

The logo for Frontex, featuring the word "FRONT" in a bold, sans-serif font, followed by a stylized icon of a hand holding a torch, and the word "EX" in a similar font.

EUROPEAN BORDER AND
COAST GUARD AGENCY

The year "2023" in a large, bold, white, sans-serif font, positioned on a pink background that is part of a larger graphic design.The title of the report, "ANNUAL REPORT of the Fundamental Rights Officer of Frontex", in a bold, white, sans-serif font, positioned on a dark blue background.

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EUROPEAN BORDER AND
COAST GUARD AGENCY

2023

**ANNUAL REPORT
of the Fundamental
Rights Officer of Frontex**

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List of acronyms

CJEU	Court of Justice of the European Union
EBCG	European Border and Coast Guard
EIBM	European Integrated Border Management
ETIAS	European Travel Information and Authorisation System
EU	European Union
EUAA	European Union Agency for Asylum
FRaLO	Working Group on Fundamental Rights, Legal and Operational Aspects of Operations
FSWG	Frontex Scrutiny Working Group
NGO(s)	Non-Governmental Organisation(s)
THB	Trafficking in Human Beings

Foreword by the Fundamental Rights Officer

The year 2023 was marked by continued rapid developments in Frontex operational areas. In an increasingly multi-polar world, characterised by greater instability and a range of active threats (including armed and hybrid conflicts) affecting the Schengen borders and their immediate neighbourhood, the European Union (EU) and the Agency need to remain vigilant and agile. These developments, along with continued climate change, will result in further migratory pressure towards Europe. The EU will be required to reflect on existing migration management capabilities, including systems for refugee protection, swift identification and referral. The Migration and Asylum Pact that was becoming ripe for adoption in 2023 is a platform for change and improvement that must be accompanied with strong measures to ensure compliance with fundamental rights, EU and international standards.

To adapt to changing circumstances, the Agency has been enhancing its working methods, including the introduction of the new operational model – the Frontex Chain of Command and the development of a “Technical and Operational Strategy for European Integrated Border Management 2023-2027.”

Amidst these changes, the Agency’s independent Fundamental Rights Office commenced an evaluation as well as a quality assurance process to ensure it remains fit for purpose after a period of rapid development over the last three years – with a substantial increase in staff, field monitoring at an unprecedented scale and a greater impact on the activities of the Agency and beyond. Over the last three years the Fundamental



Rights Office has conducted some 3,000 field monitoring days across almost 30 countries, finalised approximately 300 complaints and serious incident investigations and directly monitored well over 100 return flights. This is in addition to extensive involvement in headquarter processes, aerial surveillance and training activities. In 2023 alone, the Fundamental Rights Office conducted in excess of 1,600 days in the field.

Looking into 2024, the Fundamental Rights Office will take stock of the European Commission's evaluation of Regulation (EU) 2019/1896 on the European Border and Coast Guard and internal assessment exercises, working towards consolidating the recommendations. This will be done to ensure independent fundamental rights monitoring and advice according to the highest standards and towards a professional and effective border management in, and supported by, the EU.

Jonas Grimheden

Fundamental Rights Officer, Head of the Fundamental Rights Office
European Border and Coast Guard Agency

Introduction

The European Border and Coast Guard Regulation 2019/1896 (EBCG Regulation) requires that Frontex Fundamental Rights Officer publishes annual reports on the activities of the Fundamental Rights Office and “the extent to which the activities of the Agency respect fundamental rights”, including “information on the complaints mechanism and the implementation of the fundamental rights strategy” (Article 109(4)).

The EBCG Regulation is an essential legal instrument to strengthen border management and security within the European Union (EU). The Regulation establishes the European Border and Coast Guard Agency (Frontex) with an expanded mandate and resources to effectively protect the EU external borders, while upholding the fundamental rights of individuals.

The Fundamental Rights Office is an integral, albeit independent, part of Frontex, responsible for monitoring and advising on all activities carried out by the Agency to ensure compliance with EU's fundamental rights and international human rights obligations.

The Annual Report outlines the main observations and recommendations provided to the Agency, including the Executive Director and the Management Board, throughout the year. The recommendations stem from extensive field monitoring, complaints,¹ and serious incident reporting,² as well as desk research.

The Annual Report consists of five chapters, with the first chapter focusing on the main findings from fundamental

rights monitoring in the different thematic areas, and expanding to other topics.

The second chapter examines reporting and accountability mechanisms and the fundamental rights safeguards which guide the work of the Fundamental Rights Office. It outlines the most recent developments and provides a statistical overview of the number and type of received serious incident reports and complaints.

The third chapter provides an account of internal processes strengthened during the year, the policy and strategy and the cooperation of the Fundamental Rights Office with internal and external stakeholders for the purpose of enhancing the fundamental rights compliance of the European Border and Coast Guard community, as well as an update on collaboration with the Consultative Forum and cooperation with third countries. This chapter also includes an update on capacity building activities led by the Office.

The fourth chapter presents an overview of the Fundamental Rights Office recommendations on rights-based border management to the European Border and Coast Guard community as well as recommendations, relevant to fundamental rights, issued in the past by the European Ombudsman, the Frontex Scrutiny Working Group of the European Parliament (FSWG), and the Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (FRaLO).

The fifth and final chapter highlights the Fundamental Rights Officer's planned actions and priorities for 2024.

¹ Frontex Complaints Mechanism was established in 2016 with the purpose of monitoring and ensuring respect for fundamental rights across all activities of the Agency. It is an administrative mechanism where the Fundamental Rights Officer is responsible for handling complaints in accordance with the right to good administration.

² The serious incident reporting is an Agency-wide mechanism that obliges participants in Frontex activities to report, inter alia, potential violations of fundamental rights directly to the Fundamental Rights Office. In its capacity as designated handler for such cases, the Office subsequently follows up and, where reported information meets the threshold of a serious incident, launches investigations into cases.

CHAPTER 1:
Fundamental rights monitoring



In 2023, the Fundamental Rights Office monitored and advised in the field in excess of 1,600 days, amounting to an increase of over 70% when compared to 2022, visiting 24 countries and monitoring almost 50 return operations.³

The steep increase of field monitoring in Romania stems from the introduction of the pilot Frontex chain of command model (Project Centurion).

The heat map and chart below provides an overview of the monitoring of the Fundamental Rights Office:

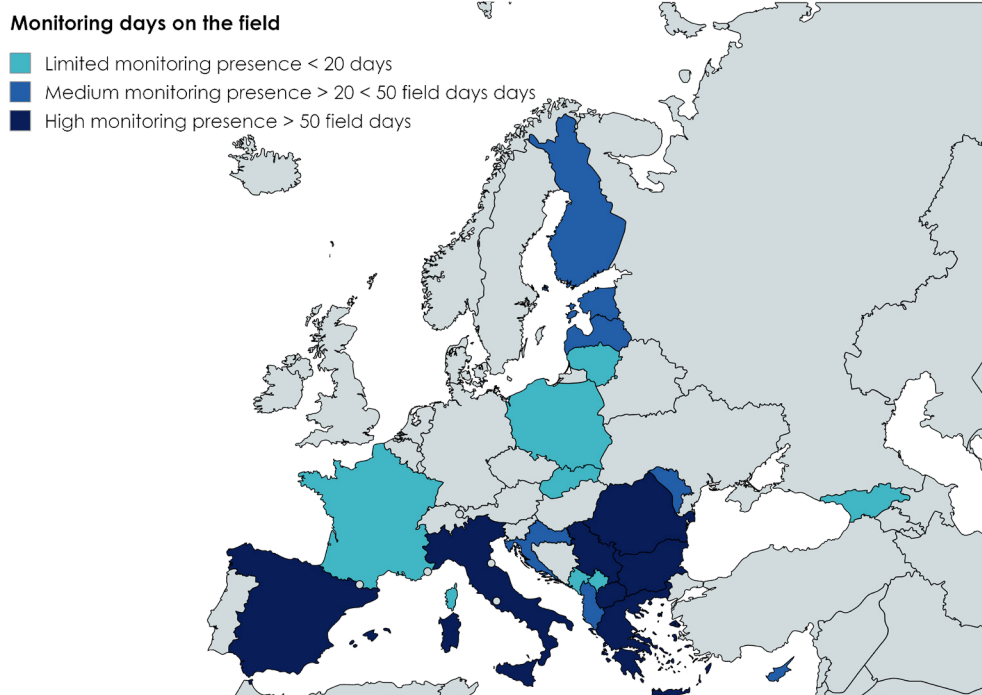
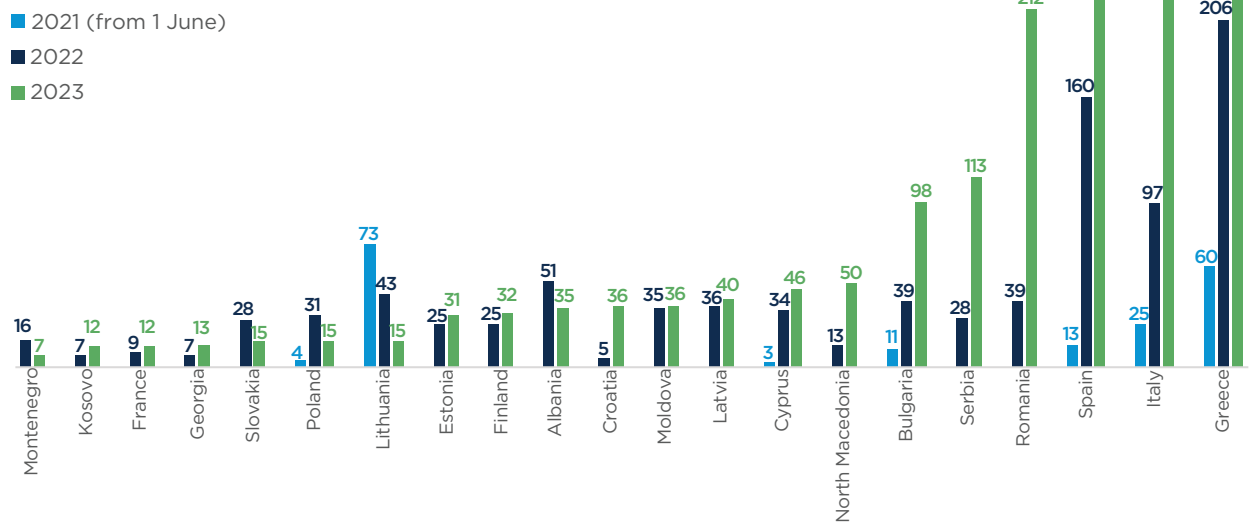


Chart 1
Monitoring of operational activities and field days per country and year
 Number of field days per country
 (June - December 2021; January - December 2022, 2023)

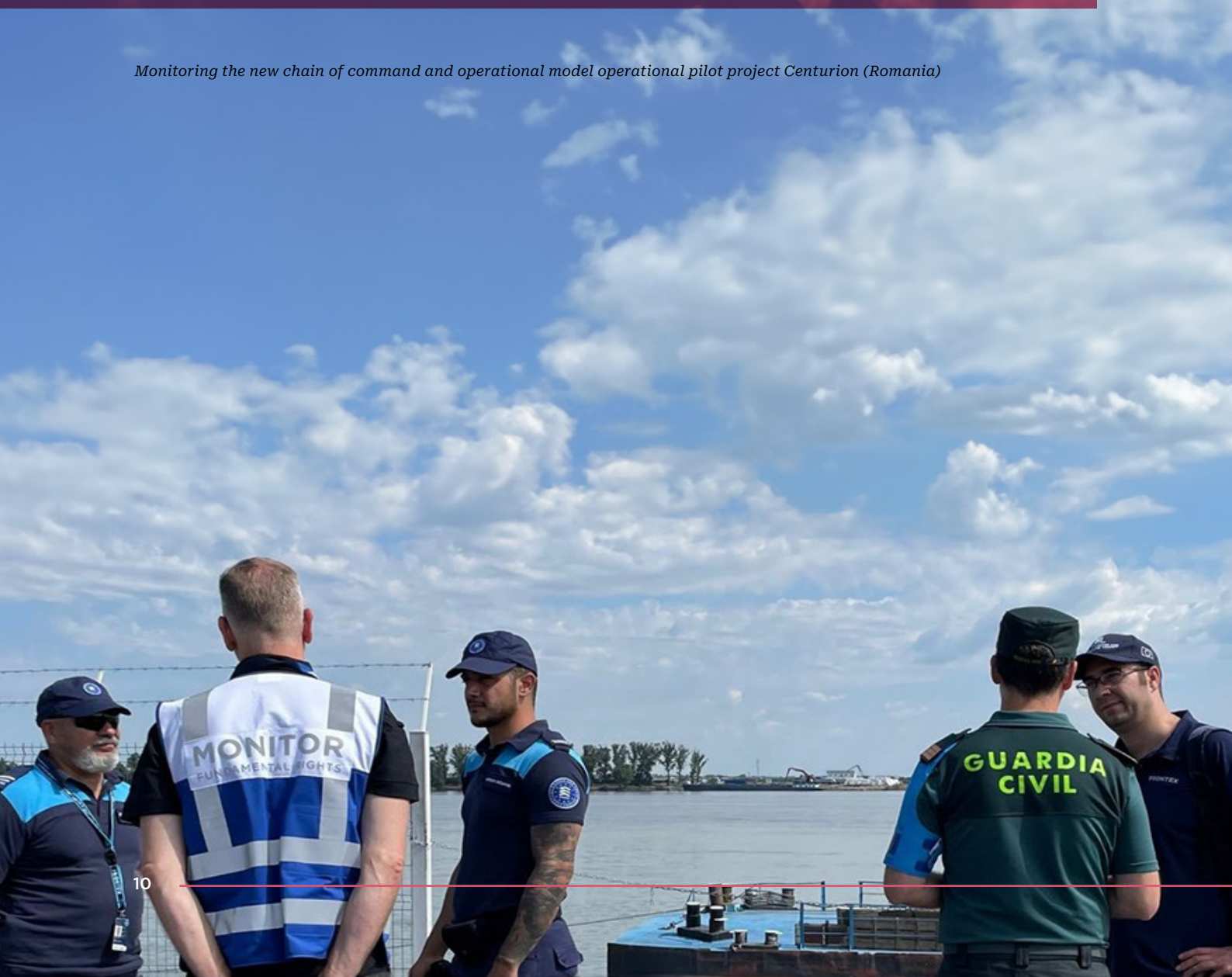


³ The field days do not include the monitoring of returns. For returns, see below Section 1.8 on monitoring of return operations.

Monitoring the new chain of command and operational model pilot project

In 2023 the Fundamental Rights Office played an important role in the context of a pilot project called operation Centurion, which tested a new organisational structure and deployment methods of the European Border and Coast Guard standing corps. In this context, the Fundamental Rights Office ensured a regular presence in Romania conducting sixteen monitoring missions, providing advice on fundamental rights matters and focusing on the implications of the new chain of command and operational model. According to initial findings, the new model should have a positive impact on promoting respect of fundamental rights in the field through increased reporting and accountability. It may also reduce the risk of fundamental rights violations, provided that additional legal and operational arrangements are adopted.

Monitoring the new chain of command and operational model operational pilot project Centurion (Romania)



Main thematic areas of concern

1.1 Monitors access to operational areas and activities

Fundamental rights monitors access to operational areas and activities is a prerequisite to the effective performance of their statutory duties. As a major development, in March 2023 the Executive Director and the Fundamental Rights Officer adopted a joint decision establishing a standard operating procedure on the role and responsibilities of fundamental rights monitors. In accordance with the EBCG Regulation, and in line with this joint Decision, the fundamental rights monitors shall have access to all areas and operational activities performed by the Agency.

However, concerns remain when it comes to the practice of some host states, either totally or in part, to restrict access to the operational activities, in breach of the EBCG Regulation's provisions.

