complaints mechanism aspects in the Agency’s Annual Report.

## 2. THE COMPLAINTS MECHANISM FRAMEWORK

### AIM, LEGAL BASIS

The individual complaints mechanism is essentially an administrative mechanism<sup>3</sup> aiming to safeguard the respect for fundamental rights in all the activities of the Agency. The FRO is responsible for handling complaints received in writing by the Agency from individuals directly affected by activities of the Agency, or their representatives, in accordance with the right to good administration. The FRO is in charge of performing an admissibility check and referring admissible complaints for follow up and findings to the relevant Member State (MS) authorities and the Agency’s Executive Director (ED), as applicable.

Article 72 of the EBCG Regulation is further developed in the Decision No R-ED-2013-106 of 6 October 2016 that includes the Agency’s Rules on the Complaints Mechanism.<sup>4</sup> The Agency has also the obligation to include information regarding the individual complaints mechanism in the Operational Plans (OPLAN’s). As stated in Article 16.3 of the EBCG Regulation “*The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following: [...] (m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the European Border and Coast Guard teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;*”

In order to fulfil this obligation, the FRO has been assisting operational units of the Agency in the drafting and revision of an Standard Operation Procedure (SOP) on complaints mechanism within Frontex coordinated activities to be annexed to the Operational Plans (OPLAN) in 2016 and 2017.

### ORGANISATION, HUMAN RESOURCES

In accordance with the EBCG Regulation, the Agency should take the necessary measures to set up a complaints mechanism and provide FRO with adequate resources and staff corresponding to its mandate and size.<sup>5</sup> The first and only staff the Agency has provided so far to support the new complaint mechanism has been an Assistant contracted as temporary agent (AST III) that joined the Agency in May 2017. Recruitment procedures for an additional assistant are pending since October 2016. No further staff has been allocated for this purpose to the FRO team.

<sup>2</sup> [http://frontex.europa.eu/assets/Legal\\_basis/European\\_Border\\_and\\_Coast\\_Guard.pdf](http://frontex.europa.eu/assets/Legal_basis/European_Border_and_Coast_Guard.pdf)

<sup>3</sup> Art.72 of the EBCG Regulation

<sup>4</sup> [http://frontex.europa.eu/assets/Complaint/Annex\\_1\\_-\\_Frontex\\_rules\\_on\\_the\\_complaints\\_mechanism.pdf](http://frontex.europa.eu/assets/Complaint/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf)

<sup>5</sup> EBCG Regulation, Whereas (48)

## 3. DEVELOPEMENT

### 3.1 CONTACT POINTS IN MEMBER STATES

In accordance with Article 72.4 of the EBCG Regulation the FRO shall “forward all registered complaints to the executive director, forward complaints concerning members of the teams to the home Member State, inform the relevant authority or body competent for fundamental rights in a Member State, and register and ensure the follow-up by the Agency or that Member State”. Article 72. 7 further explain that “If a complaint is registered that concerns a border guard of a host Member State or a member of the teams, [...], the home Member State shall ensure appropriate follow-up, [...]. The relevant Member State shall report back to the fundamental rights officer as to the finding and follow-up made in response to the complaint”.

Consequently, the FRO started in 2016 to establish a network of authorities in MS’s that have the mandate to handle the complaints against MS staff (border guards or other MS staff deployed in EBCG activities) to be transmitted by the FRO after admissibility procedure is performed. This network also includes the national bodies competent for fundamental rights, typically the Ombudsman institutions. In order to support the effective and efficient implementation of Article 72 of the EBCG Regulation, FRO, in cooperation with FRA and the European Ombudsman, organised a 1.5-day workshop in Brussels on 6-7 December 2016 with MS authorities in charge of handling complaints against border authorities and the relevant fundamental rights bodies. The overall aim was to take steps to ensure an effective follow up of complaints and reporting on the findings and follow up after admissible complaints referral is done. Further, it represented an opportunity to clarify and refine communication channels between FRO and MS/SAC and jointly reflect on challenges and opportunities to enhance the effectiveness of the mechanism, e.g. investigation of complaints in other Member State and/or third countries, coexistence of national and Frontex individual complaint mechanisms and cooperation with fundamental rights bodies. In addition, it helped FRO team to identify and establish an initial contact with responsible authorities for handling complaints received under the mechanism.

During 2017 the initial mapping was expanded to engage those MS’s authorities and fundamental rights institutions that were not present in the aforementioned workshop. To date, not all Member States institutions have submitted their contributions to FRO, on which authority is competent to handle complaints at national level. It is indeed necessary to have a clear and neat network of authorities in Member States that have the competence to handle the admissible complaints referred from the FRO. This is imperative for data protection and confidentiality purposes. A new workshop will be called in 2018 to complete the exercise and ensure an efficient mechanism with due safeguards once new rules are final.

### 3.2 ICT CASE MANAGEMENT SYSTEM

The Complaint Management Application is a customized SharePoint tool for managing the processing of complaints to ensure compliance with confidentiality, data security and safety, document retention and data protection legislation. The FRO team was working with ICT Unit during the first half of 2017 on the creation and development of the system and more intensively in piloting it since May until August 2017, when the tool was launched. Among other efficiency functionalities, the application uses case management functionalities to process each complaint: for each complaint a new case is created in the tool and all documents of the case are stored under one Case ID number. Complaints submitted electronically from the Frontex website are received directly into this application.

### 3.3 INFORMATION AND AWARENESS MATERIAL

#### A. MOST COMMON LANGUAGES

A first important consideration to provide appropriate information and awareness material relates to the languages of the potential complainants. This varies in each operational area. Article 5(1) of the Agency’s Rules of the Complaints Mechanism stipulates that *‘the Agency makes the complaint form available in the most common languages that third country nationals understand or are reasonably believed to understand’*. The Agency therefore determines the need to have the complaint form available in a specific language after collecting data from the relevant units. This process entails compiling the nationalities of people arriving at the EU’s external borders wherever the European Border and Coast Guard Agency operates, as well as the countries to which people are most commonly returned with the support of the Agency. Following this assessment, a list of the most common languages of potential complainants during the Agency’s operations is internally established. It should be stressed that operational needs can vary depending on the migratory situation and flows and the operational needs of Member States. By not adopting a close list and by adjusting it regularly to the challenging diverse realities experienced in the operational areas, the Agency

remains flexible to address new or changing language requirements. The Agency endeavours to re-examine this list of languages every year.

In 2016, it was assessed that the most common languages spoken during the Agency's joint operations were Arabic, English, French, Urdu, Tigrinya and Pashtu. In 2017, the six most common languages spoken within the framework of return operations were Albanian, Serbian, Arabic, Georgian, Russian and Spanish.

## B. AVAILABILITY OF COMPLAINTS FORMS

Prior to the entry into force of the EBCG Regulation, the FRO submitted the complaint form to the ED and the MB after consulting the CF as mandated by Article 72. With regards to data protection safeguards of the mechanism, FRO and the Frontex Data Protection Officer (DPO) signed a Memorandum of Understanding and jointly drafted a privacy statement that is attached to the complaints form. The complaint form and privacy statement were available on the Frontex website on 6 October 2016 in six languages: English, French, Arabic, Pashtu, Urdu, Tigrinya,

During 2017 the complaint form, along with general guidance regarding the mechanism and the data protection privacy statement, has been made available on the Agency's website in all the aforementioned languages as well as Serbian, Albanian, Russian and Spanish, to cover the main countries of return.

## C. INCREASED ACCESS VIA THE AGENCY'S WEBSITE

In the second report on the operationalisation of the European Border and Coast Guard from March 2017, the European Commission (EC) highlighted that the Agency should improve the dissemination of the information materials related to the complaint mechanism, including to ensure better accessibility and visibility of the complaints forms on its website. The Consultative Forum has echo this criticism in their meetings. On the Agency's website, the information regarding the individual complaints mechanism was not easily accessible as it is placed under the Agency's contact details. FRO suggested a first step towards the improvement of complaint mechanism visibility on the Agency's webpage during its revision in July 2017. As a result, a new specific section was created to enhance public access to the information on how to lodge a complaint

FRO has also worked on having an online system for submission of complaints directly from the website. During the first year of the complaints mechanism, the forms were only available in PDF format and needed to be downloaded, filled in and then submitted either in hard copies or by email to FRO. Since October 2017 the FRO team, in cooperation with the ICT unit, supported the creation of a system that allows submission of complaints through a microsite located in the website of the Agency (<https://microsite.frontex.europa.eu/en/Complaints>). This microsite includes features to ensure the safety and the confidentiality of the information. The possibility to use mobile devices in the system is under evaluation.

## D. MATERIALS

Complaints team has also embarked in developing awareness material for the complaint mechanism in accordance to Article 72, which is scheduled to be disseminated during 2018 by the Agency.

In May 2017 the EC noted with concern in the 3<sup>rd</sup> Report on the operationalisation of the European Border and Coast Guard the need *"to run an information campaign aiming at a better dissemination of the complaint mechanism"*<sup>6</sup>. Following the Commission's advice, the FRO team proposed a design to Communication team of an **information booklet on the individual complaints mechanism** that was finally published in December 2017. Inspired by the principle of good administration, the FRO has focused on the duty to inform potential complainants on their rights and how to file a complaint.

To establish the different **needs** for information material, FRO has worked intensively in close coordination with the **Joint Operations** and Return Support Units. Indeed, the Agency's joint operations and return operations do not have the same characteristics. Each of them has specific needs, which have to be considered in the decision on what kind of information materials may suit each type of operation. As already mentioned, this is notably the case when it comes to the formatting of the material and the languages that are most common in each type of operation.

In order to fulfil the different operational unit's needs, the FRO holds internal meetings with the Agency's units. The final objective was to produce a printed version of the booklet for joint operations, to be delivered and readily

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<sup>6</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/20170502\\_third\\_report\\_on\\_the\\_operationalisation\\_of\\_the\\_european\\_border\\_and\\_coast\\_guard\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/20170502_third_report_on_the_operationalisation_of_the_european_border_and_coast_guard_en.pdf)

available in operational areas, in line with Article 72 (10) of the EBCG Regulation. A booklet focused on the languages required for return operations will be available in early 2018. The printable version of this booklet information is available on the Agency's website in the ten languages mentioned, as well as in platforms of communication with MS authorities (NFPoCs, both FOSS and FAR) for the use and distribution of the deployed officers and Agency's staff.

## E. INFORMATION REQUESTS AND AWARENESS SESSIONS

FRO has regularly answered queries and requests for information from European institutions, researches and individuals about the complaints mechanism. During the reporting period, the FRO has received twenty (20) requests, including four (4) of the European Commission Reports on the operationalisation of the European Border and Coast Guard. Most of them requested information on the new mechanism, its functioning and procedures. At the same time, to increase awareness internally, the new individual complaints mechanism was introduced as a new subject in all briefings and training sessions both for operational officers and other internal (induction training) and external stakeholders (visits or conferences).

### 3.4 INTERNAL REVISION OF THE RULES WITHIN FRO OFFICE

The first exercise undertaken that the Agency made in relation to the new complaints mechanism, before entered into force in October 2016, was the draft of the procedural rules of the mechanism. FRO contributed to the Agency's rules on the complaint mechanism with comments and suggestions that were drafted by the Legal Affairs Unit. During the implementation in 2017, and on the basis of the experience gained, FRO compiled several aspects of the rules that could be enhanced in the upcoming evaluation of the mechanism, in accordance to Article 18 of the Rules. FRO identified for instance, the need to further clarify the procedure to ensure a final decision and closure of complaints, the adequacy to refer complaints directly to MS authorities competent for deciding on individual complaints, or the reference to failure to act or "omissions" in addition to "actions" of the Agency in accordance with international law. Detailed rules require to be sent to the executive director and the management board (Article 72. 10).

## 4. OVERVIEW OF COMPLAINTS RECEIVED

Since the entry into force of the complaints mechanism and during 2017, the FRO has received a total of seventeen complaints (17), **two (2) complaints in 2016 and fifteen (15) complaints in 2017**. The FRO performed admissibility reviews and five (5) complaints were declared admissible. Two (2) of these admissible complaints have been already reviewed by the competent authorities of the MS, national authorities followed up, decided on findings and reported back to the FRO as to the measures taken in response of the complaints. The FRO has proceeded to close the two (2) complaints and drafted the final reports for the consideration of the ED and MB as required following Article 72 (9) of the EBCG Regulation. In relation to the other three (3) pending admissible cases, national procedures are currently ongoing and FRO is consolidating information on the findings upon receipt.

In relation to complaints declared inadmissible, FRO responds individually, and provides information on other remedies available, when known, in case complainants wish to address their complaints or concerns to other institutions or authorities, in accordance to the principle of good administration and the information provided by MS themselves. This information includes generally complaints mechanism at the Mols and the Ombudspersons or fundamental rights institutions, as well as some specific organizations, when known or available.

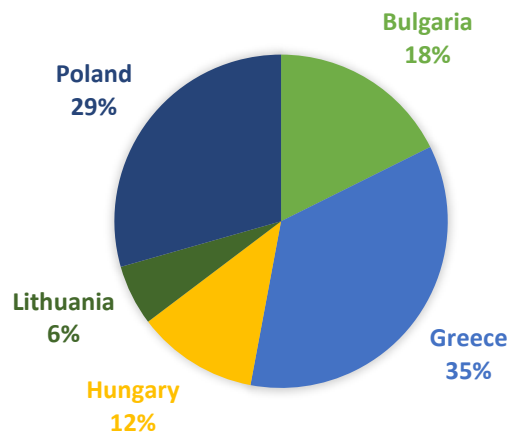
As established in the EBCG Regulation *"in order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report. It should cover in particular the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States"*<sup>7</sup>.

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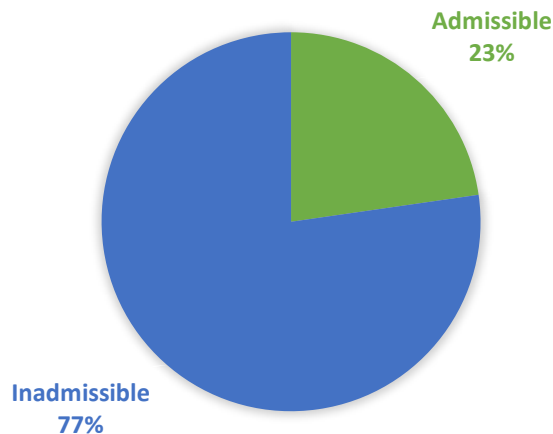
<sup>7</sup> Whereas (50) of the Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).



