



SIXTH ANNUAL REPORT

Frontex Consultative Forum on Fundamental Rights

2018

SIXTH ANNUAL REPORT

Frontex Consultative Forum on Fundamental Rights

Consultative Forum Members:

- The AIRE Centre – Advice on Individual Rights in Europe
- Amnesty International European Institutions Office (AI EIO)
- Churches' Commission for Migrants in Europe (CCME)
- Council of Europe (CoE)
- European Asylum Support Office (EASO)
- European Council on Refugees and Exiles (ECRE)
- European Union Agency for Fundamental Rights (FRA)
- International Commission of Jurists (ICJ)
- International Organization for Migration (IOM)
- Jesuit Refugee Service Europe (JRS)
- Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR)
- Platform for International Cooperation on Undocumented Migrants (PICUM)
- Red Cross EU Office
- Save the Children
- United Nations High Commissioner for Refugees (UNHCR)

Plac Europejski 6
00-844 Warsaw, Poland
T +48 22 205 95 00
F +48 22 205 95 01

Consultative.Forum@frontex.europa.eu
frontex@frontex.europa.eu
www.frontex.europa.eu

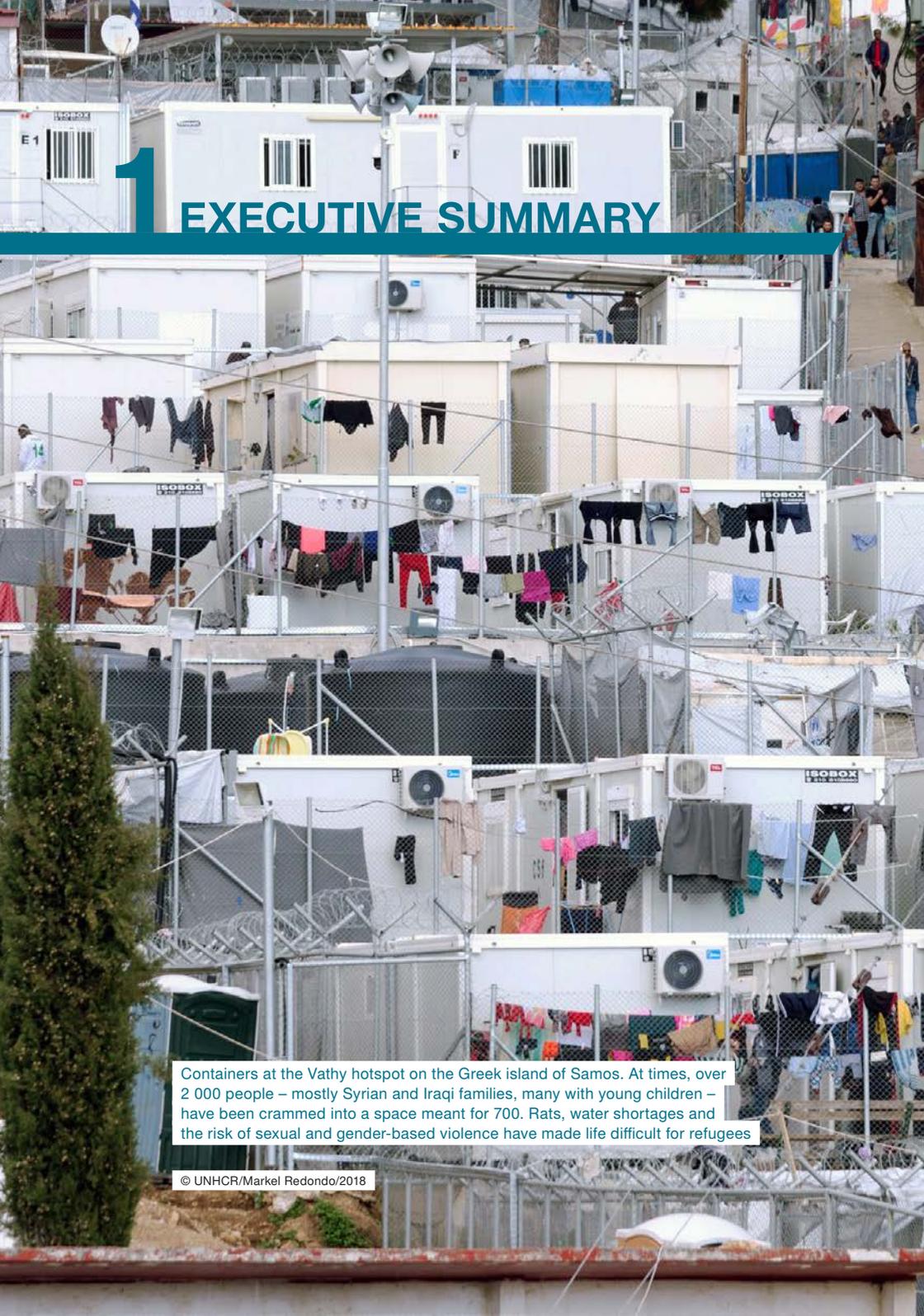
© Frontex, 2019

All rights reserved. Reproduction is authorised provided
the source is acknowledged.

Printed version:
OPOCE Catalogue number:
TT-AH-19-001-EN-C
ISBN 978-92-9471-340-7
ISSN 2363-104X
doi:10.2819/69282

PDF:
OPOCE Catalogue number:
TT-AH-19-001-EN-N
ISBN 978-92-9471-341-4
ISSN 2363-1058
doi:10.2819/781929

1 EXECUTIVE SUMMARY	4
2 INTRODUCTION	8
3 COMPOSITION AND ROLE	14
4 MAIN ACTIVITIES IN 2018	18
4.1 Provision of strategic advice on the implementation of the European Border and Coast Guard Regulation	19
4.1.1 Composition of the Frontex Fundamental Rights Office and appointment of a Fundamental Rights Officer <i>ad interim</i>	19
4.1.2 Amendments to the European Border and Coast Guard Regulation	21
4.1.3 Frontex individual complaints mechanism	21
4.1.4 Frontex fundamental rights accountability	22
4.1.5 Frontex and statelessness	24
4.1.6 Development of a European Travel Information and Authorisation System	27
4.2 Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents	27
4.2.1 Revision of the Fundamental Rights Strategy	27
4.2.2 Implementation of Frontex Codes of Conduct	28
4.2.3 Gender mainstreaming at Frontex	29
4.3 Fundamental Rights and Frontex operations	30
4.3.1 Enhancement of child protection in Frontex activities	33
4.3.2 Evaluation of Joint Operation Themis	36
4.3.3 Fundamental Rights in Frontex operations and return support activities	38
4.3.4 Frontex engagement with third countries and its impact on fundamental rights	40
4.4 Frontex training activities with an impact on fundamental rights	43
4.5 External evaluation of the Frontex Consultative Forum	44
5 PREVIEW OF 2019	46
6 ANNEXES	48
7 CONTACT	59



1 EXECUTIVE SUMMARY

Containers at the Vathy hotspot on the Greek island of Samos. At times, over 2 000 people – mostly Syrian and Iraqi families, many with young children – have been crammed into a space meant for 700. Rats, water shortages and the risk of sexual and gender-based violence have made life difficult for refugees

This report provides an overview of the Consultative Forum's activities in 2018. It also outlines the main observations and recommendations raised throughout the year with Frontex and its Management Board in an effort to strengthen fundamental rights protection in Frontex's activities.

In 2018, Frontex's ability to uphold its responsibilities in the area of fundamental rights continued to be compromised due to the **inadequate staffing of the Agency's Fundamental Rights Office**. This has been a constant concern since 2014;¹ adequate staffing is paramount to ensuring the implementation of fundamental rights obligations under the European Border and Coast Guard Regulation. The Consultative Forum also expressed **concerns on the Agency's respect for the independence of the Fundamental Rights Office** (Section 4.1.1) and regrets that the **revision of the 2011 Fundamental Rights Strategy** – a key document for the promotion, respect and protection of fundamental rights – **was not prioritised** during the year.

The Forum continued to provide advice on the enhancement of **child protection and safeguarding** in Frontex operations (Section 4.3.1), as well as on how to consistently address **gender** considerations in the Agency's activities (Section 4.2.3). A **key development** in this regard is that Frontex **began collecting sex- and age-disaggregated data**. This is something that the Forum had recommended, as it makes it easier to identify vulnerabilities and improve the planning and implementation of the Agency's operations (Section 4.2.3).

¹ See Consultative Forum Annual Reports 2014, 2015, 2016 and 2017 [URL: <https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>].

In 2018, the Consultative Forum issued a recommendation on **statelessness** in Frontex activities (Section 4.1.5). It also continued discussions on **accountability** and raised concerns about continuing reports of fundamental rights violations at EU land borders, including in areas where Frontex is operational. In this context, the Forum recommended a revision of the **Frontex serious incident reporting mechanism** for alleged breaches of fundamental rights (Sections 4.2 and 4.3) and encouraged the adoption of a revised set of rules, as well as a dissemination and awareness-raising strategy, which would contribute to the **effectiveness of the Agency's complaints mechanism** (Section 4.1.3).

