



THE EUROPEAN BORDER AND COAST GUARD AGENCY
(‘The Agency’)

Fundamental Rights Strategy

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Acronyms

CCC	Common Core Curriculum
CF	Frontex Consultative Forum on Fundamental Rights
EASA	European Union Aviation Safety Agency
EASO	European Asylum Support Office
EATMN	European Air Traffic Management Network
EBCG	European Border and Coast Guard
EEAS	European External Action Service
EFCA	European Fisheries Control Agency
EIBM	European Integrated Border Management
EIGE	European Institute for Gender Equality
EMSA	European Maritime Safety Agency
ETIAS	European Travel Information and Authorisation System
EU	European Union
EU-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
FRA	European Union Agency for Fundamental Rights
FRO	Fundamental Rights Officer
FROM	Fundamental Rights Monitor
MS	Member State
SAC	Schengen Associated Country
TC	Third Country
TCoR	Third Country of Return
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in Human Beings
UN	United Nations

Preamble

Respect for, protection and promotion of fundamental rights are unconditional and overarching components of effective European Integrated Border Management (EIBM). In the performance of its tasks, the European Border and Coast Guard shall observe the provisions of Regulation (EU) 2019/1896¹ (Article 80).

The Agency is fully committed to developing, promoting and ensuring with all its partners and stakeholders within EIBM respect for fundamental rights in all its activities, as interpreted under EU and international law, and to integrating this into its cooperation with Third Countries.

The EU Acquis, in particular the Charter of Fundamental Rights of the European Union² (Charter or EU Charter) and international law, encompassing international protection obligations, shall further reinforce an EIBM culture characterised by the principles of equality and non-discrimination, mutual respect, transparency and cooperation.

The European Border and Coast Guard integrates fundamental rights safeguards throughout all its activities, at all stages.

The Fundamental Rights Strategy will be implemented within the framework of an Action Plan, intended to draw up practical fundamental rights safeguards that guide the implementation of the Agency's operational activities, integrated into the Agency's Annual Work Programme, towards the achievement of its mission and operational goals within EIBM.

The Fundamental Rights Officer's annual report will inform the Agency's Executive Management, its Management Board and the Consultative Forum, as well as other stakeholders and the public, about the implementation of the Strategy and the Action Plan. The Agency will actively and publicly communicate and promote the objectives and content of this Strategy among the relevant national, European and/or international bodies, thereby also enhancing the transparency of Frontex activities.

Legal Framework

According to the EU Treaties, respect for fundamental rights is one of the founding values of the European Union and a legal obligation upon the Agency under EU and international law.³ Furthermore, the Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States (MS).⁴ Similarly, the Treaty on European Union⁵ (TEU) states that in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute, inter alia, to the protection of fundamental rights.

The TEU recognises the rights, freedoms and principles set out in the Charter and gives it the same binding legal force as the Treaties.⁶ According to Article 51(1) of the Charter, its provisions are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the MS only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote their application in accordance with their respective powers.

In the context of border management, certain rights are particularly relevant to those who cross the EU's external borders. Recital 103 of Regulation (EU) 2019/1896 provides that the Regulation respects fundamental rights and observes the principles recognised by Articles 2 and 6 of the TEU and by the Charter, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-*refoulement*, non-discrimination and the rights of the child.⁷ These obligations are reinforced by other relevant EU Regulations and Directives.⁸

The Agency and the Member States are bound to respect specific international legal instruments relevant to international protection in the context of border management and returns, including the 1951 Geneva Convention, its 1967 Protocol as well as other United Nations and European treaties and conventions.⁹

Objective

The objective of this Strategy is to guarantee the protection of fundamental rights in the performance of the daily tasks of the European Border and Coast Guard Agency, related to European Integrated Border Management (EIBM), as provided for by Regulation (EU) 2019/1896. This Strategy focuses on the following tenets of fundamental rights objectives embedded in the performance of EIBM:

Respect for fundamental rights by ensuring the Agency's compliance with the EU Acquis and in particular the Charter and the case-law of the EU Court of Justice, as well as international fundamental rights standards and principles, especially the principle of *non-refoulement*.¹⁰

Protection of fundamental rights of all persons regardless of their age, gender, colour, ethnic or social origin, migration status, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, gender identity and sexual orientation. Ensure prompt identification, referral and protection of children and other persons in vulnerable situations.

Protection of fundamental rights through proactive and strict compliance with obligations stemming from international law and the Union acquis on fundamental rights, as a shared responsibility of the Agency and the Member States.

Promotion of fundamental rights, including through shaping and further developing a fundamental rights culture within the EU border management and returns community and expanding its knowledge, skills and competences on fundamental rights.

Guiding principles

The Strategy shall be premised on the following principles, guiding the implementation and monitoring of the Agency's tasks and conduct:

Respect for fundamental rights is an overarching legal obligation of stakeholders involved in EIBM. Consequently, migratory challenges at EU's external borders are addressed in full compliance with fundamental rights as contained in international and EU law, with the right to seek asylum effectively respected in all circumstances, regardless of where the persons are detected or apprehended or whether they express a to seek asylum.

Particular attention is to be devoted to the needs of vulnerable persons¹¹ or groups and persons in a vulnerable situation, including children. This requires early identification, support and adequate referral as primary considerations when managing migratory flows and undertaking the tasks stipulated in Regulation (EU) 2019/1896.

The best interests of the child is a primary consideration when taking any decisions affecting children. Member States and the Agency take children's rights into account across all their activities by introducing specific measures to ensure that the rights of the child as stemming from the Charter and international obligations are respected, especially regarding unaccompanied children and children separated from their family members. That includes taking the best interests of the child into account as a primary consideration together with respecting the right of the child to be heard in all procedures.