## TOTAL NUMBER OF CASES PER COUNTRY 2016-2017



## CASES PER ADMISSIBILITY ASSESSMENT



### 4.1 ADMISSIBLE COMPLAINTS

#### CMP-2017-00001

- **Complainant:** Family of six (6) Syrian nationals, including four (4) children, who had formally expressed to the competent authorities their will to seek for asylum in Greece.
- **Frontex activity:** Air Readmission operation on 20 October 2016 from **Greece** to Turkey.
- **Allegation types:** Right to asylum (Art. 18 of the European Charter of Fundamental Rights); Rights of the child (Art. 24); Protection in the event of removal, expulsion or extradition (Art. 19).
- **Alleged Perpetrator:** Member State staff decision, Frontex implementation.
- **Type of Case:** Standard, reported weeks after event.
- **Follow up and Findings:**

Steps taken so far by the FRO to ensure the follow-up on the case, pursuant Article 72 (4) of the European Border and Coast Guard Regulation:

- o 15 February 2017: the FRO forwards the complaint to the Greek Ombudsman, as the authority legally mandated to handle fundamental rights related complaints against border guard authorities in Greece in accordance to the information provided by the Member State. The FRO forwards the complaint to the ED and informs the representative of the complainant that the complaint has been declared admissible and has been forwarded to the Ombudsman and the ED.

- 17 March 2017: the Greek Ombudsman notifies to the FRO that the mandate entrusting the Greek Ombudsman with the power of independent investigation of some serious offences will only enter into force on 9 June as foreseen in the Law 4443/2016.
- 26 April 2017: after several requests from FRO, the Hellenic National Focal Point of Contact (NFPOC) notifies via email to the FRO that the nominated authority to receive individual complaints related to the European Border and Coast Guard Agency in Greece would be the NFPOC within the Hellenic Police.
- 2 May 2017: the FRO forwards the complaint to the Greek NFPOC.
- 15 September 2017: the FRO sends the first reminder to the NFPOC that no communication has been formally received to date on the follow up and findings undertaken by the competent Hellenic authority in this case.  
On the same date, 15 September 2017, the FRO sends information to the representative of the complainant on the follow-up of the complaint.
- 16 October 2017: the FRO sends the second reminder to the NFPOC.
- 25 October 2017: the FRO receives a communication via email from the Hellenic NFPOC informing that the complaint is still under investigation by the General Inspectorate of Public Administration.
- 13 November 2017: the FRO sends information to the representative of the complainant on the follow-up of the complaint upon his requests. The FRO highlights that she will inform about any follow up on this matter and reminds that she has no mandate to provide any concrete report on findings and follow-up until it is sent by the Hellenic authorities.

To the end of the reporting period, 31 December 2017, the FRO has not received feedback from the Hellenic authorities and the deadline foreseen in the Agency's Rules has expired, without any explanation or justification being provided. In the opinion of the FRO, this situation jeopardizes the effectiveness of the complaints mechanism and the principle of good administration and due diligence that should be observed.

#### **CMP-2017-00003**

- Complainant: Iranian national who had applied for asylum in **Greece**. Appeal against negative decision of the asylum request was pending before the national Court at the time of his removal.
- Frontex activity: Sea Readmission operation on 27 April 2017. Transfer by boat from **Greece** to Turkey.
- Allegation types: Protection in the event of removal, expulsion or extradition (Art. 19 of the European Charter); Right to effective remedy and fair trial (Art. 47); Right to asylum (Art. 18).
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent Risk, as enshrined in Art. 12 of the Agency's Rules on the Complaints Mechanism.
- Follow up and Findings: The Hellenic Police on 1 November 2017 reported back to the FRO. The readmission was cancelled in order to respect fundamental rights of the complainant. On 13 November FRO informs to parties involved about the **closure** of the case.

#### **CMP-2017-00010**

- Complainant: Pakistan national who had applied for asylum in **Greece**. Appeal against negative decision of the asylum request was pending before the national Court.
- Frontex activity: Readmission operation scheduled on 25 May 2017 from Greece to Turkey.
- Allegation types: Protection in the event of removal, expulsion or extradition (Art. 19); Right to effective remedy and fair trial (Art. 47); Right to asylum (Art. 18).
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent Risk, as enshrined in Art. 12 of the Agency's Rules on the Complaints Mechanism.
- Follow up and Findings: Hellenic Police responded on 1 November 2017, the readmission to Turkey of the complainant was cancelled, in order to respect fundamental rights of the complainant. On 13 November FRO informed to parties involved about the **closure** of the case.

#### **CMP-2017-00011**

- Complainant: Russian national who was several times at the Polish borders attempting to file an application for international protection. The complainant was being rejected and sent back to Belarus.
- Frontex activity: Border check activities on 12 April 2017 at the railway Border Crossing Point (BCP) Terespol, at the Polish-Belarus border.
- Allegation types: Right to asylum (Article 18 of the EU Charter); Right to good administration (Article 41 of the Charter).
- Alleged Perpetrator: Member State staff, Frontex present in the BCP.
- Type of Case: Standard.
- Follow up and Findings: Response received from the Polish Border Guard on 7 September 2017, stating that the complainant did not hold a valid visa to enter in Poland and no request for international protection was

filed. BG authorities stated that the complainant was indicating economic reasons to enter the country. FRO requester additional information on allegations addressed by the complainant. Second response from the Polish Border Guard received on 11 December 2017, under analysis.

#### **CMP-2017-00014**

- **Complainant:** Afghan citizen removed from Hungary, while allegedly appeal was pending.
- **Frontex activity:** Joint Return operation. Flight from Hungary to Afghanistan on 20 November 2017.
- **Allegation types:** Protection in the event of removal, expulsion or extradition (Art. 19 of the EU Charter); Right to effective remedy and fair trial (Art. 47).
- **Alleged Perpetrator:** Member State staff, Frontex operational implementation.
- **Type of Case:** Imminent Risk, as enshrined in Art. 12 of the Agency's Rules on the Complaints Mechanism.
- **Follow up and Findings:** Pending. Complaint forwarded to NFPoC on 7 December 2017.

## **4.2 INADMISSIBLE COMPLAINTS**

#### **CMP-2016-00001**

- **Complainant:** Group of 22 Sri Lankan citizens that had requested asylum in Bulgaria several months ago and were waiting for a decision in detention centre without receiving any information or reason for being detained.
- **Reason for inadmissibility:** No Agency activity, referred to Ombudsman and UNHCR.

#### **CMP-2016-00002**

- **Complainant:** Information on an individual was submitted anonymously. It did not relate to a person who was directly affected by Agency's activity.
- **Reason for inadmissibility:** No related to any activity of the Agency.

#### **CMP-2017-00002**

- **Complainant:** Anonymously received complaint related to the situation at the port in Chios island: overnight in the open air at the Chios port, then wooden shed in poor conditions, and in Vial a cage as a waiting area before registration.
- **Reason for inadmissibility:** Complaint not submitted by a directly affected person.

In this case Article 6 of the Agency's Rules on the Complaints Mechanism applied:

*"1. Correspondence which is not a complaint is filed by the FRO as either outside the mandate or as an expression of concern.*

*2. An expression of concern may be sent by the FRO to the relevant unit or entity within the Agency for its further handling, and, if necessary, action".*

Even though the complaint received did not fulfil the admissibility requirements for the case to be admissible, the FRO nevertheless considered the situation described needed special attention and action by the Agency. FRO provided to ED an **expression of concern** regarding the protracted dire conditions of reception in Chios Island for landings the Agency supports during evening/night hours observed and reported since September 2016. The situation seems to have been improved.

#### **CMP-2017-00004**

- **Complainant:** Ghana citizen in a detention centre in Bulgaria not being able to ask for asylum and not receiving any reasons of his arrest.
- **Reason for inadmissibility:** No related to Agency's activities. The FRO refer the complainant with contact details to the Bulgarian Ombudsman and the UNHCR national bureau in Sofia.

#### **CMP-2017-00005**

- **Complainant:** Journalist complained after not allowed to record a readmission operation in Lesbos, Greece.
- **Reason for inadmissibility:** Actions alleged do not involve concrete fundamental rights violations. Referred to Frontex Press Office.

#### **CMP-2017-00006**

- **Complainant:** Anonymous. Tamil Sri Lankan group of persons complaining that the Bulgarian government started the deportations of rejected asylum seekers.

- **Reason for inadmissibility:** No related to any activity of the Agency. The FRO referred the complainant with contact details to the Bulgarian Ombudsman and the UNHCR national bureau in Sofia.

#### **CMP-2017-00007**

- **Complainant:** Russian citizen with children, not allowed to ask for asylum in Poland.
- **Reason for inadmissibility:** In Frontex operational area, but no apparent deployed officers' presence or involvement. Complainant referred to Polish Border Guard complaints mechanism and Polish Ombudsman.

#### **CMP-2017-00008 and CMP-2017-00009**

- **Complainant:** Citizens of Tajikistan. Poland border guards do not allow to enter Poland and ask for asylum.
- **Reason for inadmissibility:** In Frontex operational area, but no apparent deployed officers' presence or involvement. Complainant referred to Polish Border Guard complaints mechanism and Polish Ombudsman.

#### **CMP-2017-00012**

- **Complainant:** Syrian refugee detained in Moria, Lesvos, Greece pending his readmission to Turkey. A final decision on his asylum application was pending on national court.
- **Reason for inadmissibility:** It was not performed by Frontex staff or within the framework of any Agency activity. Complainant referred to the Greek Ombudsman complaint mechanism.

#### **CMP-2017-00013**

- **Complainant:** EU citizen complaints about the queues to cross at the BCP in Horgoš, at the Hungarian- Serbian border.
- **Reason for inadmissibility:** Actions alleged do not involve concrete fundamental rights violations. Allegation not performed by Frontex staff or within the framework of any Agency activity.

#### **CMP-2017-00015**

- **Complainant:** EU citizen stopped by officer allegedly having inadequate behaviour at the land border, between Kaliningrad, Russian Federation and Lithuania.
- **Reason for inadmissibility:** Allegations were not performed by Frontex staff or within the framework of any Agency activity.

## **5. CONCLUSIONS AND FUTURE PLANS**

In the first year of existence of the individual complaints mechanism, the FRO has faced enormous challenges, but has also realised the potential and the opportunities the mechanism represents in terms of addressing fundamental rights violations or risk of breaches of those. **The mechanism serves to enhance transparency in the work of the Agency and accountability** and responsibilities of Frontex deployed border guards and national host Member State staff in fundamental rights matters.

An **assessment is ongoing** whether a new ED Decision should improve and to what extent the existing rules approved by ED Decision in October 2016.

The EBCG Regulation clearly establishes that the Agency and MS have the responsibility in ensuring appropriate follow-up on the complaints.<sup>8</sup> There is therefore a need to **cooperate with national stakeholders, competent to handle and decide on fundamental rights related complaints**. In this sense, the FRO and the Member States' authorities in charge of handling complaints have to cooperate closely, coordinate information and regularly exchange best practice and challenges in order to ensure proper follow-up and reporting on the outcome of the complaints. There is also a clear need for FRO's cooperation with national human rights institutions to guarantee an additional oversight of the rights to good administration and adequate investigation of complaints. For this purpose, FRO intends to finalize the completion of the network of competent authorities in Member States during 2018. The organization of a meeting with MS/SAC authorities will take place in 2018 once the new rules are in place.

In order to address the obvious need to enhance the overall **visibility and accessibility of the mechanism** and once the awareness materials have been produced, the FRO expects a significant increase on the awareness of the mechanism following the distribution of related information materials to operational areas. Clearer instructions to operational officers in form of training and instructions from the Agency's management should enhance access to the mechanism during Agency's activities, as mandated by Article 72 (10) of the EBCG Regulation. FRO will therefore

<sup>8</sup> Art.7 and 8 of the EBCG Regulation

support the development of a specific webinar on the complaints mechanism for the use of members of the teams or other deployed officers at their convenience. To this end, meetings have been held with training unit and operational units in 2017 and an outline methodology has been agreed upon. In 2018, the webinar concept will be formalized and delivered by the FRO team.

The need for more accessibility of the complaints mechanism specifically for vulnerable groups and children, has also been clearly identified and will be developed further. In 2018, this will require deeper involvement of the FRO and the CF, and other external stakeholders. FRO will focus on complainants' needs and explore opportunities to address different vulnerabilities so as to adapt the tools and the information available for them.

Lastly, an issue of concern is the recruitment of additional staff. An additional assistant approved in October 2016 is finally foreseen for recruitment during 2018. FRO has requested the Agency more senior staff (2 AD posts) with specific expertise on complaints to manage and implement the mechanism. The mechanism requires a separated team for its independent and impartial implementation, that should be free from conflict of interest with other operational related support performed by the FRO.

Inmaculada Arnaez  
Fundamental Rights Officer

## INDIVIDUAL COMPLAINTS MECHANISM ANNUAL REPORT 2018

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## 1. INTRODUCTION

Pursuant to Article 72(9) of the European Border and Coast Guard Regulation (EBCG) 2016/1624, the Fundamental Rights Officer (FRO) “shall report to the executive director and to the management board as to the Agency’s and Member States’ findings and follow-up made in response to complaints. The Agency shall include **information on the complaints mechanism in its annual report**”. The Regulation further foresees that the FRO has the task of monitoring the Agency’s compliance with fundamental rights and of promoting its respect (Article 71(1)). For these purposes, FRO regularly reports to the Management Board (MB), and as such contributes to the mechanism for monitoring fundamental rights.

Although separated from the fundamental rights monitoring system mentioned in Article 34, Article 72 of the Regulation establishes the main features of the Agency’s individual complaints mechanism: it is defined with the clear objective to monitor and ensure the respect of fundamental rights in the activities carried out by the European Border and Coast Guard Agency. The FRO has continued to provide advice and support the development of tools to promote fundamental rights in border management activities and continuously works on improving the effectiveness of this monitoring system as provided by the Regulation.

It is necessary to enhance the functioning of the complaints mechanism. The Agency has the obligation to ensure that the work it carries out always observes and guarantees fundamental rights and EU law. The Commission and the European Ombudsman among other relevant stakeholders, have insisted on the need for the Agency to have an independent and effective individual complaints mechanism. It has been widely regarded as a very positive step of transparency to include this mechanism in the Regulation 2016/1624.

The current report gives a comprehensive overview of the FRO activities on the complaints mechanism during the year 2018 and provides full information about the implementation of the individual complaints mechanism and its legal and practical functioning and challenges.

## 2. THE COMPLAINTS MECHANISM FRAMEWORK

The individual complaints mechanism is essentially an administrative mechanism<sup>1</sup> aiming to safeguard the respect for fundamental rights in all the activities of the Agency. The FRO is responsible for handling complaints received in writing by the Agency from individuals directly affected by activities of the Agency, or their representatives, in accordance with the right to good administration. The FRO is in charge of performing an admissibility check and referring admissible complaints for follow up and findings to the relevant Member State (MS) authorities and the Agency’s Executive Director (ED), as applicable.