Attention was devoted to the **evaluation of Joint Operation Themis** (Section 4.3.2) and work continued in the area of **returns**, including through discussions at a focus group meeting with Frontex and Management Board representatives that followed the Forum's visits to return operations (Section 4.3.3).

In view of the enhancement of Frontex's engagement in third countries, the **Forum carried out one on-spot visit to the Frontex Liaison Officer to the Western Balkans** and held several discussions in an attempt to better understand the role of this new tool at the Agency's disposal (Section 4.3.4).

Support continued to be provided in 2018 for mainstreaming fundamental rights within Frontex's **training** products and courses. Given the new developments in the training unit, however, the Forum will commission expertise in 2019 to assess the extent and further needs (Section 4.4).

By the end of 2018, the Forum **launched the external evaluation** that will be undertaken on its work in 2019 and that will contribute to the process of renewing its membership (Section 4.5). The Forum

is **also closely following discussions on the European Commission's proposal to revise the European Border and Coast Guard Regulation**, which would result in additional changes to the Agency's work.

The Consultative Forum appreciates the open and positive dialogue maintained with Frontex and the Management Board throughout the year.

This sixth Annual Report of the Consultative Forum was presented to Frontex's Management Board on 12 February 2019.

2 INTRODUCTION



A stranded boat called the Mansouri. 2018 saw rescued people left stranded by governments that refused to allow disembarkation on their shores

© UNHCR/Markel Redondo/2018

Following trends seen in 2017, the number of irregular crossings at Europe's borders continued to decrease throughout 2018, with a 92 % reduction in arrivals compared with the peak of the migration and refugee crisis in 2015.²

Despite this, the management of mixed flows is still causing controversy and dominated the political and public debate within the EU. Member States reached a political deadlock concerning responsibility for the disembarkation of refugees and migrants and continued bolstering restrictions on NGO search and rescue activities while intensifying efforts to support the activities of the Libyan Coast Guard, particularly after the declaration of a Libya Search and Rescue Region in June. Limited progress was also made on the reform of the Common European Asylum System (five legislative proposals, including on the EU Asylum Agency and Asylum Procedures) due to the absence of common ground on Dublin and solidarity.

In parallel, the European Commission launched a number of new initiatives with direct impact on Frontex's mandate and activities. These include the Multi-annual Financial Framework (2021–2027), which recommends tripling EU funding for migration and border management and creating a standing border corps of 10 000, and a later proposal for a revised European Border and Coast Guard (EBCG 2.0) that was launched in September 2018.

Presented as part of a wider package together with proposals on the EU Asylum Agency and the recast of the Returns Directive, EBCG 2.0 foresees an Agency that is able to rely on its own assets and to launch operations using Agency staff with executive powers. It also

2 'Number of irregular crossings at Europe's borders at lowest level in 5 years', Frontex News Release, 4 January 2019 [URL: <https://frontex.europa.eu/media-centre/news-release/number-of-irregular-crossings-at-europe-s-borders-at-lowest-level-in-5-years-ZfkoRuj>].

provides the scope for an increased engagement in third countries, an extended role on returns and enhanced situational awareness and response activities. Notably, the proposal incorporates and expands the content of the Eurosur Regulation with the declared aim of combining 'both the tasks of the Agency and the role that EU Member States authorities must play in the functioning of the European Border and Coast Guard'.

A key development for Frontex was also the adoption of a regulation establishing a European Travel Information and Authorisation System (ETIAS) that provided the Agency with additional responsibilities in developing a system that is to become operational in January 2021.

Within the Agency, focus continued to be placed on internal growth and the development of new tasks and structures. These included the provision of Eurosur Fusion services, which are aimed at achieving EU objectives related to border surveillance, combating irregular migration, smuggling and cross-border crime, as well as contributing to search and rescue activities. The extension of aerial surveillance capabilities and the deployment of a network of Liaison Officers in EU Member States are also examples of these new developments.

Much attention was also devoted to the Western Balkan countries, with significant advances made towards the adoption of Status Agreements that will allow the Agency to launch its first operations in third countries in 2019.

Towards the second half of the year, the Western Mediterranean route, through Spain, became the most active, accounting for more than half of arrivals in the EU, whereas departures from Libya continued to drop, with an 87 % reduction from those in 2017.

With more attention being paid to the collection of data on children, the Agency estimates that approximately one out of five arrivals in 2018 claimed to be under the age of 18, with close to 4 000 unaccompanied children reported. Most arrivals in the eastern Mediterranean, through Greece, continued to be from Afghanistan (27.7 %), Syria (24.4 %) and Iraq (18.0 %), with a large preponderance of refugee profiles, as was also reflected in the recognition rates of international protection applications from the previous year. In the central Mediterranean, the main nationalities among arrivals were Tunisian (23.8 %), Eritrean (15.1 %), and Iraqi (7.9 %); for the western Mediterranean corridor, they were Moroccan (21.0 %), Guinean (20.8 %) and Malian (16.1 %).³

In 2018, the number of irregular border crossings detected at Europe's external borders fell by a quarter compared with 2017 to an estimated 150 000, the lowest level in five years. The numbers of applications for asylum also dropped to 628 500 (from 728 500 in 2017). The composition of the flow remained relatively stable, with applicants coming from a wide range of countries of origin and at an average rate of fewer than 12 000 per week. Applications from Syrians, Afghans and Iraqis were most frequent, comprising a quarter of the total.

In the course of the year, concerns remained over the treatment afforded to persons attempting to cross EU land borders, with continued reports of violence, pushbacks and denial of access to asylum procedures, including at the Greek-Turkish border, where the number of crossings quadrupled compared to 2017. Similar

³ UNHCR Data Portal, as of 31 December 2018 [URL: <https://data2.unhcr.org/en/situations/mediterranean>] and 'Desperate Journeys' 2018, UNHCR, August 2018 [URL: <https://data2.unhcr.org/en/documents/details/65373>].

allegations were repeatedly reported during the year at the EU's external land borders between Croatia and Bosnia and Herzegovina.⁴

The unpredictable situation concerning search and rescue operations (SAR) in the central Mediterranean increased incidents where vessels would drift undetected for several days. Disembarkation at a safe EU port would at times be delayed up to three weeks, creating repeated political stand-offs between EU Member States and dire humanitarian conditions for rescued persons on board the ships.

In light of the above, commercial and fishing vessels are increasingly reluctant to board migrants and refugees in distress because they are afraid of being dragged into lengthy negotiations between EU Member States about which country they should be disembarked to. Moreover, even those rescued by the Libyan Coast Guard faced detention in horrendous conditions in places with no access to food and where they are repeatedly subjected to grave human rights violations.⁵

⁴ See, for instance: 'Push-backs, violence and inadequate conditions at the Balkan route's new frontier', MSF, August 2018 [URL: <https://www.msf.org/push-backs-violence-and-inadequate-conditions-balkan-routes-new-frontier>], including a collection of video recordings of alleged pushbacks [URL: <https://www.borderviolence.eu/file-directory/>].

⁵ Libya Flash Update, UNHCR, 8–14 December 2018 [URL: <https://data2.unhcr.org/en/documents/download/67281>] and 'Desperate and dangerous: Report on the human rights situation of migrants and Refugees in Libya', UNSMIL, OHCHR, 18 December 2018 [URL: <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>].

Disembarkation of 311 people in Algeciras, Spain, after they were rescued by a rescue boat in the central Mediterranean on 21 December

© Open Arms UNHCR / 2018



Despite advisories against returns to Libya, including from the UNHCR,⁶ merchant vessels have returned persons rescued in international waters to Libyan authorities, with the latter conducting forced disembarkations.⁷

While the overall number of departures via the central Mediterranean remained low throughout 2018, the increasing death rate on this route should not be overlooked, with up to one death for every 14 people believed to have attempted to cross.⁸

6 UNHCR Position on Returns to Libya – Update II, September 2018 [URL: <https://www.refworld.org/docid/5b8d02314.html>].

7 Libya Flash Update, UNHCR, 16–23 November 2018 [URL: <https://data2.unhcr.org/en/documents/details/66955>].

8 'Desperate Journeys' 2018, UNHCR, August 2018 [URL: <https://data2.unhcr.org/en/documents/details/65373>].

3 COMPOSITION AND ROLE



Identification badge of Frontex deployed officers

© Frontex / Krzysztof Borowski / May 2018

The Frontex Consultative Forum was officially established in October 2012 and has been operational since January 2013. It provides independent advice to the Agency's Management Board and its Executive Director on the respect for, and protection and promotion of, fundamental rights in Frontex activities.

