

# The Fundamental Rights Officer **ANNUAL REPORT 2021**



# FRONTEX



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COAST GUARD AGENCY

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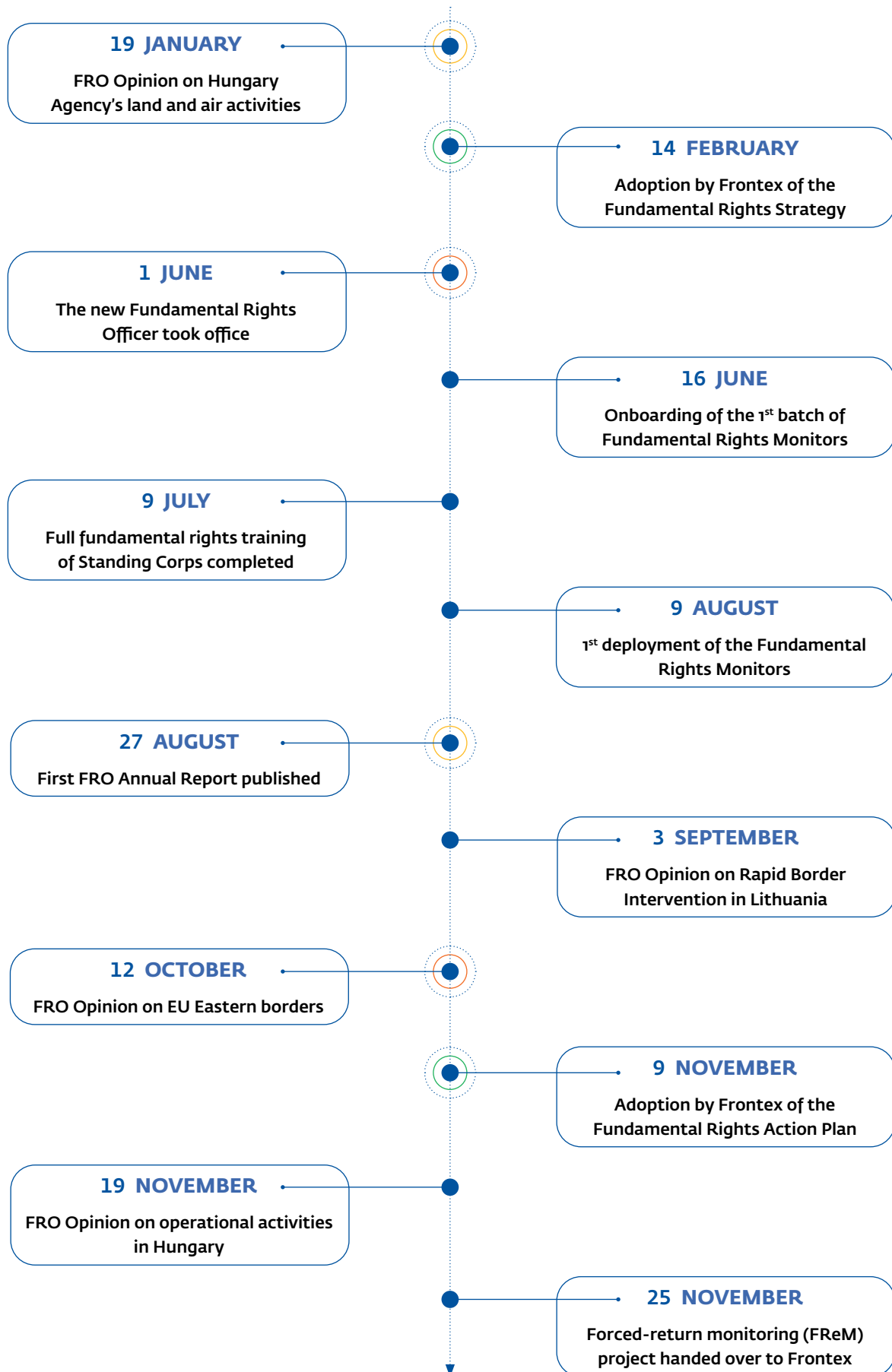
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## A year in review



## List of acronyms

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<b>CF</b>	Consultative Forum
<b>CJEU</b>	Court of Justice of the European Union
<b>CRO</b>	Collecting Return Operation
<b>ED</b>	Executive Director
<b>ETIAS</b>	European Travel Information and Authorisation System
<b>EU</b>	European Union
<b>EUAA</b>	European Union Asylum Agency
<b>FRaLO</b>	Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea
<b>FRO</b>	Fundamental Rights Officer
<b>FROM</b>	Fundamental Rights Monitor
<b>FSWG</b>	Frontex Scrutiny Working Group
<b>FSC</b>	Frontex Situation Centre
<b>JO</b>	Joint Operation
<b>JRO</b>	Joint Return Operation
<b>MAS</b>	Multipurpose Aerial Surveillance
<b>MB</b>	Management Board
<b>NRO</b>	National Return Operation
<b>OPLAN</b>	Operational Plan
<b>RBI</b>	Rapid Border Intervention
<b>SIR</b>	Serious Incident Report
<b>SOP</b>	Standard Operating Procedure
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WA</b>	Working Arrangement

## Executive summary

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The Fundamental Rights Officer's Annual Report provides an overview of the activities carried out by the Fundamental Rights Office – including the Fundamental Rights Monitors – in 2021. It outlines the main observations and recommendations provided to the Agency, the Executive Director, and the Management Board throughout the year. The recommendations are increasingly informed by the various tools, including monitoring in the field, complaints, and serious incident reporting. This Annual Report also provides an update on the implementation of the Fundamental Rights Strategy and its Action Plan both adopted in 2021.

The Fundamental Rights Officer is mandated by the Regulation (EU) 2019/1896 to perform a range of tasks, including monitoring the Agency's compliance with fundamental rights and reporting possible violations, promoting the inclusion of fundamental rights in the activi-

ties of the Agency, and providing advice and recommendations. Additionally, the Regulation (EU) 2019/1896 requires that the Fundamental Rights Officer publishes annual reports on his or her activities and on 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, as per Article 109(4).

The Annual Report is outlined in five chapters. The first chapter gives an overview of the fundamental rights monitoring conducted within the Agency's operational activities in the reporting period, as well as the observed issues and challenges encountered by the team of the Fundamental Rights Office, including the newly recruited Fundamental Rights Monitors. The second chapter focuses on the reporting and accountability mechanisms, and the fundamental rights safeguards guid-

ing the work of the Fundamental Rights Office. It outlines the most-recent developments on the improvement of such instruments. The third chapter provides a brief overview of capacity building activities and new technologies. The fourth chapter gives an account of the internal process strengthened during the year and the cooperation of the Fundamental Rights Office with internal units for the purpose of enhancing the fundamental rights compliance of the Agency, as well as an update on the work in collaboration with the Consultative Forum. The fifth and last chapter provides an overview of the work of the Fundamental Rights Office in 2021, in line with the Fundamental Rights Action Plan, following up on the recommendations from different entities and advisory working groups. Finally, the conclusive chapter includes the Fundamental Rights Officer's planned actions and priorities for 2022.

## Situation at the European Union borders and beyond

The year 2021 was marked by increased pressure on European Union's (EU) asylum and reception systems, following the previous year's overall decrease due to Covid-restrictions. New geopolitical landscapes impacted migration and border security, raising new fundamental rights concerns and challenges.

Since early January 2021, the EU eastern borders of Lithuania, Poland and Latvia with Belarus experienced an intense influx of people (+1,200% compared to 2020) which reached a peak in mid-2021. Reacting to the unprecedented flow of migrants and refugees, a large portion of whom were undocumented, the three countries introduced states of emergency in parts of their territory and amended their national legislation related to migration. Practices that according to the Fundamental Rights Officer are contrary to international and EU law, including unlawful collective

expulsions and prevention of entry without providing an effective access to asylum, were introduced with these amendments.

At the EU northern border between France and the United Kingdom, there was an increase in border crossings across the Channel which led to a rise in incidents at sea. In 2021, the Agency launched its first operation in the Channel supporting Member States in preventing cross-border crimes and irregular migration.

As for the EU Southern borders, the arrivals in Greece throughout the year decreased by 41% compared to 2020.<sup>1</sup> In particular, the number of sea arrivals in 2021, through the Aegean Sea islands as well as through the land borders, mainly the Greek–Turkish border in Evros region, continued to drop in 2021, reaching their lowest level since 2014 and 2017 respectively.<sup>2</sup> The number of fatalities and missing persons also decreased

in 2021.<sup>3</sup> Cyprus experienced an important increase of arrivals, coming mainly from Turkey and through the Northern part of the island, which is not under the control of the Republic of Cyprus, crossing the so-called 'ceasefire zone'. According to Frontex data, a total of 12 359 migrants were registered in Cyprus in 2021 (+163% compared to 2020, and +60% to 2019).<sup>4</sup> In Bulgaria, the number of arrivals increased significantly. Both the number of apprehensions of irregular migrants and the number of registered asylum seekers noted over 200% increase in comparison with 2020.<sup>5</sup> Along the Western Balkans, the number of irregular crossings raised by approximately 125% compared to the previous year.<sup>6</sup> However, the trends varied between different Member States and third countries. In Albania, the number of arrivals dropped<sup>7</sup> with most of migrants arriving from Greece and leaving the country within a few days. Whereas a slight increase in several reg-

<sup>1</sup> Ministry of Migration and Asylum, December 2021, International Protection, Reports, Statistics, accessible at <https://migration.gov.gr/statistika>

<sup>2</sup> UNCHR, Greece, Mediterranean Situation, Operational Data Portal, available in: <https://data2.unhcr.org/en/situations/mediterranean/location/5179> ; Frontex, news release, EU external borders in 2021: Arrivals above pre-pandemic levels, available in: <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>

<sup>3</sup> UNCHR, Greece, Mediterranean Situation, Operational Data Portal, accessible at <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

<sup>4</sup> See more information at <https://frontex.europa.eu/media-centre/news/news-release/frontex-executive-director-visits-cyprus-MIHw8R>.

<sup>5</sup> See more information at [https://asylumineurope.org/wp-content/uploads/2022/02/AIDA-BG\\_2021update.pdf](https://asylumineurope.org/wp-content/uploads/2022/02/AIDA-BG_2021update.pdf)

<sup>6</sup> See the preliminary figures published by Frontex accessible at <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN> and <https://frontex.europa.eu/we-know/migratory-routes/western-balkan-route/>

<sup>7</sup> By 18 % from 11,970 in 2020 to 10,102 in 2021 (<https://www.unhcr.org/publications/operations/623469b239/bi-annual-fact-sheet-2022-02-albania.html?query=fact%20sheet%20albania> and <https://www.unhcr.org/publications/operations/60d0954439/bi-annual-fact-sheet-2021-02-albania.html?query=fact%20sheet%20albania>



istered arrivals and transits was observed both in Serbia and Croatia.<sup>8</sup> In Bulgaria, the number of arrivals at the land border increased significantly. From a fundamental rights perspective, the main concerns throughout the region are related to alleged cases of so-called pushbacks (collective expulsions) and ill-treatment of migrants<sup>9</sup> as well as lack of effective access to the asylum procedure.<sup>10</sup>

In 2021, the Central Mediterranean continued to be an area of concern, being the most-used migratory route to Europe during the year and accounting for one-third of all reported irregular border-crossings.<sup>11</sup> Arrivals to Italy reached

the highest figures since 2017.<sup>12</sup> The route also recorded the highest number of fatalities among migrants attempting to cross into Europe.<sup>13</sup> This is despite the fact that the Central Mediterranean route is also where the majority of civil society vessels are deployed with a humanitarian mandate (including search and rescue of migrants in distress at sea) operate. In the course of 2021, various organisations also intensified their calls to end the EU and Italy's cooperation with Libya, stating that it leads to thousands of irregular migrants being intercepted at sea by Libyan authorities and disembarked in Libya placing them at risk of serious human rights violations.<sup>14</sup>

At the EU Western borders, Spain continued facing high migratory pressure throughout the year, with the number of arrivals remaining stable compared to the previous year<sup>15</sup>. The main migratory paths used are the so-called Western Mediterranean route (both via the Mediterranean Sea to mainland Spain, and by land to the Spanish enclaves of Ceuta and Melilla in Northern Africa) and the Western African route (to the Canary Islands).<sup>16</sup> Estimations on the number of migrants dead or missing while trying to reach Spain irregularly has increased significantly.<sup>17</sup>

8 See more information at [https://migration.iom.int/sites/default/files/public/reports/Q4%202021%20Narrative%20Overview\\_o.pdf](https://migration.iom.int/sites/default/files/public/reports/Q4%202021%20Narrative%20Overview_o.pdf)

9 See for example a general statement by the UNHCR <https://www.unhcr.org/news/briefing/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html> and the data collected by this UN Agency in Serbia <https://data2.unhcr.org/en/documents/details/90372>, as well as country reports prepared for the Asylum Information Database, for instance: [https://asylumineurope.org/wp-content/uploads/2022/02/AIDA-BG\\_2021update.pdf](https://asylumineurope.org/wp-content/uploads/2022/02/AIDA-BG_2021update.pdf) and

10 See the UNHCR Bi-annual fact sheet 2022 02 Albania at: <https://www.unhcr.org/publications/operations/623469b239/bi-annual-fact-sheet-2022-02-albania.html?query=-fact%20sheet%20albania>

11 Like in previous years, the main nationality of those migrants was Tunisian (followed this year by Egyptian and Bangladeshi).

12 See the preliminary figures published by Frontex at <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>; the Italian Ministry of Interior at [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto\\_statistico\\_giornaliero\\_31-12-2021.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2021.pdf); and UNHCR, Italy Sea Arrivals Dashboard December 2021, at <https://data2.unhcr.org/en/documents/details/90906>.

13 See data published by IOM, accessible at [missingmigrants.iom.int](https://missingmigrants.iom.int).

14 On this matter, see for example: Report of the Independent Fact-Finding Mission on Libya – 1 October 2021, accessible at <https://www.ohchr.org/sites/default/files/2021-11/A-HRC-48-83-AEV-EN.docx>; [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918003/Libya\\_-\\_Security\\_humanitarian\\_situation\\_-\\_CPIN\\_-\\_v4.0\\_-\\_September\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918003/Libya_-_Security_humanitarian_situation_-_CPIN_-_v4.0_-_September_2020.pdf); <https://reports.unocha.org/en/country/libya>; [https://www.fidh.org/IMG/pdf/no\\_way\\_out\\_migrants\\_and\\_refugees\\_trapped\\_in\\_libya\\_face\\_crimes\\_against\\_humanity\\_en.pdf](https://www.fidh.org/IMG/pdf/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en.pdf); <https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protection/h680a1abcd>; <https://www.humanitarianresponse.info/en/operations/libya/document/ocha-libya-l-humanitarian-bulletin-december-2021-%D8%A7%D9%84%D9%86%D8%B4%D8%B1%D8%A9-%D8%A7%D9%84%D8%A5%D9%86%D8%B3%D8%A7%D9%86%D9%8A%D8%A9-%D9%84%D8%B4%D9%87%D8%B1>; <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf> and also the Report on means to address the human rights impact of pushbacks of migrants on land and at sea of the Special Rapporteur on the human rights of migrants, accessible at [G210633.pdf \(un.org\)](https://www.ohchr.org/sites/default/files/2021-11/G210633.pdf).

15 See the preliminary figures published by Frontex at <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-2021-arrivals-above-pre-pandemic-levels-CxVMNN>; the Spanish Ministry of Interior at [http://www.interior.gob.es/documents/10180/12745481/24\\_informe\\_quincenal\\_acumulado\\_01-01\\_al\\_31-12-2021.pdf/70629c47-8b67-4e03-gfe8-9e4067044c16](http://www.interior.gob.es/documents/10180/12745481/24_informe_quincenal_acumulado_01-01_al_31-12-2021.pdf/70629c47-8b67-4e03-gfe8-9e4067044c16); and UNHCR at <https://data2.unhcr.org>.


16 Like in 2020, the majority of the migrants were Algerian nationals (followed by Moroccans) in the Western Mediterranean route, and of Moroccan nationality (followed by various Western African nations) in the Western African route. See further background information on migratory routes and the EU migration policy at [www.consilium.europa.eu/en/policies/eu-migration-policy](https://www.consilium.europa.eu/en/policies/eu-migration-policy).