Notably, there were cases in which national authorities did not allow the monitors to observe debriefing interviews (Italy), to participate in patrols performed by Frontex teams in areas with the highest number of apprehensions (Bulgaria, at the border with Serbia), and to observe first line border checks (Poland). In other instances, the monitors faced obstacles in obtaining permissions by the national authorities to access transit centres and areas in which debriefing activities took place (North Macedonia).

During the year however, and after raising the issue with the Management Board, access to operational activities improved. Additionally, in Greece, in 2023, the monitors attended for the first time a patrol on a co-financed maritime asset.

Fundamental rights mission to Greece



1.2 Collective expulsions, ill-treatment, and access to asylum

With regard to substantial fundamental rights issues, collective expulsions and ill-treatment of migrants constituted one of the main areas of concern for the Fundamental Rights Office during 2023. So called “pushbacks”⁴ may amount to collective expulsions and violations of the principle of non-refoulement and of the right to asylum. Such activities are often accompanied by ill-treatment of migrants in breach of the right to human dignity, the right not to be tortured, the right not to be treated in an inhuman and degrading manner and the right to a person's integrity.

Throughout 2023, the Fundamental Rights Office processed numerous serious incident reports (see Chapter 2 below) based on persistent allegations related to collective expulsions and ill-treatment of migrants. Most of the incidents were reported in Bulgaria and Greece and were not always followed by effective investigations at a national level. Similar practices have also been identified at the borders between Serbia and Hungary, in Albania (at the border with Greece), as well as in North Macedonia (at the border with Greece) and Montenegro (at the border with Albania). The Fundamental Rights Office regularly brought these incidents to the attention of the Agency and has suggested mitigating measures for both the Agency and responsible national authorities.

In the case of Poland, further to the European Court of Human Rights leading case, i.e., *M.K. v. Poland* – and as highlighted recently by the same Court's judgement in *Sherov v. Poland* – it was concluded that migrants are not granted individual assessments of applications for international protection at Polish border crossing points.⁵ Moreover, there have been several reports of violations of the principle of non-refoulement and the right to seek international protection – migrants sent back to neighbouring countries without individual assessment (in Romania – at the border with Serbia, in Bulgaria – border with Türkiye, in Greece – border with Türkiye), and refused entry at the airport and returned (Moldova). In some countries (Latvia), the Fundamental Rights Office took note of the practice of allowing persons to cross the border on humanitarian grounds rather than based on the right to seek asylum, thereby *de facto* limiting the right to seek international protection.

Over the year and following on from previous years, monitoring operations in Greece remained a priority for

the Fundamental Rights Office. After a case of collective expulsion at sea reported in a well-documented New York Times article in April, and the tragic shipwreck off Pylos in June, allegations about “pushbacks” from the Greek islands appeared to have decreased from July 2023. However, the Fundamental Rights Office kept receiving relevant information, gradually increasing as of September 2023. Allegations about collective expulsions were also reported at the land borders with Türkiye. National mechanisms, such as the Greek Ombudsman, the Greek National Commission for Human Rights, the Greek Fundamental Rights Officer, the National Transparency Office as well as international organisations and international NGOs working in Greece have also recorded allegations about incidents of collective expulsions, including against persons in vulnerable situations, often coupled with ill-treatment against migrants, illegal detention and removal of their property.

Already in 2022, the Frontex Fundamental Rights Officer issued three opinions expressing serious concerns about numerous and credible accounts of ill-treatment and pushbacks of migrants on land and at sea by Greek authorities and the risks of Frontex being indirectly or directly implicated in such fundamental rights violations. In the third opinion, in September 2022, the Fundamental Rights Officer advised the Executive Director to trigger the mechanism to withdraw financing, suspend or terminate Frontex activities as provided for by Article 46 of the EBCG Regulation. In February 2023, building upon the three opinions of the Fundamental Rights Officer, and based on the 2022 implementation plan proposed by the Greek authorities, an Agency working group on Greece (set up in the context of the mentioned implementation plan) delivered its assessment to the Executive Director. The working group continued its work throughout 2023 – with the involvement of the Fundamental Rights Officer in an advisory role, and endorsed the mitigating measures proposed by the Fundamental Rights Office to prevent fundamental rights violations in the Agency's operational areas. During 2023, the Fundamental Rights Office continued to monitor the implementation of these recommendations. Further to continued reports on fundamental rights violations and the “New York Times case”, in July 2023, the Frontex Fundamental Rights Officer issued a fourth opinion concluding that collective expulsions at sea and land borders in Greece, accompanied by additional associated fundamental rights violations,

⁴ “Collective expulsion” refers to situations where the state compels aliens, as a group, to leave the country, without a reasonable and objective examination of the particular case of each individual of the group. It is prohibited by Article 4 of Protocol No. 4 of the European Convention on Human Rights and Article 19(1) of the Charter of Fundamental Rights of the European Union. The legal term “collective expulsion” is often equated with the term “pushback.” The two terms are not identical, but quite often they are used interchangeably since pushbacks may amount to collective expulsions.

⁵ [M.K. and Others v. Poland](#) (40503/17), Judgment final on 14/12/2020; [Sherov v. Poland](#) (54029/17, Judgment 4 April 2024); [Overview of main issues before the COE Committee of Ministers - Ongoing Supervision Opinion of the Helsinki Foundation for Human Rights on Poland's implementation of the judgment of the European Court of Human Rights in the case M.K. and Others v. Poland in front of the Committee of Ministers of the Council of Europe.](#)

are conducted systematically rather than constituting isolated incidents. Therefore, the Fundamental Rights Officer reiterated the advice to the Frontex Executive

Director to trigger the mechanism to suspend or terminate Frontex activities in Greece, in whole or in part, unless significant changes were achieved.

1.3 National legislation, administrative practices and policies which may affect fundamental rights

Since 2021, the Office has raised concerns regarding emergency border procedures and legislation in several countries at the European Union's Eastern border (Latvia, Lithuania, Poland and, at a later stage, Estonia, and Finland). Similar concerns persisted in 2023, particularly in relation to inefficient national administrative procedures, which hindered migrants' rights to seek asylum in host countries where Frontex staff or assets were engaged. These obstacles were at times compounded by other factors, such as legislative and administrative measures which restrict access to international protection in the event of national emergencies or threats to public order and national security which may be caused by mass immigration. Under these emergency procedures, border guard officers can refuse

applications for international protection from migrants who have crossed the border irregularly and return them to the country from where they arrived.

At times, the adoption of emergency border procedures and legislation was accompanied by the construction of physical barriers to prevent irregular migration and address hybrid threats. While border fences are not prohibited under EU and international law, their construction and use may have significant fundamental rights implications, especially when physical barriers are accompanied by additional legal or administrative obstacles such as the establishment of transit zones, the criminalisation of the act of crossing the fence, non-entry fictions, and restrictive

Fundamental rights monitoring in Poland



entry and asylum policies under emergency laws.⁶ When related to border sections at least partially located within Frontex operational areas,⁷ the Fundamental Rights Office raised concerns regarding material access to the territory, and consequently to the asylum procedure.

In view of these observed trends, the Fundamental Rights Office continued to closely monitor legislative developments regarding migration management in the mentioned countries on the European Union's Eastern border. In Lithuania, Frontex does not have operations at

the green borders. The Fundamental Rights Office, since the 2022 Court of Justice of the European Union judgment (which declared Lithuanian legislation contrary to EU law (C-72/22 PPU)), follows legislative developments concerning border management and access to asylum in the country.⁸

Similarly, in relation to Latvia, the Fundamental Rights Office has continuously analysed national legislation to address any issues which may affect the fundamental rights compliance of Frontex activities, such as the

⁶ According to the European Union Agency for Fundamental Rights, border fences are of concern both with regard to access to asylum and the right to integrity of the person. European Union Agency for Fundamental Rights. (2020). Migration: Fundamental rights issues at land borders, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-land-borders-report_en.pdf, p. 15.

⁷ Including fences constructed on the following border sections: Norway-Russia (0.2 Km), Finland-Russia (3-Km pilot at Imatra nearing completion with a further 200 Km planned for construction), Estonia-Russia (104 Km), Lithuania-Belarus (36.9 Km), Latvia-Belarus (36.9 Km), Latvia-Russia (93 Km), Lithuania-Russia (45 Km), Poland-Belarus (186 Km), North Macedonia-Greece (37 Km), Bulgaria-Türkiye (235 Km), and Greece-Türkiye (52.5 Km).

⁸ Including the 2021 Fundamental Rights Officer "Opinion on Rapid Border Intervention in Lithuania" mentioned in the 2021 Annual Report https://www.frontex.europa.eu/assets/Images_News/2022/FRO_Report_2021.pdf and the 2022 "Opinion on Lithuania, taking into account the judgement of the Court of Justice of the EU (CJEU) of 30 June 2022 - Case M.A. vs VSAT (C72/22 PPU)" mentioned in the 2022 Annual Report [Annual Report 2022 \(europa.eu\)](https://www.frontex.europa.eu/assets/Images_News/2022/Annual_Report_2022_europa.eu).

Fundamental rights monitoring in Lithuania



recent amendments to the State Border Law and the State Border Guard Law, which authorise border guards to refuse admission to the territory and to use force in order to prevent persons from entering the country irregularly.⁹ At the time of writing, the state of emergency at the Latvia-Belarus border has been extended until 12 September 2024.

In Estonia, the 2022 legislation amending the State Border Act that allows for a restriction to access to asylum in the event of national emergencies was not activated during 2023.¹⁰

With regard to Finland, 2023 saw the implementation of the amended Border Guard Act, which provides for the centralisation of asylum applications at one or more border crossing points when a serious threat exists posed by a mass influx of migrants or so called

“instrumentalization” of migration. At the same time, the long-term closure of the Finnish-Russian land border, aimed at preventing or controlling irregular (“instrumentalized”) migration and protecting national security, had negative repercussions on the rights of travellers and asylum seekers. According to national human rights actors, the closure of land border crossing points, especially if it continues for long periods, may prevent genuine and effective access to asylum procedures.

It is, however, important to note that the Fundamental Rights Office cooperated with the Finnish national authorities during their own contingency planning and preparation initiative, which allowed the Office to contribute to the promotion of fundamental rights compliance in integrated border management.

1.4 Identification, referral, and information provision

Throughout 2023, the Fundamental Rights Office raised concerns about the effective identification and referral of persons in vulnerable situations to host countries’ authorities, and the conditions for performing such identification and referral of people with special needs.

The Fundamental Rights Office has noted the disproportion between the high risk of trafficking in human beings and the very low number of identified victims in some host countries. In Albania, Romania and Serbia, the Fundamental Rights Office recommended stronger efforts to address the identification and referral of potential victims of trafficking in human beings, coupled with the Agency’s increased coordination of these efforts with other relevant EU and international stakeholders.

More widely, the Fundamental Rights Office has reported issues relating to identification, referral and protection of persons in vulnerable situations in Greece, Italy, Latvia, Lithuania, Romania, Spain and North Macedonia. In Greece, the Fundamental Rights Office noted that the identification and referral of vulnerabilities not

visible at first sight, especially of potential victims of trafficking and victims of sexual and gender-based violence, remains a challenge. The Fundamental Rights Office provided targeted awareness raising sessions on the issue. Furthermore, the lack of effective flow management at reception centres often meant that needs of persons in vulnerable situations were not prioritised during the registration procedures.

The Office observed limited access to information on asylum procedures in some locations. Monitors observed: a lack of information in languages accessible to migrants (North Macedonia); such information was absent altogether (Albania); such information was available only to a limited extent (in certain first reception facilities in Spain and Italy); information was not consistently provided to migrants transferred to detention centres (Bulgaria). Throughout 2023, the Fundamental Rights Office systematically stressed that Frontex officers present at the borders act as a first point of contact for newly arrived persons and have a vital role in facilitating access to international protection, especially in the context of mixed migration flows, by providing migrants

⁹ UNHCR observations on the draft Amendments to the Law of Republic of Latvia on the State Border Guard Law (No 278/Lp14) and the draft amendments to the Law of Republic of Latvia on the State Border of the Republic of Latvia (No 277/Lp14), p. 6, available at: <https://www.refworld.org/sites/default/files/legacy-pdf/en/2023-6/6492f6884.pdf>. “The refusal of unlawful entry will be based on an individual (undocumented) assessment, as well as an assessment of the overall situation in the country from which the person came” (p. 4 of the Explanatory Note to the State Border Guard Law). The fact that these assessments will be undocumented and conducted on unspecified criteria is a reason of concern.

¹⁰ [Act on Amendments to the State Borders Act and Amendments to Other Associated Acts](#), signed on 1 August 2022. The amended Law also envisages more executive powers to the Police and Border Guard Board and the Defence Forces in emergencies. It provides that “in the event of a threat to public order or national security, the Police and Border Guard Board may, in emergencies caused by mass immigration, refuse to accept an application for international protection from an alien who has crossed the external border illegally and send them back without issuing a return order or drafting a decision on prohibition of entry.”

with relevant information on the right to apply for asylum.¹¹

Some positive developments and good practices have been observed across the operational areas. For instance, in Estonia, information on trafficking and labour exploitation has been clearly displayed in airport areas, and the authorities have developed a checklist, vetted by the UN High Commissioner for Refugees, on vulnerability screening of asylum seekers at the border; in Greece, with an improved understanding from Frontex officers of applicable safeguards for unaccompanied minors during screening and registration procedures; in Italy (Lampedusa), where external stakeholders - the European Union Agency for Asylum, the UN High Commissioner for Refugees, the Red Cross, the International Organisation for Migration or Save the Children - actively provide information and conduct preliminary vulnerability assessments immediately upon disembarkation or in the hotspot; in Moldova, with identification of unaccompanied minors during border checks performed with the support of social services; in North Macedonia, where the presence of national and international actors in the temporary transition centres has contributed to a proper referral of persons in vulnerable situations; in Romania, where, at the border with Ukraine, mechanisms for prevention of trafficking in human beings continue to be in place, combined with vetting of persons offering transport to migrants and the presence of child protection services dedicated to unaccompanied and separated children; in Slovakia, where the presence of female border guards and officers who can speak the language of migrants and demonstrate awareness about the risks of trafficking has been observed, especially in relation to people escaping the war against Ukraine; in Spain, where the Spanish Red Cross (under an agreement with national authorities) carries out particularly well-organised emergency socio-sanitary interventions at disembarkation points, providing medical and other assistance to migrants immediately upon disembarkation and conducting pre-identification and pre-assessment checks of those who may be in a vulnerable situation and/or in need of international protection.

Furthermore, as a good practice, the operational guidelines for the identification, referral and care of persons with vulnerabilities, which were adopted by the Italian Ministry of the Interior in June 2023, deserve mentioning¹² as a nation-wide operational tool to help with a more uniform approach to the early identification of different vulnerabilities. The document is the outcome of a two-year long exchange between the Fundamental Rights Office – supporting the Agency – and various national bodies, international organisations, non-governmental organisations and EU bodies. Importantly, one of the principles outlined in the handbook is to pre-identify persons in vulnerable situations already at the initial phase of their arrival in Italy, which directly affects activities performed by first contact officials, including Frontex staff. The document also forms an important step towards an increased awareness among all law enforcement actors in respect of the needs of persons in vulnerable situations.

Another good practice implemented in 2023 are VEGA activities which bring together border guards and representatives of international organisations and civil society with relevant expertise. As part of VEGA activities, which aimed to address the identification of child victims of trafficking and other persons in vulnerable situations, a total of 17 visits of experts to support border guards in identifying potential victims were conducted.

Important work has also been carried out at the EU level under the “Let’s speak asylum” project by the European Union Agency for Asylum. Both posters¹³ and brochures¹⁴ outlining self-identification of vulnerabilities and special needs have been developed to support the self-identification of vulnerabilities and special needs in asylum and reception. These tools can be used in locations where Frontex teams are present. Easy-to-understand illustrations aim to support the understanding of the key messages by less literate applicants and children.