Article 72 of the EBCG Regulation is further developed in the Decision No R-ED-2016-106 of 6 October 2016 that includes the Agency’s Rules on the Complaints Mechanism.<sup>2</sup> The Agency has also the obligation to include information regarding the individual complaints mechanism in the Operational Plans (OPLAN’s). As stated in Article 16.3 of the EBCG Regulation “*The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following: [...] (m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the European Border and Coast Guard teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;*”.

In order to fulfil this obligation, the FRO has assisted operational entities of the Agency in the drafting and revision of the annex on complaints mechanism within Frontex coordinated activities to be included in the Operational Plans. The annex is a brief and concise document that contains general information about the mechanism. It also highlights the obligations of the members of the teams participating in an operation, such as the duty to inform about the mechanism and the duty to have available information material. The annex is accompanied by information materials where more detailed explanation on the mechanism can be found.

In accordance with the EBCG Regulation, the Agency should take the necessary measures to set up a complaints mechanism and provide FRO with adequate resources and staff corresponding to its mandate and size. A temporary agent (AST III) joined the Agency in May 2017 to support the establishment of a complaint mechanism. Along with the

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<sup>1</sup> Art.72 of the EBCG Regulation

<sup>2</sup> [http://frontex.europa.eu/assets/Complaint/Annex\\_1\\_-\\_Frontex\\_rules\\_on\\_the\\_complaints\\_mechanism.pdf](http://frontex.europa.eu/assets/Complaint/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf)

Technical Officer, an additional staff (FG IV), pending recruitment since October 2016, was selected in the second half of 2018 and joined the FRO office in December 2018.

With the increasing tasks of the Agency, the framework for monitoring and ensuring the protection of fundamental rights as well as the complaints mechanism is being strengthened. One relatively new element to consider relates to the implementation of operational activities with executive powers on the territory of third countries.

The scope and implementation of the complaints mechanism in third countries when related to these Agency's activities will need to be considered. As mandated in Article 54.1 of the Regulation, *“the Agency and the Member States shall comply with Union law, including norms and standards which form part of the Union acquis also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards, including with regard to the protection of fundamental rights and the principle of non-refoulement”*.

### 3. DEVELOPMENTS

#### 3.1 RULES

The drafting of the procedural rules of the complaints mechanism started prior to its adoption by the Executive Director in October 2016. The FRO provided comments and suggestions to the Agency's rules on the complaint mechanism which were not all included in the adopted rules. In 2017, the FRO proposed a set of revised rules to improve the effectiveness and safeguards of the mechanism. The draft presented was extensively consulted with the Consultative Forum (CF) and relevant entities within the Agency during 2018. It has to be noted that in 2018, several organizations raised their concerns about the effectiveness and lack of effective remedy of the complaints mechanism and respective papers were published<sup>3</sup>. A sound justification for a revision was provided by FRO to the Executive Management. However, the Executive Management concluded to keep for the time being the current rules on the complaints mechanism, and favoured the elaboration of additional guidance as stipulated in the rules on the complaints mechanism, Article 17, to improve the procedures. FRO expressed her concerns for not taking into consideration the revision of the rules, but committed herself to work on the additional guidance during 2019. The guidance will further consider FRO proposals such as developing procedures for the investigative body to provide a final decision on the complaint; specifying means of appeal against decisions; and the possibility to receive anonymous complaints via representatives.

An evaluation of the rules in force is required by Article 18 of the rules on the complaints mechanism. It might be advisable to request support from an external institution and conduct an overall assessment of the mechanism, its rules, effectiveness and impact.

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<sup>3</sup> *Complaint Mechanisms in Border Management and Expulsion Operations in Europe: Effective remedies for victims of human rights violations?* CEPS. [https://www.ceps.eu/system/files/Complaint%20Mechanisms\\_A4.pdf](https://www.ceps.eu/system/files/Complaint%20Mechanisms_A4.pdf)

*Fifth Annual Report of the Frontex Consultative Forum on Fundamental Rights.*

<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>

*The introduction of an individual complaint mechanism within FRONTEX: two steps forward, one step back.* Fernandez Rojo. [https://www.academia.edu/24004716/The\\_Introduction\\_of\\_an\\_Individual\\_Complaint\\_Mechanism\\_within\\_Frontex\\_Two\\_Steps\\_Forward\\_One\\_Step\\_Back](https://www.academia.edu/24004716/The_Introduction_of_an_Individual_Complaint_Mechanism_within_Frontex_Two_Steps_Forward_One_Step_Back)



## 3.2 INFORMATION AND AWARENESS MATERIALS

### A. MOST COMMON LANGUAGES - AVAILABILITY OF COMPLAINTS FORMS

Article 5(1) of the Agency's Rules of the Complaints Mechanism stipulates that *'the Agency makes the complaint form available in the most common languages that third country nationals understand or are reasonably believed to understand'*. The Agency therefore determines the need to have the complaint form available in a specific language after collecting data from the relevant units. Following this assessment, a list of the most common languages of potential complainants during the Agency's operations is internally established. The Agency remains flexible to address new or changing language requirements.

In 2018, the complaint form, along with general information regarding the mechanism and the data protection privacy statement, has been made available on the Agency's website in three (3) new languages. In total, materials are now available in eleven (11) languages: Arabic, English, French, Urdu, Tigrinya, Pashtu, Serbian, Albanian, Russian and Spanish and Farsi.



### B. INCREASED ACCESS VIA THE AGENCY'S WEBSITE

One of the most recurrent recommendations<sup>4</sup> since the entry into force of the complaints mechanism is about the need to improve the accessibility to the mechanism on the Agency's website. Initially, the access to information about the mechanism on this website was not very user-friendly. As a result, in March 2018, the information on the complaints mechanism and how to lodge a complaint was properly placed under the Fundamental Rights section.

The creation of a system which started in 2017 in cooperation with the ICT unit, to allow submission of complaints through a microsite located in the website of the Agency (<https://microsite.frontex.europa.eu/en/Complaints>), was further developed in 2018 with a focus to study the viability to use mobile devices as a new way of submission, given its guide availability among potential complainants. FRO and ICT have jointly worked during 2018 on a tool for submission of complaints directly from smartphone devices. The prototype is on a test stage and the first prototype in English is planned to be available in summer 2019.

### C. AWARENESS RAISING CAMPAIGN: MATERIALS AND ITS DISSEMINATION

As stated in Article 72.10 *"The Agency shall ensure that information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons [...] in languages that third-country nationals understand or are reasonably believed to understand"*. Since the inception of the complaints mechanism, the FRO developed and disseminated information materials to raise awareness about the existence of the complaints mechanism, both externally for the public and internally for the Agency staff. For the establishment of the different needs for information material, FRO has worked intensively and in close coordination with the Frontex Field Deployment Unit and European Centre for Returns.

Following the principle of good administration and the subsequent need to ensure dissemination, the FRO has focused on the duty to inform potential complainants on their rights and on how to file a complaint. While in 2017 the complaints team developed the first awareness material for the complaint mechanism in accordance with Article 72, the **information booklet on the individual complaints mechanism** has been translated into the eleven (11) languages previously mentioned. In 2018, a **poster on the complaints mechanism** was also designed. The poster is meant to be allocated in visible places in operational areas along with hard copies of the information booklet.

As part of the awareness raising campaign, over nine thousand (9.000) copies of the booklet and almost one hundred (100) posters were distributed in operational areas during summer 2018. The printable versions are uploaded in FOSS and FAR, two internal databases, to be at hand for all deployed officers for all operations, including returns.

Likewise, as part of the internal awareness raising campaign, the individual complaints mechanism was introduced as a new topic in all briefings and training sessions for staff of the Agency and deployed officers. With the aim to provide

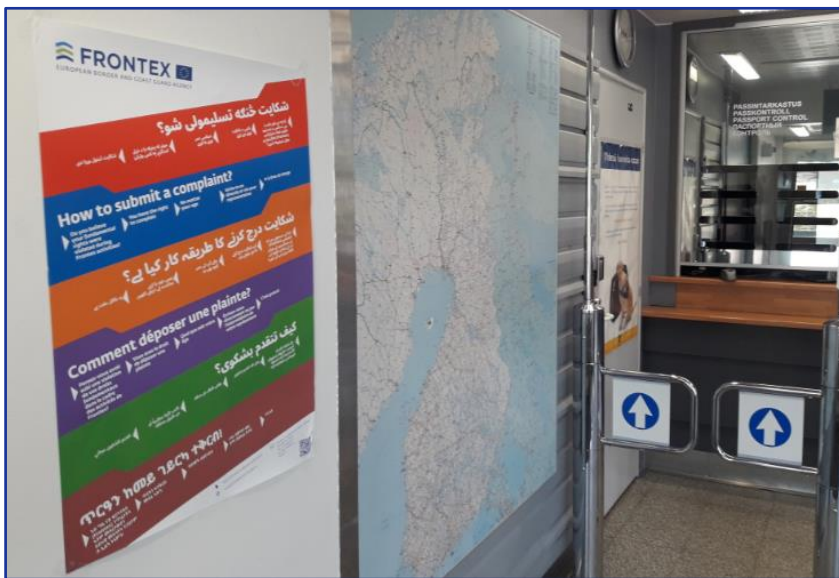
<sup>4</sup> See the Second Report on the operationalisation of the European Border and Coast Guard from March 2017 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1502446980080&uri=CELEX:52017DC0201>

a better understanding of the mechanism and the duties of persons involved in the Agency's activities, the FRO has finalised the recording of a seminar on the complaints mechanism. The videos are part of the training materials for Frontex staff, to be stored in FOSS, FAR and used in pre-deployment briefings.

In 2018, the FRO also started an external dissemination campaign. In this context, the FRO sent an information package to the members of the Consultative Forum to further raise awareness about the mechanism. In addition, the complaints team has been working on a **video about the complaints mechanism** for the general public to be informed. The video is to be translated into several languages and to be available in operational areas where potential complainants can view it.

The Technical Officer for Complaints conducted a field visit to hotspots in Lesvos and Chios islands in Greece. The aim was to introduce the Frontex complaints mechanism to the Agency's deployed officers, International Organisations and Civil Society Organisations. The visit also provided a platform for assessing the level of awareness among officers and other relevant stakeholders about the complaints mechanism and discussing challenges. New field visits will be carried out during 2019.

The FRO is also considering the development of complaints materials for children. A communication plan about dissemination and awareness raising activities are currently devised.



#### D. INFORMATION REQUESTS AND AWARENESS SESSIONS

FRO has regularly answered queries and requests for information from European institutions, researchers and individuals about the complaints mechanism.

Moreover, the FRO received three (3) requests regarding Access to Documents (PAD) under Regulation (EC) No 1049/2001. The requests were related to the individual complaints received by Frontex since the entry into force of the complaints mechanism on 6 October 2016. According to Article 4(4) of the aforementioned Regulation[1],

the FRO Office contacted Member States involved in the complaints to assess disclosure of the documents and indicate the reasons, if any, for which Frontex should not disclose the documents justified under the specific exceptions the Regulation 1049/2001 provides. FRO is pleased to report that no MS has expressed any restriction to access documents and the information is timely delivered.

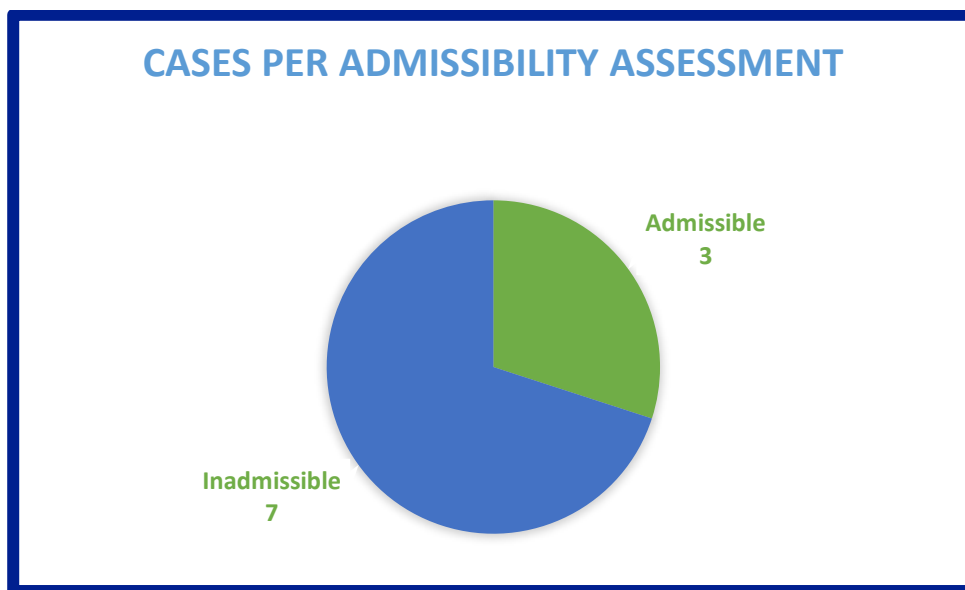
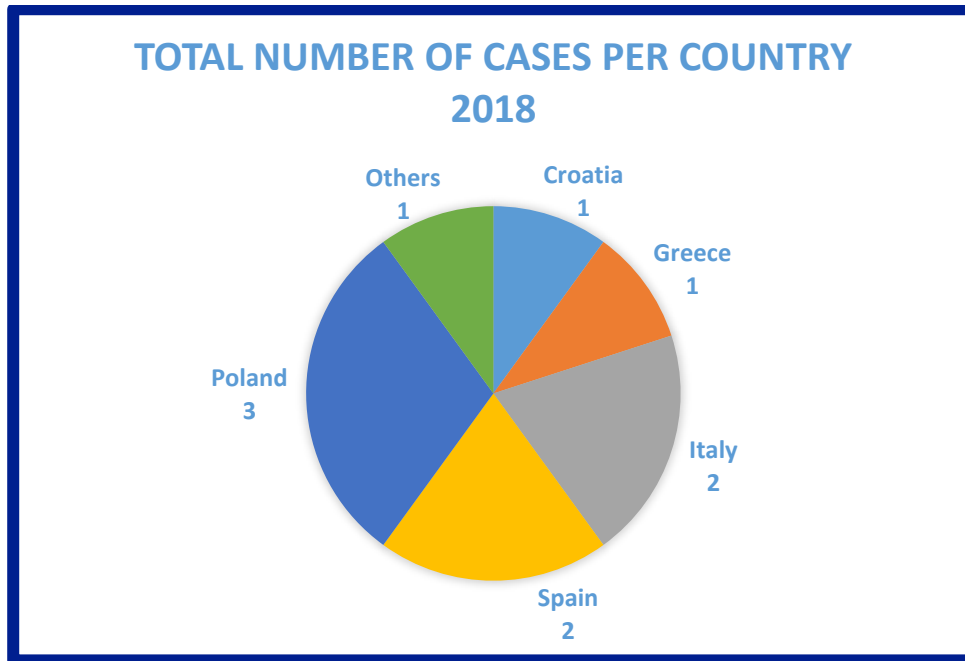
#### 4. OVERVIEW OF COMPLAINTS RECEIVED

In 2018, the FRO has received a total of ten complaints (10). The FRO performed admissibility reviews whereas three (3) complaints were declared admissible. National procedures are currently ongoing and FRO is consolidating information on the findings upon receipt, requesting updates as necessary.