Pursuant to Article 70 of the European Border and Coast Guard Regulation (EBCG Regulation), the Consultative Forum is to be consulted on matters such as the further development and implementation of the fundamental rights strategy, codes of conduct and common core curriculum and shall have effective access to all information related to the respect for fundamental rights in all Agency activities. Furthermore, the Consultative Forum conducts on-the-spot visits to operational areas and activities.

The Consultative Forum is composed of **15 organisations**, which contribute their expertise and resources on a voluntary basis, and is supported by the Consultative Forum Secretariat provided by Frontex. The members of the Consultative Forum are the following:

1. Two European Union agencies:

- the European Asylum Support Office (EASO); and
- the European Union Agency for Fundamental Rights (FRA).

2. Four UN agencies and intergovernmental organisations:

- the United Nations High Commissioner for Refugees (UNHCR);
- the Council of Europe (CoE);
- the International Organization for Migration (IOM); and
- the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE-ODIHR).

3. Nine civil society organisations:

- the AIRE Centre – Advice on Individual Rights in Europe;
- the Amnesty International European Institutions Office (AI EIO);
- the Churches' Commission for Migrants in Europe (CCME);
- the European Council on Refugees and Exiles (ECRE);
- the International Commission of Jurists (ICJ);
- the Jesuit Refugee Service Europe (JRS);
- the Platform for International Cooperation on Undocumented Migrants (PICUM);
- the Red Cross EU Office;
- and Save the Children.

In 2018, the Consultative Forum was chaired by the UNHCR and the Jesuit Refugee Service. The term of mandate of the current composition ends on 30 June 2019.⁹

The Consultative Forum does not have a mandate under the European Border and Coast Guard Regulation or the capacity to monitor or systematically assess fundamental rights compliance in Frontex activities.

Against the advice of the Consultative Forum, no relevant steps were taken in 2018 to adequately staff the Fundamental Rights Officer's team. The absence of senior staff within the Fundamental Rights Officer's team, as well as limitations posed on the independence of this function, continue to compromise Frontex's ability to fulfil its fundamental rights responsibilities.

In this context, the Consultative Forum stresses, once again, the importance of external oversight of the Agency's work.

⁹ After a six-month extension was granted by Management Board Decision 18/2018 of 18 September.



4 MAIN ACTIVITIES IN 2018



At the transit site in northern Lesvos. Refugees and migrants are given dry clothes after having crossed from Turkey

© UNHCR / Daphne Tolis / September 2018

4.1 Provision of strategic advice on the implementation of the European Border and Coast Guard Regulation

4.1.1 Composition of the Frontex Fundamental Rights Office and appointment of a Fundamental Rights Officer ad interim

As in previous years, the Consultative Forum continued to raise concerns about the fact that inadequate staffing – in terms of number and seniority of staff – is seriously undermining the fulfilment of the Fundamental Rights Officer’s mandate and, more generally, Frontex’s capacity to fulfil its fundamental rights obligations as derived from the EBCG Regulation. With an expansion in Frontex’s mandate and activities, it is clear that more capacity for the Fundamental Rights Office is necessary to be able to establish processes in line with Frontex’s fundamental rights obligations and to monitor their implementation.¹⁰

Of the 58 Administrators (AD)¹¹ posts foreseen in the indicative Frontex recruitment plan for 2018,¹² no AD post was allocated to the Fundamental Rights Officer. During the year, only three Senior Assistants (FGIV) joined the Fundamental Rights Office.¹³ In spite of the team’s hard work and dedication, the work of the Fundamental Rights Office continues to be compromised in areas such

¹⁰ Recital 48 of the EBCG Regulation states that: ‘Given the increased number of its tasks, the Agency should further develop and implement a strategy to monitor and ensure the protection of fundamental rights. To that end it should provide its fundamental rights officer with adequate resources and staff corresponding to its mandate and size.’

¹¹ Levels 5 to 12.

¹² Consultative Forum request for information submitted on 1 February 2018.

¹³ The Fundamental Rights Officer (AD10), 1 administrative assistant (FGIII), 4 Senior Assistants (FGIV), 1 complaints assistant (ASTIII), 1 interim assistant, 1 trainee and 1 technical officer responsible for the Consultative Forum (ASTIII).

as monitoring of operations, handling of complaints, provision of advice on training, risk analysis, third country cooperation and return activities.

The situation deteriorated further in the second half of the year, when the Fundamental Rights Officer took an extended period of sick leave. In the absence of senior staff within the Fundamental Rights Office who could ensure continuity of work during this period, the Management Board appointed an Advisor in the Executive Director's Cabinet as Fundamental Rights Officer *ad interim*. The decision, in November, followed a proposal by the Executive Director who immediately released the incumbent from her duties with his cabinet.

In response, the Consultative Forum noted that the appointment of a member of the Executive Director's cabinet as Fundamental Rights Officer *ad interim* raises issues under the EBCG Regulation. In particular, the previous and future reporting expectations on the incumbent in relation to the Executive Director make it difficult to provide for the necessary conditions to ensure that the Fundamental Rights Officer *ad interim* and the Fundamental Rights Officer's team maintain their independence in the performance of their duties and avoid potential conflicts of interest.

The Forum also noted that respect for Article 71(2) of the EBCG Regulation requires that the staff that is provided to the Fundamental Rights Officer by the Agency enjoy the same level of independence vis-à-vis the Agency in the exercise of their functions, including their reporting lines. This also concerns the staff working in the Consultative Forum Secretariat, who must be provided with the necessary structure and opportunities to maintain their independence vis-à-vis the Frontex Executive Director.

4.1.2 Amendments to the European Border and Coast Guard Regulation

In September, the European Commission released a new European Border and Coast Guard Regulation proposal that also incorporated provisions on Eurosur.¹⁴ The Forum discussed the proposal with Frontex staff during its 17th Consultative Forum meeting and will further engage in consultations with relevant stakeholders in 2019. The fundamental rights implications of the proposal are also addressed in the opinion published by FRA and the comments issued by ECRE.¹⁵

4.1.3 Frontex individual complaints mechanism

In 2018, the Fundamental Rights Officer prepared a draft for the amendment of the rules on the complaints mechanism. The Consultative Forum provided comments on the draft with a view to addressing current shortcomings.¹⁶ At present, for instance, the rules do not provide further details on the roles of the different actors involved in the procedure, specify the time frame for the processing of complaints or provide for the possibility of anonymous complaints. The new draft, which had not been adopted by the end of 2018, constitutes a remarkable improvement. The Consultative Forum maintained its concerns about the accessibility of the complaints

¹⁴ Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard, 12 September 2018 [URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1537358704958&uri=CELEX%3A52018PC0631>].

¹⁵ See ECRE Comments on the European Commission's proposal for a Regulation on the European Border and Coast Guard, November 2018 [URL: <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-EBCG-proposal.pdf>] and 'The revised European Border and Coast Guard Regulation and its fundamental rights implications – Opinion of the European Union Agency for Fundamental Rights' pursuant to Article 4(1)(d) of Council Regulation (EC) No. 168/2007, 27 November 2018 [URL: <https://fra.europa.eu/en/opinion/2018/eu-border-agency>].

¹⁶ The Agency's Rules on the Complaints Mechanism [URL: https://frontex.europa.eu/assets/Key_Documents/Complaints/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf].

mechanism and encouraged efforts by the Fundamental Rights Office to develop a dissemination and awareness-raising strategy.

At the Consultative Forum meetings held during the year, the Forum emphasised the importance of releasing clear information to potential complainants, their lawyers and relevant organisations. Furthermore, the Forum called for greater transparency in communicating the closure of cases, as well as the specific national authorities to which complaints are referred.

While foreseen in its work programme, there was no opportunity for the Forum to contribute to the Agency's evaluation of the complaints mechanism, given that it was not started in 2018. Nevertheless, the Forum remains ready to support the evaluation should it be carried out in the course of 2019.

4.1.4 Frontex fundamental rights accountability

In February 2018, the Consultative Forum invited Dr Melanie Fink and Dr Jorrit Rijpma of the University of Leiden to present to Frontex's Legal and Procurement Unit the findings of the research that they had undertaken for the Forum on Frontex's fundamental rights accountability in multi-actor situations. The presentation was part of a broader one-day discussion held by the Forum. The meeting was structured around a number of hypothetical scenarios prepared by the Consultative Forum that reflected various types of operations the Agency is coordinating. Potential violations were discussed in the context of the Agency, EU Member States and the involvement of third-country authorities.



Makeshift shelters in the overcrowded Vial hotspot, which hosts more than 2000 people, double its capacity, on the Greek island of Chios

© UNHCR / Daphne Tolis / October 2018

One of the key outcomes of this meeting was consensus on the importance of actual and constructive knowledge for the attribution of responsibility under EU and international law to the various actors involved in every Frontex operation.