¹¹ The role of first-contact officials in ensuring access to the asylum procedure is stipulated in Article 3(a) of the Schengen Border Code and further enhanced by the EU asylum acquis, especially by the Recast Asylum procedures directive.

¹² Ministero dell’Interno, [Vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità in arrivo sul territorio ed inserite nel sistema di protezione e di accoglienza](#) | Ministero dell’Interno.

¹³ European Union Agency for Asylum [Products | Let's Speak Asylum \(europa.eu\)](#).

¹⁴ European Union Agency for Asylum [Products | Let's Speak Asylum \(europa.eu\)](#).

1.5 Debriefing, screening, and other activities for risk analysis purposes

During 2023 the Fundamental Rights Office issued extensive recommendations relating to debriefing,¹⁵ screening¹⁶ and other activities undertaken for risk analysis purposes. The Office underlined the need to strengthen safeguards applicable to such activities in all relevant joint operations. To be practical and effective, such minimum set of safeguards should be fully integrated into the operational plans.

Within this framework, the Fundamental Rights Office actively contributed to the draft standard operating procedure for activities conducted by debriefing officers in Frontex operational activities and provided concrete recommendations on how to further strengthen fundamental rights safeguards.

1.5.1 Debriefing activities

During the implementation of debriefing activities, the Fundamental Rights Office made recommendations relating to the selection of migrants to be debriefed; the need to further ensure that the information provided is anonymous; the interview is confidential and voluntary; the importance of guaranteeing that there are no negative legal consequences for the interviewee as a result of the interview; the manner in which the interviews are performed; that information and personal data is not shared. The need to strengthen fundamental rights guarantees in debriefing activities was also highlighted by the recommendations and concerns relating to

fundamental rights compliance raised by other EU bodies throughout 2023.¹⁷

The Fundamental Rights Office also contributed to the promotion of fundamental rights in debriefing activities by developing and delivering tailored training, workshops and awareness raising sessions on its own role and tasks, fundamental rights safeguards, the identification and referral of persons in vulnerable situations, as well as on serious incidents reporting and the complaints mechanism (see the section on training and capacity building under Chapter 3).

1.5.2 Screening activities

The Fundamental Rights Office made specific recommendations concerning screening activities. These included, in particular, the need to strengthen the safeguards applicable to screening interviews when collecting information for risk analysis purposes, in order to mitigate potential risks when safeguards inherent to debriefing activities are not applicable (e.g. issuing clear guidelines making a distinction between the type of interviews to be conducted with children and adults; anonymity, confidentiality and voluntary nature of the interview); the need to ensure that adequate facilities and privacy are guaranteed during screening interviews (e.g. performing screening interviews in individual rooms when possible); the identification/referral and prioritisation of children and persons in vulnerable situations when performing interviews.

Greek authority was no longer conducting a nationality assessment for certain nationalities and instead decisions were based on the assumed nationality indicated by Frontex officers during the screening procedure. The Frontex Fundamental Rights Officer developed an opinion flagging concerns regarding these practices and the impact they may have on screening activities performed by Frontex. The opinion emphasized that screening was only the first step in the national identification process which should not substitute a thorough evaluation carried out during the asylum procedure by the competent national authority. The presumption of nationality established during screening interviews should not be the decisive element for the assessment of certain asylum applications or constitute a basis for rejection of the asylum application.

Particularly, in the second half of 2023, a change in the nationality assessment process performed by the Greek Asylum Service occurred. Allegedly, the competent

In 2023, the Agency, the European Union Agency for Asylum, together with experts from member states and third countries, developed a practical guide on information

¹⁵ Debriefings are an activity aimed at gathering information by interviewing migrants after they have crossed the EU external border irregularly. They are conducted with the agreement of the person interviewed on a voluntary, anonymous and confidential basis. The information collected is then processed and used for risk analysis and for identifying suspects of cross-border crime, such as those involved in people smuggling or terrorism. Source: [Decision on how the European Border and Coast Guard Agency \(Frontex\) ensures respect of the rights of migrants in 'debriefing' interviews \(Case 1452/2022/MHZ\) | Decision | European Ombudsman \(europa.eu\)](#).

¹⁶ Screening is the first step in any national identification process. The aim of screening is to establish an assumed nationality of the undocumented migrants and allow the national authorities to carry out registration procedures. In addition, screening activities may be used for collecting information on migration patterns and migrant profiles as well as identifying persons in vulnerable situations and referring them to the responsible authorities.

¹⁷ Recommendation n. 7 of the audit report of the European Data Protection Supervisor concerning the Agency (case reference 2022-07494) explicitly required the Agency to ensure that fundamental rights monitors can attend debriefing interviews.

provision in the context of access to the asylum procedure,¹⁸ addressed, inter alia, to first-contact officials.¹⁹

1.5.3 Gathering general information at disembarkation points

The activities that the Agency performs at disembarkation points are not sufficiently regulated in the operational plans. The Fundamental Rights Office has recommended for the Agency to further ensure that operational plans include clear guidelines on such activities and specify, inter alia, the purpose and objective of those activities as well as applicable safeguards (including on fundamental rights).

During 2023, recommendations on these types of activities were addressed, in particular, in joint operations conducted in Italy and, to a lesser extent, Spain. They related, for instance, to the need to consider

the physical and mental condition of migrants upon arrival and possible risks to the person; avoiding interviewing persons in a particularly vulnerable situation; ensuring that such activities only take place after the migrants have been subjected to a medical examination and have received immediate assistance (such as provision of water, food items, medical care or other required assistance depending on the particular circumstances); ensuring informed consent; ensuring appropriate conditions and a place to perform the interview; assessing the possibility to conduct the questioning at a later stage, and not immediately upon disembarkation.

¹⁸ European Union Agency for Asylum (2023), [Practical Guide on Information Provision – Access to the asylum procedure | European Union Agency for Asylum \(europa.eu\)](#).

¹⁹ European Union Agency for Asylum (2023) [Practical Guide: Access to the Asylum Procedure \(europa.eu\)](#).

Fundamental Rights mission to Spain



1.6 Reception conditions

Although reception facilities are not a responsibility of the Agency, material shortcomings in reception conditions and overcrowded centres, with the prolonged stay of people in the facilities in which Frontex officers are present, may have an impact on the fundamental rights compliance of the Agency's operational activities. National authorities demonstrated efforts to improve reception conditions, but on certain occasions the large number of people arriving exceeded the capacity of reception centres, resulting in deteriorating living conditions. The Fundamental Rights Office's long-standing recommendation for the Agency and host states is to work towards the improvement of such conditions, also to ensure that the Agency conducts its activities in facilities which are compliant with fundamental rights.

During 2023, challenging reception conditions were observed in the hotspot of Lampedusa (Italy), raising

serious concerns especially during periods of the year with a high influx of migrants. Certain shortcomings were also reported in other operational locations in Italy. Poor reception conditions were observed in other host countries, such as in the Pournara camp in Cyprus or on the Greek island of Lesbos. In the case of Lesbos, the monitors raised some concerns related to the lack of a proper waiting area for registration. In these latter cases, deteriorating reception conditions and overcrowded facilities contribute occasionally to unrest, increasing vulnerability in the migrant population, endangering the security of staff and migrants and causing disruption to operational activities.

In 2023, the issue of the national authorities applying de facto detention in hotspot-like facilities where Frontex operates was also raised by the European Court of Human Rights. The Fundamental Rights Office has monitored relevant case law and its impact

Frontex Fundamental Rights Monitor on board of an aerial asset



on Frontex operational activities. For instance, in several judgements,²⁰ the Court found that migrants accommodated in Lampedusa and Taranto hotspots were “arbitrarily deprived of their liberty” (violation of Article 5 of the European Convention on Human Rights) because there was no “clear and accessible legal

basis for the detention.” Although efforts to remedy the situation have been made, including amendments to the national legal framework concerning migrants’ detention in Italy, according to many commentators the question of insufficient safeguards in the regulatory framework remains.²¹

1.7 Aerial surveillance activities and support to search and rescue in pre-frontiers

Throughout the year, the Fundamental Rights Office conducted monitoring and provided recommendations on the Agency’s multipurpose aerial surveillance services, including those operating in the central Mediterranean Sea in pre-frontier areas, as well as for services delivered under a Frontex joint operation. The Fundamental Rights Office identified and informed the Agency about its concerns related to the protection of the right to life and communications with third countries with challenging human rights situations. It also assessed incidents and opened serious incident investigations when required.

As regards services operating in a non-EU search and rescue region, the Fundamental Rights Officer issued an opinion on fundamental rights concerns related to sending alerts to the Libyan joint rescue coordination centre and on search and rescue operations in the central Mediterranean. The opinion provided recommendations to enhance procedural safeguards for the purpose of protecting the right to life and suggested measures to mitigate the risks related to the potential violation of the principle of non-refoulement. Among the recommendations are the need to include strong human rights safeguards in the multipurpose aerial surveillance planning and operational documents; improving information sharing among all actors involved, with adequate follow-up between Frontex, member states and private vessels contributing to search and rescue operations; and

enhancing coordination between aerial assets in pre-frontier and aerial assets and surface assets in the context of a joint operation, to contribute ensuring prompt intervention and assistance to saving lives at sea.

In addition, the Fundamental Rights Office has been in regular consultation with various Frontex entities, to advise on the implementation of these recommendations. The Office also kept an open dialogue with EU institutions, international organisations, and private actors to discuss concerns related to potential violation of the principle of non-refoulement.

In the course of 2023, the Fundamental Rights Office further supported the investigation launched by the European Ombudsman into Frontex activities related to search and rescue operations. In this context, the investigation focused on the tragic Cutro (February 2023) and Pylos (June 2023) incidents. The Fundamental Rights Office reiterated the need to adopt the previously issued operational recommendations, applicable in general to all monitoring aerial surveillance services flying in pre-frontier areas, aimed at protecting the right to life when providing aerial surveillance support to search and rescue operations. The purpose is to enhance coordination among EU member states requesting the service by promoting an EU regional approach to search and rescue operations, thus enabling the Agency to deliver its services in a manner which is fully compliant with fundamental rights requirements.

²⁰ Reportedly, in December 2023 the European Court of Human Rights granted interim measures and ordered the transfer of an unaccompanied minor from the first reception facility in Crotona, see [here](#). See also a previous report by ASGI (published in October 2023), available [here](#) and European Court of Human Rights judgments: *Khlaifia and Others v. Italy* - Grand Chamber (no. 16483/12, judgement of 15 December 2016), *Darboe and Camara v. Italy* (no. 5797/17, judgment of 21 July 2022), *J.A. and Others v. Italy* (no. 21329/18, judgement of 30 June 2023), *M.A. vs. Italy* (no.70583/17 of 31 August 2023).

²¹ E.g. : Université Catholique de Louvain [ECtHR, 19 October 2023, A.B. v. Italy, A.S. v. Italy, M.A. v. Italy, Appl. Nos. 13755/18, 20860/20, 13110/18 |](#).

1.8 Return operations

1.8.1 Monitoring of return operations

During 2023, 208 return operations with monitors on board took place. Out of these, 178 were covered by monitors from the pool, and 55 by national monitors from the member states. On certain flights more than one monitor was present. The Fundamental Rights Office monitored 44 forced-return flights and 1 voluntary return with its own fundamental rights monitors. Out

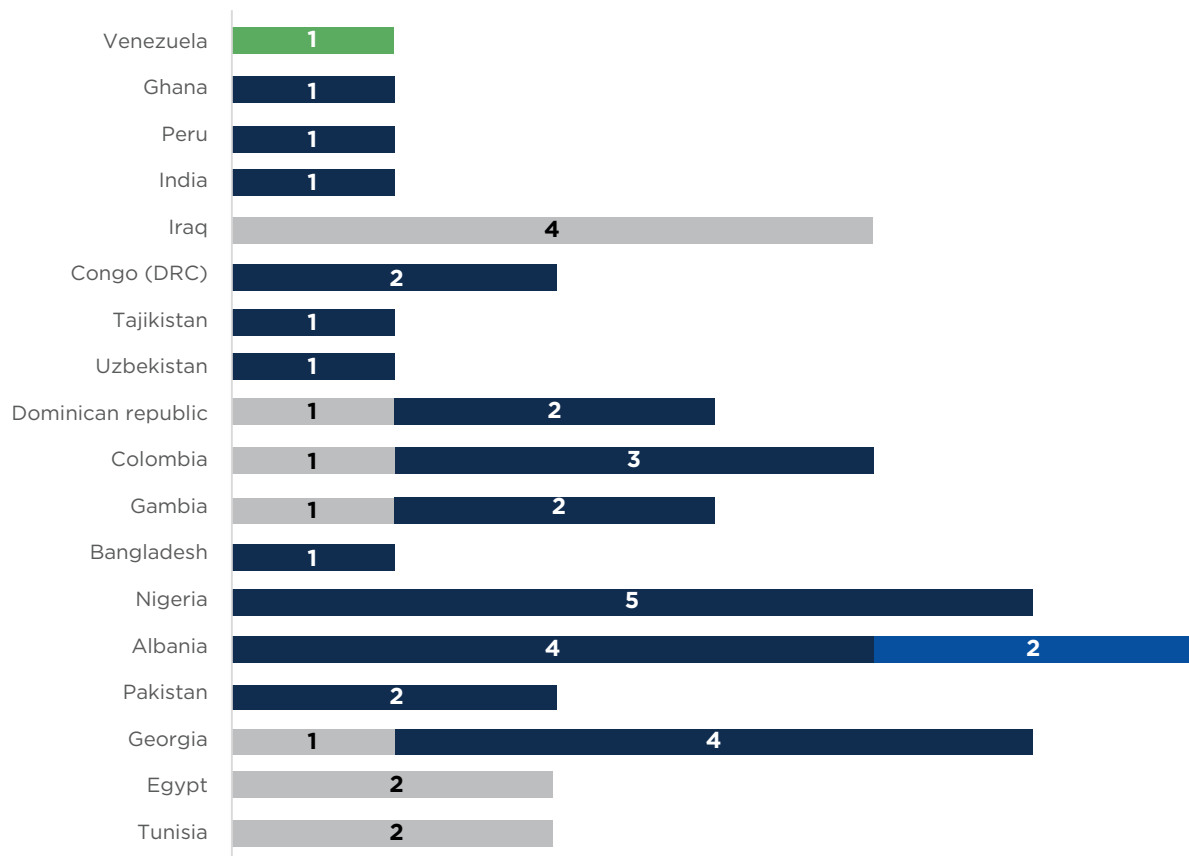
of these 44 flights, 35²² (plus one voluntary return) were monitored under the framework of Article 110 of the EBCG Regulation and the remaining nine²³ as monitors from the pool. The following charts provide details on the destinations and the organising countries respectively for the flights monitored under this strategic mandate to ensure coherence.

Chart 2

Monitored return operations, by country of destination and type of operation

Return operations monitored in 2023 (under Art. 110 of the EBCG Regulation)

■ National Return Operation ■ Joint Return Operation ■ Collecting Return Operation ■ Voluntary Return



²² Flights can be to more than one country. For that reason the total number of countries does not correspond to the number of flights.

²³ Out of the nine flights, monitored as part of the pool, eight were organised by Germany and one by France.

