

XXIII FUNDAMENTAL RIGHTS OFFICER REPORT TO MANAGEMENT BOARD

Reporting period: (February 2019 - May 2019)

1. Joint Operations
2. Return Operations
3. Capacity Building
4. Cooperation with the Consultative Forum (CF)
5. Individual Complaints Mechanism (CM)
6. Relations with External Actors
7. Miscellaneous

1. JOINT OPERATIONS

Pursuant to Article 34 (1) of the European Border and Coast Guard Regulation (EBCG) 2016/1624, the European Border and Coast Guard has the obligation to guarantee the protection of fundamental rights in all its activities. The Regulation further foresees that the Fundamental Rights Officer (FRO) has the task of monitoring the Agency's compliance with fundamental rights and of promoting its respect (Article 72 (1)). For this purposes, FRO regularly reports to the Management Board, and as such contributes to the mechanism for monitoring fundamental rights. Furthermore, FRO's role as part of the monitoring mechanism includes, *inter alia*, to act as a coordinator for Serious Incidents that involve alleged violations of fundamental rights as set by Frontex Standard Operating Procedure on Serious Incident Reporting (SIR).² To this end, FRO is deemed to provide an assessment and follow up on the information received on the SIRs provided by the Agency and Member States.

Serious Incidents Reporting (SIR)

During the reporting period, three SIRs related to fundamental rights issues were received by the FRO.

1. SIR no.829 "Migrants allegedly pushed back to Turkey by authorities in Greece", JO Flexible Operational Activities 2019 Land SE; location- Greek/Turkish Land Border Section; incident date: 08 April 2019;
2. SIR no.830 "NGOs allegedly pushed back from Croatia to Bosnia and Herzegovina and Serbia", JO Flexible Operational Activities 2019 Land on Border Surveillance / WB; location- Croatia with Bosnia and Herzegovina and Serbia border; incident date: 09 April 2019;
3. SIR no.1309/2019 "Migrants allegedly pushed back to Turkey by authorities in Greece", JO FOA SE; incident date: 06 May 2019;

OPLANS & FRO Observations

Under Article 71(3) of the EBCG Regulation, FRO shall be consulted on the operational plans drawn up in accordance with Article 16, 17 and 28 and Article 33(4) of the Regulation.

OPLANS received and observations by FRO provided during reporting period:

- Operational Plan for JO Alexis 2019
- Operational Plan for JO Minerva 2019
- Operational Plan for JO Coordination Points 2019 Sea
- Operational Plan for JO Coordination Points 2019 Land
- Operational Plan for JO Focal Points 2019 Sea
- Operational Plan for JO Flexible Operational Activities - Western Balkans 2019

FERs & FRO Observations

Pursuant to Article 26 of the EBCG Regulation, the Executive Director shall transmit detailed evaluation reports within 60 days following the end of the Agency's operational activities to the Management Board, together with the observations of the FRO. Hereby find below an overview of the FERs received as well as the FRO recommendations and observations provided to OPLANs and FERs.

FER JOs received and observations by FRO provided during reporting period:

- FER JO Alexis 2018
- FER JO Coordination Points 2018 Land
- FER JO Pegasus 2018
- FER JO Focal Points Air 2018
- FER JO Coordination Points Air 2018
- FER JO Hera 2018
- FER of Flexible Operational Activities in Return (FOAR) 2018
- FER JO Coordination Points 2018 Sea
- FER JO Flexible Operational Activities 2018 Land on border surveillance
- FER JO Flexible Operational Activities 2018 Land on border checks
- FER JO Focal Points 2018 Land

Overview FRO FER Recommendations and Observations

- FRO continued to consider the following aspects: referral mechanism, unaccompanied children, the need to enhance awareness on local fundamental rights situations in operational briefings, the need to step up the efforts on identification and prompt referral of potential victims of trafficking in human beings. In addition FRO considered the importance to enhance Frontex complaint mechanism as well as the serious incident reporting.
- FRO emphasised that fundamental rights related information, including on the number and profile of the vulnerabilities described specifically in the EBCG Regulation (UAMs, THB, persons in need of international protection, etc.) are extremely important information to be collected during joint operations. This would allow to evaluate the impact of the operation as well as to assess the compliance with fundamental rights during operational activities. Based on the replies from the MS to the questionnaire on the national referral procedures, FRO is in the process of compiling information, which should be made available on FOSS.