The Fundamental Rights Officer, the Consultative Forum and other actors can contribute to building knowledge on specific risks related to the Agency's responsibilities and the context of its activities. There was also a common understanding among meeting participants of the importance of accountability of the Agency and of national authorities in the event of potential misconduct or fundamental rights breaches. Given the rapidly changing institutional and operational environment, particularly in cooperation with third countries, this issue is of utmost importance.

The scope of responsibility of the Agency, in addition to that of Member States, in relation to potential human rights violations increases the importance of preventive measures. The Agency's positive obligations require that it not only prevent fundamental rights violations but also promote fundamental rights protection in its activities.

The meeting with the Legal and Procurement Unit and subsequent discussion with other members of the Consultative Forum also revealed the need for follow-up research on the fundamental rights implications of the Agency's enhanced cooperation with third countries on matters within its mandate (see Section 4.3.4).

The Consultative Forum started working on Frontex's fundamental rights accountability in 2015. This work mainly involved discussions with Frontex's Legal and Procurement Unit with the aim of developing a common understanding of the accountability/responsibility of Frontex for potential violations of fundamental rights.

4.1.5 Frontex and statelessness

At its 16th meeting, the Consultative Forum invited the European Network on Statelessness to present the situation of stateless persons in the EU. This allowed the Forum to reflect on the impact of the activities of the European Border and Coast Guard Agency in the identification and protection of stateless persons at the EU's external borders.

There is very limited data available on statelessness and nationality determination in the European Union. However, it is important to consider that stateless persons are, on arrival, normally not in a position to produce documentary evidence of their status (in practice, to prove a negative by those who, precisely because of their statelessness, often remain without any documents that would prove their identity or status).¹⁷ Such limitations, linked to a lack of awareness on statelessness, could hinder their proper identification and registration by border officials, including Frontex-deployed officers.

¹⁷ In this regard, it should be mentioned that only a handful of EU Member States operate a dedicated, self-standing statelessness determination procedure. See Statelessness Index [URL: <https://index.statelessness.eu/>].



Screening interview in Trapani, Italy
in the context of Joint Operation Themis 2018

© Frontex / July 2018

From a border management perspective, the non-identification of stateless persons or of the risk of statelessness undermines efforts to adequately map irregular arrivals and movements. It also limits the capacity to process arrivals in accordance with the relevant procedures, including the assessment of their specific needs, and efforts to avoid arbitrary pre-removal detention.

From the perspective of the individuals concerned, the incorrect identification of stateless persons can seriously affect the fair determination of their protection needs and status, as well as their and their children's overall protection in compliance with international standards, the EU Charter of Fundamental Rights and the European Convention on Human Rights.

In December 2018, the Consultative Forum submitted a recommendation on statelessness in the activities of the European Border and Coast Guard Agency to the Frontex Executive Director and Management Board Chair. The recommendation highlights important opportunities for the Agency to promote harmonisation and

common standards. It also identifies the specific areas where the Agency's attention to statelessness should be enhanced, given the relevance of statelessness for the Agency's activities.

The Consultative Forum recommends that the Agency:

1. **Develop guidance tools and mainstream** statelessness considerations through its activities and processes.
2. Treat statelessness as one of the building blocks in the Agency's European Border and Coast Guard **training** with the aim of raising awareness on statelessness among the Agency's staff and personnel deployed by the Agency. The content should be compiled based on available materials/training courses and draw on subject matter expertise.
3. Update the **guidelines for screeners and debriefers** deployed by the Agency to include considerations on statelessness and provide officers with regularly updated information on relevant profiles of stateless persons likely to arrive in the EU.
4. Require that the Situational Awareness and Monitoring Division conduct **specific research** on the issue of statelessness among arrivals in the EU and incorporate a statelessness perspective in the relevant analysis methodologies used by the Agency.
5. Actively support the establishment by host Member States of **effective procedures to correct potential mistakes** that occurred during the initial registration and appeal mechanisms to revert potentially incorrect nationality assessments. Reference to these mechanisms should be included in the operational plans that foresee the deployment of the Agency's registration and screening support. Screening forms should also include the possibility of recording 'stateless' data.

The Consultative Forum stands ready to support and further advise on the implementation of the aforementioned recommendations during 2019.

4.1.6 Development of a European Travel Information and Authorisation System

The adoption of a regulation on the establishment of a European Travel Information and Authorisation System provided Frontex with additional tasks and fundamental rights responsibilities. The Consultative Forum held discussions with relevant stakeholders to better understand the role of Frontex and to identify potential areas of interest. The Forum will continue to follow and closely engage with the Agency on this complex development in 2019.

4.2 Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents

4.2.1 Revision of the Fundamental Rights Strategy

Since 2016, when a draft was shared with the Consultative Forum, the revision of the 2011 Frontex Fundamental Rights Strategy has been on standby. The Consultative Forum reiterates the crucial importance of this document for promoting, respecting and protecting fundamental rights in Frontex activities and thereby regrets that its revision was, once again, not prioritised in 2018.

As part of its mandate,¹⁸ the Forum insists on, and remains ready to contribute to, the much-needed revision of the Fundamental Rights Strategy and its Action Plan in 2019.

18 Article 70(3) EBCG Regulation.

4.2.2 Implementation of Frontex Codes of Conduct

The Consultative Forum provided its views on the revision of the Code of Conduct for return operations and return interventions adopted by the Agency in 2018.¹⁹ The Code of Conduct for return operations and return interventions complements the Code of Conduct for all persons participating in Frontex operational activities that was adopted in 2017.²⁰

19 Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex [URL: https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf].

20 Frontex Code of Conduct applicable to all persons participating in Frontex operational activities [URL: https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf]. See also Consultative Forum Annual Report 2017.

In January 2018, the Forum advised Frontex and Management Board representatives on the implementation of Article 6(3) of the Code of Conduct for return operations and return interventions. In particular, the Forum stressed the **responsibility of officers to inform returnees about the possibility to lodge a complaint** concerning alleged breaches of fundamental rights during forced return flights and readmission operations. It also highlighted the fact that the ability to lodge a complaint is a right, not a privilege, and encouraged the adoption of flanking measures to ensure that it can be exercised. This includes the **development of tailored information** for returnees, taking into consideration that:

- ♦ Information needs to be conveyed in a language that returnees with different language and cultural backgrounds can understand. Specific guidance for children should also be developed;
- ♦ Efforts need to be made to avoid raising unrealistic expectations about the scope and potential outcomes of the complaints procedure;
- ♦ Complaints-related material should be made available in at least the most common languages spoken by returnees.

4.2.3 Gender mainstreaming at Frontex

In 2017, the Consultative Forum advised Frontex's Executive Director to consistently address gender considerations in all the Agency's activities. The Forum provided 10 concrete recommendations²¹ that were discussed in the course of two meetings with Frontex Executive and Deputy Director as well as Frontex Senior Management at

²¹ See Consultative Forum Annual Report 2017.

the beginning of 2018. The Agency informed the Consultative Forum that gender considerations would be integrated in the revised Frontex Fundamental Rights Strategy and Action Plan and that the Agency's cooperation with the European Institute for Gender Equality would be strengthened. The possibility of delivering tailored training and the nomination of gender focal points were discussed. These would contribute to enhancing gender awareness among Frontex staff and participants in Frontex operations.

In line with the recommendation, Frontex started collecting sex- and age-disaggregated data in 2018, both during joint operations and when receiving data from Member States. This is an important step for the planning and implementation of Frontex operations. It enriches Frontex's knowledge about the number of boys and girls crossing the EU's external borders, their age and routes. What is more, it will allow the Agency to target its operational response by, for instance, identifying different risks and dangers for boys and girls. Furthermore, the Forum welcomes the efforts made by the press and communication team to increase the representation of women – in a variety of roles – in their visibility materials.