Chart 3

Monitored return operations, by country of destination and type of operation

Return operations monitored in 2023 (as part of the Pool)

■ National Return Operation ■ Joint Return Operation ■ Collecting Return Operation

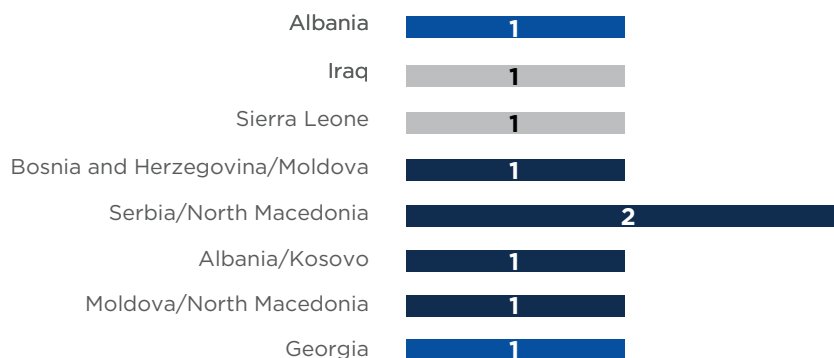
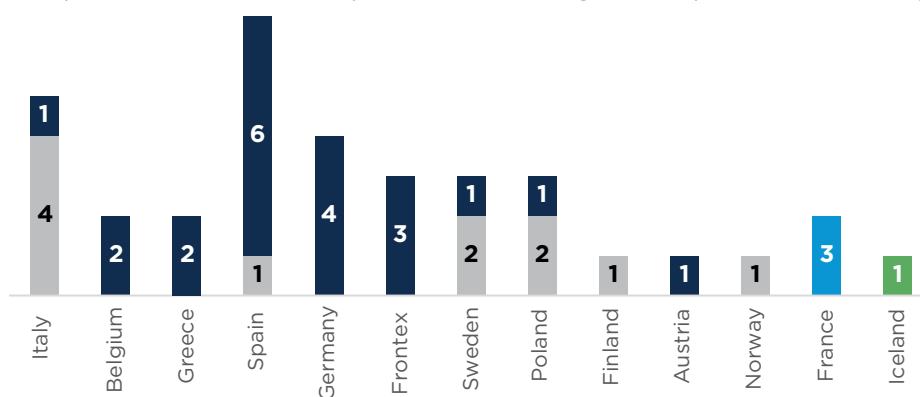


Chart 4

Monitored return operations per type and organising member state

(January - December 2023) (under Art. 110 of the EBCG Regulation)

■ National Return Operation ■ Joint Return Operation ■ Collecting Return Operation ■ Voluntary Return



1.8.2 Main recommendations on return operations by air

The Fundamental Rights Officer provides observations and recommendations concerning fundamental rights in relation to the return operations organised or coordinated by Frontex. The following main recommendations were provided in 2023:

1. Member states should refrain from using restraints as a preventive measure when conducting return operations and encourage the introduction of relevant changes in the national legislation in this regard.
2. Member states should provide information material, inform returnees about the complaints mechanism and make relevant forms available in languages they understand.
3. Member states, in cooperation with the Agency, should set up a system whereby all participants in a return operation are identifiable.
4. The Fundamental Rights Office, together with member states monitoring institutions and pool monitors,

should aim at monitoring every single forced-return operation supported by the Agency, for which a sufficient number of well-trained monitors needs to be available.

5. Member states where no effective monitoring system is in place, and whose return operations are supported by Frontex, should use monitors from the pool or the Fundamental Rights Office.
6. Whenever member states provide national monitors to return operations coordinated by Frontex, they should ensure that monitoring reports are submitted to the Fundamental Rights Office (as required by Article 50 of the EBCG Regulation) in a timely manner.
7. Member states and the Agency should ensure that monitoring covers all stages of the return process, including the pre-departure phase, in-flight phase and arrival/handover phase.
8. Frontex should ensure that information about the existing post-return and post-arrival support for

returnees (formerly known as The Joint Reintegration Services Programme)²⁴ is available to all member states participating in return operations, and that harmonisation with national reintegration programmes and partners is guaranteed.

9. The Fundamental Rights Office encourages member states to harmonise their return policies with

the adopted EU strategy on voluntary return and reintegration. This aims to promote voluntary-based return and reintegration as a crucial element of a cohesive EU system for returns, thereby enhancing the overall efficiency of the EU migration policy.

1.8.3 Other return-related activities

In addition to the direct monitoring activities of Frontex-supported return operations, the Fundamental Rights Office conducted a range of other activities in the area of returns, including issuing its observations to return operations on the first and second half of 2023, as published on the Frontex website.²⁵ It also provided its observations to the Frontex operational activity plan for return 2024 and to the evaluation of the 2023 return activities as well as contributing to the Frontex return escort and support officers implementation plans for 2024. Furthermore, the Fundamental Rights Office advised the Agency as regards the workplan for the return and reintegration roadmap 2022-2024 and provided fundamental rights assessments and opinions concerning non-EU countries regarding return.

In cooperation with other Agency entities, the Fundamental Rights Office engaged with the member states and the respective monitoring institutions on harmonising standards and procedures and deliver awareness raising sessions for the return specialists and the newly nominated monitors from the Frontex pool. A network meeting (March 2023), with the participation of key stakeholders in the field of return management,

was an opportunity to inform about the latest developments, exchange experiences in monitoring return operations and consider ways to strengthen cooperation. At the regular meetings with member states, particularly Cyprus and Italy, the Fundamental Rights Office discussed recommendations regarding the use of restraints as a preventive measure during return operations, as practiced in several countries.

Finally, the Fundamental Rights Office contributed to the Frontex led workshop – Toolbox for Children in Return – as well as cooperated with the Agency’s training entity to build an online course related to returning families with children, dedicated to participants of return operations. Both activities aim at increasing the special attention to be paid to families with children in the return process.

As of 2023, a forced-return monitoring system application is used for monitors to submit their reports on return operations to the Fundamental Rights Officer. The Fundamental Rights Office, together with relevant Agency services, provided additional training and individual support tailored to the needs of the monitors.

1.8.4 Frontex reintegration programme

The objective of reintegration assistance is to facilitate return by supporting the reintegration process in a way that addresses direct needs upon return and encourages sustainable reintegration activities, in accordance with respect for fundamental rights and the best interests of the child.

From 1 April 2022, Frontex is providing reintegration assistance as part of its reintegration programme, through the so-called joint reintegration services.²⁶ A dedicated evaluation and monitoring framework on the services

provided by reintegration partners has been developed in cooperation with the European Commission. The Fundamental Rights Office engaged in the consultation process and will be involved in monitoring missions.

During 2023, the Fundamental Rights Office took part in reintegration matters by reviewing training material related to fundamental rights and provided awareness sessions on fundamental rights aspects to the Frontex reintegration specialists.

²⁴ The initiative previously known as “Joint Reintegration Services” has been transformed into “EU Reintegration Programme.” The activities under the EU Reintegration Programme are fully financed by the Frontex budget.

²⁵ [Observations to Return Operations conducted in the first half of 2023 by the Fundamental Rights Officer \(europa.eu\)](#).
[Observations to Return Operations conducted in the second half of 2023 by the Fundamental Rights Officer \(europa.eu\)](#).

²⁶ The initiative previously known as “Joint Reintegration Services” has been transformed into “EU Reintegration Programme.” The activities under the EU Reintegration Programme are fully financed by the Frontex budget.

Chapter 2:
Accountability mechanisms, reporting and use of force



2.1 Serious incident reports (SIRs)

The European Border and Coast Guard framework on serious incident reporting foresees that all possible fundamental rights violations shall be reported by deployed officers directly to the Fundamental Rights Office. Such initial reporting will then be subject to a preliminary assessment to determine if the case meets the threshold for launching a serious incident. Equally, the Fundamental Rights Office maintains the possibility to initiate such a procedure based on information obtained through other channels (i.e., from non-governmental organisations, international organisations, or open sources). The launch of a serious incident results in an initial report, which indicates the allegations, and is then followed by an investigation that includes enquiries with the Agency and with the involved national authorities. Cases are closed with a final report which summarizes the process, the evidence found, its assessment and findings, and provides recommendations on measures to be implemented to address identified issues.

The number of launched serious incident reports depends on a variety of factors, including the occurrence of fundamental rights violations, the number of Frontex officers deployed in a certain operation/location, their deployment profiles, the number of monitors' visits, as well as their access to key locations and the engagement of civil society in a given activity. Throughout investigations, the Fundamental Rights Office attempts to corroborate or disprove allegations and concludes on the likelihood that fundamental rights violations occurred. While important to map and provide insights into the observed fundamental rights challenges, the number of serious incident reports, therefore, does not conclusively reflect the number of fundamental rights violations, their distribution or seriousness, with regard to any region or activity, and should be contextualised and complemented with other observations such as those

of the fundamental rights monitors. Throughout the year, the Fundamental Rights Office has been engaged in the development of procedures and methodologies aimed at standardising how the Fundamental Rights Office and the Agency process allegations of fundamental rights violations.

In 2023, 55 serious incident reports were launched, in comparison to 72 launched in the previous year. One of the main reasons for the drop in number is the discontinuation of border surveillance activities in Lithuania and Latvia which previously triggered a high number of serious incident reports and whose national legislation normalised so-called pushbacks of migrants. At the same time, the incident evaluation team, by continuously reviewing their procedures, has become more selective in choosing cases to launch as serious incident reports over time. This stems from lessons learnt in terms of the incidents that lend themselves to meaningful investigation.

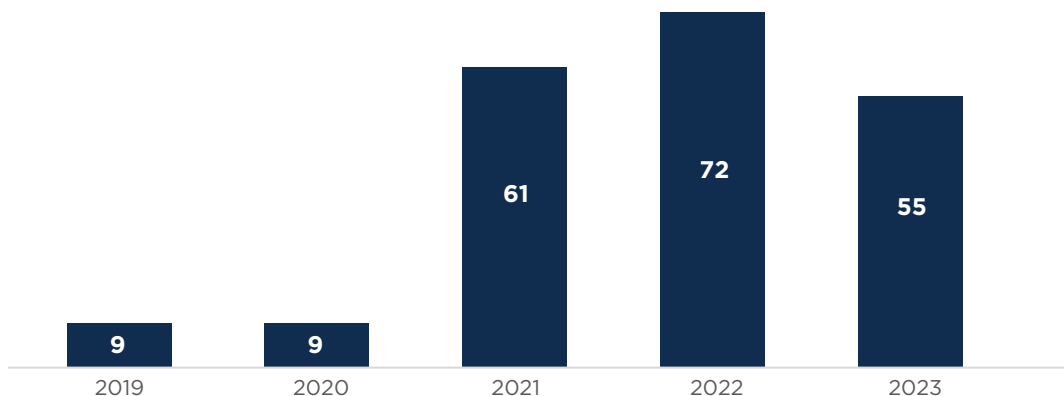
In 2023, the Fundamental Rights Office took note of the following challenges as regards submission and following up of serious incident reports:

- National authorities are reluctant to provide access to relevant data for the purpose of the investigations and deny by default any involvement in fundamental rights violations or are reluctant to investigate or follow up on cases.
- Significant underreporting of cases due to lack of awareness or knowledge, peer pressure or fear of retaliation.
- Limited Frontex presence in certain locations may also result in underreporting of possible fundamental rights violations.

Chart 5

Serious incident reports related to fundamental rights

Number of Serious incident reports - launched in 2019 - 2023



2.1.1 Serious incident reports launched in 2023

The following two charts²⁷ disaggregate the serious incidents launched by country and the type of fundamental rights violation.

Chart 6
Serious incident reports in 2023
 (January - December); data disaggregated by country

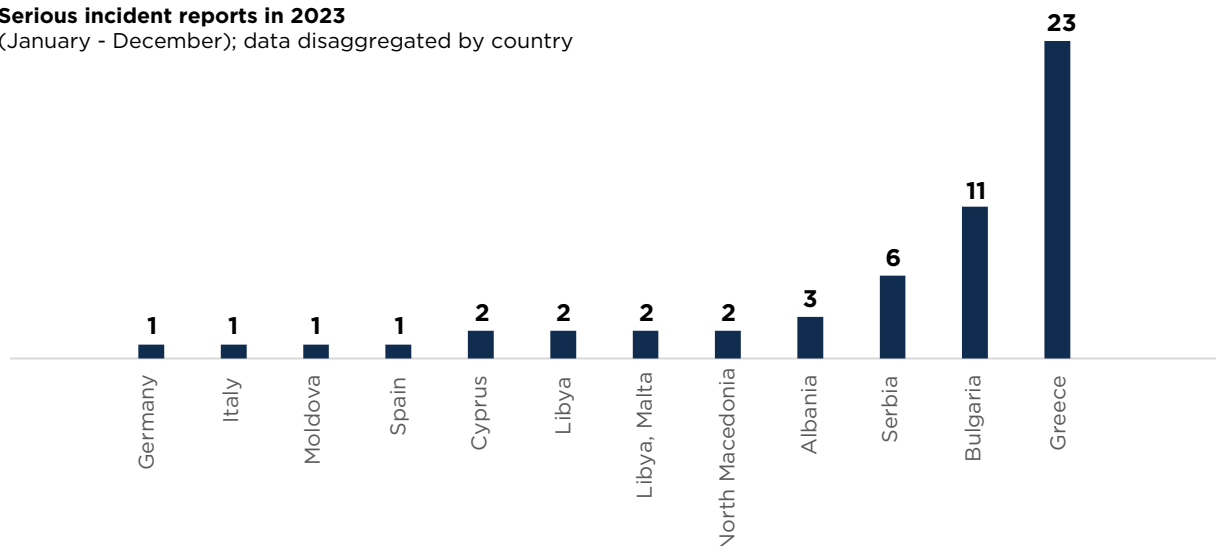
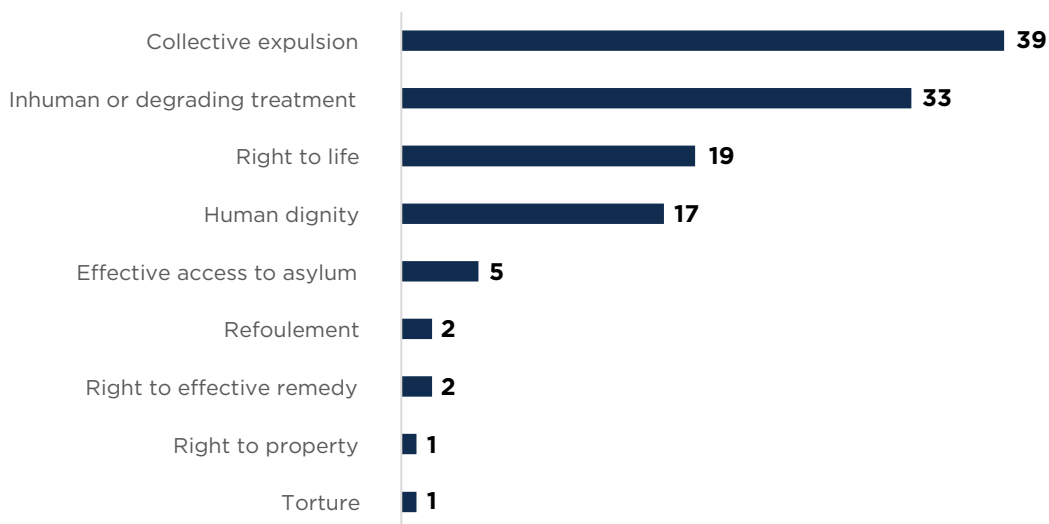


Chart 7
Type of violations reported in 2023 serious incident reports
 Multiple allegations possible per case



Out of a total of 217 reported incidents of alleged violations of fundamental rights, 55 serious incident investigations were launched following a preliminary assessment, based on a unified set of criteria. The reports were received from the

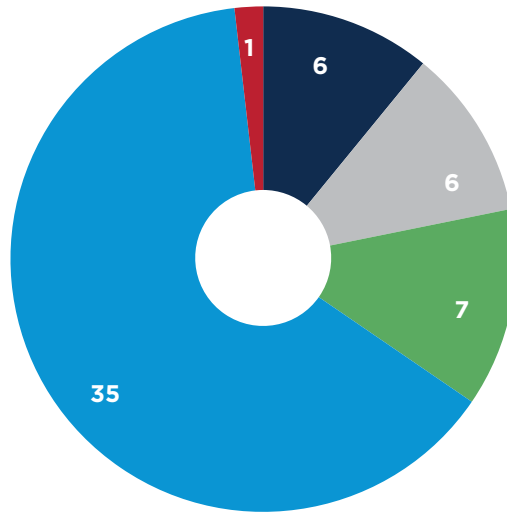
following sources: deployed officers or other participants in Frontex activities; from SOS messages sent directly to the Fundamental Rights Office; Frontex internal reports; reports by civil society or international organisations; open sources.

