

# Joint Operations Frontex Evaluation Report JO Flexible Operational Activities 2019 Land

## FRO Observations

### Main findings

- No information regarding the implementation of Frontex complaints mechanism
- Lack of fundamental rights related information in order to ensure a proper assessment of compliance with fundamental rights related obligations
- No information as to how often referral procedures were activated by deployed officers related to potential victims of THB, children, persons in need of international protection and other persons in a vulnerable situation
- Introduction of good practice to incorporate fundamental rights aspects in briefing activities
- No information on gender aspects related to the operational activities
- No detailed statistical information (women/men/children)

### 1. Introduction

Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard mandates the Fundamental Rights Officer (FRO) to draw observations and to transmit these observations to the management board together with the executive director detailed evaluation reports.<sup>1</sup> For the purpose of enhancing fundamental rights compliance in future cycle of operations, FRO observations prevalently reflect requirements as set in the Regulation to ensure fundamental rights related safeguards and compliance in upcoming operational activities. Noteworthy, Regulation (EU) 2019/1896 foresees clear safeguards for the respect of fundamental rights in operational activities. As provided in Article 80 (1) “*The European Border and Coast Guard shall **guarantee the protection of fundamental rights** in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement.*”

### 2. Implementation of JO FOA 2019 Land

#### 2.1. Frontex complaints mechanism

Article 38 (3) lit. n) of Regulation (EU) 2019/1896 requires that the operational plan covers all aspects considered necessary for carrying out the joint operation, including the procedures setting out a

<sup>1</sup> Article 47 of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (L 295/48, 14.11.2019, p. 48).

mechanism to receive and transmit to the Agency a complaints against any person participating in an operational activity of the Agency, including border guards or other relevant staff of the host Member State and members of the teams, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency. The operational plan of JO FOA 2019 Land and corresponding Annex 2 further develop the officers' duty to inform about the complaints mechanism. It includes information on the complaint form, the privacy statement and relevant leaflets on the applicable procedures, to be given to any person who expresses a wish to report an alleged fundamental rights violation against the staff involved in an activity coordinated or organized by Frontex, as well as information on ensuring availability and using the hard copy of the complaint form in operational areas. However, **the evaluation report does not make any reference to the implementation of Frontex complaints mechanism** which would allow FRO to assess its effectiveness and address potential gaps.

## 2.2. Fundamental rights related information

FRO regrets that the operational plan JO FOA 2019 Land did not contain specific fundamental rights objectives/references and indicators. According to the evaluation report the operational aim was implemented in full compliance with the relevant EU and international law, guaranteeing the respect for fundamental rights in particular the access to international protection and the compliance with the principle of non-refoulement and taking into account the recommendations of the Frontex Consultative Forum and the reports and observations of the Fundamental Rights Officer.

However, the report does not refer to any fundamental rights related information and the main recommendations of FRO of the FER 2018 and the 2019 operational plan were not implemented. FRO considers it a basic requirement in order to start developing a comprehensive and coherent system that would allow for evaluating the fundamental rights impact of operations, as foreseen in Article 47 of the Regulation (EU) 2019/1896 and to measure to what extent the Agency's obligation, as set by Article 80(1) to "*guarantee the protection of fundamental rights in the performance of its tasks*", has been met in operational practice.

Given the lack of fundamental rights objectives and indicators, as well as any fundamental rights related information, the **evaluation report does not allow the FRO to assess the fundamental rights impact of the JO FOA 2019 Land**. This is exacerbated by the fact that the information available to the FRO is often limited to external sources. In order to ensure a measurement, proper modalities of data collection and fundamental rights related information will have to be discussed with respective Member States as soon as possible, especially in the light of article 38 (3) lit. i), where Regulation (EU) 2019/1896 indicates that an operational plan should cover a reporting and evaluation scheme containing benchmarks for the evaluation report with regard to the protection of fundamental rights.