17 See data published by IOM at [missingmigrants.iom.int](https://missingmigrants.iom.int) and UNHCR at <https://data2.unhcr.org>.





# Fundamental rights situation in European countries as assessed by the Fundamental Rights Officer within integrated border management<sup>18</sup>


## LEGEND


 No presence or lower presence of the Agency's activities

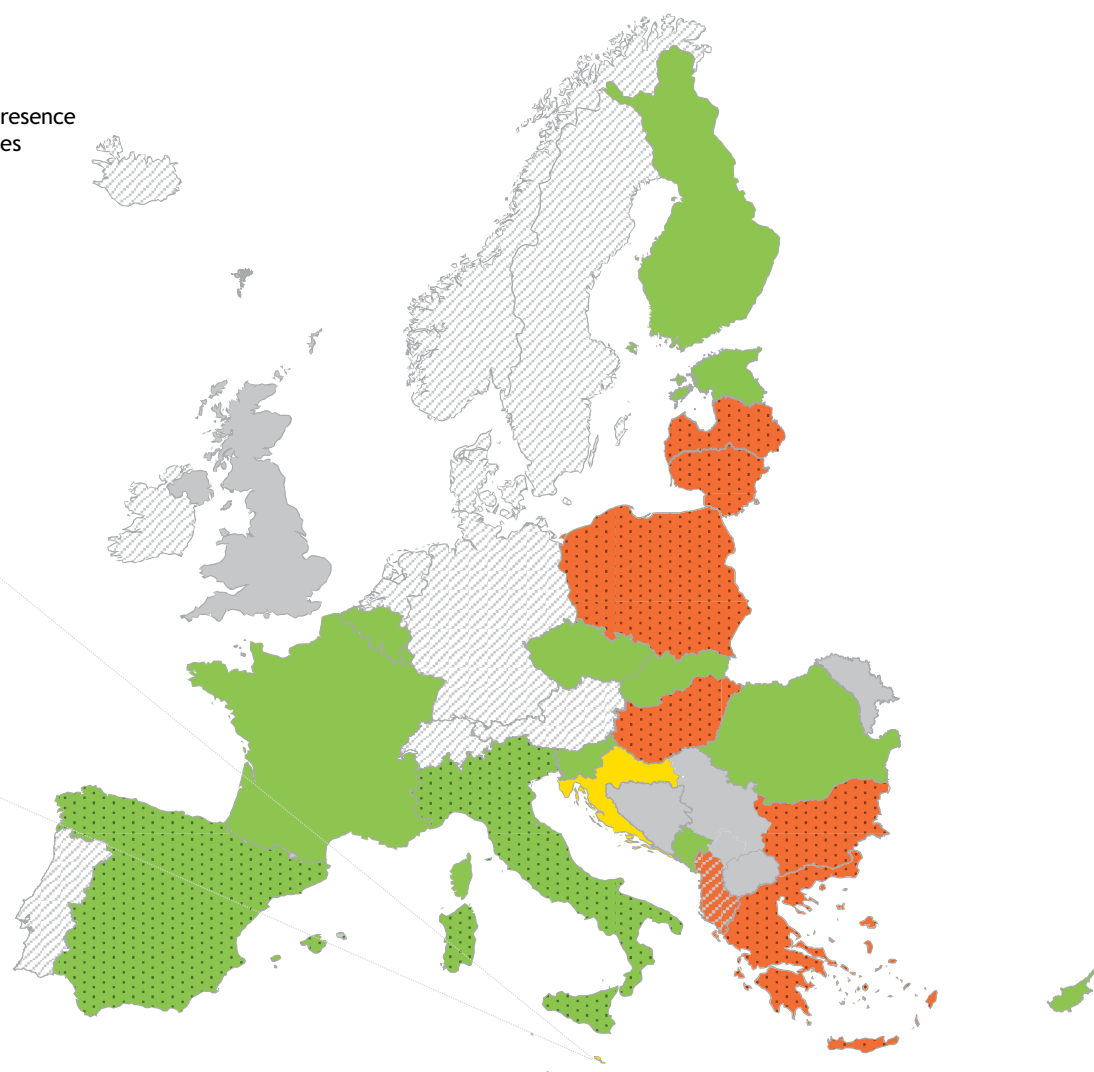
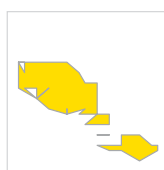
 FROM monitoring conducted

 Minor fundamental rights concerns

 Moderate fundamental rights concerns

 Serious fundamental rights concerns

 Non-EU countries (no Agency activity)



<sup>18</sup> The chart provides an overview of the fundamental rights situation in European countries within the context of integrated border management. It provides indications on the countries with a substantial presence of Frontex operational activities, specifically where the Agency support Member States in border surveillance activities and migration management. The categorisation is based on continuous assessment from the Fundamental Rights Officer substantiated by its monitoring and advisory activities conducted in 2021. The fundamental rights issues considered do not solely refer to those occurring at the borders stricto sensu but also in respective areas where Member States have a de facto control (e.g., search and rescue zone), they might also relate to other factors such as conditions of detention, shortcomings in the asylum procedure

# CHAPTER 1

## Fundamental rights monitoring



In 2021, the new Fundamental Rights Officer took office and a total of 20 Fundamental Rights Monitors (FROMs) were recruited and became operational. Starting August 2021, the monitors have been assigned to monitor, assess, and advise on fundamental rights across Frontex operational activities. The FROMs undertook extensive online and residential trainings prior to their first deployment. The FROMs also had the opportunity to familiarise themselves with Frontex operational *modus operandi*, with various situations on the ground across EU border areas, and the operational and fundamental rights challenges in the context of Frontex activities. Throughout the year, the FROMs performed numerous monitoring missions in different countries and operational areas covering all sort of Frontex activities<sup>19</sup>, from border crossing points and green borders to border surveillance and migration management support. The focus of the mon-

itoring is based on the overall considerations around Frontex operational activities, deployed staff and team members in operations and assets, data on irregular border crossings and fundamental rights concerns related to border management. Based on this, the main areas of interest were:

- ♦ Lithuania and Poland – land borders with Belarus;
- ♦ Hungary – land border with Serbia;
- ♦ Greece – Greek islands in the Eastern Aegean and the Evros region;
- ♦ Bulgaria – border with Turkey;
- ♦ Italy – Central Mediterranean and
- ♦ Spain – Canary Islands.

The outcome of the monitoring based on information from the field, open-source

information, information gathered from external actors and reports from different organisations, has guided the work of the Fundamental Rights Officer and the Fundamental Rights Office as a whole. It further shaped opinions and recommendations by the Fundamental Rights Officer and provided the rationale for proposed fundamental rights safeguards in the Agency's operational documents as well as FRO's advisory capacity to the Executive Director (ED) and the Management Board (MB).

The structure of the following sections corresponds to the structure of the Fundamental Rights Office, clustered around three border-regions – East, South and West.<sup>20</sup> It also includes a focus on monitoring of return operations and aerial surveillance activities.

<sup>19</sup> On this, the FRO is also in the process of drafting, in consultation with relevant business entities, a Standard Operating Procedure for the FROMs on their roles and responsibilities regarding operational activities and interaction with various stakeholders in the field.

<sup>20</sup> Countries under the East border-region: Lithuania, Latvia, Estonia, Finland, Poland, Slovakia, Czech Republic, Hungary. Countries under the South border-region: Bulgaria, Romania, Croatia, Cyprus (EU), and Greece. Countries under the West border-region: Belgium, France, Italy, Malta, Spain. Concerning third countries, Albania, Montenegro, and Serbia

## 1.1. Field monitoring

During the monitoring missions, the FROMs held meetings with a range of external stakeholders involved in issues related to migration (including representatives at both central and local levels), in order to learn about the stakeholders' activities and challenges, to raise awareness about the mandate and role of the FRO/ FROMs, as well as to ensure effective exchanges and good practices. Such stakeholders included international organisations, NGOs and National Human Rights Institutions and Ombuds Institu-

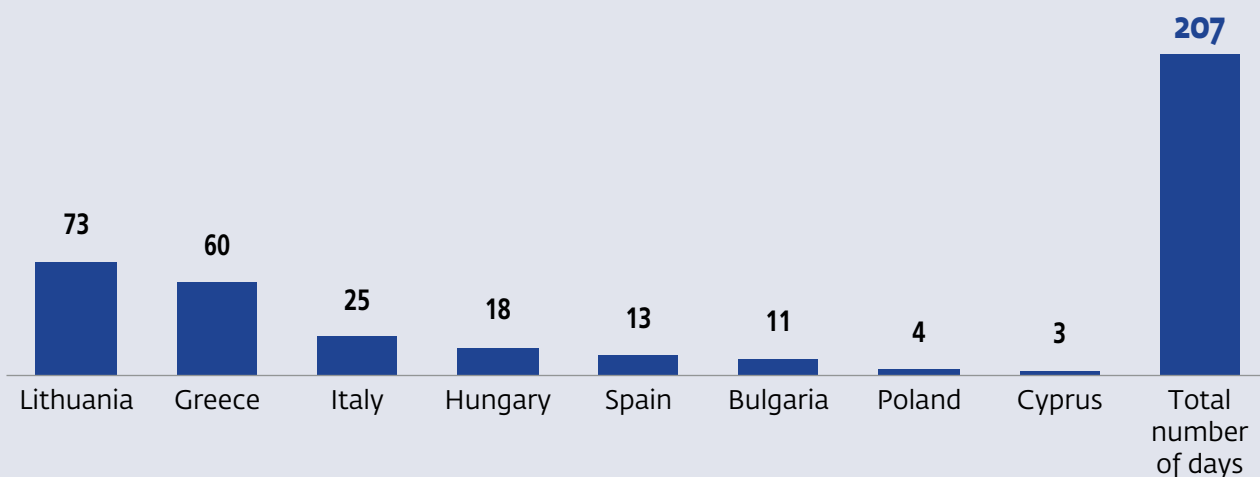
tions. Throughout the year, the FRO also engaged with the independent national border monitoring mechanism set up in Croatia, serving on its advisory board. While the FROMs also participated in a number of EU Regional Task Force (EURTF) meetings.

While carrying out their tasks, the FROMs identified some challenges, among them are:

- ♦ Limited or no access to all areas and activities (especially in patrolling, and debriefing);
- ♦ Insufficient access to operational documents relevant to assess the Agency's activities from a fundamental perspective;
- ♦ Inability to interview migrants and Frontex officers in certain operational areas without the presence of national authorities.

### Monitoring of operational activities by country

Number of deployment days per country between June and December 2021



#### 1.1.1. East

In July 2021, due to an unprecedented increase in the number of irregular migrants arriving through the Lithuanian southern green border<sup>21</sup> with Belarus, the Agency launched a Rapid Border Intervention (RBI) in Lithuania. The FROMs started their monitoring activities in early August 2021 along the Lithuanian-Belarusian border in the framework of the RBI and continued after the termination of the operation in November 2021 and its replacement by Joint Operation (JO) Flexible Operational Activities Land 2021. Since then, the monitors observed a systemic practice of what amounts to collective expulsions and restriction of access to international protection based on an amended national

legislation,<sup>22</sup> which, according to the Fundamental Rights Officer's opinion, is not compliant with EU law. Other observations included poor identification and protection system of vulnerable groups and extensive use of immigration detention. There was no evidence of Frontex staff's involvement in unlawful practices, however the Fundamental Rights Officer has continuously expressed concerns over the risk for the Agency of being indirectly involved through its extensive support to Lithuanian authorities which continuously and systematically apply practices which raise fundamental rights concerns.

Since July 2021, a migration-related crisis unravelled at the Polish-Belarusian border due to an increase in the number of people attempting to cross the border. Given the limited presence of Frontex – only at the two Polish border crossing points along the border with Belarus (within the framework of Joint Operation Focal Points Land 2021), the FROMs were not able to directly monitor the developments regarding the increased arrivals of irregular migrants across the green border. However, the FROMs conducted two visits to the border crossing point to analyse the impact of migratory pressure and related fundamental rights risks. The Fundamental Rights Officer issued an Opinion in Octo-

<sup>21</sup> According to the IATE – the Interactive Terminology for Europe database, the green border is defined as "the areas between authorised crossing points".

<sup>22</sup> Ministerial Order of 2 August 2021 in conjunction with the Resolution on the Declaration of the state of emergency of 2 July 2021, followed by the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-515) of 10 August 2021.

ber 2021 on the restricted access to asylum procedures and the dire humanitarian situation of groups of migrants stranded at the border. The Opinion drew attention to the national legislation which regularise practices inconsistent with EU and international law.

In Lithuania, the FROMs encountered very good cooperation with national authorities, in particular granting them access to operational areas, migrants, and information relevant to their monitoring activities in the country; the FROMs were also granted access to some sites outside of the operational area (e.g., reception centres for vulnerable groups in Lithuania, guarded centre in Białystok, Poland) which was very helpful for conducting a more comprehensive assessment. The monitors came across two major challenges during their monitoring activities in Lithuania and Poland:

1. Limited access to border surveillance during patrols and debriefing activities in Lithuania; however, FROMs were able to talk to patrol and debriefing team members;
2. Limited Agency activities during the migration crisis at the Polish-Belarusian border, leading to narrow possibility to

monitor the fundamental rights-related challenges of this situation.

In Hungary, the operational activity of Frontex was suspended in January 2021 following the judgment of the Court of Justice of the EU (CJEU) of 17 December 2020 in which the Court ruled that the national migration management legislation in Hungary is not compliant with EU law.<sup>23</sup> In an opinion issued in the aftermath of the ruling, the FRO advised the suspension of Frontex operations due to the prevalence of persistent serious fundamental rights violations, in line with Article 46 of the Regulation (EU) 2019/1896. In 2021, the FROMs monitoring was intended to observe the potential changes in the law and practice of the Hungarian migration management with a view to advising the Executive Director on the fundamental rights implications of activities in Hungary by Frontex. The monitors were well received by the Border Police and various representatives of the government. The FROMs assessment was that both law and practices at the Hungarian border remained insufficiently aligned with EU legislation. The Fundamental Rights Officer issued an Opinion to the Executive Director of Frontex on this basis in December 2021.

The following table outlines the main concerns observed during monitoring and advisory activities in the East border-region, with the recommendations proposed by the Fundamental Rights Officer and relevant follow-up actions undertaken by either the FRO, the Agency or Member States. The types of concerns relate to:

1. Fundamental rights challenges in Member State's law and practice, which exist independently from Frontex but have implications for the Agency through its assistance or by association with it, e.g., legislation and practice on so-called push-backs or on detention;
2. Fundamental rights challenges in Frontex operations which are on the Agency's side, e.g., lack of information and leaflets on SIRs and Complaints Mechanism, lack of gender balance in deployment, lack of interpreters, working methods of debriefers;
3. Fundamental rights challenges related to the execution of FRO/FROMs' mandate, e.g., lack of access to specific areas for the monitors, which may be due to the action/inaction of the Agency or national authorities, or objective reasons such as COVID-19).

<sup>23</sup> Judgment of the Court of Justice of the European Union (CJEU)(Grand Chamber) of 17 December 2020 European Commission v Hungary, [EUR-Lex - 62018CJ0808 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuris/ui/entry.do?entryId=62018CJ0808&entryType=JUDGMENT).