In relation to complaints declared inadmissible, FRO responds individually with detailed explanations about the reasons for inadmissibility, and provides - whenever possible - information on other remedies available, when known, in case complainants wish to address their complaints or concerns to other institutions or authorities, in accordance to the principle of good administration and the information provided by MS themselves. This information generally includes complaints mechanism at the Member States Ministers of Interior and the Ombudspersons or fundamental rights institutions, as well as some specific organisations, if known or available.

As established in the EBCG Regulation *“in order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report. It should cover in particular the number of complaints it has*

received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States”<sup>5</sup>.



#### 4.1 ADMISSIBLE COMPLAINTS

##### **CMP-2018-00005 in relation to CMP-2017-00001**

- **Complainant:** Family of six (6) persons, including four (4) children, who had formally expressed to the competent authorities their will to seek for asylum in Greece.
- **Frontex activity:** Air Readmission operation on 20 October 2016 from Greece to Turkey.
- **Allegation types:** Right to asylum (Art. 18 of the European Charter of Fundamental Rights); Rights of the child (Art. 24); Protection in the event of removal, expulsion or extradition (Art. 19).
- **Alleged Perpetrator:** Member State staff decision, Frontex implementation.
- **Type of Case:** Standard, reported weeks after event.

<sup>5</sup> Whereas (50) of the Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

- Follow up and Findings:

The FRO ensured the follow-up on the case, pursuant Article 72 (4) of the European Border and Coast Guard Regulation since January 2017. On 25 October 2017, after several requests from FRO, the Hellenic National Focal Point of Contact (NFPOC) notified via email to the FRO that the complaint was still under investigation by the General Inspectorate of Public Administration. On 13 February 2018 the ED submitted a letter to Greek NFPOC asking for urgent follow-up on the investigations.

On 17 July 2018 a new complaint CMP-2018-0005 was submitted based on the lack of response on findings and follow up of complaint CMP-2017-00001. Violation of the Right to good administration is added to the previous alleged violations above mentioned. The FRO requests monthly to the NFPOC response on follow up with no reply. On 3 December 2018, the Director of Border Protection Division sends a letter to the FRO. The actions of the Hellenic Police do not fall under the competence of the General Inspector of Public Administration. In light of the results, the Hellenic Police informed that they ordered an internal Preliminary Administrative Investigation.

To the end of the reporting period, 31 December 2018, the FRO has not received feedback from the Hellenic authorities and the deadline foreseen in the Agency's Rules has expired. In the opinion of the FRO, this situation jeopardizes the effectiveness of the complaints mechanism and the principle of good administration and due diligence that should be observed.

**CMP-2018-00008**

- Complainant: One person returned by plane from Madrid, Spain.
- Frontex activity: Joint Return Operation on 26 September 2018 from Spain to Colombia.
- Allegation types: Human dignity (Art. 1 of the European Charter); Prohibition of torture and inhuman or degrading treatment or punishment (Art. 4).
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Standard, reported two (2) months after event.
- Follow up and Findings: The Spanish Police on 18 December 2018 reported back to the FRO. FRO requested additional information on allegations addressed by the complainant.

**CMP-2018-00009**

- Complainant: Person with disabilities and reduced mobility.
- Frontex activity: Land Joint Operation on Border Checks. Polish-Ukrainian border, Dorohusk Border Crossing Point, 13 September 2018.
- Allegation types: Integration of persons with disabilities (Art. 26).
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Standard.
- Follow up and Findings: Pending. Complaint forwarded to NFPOC on 17 January 2019.

**4.2 INADMISSIBLE COMPLAINTS**

**CMP-2018-00001**

- Complainant: Anonymously received complaint related to the situation at the Croatian border with Bosnia and Herzegovina. Family stopped for hours and vehicle searched with no explanation given.
- Reason for inadmissibility: Not related to any activity of the Agency.

**CMP-2018-00002**

- Complainant: Information on an individual was submitted anonymously. It did not relate to a person who was directly affected by Agency's activity.
- Reason for inadmissibility: Not related to any activity of the Agency.

**CMP-2018-00003**

- Complainant: Non-European woman traveling from Germany to Warsaw by train, taken into custody by Polish border officers to an unknown location. She was denied the right to legal representation. She was not informed of the causes of the detention.
- Reason for inadmissibility: Complaint not related to any activity of the Agency. The FRO referred the complainant with contact details to the Polish Border Guard complaints mechanism and Polish Ombudsman.

#### CMP-2018-00004

- **Complainant:** Person living outside Europe born in Italy trying to go back to the country of birth after 20 years.
- **Reason for inadmissibility:** Not related to Agency's activities. The FRO refers the complainant with contact details to the Italian Embassy.

#### CMP-2018-00006

- **Complainant:** Woman not allowed to enter Italy, at Verona airport, due to the lack of a document required.
- **Reason for inadmissibility:** Not related to any activity of the Agency.

#### CMP-2018-00007

- **Complainant:** European citizen stopped frequently at the border crossing with Morocco despite of the agreement between countries.
- **Reason for inadmissibility:** Not related to any activity of the Agency.

#### CMP-2018-00010

- **Complainant:** European family with 3 children stopped for 10 hours at the Polish border with Ukraine to exit the EU.
- **Reason for inadmissibility:** Not related to any activity of the Agency. Complainant referred to Polish Border Guard complaints mechanism and Polish Ombudsman.

In this case, Article 6 of the Agency's Rules on the Complaints Mechanism applied. The complaint was dealt with as an expression of concern. Even though the complaint received did not fulfil the admissibility requirements for the case to be admissible, the FRO nevertheless considered that it fully deserves further attention and FRO submitted its concerns to the Polish authorities regarding this specific situation at the Polish border control points. The FRO recommended to take necessary steps to provide for appropriate infrastructure and improved procedures to avoid prolonged delays when crossing the EU external borders<sup>6</sup>.

## 5. CONCLUSIONS AND FUTURE PLANS

In these first two years of existence of the individual complaints mechanism, the FRO has faced several challenges, but is also now fully aware of the opportunity that the mechanism represents in terms of addressing fundamental rights violations or risk of breaches of those. **The mechanism serves to enhance transparency and fundamental rights accountability of the Agency** and of Frontex deployed border guards and national host Member State staff.

In order to address the need to enhance the **accessibility to the mechanism** and once the awareness materials are being produced, the FRO expects to further **increase the awareness** of the mechanism through several actions:

- Monitor the distribution of information materials in operational activities.
- Ensure wide dissemination of the training material for the complaints mechanism and ensure relevant information is provided during the operational briefings.
- Support the dissemination of the awareness video currently produced by Frontex.
- Expand activities of awareness to external stakeholders.



<sup>6</sup> For further information, see also the FRA report on land borders: <https://fra.europa.eu/en/publication/2015/fundamental-rights-land-borders-findings-selected-european-union-border-crossing>

More accessibility of the complaints mechanism, specifically for vulnerable groups, and particularly children, has also been clearly identified as need and will have to be addressed further, with involvement of FRO, the CF and other stakeholders. FRO will focus on complainants' needs and explore opportunities to address different vulnerabilities so as to adapt the tools and the information available to them.

Finally, the FRO intends to further engage with third countries concerning the complaints mechanism framework and cooperate with relevant third countries authorities to ensure the effective implementation of the complaints mechanism related to the Agency's third countries activities.

**Frontex  
Fundamental Rights  
Officer, Complaints Team**

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00-844 Warsaw  
Poland**

**<http://frontex.europa.eu/complaints/>**

**[complaints@frontex.europa.eu](mailto:complaints@frontex.europa.eu)**

The infographic features three devices: a desktop monitor on the left, a smartphone in the center, and a laptop on the right. Each device has a callout box pointing to it. The desktop monitor callout contains the organization's name and address. The smartphone callout contains the website URL. The laptop callout contains the email address. The background is a dark blue gradient.

## INDIVIDUAL COMPLAINTS MECHANISM ANNUAL REPORT 2019

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### 2. COMPLAINTS MECHANISM FRAMEWORK

### 3. DEVELOPMENTS

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##### 3.1.2. VIDEO ON COMPLAINTS MECHANISM

##### 3.1.3. RECORDED SEMINAR ON COMPLAINTS MECHANISM

#### 3.2. INCREASED ACCESS VIA THE AGENCY'S WEBSITE

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### 7. CONCLUSIONS AND FUTURE PLANS



- ENGLISH** Your right to complain to Frontex
- FRENCH** Votre droit de déposer une plainte auprès de Frontex
- TIGRINYA** ኣብ Frontex ጥርጥፕ ናይ ምኽራብ መሰልኻ
- SPANISH** Tu derecho a presentar una queja ante Frontex
- RUSSIAN** Ваше право подать жалобу в Frontex
- SERBIAN** Vaše pravo na žalbu Frontexu
- ALBANIAN** E drejta juaj për t'u ankuar pranë Frontex-it



## 1. INTRODUCTION

On 4 December 2019 the Regulation (EU) 2019/1896 on the European Border and Coast Guard<sup>1</sup> entered into force, which foresees in Article 111(9) that the Fundamental Rights Officer (FRO) includes information on the complaints mechanism in her annual report on her activities. However, as the present report covers the period from January 2019 to January 2020, the preparation of it is still based on Article 72(9) of the European Border and Coast Guard Regulation 2016/1624<sup>2</sup> (Regulation).

Pursuant to Article 72(9) of the Regulation, the FRO “*shall report to the executive director and to the management board as to the Agency's and Member States' findings and follow-up made in response to complaints. The Agency shall include information on the complaints mechanism in its annual report*”.

The Agency has the obligation to ensure that the work it carries out always observes and guarantees fundamental rights and the EU law. Among other relevant stakeholders, the EU Commission and the European Ombudsman have insisted on the need for the Agency to have an independent and effective individual complaints mechanism. It has been widely regarded as a very positive step towards transparency to include this mechanism in the Regulation 2016/1624.

The Regulation further foresees in Article 71(1) that the FRO has the task of monitoring the Agency's compliance with fundamental rights and of promoting its respect of fundamental rights. For these purposes, the FRO regularly reports to the Management Board (MB), and as such contributes to the mechanism for monitoring fundamental rights.

The current report gives a comprehensive overview of the FRO activities within the complaints mechanism during the year 2019 and provides full information about the implementation of the individual complaints mechanism and its legal and practical functioning and challenges.

## 2. COMPLAINTS MECHANISM FRAMEWORK

Mentioned in Article 34(1) of the Regulation, as a part of the mechanism to monitor the respect for fundamental rights, the individual complaints mechanism of the Agency is established in Article 72 of the Regulation, with a clear objective of monitoring and ensuring the respect of fundamental rights in all the activities of the Agency. It is essentially an administrative mechanism<sup>3</sup> within which the FRO is responsible for handling complaints, received in writing by the Agency, from individuals directly affected by activities of the Agency, or their representatives, in accordance with the right to good administration. The FRO is in charge of performing an admissibility assessment of those complaints and referring admissible ones for findings and follow-up to the competent authorities of the relevant Member States (MS) and the Agency's Executive Director (ED), as applicable.

Article 72 of the Regulation was further developed in the Decision No R-ED-2016-106 of 6 October 2016 that includes the Agency's Rules on the Complaints Mechanism.<sup>4</sup> The Rules were intended to enable persons to complain where they consider that their fundamental rights have been violated, thereby contributing to the transparency, accountability and compliance with fundamental rights of the Agency in all its activities.

In accordance with the Regulation, the Agency should take the necessary measures to set up a complaints mechanism. The functioning of the mechanism has to be enhanced, therefore the FRO has continued to provide advice on and support the development of tools to promote fundamental rights in border management activities and continuously works on improving the effectiveness of the monitoring system as provided by the Regulation. The strengthening of this mechanism will continue in future, especially in the light of the changes introduced by the Regulation (EU) 2019/1896. For that purpose, the Agency should also provide the FRO with adequate resources and staff corresponding to its mandate and size. At this moment the complaints team comprises of two members: a technical officer (AST III), who joined the Agency in May 2017, and a senior assistant (FG IV), who joined in December 2018.

Furthermore, the Agency has the obligation to include information regarding the individual complaints mechanism in the Operational Plans. As stated in Article 16(3) of the Regulation “*The operational plan shall be binding on the*

<sup>1</sup> Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

<sup>2</sup> Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

<sup>3</sup> Recital (50) of the Regulation (EU) 2016/1624.

<sup>4</sup> [http://frontex.europa.eu/assets/Complaint/Annex\\_1\\_-\\_Frontex\\_rules\\_on\\_the\\_complaints\\_mechanism.pdf](http://frontex.europa.eu/assets/Complaint/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf)



*Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following: [...] (m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the European Border and Coast Guard teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;”.*

In order to fulfil this obligation, the FRO has assisted operational entities of the Agency in the drafting and revision of the annex on complaints mechanism within Frontex coordinated activities to be included in the Operational Plans. The annex is a brief and concise document that contains general information about the mechanism. It also highlights the obligations of the members of the teams participating in an operation, such as the duty to inform about the mechanism and the duty to make available information material. The annex is accompanied by information materials where more detailed explanation on the mechanism can be found.

### 3. DEVELOPMENTS

#### 3.1 AWARENESS RAISING CAMPAIGN: MATERIALS AND DISSEMINATION

As stated in Article 72(10) of the Regulation *“the Agency shall ensure that information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons [...] in languages that third-country nationals understand or are reasonably believed to understand”.*

Following the principle of good administration and the subsequent need to ensure dissemination, the FRO has focused on the duty to inform potential complainants on their rights and on how to file a complaint. As explained below, in 2019 a new booklet on the individual complaints mechanism was prepared and translated to twelve (12) languages and is now ready to be distributed. As part of the awareness raising campaign, many copies of the previous booklet were distributed in operational areas during 2019. The printable versions were uploaded to FOSS and FAR, to be at hand for all deployed officers for all operations, including returns.

As mentioned in the reports of previous years, the FRO complaints team is permanently working on the dissemination campaign to raise awareness about the existence of the mechanism. In 2019 as part of the awareness raising strategy, the complaints team delivered five (5) external presentations on the complaints mechanism, to sixteen (16) Civil Society Organizations in Greece and Spain, as well as four (4) internal trainings for Frontex deployed officers in Greece and Spain and an internal training to FSC shift leaders. Furthermore, the complaints team delivered an awareness session on the complaints mechanism in Frontex Headquarters to Intelligence Officers from four (4) Member States.

