

FACT SHEET - 2020 Frontex Discharge

In recent months, Frontex has taken various actions to improve its activities and standards to meet stakeholders' expectations for the European Union's largest operational Agency. These actions aim to enhance the Agency as a workplace and an organisation with the central purpose of supporting Member States in securing the EU's common external borders. They range from improved budgetary and financial management, to greater respect for fundamental rights throughout all of the Agency's activities, to enhanced transparency to allow all stakeholders and EU citizens a better view and understanding of the essential activities of Frontex.

This document presents the main steps taken recently by Frontex in these areas. In particular, it addresses the issues raised in the European Parliament CONT Committee's draft second report on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2020. The Agency aims at regularly and proactively informing the Discharge Authority on actions taken in response to its observations and recommendations.

Budgetary and financial management

The draft report points out the Court of Auditors' observation on the carry-over of a provisional budgetary commitment for the preparation of deployments in 2021 for which a legal commitment was lacking.

The Agency acknowledges the mistake and has taken several measures to avoid similar situations. Staff received additional training on financial management and guidance on the principle of annuality, with a focus on carry-over rules. The overall level of scrutiny has been increased through additional verification of carry-overs by the Agency's finance team. Frontex continues to improve the mechanisms of monitoring costs and evaluating the results of its operational activities. An Internal Audit Capability has been established in the Agency and very soon the Agency will have fully-fledged internal audit capabilities in place. This is a step towards better governance, compliance and accountability in Frontex.

Fundamental rights

Frontex continues establishing a solid fundamental rights framework with the Fundamental rights strategy and its Action Plan serving as the foundation. The Frontex Fundamental Rights Officer (FRO) is included in decision-making processes as a member of the Agency's management and is consulted prior to every decision to launch a joint operation. FRO Office has access to all necessary information available at the Agency. Fundamental Rights Monitors are granted access to the operational areas in agreement with the host Member States and cooperate closely with operational staff of the Agency. The Agency is building a network of fundamental rights focal points in all its entities to develop fundamental rights expertise in all areas of activity, and operational staff receive additional fundamental rights training.

Recruitment of Fundamental Rights Monitors

In 2022, the recruitment of Fundamental Rights Monitors gained the necessary momentum. By 1 September, 34 Monitors were in service, and an additional 12 Monitors will join Frontex on 16 October. 6 new posts for Monitors were added to strengthen the activities of the Fundamental Rights Officer, bringing their total number to 46 (5 AD7, 26 AD5 and 15 AST4 posts) by mid-October.

Revised standard operating procedure on the SIR mechanism

In April 2021, an amended standard operating procedure on the Serious Incident Report (SIR) mechanism was signed and served to define the role of the Fundamental Rights Officer in this process. The Fundamental Rights Officer receives all Serious Incident Reports and decides whether they carry fundamental rights implications and thus should be investigated further by his office. The SIR mechanism is an integral part of all operational plans which are binding and are signed by the host and participating Member States. In this way, the Member States commit to respecting the deadlines included in the SIR mechanism for providing information to the Fundamental Rights Officer when a SIR is being investigated.

With the aim of further improving the effectiveness of the SIR mechanism, it is currently being revised. This is expected to be completed in one month's time.

Procedure for the implementation of Article 46

Since January 2022, Frontex has a Standard Operating Procedure for the mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities. The procedure supports the Executive Director in the exercise of powers provided for in Article 46 of the EBCG Regulation, setting out a mechanism to exercise those powers and the roles of different actors involved. It was drafted taking into consideration comments and observations of the Member States and Schengen Associated Countries, Frontex Fundamental Rights Officer, and the Frontex Consultative Forum on Fundamental Rights.

Implementation of FSWG recommendations

Out of the 29 recommendations from the FSWG report concerning compliance with fundamental rights, Frontex has fully implemented 15. All of the 14 remaining recommendations should be implemented by the end of the third quarter of 2022.

Following FSWG recommendation, the Frontex Management Board shall ensure that recommendations and opinions of the Fundamental Rights Officer and the Consultative Forum are included in the Agency's decision-making and are properly followed-up upon. To strengthen the cooperation and communication between the Agency's Executive Director, Management Board, Consultative Forum and Fundamental Rights Officer, on 20 July 2022 Frontex Management Board adopted a set of rules 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. The same rules will ensure that the recommendations of the Fundamental Rights Officer and the Consultative Forum presented to the Management Board are shared with the European Parliament.