## Fundamental rights challenges in Member State's law and practice

Concern/issue		Recommendation(s)	Follow-up
<b>1. Collective expulsions</b> of migrants and <b>violation of the non-refoulement principle</b> by Lithuanian border guards <sup>24</sup> as part of "redirection" and "prevention of entry" practices based on the Ministerial Order from 2 August 2021 and amended legislation. <sup>25</sup> <i>While there is no evidence of Frontex direct involvement in practices illegal under the EU law, there is a risk of indirect implication through a failure to act and/or through the involvement in a chain of actions that lead to collective expulsion of migrants.</i>		<p>The FRO proposed <b>mitigating measures</b><sup>26</sup> to minimise the risk of non-compliance of operational activities with fundamental rights. These included, among others:</p> <ul style="list-style-type: none"> <li>Ensure effective access to the asylum procedure to all migrants apprehended on the Lithuanian territory who express a wish to apply for protection; a sufficient number of registration points, including at BCPs, designated and open for such purpose must be ensured and information must be provided to applicants.</li> <li>Ensure that children apprehended at the border, whether unaccompanied or not, are admitted to the territory and that their best interest is prioritised;</li> </ul>	<ul style="list-style-type: none"> <li>No significant response from the Executive Director</li> <li>According to Member State representatives' media addresses, the Member State does not intend to change the law and/or practice related to collective expulsions</li> <li>Some individuals are being admitted to the territory on "humanitarian grounds" and allowed access to asylum procedures; this is, however, subject to arbitrary decisions (families with children are not admitted as only unaccompanied minors are considered vulnerable).</li> <li>Continuous monitoring of the situation</li> </ul>
<b>2.</b> Poor identification procedures and protection mechanisms for <b>vulnerable persons</b> ; absence of vulnerability assessment system in border areas results in many vulnerable persons being accommodated in reception centres with inadequate conditions		<p><b>Frontex</b> to ensure that Lithuanian border guards have completed training on the identification of vulnerable persons.</p> <p><b>Frontex</b> and <b>Member State</b> to ensure proper identification, referral and protection of vulnerable migrants apprehended at the border.</p> <p><b>Member State</b> to ensure that all vulnerable persons are accommodated in places with reception conditions adequate for their special needs no matter the stage of their asylum application.</p>	<ul style="list-style-type: none"> <li>Positive feedback from Lithuanian authorities to FRO's training proposal (consultations ongoing)</li> <li>Continuous monitoring of the situation needed</li> <li>While some vulnerable persons have been accommodated in centres adapted to their needs, many remain in detention in substandard conditions</li> </ul>
<b>3.</b> Use of immigration detention without exploring alternative measures first; as a result, even children and other vulnerable people are held in closed facilities for a prolonged period.		<p><b>Member State</b> to ensure that the detention of migrants is in conformity with the relevant law and is used only as a measure of last resort, for the shortest period of time and under conditions that respect human rights, and only after alternative measures have been explored first. Detention never serves the best interest of the child.</p>	<ul style="list-style-type: none"> <li>Further monitoring needed</li> </ul>
<b>4.</b> Poor humanitarian conditions at border crossing unit <sup>27</sup>		<p><b>Member State</b> to ensure the transfer of all migrants to proper reception centres</p>	<ul style="list-style-type: none"> <li>Partially implemented, with significant delays</li> </ul>
<b>5.</b> Frontex-assisted return activities may raise fundamental rights concerns due to the challenges to <b>fairness of the national asylum procedure</b> (including poor access to information and legal advice, and short timelines for appeal).	 	<p><b>Member State</b> to ensure the highest quality of the asylum process as well as the involvement of EUAA to help register and process international protection applications, to ensure screening of vulnerable migrants and support the management of reception facilities.</p> <p><b>Member State</b> to ensure genuine access to information and legal assistance for asylum seekers at all stages of the asylum procedure as well for migrants in the return procedure.</p>	<ul style="list-style-type: none"> <li>Continuous monitoring of the situation needed</li> </ul>
<b>6.</b> Escorting of migrants to the border without identification and registration is inconsistent with the EU law. The relevant law and practice have not been amended since the CJEU judgment.		<p><b>Frontex</b> to uphold the suspension of operational activities in Hungary</p>	
<b>7.</b> The asylum legislation and the basis for the return decisions are in-transparent		<p><b>Frontex</b> to partially suspend the support to return operations from Hungary, specifically with regards to asylum seekers</p>	<ul style="list-style-type: none"> <li>The FRO proposed additional safeguards when conducting return operations</li> </ul>

<sup>24</sup> Lithuanian authorities do not deny allegations of 'redirections', referring to national law as legitimisation for the conduct of collective expulsions.

<sup>25</sup> Extensive evidence collected: Reports by NGOs; Media reports; 28 SIRs category 1 coordinated by FRO as of 14 December November and 638 incidents ("pre-SIRs") reported in the period August-November 2021 via EUROSUR with inconsistencies in coordinates of apprehension/prevention of entry which may result in SIR.

<sup>26</sup> The mitigating measures were included in FRO Opinion of September 2021 addressed to the ED, a Joint Note of the Agency's Operational Response Division, Legal and Procurement Unit and the FRO of October 2021.

<sup>27</sup> The Border Crossing Unit are frontier stations taking care of determined border sections (including green borders)

Throughout the entire RBI in Lithuania, the FROMs have been present on the ground with high frequency. This allowed for a comprehensive assessment of the situation, including its developments over time. The practice amounting to collective expulsions at the border poses a fundamental risk to the integrity of Frontex and legality of its operation. While some progress has been noted in the area of reception (transfer of migrants from 'frontier stations' to reception centres), as well as the identification of vulnerable groups (request to Frontex to provide training to Lithuanian border guards), in other areas

(e.g., return proceedings and fairness of the asylum procedure) concerns persist.

The Fundamental Rights Officer repeatedly informed the Management Board and the Executive Director about concerns in relation to the fundamental rights situation at the Polish-Belarus border, particularly related to legislative changes and practices of the Polish authorities amounting to collective expulsions and restricted access to international protection.

In 2022, the Office intends to support the Lithuanian authorities with trainings on the identification of vulnerable groups.

The FROMs will further monitor the situation in Lithuania with the purpose of documenting possible fundamental rights violations that are likely to continue at the border and the implementation of the remaining recommendations. The Office will also continue to monitor the situation at the Polish-Belarusian border through all available means, as well as to conduct visits to Latvia and other parts of the EU eastern border where relevant. In Hungary, the Office plans to monitor the ongoing cross-border crime prevention programme undertaken at the Hungarian border with the support of Frontex.

### 1.1.2. South

In 2021, the Fundamental Rights Office has been consistently monitoring the developments in border management activities in the countries under the South border-region. A short visit was also organised to Cyprus to get familiar with operations and context.

The FROMs conducted their monitoring missions in coordination with the operational entities of the Agency. Frontex Coordinating Officers and operational staff were cooperative and supportive to FROMs missions. At the same time, national authorities were available to engage in discussions with FROMs relating to operational and fundamental rights challenges in the field. During their missions, the FROMs met with United Nations High Commissioner for Refugees (UNHCR) representatives and local NGOs and lawyers, and established contact with Ombuds institutions and other national human rights bodies. In November 2021, the FROMs contributed to a 7-day training to Greek border guards, organised by UNHCR Greece in cooperation with the

Hellenic Police. The FROMs delivered sessions on fundamental rights in the EU to newly recruited border guards (for a total of 343 participants through various sessions) in Alexandroupoli, Evros region.

The Greek authorities provided access to FROMs to reception and detention facilities and guided the FROMs in the operational area near the borderline with Turkey in the Evros region, including the border fence. The authorities also presented their new border surveillance equipment. During the mission to Bulgaria, the national authorities provided access to the FROMs and explained the functioning of their integrated border surveillance system. The FROMs were also allowed to visit the immediate proximity of the border with Turkey to familiarise with the operational area, including borderline infrastructure (such as border fence and surveillance equipment), together with Frontex patrol teams.

The main challenge that the FROMs faced in carrying out their tasks was the limited

access to operational activities, which is also an issue in other border regions. The FROMs were not allowed to observe sea and land patrolling activities by being on board Frontex patrol vessels or vehicles. The FROMs were also not able to be present during debriefing interviews with migrants with rare exceptions. Regarding such activities, the FROMs collected information through meetings with Frontex team members either during or after their shifts and asking the Frontex staff questions about their role in the field and their experiences when exercising their daily duties. The FROMs also consulted documents produced by operational staff referring to their activities, in particular shift reports.

The following table outlines the main concerns observed during monitoring and advisory activities in the South border-region, with the recommendations proposed by the Fundamental Rights Officer and relevant follow-up actions undertaken by either the FRO, the Agency or Member States.





## Fundamental rights challenges in Member State's law and practice

Concern/issue	Recommendation	Follow-up
<p><b>1.</b> The risk of Frontex staff and assets being involved in alleged illegal individual or collective expulsions (and so-called pushbacks) of migrants which are violating their fundamental rights. Such allegations also refer to excessive use of force and other acts of degrading treatment of the migrants by the perpetrators. Regarding the operational activities visited in 2021 the risk of such involvement appears higher at the land or sea borders between Greece and Turkey, as well as the land borders between Bulgaria and Turkey<sup>28</sup></p> <p><i>While there is no indication of Frontex staff or assets being directly involved in 2021 in alleged so-called pushbacks, concerns exist as regards to their indirect involvement when Frontex is handing over a detection or interception/apprehension incident to the competent national authorities without being able to document what measures were taken to complete the handling of this incident.</i></p>	<p> <b>Frontex</b> to ensure that it receives information/feedback from the Greek authorities about their follow-up actions in all incidents where Frontex staff and assets are involved, particularly as regards incidents of detections, interceptions, and apprehensions of migrants. The Frontex Tactical Support Officers (FTSO) should also receive this information and share it with the FRO together with the report on the involvement of the Frontex asset. The objective is to ensure that there is no risk of Frontex being indirectly involved in any incident of unlawful return/collective expulsion (so-called pushbacks) at sea.</p> <p><i>This is also in line with the relevant recommendation included in the 2021 FRaLO report.</i></p>	<ul style="list-style-type: none"> <li>As of the end of 2021, some measures to ensure effective follow-up of this recommendation were advocated by the Management Board.</li> <li>In April 2022, the FRO issued an Opinion on the overall fundamental rights situation at the Greek land and sea borders</li> </ul>
<p><b>2.</b> In some operational activities in Greece, the FROMs identified that registration procedures of unaccompanied children, even below the age of 15 years, was conducted without the presence of a legal representative or a guardian.</p> <p><i>According to the Greek legal framework children below the age of 15 have very limited legal capacity, for example not allowing them to apply for international protection without their legal representative or guardian. In this context, the registration of an unaccompanied child without a legal representative or guardian, especially of a child below the age of 15 years, would not ensure that their best interests are taken into consideration.</i></p>	<p> <b>Frontex</b> to ensure that the Agency's staff should not participate in registration procedures of children below the age of 15 without the presence of a legal representative or guardian.</p> <p><b>Frontex</b> to pay special attention on the registration of unaccompanied children.</p>	<ul style="list-style-type: none"> <li>The FROMs provided advice to Frontex deployed staff</li> <li>The FRO later issues an Opinion on this matter (March 2022)</li> <li>Frontex staff stopped registering unaccompanied children below the age of 15 without the presence of a legal representative or guardian</li> </ul>
<p><b>3.</b> Overcrowded reception centre in Cyprus. The Purnara reception centre was hosting double than its regular hosting capacity as of November 2021, with deteriorating living conditions. This situation impacts the workload of both national authorities and Frontex staff in registration/fingerprinting, screening, and debriefing procedures.</p> <p>In spite of all the efforts by the national authorities, the FRO is concerned that the large number of new arrivals is putting pressure on staff increasing the risk of carrying out procedures which are not in full compliance with fundamental rights.</p> <p>The situation is exacerbated by the continuous influx of migrants through the Northern part of the island, via the 'ceasefire zone', which is not under the control of the Republic of Cyprus.</p>	<p> <b>Frontex</b> to consider, in cooperation with the national authorities, whether it is necessary to increase support to Cypriot authorities by deploying Frontex staff providing migration management support, especially in light of the rising number of new arrivals.</p>	<ul style="list-style-type: none"> <li>Continuous monitoring of the situation</li> </ul>

<sup>28</sup> This conclusion is based on serious incident reports submitted by Frontex staff and complaints by individuals, as well as reports and information by international organisations, NGOs and public national human rights bodies.

## Fundamental rights challenges in Frontex operations which are on the Agency's side

Concern/issue		Recommendation	Follow-up
<b>4.</b> Lack of female officers deployed in almost all operational areas that FROMs visited in 2021.		<b>Frontex</b> to consider deploying more female officers, especially in the context of migration management support teams for registration, fingerprinting, screening, and debriefing activities. This is necessary for ensuring a gender and culturally sensitive treatment of migrants. Human resources limitations linked to the composition of Frontex standing corps seem to be the main obstacle to address appropriately this shortcoming.	<ul style="list-style-type: none"> <li>• Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations draw on monitoring missions conducted in 2021</li> <li>• Following FRO recommendation, Frontex is attempting to increase the share of women deployed in Cyprus in 2022, including for fingerprinting during registration procedures.</li> </ul>
<b>5.</b> Lack of interpreters in some migration management support teams, especially those who combine interpretation and cultural mediation skills. Such skills are important to ensure that migrants can understand the procedures and communicate their needs and possible violations of their rights.		<b>Frontex</b> to consider adding the profile of cultural mediator among the profiles of operational staff within its standing corps	<ul style="list-style-type: none"> <li>• Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> </ul>

In 2022, the Office is planning to carry out longer-lasting monitoring missions to cover all Frontex operational areas and activities in the South border-region, while focusing on areas where the Agency has extensive operational activities and where allegations of fundamental right violations persist. The FRO will therefore continue focusing on Greece, especially its land and sea borders with Turkey. Bulgaria will also remain subject to FRO's enhanced

focus, in particular its land border with Turkey. At the same time, FRO will monitor developments in Cyprus due to alarmingly increased numbers of arrivals, which undermine the migration management capacity of the authorities raising thus fundamental right concerns. Likewise, should Frontex participate in border surveillance and migration management support activities (including in the context of sea operations) in the Western Balkans, the FRO

will be notified. Visits to non-EU countries with a focus on Albania, Montenegro, and Serbia where Frontex maintains a more substantial presence are also foreseen. Furthermore, the FRO will continue to enhance the cooperation with Ombudsman institutions and other national human rights bodies and the engagement with UNHCR and local NGOs.

### 1.1.3. West

Italy and Spain faced a significant number of arrivals of migrants during the reporting year (accounting for more than a half of all detected irregular migrants). This comes with several challenges, particularly in the islands (which received a significant number of disembarkations and migrants) and where a high number of arrivals by sea took place. Such challenges included identification and referral of persons in a vulnerable situation, prompt and effective access to asylum and international protection, and first reception of migrants. This situation was also impacted by the sanitary measures put in place in response to Covid-19. Both the Italian and Spanish authorities have taken a number of actions to remedy the problems and challenges arisen with the growing number of arrivals of migrants; and the support provided by

Frontex as well as the continued presence of FROMs in the operational areas supported that process.

In general, the FROMs received adequate support from the Italian authorities during their monitoring mission. This was in particular the case for JO Themis<sup>29</sup>, where full access was granted to all the operational facilities and areas in the locations visited. It is also worth noting the national authorities' close engagement and cooperation with Frontex, international organisations and NGOs operating in the field. An example of this is the recent establishment of the Inter-institutional Working Group on Vulnerabilities, in which the FROMs regularly participated as part of the Frontex membership in this activity.<sup>30</sup> This collaborative approach has cer-

tainly brought significant positive results in border management and will positively impact fundamental rights. The FROMs also took part in several EU Regional Task Force (EUTF) meetings.

On the other hand, the support provided by the Spanish authorities during the visit of the Fundamental Rights Officer to JO Canary Islands was also constructive. However, the FROMs had certain limitations to freely access certain operational areas during their monitoring mission to JO Indalo.<sup>31</sup>

During 2021, a new Joint Operation was launched with the purpose of providing increased technical and operational assistance to Belgium and France in response to the increased migratory pressure in

<sup>29</sup> Joint Operation Themis supports Italy with border control, surveillance and search and rescue in the Central Mediterranean.

<sup>30</sup> The FROMs participate in the newly established Inter-institutional Working Group on Vulnerabilities (chaired by the Italian Ministry of Interior), aimed at improving the capacity to identify vulnerable persons among the migrants arriving in Italy by developing a harmonised procedure.

<sup>31</sup> Joint Operation Indalo supports Spain with border control and surveillance, identification and registration, both at seaports and in international airports, as well as in search and rescue operations





the Channel (JO Opal Coast 2021).<sup>32</sup> The implementation period of this operation officially started on 1 December 2021. Nevertheless, the Fundamental Rights Officer was only involved at a later stage (after approximately one week, once the imple-

mentation of the operation had effectively started), with a request to provide observations to the Operational Plan.

The following table outlines the main concerns/issues observed during monitoring

and advisory activities in the West border-region, with the recommendations proposed by the Fundamental Rights Officer and relevant follow-up actions undertaken by either the FRO, the Agency or Member States.