In 2019 the complaints team conducted a field visit to Moria hotspot in Lesbos, Greece. The aim was to introduce the Frontex complaints mechanism to the Agency’s deployed officers, International Organisations and Civil Society Organisations. The visit also provided a platform for assessing the level of awareness among officers and other relevant stakeholders about the complaints mechanism and discussing challenges. New field visits will be carried out during 2020.

### 3.1.1. BOOKLET ON COMPLAINTS MECHANISM



In 2019, the FRO developed a new booklet on the complaints mechanism to provide the information on the mechanism in a more simple and clearer way. The text of the new booklet was shared with the Consultative Forum and the Senior Management of the Agency. In order to provide the information about the possibility and procedure for making a complaint in languages that third-country nationals understand or are reasonably believed to understand, the new booklet was prepared in the following twelve (12) languages: English, French, Tigrinya, Spanish, Russian, Serbian, Albanian, Pashtu, Urdu, Arabic, Farsi and Kurdish. The booklet is ready for the distribution in operational areas of different Agency activities. Moreover, it is also available on the Agency's website<sup>5</sup> and in FOSS and FAR, two Agency's internal databases accessible to all deployed officers.

### 3.1.2. VIDEO ON COMPLAINTS MECHANISM

In 2019, the complaints team finalized the video on the complaints mechanism prepared for the general public to be informed about the possibility to submit a complaint to the Agency. Currently, the video is pending approval from the Senior Management of the Agency to be uploaded to the webpage and widely available, as foreseen in the Regulation.

### 3.1.3. RECORDED SEMINAR ON COMPLAINTS MECHANISM

Further in 2019, the complaints team revised the two existing recorded seminars on the complaints mechanism and prepared a new, refined and clearer version of it. The purpose of the seminar is to provide information on the complaints mechanism to the Frontex staff, the current deployed officers and the future standing corps, before their deployment to different operations of the Agency.

## 3.2. INCREASED ACCESS VIA THE AGENCY'S WEBSITE

One of the most recurrent recommendations<sup>6</sup> since the entry into force of the complaints mechanism in 2016 has been about the need to improve the accessibility of the mechanism through the Agency's website. Initially, the access to information about the mechanism on this website was not very user-friendly.

In 2019, in cooperation with the ICT unit, the complaints team continued the process of the development of the application for submission of complaints through mobile devices, using a microsite located in the website of the

<sup>5</sup> <https://frontex.europa.eu/contact/lodge-a-complaint/>

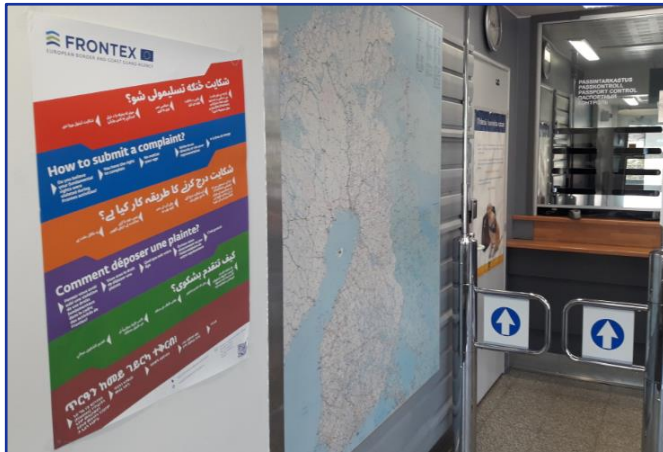
<sup>6</sup> See the Second Report on the operationalisation of the European Border and Coast Guard from March 2017 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1502446980080&uri=CELEX:52017DC0201>

Agency<sup>7</sup>. The process of developing an online system for submission of complaints, which started in 2017, is planned to be finalized in 2020 and is currently undergoing an internal pilot test.

### 3.3. COMPLAINT FORM - PRIVACY STATEMENT

In 2019, the complaints team prepared a new privacy statement, according to the Regulation (EU) 2018/1725<sup>8</sup>, to be incorporated in the existing complaint form, providing potential complainants information on the protection of their personal data when submitting a complaint. The privacy statement was translated in eleven (11) additional languages<sup>9</sup>.

### 3.4. INFORMATION REQUESTS



The FRO has regularly answered queries and requests for information about the complaints mechanism from journalists, researchers and other individuals.

Moreover, in 2019 the FRO received four (4) requests regarding Access to Documents (PAD) under Regulation (EC) No 1049/2001 on access to public documents. The requests were related to different individual complaints received by Frontex since the entry into force of the complaints mechanism on 6 October 2016. According to Article 4(4) of the aforementioned Regulation, the complaints team contacted Member States involved in the complaints to assess disclosure of the documents and indicate the

reasons, if any, for which Frontex should not disclose the documents justified under the specific exceptions the Regulation 1049/2001 provides. The FRO is pleased to report that no Member State has expressed any restriction to access documents and that the information was timely delivered by the complaints team to the Transparency Unit and the requestors.

## 4. OVERVIEW OF COMPLAINTS RECEIVED

In 2019, the FRO received a total of eighteen (18) complaints. The FRO performed admissibility review of those complaints and seven (7) of them were declared admissible.

In relation to three (3) admissible complaints, the FRO will proceed with the preparation of a final report and consider the case closed. Regarding the other four (4) admissible complaints, the procedures before competent authorities are currently pending and the FRO is consolidating information on the findings and follow-up upon receipt, requesting updates as necessary, before preparing a final report and closing each complaint.

Regarding the complaints declared inadmissible, the FRO has responded individually with a decision providing the complainants the reasons for inadmissibility, and whenever possible information on other available remedies, in case complainants wish to address their complaints or concerns to other institutions or authorities, in accordance with the principle of good administration and the information provided by Member States themselves. This information generally includes complaints mechanism at the Member States Ministry of Interior and the Ombudspersons or fundamental rights institutions, as well as some specific organizations, if known or available.

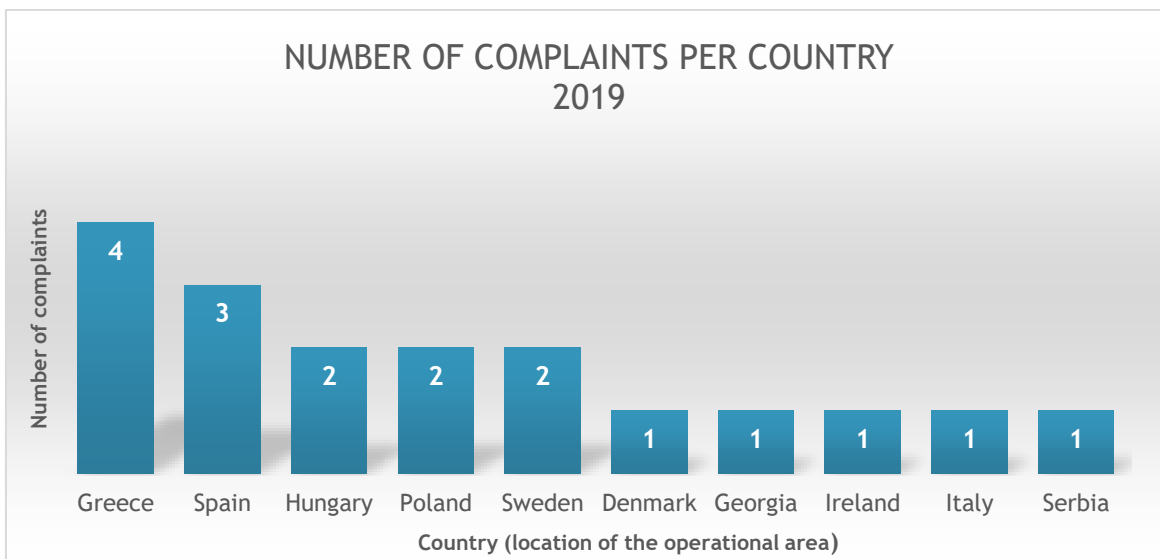
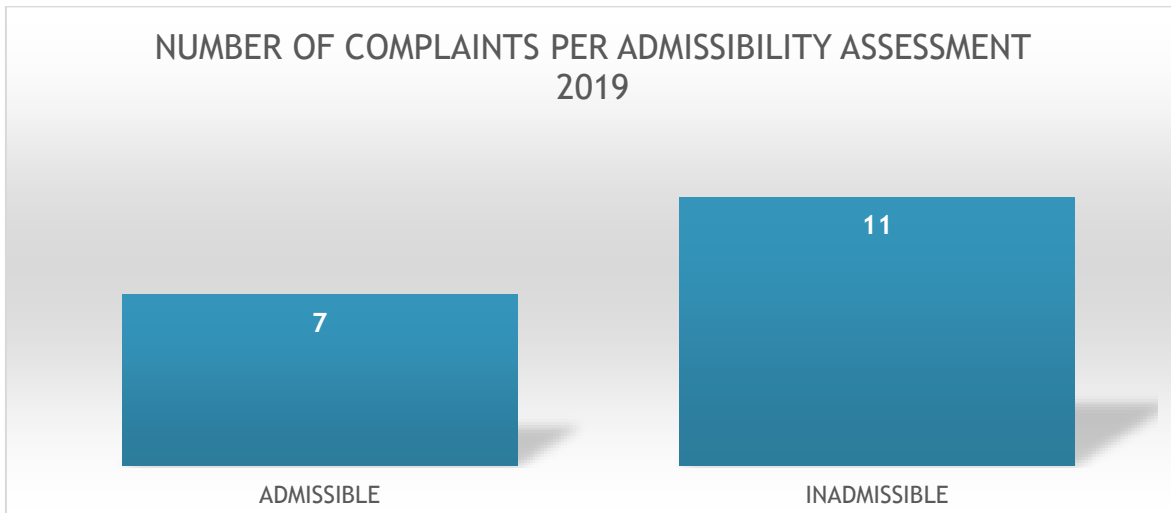
As established in the Regulation *“in order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report. It should cover in particular the number of complaints it has received,*

<sup>7</sup> <https://microsite.frontex.europa.eu/en/Complaints>

<sup>8</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39-98).

<sup>9</sup> French, Tigrinya, Spanish, Russian, Serbian, Albanian, Pashtu, Urdu, Arabic, Farsi and Kurdish.

the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States”<sup>10</sup>.



#### 4.1 ADMISSIBLE COMPLAINTS

##### CMP-2019-00004

- Complainant: Three families (sixteen persons, including children and women in vulnerable situation) who were to be returned from Hungary, where they had applied for asylum, while their appeal proceedings had been pending. They alleged that the return would violate the EU asylum legislation, as their asylum applications had not been examined in merits but merely dismissed based on a new inadmissibility ground, introduced by Hungary contrary to the EU asylum law.
- Allegation types: Right to asylum (Article 18 of the Charter of Fundamental Rights of the European Union); protection in the event of removal, expulsion, or extradition (Article 19 of the Charter); rights of the child (Article 24 of the Charter); Health care (Article 35 of the Charter); right to effective remedy and to a fair trial (Article 47 of the Charter).

<sup>10</sup> Recital (50) of the Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

- Frontex activity: Joint Return Operation, flight from Budapest, Hungary, scheduled for 7 May 2019.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent risk case.
- Follow-up and Findings: Hungarian authorities informed the FRO that there had been no fundamental rights violation and that the national procedures by the Immigration and Asylum Office (Office) and courts had been conducted in a proper way. In their opinion the complainants had all had their legal guarantees respected by the Office and later on in judicial procedure by courts (the hearing of the complainants; native-language interpreter; assistance of a legal representative). Inadmissibility decisions of their asylum applications and decisions on expulsion from Hungary had been issued in accordance with the law and *non-refoulement* principle had been respected by national authorities in all their cases, based on different information (country information, health status of the complainants). Further, MS authorities claimed that the conditions in which the families had been held in a transit zone, had been adequate (living conditions, provided healthcare). Finally, the complainants had voluntarily left Hungary to Serbia before the execution of the return decision.

#### **CMP-2019-00011**

- Complainant: Two persons who alleged mistreatment by a Hungarian border guard at the border crossing point Röszke, Hungary.
- Allegation types: Human dignity (Article 1 of the Charter); prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter); Right to Property (Article 17 of the Charter).
- Frontex activity: JO Focal Points 2019 Land, border crossing point Röszke, Hungary.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Standard.
- Follow-up and Findings: Hungarian authorities informed the FRO that the complaint was dealt with by the competent national authority (National Tax and Customs Central Management Department of Justice and Supervision), which found that the complainants' statements were in contradiction with the statement of the financial officer, who was dealing with the complainants at the Hungarian border, and that therefore the circumstances of the event could not have been ascertained.

#### **CMP-2019-00013**

- Complainant: Two families (five persons) who alleged verbal mistreatment and violation of their right to good administration at the airport Kutaisi, Georgia by officers deployed by Frontex to that operational area.
- Allegation types: Human dignity (Article 1 of the Charter); right to good administration (Article 41 of the Charter).
- Frontex activity: JO Coordination Points 2019 Air; operation in Kutaisi airport, Georgia.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Standard.
- Follow-up and Findings: Pending before national competent authorities. The complaint was forwarded to French and Italian NFPoC respectively on 7 February 2020.

#### **CMP-2019-00014**

- Complainant: A person who alleged verbal mistreatment by a Polish border guard at the Polish border crossing point in Terespol.
- Allegation types: Human dignity (Article 1 of the Charter).
- Frontex activity: JO Focal Points 2019 Land, border crossing point Terespol, Poland.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Standard.
- Follow-up and Findings: The Polish Border Guard reported back on 8 January 2020, informing the FRO that after a conducted investigation and collected evidence it was found that there had been no violation of the complainant's fundamental rights during the border control performed by a Polish border guard at the Terespol border crossing point. The Polish Border Guard further found that if the complainant felt insulted by the officer, the reason for it was probably the fact that the complainant did not understand the Polish language.

#### **CMP-2019-00015**

- Complainant: A person who was to be returned from Sweden and who provided medical certificates showing that the flight would seriously endanger his health. Finally the complainant was not returned.

- Allegation types: Right to health care (Article 35 of the Charter) in relation to protection in the event of removal, expulsion or extradition (Article 19 of the Charter).
- Frontex activity: Joint return operation financed by Frontex, flight from Sweden, scheduled for 12 November 2019.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent risk.
- Follow-up and Findings: The Swedish authorities reported back on 26 November 2019, informing the FRO that they reviewed the case and concluded that no further action would be taken from their side as there had been no violation of the complainant's fundamental rights. They found that the complainant appealed numerous times, always with a negative outcome and that the medical report on the complainant did not corroborate the allegations in the complaint.