²⁷ The charts also include incidents linked to Frontex's pre-frontier aerial surveillance activity, which occurred in the Libyan and Maltese Search and Rescue Zones, all with the involvement of Libyan Search and Rescue actors.

The following graph provides an overview of the initial sources of information that triggered scrutiny from the Fundamental Rights Office.

Chart 8
2023 Serious incident reports
 Source of initial information about the incident

- Fundamental Rights Monitors
- Media
- Non-governmental organisations
- Frontex Operational Staff
- Victim



2.1.2 Serious incident reports closed in 2023, findings and recommendations

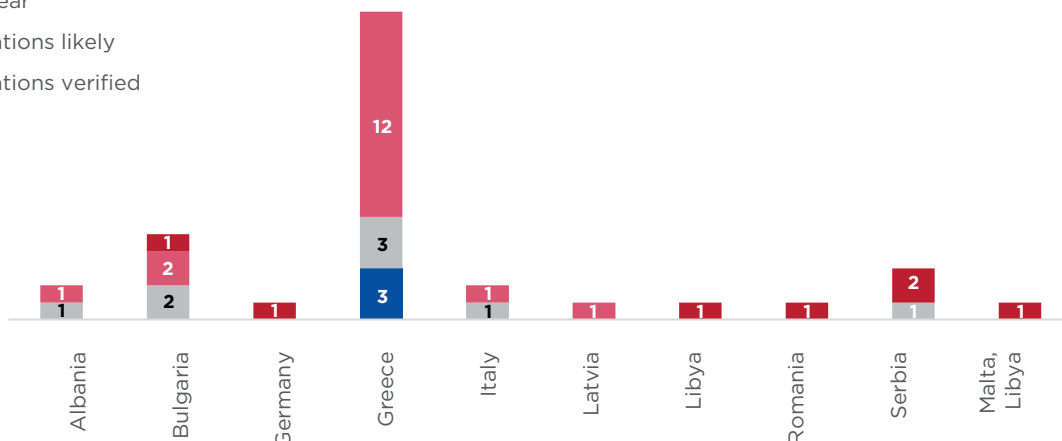
Final serious incident reports conclude investigations into initial allegations and categorize findings into one of four categories:

- violation verified
- violation likely
- unclear whether violation occurred
- no violation

In 2023, 39 serious incidents were closed with a final report. In about a third of these cases, the investigation confirmed the occurrence of at least one fundamental rights violation, while such violations were found to have likely happened in almost half of the closed cases.

Chart 9
2023 Closed serious incident reports
 Data disaggregated by concluded likelihood of a fundamental rights violation and by country

- No violation
- Unclear
- Violations likely
- Violations verified



While details of individual cases differ, in the majority of cases the following findings have been reflected in the final conclusions of serious incident reports of the Fundamental Rights Office:

- Frontex staff are often allocated/tasked by host state authorities in a manner seemingly designed to keep them away from locations or situations where fundamental rights violations are reportedly taking place. In addition, the Fundamental Rights Office also noted allegations about Frontex staff being re-assigned following their reporting of possible serious incident reports. The Office recommends that Frontex officers should be integrated into operational activities in a comprehensive manner that allows for their contribution to border management to be compliant with fundamental rights.
- The officers' ability to recognize indications of fundamental rights violations should be strengthened

alongside a culture of reporting not only evidence-based but also suspected cases.

- Protection of reporting persons and their possibility to report exclusively and directly to the Fundamental Rights Office remains essential.
- Whenever Frontex officers and assets are involved in the detection, interception and/or apprehension of migrants whom they subsequently hand over to national authorities, Frontex should ensure that strong safeguards are applied by member states/third countries; especially in the context of frequent reports about collective expulsion and/or ill-treatment.
- Serious incident report enquiries, in particular when allegations are substantiated and verified, do not diminish the responsibility of member states/third countries to carry out independent and thorough investigations. National authorities remain bound to follow up on cases but often fail to do so when allegations concern their officers.

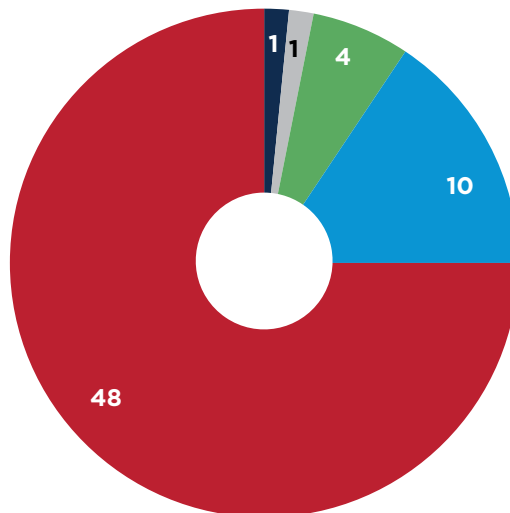
2.2 Complaints

In 2023, the Fundamental Rights Office received 64 complaints. After an admissibility review, four were declared admissible and forwarded to the relevant member states' competent authorities for further handling, as well as to the Frontex Executive Director for his information.²⁸ One complaint concerned third-country staff (Moldova)

and was forwarded to the People's Advocate Office of the Republic of Moldova for further handling, as provided for in the memorandum of understanding between the Fundamental Rights Officer and the People's Advocate Office. One complaint was stayed upon request of the complainants and 10 complaints are under admissibility assessment.²⁹

Chart 10
Complaints received in 2023
 Data disaggregated by the status of the complaint
 (1 January - 31 December 2023)

- Stayed
- Third country
- Admissible
- Under assessment
- Inadmissible



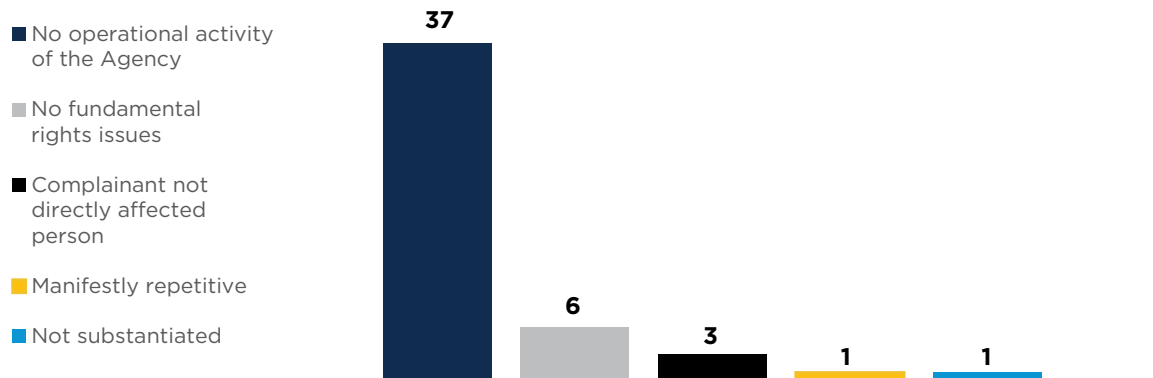
²⁸ Additionally, one complaint submitted in 2022 was declared admissible in 2023 and was forwarded to the relevant member states' competent authorities for further handling, as well as to the Frontex Executive Director, for information.
²⁹ In 6 of these 10 complaints, the complainants are not responding to the Fundamental Rights Office's request for information. Due to the lack of crucial information, the admissibility assessment cannot proceed. If contact with the complainants cannot be established and relevant information obtained within one year, these cases might be discontinued as provided

Furthermore, 11 pending complaints from the previous years (2022 and 2021) were discontinued because the complainants did not respond to the Fundamental Rights Officer's request for information for more than a year.³⁰

Fundamental Rights Officer to the Management Board. An annual overview of the conclusions/findings concerning admissible complaints is presented in Annex I to this annual report, including references to the Agency's and member state's findings and follow-up to the complaints (as per Articles 109(4) and 111(9) of the EBCG Regulation)

The admissible and inadmissible complaints, regarding land, air and sea activities, are regularly reported by the

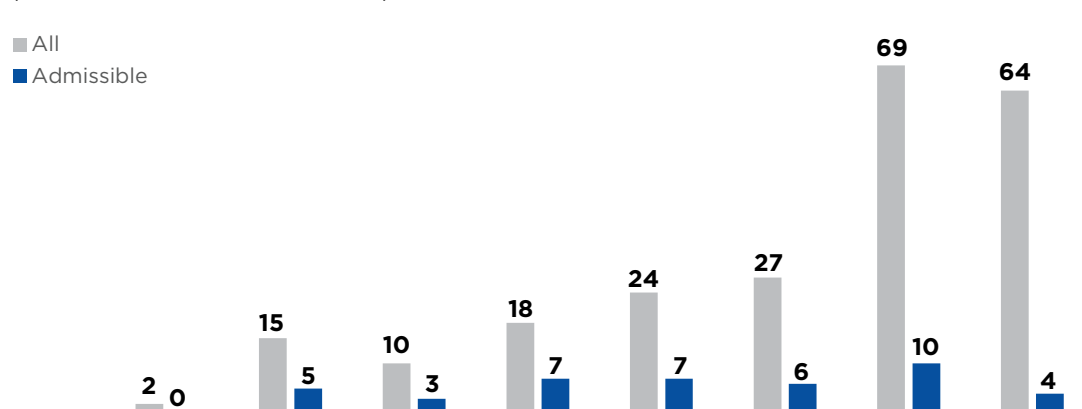
Chart 11
Breakdown of the reasons for inadmissibility of complaints
 (January - December 2023)



When compared to 2022, the total number of received complaints in 2023 remains similar (2022: 69; 2023: 64).

However, the number of admissible complaints was lower in 2023 (2022: 10; 2023: 4). The following figure provides an overview from 2016 through to 2023.

Chart 12
Overall complaints received via the Frontex Complaints Mechanism
 (October 2016 - 31 December 2023)



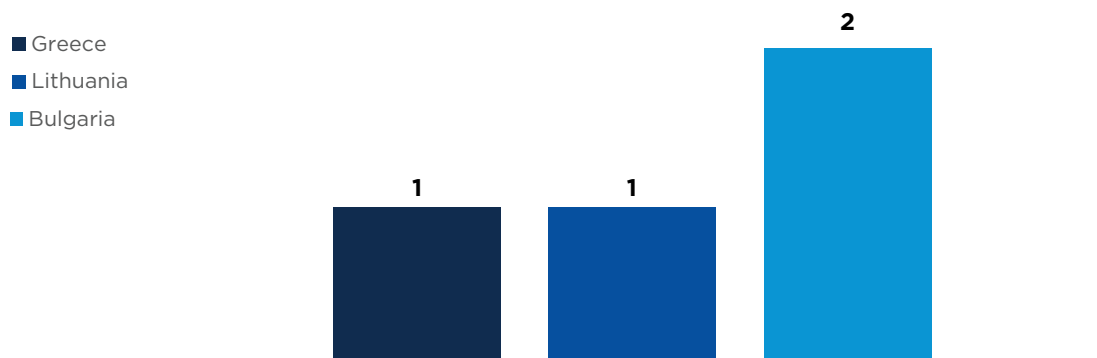
for by Article 6(3) of the Management Board Decision 19-2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism, which replaced and repealed the Executive Director Decision No R-ED-2016-106 of 6 October 2016 on the Complaints Mechanism ("the Agency's Rules on the complaints mechanism").

³⁰ Article 6(3) of the Agency's rules on the complaints mechanism.

The admissible complaints submitted in 2023 concerned alleged violations of the right to life; prohibition of torture and inhuman or degrading treatment or punishment; protection in the event of removal,

expulsion, or extradition and the right to property. The admissible complaints concerned Frontex operational areas in Bulgaria, Greece and Lithuania.

Chart 13
Admissible complaints in 2023
 Data by country (January - December)



In 2023, activities related to the complaints mechanism also included knowledge building in the form of basic and specialised trainings to Frontex standing corps and the European travel information and authorisation system, as well as in ad hoc awareness raising sessions to Frontex deployed team members and local partners during visits to Frontex operational areas. Specifically, this was achieved through facilitating the information and the updated material distribution in various Frontex operational areas; providing information sessions to the relevant institutional and national stakeholders in member states or third countries where operational activity takes place. Furthermore, by the end of 2023, it was observed that in Poland, Lithuania, Slovakia and Romania, the Fundamental Rights Office’s recommendations on the correct display of the complaints material in all relevant border crossing points had been followed.

Similarly, to ensure the cooperation on complaints regarding alleged violations on territories of non-EU countries where Frontex undertakes operational activities, the Fundamental Rights Office liaised with the ombuds institutions of the relevant partner countries. In 2023, the memorandum of understanding between the Fundamental Rights Officer and the Ombudsman of the Republic of North Macedonia was developed, while the memorandum with the Protector of Human Rights and Freedoms of Montenegro was signed. In April 2023, the Fundamental Rights Office organised a first working visit of national human rights and ombuds institutions to Frontex. The meeting was attended by assembled representatives of countries with whom the Fundamental Rights Office has cooperation on the complaints mechanism, based on respective status agreements: Albania, Montenegro (hybrid participation), North Macedonia, Serbia and Moldova.

2.3 Use of force monitoring and advice

The Fundamental Rights Office is mandated to “regularly” monitor “all activities” related to the use of force, weapons, ammunition and equipment.³¹ Additionally the Fundamental Rights Officer has a duty to thoroughly investigate any reported incidents involving the use of force, report without delay to the Executive Director and

transmit the results of the investigations to Frontex’s Consultative Forum.³²

During 2023, the Fundamental Rights Officer was informed of 88 reports on the use of force, out of which none were classified as an “incident involving use of force”,³³ triggering the mandate and task of

³¹ Annex V (Section 4) of the EBCG Regulation.

³² The role of the Fundamental Rights Officer, related to investigating incidents involving the use of force, is set out in Annex V of the EBCG Regulation (in particular its section 4) and Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard standing corps.

³³ “Incident involving the use of force” is an event in which the “use of force” results in: death of a person, serious injury,

the Fundamental Rights Officer to ensure effective investigations.³⁴ In contrast to such reports, which rely on self-reporting and focus on the conduct of members of the Frontex standing corps only, investigations of serious incidents category 1 (possible violations of fundamental rights) by the Fundamental Rights Office may cover both instances of excessive use of force by officers of the host member state and Frontex. In 2023, use of excessive force by Frontex officers was alleged twice but could be rebutted in the context of a serious incident investigation. In contrast, use of illegitimate force by officers of the host state is more frequently alleged and has been verified or found likely in the context of 15 investigated incidents in which Greek (6), Bulgarian (4), Serbian (3) and Libyan (2) officers were involved.

In 2023, the Fundamental Rights Office issued two opinions on the use of force. The first one focused on the use of force related to the use of weapons and equipment in the context of the executive powers assigned to the standing corps in the performance of their statutory duties. It aimed to provide guidance on how to read and interpret the use of force provisions of the EBCG

Regulation, to be consistent with relevant established international standards on use of force. The second opinion elaborated on fundamental rights due diligence considerations in the context of the procurement of law enforcement and security equipment by Frontex with a focus on the weapons (lethal or less lethal weapons) that standing corps officers (category 1) are authorized to use. This opinion was developed with a view to supporting the inclusion of fundamental rights considerations and good practices at an international level into future tender procedures and assessment of contracts by the Agency.