4.3 Fundamental Rights and Frontex operations

During the year, the Consultative Forum continued to raise concerns with the Frontex Executive Office and Management Board Chair on fundamental rights violations reported at the EU's external borders. Particular attention was devoted to fundamental rights violations in areas where the Agency is operational, including the Hungarian-Serbian and the Greek-Turkish land borders.²²

²² See, for example, 'Migrant pushbacks a growing concern in some Member States', Fundamental Rights Agency, March 2018 [URL: <https://fra.europa.eu/en/news/2018/migrant-pushbacks-growing-concern-some-member-states>]; 'Desperate Journeys', UNHCR, January to August 2018 [URL: <https://www.unhcr.org/desperatejourneys/>]; 'Hundreds of Children report Police Violence at EU Borders', Save the



The Evros River at the Greek-Turkish land border.
Several people lost their lives or went missing
while attempting to cross the river in 2018

© UNCHR / Socrates Baltagiannis / May 2018

The Consultative Forum has repeatedly advised that operational support by the Agency must be contingent upon Frontex being satisfied that people arriving at EU borders are duly registered by the competent national authorities; given access to an individualised procedure and to asylum, if they so wish; are not summarily

Children, 24 December 2018 [URL: <https://www.savethechildren.net/article/hundreds-children-report-police-violence-eu-borders>]. Bulgaria/Greece/Turkey: 'Push backs and human rights violations at Bulgarian and Greek borders with Turkey', ECRE Weekly Bulletin, 2 March 2018 [URL: <https://www.ecre.org/push-backs-and-human-rights-violations-at-bulgarian-and-greek-borders-with-turkey/>]; 'UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey', UNHCR, 8 June 2017 [URL: <http://bit.ly/2tbPoRO>]; Reports of systematic pushbacks in the Evros region, Greek Council for Refugees, 20 February 2018 [URL: <http://bit.ly/2FndTBN>]; Council of Europe Commissioner for Human Rights, Facebook post, 7 June 2017 [URL: <http://bit.ly/2EgrsJC>]; 'The new normality: Continuous pushbacks of third country nationals on the Evros river', Greek Council for Refugees, Arsis, Human Rights 360 [URL: <https://www.gcr.gr/en/news/press-releases-announcements/item/1028-the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river/>]; 'Greece: Violent Pushbacks at Turkey Border', Human Rights Watch, December 2018 [URL: <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>]; Croatia/B&H: Letter from Commissioner for Human Rights Mrs Dunja Mijatovic addressed to Croatian Prime Minister, Council of Europe, 20 September 2018 [URL: <https://rm.coe.int/letter-to-mr-andrej-plenkovic-prime-minister-of-croatia-concerning-the/16808d7db3>]; Letter to the Chief Prosecutor of the Republic of Croatia, Ombudsman of the Republic of Croatia, 23 January 2018 [URL: <http://ombudsman.hr/attachments/article/1263/DORH%20-%20dostava%20podataka.doc>]. Serbia/Hungary: 'Systemic violation of Asylum Seeker's Human Rights in Hungary', Hungarian Helsinki Committee, September 2018, Statement by the Hungarian Helsinki Committee, OSCE HDIM 2018 [URL: <https://www.osce.org/odihr/396917?download=true>]. Bulgaria/Turkey: Amnesty International 2017/2018 report [URL: <https://www.amnesty.org/en/countries/europe-and-central-asia/bulgaria/report-bulgaria/>].

returned; and that instances of police abuse and violence are investigated in an independent and impartial manner.

In relation to Frontex's operational activities at the Hungarian-Serbian border, the Forum reiterated its 2016 recommendation that, until the above can be guaranteed, the Executive Director should take action pursuant to Article 25(4) of the EBCG Regulation and suspend operational activities.

For a number of years, the Agency has been managing a serious incident reporting mechanism (SIR) that is used to transmit to the relevant national authorities and the Agency information concerning any incident, including allegations of fundamental rights violations during joint operations, pilot projects or rapid intervention. Together with visits by the Fundamental Rights Officer (see Section 4.1.1 on staff limitations) and the complaints mechanism (see Section 4.1.3 on effectiveness of the complaints mechanism), the SIR constitutes the main tool for Frontex to monitor respect for fundamental rights in its activities.

In line with the Agency's Operational Plans, all participants in Frontex operational activities are responsible for immediately reporting any incident that could affect the Agency's activities, having special regard to any allegation of fundamental rights violations.

In 2018, the Agency only received 3 serious incident reports for alleged violations of fundamental rights and 10 complaints.²³ The almost negligible number of reports received by the Agency, with an average of 1 500 officers deployed along the EU's external borders, raises serious concerns about the effectiveness of Frontex's serious incident reporting mechanism.

23 Information provided by Frontex Fundamental Rights Officer on 21 January 2019.

During the year, the Consultative Forum raised these concerns and encouraged the Agency to revise the SIR mechanism and take additional measures to set up an effective system to monitor respect for fundamental rights in the context of its activities.

4.3.1 Enhancement of child protection in Frontex activities

In 2018, the protection of children's rights was pursued in the context of various Frontex activities. For instance, Frontex completed the development of a training course on protection of children at the border for first- and second-line officers. The Agency also started collecting sex- and age-disaggregated data.

a) Save the Children's visit to Frontex

In September 2018, Frontex extended an invitation to Save the Children, as a new member of the Forum, to an introductory meeting with the Agency. Similar to other Consultative Forum members, Save the Children has an operational footprint in areas where Frontex is active, such as border areas in Spain and Italy and transit countries in the Western Balkans. Save the Children presented how they work with children in border areas, while several Frontex representatives explained how the Agency operates in the new framework – from risk analysis to return support activities – and more specifically how their activities are designed and how they could affect children. This was followed by a fruitful discussion on how to address child protection/safeguarding risks in Frontex operations.

A number of shortcomings were identified, such as inconsistencies in data reporting and deficiencies in referral mechanisms for children in Member States/at borders. There was a broad acknowledgment of the need to focus more on child safeguarding – both at borders and in return operations – and child protection, including in the

Fundamental Rights Strategy and guidelines for Frontex operations. Frontex is currently reviewing and developing a number of strategies that should also consider the well-being of children. In particular, the revision of the 2011 Frontex Fundamental Rights Strategy and the ongoing development of the Integrated Border Management (IBM) Strategy present an opportunity to tackle child protection and safeguarding in a more structured way.

b) Participation in JO VEGA Children 2018 – Phase I and Phase II

The Consultative Forum supported Joint Operation (JO) VEGA Children 2018 Phase I (30 May through 9 July) and Phase II (30 August through 8 October) with the deployment of experts on trafficking in human beings, child protection and interviewing in order to provide assistance and advice to Frontex and national officials on how to improve the identification and referral of at-risk children on the move at EU airports. The aim of JO VEGA Children is to identify children at risk arriving by air in EU Member States and Schengen-associated countries, identifying any criminality associated with their movements as well as developing good practices in identification and referral.

The Consultative Forum regrets that no new airports agreed to host experts from international and civil society organisations as part of the mixed teams in 2018.²⁴ Nevertheless, the Consultative Forum ensured the deployment of, in total, nine experts to EU airports. The airports that hosted mixed teams were located in Romania, Spain, Bulgaria, Latvia, Lithuania, Poland, Portugal and Sweden. In this regard, the Consultative Forum acknowledges the great efforts made by the aforementioned Member States and welcomes their willingness to engage with international and civil society organisations at the working level.

²⁴ Teams composed of one national officer, one Frontex deployed officer and one Frontex Consultative Forum's representative, i.e. an expert from an International organisation or a civil society organisation.



In September 2018, the Moria hotspot on the Greek island of Lesbos hosted more than 8 500 people, almost four times its official capacity, in dire living conditions.

© UNHCR / Daphne Tolis / September 2018

Recommendations²⁵ made in the context of the operation include:

- ♦ Encourage the participating states to involve more female border officers in the joint operation;
- ♦ Make sure all members of the team are able to communicate in English;
- ♦ Include training activities in the tasks of the experts;
- ♦ Facilitate meetings with social services and other relevant stakeholders from the national referral systems;
- ♦ Facilitate national deployments to improve cooperation between stakeholders, i.e. border police and international and civil society organisations, which are part of the same protection system.

The Consultative Forum also discussed with Frontex the format for the continuation of support for the implementation of the VEGA Children concept at air borders. In particular, the Consultative Forum

²⁵ These recommendations derive from the final reports submitted by participants from the Consultative Forum to Joint Operation VEGA Children Phase I and Phase II during 2018.

welcomes efforts to ensure that the use of the manual and approach, as well as cooperation with civil society and international organisations, extends beyond the launching of joint operational activities.

c) VEGA Children land and sea handbooks

In 2017, the Consultative Forum supported the drafting of VEGA Children handbooks for land and sea operations. Both drafts were tested at operational areas by Frontex-deployed officers in 2018. However, the Consultative Forum was not consulted or invited to contribute to the testing and roll-out of the handbooks. The Consultative Forum will engage in consultations on how to further contribute to the implementation of the handbooks in 2019.

4.3.2 Evaluation of Joint Operation Themis

At its 16th meeting in Brussels, the Consultative Forum inquired about the methodology and preliminary findings for the Themis evaluation. The evaluation takes into account the effectiveness of border surveillance and the operation's contribution to SAR and law enforcement targets. One of the main differences between Joint Operation Themis and its predecessor, Triton, is that Themis's operational plan does not foresee a specific disembarkation point and that the operational area in the central Mediterranean has been reduced. Furthermore, the Forum raised concerns about the impact that Frontex's maritime aerial surveillance might have on prevention of departure from Libya.

A consequence of the reduced operational area in the central Mediterranean is that assets co-financed by Frontex are no longer being requested to support SAR activities taking place close to Libyan shores. The declaration of a Libyan SAR region in the central Mediterranean in June 2018, alongside reinforced activities of the Libyan Coast Guard, have also impacted SAR operations in that area, which is where most shipwrecks happen.



A deployed multipurpose aerial surveillance aircraft allows Frontex to obtain real-time information about the situational picture at EU borders and in the pre-frontier areas.

