



SEVENTH ANNUAL REPORT

Frontex Consultative Forum on Fundamental Rights

2019

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Consultative Forum Members in 2019:

- The AIRE Centre – Advice on Individual Rights in Europe
- Amnesty International European Institutions Office (AI EIO)
- Churches' Commission for Migrants in Europe (CCME)
- Council of Europe (CoE)
- European Asylum Support Office (EASO)
- European Council on Refugees and Exiles (ECRE)
- European Union Agency for Fundamental Rights (FRA)
- International Commission of Jurists (ICJ)
- International Organization for Migration (IOM)
- Jesuit Refugee Service Europe (JRS)
- Organisation for Security and Co-operation in Europe,
Office for Democratic Institutions and Human Rights (OSCE/ODIHR)
- Platform for International Cooperation on Undocumented Migrants (PICUM)
- Red Cross EU Office
- Save the Children
- United Nations High Commissioner for Refugees (UNHCR)

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1 EXECUTIVE SUMMARY

Shipwrecked boats used by migrants and refugees piled up in the port of Barbate, Spain.

© UNHCR / Markel Redondo / January 2019

This report provides an overview of the activities undertaken by the Consultative Forum in 2019. It outlines the main observations and recommendations raised throughout the year with Frontex and its Management Board to strengthen fundamental rights protection in the Agency's activities.

The entry into force of a new Regulation in December has substantially extended the mandate and capacities of the Agency and thus its impact on fundamental rights. For the first time, Frontex staff will directly exercise police powers, including the use of force. The Agency has also extended its involvement in third countries, surveillance and return activities. During the year, the Consultative Forum issued concrete recommendations on the Agency's return activities and cooperation with third countries and conducted a visit to Frontex operational activities in Albania, the first in a third country. Together with an assessment on Frontex training activities commissioned during the year, these will provide a good starting point for the implementation of the new Regulation in these key areas.

To accompany such developments, the Regulation enhances the independence of the Fundamental Rights Officer and her team, extends her mandate to the investigation of potential fundamental rights violations and provides for the recruitment of at least forty fundamental rights monitors under her lead. Well implemented, and accompanied by the allocation of additional staff to implement them, these provisions provide a unique opportunity to address the main concern expressed by the Consultative Forum over the years, i.e. the limited capacity of the Fundamental Rights Officer and the absence of an effective monitoring system to prevent and address potential fundamental rights violations in the Agency's activities.

The Regulation further strengthens Frontex's due diligence responsibilities with a reinforced obligation for the Agency to suspend,

terminate or not launch activities that could lead to violations of fundamental rights or international protection obligations.

An external evaluation carried out on its work concluded that the Consultative Forum had proved its relevance and ability to support Frontex in addressing key challenges and needs in the field of fundamental rights. However, the evaluation identified some existing challenges such as the high dependency of the Consultative Forum on the Agency's willingness to seek its advice and to act upon recommendations, and the limitation posed to its work by an understaffed Consultative Forum Secretariat. The Consultative Forum has also taken good note of the recommendation to increase the transparency of its activities.

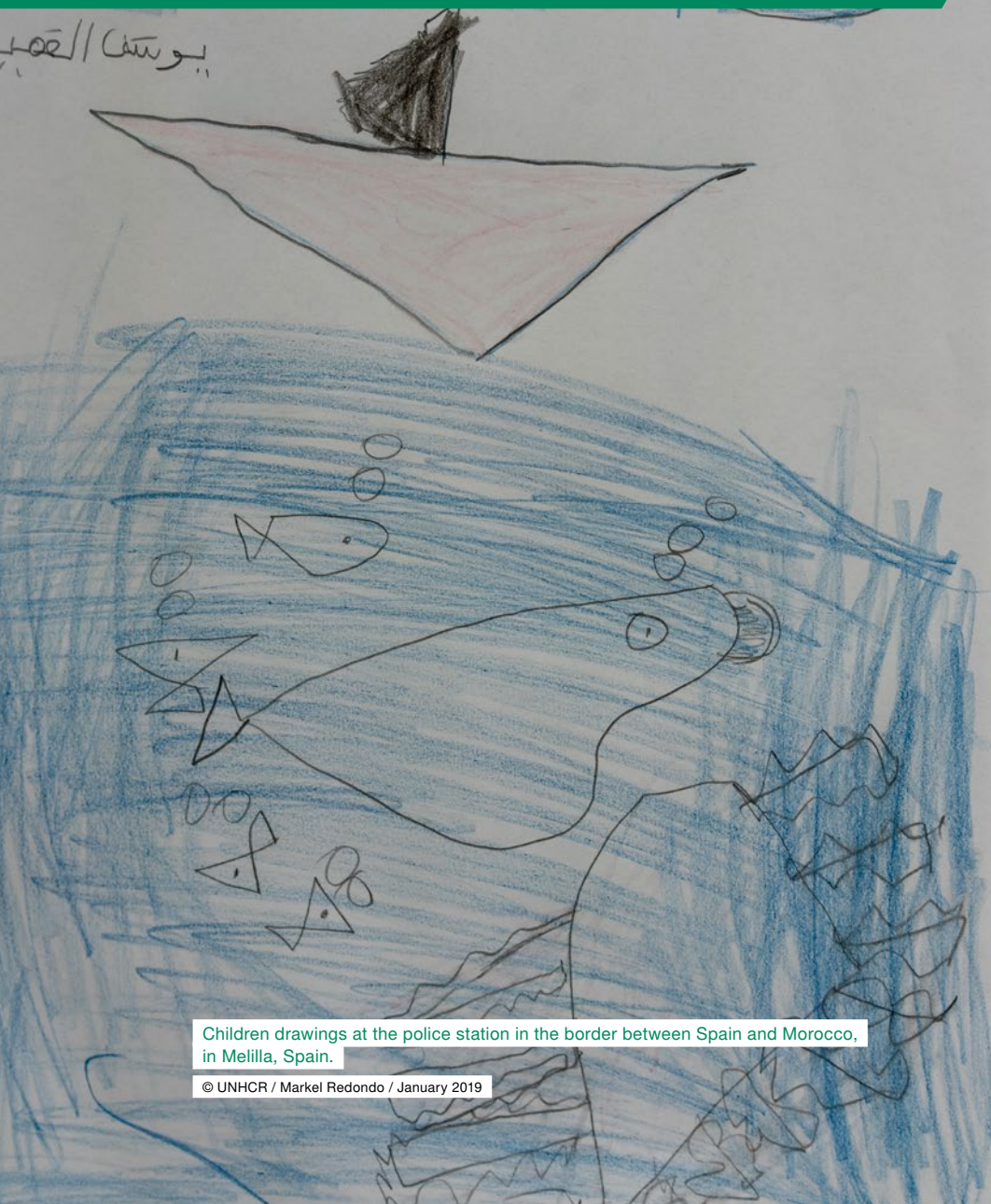
A renewed composition of the Consultative Forum in 2020 as well as the provisions on Frontex follow up to the Forum recommendations will contribute to jointly addressing some of these challenges.