#### **CMP-2019-00016**

- Complainant: A person who was to be readmitted from Greece to Turkey.
- Allegation types: Protection in the event of removal, expulsion or extradition (Article 19 of the Charter); right to effective remedy and to a fair trial (Article 47 of the Charter); right to asylum (Article 18 of the Charter).
- Frontex activity: Readmission operation financed by Frontex from Lesbos, Greece, to Turkey, scheduled for 15 November 2019.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent risk.
- Follow-up and Findings: Pending before national competent authorities. The complaint was forwarded to Greek NFPoC on 14 November 2019.

#### **CMP-2019-00018**

- Complainant: A person who was to be returned from Sweden to a country where, according to his allegations, he has never been.
- Allegation types: Protection in the event of removal, expulsion or extradition (Article 19 of the Charter).
- Frontex activity: Joint return operation financed by Frontex, flight from Sweden, scheduled for 9 December 2019.
- Alleged Perpetrator: Member State staff, Frontex operational implementation.
- Type of Case: Imminent risk.
- Follow-up and Findings: The Swedish authorities informed the FRO that the Swedish Migration Agency reviewed the complainant's asylum application, verifying also the respect of the principle of non-refoulement, and issued a negative decision. Later on, the complainant appealed to the Swedish Migration Court and the Swedish Administrative Court of Appeal, which rejected the complainant's appeal, thus the expulsion decision gained legal force. In their reply, the Swedish authorities pointed out that after such procedure, the circumstances regarding the principle of non-refoulement were tried by three different Swedish authorities and that at the moment the complainant was still in Sweden.

## **4.2 INADMISSIBLE COMPLAINTS**

#### **CMP-2019-00001**

- Complainant: A person who alleged to have been a victim of discrimination and other fundamental rights violations by her community.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00002**

- Complainant: A person who alleged to have been a victim of a fraud in connection to employment procedure.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00003**

- Complainant: A person who alleged to have been stopped frequently at the border crossing with Morocco despite of the agreement between Morocco and Spain.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00005**

- Complainant: A family who alleged that they had no tent in Moria camp, Greece.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00006**

- Complainant: A person who alleged to have been stopped at Polish land border and not allowed to enter the EU, based on information from the Schengen database.
- Reason for inadmissibility: No concrete fundamental rights violations.

#### **CMP-2019-00007**

- Complainant: A person who alleged to have been refused to enter the European Union, at an Italian airport.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00008**

- Complainant: A person who alleged to have been discriminated against and mistreated during a border control at the Copenhagen airport.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00009**

- Complainant: A family who alleged that they have waited for hours at the Greek border.
- Reason for inadmissibility: Not related to any activity of the Agency.

#### **CMP-2019-00010**

- Complainant: Two members of a Frontex Team in Almeria, Spain (Indalo operation) who alleged to have been victims of insults from another team member.
- Reason for inadmissibility: No concrete fundamental rights violations; allegations concern working relations.

#### **CMP-2019-00012**

- Complainant: A person who reported mistreatment of residents of the camp Drama, Greece by two persons working in the camp.
- Reason for inadmissibility: Not related to any activity of the Agency; the complainant is not directly affected by the alleged actions and does not consider him/herself to be the subject of a breach of his/her fundamental rights, due to those actions.

#### **CMP-2019-00017**

- Complainant: Two persons who alleged mistreatment by Spanish border guards at the border crossing point Tarifa, Spain.
- Reason for inadmissibility: No activity of the Agency at the border crossing point Tarifa, Spain at the time of the alleged incident.

## **5. AGENCY ACTIVITIES WITH THIRD COUNTRIES**

In accordance with Article 73 of the Regulation 2019/1896, the status agreement concluded by the European Union with a third country, for the cooperation of the Agency with that third country, will cover all aspects that are necessary for carrying out the actions within that cooperation and will ensure that fundamental rights are fully respected during operations as well as provide for a complaints mechanism.

As explained below<sup>11</sup> two complaints mechanisms will exist in parallel, that of the Agency and that of the third country. The Agency and the third country will deal separately with allegations concerning fundamental rights violations committed by its staff in the exercise of their official functions in the course of a joint operation that the Agency performs together with a third country.

As the European Union concluded such an agreement with the Republic of Albania, the complaints team has been working since 2019 on the concept of how to deal with complaints concerning Frontex activities in that third country. For that purpose, the FRO team met with competent national authorities in Albania in October 2019. Both parties agreed on the draft of a Memorandum of Understanding (MoU), the purpose of which is a coordination between both complaints mechanisms. The MoU draft proposal was shared with the Legal and Procurement Unit and the International and European Cooperation Division in January 2020.

## 6. REGULATION 2019/1896

As mentioned above, on 4 December 2019 the Regulation (EU) 2019/1896 on the European Border and Coast Guard entered into force. Throughout 2019, in an anticipation of the entry into force of the new Regulation, the complaints team conducted preparatory work and prepared different documents and opinions regarding the amendments to the complaints mechanism established by the new Regulation. In the following, the most important changes introduced regarding the Agency's complaints mechanism will be presented.

Firstly, Article 111(1) of the Regulation 2019/1896, points out that the Agency shall, together with the FRO, further develop the complaints mechanism, which shall be independent and effective.

Further, according to the new Article 111(2) a fundamental right violation can be committed by actions as well as by failure to act.

The novelties introduced by the new Article 111(5) provide that in cases of inadmissible or unfounded complaints, the Agency will now provide for an appropriate procedure, as well as that in these cases the FRO will reassess complaints if complainants submit new evidence.

An important difference between the previous Article 72(7) and the new Article 111(7) is that in cases of admissible complaints concerning Agency staff, the FRO will recommend appropriate follow-up, including disciplinary measures to the Executive Director and, where appropriate, referral for the initiation of civil or criminal justice proceedings, according to the Regulation 2019/1896 and national law. If a complaint concerns Member State staff, the competent authorities of that Member State shall ensure, amongst others, referral for initiation of civil or criminal proceedings as necessary.

Another significant development of the new Article 111(7) is that in case no report is received by the FRO from the relevant Member State as to an admissible complaint, the Agency is to provide appropriate follow-up of that complaint.

Moreover, according to the new Article 111(8), in cases where a team member is found to have violated fundamental rights or international protection obligations, the Agency is obliged to request the relevant Member State to remove that member immediately from the Agency activity or the standing corps.

Further, in accordance with the new Articles 111(9) and 109(4) the FRO will prepare an annual report on her activities and include in it information on the complaints mechanism, together with specific references to the Agency's and Member States' findings and the follow-up to admissible complaints.

According to the new Article 73(3), on the cooperation between the Agency and third countries, the status agreement concluded by the European Union with the third country will provide for a complaints mechanism. Therefore, two complaints mechanisms will exist in parallel, that of the Agency and that of the third country. The Agency and the third country will deal separately with allegations of fundamental rights violations committed by its staff in the exercise of their official functions during the activities that the Agency performs together with a third country. Thus, when staff of a third country is involved in an activity of the Agency, complaints regarding fundamental rights violations allegedly committed by the third country staff, will be handled by authorities of that third country within

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<sup>11</sup> The section 6 of this Report on the Regulation 2019/1896.



their national complaints mechanism, and the FRO will handle complaints concerning violations allegedly committed by the Agency and/or Member States staff.

Further, in the Annex V<sup>12</sup> the Regulation (EU) 2019/1896 provides for a possibility for any person to report through the complaints mechanism suspected breaches of the rules on the use of force, applicable under the Annex V, by statutory staff deployed as members of the teams.

Moreover, in the period covered by the present report, the FRO prepared the new Frontex Complaints Mechanism Rules. The text was prepared in the light of the entering into force of the Regulation (EU) 2019/1896, and with the aim to further develop the independent and effective complaints mechanism of the Agency. As in 2018 the Senior Management favoured the preparation of the Guidance over the new Rules on the Complaints Mechanism, in 2019 the FRO was first preparing the draft Guidance, as an additional document to the Rules<sup>13</sup>, based on Article 17 of the Rules. The Guidance were planned to provide more detailed information on the complaints mechanism procedure for individuals who wished to submit a complaint to the FRO. They were also intended to offer practical assistance to the authorities competent to provide follow-up on complaints. However, in the second half of 2019 the FRO started preparing the new Rules instead of continuing the development of the Guidance, for the following reasons. Since 2016, through handling complaints, the FRO has come across different practical issues that, due to their nature, required regulation in form of rules, and not in form of a document with a lower legal value. Further, as mentioned above, the existing Rules needed to be revised in the light of the amendments introduced by the Regulation 2019/1896, and adapted accordingly. Therefore, to reflect these needs in an adequate way, the FRO prepared a reformulation of the existing Rules. The main new features of the reformulated Rules are the following.

The new Rules allow for anonymous complaints. Therefore, complainants who wish to remain anonymous will be represented, by providing contact details of their representative.

Further, as to the submission of complaints, the new Rules enable complainants to hand over complaints to the Agency staff present in operational areas. In this connection, it is also foreseen that the Agency staff provide further information, guidance and assistance to potential complainants, especially to vulnerable persons, on the complaints procedure and the submission of a complaint.

As to the complaint forms, the novelty is that the staff involved in the activities of the Agency have the obligation to make the forms available and provide them when requested.

There are new provisions regarding complaints that consider Agency activities in third countries. According to those provisions, the complaints arising from those activities and submitted against the Agency or participating Member State staff, are treated by the FRO; and the complaints submitted against third country staff are handled by the competent national authority of the respective third country within a separate complaints mechanism.

As to the findings on admissible complaints provided by the competent authorities, in line with the new Rules, these findings have to include a decision on the complaint, stating the grounds on which it is based. Further, the decision adopted by the competent authorities has to contain an indication of the appeal possibilities available for challenging the decision.

As to a final report, which the FRO prepares before closing a complaint, the new Rules provide that a final report will be sent to the authorities that dealt with a complaint, Executive Director, Management Board, as well as to complainants.

The new feature are also the deadlines established for different actions undertaken by the FRO (e.g. ten working days for an acknowledgement of receipt; as a general rule, two months for an admissibility review; six months for the preparation of a final report).

## 7. CONCLUSIONS AND FUTURE PLANS

In the three years of the existence of the individual complaints mechanism, the FRO has faced several challenges, but has also become fully aware of the opportunity the mechanism represents in terms of addressing actual or potential

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<sup>12</sup> Annex V on the Rules on the use of force, including training and the supply, control and use of service weapons and non-lethal equipment, applicable to statutory staff deployed as members of the teams.

<sup>13</sup> ED Decision No R-ED-2016-106 on the Complaints Mechanism of 6 October 2016.

fundamental rights violations. The mechanism serves to enhance transparency and fundamental rights accountability of the Agency, its deployed border guards and host Member State staff.

According to the new Article 111(1) the complaints mechanism, which is to be independent and effective, has to be further developed. In order to address this need the FRO plans to take additional steps towards increasing the awareness of the mechanism through different actions:

- Distribute or monitor the distribution in operational areas of the prepared awareness material;
- Finalize the preparation of material which is currently under development;
- Ensure wide dissemination of the training material for the complaints mechanism and ensure relevant information is provided during the operational briefings;
- Expand activities on awareness of the mechanism to external stakeholders.

The accessibility of the complaints mechanism, specifically for vulnerable groups, and particularly children, will have to be enhanced further. In this regard, the FRO will cooperate with the Consultative Forum and other stakeholders. The FRO will focus on the needs of complainants and explore opportunities to address different vulnerabilities so as to adapt the tools and the information available to them.

Finally, the FRO intends to further engage with third countries concerning the complaints mechanism framework and cooperate with relevant third countries authorities to ensure the effective implementation of the complaints mechanism related to the Agency's third countries activities.



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## MANAGEMENT BOARD DECISION 35/2020 of 10 November 2020

### approving the publication of the Vacancy Notice “Fundamental Rights Officer”

#### THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation<sup>1</sup> (hereafter the “Regulation”), and in particular Articles 95(1), 100(2)(z) and 109 thereof;

Having regard to the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union<sup>2</sup> (hereafter the “Staff Regulations” and “CEOS”, respectively), and in particular Articles 2(f), 6, 10(1), 12, 53 and 55 of the CEOS;

Having regard to Management Board Decision laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union<sup>3</sup>, (hereafter “GIPs on temporary staff 2(f)”);

Having regard to the Management Board Decision 34/2020 on middle management staff, and in particular to Article 7 and 12<sup>4</sup>;

Whereas:

- (1) Article 100 (2)(z) and 109(1) of the Regulation provide the Management Board shall appoint the Fundamental Rights Officer on the basis of a list of three candidates, after consultation with the consultative forum. The Fundamental Rights Officer shall have the necessary qualifications, expert knowledge and professional experience in the field of fundamental rights;
- (2) Pursuant to Article 109(4) of the Regulation, the Management Board shall lay down specific rules to guarantee that the Fundamental Rights Officer is independent in the performance of his/her duties, which entails, amongst other matters, the assistance to Frontex in the implementation of its fundamental rights obligations, and fulfilment of the tasks as set out under Article 109(2)-(3) of the Regulation. The Fundamental Rights Officer shall report directly to the Management Board;
- (3) Article 95(1) of the Regulation establishes all statutory staff members of the Agency including the Fundamental Rights Officer is subject to rules and decisions giving effect to the Staff Regulations and the CEOS adopted by the Agency;

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<sup>1</sup> Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

<sup>2</sup> Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15-62).

<sup>3</sup> Management Board Decision No 14/2019 of 18 July 2019 laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union.

<sup>4</sup> Management Board Decision No 34/2020 of 10 November 2020 on middle management staff.

- (4) The Staff Regulations and the CEOS lay down the conditions under which temporary staff under Article 2(f) CEOS are employed and the GIPs on temporary staff 2(f) establishes the procedure governing the engagement and use of such staff (hereafter “GIPs on temporary staff 2(f)”);
- (5) The remit and scope of the duties of the Fundamental Rights Officer have been significantly increased by the provisions of the Regulation in comparison to the regulation it replaced<sup>5</sup> and include amongst others financial and human resource management. Furthermore the Fundamental Rights Officer’s duties entail a high level of autonomy and complexity (for example high level of expertise in the field of Fundamental rights);
- (6) The post of Fundamental Rights Officer, in line with the Regulation and Article 2(1) of the Management Board Decision on middle management staff, is defined as middle management function, for which a selection procedure needs to be adapted to the specific need to ensure the independence of the Fundamental Rights Officer in line with Articles 9(2), 14 and 16 of the aforementioned Decision;
- (7) Following an assessment of the requested profile, the post grade of Fundamental Rights Officer in Frontex is set at AD9 - AD14 regarding an internal publication and AD10 regarding an external publication (post title Fundamental Rights Officer/ type of post 'Head of Unit or equivalent'). No reassignment in the interest of the service is foreseen from among existing middle managers in Frontex. No suitable profiles in existing reserve lists are available and a reserve list of suitable candidates should be established from among external applicants;
- (8) In line with Article 2 of the GIPs on temporary staff 2(f) and the Management Board Decision on middle management staff, the post is to be published simultaneously internally, inter-agency and externally. This vacancy is therefore opened to eligible applicants from among established temporary staff 2(f)<sup>6</sup> from other EU Agencies interested in an inter-agency mobility in grades AD9 - AD10 (in case they currently occupy a middle-management position) and to eligible internal applicants in grades AD9 - AD14 (in case they currently occupy a middle-management position) or internal applicants in grade AD8 having a seniority of at least two years in that grade. All received applications should be assessed at the same time within one recruitment procedure;
- (9) A Pre-selection and Selection Committee is to be established in line with Article 9 of the Management Decision on middle management staff and in line with article 2(4) of the Annex to the GIPs on temporary staff 2(f) in order to draw up a list of applicants who most correspond to the profile sought.