In December 2023, the Fundamental Rights Officer convened an expert meeting on the *Fundamental Rights Compliant Use of Force in Border Management*, with the participation of representatives of inter-governmental organisations, national law enforcement bodies and relevant Frontex entities and trainers. The meeting focused on command-and-control structures and best practices at a national level (with special attention to persons in vulnerable situations), in order to guarantee fundamental rights compliant use of force in border management.

significant damage to property, use of a firearm (fired or discharged), including warning shots, or where it is reasonable to believe that the use of force by Categories 1-4 of the standing corps failed to comply with the applicable operational plan, national law, the core principles and specific rules referred to in Annex V to the Regulation; fundamental rights as guaranteed under international and Union law or the Agency's code of conduct provisions related to the use of force.

³⁴ Based on the definitions of the Executive Director Decision No R-ED-2021-38 of 6 March 2021 on the standard operating procedure on use of force and incidents involving the use of force reporting, "use of force" refers to recourse by categories 1-4 of the EBCG standing corps deployed as members of the teams to physical means for the purposes of performing their functions or ensuring self-defence, which includes the use of hands and body and the use of any instruments, weapons, including firearms or equipment.

CHAPTER 3:
Policy, Strategy and Capacity building



3.1 Fundamental Rights Office's advice

The expanding involvement of the Agency in operations, projects and cooperation agreements, including with third countries, was reflected in the increasing number and variety of opinions and input provided by the Fundamental Rights Office on the strategy and policy of the Agency, including its strategic, policy and operational documents. Throughout 2023, the Fundamental Rights Office was regularly consulted on

draft working arrangements, and standard operating procedures. On occasion, the Fundamental Rights Office provided input to other tools or policy documents.

Apart from policy and strategy work, the Fundamental Rights Office should provide training, in the context of capacity building activities, and structured advice to the ETIAS fundamental rights guidance board.

3.1.1 Opinions to the Executive Director

In 2023, the Fundamental Rights Officer made extensive use of the advisory functions mandated by the EBCG Regulation³⁵ by identifying issues of concern and developing opinions on projects and policy matters of relevance for the Agency as well as to ensure Frontex full compliance with fundamental rights and where possible, to support the strategic advancement of fundamental rights in European Integrated Border Management. This advice is expressed in opinions to the Executive Director, recommendations to the Management Board or the on-going process of reviewing and contributing to reports, policies and strategies drafted by relevant entities within the Agency (for instance, consultations regarding Frontex International Cooperation Strategy 2024-2026). Some of these opinions have already been mentioned under different sections of Chapter 1, most notably the opinion on suspending or terminating operations in Greece, in accordance with Article 46(4) of the EBCG Regulation, the opinion relating to fundamental rights concerns regarding alerts to Libyan authorities in the context of the multipurpose aerial surveillance services

provided by the Agency and the opinion of the use of force monitoring.

Other opinions emerge from the Fundamental Rights Officer's initiative to highlight the recurrent recommendations made during the review of the Agency's operational documents, such as the opinion on Frontex operations and recommendations on addressing trafficking in human beings, with tangible recommendations aimed at the prevention of trafficking in human beings and protecting the victims. The opinion on Frontex operations and gender mainstreaming outlined recommendations aimed at achieving better gender balance, especially in the context of joint operations, and stronger gender considerations in the context of recruiting, training and capacity building, career and work conditions and communication.

The table below shows the opinions to the Executive Director issued by the Fundamental Rights Officer in 2023.

Issue	Date raised
Opinion in relation to Frontex operations and Fundamental Right's Office's recommendations on addressing Trafficking in Human Beings (THB)	18 October 2023
Opinion on fundamental rights due diligence considerations in the context of the procurement of law enforcement and security equipment by Frontex with a focus on weapons (lethal and less-lethal weapons) Standing Corps Officers, Category 1, are authorized to use	29 September 2023
Opinion on Multipurpose Aerial Surveillance Services: Fundamental rights concerns as regards sending alerts to Libyan authorities and [search and rescue] operations in the Central Mediterranean	18 July 2023
Opinion on the use of force, including weapons and equipment, in the EBCG Regulation	11 July 2023
Opinion on Greece: Advice to suspend or terminate Frontex operations in Greece in accordance with Article 46(6) of the EBCG Regulation	10 July 2023
Opinion on Frontex operations and gender mainstreaming	19 June 2023
Opinion on Technical Assistance Projects for Third Countries on Return, Readmission and Reintegration (TAB4RRR)	23 March 2023

³⁵ In accordance with Article 109(2)(d) of the EBCG Regulation.

3.1.2 Operational plans and evaluation reports

Throughout 2023, cooperation between the Fundamental Rights Office and other Frontex entities responsible for operational planning further improved, leading to the identification of new practical solutions and a more efficient implementation of relevant recommendations. In 2023, the Fundamental Rights Office was consulted on the drafts of all operational plans for 2024,³⁶ in line with the two-stage consultation process foreseen by the standard operating procedure on operational plans for operational activities. The Fundamental Rights Office

also submitted observations to amendments of certain 2023 operational plans, taking note and informing the entities responsible for planning operations of the fundamental rights implications of the planned changes to the joint operations, as relevant. The Fundamental Rights Office also submitted observations evaluating from its perspective the joint operations implemented by the Agency in the previous year and provided tailored recommendations.³⁷

3.1.3 Development and consultations on standard operating procedures

The standard operating procedure on the roles and responsibilities of fundamental rights monitors in Frontex operational activities was jointly adopted by the Executive Director and the Fundamental Rights Officer in March 2023. The document lays down the rules regarding the fundamental rights monitors in the performance of their duties towards Frontex operational activities. In compliance with the EBCG Regulation, these procedural rules aim at ensuring smooth cooperation between the monitors and all participants in Frontex operational activities. A revision of the procedure is currently on-going and is aimed at gathering relevant feedback on its implementation from member states,

the Consultative Forum as well as competent Frontex entities. The consultations are expected to lead to the revision of the procedure in 2024.

The Fundamental Rights Office continued to be consulted on the standard operating procedure on mobile surveillance systems. Following multiple exchanges with relevant Frontex entities and numerous fundamental rights monitors' missions to locations where the mobile surveillance systems were deployed, mitigating measures related to the use of new technologies and their impact on fundamental rights have been proposed.

3.2 The Fundamental Rights Action Plan

The Agency, with the contribution of, and upon the endorsement of the Fundamental Rights Office,³⁸ drew up and has been implementing since 2021 a Fundamental Rights Strategy and Action Plan.³⁹ As foreseen in the Action Plan, the Fundamental Rights Office reports in its annual report on progress made in implementation.

The Fundamental Rights Action Plan is divided into two sections. The initial section provides an overarching component applicable to the entire European Border and Coast Guard community, consisting of 10 objectives and 27 corresponding activities, aiming at incorporating fundamental rights aspects into member states' national integrated border management strategies. To support member states in the implementation of the Fundamental

Rights Action Plan and allow a space for constructive exchanges among peers, the Fundamental Rights Office convened six dialogues on best practices in human rights-based migration management.

The second section of the Action Plan relates to the Agency's tasks, aiming at increasing the alignment of Frontex entities with fundamental rights. The Agency's component follows the principle of results-based planning, linking concrete activities with qualitative or quantitative indicators and outcomes, as well as the suggested means of verification. This component includes 17 objectives with 87 corresponding activities and the overall implementation timeline aligned with the Agency's multiannual programming cycle.

³⁶ In accordance with Article 109(2)(e) of the EBCG Regulation, the Fundamental Rights Officer provides opinions on the operational plans drawn up for operational activities of the Agency. In line with Article 110(2) of the EBCG Regulation, the fundamental rights monitors shall follow the preparation of the operational activities and report to the Fundamental Rights Officer, as well as contributing to the evaluation of activities (among other tasks).

³⁷ In accordance with Articles 47 and 110 (2)(a) of the EBCG Regulation.

³⁸ In accordance with Article 80(1) of the EBCG Regulation.

³⁹ The Management Board Decision 12/2021 of 14 February 2021 adopting the Fundamental Rights Strategy.

Status of implementation of the Fundamental Rights Action Plan (January - October 2023)



The different entities of the Agency ensure progress to implement the Action Plan in their respective remit. Out of the 87 activities, 15 have been fully implemented; 54 have been implemented and are on-going,⁴⁰ six are partially implemented, and 12 are delayed in relation to the original implementation schedule. Delays are attributed to the complex and sensitive nature of materials to be developed, ongoing consultations, internal review and revision of outputs or technological constraints that do not allow for the full implementation of specific activities. The Fundamental Rights Office, however, perceives that having specifically determined deadlines for their completion is a positive step and an indication of the commitment to fully implement the activities of the Fundamental Rights Action Plan. In 2023 the Fundamental Rights Office continued to support the Agency in the maintenance of the network of Frontex focal points for the implementation of the Agency's commitments under the Fundamental Rights Action Plan.

Certain good practices, reflecting developments across the different units of the Agency, have been identified, for instance as part of an objective on "Tasks of the

participants of Joint Operations, pilot projects and rapid border interventions to be undertaken in line with the fundamental rights obligations". Below are examples of good practices:

- Twenty-six awareness sessions have been organised on VEGA children handbooks, with a focus on prevention, detection and combating of child trafficking and child protection.
- Supporting border guards' capacity in identifying potential child victims of trafficking as part of VEGA children initiative experts conducted (five visits to international airports in Kosovo,* Moldova and North Macedonia, 13 visits to land border crossing points in Croatia, Moldova, Lithuania, Poland, Romania and Slovakia).
- Awareness sessions to standing corps officers in Frontex joint operations on victim identification in border control.
- Training for the Frontex liaison officers in member states and third countries, successfully implementing the Action Plan activity 70, concerning fundamental rights awareness among Frontex liaison officers.

3.3 The Technical and Operational Strategy for European Integrated Border Management (EIBM)

In September 2023, the Agency adopted the Technical and Operational Strategy for European Integrated Border Management. This document outlines the tenets of effective border management at the national and the EU level as well as the interaction between national and European strategies. It identifies the respect, protection and promotion of fundamental rights as one of the key components of European Integrated Border Management. The Fundamental Rights Office provided advice to the relevant entities in the development of the strategy's implementation plan, specifically the actions relevant

to fundamental rights. During this internal consultation the Fundamental Rights Office focused on enhancing synergies between various actors and transforming them into concrete actions for the Agency, national authorities and the European and national human rights institutions, recognising the existing frameworks, the importance of cooperation and the link between the Implementation Plan for the Technical and Operational Strategy for European Integrated Border Management and the Fundamental Rights Action Plan, as follows:

⁴⁰ Activities that are implemented and on-going might consist of actions that are completed and repeated; or actions that are completed (and repeated) and actions that are on-going.

Action		Timeline
(13.1) [...] national-level fundamental rights strategies and Action Plans [for] the EBCG [...] Fundamental Rights Action Plan, involving all operational concerned actors, including European Union Agency for Fundamental Rights, as well as key human rights bodies, in particular Ombudspersons, National Human Rights Institutions and National Preventive Mechanisms, as relevant. Ensure to continuously act upon recommendations related to border management coming from national, EU and international monitoring mechanisms, including the relevant United Nations bodies and the Council of Europe.	[...] fundamental Rights strategies and action plans	End of 2025
(13.2) [...] regular and independent evaluations of the fundamental rights compliance of the operational activities and feed findings into improvements (e.g.: regular revisions of ‘operational plans’, implementing safeguards).	Establishment of national monitoring mechanisms building on European Union Agency for Fundamental Rights’ guidance	Continuous, 2027
(13.3) [...] constructive exchange to feed into the ‘do’s’ and ‘don’ts’ guidance, based on the patterns emerging from serious incidents category 1 (fundamental rights-related incidents) and ensure that the guidance is applied by the operational stakeholders.	Development of guidelines	12 months from the adoption of the Strategy
(13.4) Actively involve fundamental rights monitoring in all activities of the EBCG, granting the same access to operational areas in line with Article 110(3) of the EBCG Regulation.	Operational instructions by national authorities [...]	Continuous
(13.5) Actively involve fundamental rights monitoring in all activities of the EBCG, granting the same access to operational areas in line with Article 110(3) of the EBCG Regulation.	Operational guidelines developed and adopted	End of 2026
(13.6) [...] EBCG-wide network of focal points for the exchange of promising practices and to take stock of progress and/or seek advice where needed from the Fundamental Rights Offices of the relevant EU agencies (Frontex, Europol, European Union Agency for Asylum and European Union Agency for Fundamental Rights).	Log of lessons learned and best practices; Network established; Development and agreements on Terms of reference	Continuous

The subsequent agreement of the member states and Schengen associated countries to the indicated actions is intended to go together with their firm commitment to deliver on the rights-based elements of their national and European Integrated Border Management strategies. The Fundamental Rights Office has started delivering on the actions, under its lead, such as the scenarios on the fundamental rights compliance of the operational stakeholders, which were drafted in the second half of

2023. The Fundamental Rights Office sees the processes surrounding the development and the implementation of the mentioned strategy as an added forum to discuss possible shortcomings and jointly identify solutions on fundamental rights issues, building upon already established fora, such as the regular exchanges on member states’ commitment to fundamental rights under the umbrella of the Fundamental Rights Action Plan.

3.4 Cooperation with the Consultative Forum for fundamental rights

Formed in 2013, the Consultative Forum brings together key European institutions and international and civil society organisations to provide Frontex with independent advice in fundamental rights matters. According to the EBCG Regulation, the Agency shall reach out to the Consultative Forum on the further development and implementation of the fundamental rights strategy, on the functioning of the complaints mechanism, on codes of conduct and on the common core curricula. Following the expiry of the mandate 2021-2023, the Fundamental

Rights Office launched in early 2023 a call for expressions of interest from relevant civil society organisations to become members of the Frontex Consultative Forum.

Chaired by the UN High Commissioner for Refugees and the European Union Agency for Fundamental Rights, the Consultative Forum, Frontex Management Board and the Fundamental Rights Office regularly discuss the state of affairs of fundamental rights at the external borders of the EU. Further exchanges among the Fundamental

Rights Officer and the Consultative Forum take place throughout the year to reflect on the fundamental rights dimension of Frontex activities, including risks for violations and the identification of measures to mitigate them. In compliance with the EBCG regulation, the Fundamental Rights Office assists the Consultative

Forum by providing its secretariat, which is mandated to support it both administratively and financially. In 2023, the Consultative Forum participated in on-the-spot visits to joint operations and took part in the implementation of VEGA activities. The activities of the Consultative Forum are presented in a separate annual report.⁴¹

3.5 Cooperation on risk analysis

In 2023, the Fundamental Rights Office maintained a strong level of cooperation with the entities of the Agency engaged in the analysis of risks related to the management of the Schengen borders. Reflecting on the fundamental rights aspects of developments that are perceived as risks and threats to the Union's external borders, allows the Agency to draw attention to situations and the rights of persons who cross them. The Fundamental Rights Office and the Agency's entity responsible for risk analysis, the Risk Analysis Unit, held meetings on a regular basis to strengthen their mutual collaboration and exchange perspectives on matters of shared interest.

During the year, the Fundamental Rights Office has increasingly contributed to various products of the Risk Analysis Unit, mainstreaming a fundamental rights perspective in reports such as the annual risk analysis report and the strategic risk analysis report. In the framework of the Africa Frontex intelligence community project, the Fundamental Rights Office analysed the fundamental rights risks and the potential implications of ongoing and prospective engagement in the project countries.⁴²

The Risk Analysis Unit regularly provided briefings and shared relevant information with the Fundamental Rights Office ahead of monitoring missions, while after their missions, fundamental rights monitors share

observations and recommendations related to risk analysis activities. Regular meetings have addressed the challenges related to the monitoring of debriefing activities. A webinar on fundamental rights for debriefing officers has been developed, with the aim of further enhancing cooperation.

Since June 2023, the fundamental rights monitors have been granted access to the Fundamental Rights Office Dashboard. This online tool, created to support monitoring activities, permits the breaking down of disaggregated data for irregular border crossings by route and country, border crossing points, border section and type, thereby helping to identify persons in vulnerable situations.