## Fundamental rights challenges in Member State's law and practice

Concern/issue	Recommendation	Follow-up
<p><b>1.</b> Information on vulnerabilities is dispersed and collected by various actors in the different phases of arrival and follow-on reception, which may affect ensuring a proper follow-up by specialised services.</p>	 <p><b>Frontex and Member State</b> to streamline identification and referral procedures for vulnerable persons and persons in vulnerable situations, including active role of Standing Corps officers in those processes.</p>	<ul style="list-style-type: none"> <li>Continued participation by Frontex/FROMs in the Inter-institutional Working Group on Vulnerabilities<sup>33</sup> (chaired by the Italian Ministry of Interior), aimed at developing a vademecum on detection and referral of vulnerable people.</li> <li>Once the vademecum is officially endorsed, Frontex (with the support and advice of FROMs) should ensure that it is properly integrated into Frontex activities, reflected in operational documents (including Operational Plans) as well as explained and available to all the deployed officers.</li> </ul>
<p><b>2.</b> Material conditions in the Hotspots facilities of Lampedusa and Pozzallo (in terms of space and accommodation, or sufficient access to the open air and physical exercise, depending on the location) remains an issue of concern owing to the limited first-reception capacity when faced with high numbers of migrant arrivals.</p>	 <p><b>Frontex and Member State</b> to work towards the improvement of the conditions in the places where Frontex conducts its operational activities to fully ensure the Agency compliance with fundamental rights.</p>	<ul style="list-style-type: none"> <li>Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> <li>FRO acknowledges the efforts being made by the Italian authorities to improve the conditions of the hotspot facilities (particularly in Lampedusa, where new facilities were ready to be opened soon after FROM's visit).</li> </ul>
<p><b>3.</b> Prompt and effective access to asylum and international protection at the borders or upon disembarkation remains challenging, particularly as a result of the Covid-19 measures currently in place (e.g., limited time available between disembarkation and the effective transfer of migrants to quarantine vessels).</p>	 <p><b>Frontex</b> to ensure that members of the Standing Corps are proactive in guaranteeing effective access to the asylum procedure, by pre-identifying persons who may need international protection, informing the migrants about their right to apply for asylum and referring them to appropriate procedures and relevant national authorities.</p>	<ul style="list-style-type: none"> <li>Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> </ul>
<p><b>4.</b> Although the FROMs were unable to access the first-reception facilities (CATEs - Temporary Attention Centres for Aliens) in all the locations visited during the mission to JO Indalo, a number of organisations and reports have raised concerns about the material (reception) conditions in some of such facilities, as well as effective access to legal assistance therein. <i>Although the conditions in detention facilities and reception centres do not fall within Frontex mandate, there are strong links between them and the Agency's activities.</i></p>	 <p><b>Frontex and Member State</b> to ensure that the FROMs have access to the CATEs in the areas in which operational activities of the Agency take place.</p> <p><b>Frontex and Member State</b> to work towards the improvement of the conditions in the places where Frontex conducts its operational activities to fully ensure the Agency compliance with fundamental rights.</p>	<ul style="list-style-type: none"> <li>Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> </ul>


<sup>32</sup> See the information published by Frontex at <<https://frontex.europa.eu/media-centre/news/news-release/frontex-to-support-member-states-in-the-channel-and-north-sea-region-pZWNYE>>.

<sup>33</sup> The Working Group is aimed at improving the capacity to identify vulnerable persons among the migrants arriving in Italy and refer them to the relevant authorities). To is to be achieved by developing a vademecum to be included as an Annex in the Hotspots SOP.

## Fundamental rights challenges in Frontex operations which are on the Agency's side

Concern/issue		Recommendation	Follow-up
<b>5.</b> Data/ information on identification and referrals of vulnerable groups by Frontex Standing Corps is not systematically collected.		<b>Frontex</b> , in cooperation with the FRO, to further integrate identification and referral of persons in a vulnerable situation into all operational activities (including screening/debriefing), as well as to enhance the systematic collection of information in relation to vulnerable persons detected and referrals.	
<b>6.</b> Participation of female operational staff in Frontex operations remains significantly low.		<b>Frontex</b> to promote the secondment/nomination by participating Member States of female Standing Corps officers to Frontex operations.	<ul style="list-style-type: none"> <li>• Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> </ul>
<b>7.</b> Limited visibility and awareness of the Complaints Mechanisms in operational areas.		<b>Frontex</b> and <b>FRO</b> to ensure the effective implementation of the Complaints Mechanism through enhanced visibility and availability of information as well as further access to complaint materials, distribution, and availability of complaint forms in operational areas whenever feasible, particularly in places where migrants are present.	<ul style="list-style-type: none"> <li>• The FROMs to further engage with external stakeholders including international organisations, civil society and Bar associations to raise awareness on the functioning of the complaints mechanisms as well as the role of the FROMs.</li> </ul>
<b>8.</b> In certain locations (like Lampedusa), Frontex Standing Corps conduct debriefing/ screening activities on the quayside, immediately upon disembarkation of migrants rescued / intercepted at sea.		<b>Frontex</b> , in cooperation with the MS, to ensure that debriefing and screening activities be done with full respect for fundamental rights, human dignity, and considering their health and mental condition upon disembarkation. Frontex Standing Corps should always strike a fair balance between the need to conduct debriefing/ screening upon disembarkation and the circumstances of the migrants concerned.	<ul style="list-style-type: none"> <li>• Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021</li> </ul>

## Fundamental rights challenges related to the execution of FRO/FROMs' mandate

Concern/issue		Recommendation	Follow-up
<b>9.</b> The FROMs access to Operational and Frontex reports remains a challenge. For the FROMs to effectively conduct their duties as required by Article 110 of the Regulation (EU) 2019/1896, it is essential that they are provided with timely information on the operational activities and have access to all documents relevant to their implementation.		<b>Frontex</b> should proactively provide the FROMs with timely information on the operational activities and access to all documents relevant to their implementation, in line with the Regulation (EU) 2019/1896 and the relevant Operational Plan	<ul style="list-style-type: none"> <li>• Advocate for FROMs direct access to relevant reports provided for in the forthcoming Operational Plans for 2022.</li> <li>• Alternatively, Frontex to propose a system by which the FROMs could easily and timely access Operational and Frontex reports.</li> <li>• Raised in the XXXI FRO report to the MB (January 2022) in which the findings and recommendations provided draw on monitoring missions conducted in 2021.</li> </ul>

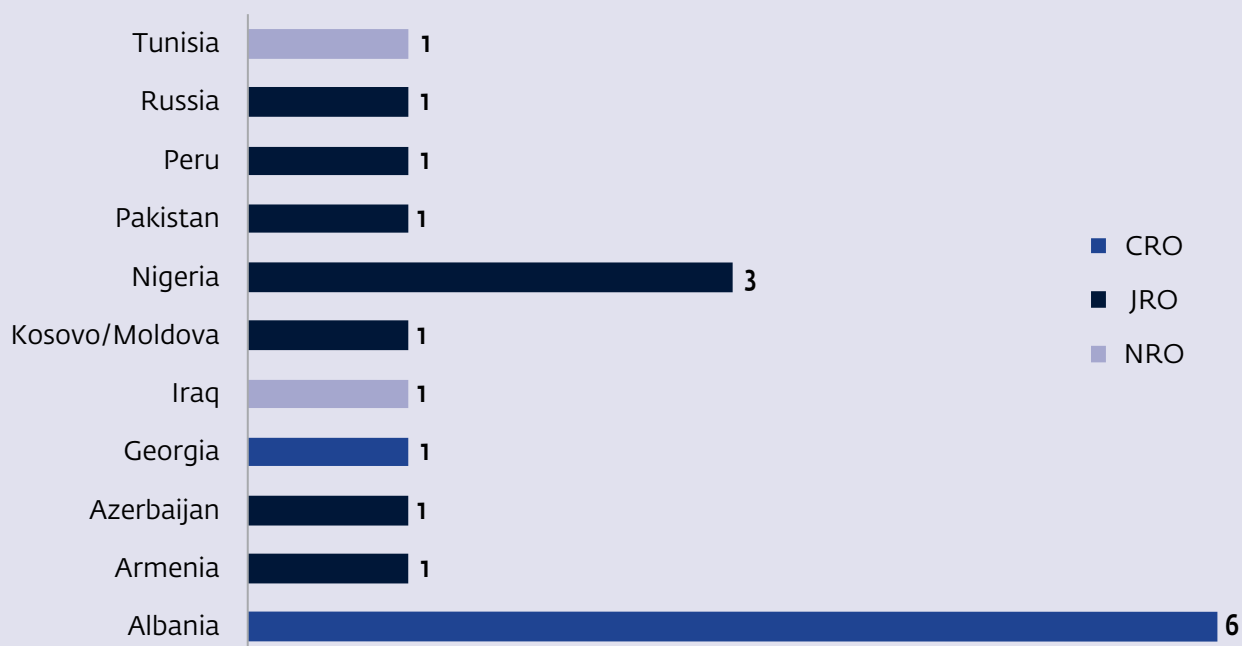
In 2022, the Office will continue monitoring the developments in legislation, policy, and practice, and assess their impact on Frontex operational activities. The FROMs will increase their presence in operational areas and the number of monitoring missions complying with

established operational procedures, further integrating themselves in the work of Frontex operational teams and team members. This includes, for example, participating in operational briefings prior to the deployment of Standing Corps as well as in training or awareness raising activities,

to promote an environment conducive to fundamental rights. The FROMs will further enhance cooperation with external partners and stakeholders involved in issues related to migration.

## Monitoring of return operations by country of destination

Number of return operations monitored by the FROMs in 2021 divided by type of returns



## 1.2. Return operations

Three of the FROMs recruited in June 2021 were assigned to act as forced-return monitors to the pool<sup>34</sup> and engaged in return monitoring activities as forced-return monitors, in support to monitors from the Member States. In 2021, they monitored a total of 18 return operations supported by the Agency. Among them, nine were joint return operations<sup>35</sup> (JROs), seven collecting return operations<sup>36</sup> (CROs) and two national return operations<sup>37</sup> (NROs). The organising Member States for whom forced-return monitors from the pool were deployed included Germany, France, and Spain. The FROMs have also monitored the pre-departure phase of three return operations (Poland to Iraq) by scheduled flight in December 2021.

The Office has worked towards strengthening the fundamental rights safeguards in return monitoring, including by participating in and contributing to training for forced-return monitors organised by the Agency, establishing contacts, creating network, building trust between the FROMs and Member States, National Preventive Mechanisms (national monitoring mechanisms linked to treaty obligations), international and national organisations operating in the field of monitoring and returns.

The following chart outlines the countries of destination of the overall return operations of 2021 where the Fundamental Rights Monitors were onboard, highlighting the type of returns conducted.

During the monitoring of the above-mentioned return operations, the FROMs were able to access all relevant areas and were well-received by the escorts at all stages, enjoying a good cooperation and mutual trust with the organising Member State. The FROMs have observed several good practices, specifically:

### ♦ On vulnerable groups, children, and families

1. Overall improvement of conditions in waiting areas dedicated to children, including rooms or corners with soft playing carpets, toys, and cartoons on screens;
2. Vulnerable families and persons boarded as priority;

<sup>34</sup> Forced return monitors observe and report on return operations coordinated or supported by Frontex, from the pre-departure phase until the handover of returnee(s) in the country of return. The pool of monitors was established as a subsidiary mechanism to the national monitoring mechanisms. It was a requirement that was included in the Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (Article 8(6) of Directive 2008/115/EC). As of May 2021, the pool of forced return monitors counted 73 monitors from 24 EU Member States.

<sup>35</sup> Joint return operations (JRO) are operations where non-EU nationals from two or more Member States are returned on the same aircraft

<sup>36</sup> Collecting return operations (CRO) are operations where an aircraft and escorts are provided by the countries of return

<sup>37</sup> National return operations (NRO) are operations where non-EU nationals from a single Member State are returned; including cases when technical support is provided by other Member States' resources (e.g. monitors, forced-return escorts or aircraft provided by another Member State)

3. Escorts involved in entertaining children both in the waiting area and on the plane.

- **On the escorts**

1. Initial contact of the escort leader with each returnee upon arrival at the airport for introductory talk, explanation of the return procedure and risk assessment;
2. Escorts well trained in communication and de-escalation techniques;
3. Escorts had an overall proactive approach to the well-being of the returnee(s) and open dialogue which fostered a calm, low-tension environment also during flights, especially during forced return operations.

- **On logistics**

1. Separate areas/tents for violent returnees were prepared in such a way as not to restrict their right to privacy and intimacy;
2. Interpreters with very good interpersonal and cultural skills to minimise tension;
3. Availability of a mobile phone for returnees to call their lawyer or relatives.

The FROMs also acknowledged the presence of material about Frontex Complaints

Mechanism in waiting areas of some airports as well as escort leaders verbally informing the returnees of their right to complain.

The following chart provides an overview of the organising Member States and return operations where the FROMs were onboard, divided by type of return operation by charter flight (national, joint, or collecting).

According to FRO's monitoring activities, but also drawing on the reports submitted by the monitors from the pool of forced-return monitors, most of the return operations were performed in full compliance with fundamental rights, respecting returnees, and human dignity. Problems and shortcomings have been reported and they are presented in more details in the semi-annual FRO Return Observations. For example, incidents harming the privacy or integrity of the person during searches, insufficient numbers of female escorts, sometimes disproportionate use of force, not always sufficient attention paid to the needs of children. However, these shortcomings are not systematic and hence are considered as non-recurring individual cases.

The FRO has also highlighted the need of improving the procedures at some airports. In particular: increasing awareness and access to the Complaints Mechanism to returnees, limiting the use of force as

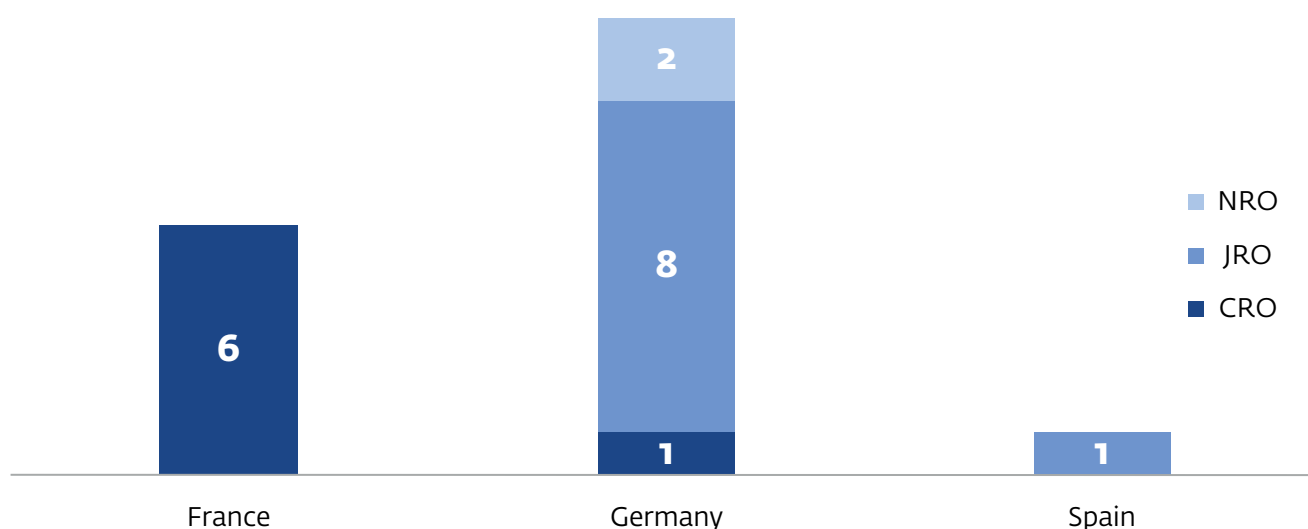
a last resort measure and strengthening special care towards families with children to ensure their rights and best interests are guaranteed. For the purpose of enhancing monitoring impact, the FRO proposed a set of recommendations which included:

- Every high-risk or potentially challenging flight should be monitored
- Assigning two monitors to determined flights, e.g., in case of longer or high-risk return flights.
- Assign the FROMs to return flights from countries which have been less monitored and flights flying to newly added destinations.