## HAS DECIDED AS FOLLOWS:

### Article 1

The attached Vacancy Notice is approved and it shall be published (internally and externally) without a delay for a minimum of 30 calendar days.

The closing date for a submission of applications as well as its eventual extension(s) and non-substantial technical adjustments in the text or format of the Vacancy Notice may be adapted by HR in agreement with the Chairperson of the Management Board.

### Article 2

1. The composition of the Pre-Selection Committee (“panel” as per Articles 9 (1)(a) and (2) Management Board Decision on middle management staff) for the assessment of applications and of the Selection Committee for the interviews in this selection procedure will be decided in the next Management Board meeting on 25 - 26 November 2020.
2. The composition of the Selection Committee will be disclosed in Frontex and to those applicants invited for an interview in the framework of this selection procedure.
3. Frontex Human resources and security unit shall assist the Committees by providing procedural guidance and secretarial services.

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<sup>5</sup> Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

<sup>6</sup> In line with provisions of Article 55 of the CEOS.

Article 3

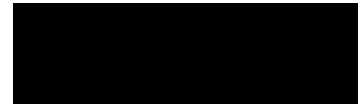
1. The Chairperson of the Management Board will assess the declarations of familiarity and of an absence of conflict of interest made by the members of the Pre-Selection Committee and of the Selection Committee and decide on these declarations. Declarations made by the Chairperson of the Management Board will be assessed by a member of the Management Board representing the European Commission.
2. Annex to this Decision shall not be published before the Vacancy Notice is officially published.

Article 4

This decision enters into force on the day following its adoption.

Done in Warsaw, 10 November 2020.

For the Management Board



Marko Gašperlin  
Chairperson

Annex: Vacancy Notice - Fundamental Rights Officer (a reserve list to be created for one post to be filled).

## VACANCY NOTICE - TEMPORARY STAFF CORRIGENDUM

**A technical update to the Vacancy Notice has been made. Please see footnotes 2, 3, 9; Part 7. Selection Procedure and Part 8. Appointment and conditions of employment (remuneration table updated with the new correction coefficient for Poland) for more details.**

**The deadline for applications has been amended.**

Reference number: RCT-2020-00078

### Fundamental Rights Officer

Post (business title):	<b>Fundamental Rights Officer</b> <i>(a reserve list to be created for one post to be filled)</i>
Sector/Unit/Division:	Fundamental Rights Office
Function group / Grade / Post title:	Temporary staff 2(f) of the CEOS <sup>1</sup> , AD10, Head of Fundamental Rights Office (middle management position)
Grade bracket for inter-agency mobility <sup>2</sup> :	AD9 - AD10
Grade bracket for internal mobility <sup>3</sup> :	AD9 - AD14 Specific eligibility: TA 2(f) AD8 with two years of seniority in the grade
Location:	Warsaw, Poland
Starting date:	As soon as possible (ideally as from March 2021)
Level of Security Clearance:	SECRET UE / EU SECRET
Closing date for applications	<b><u>(MIDDAY) 29/12/2020 at 12:00 h<sup>4</sup>, Warsaw local time</u></b>

## 1. BACKGROUND

The European Border and Coast Guard Agency (Frontex) has been established under the European Border and Coast Guard Regulation<sup>5</sup>. The agency was created on the foundations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (established under Council Regulation (EC) No 2007/2004), which has been coordinating operational activities at the EU external border since 2005.

Frontex is located in Warsaw, Poland, and is in the process of significantly increasing the size of its staff to 4,000 to meet its expanding tasks.

<sup>1</sup> Article 2(f) of Conditions of Employment of Other Servants of the European Communities (OJ L 56, 4.3.1968, p. 10), as lastly amended.

<sup>2</sup> For applicants who on the closing date for the receipt of applications are established temporary staff referred to in Article 2(f) CEOS in the EU Agencies in a grade belonging to the grade bracket AD9-AD10 and fulfilling the requirements of Article 9 of the GIPs on temporary staff 2(f).

<sup>3</sup> For applicants who on the closing date for the receipt of applications are established temporary staff referred to in Article 2(f) CEOS in Frontex in a grade belonging to the grade bracket AD9-AD14; for those applying via reclassification, being in grade AD8 and having a seniority of at least two years in that grade.

<sup>4</sup> Date of publication of corrigendum: 17 December 2020.

<sup>5</sup> Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p.1).

The new European Border and Coast Guard Regulation provides for the establishment of a European Border and Coast Guard Standing Corps, which will consist of up to 10,000 operational staff by 2027, and will be deployed along the external land, sea and air borders of the European Union and the Schengen Area.

With the establishment of the Standing Corps - the first European law enforcement uniformed corps - Frontex offers a unique, pioneering opportunity to form part of the EU's operational arm for European integrated border management. The establishment and operations of the Standing Corps gives rise to various novel legal challenges and risks. The selected candidate will have a chance to significantly contribute to the application of the EU law in this area by developing creative legal solutions in cooperation with internal and external partners.

The Agency's key tasks include:

- Operational and technical assistance to the EU Member States at their external borders by coordinating joint border control operations including deployment of vessels, aircraft and other equipment and border and coast guards from EU countries;
- Coordination of border surveillance and law enforcement activities being part of maritime security in cooperation with national authorities and EU agencies such as Europol, EMSA and EFCA;
- Situation monitoring of EU's external borders and risk analysis of all aspects of border and coast guard management, including assessment of the EU Member States' border control authorities' ability to face migratory pressure and different challenges at their external borders;
- Assisting Member States in returning nationals of non-EU countries who do not have the right to remain on the territory of the EU;
- Development of training programmes for European border and coast guards;
- Monitoring new technological developments in the field of border control and acting as an interface between research institutions, industry and national border and coast guard authorities;
- Cooperation with EU and international organisations in the area of border and coast guard management, security, and prevention of cross-border crime (including terrorism);
- Assist non-EU countries in the context of technical and operational cooperation on border management including return of non-EU nationals, in the framework of the EU external relations policy.

For more information, please refer to our website: <http://www.frontex.europa.eu>

## 2. DESCRIPTION OF THE ENTITY

The Fundamental Rights Office (FRO) assists Frontex in the implementation of its Fundamental Rights strategy and its action plan. It prepares reports to the Management Board (MB) and the Consultative Forum for fundamental rights. The main tasks are:

- a) identifying and proposing both preventive and corrective measures;
- b) making observations on the identified needs and challenges in all the activities of the Agency;
- c) handling individual complaints from persons who consider that their fundamental rights have been violated by staff involved in the Agency's activities;
- d) contributing to the implementation of the Agency's Fundamental Rights strategy.

## 3. DUTIES AND RESPONSIBILITIES LINKED TO THE POST

The Jobholder, acting independently and being appointed by the Management Board, will be responsible for:

- contributing to the Agency's fundamental rights strategy and the corresponding action plan, including by issuing recommendations for improving them;
- monitoring the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities;
- promoting the Agency's respect of fundamental rights;
- advising the Agency where he or she deems it necessary or where requested on any activity of the Agency without delaying those activities;

- providing opinions on the operational plans drawn up for the operational activities of the Agency, on pilot projects and on technical assistance projects in third countries;
- providing opinions on working arrangements;
- carrying out on-the-spot visits to any joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation or return intervention, including in third countries;
- providing the secretariat of the consultative forum;
- informing the Executive Director about possible violations of fundamental rights during activities of the Agency;
- selecting and managing the fundamental rights monitors;
- reporting directly to the management board and cooperating with the consultative forum;
- managing the work of the Fundamental Rights Office, including managing the work of a team of over 50 staff in compliance with the applicable EU staff regulations and administrative management framework;
- managing the budget of the Fundamental Rights Office, which for 2021 slightly exceeds 1 million EUR, by ensuring proper implementation of objectives and full respect for the principles of regularity, legality and sound financial management;
- performing any other tasks, where provided for by the Frontex Regulation.

## 4. QUALIFICATIONS AND EXPERIENCE REQUIRED

### 4.1. Eligibility criteria (for external applicants<sup>6</sup>)

To be eligible, an applicant shall:

- a) Possess a level of education which corresponds to **completed university studies** attested by a diploma when the normal period of university education is **four years or more** (of full-time education);

or

Possess a level of education which corresponds to completed university studies attested by a diploma **followed by at least one year full-time professional experience**, when the normal period of university education is **at least three years** (of full-time education);

*Only qualifications that have been awarded in EU Member States or that are subject to the equivalence certificates issued by the authorities in EU Member States shall be taken into consideration.*

*Only the required education will be taken into account.*

- b) Possess (by the closing date for applications) at least **12 years** of proven full-time professional experience in positions corresponding to the nature of duties of the vacant post acquired after the respective diploma was awarded and (at the same time) after the condition(s) described in criterion a) above are fulfilled;

*Professional experience will be taken into account after the award of the minimum qualification certifying the completion of the level of studies required above in the criterion a). Only duly documented professional activity is taken into account.*

*ANY GIVEN PERIOD OF STUDIES OR PROFESSIONAL EXPERIENCE MAY BE COUNTED ONLY ONCE. In order to be calculated as eligible, years of studies or professional experience to be taken into account shall not overlap with other periods of studies or professional experience, e.g. if the applicant had a fulltime job and did freelance consultancy work in the evenings and weekends, the days spent on the latter will not be added to the period). In case of part-time work the professional experience will be calculated pro-rata in line with the workload stated by the applicant. Compulsory military service or equivalent civilian service accomplished after achieving the minimum qualification stated in the criteria a) shall be taken into consideration as professional experience if the official documentation is provided.*

<sup>6</sup> For all existing EU temporary staff 2(f) applicants the eligibility criteria are defined in Article 12(2) of the CEOS and on the title page of the Vacancy Notice.



- c) Produce evidence of thorough knowledge of one of the languages of the European Union and of satisfactory knowledge of another language of the European Union to the extent necessary for the performance of duties (Common European Framework of Reference for Languages: B2 level);
- d) Be a citizen of one of the Member States of the European Union or the Schengen Associated Countries<sup>7</sup> and enjoy full rights as its citizen;
- e) Have fulfilled any obligations imposed on him/her by the laws of his/her home country concerning military service.

## 4.2. Selection criteria

Suitability of applicants will be assessed against the following criteria in different steps of the selection procedure. Certain criteria will be assessed/scored only for shortlisted applicants during interviews (and or tests):

### 4.2.1. Technical competencies

1. Experience in fundamental and human rights issues of at least 10 years; at least 3 years of these should have been acquired in a national public body, in an EU institution, body or agency or in an international organisation;
2. Experience and demonstrated practice of financial and human resources management, preferably within the EU framework, of at least 5 years;
3. Master degree or higher in the relevant related fields;
4. Thorough knowledge of EU primary law, including the EU Charter of Fundamental Rights and its application to the EU Justice and Home Affairs acquis;
5. Sound knowledge of the EU acquis concerning border management, immigration, asylum, return and readmission;
6. Knowledge of the international human rights legal framework relating to border management, immigration, asylum, return and readmission;
7. Strong expertise in human rights law and human rights monitoring;
8. Knowledge of the EU decision-making process<sup>8</sup>.

Besides, the following attributes would be considered advantageous:

9. Familiarity with law enforcement environment;
10. Experience in coordinating diverse and complex activities;
11. Experience in managing the work of a team of experts, who may work remotely or within a decentralised environment.

### 4.2.2. Behavioural competencies

12. Ability to coordinate complex and diverse activities;
13. Excellent written and verbal communication skills in English (and articulate a complex subject, incl. preparation and delivery of presentations);
14. Capacity to work in an independent manner and in a team with excellent organizational and interpersonal skills to work cross-functionally;
15. Ability to work in a fast-paced environment, prioritizing conflicting demands from multiple entities, and to provide sound advice on tight deadlines;
16. Results-oriented, ability to find practical and creative solutions to fundamental rights issues;
17. Professional and ethical behaviour, strong sense of initiative, responsibility, commitment and ability to deal with various external counterparts on sensitive issues.

<sup>7</sup> For citizens of the Schengen Associated Countries, it is subject an exemption by the Authority authorised to conclude contracts of employment (AACC).

<sup>8</sup> This criterion is assumed to be fully met by eligible applicants in the EU Agencies applying via internal (including reclassification) or interagency mobility.

#### 4.2.3. Managerial competencies (to be assessed in the Assessment Centre)

INFORMATION MANAGEMENT	
<b>Integrating</b>	Synthetically integrating and linking various data into a coherent and relevant whole, formulating alternatives, and transforming this synthesis and these alternatives into a valuable and correct conclusion
TASK MANAGEMENT	
<b>Managing the organization</b>	Developing and setting up processes and structures across various fields of activities. Drawing up and managing budgets in a realistic and consistent way. Introducing and supervising changes, trying out new methods for improvement
<b>Steering</b>	Efficiently assessing and managing time as well as material, human and financial resources, including regular follow-ups and corrective interventions in accordance with the objectives to be reached
PEOPLE MANAGEMENT	
<b>Motivating</b>	Acknowledging and appreciating the efforts of others, adjusting one's own leadership style to them and entrusting the right people with the right responsibilities to optimise their performance.
<b>Guiding people</b>	Ensuring that everyone behaves appropriately by giving clear instructions, by monitoring results and taking corrective measures in accordance with the objectives and the available means.
INTERPERSONAL MANAGEMENT	
<b>Influencing</b>	Reaching goals by making a good impression, getting others to accept ideas by using convincing arguments, creating win-win situations and responding efficiently to one's interlocutors or audience.
PERSONAL MANAGEMENT	
<b>Coping</b>	Responding calmly to frustrations, obstacles and opposition, controlling one's emotions and responding to criticism in a constructive way, while keeping the objectives in mind.

## 5. INDEPENDENCE AND DECLARATION OF INTEREST

The selected applicant(s) will be required to make a declaration of commitment to act independently in Union's interest and to make a declaration in relation to interests that might be considered prejudicial to his/her independence.

## 6. EQUAL OPPORTUNITIES

Frontex applies an equal opportunities policy and accepts applications without distinction on grounds of age, race, political, philosophical or religious conviction, sex or sexual orientation and regardless of disabilities, marital status or family situation.