## 2.3. Referral procedure

Article 38 (3) lit. m) of Regulation (EU) 2019/1896 requires that the operational plan covers procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance. FRO considers that statistical data on the number and type of vulnerability are extremely important information to be collected during joint operations. This information could be used for analysis upon completion of an operation measuring the effectiveness of the mechanism. Also during the Operation FRO could decide based on the statistical information to monitor the situation more closely based on the statistical information. This would

allow to evaluate impact on fundamental rights of the operation based on comprehensive data collection and not limited only to external and scattered information.

The evaluation report does not provide information on the number and type of vulnerability detected and whether corresponding referral procedures were activated by EBCGT deployed officers related to potential victims of THB, children, persons in need of international protection and other persons in a vulnerable situation. FRO considers that detailed information on national referral mechanisms should be provided during the national operational briefings conducted prior to operational activities, and that this detailed information should be part of the operational package to familiarise deployed officers with referral procedures in operational areas. And needs to be collected during the Operation to update this detailed information for the next operational cycle.

#### 2.4. Fundamental rights trainings and briefings

The evaluation report reflects on the briefings conducted during operational activities. FRO welcomes the specific briefing on fundamental rights for debriefing experts and interpreters. However further reflection on the practical application would allow to assess whether the topics related to referral procedures were sufficient, clear, and whether they cover all aspects of operational activities in the view of deployed officers; respective feedback would be very useful.

#### 2.5. Sex-disaggregated data

FRO notes that during JO FOA 2019 Land, 1208 TMs were deployed, 936 had the profile of BSO, 91 dog handlers, 4 debriefing experts, 9 screening experts, 60 interpreters, 16 coordinators deployed within ICC and 50 FSOs and FSO-LD. The sex disaggregated data is not included in the evaluation report. Given very low numbers of women in operations coordinated by Frontex as such, FRO recommends to increase deployments of female officers, especially in the profiles with direct migrant interaction, like debriefing experts, screening experts and interpreters. FRO also encourages the respective entities to reflect **gender composition of the members of the teams** in the evaluation reports, in order to address gender specific concerns as provided in the Handbook to the Operational Plan, Air Border Joint Operations.

With regard to composition of migratory flows, FRO also regrets that the evaluation report does not provide age and sex-disaggregated data despite the fact that in 2018 Frontex began to collect detailed data on the gender and the age of irregular migrants.<sup>2</sup> FRO recommends to reflect in the evaluation reports on the numbers of men, women and children, including unaccompanied minors crossing the EU borders.

#### 2.6. Serious incident reporting

Point 10.4 of the JO FOA 2019 Land operational plan refers to the obligation to report within the serious incident reporting (SIR) procedure. According to the point 4.3.2.2 of the Evaluation Report 37 serious incidents were reported to FSC in the course of the operational activities. As mentioned in the operational plan, these SIRs were reported in proper time and according to the established SIR procedure and no major issues were identified on the implementation of SIR templates and reporting procedures.

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<sup>2</sup> Frontex Risk Analysis Report for 2019,  
[https://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Risk\\_Analysis/Risk\\_Analysis\\_for\\_2019.pdf](https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2019.pdf).

However, there is no more information provided regarding the type of SIR as well as additional details of the occurred serious incidents. In this context **FRO considers more details on the serious incident reports to be provided in Evaluation Report in order to allow FRO to assess the fundamental rights impact of the operations.**

With reference to the above, FRO considers of outmost importance to make a reference to the ongoing 8 SIR procedures coordinated by FRO, which are based on received testimonies in particular related to numerous push-backs observed from Croatia to Bosnia and Herzegovina, and Serbia, from Greece to Turkey, from Bulgaria to Greece, all reported in the course of 2019 (FOA 2019 Land on border surveillance SE). FRO continues to follow up on the above mentioned cases in a direct contact with national authorities.