Equality and non-discrimination are central to the respect for, protection and fulfilment of fundamental rights. In the design and implementation of border management measures, Member States and the Agency ensure proactive safeguarding of equal and non-discriminatory conduct towards those who cross the EU borders, irrespective of their age, gender, colour, ethnic or social origin, migration status, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, gender identity and sexual orientation.

The Member States and the Agency promote gender equality as an integral part of their work and resolve to include gender considerations throughout their operational activities. This relates specifically to the recognition of equal rights of all people irrespective of their sex, sexual orientation and gender identities. In operational areas, the specific gender-based needs of those on the move shall be promptly identified and addressed. To this end, Member States and the Agency promote gender-balanced participation in their operational activities.

Accountability includes responsibility for any actions in the professional conduct of Member States and Agency staff. In particular, the Agency is accountable to the

European Parliament and to the Council¹² as well as to the Court of Justice of the European Union for actions and omissions under its mandate.

Transparency, good administration and access to documents held or produced by the Agency are guaranteed in accordance with Regulation (EC) No 1049/2001.¹³ The Agency communicates actively with stakeholders about its activities, including through publishing of annual reports, without revealing information that, if made public, would jeopardise the attainment of operational objectives.

Member States and the Agency apply fundamental rights due diligence to all of their activities, ensuring the highest standard of performance, assessing and mitigating the risk of violating fundamental rights from planning through monitoring and evaluation, and respecting human dignity and the principle of “do no harm” with regard to the rights of those on the move.

Protection of personal data is ensured in all of the Agency’s activities. Collecting, processing and exchanging of personal data shall be performed in accordance with applicable national and EU law¹⁴, data protection principles and principles of necessity, proportionality and transparency.

Operationalisation

Fundamental rights are one of the overarching components in the implementation of EIBM.¹⁵ Accordingly, Member States and the Agency must comply with the principles and standards of relevant national, EU and international law. This applies to all stages of their work, including analysis-based planning and development of activities, and later implementation and evaluation.

According to Article 46(5) of Regulation (EU) 2019/1896, the Executive Director shall, after consulting the Fundamental Rights Officer, decide not to launch any activity by the Agency where he or she considers that there would be serious reasons already at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature or that are likely to persist.

The tasks and the professional conduct of all stakeholders and participants in EIBM are equally guided by respect for equality, non-discrimination and accountability and dignified interaction with partners and those on the move across the EU external borders.

Analysis-based planning: Risk Analysis and Vulnerability Assessment in EIBM

Any operational activity is based on proper analysis of the risks affecting the situation at the EU external borders. To provide a comprehensive situational picture, this analysis shall specifically assess the migratory flows, trends and other possible challenges at the external borders, including taking into consideration the situation of persons in need of international protection, and the particular needs of vulnerable individuals or groups (e.g. children, including unaccompanied children, pregnant women, victims of gender-based and sexual violence, victims of trafficking in human beings (THB), stateless¹⁶ persons and others in a vulnerable situation or at risk).

The methodology applied for risk analysis shall consider and reflect the impact on the rights of persons crossing the borders, for instance through ensuring that collection, assessment and communication of data on entry and exit and referrals is disaggregated by nationality,

sex and age.¹⁷ The Fundamental Rights Officer provides methodological support to ensure fundamental rights are factored into the Agency's risk analysis and to support the Agency in the collection and analysis of quantitative and qualitative data in cooperation with the relevant European and Member States' national data protection supervisory bodies and the Frontex Data Protection Officer as appropriate.

In the context of operational activities organised or coordinated by the Agency, the outcome of risk analysis shall contribute to an informed preparation of these activities (e.g. deployment of the members of the team with expertise on THB or other cross-border crime, child protection, gender-based persecution-related expertise or international protection, to correlate with the anticipated vulnerabilities and identified needs).

A Vulnerability Assessment helps MS to assess their capacity and readiness to face current and upcoming challenges at the external borders. The qualitative and quantitative aspects of a Vulnerability Assessment¹⁸ should allow fundamental rights-related information to be factored in, and an assessment of the availability and effectiveness of mechanisms and procedures for the identification and referral of vulnerable persons and those who are in need of or wish to apply for international protection.

To have the most accurate situational picture and consistent risk analysis and Vulnerability Assessment, the pre-warning mechanism developed by the Agency shall follow migratory trends. This requires thorough attention to compiling disaggregated data on entry, exit and the type of identification and referral of persons in vulnerable situations, in order to ensure preparedness and guarantee fundamental rights at the EU external borders.

The Agency's joint operations, pilot projects, rapid border interventions

Operational plans (OPLANs) underpinning border control activities shall contain general instructions on how to ensure the safeguarding of fundamental rights, including data protection requirements¹⁹ binding on the Agency, the host and participating Member States. OPLANs for actions carried out in a third country under a Status Agreement shall also contain the same instructions. Practical guidelines on safeguarding those rights, with clear provisions on the respective tasks and fundamental rights-based responsibilities as well as training for members of the teams with different profiles and for interpreters/cultural experts contracted by the Agency,²⁰ shall be drawn up with the support of the Fundamental Rights Officer and advice and assistance provided by the Fundamental Rights Monitors in cooperation with the operational entities responsible for deployments. Through his/her observations²¹ the Fundamental Rights Officer provides advice, opinions and recommendations on practical aspects of fundamental rights protection in operations, including a special focus on the rights of the child.