© Frontex / Francesco Malavolta / May 2018

NGOs in particular have been driven out of that SAR area by threats of legal action and bureaucratic obstacles.²⁶ Recent policies operated by some EU Member States, which are refusing disembarkation in their ports, further discourage SAR activities, including by commercial boats, for fear of being denied permission to disembark people rescued. Over the year, there were many instances of boats carrying refugees and migrants in the Mediterranean left unattended for days or even weeks.²⁷

As part of the Themis evaluation, Frontex noted a decrease in SAR cases off the coast of Libya, but the Consultative Forum is concerned that current EU policies have increased the likelihood of shipwrecks remaining unregistered and that interception operations by the Libyan Coast Guard are returning an increasing number

²⁶ 'As Mediterranean Sea arrivals decline and death rates rise, UNHCR calls for strengthening of search and rescue', UNHCR, 6 July 2018 [URL: <https://www.unhcr.org/news/briefing/2018/7/5b3f270a4/mediterranean-sea-arrivals-decline-death-rates-rise-unhcr-calls-strengthening.html>].

²⁷ 'Stranded at sea: Europe must stop playing with human lives', Amnesty International [URL: <https://www.amnesty.org/en/get-involved/take-action/stranded-at-sea-europe-stop-playing-with-human-lives/>] and 'Libya: Refugees and migrants refuse to disembark ship in desperate plea to avoid detention and torture', Amnesty International, 16 November 2018 [URL: <https://www.amnesty.org/en/latest/news/2018/11/libya-refugees-and-migrants-refuse-to-disembark-ship-in-desperate-plea-to-avoid-detention-and-torture/>].

of migrants and refugees to inhuman and degrading conditions and arbitrary detention in Libya.²⁸

4.3.3 Fundamental Rights in Frontex operations and return support activities

The Consultative Forum observed return support activities in 2017²⁹ and 2018.³⁰ The motivation for this was to better understand the different types of return operations based on the EBCG Regulation and to consequently provide high-quality advice to Frontex on fundamental rights protection.

Predominant observations on due diligence, non-refoulement, data protection, obstacles to lodging complaints, medical matters and identification of vulnerable persons were discussed at a focus group meeting on 25 January 2018. Consultative Forum members and representatives of the Management Board, the European Commission and Frontex reflected on the findings and potential solutions. Such meetings are of great value in order to translate initial observations into practical and workable recommendations.

Before the end of the year, members of the Forum met to discuss more broadly matters related to return support activities with a view to issuing a set of recommendations to Frontex at the beginning of 2019.

- 28** According to the UNHCR, 'as of 6 December, the Libyan Coast Guard (LCG) rescued/intercepted 14 795 refugees and migrants at sea (10 346 men, 2 172 women and 1 421 children) during 115 sea operations'. See Flash Update Libya, UNHCR, 1–7 December 2018 [URL: <https://reliefweb.int/report/libya/unhcr-flash-update-libya-1-7-december-2018-enar>]. 'Libyan coast guard says it has intercepted 15 000 migrants in 2018', Reuters, 20 December 2018 [URL: <https://uk.reuters.com/article/uk-europe-migrants-un/libyan-coast-guard-says-it-has-intercepted-15000-migrants-in-2018-idUKKCN1OJ273>].
- 29** In 2017, Consultative Forum representatives observed three return operations: 1) Frontex collecting return operation from Lille to Tirana on 31 May 2017; 2) Frontex joint return operation from Athens to Islamabad on 19 July 2017; and 3) Frontex joint return operation from Hannover to Belgrade and Podgorica on 24 August 2017.
- 30** A Consultative Forum member observed a national return operation from Düsseldorf to Tirana and Pristina on 22 August 2018.



Monitoring forced returns

In 2018, Frontex coordinated and co-financed 345 forced-return operations in the EU and established a pool of 66 monitors. Some 230 out of 345 forced-return operations were monitored.³¹

345 forced-return operations in 2018

140 joint return operations	133 monitored
67 collecting return operations	67 monitored
138 national return operations	30 monitored
345 total	230 total

³¹ Information provided by European Centre for Returns on 18 January 2019.

The Consultative Forum sees a continued trend whereby almost all joint return operations and collecting return operations are monitored, whereas national return operations are monitored far less often. Here, we have to explore how the national return monitoring mechanisms interplay with the Frontex-governed pool of return monitors in order to bridge this monitoring gap. How can the pool be more effectively used to monitor Frontex-coordinated national return operations and what can Frontex do to encourage and assist Member States in creating more sustainable monitoring systems? These are issues to be addressed in 2019.

The International Centre for Migration Policy Development (ICMPD) and the Consultative Forum continued to share information and coordinate activities in the framework of the Forced Return Monitoring II (FReM II) project, particularly by looking at good practices concerning fundamental rights compliance in forced-return operations and lessons learned. The third phase of this project was just launched in December 2018 and will offer the possibility of further enhancing cooperation in 2019.

4.3.4 Frontex engagement with third countries and its impact on fundamental rights

a) Africa-Frontex Intelligence Community Joint Report

The Consultative Forum commented on the draft 2018 Africa-Frontex Intelligence Community Joint Report (AFIC). The report presents an overview of the irregular movement of persons affecting AFIC countries and EU Member States in 2018.

Among other things, the Consultative Forum emphasised the misrepresentative terminological approach: although the report focuses on flows of a mixed nature, which includes people in need of international protection, the report overwhelmingly uses the term 'migrant'. Furthermore, the Forum challenged the assumption made in the report that EU policies may constitute a pull factor, given that there is little evidence if any to support it. Instead, pull factors should be framed in terms of people's desires and needs, e.g. the presence of family members in EU Member States.

With regard to the central and western Mediterranean routes, the Forum stressed that the report should also note that migrants and refugees intercepted by the Libyan Coast Guard are brought back to detention centres where they are exposed to inhuman conditions and treatment.³² Similarly, it recommended that information be provided on how cooperation is being conducted with Morocco to prevent irregular migration to Spain.³³

Lastly, the Forum highlighted the need to not only consider the number of deaths on a certain route but also the death rate per departure.³⁴

An updated version of the report was not provided to the Forum before the end of the year.

32 See 'Libya: Refugees and migrants refuse to disembark ship in desperate plea to avoid detention and torture', Amnesty International, 16 November 2018 [URL: <https://www.amnesty.org/en/latest/news/2018/11/libya-refugees-and-migrants-refuse-to-disembark-ship-in-desperate-plea-to-avoid-detention-and-torture/>].

33 See 'Morocco: Relentless crackdown on thousands of sub-Saharan migrants and refugees is unlawful', Amnesty International, 7 September 2018 [URL: <https://www.amnesty.org/en/latest/news/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/>].

34 See 'Desperate Journey: Refugees and migrants arriving in Europe and at Europe's borders', UNHCR, August 2018 [URL: <https://data2.unhcr.org/en/documents/details/65373>].

b) Frontex Liaison Officers in third countries

So far, the Agency has deployed three Frontex Liaison Officers (FLOs) in Ankara, Belgrade and Niger. The Forum dedicated efforts in 2018 to understanding their role, including tasks, responsibilities and reporting lines. For that purpose, the Forum requested two on-the-spot visits to the FLOs in the Western Balkans and Niger. Frontex advised against the visit to Niger on security and operational grounds. To better understand the context and particularities of his deployment, the Consultative Forum met with the FLO to Niger at Frontex HQ. During the meeting, Consultative Forum members discussed the FLO's role, daily activities and operational context.

In November, Forum members visited the FLO to the Western Balkans in Belgrade with the purpose of better understanding the role of the FLO in general and the fundamental rights component of her work in particular. The visit also covered discussions with relevant stakeholders, e.g. the Serbian Commissariat for Refugees and Migration and counterparts at the Ministry of Interior, with whom the FLO engages regularly, to provide a full picture of Frontex representation in a third country.

During a meeting with the acting head of the Liaison Officers Network Unit, the Forum asked questions related to the FLOs' fundamental rights responsibilities as per Article 55 of the EBCG Regulation, as well as the Agency's follow-up on FLO reports, in particular those raising fundamental rights concerns.

The Forum appreciates the positive engagement with, and openness of, the FLOs to discuss their work as well as the time and availability of Frontex counterparts in Serbia. The outcome of this visit and discussions will be further discussed at a focus group meeting with Frontex and the Management Board in 2019.

c) Fundamental rights implications of Frontex cooperation with third countries

In 2018, the Consultative Forum commissioned expertise for the analysis and better understanding of the limitations and consequences of Frontex's expanded mandate regarding cooperation with third countries. As a follow-up, the Forum is working on a recommendation that will be addressed to Frontex's Executive Director and Management Board in 2019.