## 2.7. Other FRO Observations

### a. FRO recommendations related to Evros region:

- With regard to allegations of pushbacks in Evros region to follow up on reported incidents and ongoing investigations; FRO considers that particular attention should be paid to FX operational activities in the areas where fundamental rights violations are reported and to consider suspension or termination of the activities in case violations of fundamental rights or international protection obligations are of a serious nature or are likely to persist, as set by Article 46 of Regulation (EU) 2019/1896;
  - To consider EBCGT members being deployed and present in all FX operational areas which would allow to comprehensively support host authorities in border management related activities in full compliance with fundamental rights, as set by Article 80 of Regulation (EU) 2019/1896;
  - To improve SIR procedure in order to ensure its effectiveness and awareness among EBCGT members, as well as host MS authorities;
  - To ensure effective implementation of the complaints mechanism with regard to pro-active provision and visibility of information as well as access to the complaint materials, distribution and availability of complaint forms, etc.
  - To ensure active cooperation between all parties involved in border and migration management.
- b. In the reported period, FRO received and reported about a number of notifications of alleged fundamental rights violations taking place in the operational area. **FRO recommends a need to effectively address fundamental rights issues in the upcoming operational plan, in order to prevent potential fundamental rights violations and guarantee full co-operation with the fundamental rights monitors on the ground.**
- c. The evaluation report uses wording of “illegal migrants” and “illegal migration”. **FRO recommends to use correct terminology in Frontex documents and activities, namely to use “irregular migrant” instead of “illegal migrant”, and “irregular migration” instead of “illegal migration”.** FRO considers that due to the association with criminality, the term “illegal migrant” should be avoided, as it has negative connotations and most of irregular migrants are not criminals. Finally, the expression “irregular migrant” is officially used in several EU policy documents, including the European Agenda on Migration and the European Agenda on Security.
- d. The evaluation mentions that no agreement with the Hellenic authorities could be reached regarding the UNHCR participation in operational briefings in Greece. Effective co-operation between national border authorities and UNHCR is highly recommended for the purposes of well-functioning border management, including fundamental rights safeguards, as well as for proper

implementation of the European Agenda on Migration. **FRO recommends the Hellenic authorities to be encouraged to co-operate with UNHCR and other relevant international organizations working in migration and border management.**

- e. The evaluation report mentions that the monthly meetings of the Greek and Turkish contact points for the bilateral operational cooperation in the land borders are on the standstill since March 2019, with all meetings being cancelled. For a well-functioning border management, including fundamental rights safeguards, effective cooperation with the border authorities of neighbouring countries is recommended. **FRO recommends that Hellenic and Turkish authorities are both encouraged to re-establish proper channels of communication and co-operation on migration and border management issues.**

### 3. Observations during the pilot project on fundamental rights monitors (FRoMs)

During the pilot project on fundamental rights monitors of Frontex and FRA, monitoring visits were made to the Bulgarian - Turkish border and the Greek - Albanian border. During those visits good cooperation and coordination between Frontex coordinating officer and the FRoMs were considered very important. The facilitation by the coordinating officers enabled FRoMs to exercise their monitoring role in a much more efficient way. Therefore, the upcoming Operational Plan should clearly mention the role of the FRoMs in the operational activities and create a basis for the facilitation of the monitoring on fundamental rights.

### 4. FRO recommendations

- To incorporate in the evaluation report respective feedback from officers related to the complaints mechanism;
- To ensure that detailed information on national referral mechanisms is provided during the national operational briefings conducted prior to operational activities;
- To find suitable means to collect and report on fundamental rights related data in order to reflect in the evaluation reports information based on indicators, including on the number of referral procedures activated by deployed officers related to victims of THB, children, persons in need of international protection and other persons in a vulnerable situation;
- To include in the evaluation report information on the provision of fundamental rights trainings and briefings to allow its adjustment to the real operational needs;
- To support gender mainstreaming of deployment policies to ensure a special attention for gender specific concerns and cultural differences in the Agency's operational activities;
- To include comprehensive information about serious incidents reports (SIRs) received in the course of the operation;

ASSOCIATE FUNDAMENTAL RIGHTS OFFICER  
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