Border checks and border surveillance (sea, land and air) shall be conducted in a way that ensures respect for, protection and promotion of the fundamental rights of those on the move and puts in place safeguards for children, including the presence of members of the teams with special training on child protection as soon as possible. Participants in operational activities shall be proactive in the identification of and assistance to persons in need of international protection, victims of trafficking in human beings or other violent crime, pregnant women, children (especially unaccompanied children), stateless persons and other persons in vulnerable situations. Timely identification and referral to the competent national authorities shall be among the principal considerations of effective, rights-based border control.²² The principles of equality and non-discrimination require that all border control-related activities be undertaken in an age-, gender- and culturally-sensitive manner.

Border control and any further measures by the Agency related to the prevention and detection of illegal border crossings and combatting of cross-border crime, such as THB and smuggling of migrants, shall be conducted in line with fundamental rights including access to international protection, the prohibition of collective expulsions, data protection, and the prevention of torture or inhuman or degrading treatment or punishment. Activities requiring the use of force, means of restraint, or weapons require strict alignment with the principles of proportionality, necessity and the duty of precaution and must be in line with national, EU and international law.²³

In case of children and the necessity to use coercive measures, including the use of restraints, the best interests of the child shall be duly assessed and taken into account.

During operational activities at sea, the members of the teams shall assist every person in distress at sea irrespective of their nationality, gender, age, status or any other consideration. Search and rescue operations the Agency participates in should lead to timely assistance and effective referral, specifically addressing the needs of vulnerable persons such as children (including separated children and other unaccompanied minors²⁴), pregnant women, persons in need of urgent medical and/or psychosocial assistance and persons with disabilities.

Disembarking, forcing people to enter, conducting them to or handing them over to the authorities of a country where inter alia, there is a serious risk of being subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where life or freedom would be threatened on account of race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of non-*refoulement*, is prohibited.²⁵

Consequently, disembarkation in third countries can happen only after thorough and up to date assessment of the fundamental rights situation in that country, as well as the personal situation of each of the intercepted or rescued person. Such assessments are to be based on information derived from a broad range of sources, such as reports and guidance from relevant national, European and international competent services and human rights bodies.

Return activities supported by the Agency

The Agency provides assistance to the Member States at all stages of the return process, including pre-return, return-related and post-arrival and post-return activities²⁶ of third country nationals without entering into the merits of return decisions, which remain the sole responsibility of the Member States. While implementing return operations, return interventions and other return-related activities, the Agency shall at all times comply with and act with respect for EU and international law, including the principle of non-*refoulement* and the prohibition of collective expulsions.²⁷ Accordingly, Member States are expected to take effective measures to avoid returning persons with a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, sexual orientation or membership in a particular social group, or fear of other serious harm as defined in the asylum *acquis*. Children should be informed in a child-friendly manner about the steps of the return process. The Member States concerned shall confirm to the Agency that all returnees covered by a return operation organised or coordinated by the Agency are the subject of an enforceable return decision.²⁸

At all times during return operations and return interventions, fundamental rights are to be upheld, especially human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, liberty and security of the returned persons. The use of force, including means of restraint, by the members of the return teams shall be strictly limited to

the absolutely necessary, following the principle of proportionality and in strict legality, aligned with applicable rules contained in Operational Plans and the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex,²⁹ as well as the standards in the Guide for Joint Return Operations coordinated by the Agency.

The specific needs and vulnerabilities of the persons to be returned, their mental and physical conditions and individual risk assessments, including the best interests of the child, are to be taken into consideration to the extent of what is legally required by Member States authorities in the organisation of return operations and return interventions. Fundamental rights safeguards shall also be applied in voluntary returns when technical assistance is provided by the Agency.

All return activities will be approached in an age-, gender- and culturally sensitive manner, including escorts and other staff involved in return related matters nominated by Member States. Any return operation involving children will be considered after an individual assessment of the best interests of the child, ensuring age-appropriate conduct, communication and information on the return process provided to the child returnee. The Agency will make available relevant standing corps profiles such as return specialists and forced-return escorts and support officers, as well as forced-return monitors with specific expertise in child protection. The Member States are encouraged to confirm to the Agency that prior to engaging in a return operation involving a child the relevant safeguards have been verified. Such safeguards could for example include the existence of a post-return monitoring mechanism, assessing whether a return operation to a specific country is in line with international law, especially with the principle of *non-refoulement* or the documented willingness of the family members to receive the returnee child in the Third Country. Where Frontex is involved in post-arrival/post-return assistance, fundamental rights safeguards for children shall also be envisaged.

Every return operation organised or coordinated by the Agency includes the processing of personal data as part of the administrative process of return. Any such processing shall be done in accordance with the applicable data protection legislation, especially in the case of transfer of personal data to third countries and/or international organisations.

Every return operation organised or coordinated by the Agency will be monitored in accordance with Article 50(5) of Regulation (EU) 2019/1896.³⁰ In collecting return operations, at least one forced return monitor should be present throughout the entire return operation,³¹ whether from the competent national forced-return monitoring bodies or from the pool of forced-return monitors. To support Member States in implementing their legal obligation to ensure an effective forced-return monitoring system, including the compliance of the operation with fundamental rights safeguards when carrying out return operations, the Agency has established a pool of forced-return monitors. Fundamental Rights Monitors may be appointed for the pool by the Fundamental Rights Officer.³² Forced- return monitors shall observe, based on objective and transparent criteria, and report on fundamental rights compliance in forced-return operations and return interventions.