Other support to Frontex operational activities

During the reporting period, FRO and the Team delivered the following presentations on fundamental rights:

- Familiarisation visit in Frontex HQs for representatives of:
- Moldova, 05 February; Ghana and Consular Workshop for Consular Officials accredited in the EU, 26 February; Ivory Coast and Consular Workshop for Consular Officials accredited in the EU, 07 March; Belarus 13 March; Vietnam, 11 April;
- Familiarization meeting of the LO to NATO flagship, 26 February;
- Joint Operation Focal Points 2019 Air- Briefing for Third Country Observers on 12 March;

2. RETURN OPERATIONS

Consultations on Return matters & Return interventions

In accordance with Articles 28 and 33 of the EBCG Regulation, the Agency shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations and return interventions. The Agency shall perform return activities with respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights. FRO is also supporting the finalization of the Guide for readmission operations by sea.

In this context, FRO contributes to the establishment and selection of forced-return monitors for joint return operations. The selection procedure is organised by Pooled Resources Unit, following an open call addressed to relevant bodies in Member States. During the reporting period, FRO Team contributed to two selection procedures.

FERs & FRO Observations

In compliance with Article 28(8) of the EBCG Regulation, FRO observations are annexed to the Executive Director's evaluation report and transmitted to the Management Board every six months, covering all return operations conducted in the previous semester. During the reporting period, FRO received 148 monitoring reports, which also serve to provide concrete recommendations as well as to adjust training needs of those organising the implementation of return operations.

FRO presented the Observations to the return operations for the second half of 2018 to the MB on 27-28 March 2019.

3. CAPACITY BUILDING ACTIVITIES

The FRO's role in supporting the Agency's initiatives in ensuring that all border guards and other relevant staff of the European Border and Coast Guard teams receive training in relevant Union and international law, including on fundamental rights and access to international protection falls under Article 36(2) of the EBCG Regulation. During the reporting period, FRO continued to actively contribute and support the Agency's activities in the field of capacity building.

FRO team took part in the following meetings and workshops in the context of the Forced-Return Monitoring III (FRm) project:

- 12 February: 1st FRm project steering group meeting, Vienna, Austria;
- 18-22 March: 1st training for forced-return monitors, Oslo, Norway;
- 09-10 May: National Training on Escorted Return Operations and Forced-Return Monitoring Mechanisms, Nicosia, Cyprus;
- 13-14 May: Workshop on the Elaboration of a National Training Concept for Escorts - Fundamental Rights and Forced-Return Monitoring, Nicosia, Cyprus;

The FRm project is supporting the Agency to further establish the pool of forced-return monitors (Pool) in line with its Regulation. Furthermore, it will support Member States (MSs) in meeting their obligations under Art. 8(6) of the Return Directive, requiring them to provide for an effective forced return monitoring system.

On 28 February, FRO also took part in the 39th Pooled Resources Network meeting and presented the FRO program of work for 2019.

On 22 May 2019, FRO participated in the Direct Contact Points in Return Matters (DCP) combined with 11th Pre-Return Activities Network meeting (PRAN), Warsaw, Poland.

CBD/Training Unit and IEC related activities

On 28 March, FRO team delivered a training session on fundamental rights in Frontex operational activities in the framework of the training program organized by the Hellenic Coast Guard co-founded by the ISF national program, in Athens.

On 7 May 2019 FRO delivered the fundamental rights module during the second training of the EBCG Maritime Border Surveillance Officer Training in Warsaw. The FR session included the general framework of fundamental rights obligations for the Agency and participants in operational activities (inter alia, FRS, CoC, SIR and complaints mechanism).