Furthermore, the Fundamental Rights Officer provided observations and recommendations to the section on debriefing and screening activities of the Handbook to the operational plan as well as on the standard operating procedure for debriefing and screening activities. Most of the Office's recommendations have been duly taken into consideration and integrated in the documents by the Risk Analysis Unit, thereby ensuring stronger fundamental rights safeguards within the context of debriefing activities.

3.6 Third Country engagement

Frontex's active engagement with third countries is one of the key elements of European Integrated Border Management. In 2023, the Agency's role in practical and operational cooperation with third countries increased

significantly.⁴³ In accordance with the EBCG Regulation⁴⁴ multiple forms of engagement can take place and depending on the fundamental rights situation in the third country and the scope of cooperation, Frontex may

⁴¹ Frontex Consultative Forum, Tenth annual report on fundamental rights, July 2023, accessible at [Tenth Annual Report - Frontex Consultative Forum on Fundamental Rights - 2022 \(europa.eu\)](#).

⁴² The eight countries in which risk analysis cells are located are the Republic of Cote d'Ivoire, The Gambia, Ghana, Mauritania (Islamic Republic of), Niger (until 2023), Nigeria, Senegal and Togo.

⁴³ *Inter alia* on return and readmission, the fight against human trafficking, the provision of training, operational and technical assistance to authorities of third countries for the purpose of border management and border control, carrying out operations or joint operations at the EU external borders or in the territories of third countries and deploying liaison officers in third countries.

⁴⁴ Article 73(2) of the EBCG Regulation: When engaging in cooperation with non-EU countries, Frontex must "act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment."

risk being implicated – whether directly or indirectly – in fundamental rights violations of its partners.

Based on the above considerations, in 2023 the Fundamental Rights Office continued to advise the Agency on potential risks which may derive from ongoing or planned cooperation of the Agency with third countries and devising fundamental rights safeguards as risk mitigation measures. The advice to the Agency can result in a human rights impact assessment, tailored to the specific objectives of the planned cooperation or engagement, which span from situational awareness to risk analysis; information exchanges through EUROSUR; search and rescue; return including pre-return activities; capacity building; operational cooperation. The relevant human rights impact assessment is developed under the framework of the fundamental rights due-diligence procedure, which was adopted by the Fundamental Rights Office in 2022 and further revised in 2023. Its scope and extensiveness depend on the envisaged form of cooperation between Frontex and the third country,

including working arrangements, pilot projects and technical assistance projects, return-related activities, as well as the Frontex activities based on status agreements (in respect of which the European Commission also assesses the fundamental rights situation in the third country).⁴⁵ The Agency also provides technical and operational assistance to third countries in accordance with Regulation 656/2014⁴⁶ and international law, in support of search and rescue operations at sea which may arise during border surveillance operations.

The human rights impact assessment provides recommendations relevant to the foreseen activities. If fundamental rights concerns are identified, safeguards and mitigating measure are proposed (e.g., the inclusion of fundamental rights related trainings for third country authorities or increased guarantees for the monitors to assess the fundamental rights compliance of Frontex activities in the third country). The table below shows the human rights impact assessments delivered by the Fundamental Rights Office in 2023.

Human Rights Impact Assessments	Date
Egypt	September 2023; November 2023
Mauritania	September 2023
Senegal	August 2023, September 2023
Tunisia	August 2023; November 2023
Working Arrangement negotiations with Georgia, Jordan and Lebanon	October 2023
Latin America (Argentina, Chile, Colombia, Cuba, Guatemala, Mexico, Panama, Peru, Venezuela)	October 2023
Türkiye	August 2023; September 2023
Working Arrangement between the Agency and the United Kingdom of Great Britain and Northern Ireland	September 2023
Risk Analysis Cells related activities in selected Third Countries – Angola, Benin, Burkina Faso, Cameroon, Cabo Verde, Chad, Democratic Republic of the Congo, Djibouti, Eritrea, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Sierra Leone, Somalia, Sudan, South Sudan, Egypt, Tunisia, Morocco	August 2023
Libya	August 2023
Albania	July 2023
Montenegro	May 2023; June 2023
North Macedonia	March 2023; June 2023
Risk Analysis Cells in selected Third Countries – Cote d’Ivoire, Gambia, Ghana, Mauritania, Niger, Nigeria, Senegal, Togo	February 2023, updated June 2023
Bosnia and Herzegovina	June 2023
Kosovo*	June 2023
Serbia	June 2023

⁴⁵ Recital 88 of the EBCG Regulation.

⁴⁶ [Regulation \(EU\) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.](#)

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

3.7 Training, capacity building

Throughout 2023, the Fundamental Rights Office delivered specialised training to Frontex statutory staff and staff from national authorities of participating states, including EU member states, Schengen associated countries and third countries. 191 training and awareness raising sessions on fundamental rights were addressed to Frontex teams and national officers involved in Frontex activities in Albania, Italy, Lithuania, Moldova, Spain and Greece.

Additionally, fundamental rights monitors collaborated with other Frontex entities delivering training and participating in awareness raising sessions on the

following themes and target groups: European Travel Information and Authorisation System (ETIAS) for operators, fundamental rights for multipliers, induction training, Mobile Surveillance System, return, standing corps category 1, trafficking in human beings (THB), use of force and specialist profiles (including information, debriefing officers and Frontex tactical support officers). In addition, upon invitation, the Fundamental Rights Office also contributes to awareness raising sessions organised by third parties such as the UN High Commissioner for Refugees and International Organisation for Migration.

3.8 The ETIAS Fundamental Rights Guidance Board

ETIAS is an emerging border management tool, which will affect travellers from more than 60 visa-free countries, and usher in a new era of border management and security within the Schengen area. The implementation of the Regulation on the establishment of ETIAS has proven to be a challenging endeavour, intensively involving all responsible parties. One of the governance elements of the new travel information system, as per the ETIAS Regulation, is the ETIAS fundamental rights guidance board.⁴⁸ Established in 2022, the guidance board's main responsibility is to help guarantee adequate protection of travellers' fundamental rights when they apply for ETIAS travel authorization, a process that is expected to start in 2025. The guidance board brings together stakeholders with diverse expertise, including the Fundamental

Rights Office, a member of the Consultative Forum on fundamental rights, representatives from the European Data Protection Supervisor, the European Data Protection Board and the European Union Agency for Fundamental Rights. The Fundamental Rights Officer acts as a deputy chair of the Guidance board. In 2023, the guidance board held six meetings establishing working methods, setting up relations with the main stakeholders, identifying key issues of concern and working on how to tackle them. The guidance board also developed its 2024 work programme,⁴⁹ with a focus on following closely and supporting the setting up and implementation of the ETIAS governance structure and mechanisms. The Guidance Board also issues an annual report on its activities.

⁴⁸ Pursuant to Article 10(2) of Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, pp. 1–71.

⁴⁹ Work Programme 2023 – 2024, The ETIAS Fundamental Rights Guidance Board, Accessible at: [ETIAS Fundamental Rights Guidance Board \(europa.eu\)](https://etias.fundamentalrights.europa.eu/).

CHAPTER 4:
Recommendations



This chapter provides a summary of the main recommendations consistently delivered by the Fundamental Rights Office in 2023 to the Agency, as well as an overview of recommendations made to Frontex by key external actors, and their current status of implementation. The Fundamental Rights Office continued to contribute

to the implementation of recommendations addressed to the Agency by EU supervisory/oversight bodies, insofar as they were related to fundamental rights. Such a commitment is consistent with the Fundamental Rights Office's mandate to monitor and advise.

4.1 Main Recommendations of the Fundamental Rights Office

Access to Frontex operational areas and activities

Specifically relating to access of the fundamental rights monitors to debriefing activities and interviews. With the introduction of the standard operating procedure on the role and responsibilities of the fundamental rights monitors, the situation improved in most locations with only a few remaining hurdles, but with commitments to ensure full access in 2024.

Screening and debriefing

The Fundamental Rights Officer drew attention to several elements of operational activities related to screening and debriefing, including as relevant to disembarkation points. Specifically, the need to strengthen fundamental rights safeguards applicable to screening and debriefing, through adopting an appropriate regulatory framework and guidelines, to be included in the operational plans, with regards to identification of persons in vulnerable situations and access to asylum. Additionally, the importance of adequate facilities and privacy for screening and debriefing was advised throughout the year.

Apprehensions during patrolling and subsequent referrals

The Fundamental Rights Office raised the need to apply strong procedural safeguards following the

apprehensions conducted during patrolling in order to ensure prompt registration, identification of persons in vulnerable situations and the access to asylum.

Serious incident investigations and lack of reporting

On multiple occasions the Fundamental Rights Officer has expressed concern that the national authorities were reluctant to provide access to relevant data for the purpose of the investigations, investigate or follow up cases or, at times, denied officers' involvement in alleged fundamental rights violations altogether. The Fundamental Rights Office also noted that significant underreporting of cases might result from a lack of awareness or knowledge, peer pressure or fear of retaliation. Equally, limited Frontex presence in locations with high migratory pressure may also contribute to underreporting of possible fundamental rights violations.

Multipurpose Aerial Surveillance

The Fundamental Rights Office has regularly engaged with the Agency's relevant entities with a view to implementing recommendations and mitigating measures proposed, in order to ensure compliance of the Agency with fundamental rights, including the right to life and the principle of non-refoulement.

4.2 Recommendations by external key actors

The Fundamental Rights Office has worked consistently since 2021 to address the various recommendations provided to Frontex by different oversight entities and ad hoc Working Groups operating at the EU level.

These recommendations have been issued by the European Parliament's Committee on Civil Liberties, Justice, and Home Affairs (LIBE), Frontex Scrutiny Working Group (FSWG), the European Commission,

the European Ombudsman, and the Working Group on Fundamental Rights, Legal and Operational Aspects of Operations (FRaLO) where the Fundamental Rights Office was among the responsible entities.

The majority of the LIBE Frontex Scrutiny Working Group recommendations requiring active engagement of the Fundamental Rights Office were implemented by the end of 2023. In its resolution of December 2023,⁵⁰ the LIBE

⁵⁰ [European Parliament resolution of 14 December 2023 on Frontex building on the factfinding investigation of the LIBE Working Group for Frontex Scrutiny \(2023/2729\(RSP\)\)](#).

Frontex Scrutiny Working Group recognized the tangible progress made in this respect by the Agency. However, it provided further recommendations for additional specific actions. Despite the progress noted, the Frontex Scrutiny Working Group indicated that the staffing needs of the Fundamental Rights Office were not being met and based on the Agency’s updated mandate and the growing size of the standing corps, the number of fundamental rights monitors should continue to increase. The LIBE Frontex Scrutiny Working Group expected to receive details of the Agency’s plans to increase the number of fundamental rights monitors, guided by an assessment of the needs of the Fundamental Rights Office.

The table below provides an overview of recommendations issued by multiple external key actors in the context of their factfinding investigations, resolutions, or decisions. It includes actions taken to implement the relevant recommendations. In the status column below, in green are listed the “implemented” recommendations, in yellow are those “in progress.”

Additionally, 13 recommendations (Frontex Scrutiny Working Group: 11; European Ombudsman: 1; Working Group on Fundamental Rights, Legal and Operational Aspects of Operations : 1) have already been implemented and reported during the previous reporting period in the [2022 Annual Report](#) of the Fundamental Rights Officer of Frontex and others have been implemented and reported in the [2021 Annual Report](#).

Recommendations from external stakeholders

Entity	Recommendation	Action	Status
European Parliament	The FSWG emphasises the importance of an effective and independent investigation of serious incident reports or other reported incidents. This implies that in its follow-up to a serious incident report, the Fundamental Rights Officer or Executive Director should not only rely on responses by government authorities, but ensure a diversification of sources, and corroborate the information provided by national authorities with competent national human rights bodies and/or authorities such as national ombuds institutions and relevant international organisations.	As regards diversification of sources, since 1 March 2022 the Fundamental Rights Office further increased information gathering to systematically include additional sources of information (Non-governmental organisations’ and international organisations’ reports, social media, journalistic investigations) whenever available to cross-check information provided by national authorities. The Fundamental Rights Office’s final reports on serious incident reports draw conclusions and recommendations that take into account this multiple source analysis. The adopted standard operating procedure clarify the overarching methodology for investigations used by the Office.	
European Parliament	The FSWG welcomes the FRaLO recommendation to clarify the relationship between its system of protecting whistle-blowers and exceptional reporting under the serious incident reports mechanism, to ensure that confidential reports from Frontex employees and team members are handled in an appropriate way, given prompt follow-up to, and that the protection of the identity is guaranteed.	Relevant implementing rules have already been included in the current standard operating procedure on serious incident reporting. The draft revised standard operating procedure is currently undergoing a review process in consultation with the Consultative Forum. To date, the part concerning the relevant rules on "exceptional reporting - link to whistleblowing procedure" remains the same as the standard operating procedure in force. The review process by Frontex entities is ongoing. The whistle-blowing policy ⁵¹ is a EU Commission model decision, its revision is not foreseen.	

⁵¹ Management Board Decision 17/2019 of 18 July 2019 adopting the Frontex Guidelines on Whistleblowing.

Entity	Recommendation	Action	Status
European Parliament	<p>The European Parliament recommends, based on the FSWG recommendations, that the following further specific actions be taken:</p> <p>The Agency should ensure that the Fundamental Rights Officer is consulted earlier on in the process of developing operational plans, is granted sufficient time for giving his or her opinions and is equipped with established methods and channels to escalate, if his or her opinion is ignored.</p>	<p>The Fundamental Rights Office is working fruitfully together with the business entities responsible for planning to ensure that the Office is consulted consistently throughout the planning cycle, starting from its early phase.</p> <p>Planning entities are also making efforts to improve the timeline concerning the development and adoption of operational plans to allow sufficient time for the Fundamental Rights Officer to deliver his or her input and opinions. However, this requires also timely feedback from all stakeholders involved, including host state authorities.</p> <p>Late and short notice requests may result in inadequate time for the Fundamental Rights Officer to provide his or her input and opinions, and for the executive management of the Agency to appropriately take it into account.</p> <p>Management Board decision 43/2022⁵² provides for methods and channels for the Fundamental Rights Officer to escalate in case opinions are ignored.</p>	
European Parliament	<p>The European Parliament points out that, based on the Agency's updated mandate, the number of fundamental rights monitors, employed as statutory staff of the Agency, should continue to grow as the overall size of the standing corps increases; looks forward, in that regard, to receiving details of the Agency's plans to increase the number of fundamental rights monitors, accompanied by an assessment of the Fundamental Rights Officer regarding estimation of the necessary number of monitors.</p>	<p>The Fundamental Rights Office has recruited and onboarded all of the initially envisioned fundamental rights monitors. Future posts in that capacity shall be recruited at the Administrator-AD level to eventually reach forty monitors at that level.</p>	
European Commission	<p>The Commission welcomes the annual assessment on the number of the fundamental rights monitors, which finds that the number of monitors should increase by five, to match growing operational needs in 2024. The Commission supports this assessment and reiterates that any future recruitment of monitors should take place in the administrator function category, rather than at assistant level, to have at least 40 fundamental rights monitors in the administrator function.⁵³</p>	<p>The number of posts allocated does not correspond to the assessed needs and the request of the Fundamental Rights Officer.</p>	

⁵² Management Board Decision 43/2022 of 20 July 2022 adopting the rules for the Executive Director and the Management Board to inform the Consultative Forum of the follow-up to its recommendations and to ensure that action is taken with regard to recommendations of the Fundamental Rights Officer.

⁵³ Commission Opinion on the Single Programming Document containing the draft multiannual programming for 2024–2026 and the draft Annual Work Programme for 2024 ('Programming Document for 2024–2026') of the European Border and Coast Guard Agency, C(2023) 4898 final, 14 July 2023.