In November 2021, the Forced-Return Monitoring Project (FReM III) – managed by the International Centre for Migration Policy Development (ICMPD) – was taken over by Frontex. The FRO will manage the pool of Forced Return Monitors and will lead on the introduction of new tools, e.g., new reporting framework for the pool via an IT system, a dedicated reporting system via an IT application accessible to each monitor on a device and a web-supported platform for communication, coordination, and information sharing.

## Return flights monitored and organising Member States

Number of return flights monitored by the FROMs divided by type of return operation



## 1.3. Aerial surveillance

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Since September 2021, four staff members of the Fundamental Rights Office, including FROMs, are assigned to monitor, provide recommendations and independent advice on the activities of the Agency's Multi-purpose Aerial Surveillance (MAS) services. Their monitoring role is also embedded in the implementation plan (IMPLAN) and related Standard Operating Procedures (SOPs). The monitoring and advisory activities also include the presence of the FROMs in the European Surveillance Room (ESR) as observers and advisers to ensure compliance with fundamental rights, EU, and international

law. The cooperation with the Situational Awareness and Monitoring Division also entails regular contribution by the Fundamental Rights Officer to planning documents and the issuance of dedicated Fundamental Right assessments with the purpose of highlighting the fundamental rights risks and implement appropriate fundamental rights safeguards in all actions and activities conducted within the framework of MAS. Continuous monitoring enables the Office to constantly update the proposed measures to mitigate fundamental rights risks in activities related to aerial surveillance within the

MAS services. In this regard, the Fundamental Rights Officer has been working on a set of recommendations to be addressed at the respective levels (the EU, Frontex, and the FRO). In addition, since September 2021 until the end of the year, a total of five Serious Incident Reports related to aerial surveillance activities in the Central Mediterranean were launched and are being investigated.<sup>38</sup>

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<sup>38</sup> As of the time of writing, two SIRs have been closed and three are ongoing.



# CHAPTER 2

## Reporting, accountability, and safeguards



## 2.1. Serious incident reports (SIR) mechanism

In 2021, the Fundamental Rights Office received and coordinated a total of 61 Serious Incident Reports (SIRs).<sup>39</sup> Out of these, 53 have been covered by a procedural regime of the amended Standard Operating Procedure on SIRs, which became applicable to the various joint operations as they were revised during May 2021. When compared to previous years, there has been a significant increasing trend in 2021 of number of SIRs (2018: 2; 2019: 9; 2020: 10; 2021: 62).

At the end of the year, 31 SIRs stemming from 2021 were still ongoing. While the Fundamental Rights Office is striving for a fast processing of Serious Incidents, processing times of individual SIRs from launch to closure depended on a multitude of factors including their relative urgency (e.g., periodical bundling of reported incidents related to Lithuania due to their similar nature) and limited staff as well as impor-

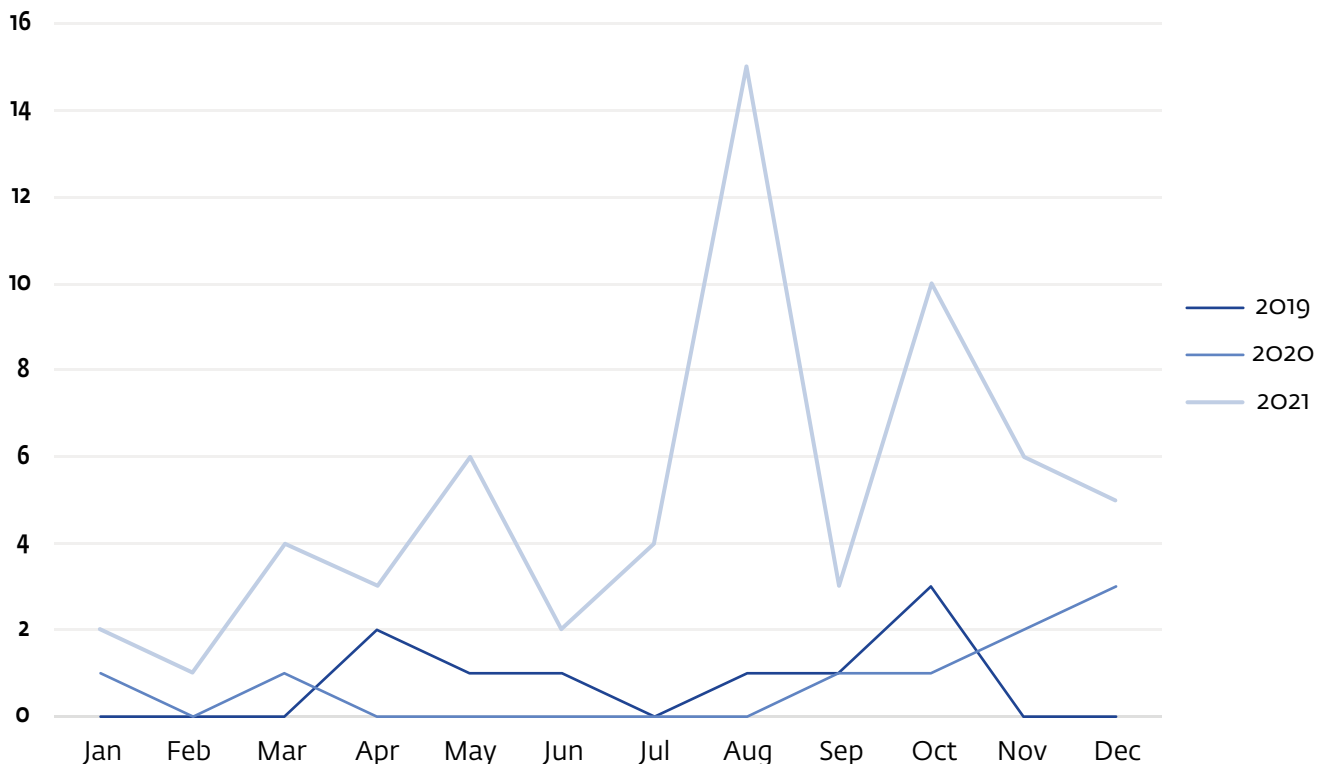
tantly, timely and thorough follow-up by national authorities. In the majority of the 31 ongoing SIRs, the received information provided by the national authorities is insufficient to corroborate or refute the alleged scenarios and needs more, and better follow up by the national authorities to be able to analyse and eventually close reported cases. In this way the level of engagement by national authorities is not sufficient for the FRO to deliver on its obligations under the Regulation (EU) 2019/1896 and towards the Agency's Management Board. The Office is stepping up its efforts in clarifying shortcomings in information provided.

SIRs appear quite often not to be sufficiently investigated and examined by the national authorities. In some cases, the national authorities state that there are no grounds for conducting any further investigative procedure even in cases where,

in FRO's view, there are indications based on preliminary fact-finding, that reported incidents could entail serious violations of EU and international law. Allegations include potential violations of the respect for human dignity, right to life and the prohibition of torture and of inhuman or degrading treatment or punishment and violations of the prohibition of collective expulsion. Shortcomings in terms of investigation quality and incident follow-up has caused reluctance on the part of the Fundamental Rights Officer to close several Serious Incidents. The Fundamental Rights Officer has been working towards conducting more effective investigation as required by the European Court of Human Rights in terms of general investigations and specifically as regards the cooperation between Frontex and the Member States as set out in Article 11 and Article 12 of the Regulation (EU) 2019/1896. In addition, the Management Board, in its conclusions on

### Serious Incident Reports related to fundamental rights

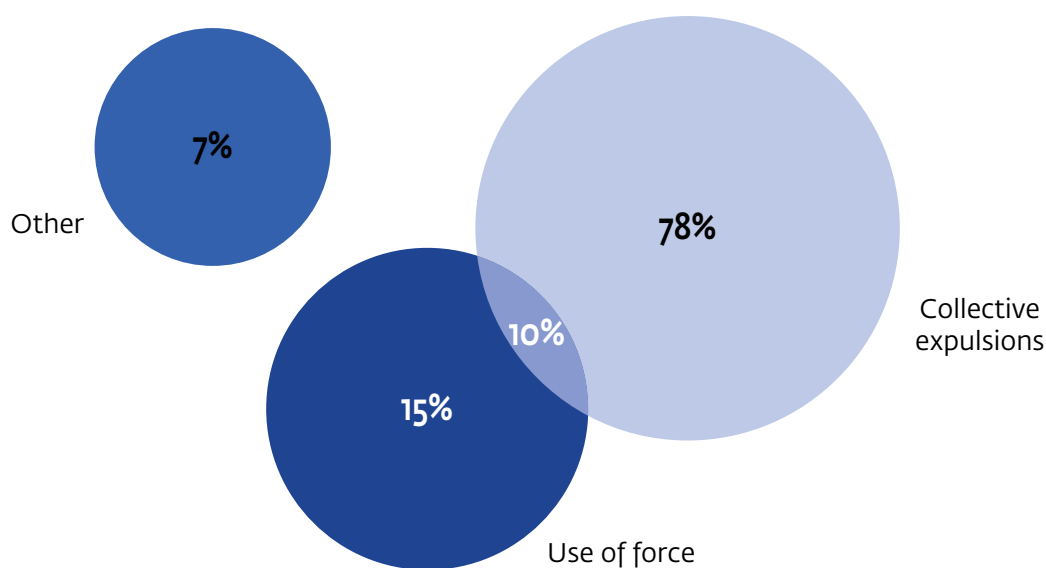
Number of SIRs received by the FRO across 2019, 2020 and 2021



<sup>39</sup> As per Decision of the Executive Director No R-ED-2021-51 on the Standard Operating Procedure (SOP) – Serious Incident Reporting of 19/04/2021 – A Serious Incident (SI) is an event, caused by an action or failure to act by a person, or by force of nature, which directly or indirectly involves Frontex participants or assets and which: Entails a potential violation of EU or international law, in particular related to Fundamental Rights and international protection obligations; and/or involves a potential violation of the Frontex Codes of Conduct (CoCs); and/or has serious actual or potential negative implications on Frontex's tasks or activities and/or has a serious potential life-changing impact on a participant's health.

## Type of alleged fundamental rights violations reported via the SIR mechanism

Percentage of the different types of alleged violations registered in 2021 by the Fundamental Rights Officer



the follow up of the FRO's recommendations regarding SIRs <sup>40</sup> at the 88<sup>th</sup> Management Board Meeting of 26 January 2022, requested member states to *"actively and fully support the Fundamental Rights Officer as he conducts his investigations, in particular by providing – in a timely manner – all relevant information in response to his enquiries, noting that failure to do so could represent a reputational risk for the Agency"*.

At the end of 2021, 9 initial responses from the national authorities out of the 29 ongoing SIRs had still not been shared with the FRO within the given deadline. When comparing national authorities' responses to enquiries about SIRs, the Office observes that they tend to discredit reports describing them as unreliable or manipulated. In a few cases, the national authorities highlighted in their answers that they rule out the accuracy of reported fundamental rights violations based on the mere fact that reported events are incompatible with applicable procedures governing their operational activities. The Fundamental Rights Office considers such generalised responses insufficient against the backdrop of states' obligation to thoroughly investigate alleged violations of fundamental rights.

Going forward, the FRO intends to follow up and monitor more closely the receipt and type of such responses and to complement such enquiries with the use of other tools, including field visits, for a more comprehensive investigation of cases, when deemed necessary. The Fundamental Rights Officer will further continue to keep records of all Serious incidents in the context of operational activities of Frontex for which the national authorities did not demonstrate genuine efforts to investigate allegations of serious fundamental rights violations. This record allows for assessment of the level of engagement of the national authorities and discussions on follow up in the Management Board and the Agency overall.

In the first half of 2021, both the Frontex Management Board Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea (FRaLO) and Frontex Scrutiny Working Group (FSWG) outlined in their reports on the Fundamental Rights Officer's involvement in Serious Incident handling which they considered insufficient under the applicable Standard Operating Procedure (SOP) on Serious Incident Reporting at the time. In reactions to the recommendations of the FRaLO Working

Group, on April 19, 2021, the new SOP on Serious Incident Reporting was adopted, strengthening the role of the Fundamental Rights Officer. Importantly, this entails direct reporting of situations of potential violations of fundamental rights to the Fundamental Rights Officer and his sole decision-making power with regards to launching Serious Incident procedure in such cases. The Agency-wide commitment to enforce the new Serious Incident Mechanism was reiterated in Frontex Fundamental Rights Action Plan, adopted on 9 November 2021.<sup>41</sup>

The Office invested significant efforts in sensitising officers to the changes of the reporting procedure and obligation to report directly to the Fundamental Rights Officer through training and briefing activities. Such efforts will continue in 2022 and beyond to further reduce officers' inhibition threshold to report in a direct manner.

Under invitation by the Frontex Management Board on October 7, 2021, the FRO contributed to a report on the implementation of the revised Standard Operating Procedure on Serious Incident Reporting, elaborating on the state of play, existing challenges, and next steps. The report also announced a revision of the SOP on Seri

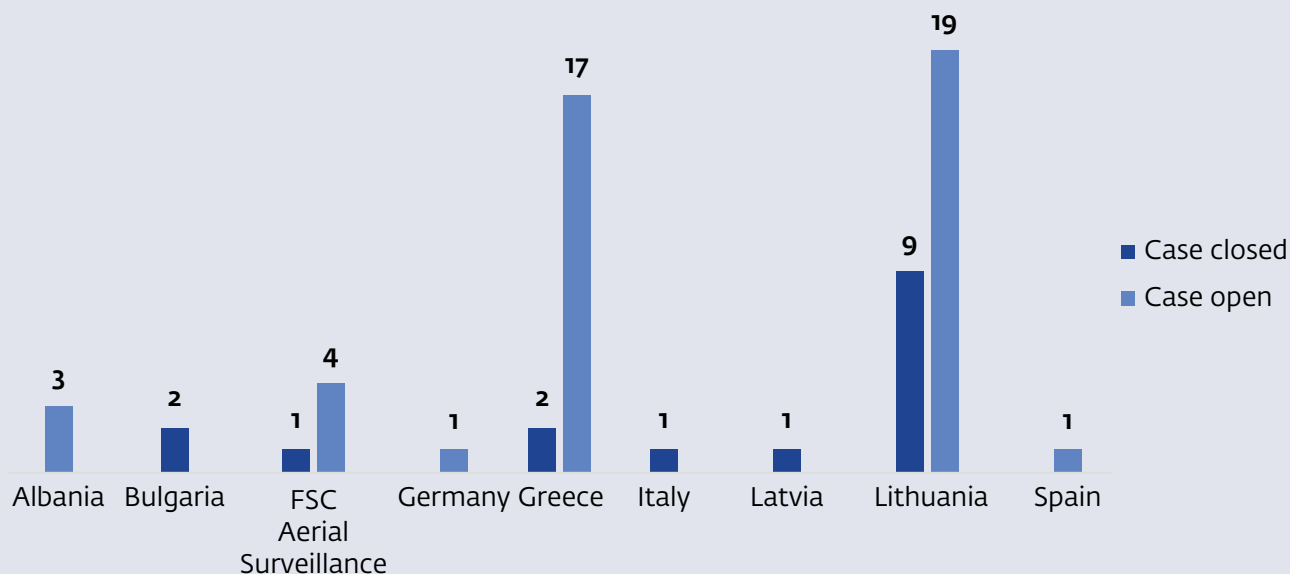
<sup>40</sup> [Management Board conclusions on the follow up of the FRO's recommendations regarding SIRs](#)

<sup>41</sup> Activity 19, Management Board Decision 61/2021



### SIRs status update

Number of SIRs closed and open per country/activity as of end of 2021



ous Incident Reporting in 2022 to reflect lessons learnt in the first year since its adoption for which the FRO stands ready to support.

The FRO equally took note of the findings of the report of the Internal Audit Service of the European Commission highlighting the lack of clarity as regards documentation of Fundamental Rights Officer decision-making in relation to the launching of SIRs and modalities of its cooperation with national authorities in the context of investigations. These recommendations are being followed up through an Agency-wide Action Plan, with the Fundamen-

tal Rights Office delivering on these in the course of 2022.