FRO and the Team are continuously engaged in the **Induction trainings for new-comers**. Sessions were held during the reporting period on a monthly basis. The engagement in this activity is deemed very important since the Regulation has clearly stepped up the fundamental rights obligations of the European Border and Coast Guard. FRO team has jointly revised and reflected on the most efficient way to convey FR basic information and enhance the awareness of the Agency's staff on the matter, as the first step towards effective implementation of these obligations.

On 24 April, FRO team took part in the meeting held on the occasion of the visit of the Director of Relations with the EU from the Ministry of Foreign Affairs of Tunisia.

On 20-24 May, FRO team attended CEPOL activity on Trafficking in Human Beings - multidisciplinary approach, Szcztyno, Poland;

FRO team contributed to various documents shared for consultation:

- FRA Annual Report 2019;
- FRA Draft Work programme 2020;
- Frontex-EASO Cooperation Plan 2019-2020.

4. COOPERATION WITH THE CONSULTATIVE FORUM (CF)

During the reporting period, the CF Secretariat assistant was temporarily replaced by an interim from the FRO office until completion of the recruitment process for the vacant position of CF Secretariat assistant.

During the 74th MB meeting, and after a proposal made during the 18th Consultative Forum meeting, it was agreed to extend the CF mandate until 31st of December 2019. This will allow to take into account the outcome of the ongoing CF external evaluation.

The 18th CF meeting was held on 11-12 March in Warsaw in which FRO presented her regular report. CF expressed concerns about the fact that fundamental rights objectives have not been included in the Operational plans. Such objectives were assessed as crucial to ensure the efficiency of referral systems. Concerns were also raised regarding alleged push-backs at the Croatian-BiH border and in the Evros region between Greece and Turkey. Moreover, CF inquired about the revision of the Fundamental Rights Strategy as it is a core part of their mandate (Article 70 (3) EBCG Regulation).

The co-Chairs of CF presented the Annual Report 2018 in the LIBE Committee on 21st March.

The 19th CF meeting was held on 17 May in Brussels in which the draft report on the CF evaluation with preliminary results was presented by the external evaluators. Consultations rounds with the CF as well as with Frontex Executive Management will follow and it is envisaged to finalize the work in the second half of June 2019. In the formal session, FRO presented a general FRO report as well as the observations to return operations - 2nd semester 2018 followed by discussions.

On 4th April a meeting was organised between FX entities and the International Commission for Missing Persons (ICMP) in FX premises. The work of the forum was presented and ICMP expressed their interest in joining the CF.

VEGA Child protection and safeguards in Frontex activities were discussed during a meeting between FX and CF representatives on 17/04 where also the future involvement of the CF was discussed.

5. INDIVIDUAL COMPLAINTS MECHANISM (CM)

As stipulated in Article 72(9) and also referred to in recital (50) of the EBCG Regulation, FRO is responsible for handling complaints in writing received by the Agency from individuals directly affected by activities of the Agency or their representatives. FRO is in charge of performing an admissibility check and referring the admissible complaints for follow-up and findings to the relevant MS authorities and the Agency's Executive Director, as applicable.

During the reporting period, FRO has received five (5) complaints; four of them were declared inadmissible and one admissible. As to complaints declared inadmissible, FRO responds individually and provides, whenever possible, information on other available remedies in case complainants wish to address their complaints or concerns to other institutions or authorities, in accordance with the principle of good administration.

In relation to the pending admissible cases from 2017 and 2018, national procedures are still ongoing and FRO is requesting information on the status of the follow up/investigations by way of monthly reminders when necessary.

FRO complaints team has also received one (1) request regarding Access to Documents (PAD) under Regulation (EC) No 1049/2001 on access to public documents. The request covered all individual complaints submitted to FRO since September 2018 and FRO reports to the Executive Director and the Management Board on findings and follow-up in respect of the complaints declared admissible.

In the reporting period the FRO complaints team has been working on the draft of a guidance for the existing Rules on the complaints mechanism. The guidance is designed to provide more detailed information on the complaints mechanism procedure for individuals who wish to submit a complaint to FRO under Article 72 of the EBCG Regulation. It is further intended to offer practical assistance to the competent authorities to provide follow-up on complaints that have been forwarded to them and for the fundamental rights bodies in Member States, who were informed about

submitted complaints. FRO intends to share the draft of the guidance with the Consultative Forum and the Frontex Senior Management to consolidate a final version in the second half of 2019.