## 7. SELECTION PROCEDURE

The selection procedure includes the following steps:

- All the applications are evaluated by an appointed Pre-selection Committee based on a combination of certain selection criteria defined in the vacancy notice (some criteria will be assessed/scored only for shortlisted applicants during interviews and/or tests). Certain selection criteria may be assessed/scored jointly and some criteria may be assessed/scored in two or more steps of the selection procedure. Indicated criteria are assumed to be fully met by eligible applicants applying for internal or inter-agency mobility. The Pre-selection Committee shall shortlist the best suited eligible applicants matching the profile and conduct oral and written tests with shortlisted external applicants, where appropriate conduct interviews with shortlisted internal and interagency applicants. Applicants who are best matching the evaluated selection criteria will be invited for an interview with the Selection Committee;
- The potential, managerial skills, adaptability and other core competencies of all applicants invited to the interview will be assessed in an assessment centre, unless the applicant has taken part in such assessment centre in the course of the two years preceding the closing date for receipt of applications. If an applicant has taken part in an assessment centre within this two-year period, but not within the 18 months preceding the closing date for the receipt of applications, s/he may at her/his request be admitted to the assessment centre. The result of the assessment centre shall be taken into consideration by the appointing authority;
- The names of the Pre-selection and of the Selection Committee members will be disclosed to the applicants invited for the interview/test;

- Following the interview with the Selection Committee, the list of three candidates will be established and proposed to the Management Board.
- The Management Board will appoint the Fundamental Rights Officer, on the basis of the list of three candidates selected by the Selection Committee, after consultation with the consultative forum;
- The other two suitable applicants will be proposed for a reserve list. The reserve list will be valid for 2 years (the validity period may be extended).

**Notes:** (1) Applicants invited to the interview will be requested to present, on the day of the interview, originals of their diploma(s) and evidence of their professional experience, clearly indicating the starting, finishing dates and workload;

(2) Each interviewed applicant will be notified in written whether or not he/she has been placed on the reserve list;

(3) Applicants should note that the placement on the reserve list does not guarantee an employment offer.

The work and deliberations of the Pre-Selection and the Selection Committee are strictly confidential and any contact of an applicant with its members is strictly forbidden.

## 8. APPOINTMENT AND CONDITIONS OF EMPLOYMENT

The most successful applicant will be appointed by the Management Board of Frontex. In order to be engaged, the appointed applicant shall:

- Be available for the job at a short notice (not later than 4 months after the job offer is made);
- Produce the appropriate character references as to his/her suitability for the performance of duties (a criminal record certificate or equivalent certificate, not older than six months) and a declaration in relation to interests that might be considered prejudicial to his/her independence;
- Be physically fit to perform the duties<sup>9</sup>.

The successful external applicant will be engaged as temporary staff pursuant to Article 2(f) of the Conditions of Employment of Other Servants of the European Communities (CEOS). The temporary post is placed in the following function group and grade: **AD10**<sup>10</sup>. This is a managerial position.

The staff member's remuneration consists of a basic salary and allowances. The staff member may be entitled to various allowances, in particular to an expatriation (16 % of basic gross salary) or to a foreign residence allowance (4 % of basic gross salary) - depending on particular situation, and to family allowances (depending on personal situation) such as household allowance, dependent child allowance, pre-school allowance, education allowance.

**The final net calculation (amount payable) is as follows:**

Function group, grade and step	AD10 Step 1	AD10 Step 2
1. Basic net/payable salary (after all deductions, contributions and taxes are applied)	4 663 EUR 20 827 PLN	4 817 EUR 21 513 PLN
a. Managerial allowance	154 EUR 688 PLN	152 EUR 679 PLN
2. Other possible monthly entitlements/allowances, depending on the personal situation of the candidate (expressed as gross amount weighted by 70.9 correction coefficient applicable for Poland):		

<sup>9</sup> Before the engagement, the successful applicant shall be medically examined by the EU medical service to fulfil the requirement of Article 13 of Conditions of Employment of Other Servants of the European Communities (OJ L 56, 4.3.1968, p. 10), as lastly amended.

<sup>10</sup> Specific conditions about grading are defined on the title page of the Vacancy Notice. For existing EU temporary staff 2(f) from other EU bodies interested in an inter-agency mobility and internal applicants, the classification in grade and step should be established in line with Article 55 of the CEOS.

b. Household allowance	266 EUR 1 188 PLN	271 EUR 1 212 PLN
c. Household allowance, when managerial allowance is granted	271 EUR 1 212 PLN	277 EUR 1 237 PLN
d. Expatriation allowance	1 034 - 1 220 EUR 4 619 - 5 449 PLN	1 078 - 1 265 EUR 4 813 - 5 647 PLN
e. Expatriation allowance, when managerial allowance is granted	1 078 - 1 265 EUR 4 813 - 5 647 PLN	1 123 - 1 311 EUR 5 015 - 5 854 PLN
f. Dependent child allowances for each child	299 EUR 1 334 PLN	299 EUR 1 334 PLN
g. Preschool allowance	73 EUR 326 PLN	73 EUR 326 PLN
h. Education allowance for each child up to	405 EUR 1 810 PLN	405 EUR 1 810 PLN

The remuneration is expressed in EUR, after the compulsory deductions set out in the Staff Regulations or in any implementing regulations is weighted by the correction coefficient for Poland (currently 70.9). It can be paid either in EUR or in PLN according to a fixed exchange rate (currently 4.466 PLN/EUR).

The remuneration of the staff members, the correction coefficient and the exchange rate are updated annually before the end of each year, with retroactive effect from 1 July, in accordance with Annex XI of the Staff Regulations.

Staff pays an EU tax at source and deductions are also made for medical insurance, pension and unemployment insurance. Salaries are exempt from national taxes. The rate of the solidarity levy is 6 %.

The headquarters agreement with the Polish authorities is effective as of 1 November 2017. Under this agreement the Polish authorities will provide the following main benefits to Frontex expatriate staff<sup>11</sup>:

- (a) in case a child may not be admitted to a European School - reimbursement of tuition cost of each dependent child (as from the age of 2.5 years) attending a school (up to and including secondary school) on Polish territory up to a limit of 35 000 PLN per school year;
- (b) reimbursement of VAT on purchases of main household effects to assist a newcomer to settle in Warsaw;
- (c) reimbursement of VAT on a purchase of a private car (this entitlement is renewable after 36 months).

An (accredited<sup>12</sup>) European School is gradually set up in Warsaw to allow dependent children of all Frontex staff (including Polish nationals) to attend a (tuition-free) European-type multilingual education.

Staff is entitled to annual leave of two working days per each complete calendar month of service and to additional days of leave depending on the grade and age. Moreover, two and a half days are granted every year to the staff members entitled to the expatriation or foreign residence allowance for the purpose of visiting their home country. In addition, there are on average 18 public holidays per year. Special leave is granted in certain circumstances such as marriage, birth or adoption of a child, removal etc.

Frontex being a knowledge-based organization acknowledges the importance of training provided to its staff. Frontex provides general and technical nature training as well as professional development opportunities that are discussed annually during the staff performance appraisal.

Throughout the period of service staff is a member of the EU pension scheme. The pension is granted after completing a minimum of 10 years' service and after reaching the pensionable age of 66 years. The pensionable age for staff recruited before 1 January 2014 varies between 60 and 65 years. Pension rights acquired in one or more national schemes before starting to work at Frontex may be transferred into the EU pension system.

Staff is covered 24/7 and worldwide by the Joint Sickness Insurance Scheme (JSIS). Staff is insured against sickness, the risk of occupational disease and accident as well as entitled under certain conditions to a

<sup>11</sup> Staff of non-Polish nationality and non-permanent residents.

<sup>12</sup> Process of accreditation is ongoing.

monthly unemployment allowance, the right to receive payment of invalidity allowance and travel insurance.

For further information on working conditions please refer to the Staff Regulations and the CEOS.

A contract of employment will be offered for a period of five years, with a probationary period of nine months. The contract may be renewed.

Frontex requires selected candidates to undergo a vetting procedure executed by the National Security Authority of the candidates' state of citizenship in order to obtain a personnel security clearance. The level of the latter depends on the specific post/position. For this position, the **required level of clearance is specified on the title page of the Selection Notice**. Candidates who currently hold a valid personnel security clearance at the above-mentioned level (or higher) may not need to obtain a new one, pending confirmation from their respective National Security Authority. The National Security Authority of the candidate shall provide Frontex, with an opinion or a personnel security clearance in accordance with relevant national legislation. In case selected candidates do not currently hold a valid security clearance at the above-mentioned level, Frontex will request such from the National Security Authority of the candidates' state of citizenship. In case of a failure to obtain the required personnel security clearance or if the National Security Agency issues a negative opinion at the above-mentioned level after the signature of the contract of employment Frontex has the right to terminate the contract of employment.

## 1 PROTECTION OF PERSONAL DATA

Frontex ensures that applicants' personal data are processed in accordance with Article 5(1)(a) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

Please note that Frontex will not return applications to applicants. This is due, in particular, to the confidentiality and security of such data. The legal basis for the selection procedures of temporary staff are defined in the CEOS<sup>13</sup>.

The purpose of processing personal data is to enable to properly carry out selection procedures.

The selection procedure is conducted under the responsibility of the Human Resources Sector of the Human Resources and Security Unit, within the Corporate Governance of Frontex. The controller for personal data protection purposes is the Head of the Human Resources and Security Unit.

The information provided by applicants will be accessible to strictly limited number of staff in Human Resources, to the Pre-selection and Selection Committee members and, for the three candidates on the list proposed by the Selection Committee, to Frontex Management Board and consultative forum. If necessary, it will be provided to the staff of Legal and Procurement Unit, external parties directly involved in the selection process or to respective experts in ICT (in case of technical issues with the application).

There will be no automated decision making or profiling upon applicants' data.

No data is transferred to a third country or international organisation.

Processing begins on the date of receipt of the application. Data storage policy is as follows:

- For applications received from not-selected applicants: the data are filed and stored in archives for **2 years and** after this time the data are destroyed;
- For applicants placed on a reserve list but not recruited: the data are kept for the period of validity of **the reserve list + 1 year and** after this time the data are destroyed;
- For recruited applicants: the data are kept for a period of **10 years** after the termination of employment or as of the last pension payment **and** after this time the data are destroyed.

Applicants have the right to request access to and rectification or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to data portability. In case of identification data, applicants can rectify those data at any time during the procedure. In the case of data related to the eligibility or selection criteria, the right of rectification can only be exercised by submitting/uploading a new application and it cannot be exercised after the closing date for submission of

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<sup>13</sup> In particular the provisions governing conditions of engagement in Title II, Chapter 3.

applications. Withdrawal of a consent to such data processing operations would result in exclusion of the candidate from the recruitment and selection procedure.

Should an applicant have any query concerning the processing of his/her personal data and has substantiated request, he/she shall address them to the HR Sector at [jobs@frontex.europa.eu](mailto:jobs@frontex.europa.eu) or Frontex Data Protection Officer at [dataprotectionoffice@frontex.europa.eu](mailto:dataprotectionoffice@frontex.europa.eu).

Applicants may have recourse at any time to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)).

## 2 APPEAL PROCEDURE

If an applicant considers that he/she has been adversely affected by a particular decision related to the selection procedure, he/she can lodge a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC No 259/68)<sup>14</sup>, mentioning the reference number of the selection procedure, at the following address:

**Frontex**  
Human Resources Sector  
Plac Europejski 6  
00-844 Warsaw  
Poland

The complaint must be lodged within 3 months. The time limit for initiating this type of procedure starts to run from the time the applicant is notified of the act adversely affecting him/her.

Applicants also have a possibility to complain to the European Ombudsman. Please note that complaints made to the European Ombudsman have no effect on the time period laid down in Article 91 of the Staff Regulations. Note also, that under Article 2(4) of the general conditions governing the performance of the Ombudsman's duties, any complaint lodged with the Ombudsman must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.

## 3 APPLICATION PROCEDURE

**Note: It is required to upload the digital application form saved in its original electronic dynamic PDF format (not scanned). Do not use any e-mail communication to submit your application (for exceptional circumstances see point 6 below) - such an application will be automatically disregarded and will not be recorded and further processed.**

Frontex Application Form is to be downloaded (as a dynamic PDF form) from Frontex website under the link provided next to the Reference Number of the post/position. This digital application form is specifically created only for this selection procedure (and shall not be reused for another procedure).

The Frontex Application Form must:

1. Be opened in a PDF reader in a MS Windows equipped computer - the recommended version of the PDF reader is Adobe Acrobat Reader DC (*version 2017.009.20044*. You may download a free version here: <https://get.adobe.com/uk/reader/>).
2. Not be manipulated or altered. The form is digitally signed and protected against any manipulation or changes. Therefore, applicants shall not try to manipulate and/or alter it - in such a case the digital signature will disappear and the application form will become invalid for subsequent processing resulting in an automatic rejection of such submission.
3. Be completed in English. Fields, where you may enter your input, are highlighted in light blue colour. Fields marked with an asterisk (\*) indicate a required input. You should be concise, the space for your input is limited by the size of the text boxes.
4. Be saved and named as follows: 'SURNAME\_RCT-2020-000078'.
5. **Be submitted to Frontex - after saving - by uploading it to this URL link:**

<sup>14</sup> OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

<https://microsite.frontex.europa.eu/en/recruitments/RCT-2020-00078>

6. In case you have technical issues with filling/saving/uploading your electronic application form, you may write to us (in advance of the closing date for submission of applications) at [jobs@frontex.europa.eu](mailto:jobs@frontex.europa.eu).

In case you submit more than one application for this procedure, Frontex will only assess the latest one and will automatically disregard all your previous applications.

If at any stage of the selection procedure it is established that any of the requested information provided by an applicant is false or misleading, the applicant in question will be disqualified.

Applicants shortlisted for an interview will be requested to supply documentary evidence in support of the statements made in the application. Do not, however, attach any supporting or supplementary documentation with your application until you have been asked to do so by Frontex.

Incomplete applications, applications uploaded after the deadline, sent by e-mail or applications using inappropriate or altered/manipulated application forms will be automatically disregarded by the system and will not be processed further.

Due to the large volume of applications, Frontex regrets that only applicants invited for the test and interview will be notified about the outcomes. The status of the recruitment procedure is to be found on Frontex website.

Due to high volume of selection procedures handled by Frontex, the period between the closing date for the submission of applications and the final shortlisting of applicants for an interview may take more than two months.

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**The closing date and time for the submission of applications is provided on the title page of the Vacancy Notice.**

**Please keep a copy of the automatically generated submission code that proves that you have submitted/uploaded your application to Frontex.**

**Applicants are strongly recommended not to wait until the last day to submit their applications.**

**Frontex cannot be held responsible for any last-minute malfunction due to an overload of the system or for other technical issues applicants may eventually encounter in the very last moment before the deadline.**

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