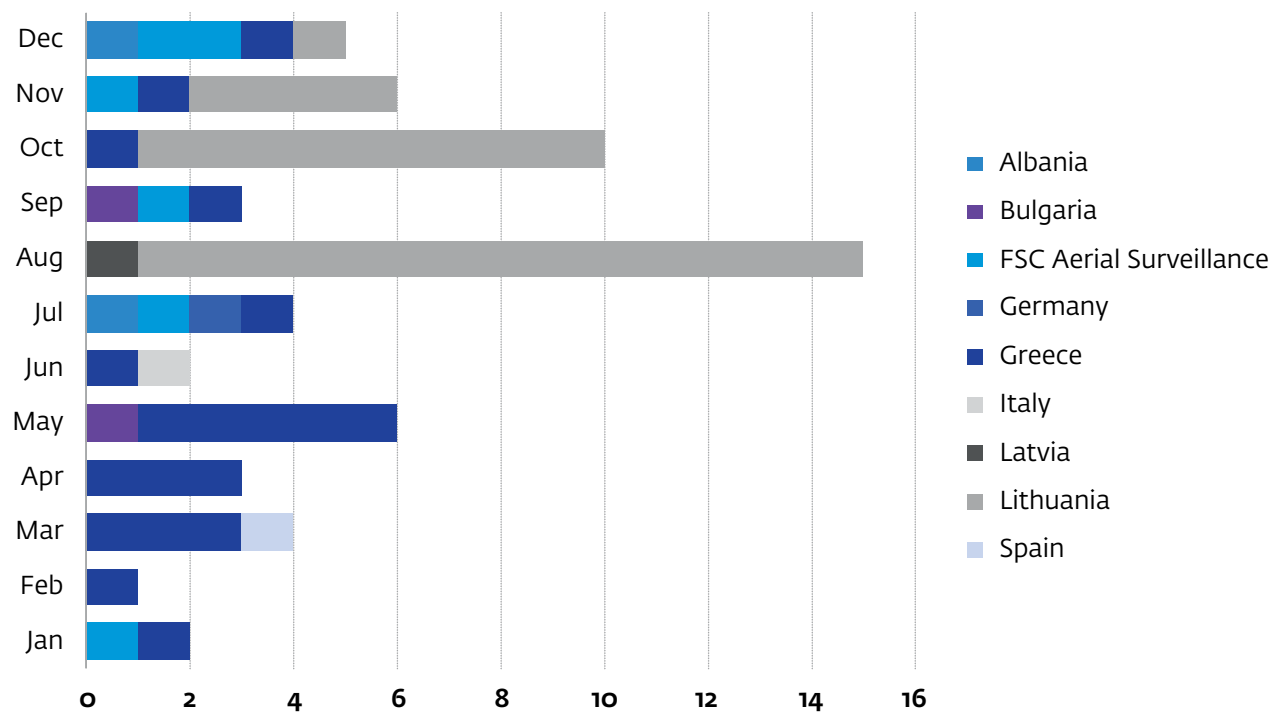
Considering that the incidents are happening in the framework of Frontex operational activities and/or within joint operational areas, and that the alleged events are of a serious nature, the applicability of Article 46 of the Regulation (EU) 2019/1896 could be considered. The FRO recommends that national authorities initiate investigations on a regular basis into the alleged occurrences. National authorities should also share the findings of their investigation, including national investigative reports, with the FRO.

Furthermore, as expressed by a Report of the Internal Audit Service, Frontex should consider developing a policy, which would allow to follow up on recommendations/ SIR from SIR processing. This would also enable a proper reporting to the Management Board. The responsibilities of Member States in SIR processing and follow-up, including on SIRs related to fundamental rights should be clarified.

Finally, 2021 has seen an increase in staff in the Fundamental Rights Office which allowed for the creation of a specialised SIR team as a response to the growth of cases both in terms of scope and scale.

### Country overview of fundamental rights related SIRs

Total number of SIRs submitted in 2021 divided by month of reception



## 2.2. The Complaints Mechanism

In 2021, the Office received a total of 27 complaints. After an admissibility review of these complaints, six of them were declared admissible and were forwarded to the relevant Member States' competent authorities or Frontex Executive Director, for further handling, as well as to Frontex Executive Management, for information.

The admissible and inadmissible complaints, regarding land, air, and sea activities, are regularly reported by the Fundamental Rights Officer to the Management Board. An overview of the Complaints Mechanism is presented below, including references to the Agency's and Member State's findings and follow-up to the complaints (as per Article 109(4) and 111(9) of the Regulation (EU) 2019/1896).<sup>42</sup>

When compared to 2020, the number of admissible complaints is slightly lower (2020: 7; 2021: 6), however, the total number of incoming complaints displays a growing trend (2020: 24; 2021: 27). The admissible complaints submitted in 2021 concerned alleged violations of the following fundamental rights: the right to respect human dignity; prohibition of tor-

ture and inhuman or degrading treatment or punishment; protection in the event of removal, expulsion, right to asylum, right to property, and right to good administration. The admissible complaints concerned Frontex operational areas in the following Member States or third countries: Albania, Croatia, Greece, and Spain. One complaint regarded the Agency's own staff, with the Executive Director having to provide findings and follow-up, and the rest concerned staff from Member States, where their competent national authorities have to inform the FRO about the findings and appropriate follow-up.

Throughout 2021, the Office has worked on three fronts in relation to complaints:

1. Strengthening the tools of the Complaints Mechanism and raising awareness by updating the existent complaint form, finalising, and implementing the use of a new submission tool – the online complaint form, and facilitating the distribution of the Complaints Mechanism information material to various Frontex operational areas.

2. Contributing to enhancement of the mechanism by providing inputs on the new Rules on the Complaints Mechanism.

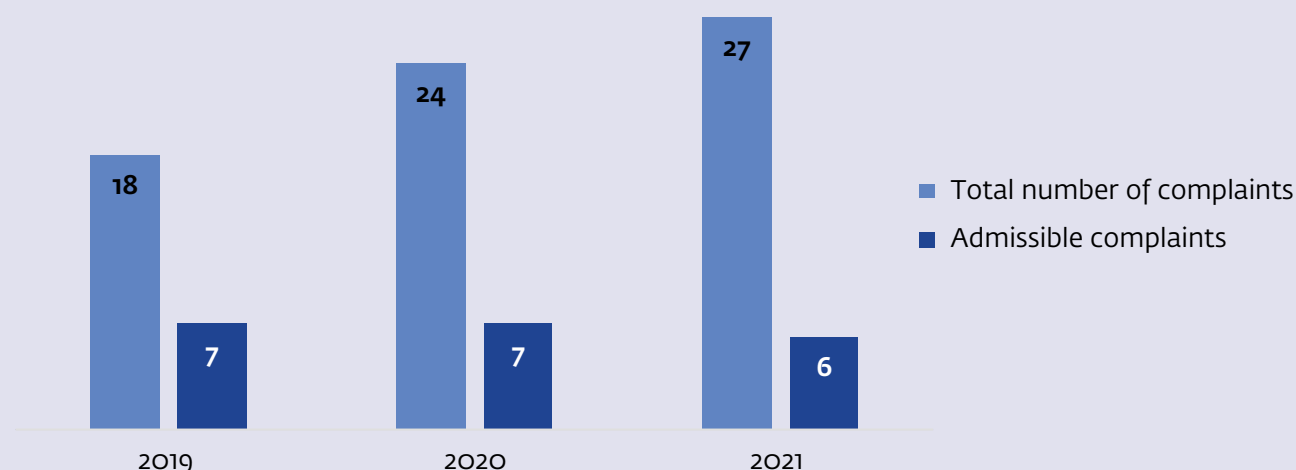
3. Capacity building activities on the mechanism in the form of trainings to Frontex staff at headquarter and in the field, as well as to local partners during monitoring of Frontex operational areas.

During the year, the Agency, in cooperation with the FRO, designed an action plan to implement the recommendations included in the European Ombudsman's Decision<sup>43</sup> on the functioning of the Frontex Complaints Mechanism. The decision comes after the European Ombudsman launched an inquiry on its own initiative to assess the effectiveness and transparency of Frontex's complaints mechanism.

In 2021, the FRO also drafted a Memorandum of Understanding (MoU) between the Albanian People's Advocate Institution (Albanian Ombuds) and the Fundamental Rights Officer, and a Memorandum of Understanding (MoU) between the Albanian Ministry of Interior and Frontex Executive Director, based on the Status Agree-

### Complaints received via the Complaints Mechanism since 2019

Number of complaints registered over the past three years



<sup>42</sup> Article 111(9) of the Regulation (EU) 2019/1896 mandates the fundamental rights officer to include information on the complaints mechanism in his or her annual report, as referred to in Article 109(4), including specific references to the Agency's and Member States' findings and the follow-up to complaints. In order to increase transparency and accountability, the Agency should report on the Complaints Mechanism in its annual report. The report should cover in particular the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States. (Recital 104 of the Regulation (EU) 2019/1896)

<sup>43</sup> European Ombudsman OI/5/2020/MHZ, accessible at <https://www.ombudsman.europa.eu/en/search?search=OI%2F5%2F2020%2FMHZ%20%20%20>

ments between the EU and the Republic of Albania on actions carried out by Frontex in Albania.<sup>44</sup> The latter MoU with the Albanian Ministry of Interior and the Frontex Executive Director will be taken over by the Agency ahead of its conclusion. The aim of these MoUs are to coordinate the coexistence of Frontex Complaints Mechanism with the national mechanisms, used during operational activities in Albania.

According to 111(9) of the Regulation (EU) 2019/1896, the Fundamental Rights Officer shall include information on the Complaints Mechanism in the Annual Report, as referred to in Article 109(4), including specific references to the Agency's and Member States' findings and the follow-up to complaints. A number of new individual complaints were submitted during the year which, at the time of reporting, are still pending. However, in 2021, the FRO closed the following admissible complaints:

#### **Complaint No. 2020-00003**

The complaint concerned a planned readmission of persons (the complainants) from Greece to Turkey, which was subsequently cancelled. The complainants raised alleged violations of their fundamental rights (protection in the event of removal, expulsion, or extradition; right to asylum; right to effective remedy and to a fair trial).

The readmission was, according to Hellenic authorities, cancelled due to interim measures issued by the European Court of Human Rights.

The Greek Ombudsman informed the FRO that they had recommended to the Hellenic Police to abstain from removal of the complainants due to their pending applications for judicial protection.

Based on the facts put forward by the complainants, in particular those relating to their health condition and their pending proceedings, which allegedly hindered the planned readmission, in the closure

of the case the FRO noted with satisfaction that the complainants were finally not readmitted, as well as reiterated the Greek Ombudsman's recommendation as to judicial protection to the Hellenic Return/Readmission authorities, aiming at safeguarding the right of anyone, including the complainants, to be heard before a court of law and the right to an effective remedy.

#### **Complaints No. 2020-00005 and 2020-00006**

Similar to the above-mentioned case, these complaints concerned a planned readmission from Greece to Turkey of two complainants, who alleged violations of their fundamental rights (protection in the event of removal, expulsion, or extradition; right to asylum; right to effective remedy and to a fair trial). In the closure of the cases, the FRO noted that following interventions and actions of competent Hellenic authorities, the complainants' rights were finally upheld.

#### **Complaint No. 2020-00018**

This complaint concerned alleged discrimination and verbal mistreatment (human dignity; non-discrimination) of two complainants by Bulgarian border guards at a border crossing point (Kapitan Andrevo). Bulgarian Border Police declared the complaint unfounded, based on video surveillance footages and border guards' statements, finding that no aggression or discrimination took place. Furthermore, upon a request, the FRO was informed that the recordings were deleted as no violation was found.

In the closure of the case, the FRO welcomed the fact that national authorities examined the complainant however, expressed concerns that the footages were deleted despite being used as evidence. The FRO recommended that such evidence be kept as long as a Frontex complaints procedure is ongoing, in order to ensure

due process. The FRO added that in performing their tasks, European border, and coast guards, including Bulgarian border guards, must guarantee the protection of fundamental rights and abstain from all behaviour likely to compromise the prestige and nature of the public mission in which they are invested, as participants in Agency's activities.

#### **Complaint No. 2019-00013**

This complaint concerns five persons alleging improper conduct of an officer deployed by Frontex within the Agency's activity in the international airport Kutaisi, Georgia. The complainants were denied boarding a plane by the officer, who allegedly exceeded powers, and claimed violation of their fundamental rights (human dignity; good administration). Competent national authorities declared the complaint unfounded, finding that the officer, who was deployed as an observer, worked under supervision of Georgian border authorities, and never exceeded the powers, and the officer simply provided advice on denying boarding to persons for whom a migratory risk existed for the Schengen Member States.

The FRO welcomed the fact that the competent national authorities conducted an examination of the complaint and provided the following observations and recommendations. The FRO pointed out that team members can only act, within their mandate, under instructions from and, as a rule, in the presence of border guards of the host country.

Furthermore, the FRO highlighted that European border and coast guards must guarantee the protection of fundamental rights and abstain from all behaviour likely to compromise the prestige and nature of the public mission in which they are invested, as participants in Agency's activities.

<sup>44</sup> Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, OJ L 46, 18.2.2019, p. 3–10.



# CHAPTER 3

## Knowledge, skills, and competences



### 3.1. Trainings

In 2021, the Office continued its support to Frontex Training Unit for delivering training sessions on fundamental rights to the Agency's Standing Corps officers. These included basic trainings prior to deployment, *ad hoc* trainings on the Agency's fundamental rights protection and monitoring systems (including on SIRs and the Complaints Mechanism), specialised trainings to different officer's profile

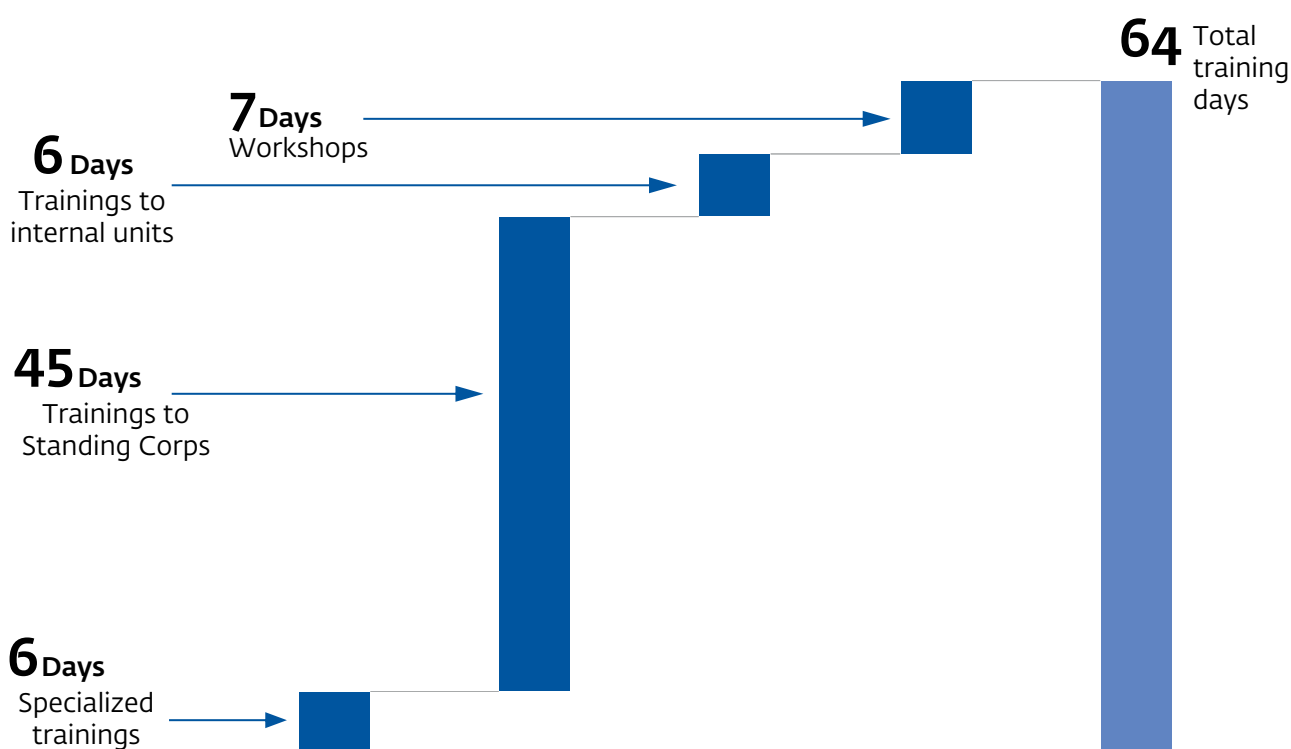
(including debriefers, staff from Frontex Situation Centre and from the European Travel Information and Authorisation System (ETIAS)), refresher trainings as well as specific trainings to national authorities.<sup>45</sup>

Given the role in Annex V of the Regulation (EU) 2019/1896, stating that the Fundamental Rights Officer shall verify and provide feedback on the content of induction

and refresher training on the use of force<sup>46</sup>, the Office participated in an Agency workshop for the development of the use of force annual refresher training. The Office was actively involved in the design of training materials, ensuring mainstreaming of fundamental rights across sessions, and paying special attention to ways of protecting fundamental rights where the use of force is necessary and lawful.