Frontex return-activities in Hungary

The draft EP report mentions the Agency's decision not to suspend its return-related activities in Hungary. The Agency attaches the highest importance to the decision of the CJEU, which has identified serious shortcomings in the Hungarian asylum system. Frontex is aware of the potential risks. Nevertheless, the Agency also has the responsibility to fulfil its mandate to support the Member States.

For each request for support, Hungarian authorities confirm in writing to Frontex that each person concerned has been properly informed about the right to lodge an application for international protection and offered the genuine possibility to submit such an application. For persons who have applied for international protection, Hungary also confirms that their application was examined on its merits and rejected based on a formal and reasoned decision in full compliance with the EU asylum legislation, and that there is no pending process against any rejection or inadmissibility. Cases of possible rejection or inadmissibility which have been deemed incompatible with EU law by the CJEU are by default excluded from Frontex support.

The Agency monitors the correct implementation of return procedures by the Hungarian authorities. In fact, monitoring of returns from Hungary by independent monitors, as foreseen by the EU legal framework, and by Frontex Fundamental Rights Monitors has been strengthened to further ensure the respect of fundamental rights in returns carried out with Frontex assistance.

All these measures have been adopted by the Agency in line with the Fundamental Rights Officer's recommendations and are aimed at mitigating the risks related to supporting returns from Hungary. They

have proven to be effective: since 2020 there have been no operational reports (either by staff deployed in returns from Hungary or by the independent monitors), no complaints, no serious incident reports, and no communication of any other type to the Agency on alleged violations of fundamental rights in cases of Frontex assisted returns from Hungary. There is no evidence of violations of fundamental rights in case of returns carried out with Frontex assistance.

The Agency continues to be vigilant and will monitor the situation and the correct application of the agreed procedures. Frontex stands ready to intervene and take adequate measures in case of any reported violations.

Processing of personal data

In July 2022, media outlets published reports on alleged mass surveillance at the EU's external borders, a cooperation project with Europol (PeDRA), and the observations of the European Data Protection Supervisor (EDPS) on Frontex data processing rules.

PeDRA (Processing of Personal Data for Risk Analysis) was a project implemented between 2015 and 2017 to fight against cross-border crime. It allowed the Agency to develop capabilities required for processing personal data in accordance with Article 11c of Regulation 1168/2011. Contrary to media reports, this project was in no way secret; in fact, the Agency has often been communicating on it in the past, mentioning it in its external communication as one of the measures undertaken to combat criminal smuggling networks. Frontex has been processing only operational personal data of suspects of cross-border crime and terrorism. The Agency has not started the processing of personal data of victims or witnesses.

Immediately after receiving the EDPS opinions on Frontex data processing rules (Management Board decisions 56/2021, 68/2021 and 69/2021), the Agency's Data Protection Officer prepared an Action Plan to implement the EDPS recommendations. The Management Board decisions are now being redrafted, with the Agency's Data Protection Officer, to ensure full compliance with the EU data protection rules. All relevant institutional stakeholders will be consulted and the findings and observations of EDPS will be diligently followed during this process.

Organisational culture

Staff well-being and reassurance

The executive managers work together with the staff committees to identify and address staff concerns. To further foster well-being of staff and promote cultural change within the Agency, Frontex has recently re-assessed its HR Strategy for the years up to 2024. One of the strategic pillars of the new HR strategy is 'Fostering an Engaging, Safe and Ethical Workplace'. Under this pillar, actions will focus on the following four areas, building on the Agency's and EU values:

- Health and Safety Strategy
- Diversity and Inclusion
- Shared Agency Culture
- Successful Social Dialogue

Specific programmes will be developed in the above areas to foster staff well-being, while enabling a culture of trust, accountability, empowerment, inclusion, transparency and collaboration. As a start, a diversity officer was appointed in the Agency in June to promote diversity and inclusion and to support outreach to minority groups.

Changing the management culture

After the OLAF report, it became obvious that the management culture in Frontex needs to be changed. During the transition period, before appointment of the new Executive Director, the executive management team is working towards breaking the culture of silence. Managers of all levels and staff are encouraged to proactively present new ideas, report issues and engage together in solving issues.

Decision-making is being decentralised and delegated, to empower managers at all levels and to distribute the personal responsibility and ownership of decisions.