Responsibilities of the participants in Frontex operational activities

All participants in Frontex operational activities, including members of the standing corps and interpreters/cultural experts contracted by the Agency, proactively apply the fundamental rights safeguards, including the principles of equality and non-discrimination. All members of the teams promote professional values based on EU and international law, respect for fundamental rights and the principle of good administration³³ in strict alignment

with the ethical and professional guidelines of the Code of Conduct applicable to all persons participating in Frontex operational activities.

Members of the teams, including statutory staff, perform their tasks and execute their powers in line with fundamental rights. The use of force, including the use of weapons, ammunition and equipment, shall be only during operations and always in accordance with the national law of the host Member State or the host Third Country and the provisions of the relevant Operational Plan, and in line with the relevant Management Board decisions on the use, carrying, storage and reporting. The use of force shall take place in strict adherence to the principles of necessity, proportionality, and the duty of precaution.³⁴ In that respect, the Agency is setting up a supervisory mechanism to monitor the application of the provisions on use of force by statutory staff. Any incidents involving the use of force by statutory staff shall be immediately reported through the chain of command to the coordination structure relevant for each operation and to the Fundamental Rights Officer and the Executive Director, in line with the provisions of the relevant Operational Plan. The Fundamental Rights Officer shall ensure that incidents related to the use of force and use of weapons, ammunition and equipment are thoroughly investigated and reported without delay to the Executive Director. The results of such investigations shall be transmitted to the consultative forum.

The Coordinating Officer contributes to the implementation of all the organisational aspects of the Operational Plan by fostering cooperation and coordination among host and participating Member States. This includes monitoring and reporting that the implementation of the Operational Plan complies with fundamental rights obligations under relevant national, EU and international law. The Coordinating Officer, among others, shall monitor the correct implementation of the Operational Plan, including, in cooperation with the Fundamental Rights Monitors, as regards the protection of fundamental rights, and shall report to the Executive Director on this, including the alleged violations of fundamental rights.³⁵

Frontex Liaison Officers (FLO) foster cooperation between the Agency and the national authorities responsible for border management and return in Member States³⁶ and Third Countries,³⁷ carrying out their tasks in compliance with Union law and with respect for fundamental rights, including data protection rules.

The deployment of Third Country Observers reflects the Agency's support to cooperation and exchange of good practices with non-EU countries. The work of the TC Observers, defined in the relevant Operational Plan, will be undertaken in strict compliance with fundamental rights, including data protection, and the Agency's Code of Conduct.³⁸

To address the specific needs identified, where necessary the Agency will deploy on migration management support teams persons with expertise in fundamental rights, child protection, mental health issues, trafficking in human beings and protection against gender-based persecution.³⁹ In accordance with Statutory staff rules and national legislation for law enforcement officers, members of the teams will by default have been vetted to prove no criminal record.

Fundamental Rights Monitors (FROM) will be appointed and managed by the Fundamental Rights Officer to assess fundamental rights compliance in each operational activity.⁴⁰ The FROM will inform the Coordinating Officer and report to the Fundamental Rights Officer on any concerns related to possible fundamental rights violations within the Agency's operational activities.⁴¹

Participants in the activities⁴² of the Agency are accountable for breaches of their professional conduct rules and are responsible for promoting, respecting, upholding and protecting fundamental rights in the context of their participation in a Frontex operational activity, including reporting related to infringements of fundamental rights. Any participant in the

Agency's operational activities who has reason to believe that a violation of fundamental rights has occurred is required to report it to the Agency via the established reporting channels, such as the Frontex serious incident report system.

The Agency has set up an independent and effective complaints mechanism for any person who is directly affected and considers that he or she has been a victim of fundamental rights violations by actions or failure to act on the part of staff involved in a Frontex activity.⁴³ Additionally, any person suspecting breaches of the rules on the use of force by statutory staff deployed as members of the teams, applicable under Annex V of the Regulation (EU) 2019/1896, may report those breaches through the Agency's complaints mechanism. The Agency ensures that information on how to submit a complaint is made available to the public. The Agency regularly reviews the efficiency and effectiveness of the complaints mechanism to ensure effective redress to complainants concerning fundamental rights violations. The Fundamental Rights Officer reports on the complaints mechanism in the Agency's annual report, including specific references to the Agency's and Member States' findings and the follow-up to complaints.

The Code of Conduct and the Standard Operating Procedure of the Serious Incident Report⁴⁴ oblige all participants in the Agency's operational activities to report any potential violation of fundamental rights through a Serious Incident Report (SIR).⁴⁵ This mechanism enables prompt awareness and ensures follow-up from the Agency, the Fundamental Rights Officer and the Member States into the allegations.

Knowledge, skills and competences

Competences of the participants in Frontex activities

To develop and maintain a high degree of professionalism and ensure strict compliance with fundamental rights, all participants in the Agency's operational activities, including the standing corps, to the extent possible, should be recruited in an equitable gender composition and in line with the fundamental rights principles of equality and non-discrimination. They shall receive training from the Agency on how to apply fundamental rights principles and standards in the Agency's activities.

The learning outcomes will be adapted to the specific profiles of the deployed officers to apply their skills and competences to proactively identify and refer persons seeking international protection. Capacity building activities and learning materials will mainstream fundamental rights. They will identify and address the specific needs of persons in vulnerable situations, including unaccompanied children, and identify and address the needs of victims of THB and persons in need of urgent medical assistance.⁴⁶

The Agency will develop additional training courses, seminars on particular aspects of EIBM for officers, monitors of the competent national services of MS and third countries, FROMs and others, where needed.