#### Trainings provided by the Office

Number of training days over the year 2021 divided by type and target audience

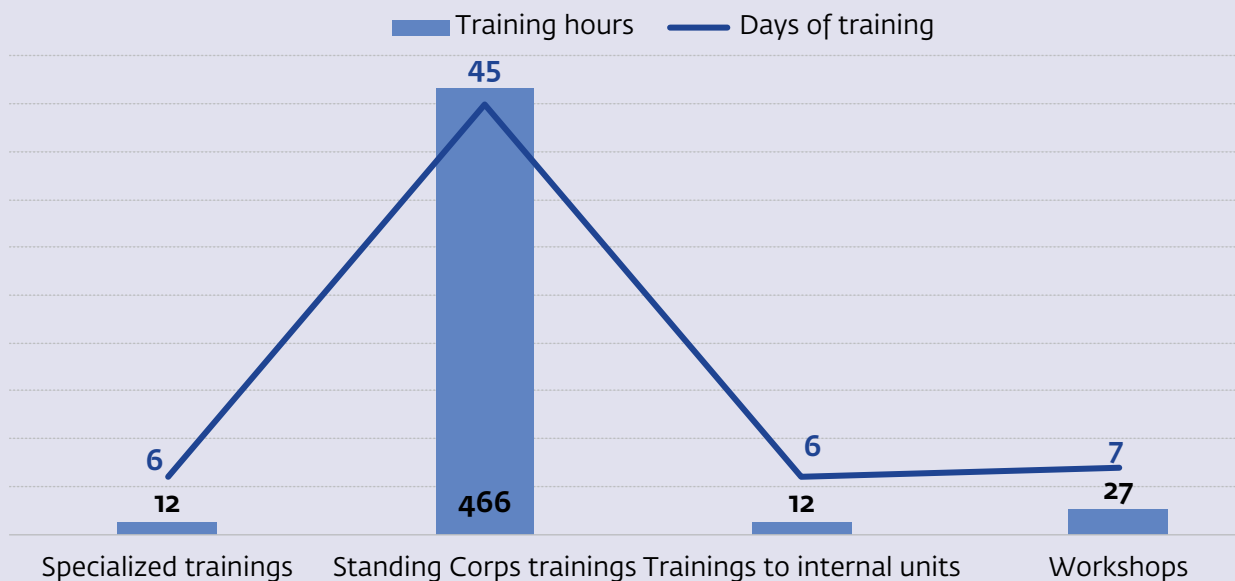


<sup>45</sup> The FROMs provided a training in November 2021 to Greek border guards in cooperation with UNHCR and the Greek Ombudsman.

<sup>46</sup> Under the framework of the Supervisory Mechanism on the Use of Force (Management Board Decision 7/2021 of 20 January 2021), the Fundamental Rights Office supported the drafting of a Standard Operating Procedure on reporting use of force and incidents involving the use of force which entered into force on 06/03/2021. The procedure requires all members of the Standing Corps are obliged to report when they use force. In line with its mandate, according to Annex V of the EBCG Regulation, to monitor all activities related to the use of force and to ensure investigation and reporting of incidents related to the use of force, the Fundamental Rights Office is shared all incidents involving the use of force. See more at <https://frontex.europa.eu/media-centre/management-board-updates/conclusions-of-the-management-board-on-the-implementation-of-the-agency-s-new-administrative-structure-2TJePn>

### Overview of trainings provided by the Office

Number of training days compared against hours of trainings delivered in 2021



## 3.2. Technology and related guidance

In 2021, the Agency continued to be involved in the setting up of the ETIAS, and specifically the ETIAS Central Unit which will be part of Frontex, with the Fundamental Rights Officer as a member of the respective Project Steering Committee. Throughout the year, the Office has been in regular exchange with members from the ETIAS Central Unit Division in Frontex as part of its mandate to monitor Frontex activities. Furthermore, the Fundamental Rights Office has repeatedly supported the Training Unit with the development of material for the training of ETIAS Central Unit staff and the delivery thereof as of summer 2021 onwards. Finally, as foreseen by the ETIAS Regulation, the Fundamental Rights Office will be providing the secretariat for the ETIAS Fundamental Rights Guidance Board (EFRGB) with advisory function tasked to perform regular appraisals and issue recommendations on

the impact of the processing of applications and the implementation of the ETIAS screening rules on fundamental rights. Since October 2021, the FRO has hosted several meetings with representatives of those entities which will be represented on the board to facilitate joint planning as regards its set up and will continue to do so in 2022.

During 2021, the staff of the Office also participated in the work of the Working Group on the European Asylum Support Office EASO (since January 2022, the European Union Asylum Agency, EUAA) toolbox on information provision to applicants for international protection, in the context of access to the asylum procedure. The Working Group is chaired by EUAA and, apart from the FRO, it includes EU+ experts from several Member States. The toolbox is a component of the broader project

*"Let's speak asylum: methodology and tools to support the provision of information in the context of asylum and reception"*. The toolbox focuses on the provision of information during the three steps of access to the procedure (i.e., making, registration, lodging) and aims at supporting first contact officials and registration officers in their duty to provide information to persons who wish to apply for international protection. The FRO has taken active part in designing different information provision tools as well as participating in the discussions of the Working Group.



# CHAPTER 4

## Independent advice and cooperation



## 4.1. Strengthening processes

In 2021, the Fundamental Rights Officer has worked towards embedding fundamental rights in an ever-increasing number of procedures and processes, that accompanies the expansion of the mandate of the Agency. The insight of the Office, along with the findings of the field monitoring, allowed the Fundamental Rights Officer to provide advice and issue concrete recommendations to the Agency towards the alignment of its activities with fundamental rights. The FRO's active participation in the development of formative and strategic documents of the Agency (73 in total throughout 2021), such as the annual planning, the Annual Strategic Risk Analysis Report and the Agency's Code of conduct for all border control operations and all persons participating in the activities, contributed significantly to higher fundamental rights standards.



The Office contribution to the variety of tools and procedures allowed to mainstream these processes with fundamental rights safeguards. For instance, the FRO contributed the Standard Operating Pro-

cedure on the implementation of Article 46 of the Regulation (EU) 2019/1896 – setting up the mechanism to suspend, terminate, withdraw the financing or not to launch Frontex activities or the handbook for the debriefers. The Fundamental Rights Officer's observations to the Operational Plans for activities supported by the Agency offered guidance for the operational stakeholders on rights-based conduct. The Fundamental Rights Officer's opinions and expressions of concerns on selected fundamental rights challenges observed in the migration management law or practices of the Member States provided recommendations to improve the processes and to advise Frontex management on the possible fundamental rights risks. Issuing of FRO observations at different stages of the development of the Working Arrangements with third countries, EU Agencies and International Organisations, allowed to assess the implications of such cooperation on given areas of fundamental rights and suggest corrective measures to mitigate the potential risks. In this regard, together with the Agency's International and European Cooperation Division, a new two-step approach on the issuing of FRO Opinions on working arrangements in line with Article 109(2)(f) of Regulation 2019/1896 has been elaborated in order for the FRO to be able to give meaningful textual proposals but also recommendations on the implementation of such arrangements with the Agency's partners. In addition, and in line with the Fundamental Rights Action Plan implementing the Fundamental Rights Strategy, the FRO has been asked by the Agency to provide the first round of assessments prior to the start

of working arrangement negotiations with third countries as part of the due diligence procedure.

In terms of policy development, the adoption by the Agency of the Fundamental Rights Strategy on 14 February and the Action Plan on 9 November constitute significant milestones of 2021. The development of the Action Plan was preceded by a thorough consultation with all in-house entities. The implementation of specific time-bound outputs, activities, and indicators in 2022 (and beyond) will uphold the efforts to align the Agency's work with fundamental rights through targeted and tangible actions. The activities are indeed formulated as key action points, assigned to the European Integrated Border Management community as a whole, the Agency or its specific units. They relate, for example, to improving data collection on identification and referrals of persons in vulnerable situations or ensuring that deployed staff, whenever needed, have an advanced knowledge or expertise in specific fundamental rights subject-matters (e.g., child protection). Frontex, including the Fundamental Rights Officer, monitors the implementation of the Action Plan. Some of the responses and recommendations to the challenges identified during the Office's monitoring and advisory activities feature in the Action Plan as actions to be implemented horizontally by the Agency. In this way, the Fundamental Rights Officer is able to systematically address the challenges, concerns and issues identified. In 2022, the FRO will start implementing the Fundamental Rights Action Plan.

## 4.2. The Consultative Forum on fundamental rights

According to Article 108(3) of the Regulation (EU) 2019/1896, the Consultative Forum shall be consulted 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.

In 2021, the Consultative Forum, and its 14 members, provided its expertise to the Office and the cooperation was further enhanced. Regular meetings held between both entities provided space for discussions on the current fundamental rights challenges in view of advising coherently the Agency. At the beginning of the year, the Consultative Forum provided its recommendations to the Frontex Fundamental Rights Officer in relation to the suspension of operations in Hungary. In addition

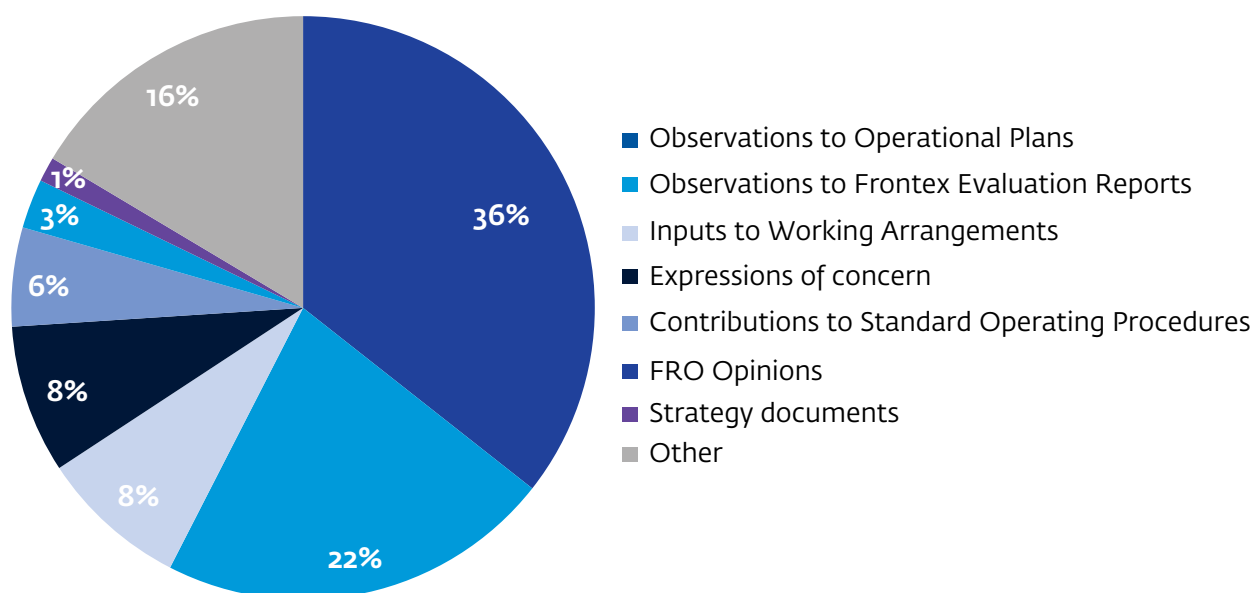
to that, the Forum offered its expertise in the recruitment of the Fundamental Rights Officer and participated in the recruitment panel. The FROMs had the opportunity to benefit from the expertise of the Forum, which provided tailored human rights monitoring trainings. In turn, the monitors and the FRO contributed to inform the Forum on the current fundamental rights challenges ahead of its visits to Lithuania and to Greece.

In view of strengthening the internal safeguards and as, the Consultative Forum issued recommendations on the following documents:<sup>47</sup>

- ♦ Standard Operating Procedure on Frontex's Serious Incident Reporting Mechanism
- ♦ Action Plan to the Fundamental Rights Strategy;
- ♦ Frontex' 'Best Practices on Returning Minors and Families'
- ♦ Standard Operating Procedure – setting up the mechanism to suspend, terminate, withdraw the financing or not to launch Frontex activities;
- ♦ Draft rules on the complaints mechanism;
- ♦ Code of conduct for all border control operations and all persons participating in the activities of Frontex and the Code of conduct for return operations and return interventions.

### Type of documents issued by the Fundamental Rights Officer

Percentage of the type of documents issued in 2021 divided by type



<sup>47</sup> For further information on the activities of the Consultative Forum, please refer to its Ninth Annual Report (2021)



# CHAPTER 5

## **Impact and follow-up to recommendations**





Throughout the year, the Fundamental Rights Officer has continuously provided advice and assistance to Frontex with regards to fundamental rights and related risks by issuing opinions and recommendations as well as by assessing and analysing the Agency's support to specific operational activities.

The following table is based on the main recommendations issued by the Fundamental Rights Officer in 2021, in the form of expressions of concern and opinions to the Executive Director. It outlines his recommendations related to a given issue (operational activity, country of concern) and the follow-up actions taken by the

Agency. In the last column of the table, the status of implementation of the recommendation is shown with a common traffic light system: green for implemented; yellow for partially implemented, and orange for pending implementation.

Topic	Recommendation	Follow-up actions	Status
<b>Returns</b>	1. Frontex should temporarily suspend return operations and in providing technical assistance in voluntary returns to Belarus.	Return operations and voluntary returns to Belarus have been suspended	
	2. Frontex should temporarily put on hold the support and technical assistance to Member States in forced-return operations to Afghanistan	Forced returns to Afghanistan were temporarily put on hold	
	3. Immediately suspend any support and technical assistance to return operations and interventions to Afghanistan.	The support to forced and voluntary returns was suspended immediately.	
<b>Hungary</b>	1. Frontex should suspend or terminate, in whole or in part, or not to launch land border operational activities in Hungary	Land border operational activities have been suspended	
	2. The Agency should maintain the suspension of the joint operational activities	The suspension of the operational activities has been maintained	
	3. The cross-border crime project should have strong fundamental rights safeguards		
	4. The Agency should not be involved in the return of third country nationals who are seeking international protection in Hungary.	The disclaimer for Hungary in the Frontex Application for Returns has been strengthened	
<b>Lithuania</b>	1. Introduction of further fundamental rights safeguards at OPLAN level.		
	2. The Agency could support Lithuania in transporting all apprehended migrants to a border crossing point in Lithuania.		
	3. Introduce a permanent monitoring on the activities within the Rapid Border Intervention.	FROMs monitored the activities extensively	
	4. Refugees and migrants in temporary accommodation, while awaiting finalisation of their procedures shall be transferred to the reception centres with adequate living conditions as soon as possible.		
<b>Poland</b>	1. Enhance the fundamental rights safeguards especially if a greater Frontex engagement is to be considered.		

Since 2021, following the various recommendations provided to Frontex by different oversight entities and *ad hoc* Working Groups operating at the EU level, the FRO has worked towards the implementation of such recommendations. The FRO has been acting upon them by developing activities

together with the Agency, by embedding them in various recommendations.

The table below provides an overview of recommendations issued by the European Ombudsman, the Frontex scrutiny working group (FSWG) and the Work-

ing Group on Fundamental Rights, Legal and Operational Aspects of Operations (FRaLO) where the Fundamental Rights Officer (FRO) was among the responsible entities and includes the actions taken to implement such recommendations.