4.4 Frontex training activities with an impact on fundamental rights

In 2018, the Consultative Forum continued to advise on the revision of the Common Core Curricula (CCC) mid-level. The CCC mid-level is a key training manual offering common standards for border and coast guard officers in mid-level management positions in the EU. One of the main objectives of this revision was to further build on the existing fundamental rights section and to reflect the legislative, policy and operational developments in the past few years throughout the manual.

Furthermore, the Consultative Forum provided final comments on the course manual for Frontex fundamental rights trainers. In 2018, 37 specialists in the area of fundamental rights were certified by Frontex after completion of Frontex fundamental rights training for border guards. In addition, four of them were certified as Frontex trainers.³⁵ However, Frontex does not have information about the number of fundamental rights training sessions conducted at the national level or about future training plans.

35 Information provided by the Frontex Training Unit on 18 January 2019.

As in previous years, two Consultative Forum representatives participated in the Mid-level Management Course at the Lithuanian Partnership Academy in Medininkai.

In 2019, the Forum will commission expert advice to assess the extent and further needs for fundamental rights mainstreaming in Frontex training courses and products. This study will be particularly relevant given the new developments within the Frontex training unit, including the development of a curriculum tailored to the operational needs of the Agency, and it will allow the Forum to provide strategic advice on the streaming of fundamental rights through this new approach.

4.5 External evaluation of the Frontex Consultative Forum

In consultation with Frontex and the Management Board, the Consultative Forum adopted terms of reference for the launch of an external evaluation of the Consultative Forum.

The evaluation aims to assess the relevance, impact and effectiveness, efficiency and internal coherence of the Consultative Forum and, in particular, it will generate an understanding of the obstacles and challenges experienced to achieve results and identify possibilities for improvements.

The process was launched by Frontex through the European Commission's 'Impact Assessment, Evaluation and related services in the area of Migration and Home Affairs' framework contract. The evaluation is to be commenced in early 2019.



Eighteen officers from 15 EU Member States took part in Frontex land border surveillance training in Croatia

© Frontex / Paulina Bakuta / April 2018

The final evaluation report should provide the Agency's Management Board and Executive Director, as well as Forum members, with an in-depth analysis of the performance and achievements of the Forum and should set out clear evidence-based findings and recommendations for further improvements.

The outcome of the evaluation will also feed into the revision of the Consultative Forum in 2019.

5 PREVIEW OF 2019



„Mansouri“, stranded boat

© UNHCR / Markel Redondo / September 2018

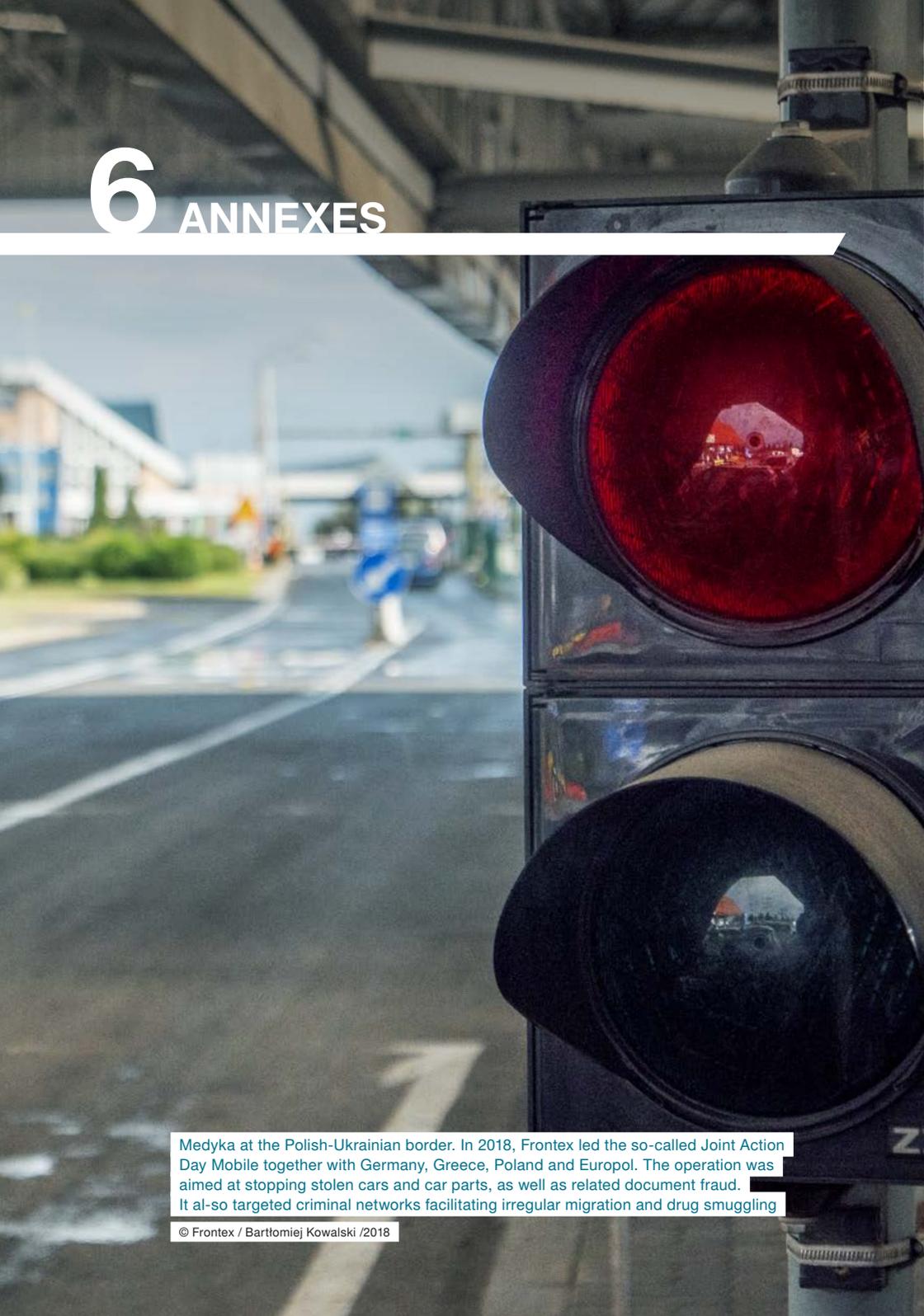
2019 will see many changes within the Consultative Forum. The election of a new European Parliament and the subsequent composition of a new European Commission will result in changes to the political framework and will therefore have an impact on the work of the Agency. Moreover, in the middle of the year, the term of office of the current Consultative Forum will expire, and the Agency's Management Board will have to decide on a new composition, potentially bringing additional actors or expertise to the Forum.

During the year, the Consultative Forum will closely follow discussions on the European Commission's proposal for a new European Border and Coast Guard Regulation and analyse the impact of the changes in the Agency's fundamental rights responsibilities and activities. Given their direct impact on the work of the Agency, the Consultative Forum will also follow the ongoing debate on legislative proposals to reform the Common European Asylum System, as well as developments on the EU information technology systems used in border control. As mentioned above, the revision of the Frontex Fundamental Rights Strategy and Action Plan is still outstanding. As per the EBCG Regulation, the Agency is obliged to engage the Consultative Forum in this revision. The Consultative Forum considers this an important part of its work in 2019.³⁶

Another important element that derives from the Consultative Forum's activities in 2018 is the provision of advice on Frontex's fundamental rights monitoring mechanisms, including the allocation of resources to the Fundamental Rights Office. The Consultative Forum will also engage in the observation and provision of advice on fundamental rights in Frontex operations and return support activities, as well as in the Agency's engagement with third countries. More specifically, the Forum will continue to look at child protection and safeguarding in the context of Frontex activities. Finally, the Consultative Forum will also continue providing support to Frontex for training activities with an impact on fundamental rights.