The Common Core Curricula (CCC) includes dedicated sections on fundamental rights as its overarching components, including gender mainstreaming and international protection obligations. The CCC will be regularly updated according to institutional and legal developments, in full coordination with MS experts and external partners, and in consultation with the CF and the Fundamental Rights Officer.

The Agency intends to continuously enhance the culture of fundamental rights in the professional conduct of its staff and of all participants in its activities, as a means to implement its fundamental rights obligations. Dedicated events and capacity building and

awareness initiatives will promote respect for fundamental rights in interactions with partners and those who cross the EU external borders.

The use of state-of-the-art technology

When applying innovation in operational EIBM measures, the Agency shall use technological solutions that improve EIBM practice and ensure the Agency's compliance with fundamental rights. Additionally, in the context of new technologies in border control activities the Agency will also analyse the impact on fundamental rights, including data protection. A coherent approach to the strategic and ethical aspects of sustainability and social responsibility is a key factor in this regard.

The Agency's use of large-scale information systems, e.g. SIS II, the European Travel Information and Authorisation System (ETIAS), EUROSUR and the Entry-Exit System (EES) among others), shall contribute to more efficient management of external borders, including preventing and combating irregular immigration and cross-border crime, such as THB, and contributing to ensuring the protection and saving the lives of migrants.⁴⁷ Compliance with fundamental rights, including the protection of personal data and non-discrimination, shall be a core element in the establishment and running of large scale information systems under the responsibility of the Agency. For example, the ETIAS Fundamental Rights Guidance Board serves this purpose in the context of ETIAS.⁴⁸

Any processing of personal data, including gathering, retention, exchange and deletion of information, shall be handled with respect for fundamental rights, including the right to private and family life and protection of personal data. Personal information shall be accessed and processed lawfully. Any exchange of information with third countries⁴⁹ shall be done in strict accordance with the relevant Union law, in particular rules on transfer of personal data, and shall strictly uphold the principle of *non-refoulement*.

The collection of biometric data, such as fingerprints, shall be performed only when authorised by law and with respect for integrity of the person, with provision of sufficient and adequate information, refraining from the use of force, and in an age-, gender- and culturally sensitive manner, respecting the EU and international legal framework. In the case of children, fingerprinting shall be performed only in a child friendly manner and with due consideration for the rights associated with the age of the child.

Automated tools and the use of artificial intelligence in border management, such as algorithmic profiling, for instance with regard to automated information on gender or physical features, shall always be used in full compliance with EU data protection legislation and with appropriate safeguards, and in line with human dignity and the principle of non-discrimination, and shall be monitored, including through personal oversight, and verified regularly.

Cooperation around EIBM

An efficient concept of EIBM, covering all elements of the four-tier access control model,⁵⁰ requires coordination and cooperation among stakeholders in the EU and beyond. The Agency shall maintain and facilitate collaboration with and between stakeholders within the framework of the Union's external action policy, including with regard to the protection of fundamental rights and the principle of *non-refoulement*.

Agency-supported cooperation at European and national levels

At European level, the Agency supports cooperation among the national services responsible for IBM in the MS/Schengen Associated Countries (SAC), including conducting needs assessments and knowledge and information exchanges among MS/SAC. The Agency also coordinates the implementation of joint operational activities and reinforces operational and technical capabilities to jointly address migratory challenges at the external borders.

The Agency organises, promotes and coordinates activities enabling the identification and pooling of Member States' resources for EBCG-related activities. For instance, the Agency-run pool of (MS) forced return monitors and specialists facilitates consistent monitoring of fundamental rights in the execution of return operations and interventions. The Agency's coordination of joint operations and border interventions includes the exchange of rights-based practices, sharing of knowledge and pooling of relevant resources, including e.g. through the deployment of officers with specific expertise in child protection, trafficking in human beings and gender-based persecution.

Frontex Liaison Officers in MS and Schengen Associated Countries foster cooperation and dialogue between the Agency and the national authorities responsible for border management. Among other tasks, they contribute to promoting the application of the Union acquis relating to the management of the external borders and return, including with regard to respect for fundamental rights, and cooperate with the Fundamental Rights Officer, where necessary, with a view to promoting respect for fundamental rights in the Agency's work.⁵¹

Inter-agency and external cooperation

The Agency maintains regular communication and cooperation with the relevant EU institutions, bodies, offices, agencies and international organisations on all aspects of the Agency's mandate. Collaboration encompasses the joint development of guidance and trainings on border management practices, the promotion of rights-based migration management processes and completing and enhancing the situational picture at the external borders. Any exchange of information between the Agency and the cooperating entities shall occur within the limits of their mandates and shall respect fundamental rights, including EU and national data protection provisions.

The Agency cooperates, in particular, with the European Commission and the European External Action Service (EEAS), the EU Agency for Fundamental Rights (FRA), the European Asylum Support Office (EASO), Europol, the European Union Agency for Criminal Justice Cooperation (Eurojust), European Fisheries Control Agency (EFCA), the European Maritime Safety Agency (EMSA) and the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), the European Union Aviation Safety Agency (EASA) and the Network Manager of the European Air Traffic Management Network (EATMN) as well as the Common Security and Defence missions and operations.⁵²

Cooperation with FRA, the EU's specialised Agency on fundamental rights, is of particular importance to advance fundamental rights. Exchange with other EU agencies, such as the European Institute for Gender Equality (EIGE) and the European Union Agency for Law Enforcement Training (CEPOL), institutions, bodies and offices will be considered to further advance efficient, uniform and rights-based border management, within the remit of their respective mandates.