Entity	Recommendation	Action	Status
<b>European Ombudsman</b>	1. <i>In its memoranda of understanding or other relevant documents concluded with non-EU country bodies, Frontex should stipulate that Frontex (via the FRO) is responsible for receiving all complaints on non-compliance with fundamental rights. After classifying them, the FRO would then transfer complaints to the relevant national body, where necessary.</i>	The preparatory work for a Memorandum of Understanding between FRO and the Albanian Ombuds institution were initiated in 2021 (to be concluded early 2022) and a similar instrument will be concluded between the Agency as a whole and the Albanian Ministry of Interior. Similar arrangements were underway with Montenegro and Serbia.	

Entity	Recommendation	Action	Status
<b>European Ombudsman</b> Endorsed by the FSWG	2. In its public information material, Frontex should make clearer to potential complainants the benefits of the Complaints Mechanism, notably that it is free of charge. Frontex should also draw attention to the fact that complainants are not supposed to be penalised for submitting complaints, and that submitting complaints should not prejudice other procedures, such as asylum applications.	<ul style="list-style-type: none"> <li>New rules on the Complaints Mechanism have been drafted to improve the existing mechanism and they are to be adopted by the Management Board.</li> <li>Posters and other means of communication are developed.</li> <li>Complaint forms which specifically mention that filing a complaint is free of charge and that Frontex will treat all complaints as confidential are provided to complainants.</li> <li>The Frontex website provides information explaining in which situations complaints may be submitted and that it is free of charge and does not prejudice other procedures, such as an application for asylum.</li> </ul>	
<b>European Ombudsman</b>	3. The FRO should seek to develop permanent channels of cooperation with civil society organisations present on the ground where Frontex operates and provide them with information material on the Complaints Mechanism, which explains the procedures for those representing individuals that wish to submit complaints.	The Fundamental Rights Officer regularly engages with civil society organisations (in addition to the Consultative Forum) and the Fundamental Rights Monitors systematically engage with civil society organisations in the field, promoting the Complaints Mechanism.	
<b>European Ombudsman</b> Endorsed by the FSWG	4. Frontex should publish on its website the FRO's annual reports for 2017, 2018, 2019 and 2020, and consider publishing the FRO's closing decisions on complaints (so-called 'final reports'), if necessary, after having anonymised their content. Annual reports of the FRO could include a section on the concrete actions undertaken by Frontex and the Member States on the basis of the FRO's observations and recommendations, one year on.	Individual complaints are included as an annex in the 2022 Annual Report by the Fundamental Rights Officer	
<b>FSWG</b>	1. The FSWG urges the FRO and/or the Executive Director to ensure that complaints are not closed until Member States provide the Agency with an adequate response. This can either be done by addressing the complaint in the Management Board and/or by involving the relevant national Ombudsman's office. The FSWG calls for more capacity to ensure adequate follow up on complaints.	The reviewed rules on complaints provide for timelines and the follow up is to be enhanced.	
<b>FSWG</b>	2. The FSWG emphasises the importance of an effective and independent investigation of SIRs or other reported incidents. This implies that in its follow up to a SIR, the FRO 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 Ombudsmen and relevant international organisations.	The FRO has during 2021 stepped up its capacity and enhanced procedures for more effective follow up to SIRs; additional work is underway.	
<b>FSWG</b>	3. The FSWG welcomes the European Court of Auditors (ECA) recommendation that the relevant assessment units should ensure the necessary expertise and human resources for adequate analyses, and emphasises that, for a responsible decision making on joint operations, these units should include fundamental rights expertise as well. The FSWG insists on the proper implementation of the current Regulation where the FRO and his staff are able to issue opinions on all OPLANs, including the risk and vulnerability assessment parts.	From 2021, the FRO has been involved in all operational plans, in trainings of the Standing Corps and various operational contexts. In addition, the FRO is developing tailor-made training programme for FSC and Operational Response Division and has a permanent seat in the FSC Situation Room for monitoring.	
<b>FSWG</b>	4. The FSWG recommends that, in order to ensure effective border management and proper monitoring of the fundamental rights situation, further improvement in information sharing is necessary.	All business entities of the Agency engage with and involve the FRO in relevant processes. The FRO is also fully responsible for fundamental rights-related SIRs.	
<b>FSWG</b>	5. The FSWG recommends that border guards should be offered clearer guidance and more effective training on fundamental rights and procedural safeguards while exercising border surveillance tasks. The FSWG insists that further development of common core curricula for the training of border guards and training at European level for instructors of the border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law is necessary.	<ul style="list-style-type: none"> <li>Fundamental rights are an integral part of the training for the Standing Corps Officers. The FRO contributes extensively to this training.</li> <li>The FRO has also provided training to national officers.</li> </ul>	
<b>FSWG</b>	6. The exceptional reporting mechanism, where incidents can immediately be reported to the FRO should be available for all participants and all relevant categories of staff. The FSWG underlines that orders to avoid parts of the operational area where are potentially happening, should be reported by team members.	<ul style="list-style-type: none"> <li>Regular awareness and briefings sessions are organised for the staff directly dealing with SIRs. See also recommendation 6.</li> <li>Potential cases where host Member States would order assets to avoid certain areas or leave the scene of the incident are followed constantly on the ICC level and instructed to be reported through chain of coordination.</li> </ul>	

Entity	Recommendation	Action	Status
<b>FSWG</b>	7. The FSWG urges the Management Board and the Executive Director to ensure that the FRO and CF are included actively from the very start of relevant processes, actively involve the recommendations and opinions from the FRO and CF in their decision-making and justify their follow-up to the respective actors.	The Agency is systematically involving FRO as soon as fundamental rights cases are flagged and in line with the adequate procedures. The MB invites MB meetings for the agenda points dedicated to fundamental rights, which became a regular agenda point of all MB ordinary meetings. Furthermore, the MB is more systematically acting on FRO recommendations and opinions.	
<b>FSWG</b> Endorsed by the FRaLO	8. The FSWG calls for the immediate provision of a clear and short timeline for the employment and deployment of the remaining fundamental rights monitors at AD level, complemented with supporting personnel at AST-level.	20 FROMs have been hired by Frontex and have just completed their intensive trainings both online and residential to deepen their knowledge on their tasks. FROMs have been assigned to geographical and thematic clusters and engaging in field visits. The recruitment process of 20 FROM AD5 is ongoing and it will be completed by end of February 2022. The newly recruited monitors will take up their position in spring/summer 2022.	
<b>FSWG</b>	9. The FSWG requests from the FRO and the CF to report back on their activities to the European Parliament. This should be organized periodically and whenever deemed necessary. The FSWG urges the FRO and the CF to alert the Management Board and, if necessary, the LIBE Committee of the Parliament, the FSWG and the Commission when they are restricted in their independence while exercising their mandate.	Recommendations and opinions by the FRO are shared at Management Board meetings in which the European Parliament is invited as observer. The FRO Annual Report is public. The FRO has also actively participated in various exchanges with the European Parliament and with Member of the European Parliament	
<b>FSWG</b>	10. The FSWG concludes that clearer criteria and procedures need to be established for the adequate application of Article 46 and supports that the Agency has set up an ongoing structured debate in cooperation with the FRO in order to develop a due diligence procedure and intermediate steps in this regard. These criteria should, as a minimum, include a strong role of the FRO, the need to take account of information received from external actors, risk indicators and objective early warning criteria, as well as a justification for the decision to suspend, terminate or withdraw funding, and transparency.	SOP on setting up the mechanism to suspend, terminate, withdraw the financing, or not to launch Frontex activities pursuant to Article 46 of the Regulation (EU) 2019/1896 was drafted in consultation with the Fundamental Rights Officer and the European Commission during 2021. The SOP was adopted by the Executive Director on January 25, 2022. In addition to that, the FRO had already elaborated its own internal due diligence procedure.	
<b>FSWG</b>	11. The FSWG calls upon the Executive Director to apply this due diligence procedure in the case of its activities in Greece, in a fully transparent, comprehensive and timely manner, and to share his conclusions with the European Parliament.	The FRO will continue to monitor the situation and recommend the use of Art. 46 if required. The FRO will submit an Opinion on the overall fundamental rights situation in Greece as regards border management (to be submitted early 2022).	
<b>FSWG</b>	12. The FSWG stresses that, although not all reported incidents necessarily equal violations, reports of similar incidents should be carefully considered, seeing that they could indicate violations of fundamental rights that are of a serious nature. This should be reflected in the manner in which SIRs are handled, particularly regarding communication and information exchange with the host Member State, and also in the decisions of Art. 46. The FSWG stresses that such recurring incidents - which should be reported regularly to the Management Board by the FRO - should also be followed up on by the Management Board.	The FRO reports periodically and on an ad-hoc basis to the MB. The MB reports on follow-up measures taken to address these concerns.	
<b>FSWG</b>	13. The FSWG urges the Agency to further increase its transparency by acting in accordance with the practice of the AsktheEU portal and not resort to any copyright clause. The FSWG emphasises that SIRs, reports on the use of force and individual complaints should only be classified as restricted documents when necessary and on a case-by-case basis.	According to the new SIRs SOP, SIRs are not classified. Reports on the use of force are classified in accordance with provisions set out in procedures concerning EU Classified Information. The FRO will be systematically the recipient of incident reports on the use of force.	
<b>FSWG</b>	14. The FSWG underlines that effective fundamental rights impact assessments should be carried out by the Agency before engaging with third countries and asks the Commission to monitor that those are actually performed before giving its prior approval to working arrangements.	As foreseen in the regulation, the FRO is involved at all stages of WA negotiations and provides an opinion on the WA before it is concluded. A template on FRO opinions for Working Arrangements has been developed. In the context of the FRO internal due diligence, assessments on the fundamental rights risk of Frontex engagement for the third countries where a WA is to be concluded.	
<b>FRaLO</b>	1. The existing reporting and validation system should be reviewed, taking into account in particular the following elements: 1.2 Revise and enhance the minimum requirements for the experts in the Frontex Situation Centre (FSC) and provide additional training for the experts in order to allow them to detect, e.g. incorrect use of incident types and possible violations of Fundamental Rights.	A 24/7 system will be put in place once all FROMs are recruited and trained (Q4 2022). However, some consultations have already been made in terms of staff resources, staff conditions, and needs.	

# CHAPTER 6

## Conclusions





In 2021, the Fundamental Rights Officer – with the Fundamental Rights Monitors and the Office – has continued to provide analysis, assessments and advise to the Agency and the European Border and Coast Guard more generally, in relation to operational activities within and outside the European Union. The Fundamental Rights Strategy, adopted early 2021, was translated into a Fundamental Rights Action Plan which guide the operational aspects of the Strategy's implementation to ensure effective respect, protection, fulfilment, and promotion of fundamental rights of those who cross the EU borders, in the context of all the European Border and Coast Guard activities and in line with national, international and EU law.

In 2021, the Agency also recruited the first Fundamental Rights Monitors. 20 of the minimum 40 Monitors required by the Regulation (EU) 2019/1896 became operational in the summer of 2021 after intensive training, and the new Fundamental Rights

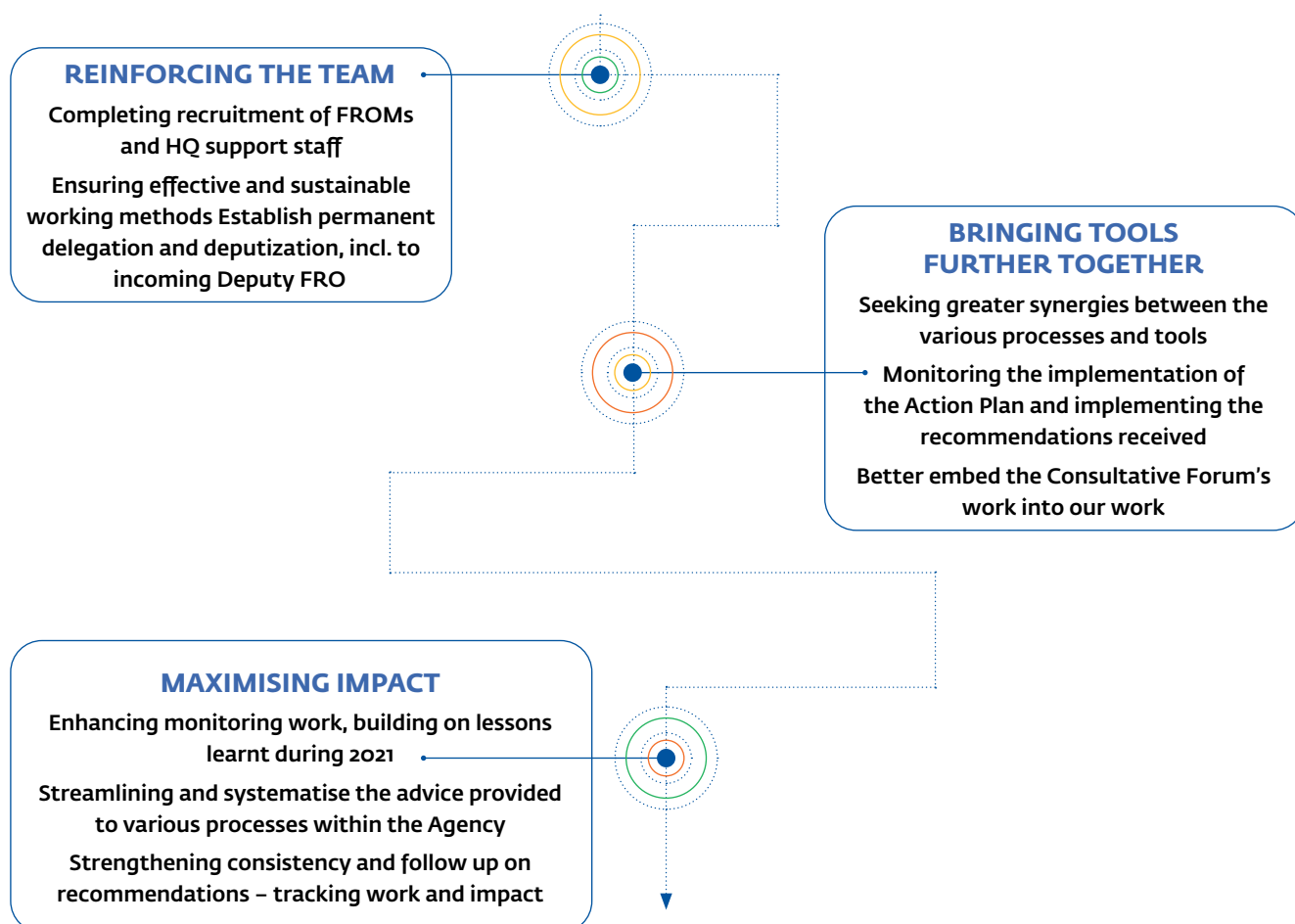
Officer took office in June. The recruitment process of 20 additional fundamental right monitors was also initiated during the year, with the onboarding anticipated for most of the remaining ones during spring 2022. The staff of the Fundamental Rights Office, including the monitors, was in 2021 deployed in monitoring missions for an overall duration of more than 200 days, covering 9 countries. The main operational focus was on Lithuania and Greece, based on a fundamental rights risk assessment and on the heavy engagement of the Agency in the two countries. Part of the monitors were also assigned by the Fundamental Rights Officer to the pool of forced-return monitors. The Fundamental Rights Office also trained Standing Corps, Frontex and national officers, and border management officials of third countries, on relevant fundamental rights standards and practices.

The Fundamental Rights Officer continued to provide advice to the Agency in the form of opinions and recommendations, as well

as by monitoring and embedding strong fundamental rights safeguards in the Agency's planning and operational instruments. As part of due diligence and the advisory role, the Fundamental Rights Officer also advised the Agency on implications of return operations to countries with increasingly challenging fundamental rights situation.

Finally, the Fundamental Rights Office handled an increasing number of Serious Incidents Reports compared to previous years, with the number of cases related to fundamental rights growing markedly. Greece and Lithuania were the main countries of origin. In addition, the Complaints Mechanism saw a slight increase in cases during the year. The Office continued providing inputs to the wide range of Frontex processes, from operational plans to evaluations and working arrangements, providing comments to more than 70 documents throughout the year.

## Priorities for 2022











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