36 See Annex IV of the Consultative Forum Work Programme 2019.

6 ANNEXES



Medyka at the Polish-Ukrainian border. In 2018, Frontex led the so-called Joint Action Day Mobile together with Germany, Greece, Poland and Europol. The operation was aimed at stopping stolen cars and car parts, as well as related document fraud. It also targeted criminal networks facilitating irregular migration and drug smuggling

6.1 ANNEX I: List of activities

17–18 January Presentation ‘Children on the move at risk’ in the framework of a briefing provided to team members of JO Focal Points 2018 Land and JO Coordination Points 2018, Warsaw

25 January Focus group meeting with Frontex staff and Management Board members on Consultative Forum visits to Frontex return support activities during 2017, Warsaw

1 February Consultative Forum’s presentation to Frontex Executive Director and Frontex Deputy Executive Director of study on gender mainstreaming in Frontex activities, Warsaw

19 February Meeting with Consultative Forum members and Legal Affairs and Procurement Unit on Frontex Accountability, Warsaw

20–21 February 15th Consultative Forum meeting, Warsaw

21–22 March Presentation of Consultative Forum’s Annual Report 2017 at the 69th Management Board meeting, Warsaw

27–29 March Operational Heads of Airports Conference, Venice

16 April Consultative Forum’s presentation to Frontex Senior Management of study on gender mainstreaming in Frontex activities, Warsaw

15 May Mid-level Management Course, contact week 2, Medininkai

16–17 May 16th Consultative Forum meeting, Brussels

29 May Operational Briefing for JO VEGA Children, phase I, Warsaw

30 May–9 July JO VEGA Children, phase I, various locations

19–20 June 2nd Annual Lessons Learned Meeting, Forced Return Monitoring II, ICMPD, Helsinki

26–29 June CCC Mid-level core group meeting, Warsaw

29 August Operational Briefing for JO VEGA Children, phase II, Warsaw

30 August–8 October JO VEGA Children, phase II, various locations

21 September Child protection and safeguarding in Frontex activities, introductory meeting with Save the Children, Warsaw

24–28 September CCC Mid-level core group meeting, Warsaw

10–11 October Frontex Annual Training Conference, Warsaw

17–18 October 17th Consultative Forum meeting, Warsaw

23 October Closing conference of the Forced Return Monitoring II project, Nuremberg

5–6 November Presentation of Consultative Forum's Work Programme for 2019 at the 72nd Management Board meeting, Vienna

1 October Delivery of Advice on the Fundamental Rights Implications of Frontex Cooperation with Third Countries

8 November Internal meeting on returns, Vienna

26–30 November CCC Mid-level core group meeting, Warsaw

26–27 November Visit to Frontex Liaison Officer to Western Balkans, Belgrade

14 November Meeting with Frontex Liaison Officer to Niger, Warsaw

December Launch of external evaluation of the Consultative Forum

12 December Briefing on child protection in Frontex activities, Warsaw

20 December Meeting with European and International Cooperation Unit, Warsaw

6.2 ANNEX II: List of consultations

- ♦ Fundamental Rights training for border guards
- ♦ AFIC Joint Report 2018
- ♦ Common Core Curriculum Mid-level

6.3 ANNEX III: List of requests for information filed by the Consultative Forum

Date of the request	Subject	Brief description
1 February	Cabinet	Frontex staffing plan 2018, including staffing plan for the Fundamental Rights Office
1 February	Operations	Operational Plan Joint Operation Themis
21 May	Fundamental Rights Office	Annual Report on complaints 2017
30 May	European Centre for Returns/ Operations	Operational plan: Flexible Operational Activities in return 2018; Evaluation of Flexible Operational Activities in return 2017; Information on Frontex pre-return activities and evaluation methodology, in particular evaluation methodology for Joint Operation Themis
30 May	Operations/ International Cooperation	Frontex international cooperation strategy; Information regarding the Agency's financial and technical support to TCs; Framework for the deployment of TC officers in the Agency's pre-return assistance activities and maritime operations.
21 June	Training	Evaluation methodology for training courses; Evaluation of fundamental rights training for border guards; evaluation of European Joint Master's in Strategic Border Management

Date of the request	Subject	Brief description
30 July	Situational Awareness and Monitoring Division	Eurosur evaluation
27 August	European Centre for Returns/ Operations/ International Cooperation	Return Plan for Collecting Return Operations and Implementation Plan for a Collecting Return Operation; report on a forced return monitor concerning a collecting return operation or, alternatively, a standard return operation, in which concerns were raised by the monitor about the follow-up conducted by the Agency; Rolling Operational Plan for Return; Operational Plan for Return Interventions (if different from the Operational Plan for Standard Return Operations); Code of Conduct for Return Operations and Return Interventions as revised in spring 2018.; list (and the text) of agreements between Member States and third countries that refer to the Agency in line with 54(10); list and legal basis of coordination points at external borders between, or airports in, third countries; list of Liaison Officers deployed in third countries; overview of the status of negotiation in relation to the status agreements to be concluded with third countries; list of technical assistance projects launched under Article 54(9) or any other framework, including EU funding.

Date of the request	Subject	Brief description
7 September	Cabinet	Frontex views on the ongoing revision of the European Border and Coast Guard Regulation and EU Return acquis
15 November	Management Board	<p>Information on the procedure followed to find a solution for the temporary absence of the Fundamental Rights Officer, indicating how the requirements of the Regulation with regard to the Fundamental Rights Officer's independence, expertise and qualifications as well as absence of conflicts of interest have been assessed and documented.</p> <p>Detailed plan for the swift provision of the necessary senior staff to the Fundamental Rights Office</p>
23 November	Operations	Themis evaluation

6.4 ANNEX IV: Work Programme 2019

The **priorities of the Consultative Forum in 2019** are:

- A. Implementation of the European Border and Coast Guard Regulation and its fundamental rights implications.
- B. Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents.
- C. Fundamental rights in Frontex operations and return support activities.
- D. Frontex training activities with an impact on fundamental rights.
- E. Child protection and safeguarding in the context of Frontex activities.

In the implementation of this work programme, the Consultative Forum finds it crucial to continue working together with and supporting the Frontex Fundamental Rights Officer and her team, while ensuring complementarity with her mandate and activities.

All activities and recommendations of the Consultative Forum will fully respect the right to protection of personal data.

Priority A: Implementation and further development of the European Border and Coast Guard Regulation and its fundamental rights implications.

Activity A. 1: Provision of strategic advice on the implementation of the European Border and Coast Guard Regulation and further development of the Agency's mandate.

The Consultative Forum will contribute its collective expertise on fundamental rights to the further development of the European Border and Coast Guard Agency, including advice on the amendments of Frontex regulation and the setting up of new functions such as those related to the implementation of ETIAS.

Responsible: CF Chairs.

Output: Ongoing analysis and consultation with Frontex and other relevant stakeholders.

Activity A.2: Frontex fundamental rights monitoring mechanisms.

With a view to enhancing the monitoring of fundamental rights compliance in Frontex activities, the Consultative Forum will map and advise on fundamental rights monitoring mechanisms within the Agency.

Responsible: CF Chairs.

Output:

- (i) Consultation with Frontex Fundamental Rights Officer, Frontex staff and other relevant stakeholders.
- (ii) Advice on rules and procedures, including the Agency's rules on the complaints mechanism.

Priority B: Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents.

The Consultative Forum will contribute to the revision of the Frontex Fundamental Rights Strategy and Action Plan.

Responsible: CF Chairs.

Output: Consultation on the amendment of the 2011 Frontex Fundamental Rights Strategy and its Action Plan.

Priority C: Fundamental rights in Frontex operations and return support activities.

Activity C.1: Fundamental rights in Frontex return support activities.

Responsible: Working Group on Returns.

Output:

- (i) Observation of Frontex's pre-return activities.
- (ii) Advice on the relevant developments in this area.
- (iii) Ongoing analysis and consultation with relevant Frontex staff and other stakeholders.

Activity C.2: Frontex engagement with third countries and its impact on fundamental rights.

The Consultative Forum will continue looking at Frontex's enhanced role in third countries, including operational activities in the territory of third countries.

Responsible: CF thematic rapporteur on third-country cooperation.

Output:

- (i) Ongoing analysis and consultation with relevant Frontex staff and other stakeholders.
- (ii) Follow-up to the Consultative Forum recommendation related to third-country cooperation.

Priority D: Frontex training activities with an impact on fundamental rights.

To the extent of its capacity, the Consultative Forum will advise on the development of training tools and implementation of training on issues of relevance to fundamental rights with a view to mainstreaming fundamental rights through Frontex training activities.

Responsible: Working Group Training.

Output: Ad hoc advice on the development and/or observation of training courses and/or material.

Priority E: Child protection and safeguarding in the context of Frontex activities.

The Frontex Consultative Forum will continue to support Frontex efforts to enhance the protection and safeguarding of children through its operational activities, including through Frontex's implementation of the recommendations issued by the Consultative Forum in 2017.

Responsible: CF Chairs and Working Group Operations.

Output:

- (i) Ongoing analysis and consultation with relevant Frontex staff and other stakeholders.
- (ii) Spot visit(s) to joint operations with a focus on child protection.
- (iii) Support for the implementation of the Consultative Forum's recommendation on the enhancement of child protection in Frontex activities.

7 CONTACT US

If you would like to know more about the work of the Consultative Forum or have any comment about this Annual Report, please contact our secretariat at: consultative.forum@frontex.europa.eu



Plac Europejski 6
00-844 Warsaw, Poland
T +48 22 205 95 00
F +48 22 205 95 01

Consultative.Forum@frontex.europa.eu
frontex@frontex.europa.eu
www.frontex.europa.eu

Printed version:

OPOCE Catalogue number:
TT-AH-19-001-EN-C
ISBN 978-92-9471-340-7
ISSN 2363-104X
doi:10.2819/69282

PDF:

OPOCE Catalogue number:
TT-AH-19-001-EN-N
ISBN 978-92-9471-341-4
ISSN 2363-1058
doi:10.2819/781929