When it comes to international organisations the Agency, amongst others, cooperates with the United Nations, including the Office of the UN High Commissioner for Refugees, the Office of the UN High Commissioner for Human Rights and the International Organization for Migration,⁵³ as well as the Organization for Security and Cooperation in Europe. Additionally, where applicable, advice and support from the Consultative Forum and members of civil society shall be pursued proactively in cooperation about IBM matters.

European cooperation on coast guard functions is performed with EFCA and EMSA to support national authorities in their functions at national and Union level, and where appropriate at international level. This cooperation is carried out in full compliance with fundamental rights.

Cooperation with third countries

The Agency cooperates with the authorities of third countries competent in matters covered by the Agency's mandate and to the extent required for the fulfilment of its tasks, including the launching and financing of technical and operational assistance projects. Cooperation with third countries falls within the framework of the external action policy of the Union and the Union acquis. It must comply with fundamental rights including the protection of personal data and the principle of non-*refoulement*.⁵⁴ In particular, transfers of personal data to third countries must be carried out only when necessary for the performance of the Agency's tasks and in full compliance with Chapter V of Regulation (EU) 2018/1725.⁵⁵

The Working Arrangements (WA) that the Agency concludes with third countries contain provisions related to fundamental rights that address practical measures, which are consulted with the Fundamental Rights Officer.⁵⁶ WAs concluded with the Agency's partners, such as third countries and international organisations, regarding the exchange of personal data are subject to the authorisation of the European Data Protection Supervisor.⁵⁷ In cases of deployment of border management teams from the standing corps with executive powers to a third country, the Agency complies with the Status Agreement concluded by the Union, including practical measures related to the respect of fundamental rights, data protection and the complaints mechanism.

To identify any potential fundamental rights challenge while cooperating with non-EU countries, the Agency will undertake a due diligence assessment of fundamental rights risks and the impacts of such cooperation prior to entering into any formal cooperation pursuant to Article 73 of Regulation (EU) 2019/1896, in particular activities related to technical and operational assistance in the field of border management and return in third countries, and the deployment of liaison officers. Such an assessment will be based on policy recommendations and assessments by the European Commission⁵⁸ and the European External Action Service and take into consideration a range of relevant sources. To allow situational monitoring and risk analysis as part of Frontex risk analysis networks and communities in third countries, and where relevant during the technical assistance and pilot projects undertaken with third countries, the analysis of all data collected on third countries (i.e. through network cooperation, regional intelligence sharing and risk analysis) shall be rights-based and include the collection of sex- and age-disaggregated quantitative and qualitative migration-relevant data.

To establish and maintain contacts with the competent authorities, the Agency deploys Frontex Liaison Officers in third countries. These liaison officers contribute to the prevention of and fight against illegal immigration and the return of third-country nationals illegally staying in the Member States, including by providing technical assistance in the identification of third-country nationals and the acquisition of travel documents. These tasks are carried out in compliance with Union law and with respect for fundamental rights.⁵⁹

Implementation, monitoring and evaluation

Implementation

The Agency must ensure respect for, protection and implementation of fundamental rights in line with the EU Charter, international law, Regulation (EU) 2019/1896 and this Strategy.

The Action Plan, complementing this Strategy and drawn up by the Agency, shall guide the operational aspects of implementation of EIBM contained in this Strategy. The Action Plan delineates the specific time-bound outputs, activities and indicators on fundamental rights. It is correlated with the Agency's multiannual programming, which includes strategic actions for translating the formal FR commitment of the organisation's governing structures through the allocation of appropriate responsibilities and resources.

To support the implementation of fundamental rights-based EIBM and this Strategy, the Agency will seek advice from its Consultative Forum (CF) through consultations. The CF is mandated to assist the Agency by providing independent advice on fundamental rights matters, to support its awareness, understanding and knowledge to ensure early identification of potential breaches of fundamental rights and specific fundamental rights challenges during the Agency's activities. The CF's Annual Report as well as its recommendations and opinion are taken into account by the Agency and its Management Board. The Agency shall inform the CF on the follow-up to its recommendations.⁶⁰

Effective implementation of the Strategy requires active communication and promotion of its objectives and content among relevant EU agencies, national authorities, international organisations, third country authorities, civil society and the general public. The FRO Annual Report addresses the implementation and monitoring of the Fundamental Rights Strategy, and the Executive Director reports on the matter to the European Parliament and to the Council.

Monitoring and evaluation

Ongoing monitoring of compliance of the Agency's activities with fundamental rights includes a set of tools and instruments for consistent support in translation of the obligations stemming from the EU Charter, international law and Regulation (EU) 2019/1896 into the work of the Agency, continuous monitoring, and adequate reaction to potential fundamental rights violations in the activities of the Agency.

The Fundamental Rights Officer and her/his staff are independent in the performance of their duties, as guaranteed by special rules laid down by the Management Board. The FRO monitors the Agency's compliance with fundamental rights,⁶¹ reports directly to the Management Board and cooperates with the Consultative Forum. The tasks of the FRO include:

Advice: Provision of opinions on the Operational Plans and working arrangements, analysis of fundamental rights impact of the activities and contribution to the Agency's planning processes towards their rights-based design and implementation,⁶² and, where requested by the Executive Director, advice on any activity without delaying that activity.⁶³

Monitoring: Analysis of the findings of the Fundamental Rights Monitors,⁶⁴ research on fundamental rights matters, coordination of the handling of SIRs on alleged violations of fundamental rights⁶⁵ and in the complaints mechanism;⁶⁶ conducting investigations - related to compliance with fundamental rights - into any of Agency's activities,⁶⁷ consultation with the Data Protection Officer where DP considerations are involved,

visits to operational areas to provide advice on compliance of the activities with FR and follow up on incidents of alleged violations.⁶⁸

Promotion: Enhancing awareness of fundamental rights among Agency staff, strengthening the culture of fundamental rights in the Agency's work and conduct of its staff, including fundamental rights considerations in training materials.⁶⁹

Evaluation: Contribution of his/her observations to the results of all the Agency's operational activities. These observations, including the contributions of the FROMs, shall form part of a comprehensive analysis of the results with a view to enhancing the quality, coherence and effectiveness of future activities.⁷⁰ An annual report on the FRO's activities will be drafted concerning the extent to which the Agency's activities respect fundamental rights.