Entity	Recommendation	Action	Status
European Ombudsman	In its Memoranda of Understanding ⁵⁴ or other relevant documents concluded with non-EU country bodies, Frontex should stipulate that Frontex (via the Fundamental Rights Officer) is responsible for receiving all complaints on non-compliance with fundamental rights.	<p>Actions are being implemented with the ombuds institutions in Albania, Moldova, Montenegro and Serbia. The Memorandum of Understanding between the Fundamental Rights Officer and the Montenegrin Ombudsman was signed in February 2023.</p> <p>In April 2023, the first introductory visit of ombuds institutions to Frontex was conducted focusing on the modalities of the memoranda, capacity building and exploring synergies between the Fundamental Rights Office and national monitoring mechanisms.</p> <p>The draft Memorandum of Understanding with the respective Ombuds Office of the Republic of North Macedonia has been consulted extensively and it is currently pending approval. Fundamental rights monitors conduct missions to Albania, Montenegro, Serbia and Moldova on a regular basis, during which the complaints mechanism is promoted.</p>	
European Ombudsman	The guidelines for screening officers should indicate the timeline for the screening process and provide more details on how to register minors and document the answers to questions asked during the screening process. Frontex officers should require the presence of a cultural expert during the screening and that the host member state makes available in as many languages as possible information about the applicable procedures.	<p>The Handbook to the operational plans was updated in June 2022 in consultation with the Fundamental Rights Office in order to reflect the recommendation. The revised Handbook pays particular attention to the identification, referral and specific needs of persons in vulnerable situations during the screening process.</p> <p>As regards the screening template following internal consultations with the Fundamental Rights Office, it is planned to be consulted and implemented with the host member states in 2024.</p> <p>The new sub-profile for debriefing officers (cultural mediators) was approved by Management Board Decision 8/2022 (later amended by Management Board Decision 42/2022⁵⁵). Fundamental rights, serious incident reporting and referrals to the hosting member states of persons in vulnerable situations are part of all specialized trainings for debriefing officers, which were revised by the Fundamental Rights Officer.</p> <p>Fundamental rights monitors are present during the screening processes. Their findings and recommendations are taken into consideration for the improvement of the screening procedure.</p>	

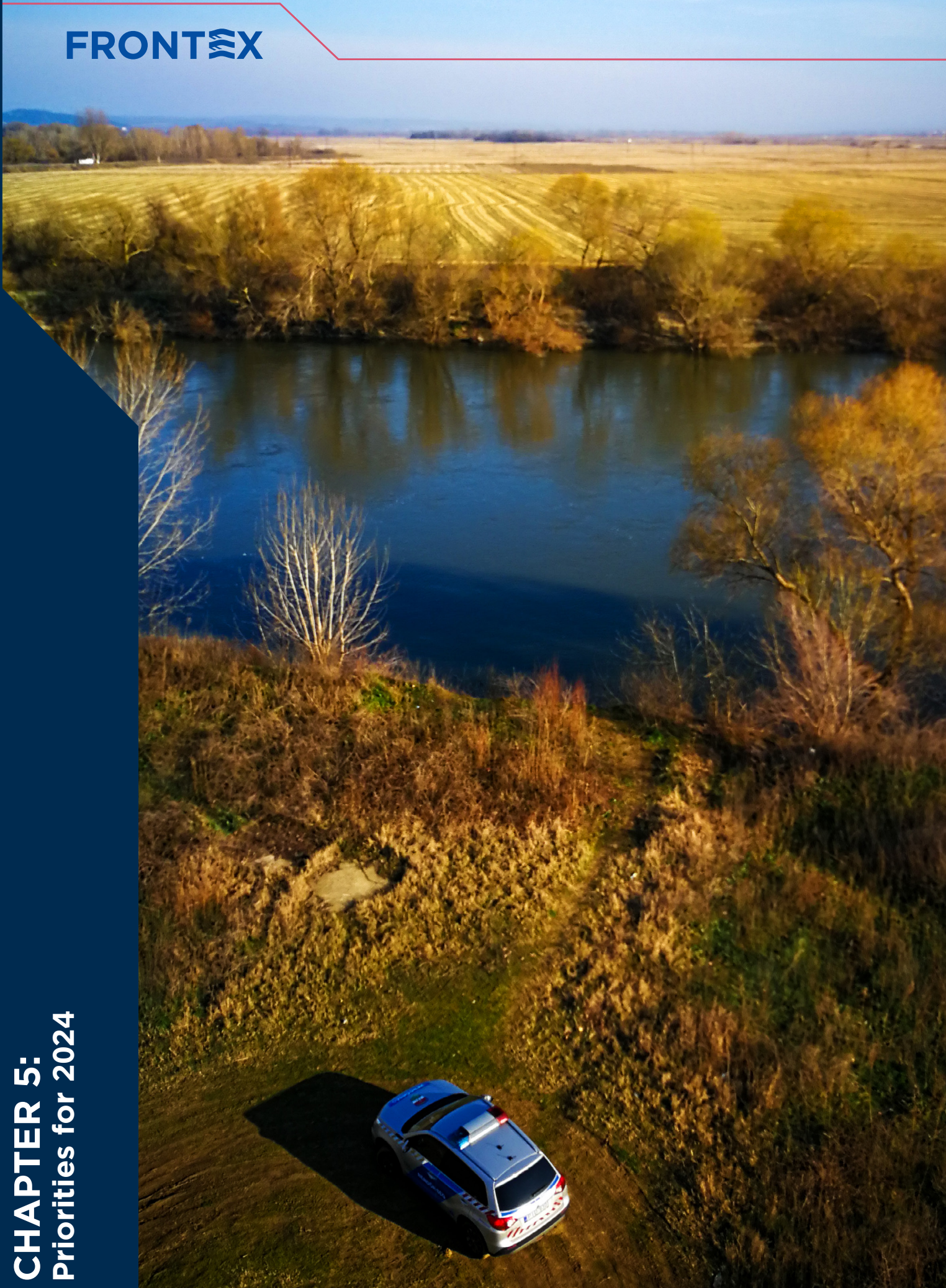
⁵⁴ Memoranda of Understanding with non-EU countries define the modalities of cooperation/coordination as regards complaints against national staff of the non-EU country, which are to be directed and dealt with by the relevant national bodies, following the Status Agreement.

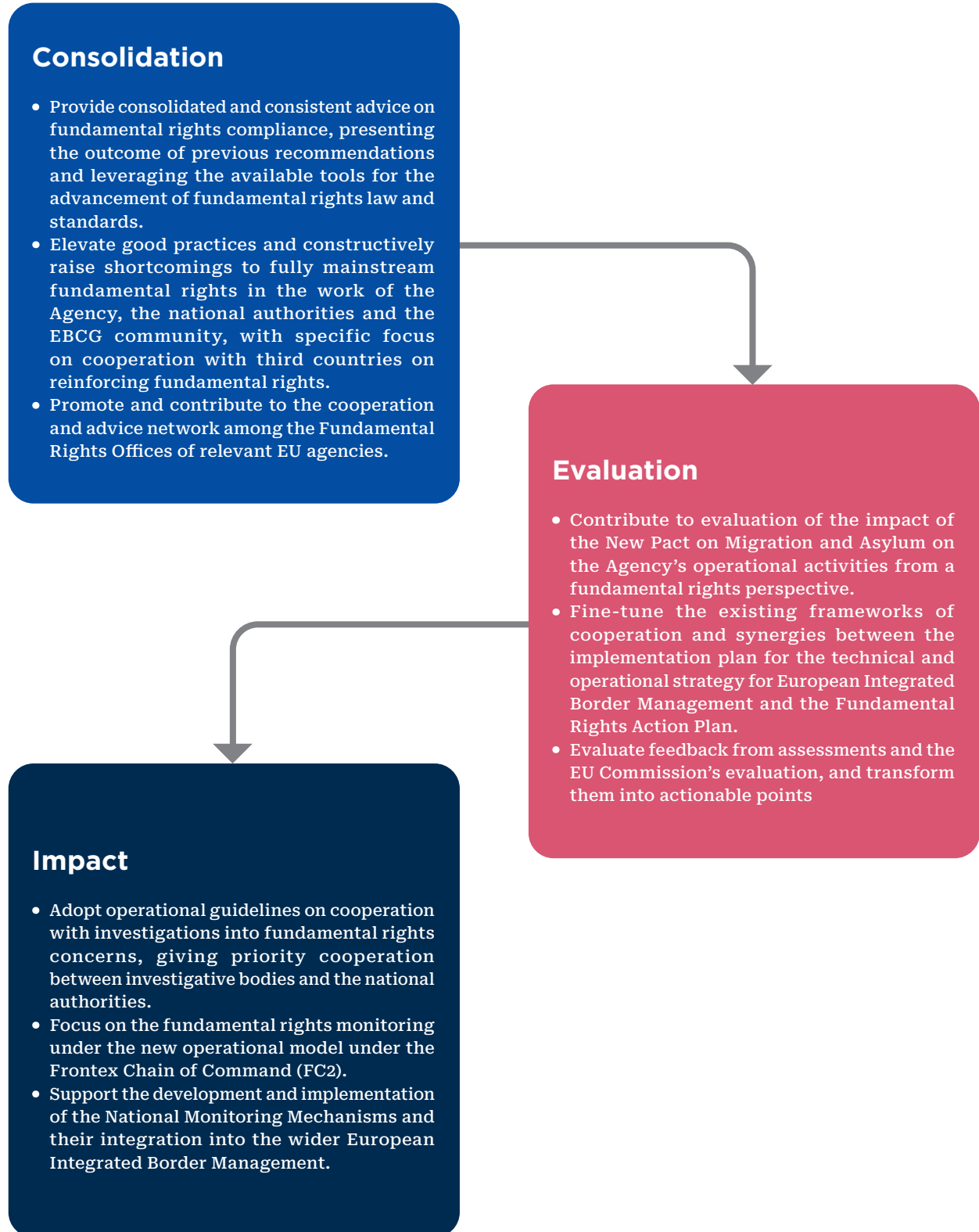
⁵⁵ Management Board Decision 42/2022 of 09 July 2022 amending Management Board Decision 8/2022 adopting the profiles to be made available to the European Border and Coast Guard standing corps for 2023.

Entity	Recommendation	Action	Status
European Ombudsman	Frontex should ensure that, during debriefing interviews, interviewees are treated in compliance with their right to dignity. ⁵⁶ This includes providing interviewees with information about their rights, access to interpretation, the possibility to review and sign the interview record, and access to an independent complaints mechanism (with proper oversight). These safeguards could be implemented more effectively if migrants have access to legal aid. Frontex should insist with the host member state that this is included in the operational plan.	The Fundamental Rights Office has been consulted on the standard operating procedure for debriefing officers in Frontex joint operations and recommended some safeguards to ensure that interviewees are treated in compliance with their right to dignity. The Fundamental Rights Office is advising the Agency on how to implement these recommendations.	
European Ombudsman	The scope of application of the due-diligence procedure should be consistent with what is set out in the Fundamental Rights Officer's 2022 Annual Report, where he stated that the procedure applies to Frontex activities based on EU "status agreements with non-EU countries on operational cooperation in border management."	The due-diligence procedure has been revisited to include the updated working modalities and other monitoring activities (e.g., returns, multi-purpose aerial surveillance). The Fundamental Rights Office has been increasingly consulted prior to the establishment of operational cooperation with third countries.	
	The Fundamental Rights Officer's assessments of Frontex activities in, and support to, non-EU countries should always be based on the due-diligence procedure. They should systematically identify the human rights impacts of Frontex concrete activities on persons potentially affected by them. The Fundamental Rights Officer should consider using the template set out in the due-diligence procedure to increase the clarity of its assessment documents. If in conducting these assessments, the Fundamental Rights Officer consults local stakeholders and/or potentially affected groups, and include the information gathered from such consultations in the assessment documents, the consultation should be mentioned in these documents.	The Fundamental Rights Officer's assessments of Frontex activities are based on the due-diligence procedure and the different workstreams procedures have been aligned to the updated due-diligence procedure. The same due-diligence model is used in all assessments, albeit updated to fit specific aspects to the operational activity or engagement being assessed.	
	For ad hoc Frontex activities in the context of its cooperation with non-EU countries, Frontex should draw up criteria as to when the Fundamental Rights Officer should be asked for prior advice. If Frontex engages in transfers of surveillance techniques and of related capacity building to non-EU countries with poor human rights records or systemic human rights abuses, a prior assessment of the human rights impact should always be carried out. This could be by means of the Fundamental Rights Officer's assessments. Such activities should be subject to ongoing monitoring.	The Fundamental Rights Office was regularly consulted prior to engagement with non-EU countries. These consultations result in human rights impact assessments which are revisited and updated throughout the year on a need basis.	

⁵⁶ This recommendation reflects also issues raised by the European Data Protection Supervisor. An executive summary of the relevant Audit Report is accessible here: [Audit Report on the European Border And Coast Guard Agency \(Frontex\)](#)

CHAPTER 5:
Priorities for 2024





Annex I - Complaints mechanism

Complaints Mechanism

Annual Reports by the Fundamental Rights Officer shall include information on the complaints mechanism (Articles 109(4) and 111(9) of the EBCG Regulation), including details on the findings and the follow-up to complaints by the Agency and national authorities.

In 2023, the Fundamental Rights Officer closed four admissible complaints, as summarised below. Other admissible complaints were pending and not ready for closure in 2023.

2021-00003

Alleged infringement of the right to good administration with regard to the complainant's entry into the Schengen area, his permanent EU residence permit and the handling of his case in this regard by Croatian border guards at the border crossing point Karasovici, Republic of Croatia (Joint Operation Focal Points Land 2021). Following the examination, the Croatian authorities concluded that the actions taken by the Border Police officers did not affect the complainant's

EU residence status because the affixed border stamp was cancelled, and complainant was allowed to transit the Republic of Croatia. The Fundamental Rights Officer welcomed the efforts of the Croatian police to guarantee the complainant's right to good administration and recommended the enhancement of information provision during border checks to prevent future complaints of a similar nature and ensure full compliance with fundamental rights protection obligations.

2021-00007

Alleged infringement of the right to dignity of the complainant at the border crossing point Rinas, Tirana International Airport (Joint Operation Coordination Points Air, Land and Sea 2021) by a standing corps officer category 1. After preliminary assessment the Executive Director concluded that the complainant's allegations could not be verified and did not launch an

administrative inquiry. The Fundamental Rights Officer welcomed the fact that the Executive Director conducted an examination of the complaint and emphasised the obligations under the Code of Conduct for all persons participating in Frontex activities to promote and respect human dignity and the fundamental rights of every individual.

2022-00008

Alleged ill-treatment of the complainant by Lithuanian border guards upon apprehension at the Lithuanian-Belarusian green border. Following examination, the Lithuanian authorities held that the complainant disobeyed lawful orders of Lithuanian border officers and concluded that the officers' legitimate powers were not exceeded, considering the mild nature of the complainant's injuries, the fact that he resisted orders and the fact that the officers and service dog were at risk.

The Fundamental Rights Officer recommended that the competent Lithuanian authorities consider reinforcing the existing system of preventative and enforcement measures related to the use of force within the border control context, to ensure that applied practices are consistent with applicable national, European and international law, with a view to guarantee respect for human dignity and prohibition of inhuman or degrading treatment.

2022-00050

Alleged violation of the right to health care during a planned voluntary return from Cyprus to Morocco, assisted by the Agency. The Cypriot Police informed the Fundamental Rights Officer that the complainant was finally returned, as it was confirmed in two medical examinations that he was fit to fly and not suffering from any condition preventing him from using air transportation. Due to the complainant's subsequent unavailability, the Cyprus Independent Authority for the Investigation of Allegations and Complaints

Against the Police, closed the case. The Fundamental Rights Officer was satisfied that the complainant's medical state was examined thoroughly and that it was confirmed by the national authority that the conditions for his voluntary return had been fulfilled. The Fundamental Rights Officer recommended that returnees are returned when fit to travel or when provided with a medical examination, where they have a known medical condition or where medical treatment is required, as was done by the Cypriot return authorities.

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