Harassment cases

Frontex has in place several anti-harassment measures and policies. These include codes of conduct (general and operational activity related), a policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, and its implementing rules: the Manual of Procedures for Frontex Confidential Counsellors. In addition, dedicated awareness raising sessions are organised for managers and staff and guidance for staff on reporting psychological and sexual harassment are made available. The Agency is developing an anti-harassment policy e-learning course that will be mandatory for all staff.

Depending on the decision of the complainant, a case can be dealt with in two different and independent procedures: informal and formal procedure. Informal procedures are carried out by confidential counsellors and aim at finding an amicable solution to the case, acceptable for both sides. Cases under the informal procedure are reported by the confidential counsellors using mainly statistical information. The formal procedure is driven and carried out by the Inspection and Control Office of the Agency, following the regular procedure for administrative inquiries and/or disciplinary procedures. Out of the 17 cases reported in 2020, 15 were dealt with in an informal procedure.

One of the cases from 2020 which resulted in a tragic death of a staff member was recently re-opened to widen the scope. The case is now investigated professionally by external experts.

Cultural mediators

In April 2022, Frontex received a petition from a group of interpreters and cultural mediators, drawing attention to “the unacceptable working conditions and salaries offered by to cultural mediators/interpreters, based on the Tender won by SeproTec/CIES”. This was reported by media claiming that Frontex is “exploiting its own staff” and breaching European standards on pay and working conditions by using a third-party contractor that offers low wages. The per-hour wage cited in the media reports was based on an assumption that people work 24 hours a day 7 days a week, which of course is not the case.

The company SeproTec/CIES won a tender for providing interpretation and cultural mediation services to Frontex. It is the contractor who is responsible for the provision and the management of the services required by Frontex, including payment to the interpreters and cultural mediators in compliance with applicable social and labour law. Frontex was concerned about the petition, as the Agency does not accept unethical or illegal working conditions. Frontex assessed all arguments put forward in the petition with due diligence, and is convinced that the applicable rules, the legal framework and the principles of public procurement were followed and fully respected during the relevant tender procedure. Nevertheless, the Agency wrote a letter to the contractor, expressing concern and reminding the company of the contractual obligations. The signatories of the petition were also contacted to clarify the roles and obligations of the contractor.

Transparency

The draft report calls on the Agency to ensure a more proactive approach to transparency, including publishing documents needed to understand the respective roles and responsibilities of the actors involved in its operations, as requested by the European Ombudsman.

Transparency and prevention of conflict of interest are key priorities for Frontex. The Agency set up a Transparency Register which provides information on meetings and contacts between third-party stakeholders and senior managers in matters concerning procurement and tenders for services and equipment. We also set up a Public Register of Documents where the public can easily search and access a wide range of documents. The Agency has in a place a Transparency Office which deals with requests from the public for access to documents. The staff of the Transparency Office has been recently increased to improve its functioning.

In some areas, transparency must be balanced with the task of ensuring well-functioning and secure external borders of the EU. The Agency's operational plans cannot be released in full as this would jeopardise our operational objectives and would benefit criminal networks. Frontex is, however, working on an operational brief informing the public about its operational activities in a comprehensive way, while respecting the confidentiality of some of the operational data.

Oversight over the Agency's activities is ensured by the Frontex Management Board, which has increased the number of its meetings and subsidiary bodies supporting the strategic decision-making in areas such as budgetary and financial planning and monitoring. An expert nominated by the LIBE Committee is invited to participate in the meetings of the Management Board and receives the documents for those meetings. The rules adopted on 20 July 2022 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 also aim at increasing transparency of the work of the Agency. The recommendations presented by the Fundamental Rights Officer and the Consultative Forum to the Management Board will be transmitted to the European Parliament. Such recommendations will also be published on the Agency's website, unless their publication would result in the disclosure of operational information that would jeopardise the attainment of operational objectives.

OLAF report

Members of the European Parliament and the executive management of the Agency have been granted access to the OLAF report by the Frontex Management Board. The findings of the report have been discussed by the LIBE and CONT Committee with the Chair of the Management Board, the Deputy Director General of DG HOME and the Executive Director of Frontex *ad interim* on 12 September 2022. The Agency reiterated in these discussions that it stands ready to implement the recommendations received from the European Parliament and to report back regularly on the progress. Furthermore, the Agency continues to closely cooperate with OLAF in accordance with the legislation in place.

Action plan on the remedial actions

Under the lead of the Executive Director *ad interim*, an action plan on remedial actions is being prepared and will be shared with the Members of the European Parliament when finalised.