Fundamental Rights Monitors are assigned by the FRO to each operational activity to monitor and report to the FRO on fundamental rights concerns⁷¹ and alleged breaches of fundamental rights. In case of serious or systematic violations,⁷² the Fundamental Rights Officer reports them to the Executive Director for his/her decision on measures to remedy, which may include the suspension or termination of the activity.

Forced-Return Monitors that are part of the pool shall oversee the assigned return operation on the basis of objective and transparent criteria.⁷³ The monitors pay particular attention to the treatment of vulnerable persons, including children. The findings of forced-return monitors are reported to the Executive Director, the FRO and the competent national authorities of all MS involved in the operation. The FRO analyses observations and recommendations from monitors to enhance fundamental rights compliance and regularly informs the authorities in charge of organising return operations in MSs, the MB and the Executive Director.

Alleged breaches of fundamental rights, committed by action or the failure to act, must be formally reported through following mechanisms:

The Serious Incident Report Mechanism (SIR), which obliges any participant in the Agency's activities to report on allegations of violation of fundamental rights. Reporting of serious incidents enables the Agency to react swiftly and take immediate measures as established in the standard operating procedure. The procedure clarifies how SIRs are launched, categorised and effectively followed up. The FRO handles SIRs on allegations of violations of fundamental rights, including by gathering facts, and liaises with the relevant MS authorities. The Agency ensures information is immediately provided to the FRO on SIRs categorised as fundamental rights-related.

The complaints mechanism for possible fundamental rights violations during any activity of the Agency, where any person who believes his/her fundamental rights have been violated, can submit a complaint in accordance with Article 111 of Regulation (EU) 2019/1896. Additionally, any person may report suspected breaches by statutory staff deployed as members of the teams of the rules on the use of force applicable under Annex V of Regulation (EU) 2019/1896 through the complaints mechanism. The matter shall be investigated, and if necessary, followed up with the relevant administrative or disciplinary measures by the Agency or the relevant MS.⁷⁴

The Agency ensures that participants in operational activities are aware of the reporting mechanisms concerning violations of fundamental rights and the potential consequences related to involvement in an incident, as well as their duty to provide information on the right to complain. The Agency ensures that information about the possibility and procedure for

making a complaint is accessible, readily available⁷⁵ and provided in an age-, gender- and culturally-sensitive manner. The Agency ensures that guidance and assistance on the complaints procedure is given to complainants.

To monitor respect for fundamental rights in all the activities of the Agency, it will further develop an effective monitoring mechanism. Information collected via the mechanism will inform the provision of advice and assistance on fundamental rights in the preparation, implementation and evaluation of all activities of the Agency. This process will be aligned with Regulation (EU) 2019/1896.

Evaluation of the Strategy

The Strategy is an integral part of the Agency's multiannual programme of work, which will include strategic actions for Strategy implementation⁷⁶. The Strategy and its Action Plan will be reviewed and evaluated on the basis of its results and feedback provided by key stakeholders in line with the multiannual programme of work.

The FRO's annual report will include information on the progress of the implementation of the Strategy and the Action Plan. The FRO will collect information on the progress of the implementation of the Strategy and its Action Plan from the Executive Director through a reporting and monitoring system.

¹ Regulation (EU) 2019/1896 of the European Parliament and the Council of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 73).

² Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–07)

³ Article 2 of the Consolidated Version of the Treaty on European Union (OJ C 326, 26.10.2012, p.17)

⁴ Article 67 of the Consolidated Version of the Treaty on the Functioning of the European Union OJ C 326, 26.10.2012 p. 73

⁵ Consolidated version of the Treaty on European Union OJ C 326, 26.10.2012, p. 13.

⁶ Article 6(1) of the TEU; Article 21(1) of the TEU.

⁷ Recital 103 of Regulation 2019/1896.

⁸ Regulation (EU) 2016/399, 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code); Regulation (EU) No 603/2013 on the Establishment of the EURODAC; Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (ETIAS); Regulation (EU) 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union; Directive 2013/33/EU (Reception Conditions Directive); Directive 2013/32/EU on common procedures for granting and withdrawing international protection; Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive). For references to other relevant EU law instruments, see FRA and European Court of Human Rights, [Handbook on European law relating to asylum, borders and immigration](#), 2014.

⁹ International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966; Convention on the Elimination of Discrimination against Women (CEDAW) Of 18 December 1979; Convention on the Rights of the Child (CRC) of 20 November 1989; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) of 10 December 1984; United Nations Convention against Transnational Organized Crime and the Protocols Thereto of 15 November 2000; Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950; EU Charter of Fundamental Rights;

¹⁰ Article 80(2) of the Regulation (EU) 2019/1896.

¹¹ Examples of vulnerable persons from the Qualifications Directive, Article 20(3): disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

¹² Article 6 of Regulation (EU) 2019/1896.