As mentioned in the previous reports, the FRO complaints team is permanently working on the dissemination of material and awareness raising on the complaints mechanism. The FRO is currently drafting a revised version of the booklet on the complaints mechanism, with a view to provide clear and simple information on the mechanism to the general public.

Furthermore, the complaints team keeps on working on a video about the complaints mechanism to be used in the operational areas and developing in cooperation with the ICT an online system for submission of complaints directly from mobile devices, as informed in previous reports.

Regarding the fully fledged operational activities of Frontex in Albania, the Status Agreement between the EU and the Republic of Albania defines that each party shall have a complaint mechanism to deal with allegations of a breach of fundamental rights committed by its staff in the exercise of their official functions in the course of the joint operation. The coexistence of the two mechanisms, the one of the Agency and the one of the Republic of Albania, will be discussed by the FRO in a planned visit to the national authorities competent for the handling of complaints in Albania.

Finally, in line with the Agency Regulation, Recital (50) and article 72(9), the FRO submitted the 2018 Annual Report on the Complaints Mechanism, as information to the Agency's Annual Report. The Report contains in particular the number of complaints the FRO has received, the types of fundamental rights violations involved, the operations concerned and the follow-up measures taken by the Agency and Member States.

6. RELATIONS WITH EXTERNAL ACTORS

On 08 February, FRO participated in the Annual strategic meeting with UNHCR Bureau Europe, Frontex premises.

On 20-22 February, FRO was invited for the conference celebrating the 20th Anniversary of the Greek Ombudsman, which was held in Athens.

On 13 March, FRO delivered a presentation during the visit of the Swedish Heads of Regional Border Policing Sections to Frontex.

On 2-3 April, FRO took part in the 12th European Forum on the rights of the child - "Where we are and where we want to go", organised by the European Commission in Brussels.

7. MISCELLANEOUS

Staffing:

Associate FRO: recruitment is still pending following further consultations with the Executive Director and MB Chair on the need to deputize FRO in times of absences.

CF Secretariat Assistant: recruitment procedure is ongoing and finalization is foreseen by end of June 2019.

Consultancies:

Child consultancy commissioned by FRO: recommendations were shared with the Agency's entities for their consideration and in view of the drafting of a revised Fundamental Rights Strategy.

Consultancy for the CF evaluation, commissioned to ICF: The overall aim of this assignment is to conduct an independent external evaluation on the results of the Frontex Consultative Forum by assessing the relevance, impact and effectiveness, efficiency and internal coherence of the Consultative Forum. The Final Evaluation Report should provide to Management Board and Executive Director as well as to the Forum's members for their consideration an in-depth analysis on the performance and achievements of the Forum and should set out clear and evidence informed findings and recommendations for further improvements.

Training consultant: The CF hired a consultant for the purpose of providing the CF with an independent expert assessment on the extent and further needs for fundamental rights mainstreaming in Frontex training courses and products.

Implementation of ETIAS

Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (ETIAS) entered into force on October 9, 2018. The ETIAS is expected to go live in 2021. As per Art.10 of this Regulation, the Fundamental Rights Office is expected to play a role in the establishment and the functioning of the ETIAS Fundamental Rights Guidance Board. In this context, FRO and its team:

- provide contributions to relevant documents in close cooperation with the ETIAS task force
- attended a meeting with the European Commission, RAU and the ETIAS Task Force on 2 April 2019;
- attended the Agency's brainstorming meeting on 14 May 2019.

Upcoming activities

- **3-4 June:** 4th joined meeting of the DG HOME expert group on children in migration and DG JUST expert group on the rights of the child, Brussels, Belgium;
- **4-5 June:** Operational Heads of Airports Conference, Gdynia, Poland;
- **25-26 June:** FReM III annual lessons learned meeting, Bratislava, Slovakia;
- **17-19 September:** FReM III 1st Training for Trainers of Monitors, Berlin, Germany;
- **20 September:** FReM III 2nd Project Steering Group meeting, Berlin, Germany.