¹³ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

¹⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation; OJ L 119, 4.5.2016, p. 1–88; Text with EEA relevance).

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- ¹⁵ Together with education and training as well as research and innovation, Article 3, of Regulation (EU) 2019/1896.
- ¹⁶ Stateless person means a person who is not considered as a national by any State under the operation of its law, see Article 1, 1954 Convention Relating to the Status of Stateless Persons.
- ¹⁷ Article 32(5), Regulation (EU) 2019/1896.
- ¹⁸ *ibid.*
- ¹⁹ Article 38(3)(d), Regulation (EU) 2019/1896.
- ²⁰ Framework Contract for provision of interpretation and cultural expertise services (Frontex/OP/1417/2018/DT).
- ²¹ Article 109(2)(a), Regulation (EU) 2019/1896.
- ²² Article 38(3)(m), Regulation (EU) 2019/1896.
- ²³ Annex V to the Regulation (EU) 2019/1896, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Havana Principles).
- ²⁴ Article 8 of UN Committee on the Rights of the Child, General Comment No 6 (2005) and Study on separated, asylum seeking children in EU Member States, Fundamental Rights Agency (FRA) 2010.
- ²⁵ Article 4(1), Regulation (EU) No 656/2014.
- ²⁶ Post-arrival and post-return activities to be implemented gradually in line with the Roadmap or the implementation of Regulation (EU) 2019/1896.
- ²⁷ See Article 4 of Protocol No. 4 to the ECHR and Article 19 of the EU Charter.
- ²⁸ Article 50(3) Regulation (EU) 2019/1896.
- ²⁹ Article 81(2) Regulation (EU) 2019/1896.
- ³⁰ Article 50(5) Regulation (EU) 2019/1896.
- ³¹ *Ibid.*
- ³² Article 109(3)(c) and Article 51 (2) of Regulation (EU) 2019/1896.
- ³³ Article 41 of the EU Charter.
- ³⁴ Annex V to Regulation (EU) 2019/1896
- ³⁵ Article 44(3)(b), Regulation (EU) 2019/1896.
- ³⁶ Article 31, Regulation (EU) 2019/1896.
- ³⁷ Article 77, Regulation (EU) 2019/1896.
- ³⁸ Article 78, Regulation (EU) 2019/1896.
- ³⁹ Article 40(5), Regulation (EU) 2019/1896.
- ⁴⁰ Article 109(2)(j), 109(3), 110 Regulation (EU) 2019/1896.
- ⁴¹ Article 110(2)(d), Regulation (EU) 2019/1896.
- ⁴² Joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, return intervention or an operational activity of the Agency in a TC, see Article 111(2) of the Regulation 2019/1896.
- ⁴³ *ibid.*
- ⁴⁴ Frontex Standard Operating Procedure on Serious Incident Reporting, Frontex 2014.
- ⁴⁵ Violation of fundamental rights is one of the categories (category IV) of Serious Incident Reports.
- ⁴⁶ Article 62(2), (4), (5), Regulation (EU) 2019/1896.
- ⁴⁷ Article 19(1), Regulation (EU) 2019/1896.
- ⁴⁸ Article 10, Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, *OJ L 236, 19.9.2018, p. 1–71.*
- ⁴⁹ Article 72(2) and Article 75 of Regulation (EU) 2019/1896.
- ⁵⁰ Recital 11, Regulation (EU) 2019/1896
- ⁵¹ Article 31(3), Regulation (EU) 2019/1896.
- ⁵² Article 68(1), Regulation (EU) 2019/1896.
- ⁵³ Article 68(1), Regulation (EU) 2019/1896.
- ⁵⁴ Article 71(2), Regulation (EU) 2019/1896.
- ⁵⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance, pg. 39 – 98)
- ⁵⁶ Article 109(2)(f), Regulation (EU) 2019/1896.
- ⁵⁷ Article 68(5), Regulation (EU) 2019/1896.
- ⁵⁸ For example, the assessment of the fundamental rights situation in a third country, made by the Commission when it recommends to the Council to negotiate a status agreement (recital (88) EBCG Regulation).
- ⁵⁹ Article 77(3), Regulation (EU) 2019/1896.
- ⁶⁰ Article 108(3), Regulation (EU) 2019/1896.
- ⁶¹ Article 109(2)(b), Regulation (EU) 2019/1896.
- ⁶² Article 109(2)(e) and (f), Article 110(2)(a), Regulation (EU) 2019/1896.
- ⁶³ Article 109(2)(d), Regulation (EU) 2019/1896.
- ⁶⁴ Article 109(2)(j), Regulation (EU) 2019/1896.
- ⁶⁵ Frontex Standard Operating Procedure on Serious Incident Reporting, Frontex 2014.
- ⁶⁶ Article 111(4), Regulation (EU) 2019/1896.

⁶⁷ Article 109(2)(b) Regulation (EU) 2019/1896.

⁶⁸ Article 109(2)(b), Regulation (EU) 2019/1896.

⁶⁹ Article 109(2)(c), Regulation (EU) 2019/1896.

⁷⁰ Article 110(2); Article 47, Regulation (EU) 2019/1896.

⁷¹ Article 109(3)(b), Regulation (EU) 2019/1896.

⁷² Article 46(4), Regulation (EU) 2019/1896.

⁷³ Article 8(6), Directive 2008/115/EC.

⁷⁴ "The European Code of Good Administrative Behaviour", <https://www.ombudsman.europa.eu/en/publication/en/3510>

⁷⁵ Article 111(10), Regulation (EU) 2019/1896.

⁷⁶ Article 102(3), Regulation (EU) 2019/1896.