The Consultative Forum has also welcomed the increased attention on Frontex fundamental rights responsibilities and accountability over the year, as well as increased interest in our work, including invitations to present the Consultative Forum Annual Report to the the European Parliament's LIBE committee and Council Working Party on Frontiers.

This Seventh Annual Report of the Consultative Forum was presented to the Frontex Management Board on 17 June 2020.

2 INTRODUCTION

يوسف القحيل



Children drawings at the police station in the border between Spain and Morocco, in Melilla, Spain.

© UNHCR / Markel Redondo / January 2019

With EU Member States unable to overcome the political deadlock over the reform of the Common European Asylum System, in the absence of common ground regarding responsibility sharing and solidarity, the EU continued to invest in border management. This included the adoption of key reforms as well as sustained focus on increasing returns. The European Parliament elections in May 2019, along with the reconfiguration of the European Commission in December 2019, took centre stage at the EU and national levels.

As reported by EASO, some 714 200 applications for international protection were lodged in the EU during the year, an increase of 13 percent compared to 2018¹ and the first year-on-year increase since 2015.² More than a quarter of these applications were lodged by persons of Syrian, Afghan and Venezuelan origin.³

Whilst the number of asylum applications increased, the overall number of irregular arrivals at the EU's external borders diminished.⁴ The total number of irregular border crossings detected along the EU's external borders was just over 139 000, this being the lowest number since 2013 and a 6 percent decrease compared to 2018.

Despite the overall decrease, arrivals via the Eastern Mediterranean and Western Balkan routes increased by 46 percent and 143 percent respectively compared with 2018.

NGO search and rescue activities continued to be hindered by coastal state restrictions and persons rescued or intercepted continued to be returned to Libya despite the worsening human rights

¹ [URL: <https://www.easo.europa.eu/asylum-trends-annual-overview>].

² Idem.

³ Idem.

⁴ Idem.

situation in the country.⁵ The number of deaths at the external borders also remained alarmingly high: IOM and UNHCR counted 1,318 fatalities for 2019 in the Mediterranean alone.

At Frontex, 2019 was marked by the launch of an operation in Albania, the first in a third country, as well as the adoption of the new European Border and Coast Guard (EBCG) Regulation 2019/1896, which entered into force in December.

Adding to a substantial budget and staff increase, the Regulation brought Frontex's mandate to a new level with the creation of a standing corps that will reach up to 10,000 officials by 2027, partly composed of Agency staff, for the first time entrusted with executive police powers. The Regulation further increased the role of the Agency in third countries, with the removal of geographical restrictions on operations. With the new Regulation, Frontex will also take a new role in monitoring onward movements in cooperation with the EU Asylum Agency.

The Regulation further extends the mandate of Frontex in all phases of the return process, including the initiation of forced return operations, as well as support for the implementation of voluntary return and post-return activities.

These changes were accompanied by substantial new measures to better safeguard fundamental rights compliance throughout all Frontex activities, such as the recruitment of 40 Fundamental Rights Monitors under the lead of the Fundamental Rights Officer. A significant development is the responsibility of Frontex to refrain from

5 [URL: <https://www.unhcr.org/news/press/2019/7/5d2765d04/unhcr-iom-joint-statement-international-approach-refugees-migrants-libya.html>].
[URL: <https://www.unhcr.org/news/press/2019/4/5cb050954/iom-unhcr-unicef-62-rescued-refugees-migrants-board-alan-kurdi-disembarked.html>].



Refugees' graves in the cemetery on the island of Lampedusa. In the six years from 2014 to the end of the decade, 15,000 refugees and migrants died attempting to cross the Central Mediterranean route from North Africa to Europe. Many suffered detention or human rights abuses in Libya, having fled conflict, persecution and poverty in their countries of origin.

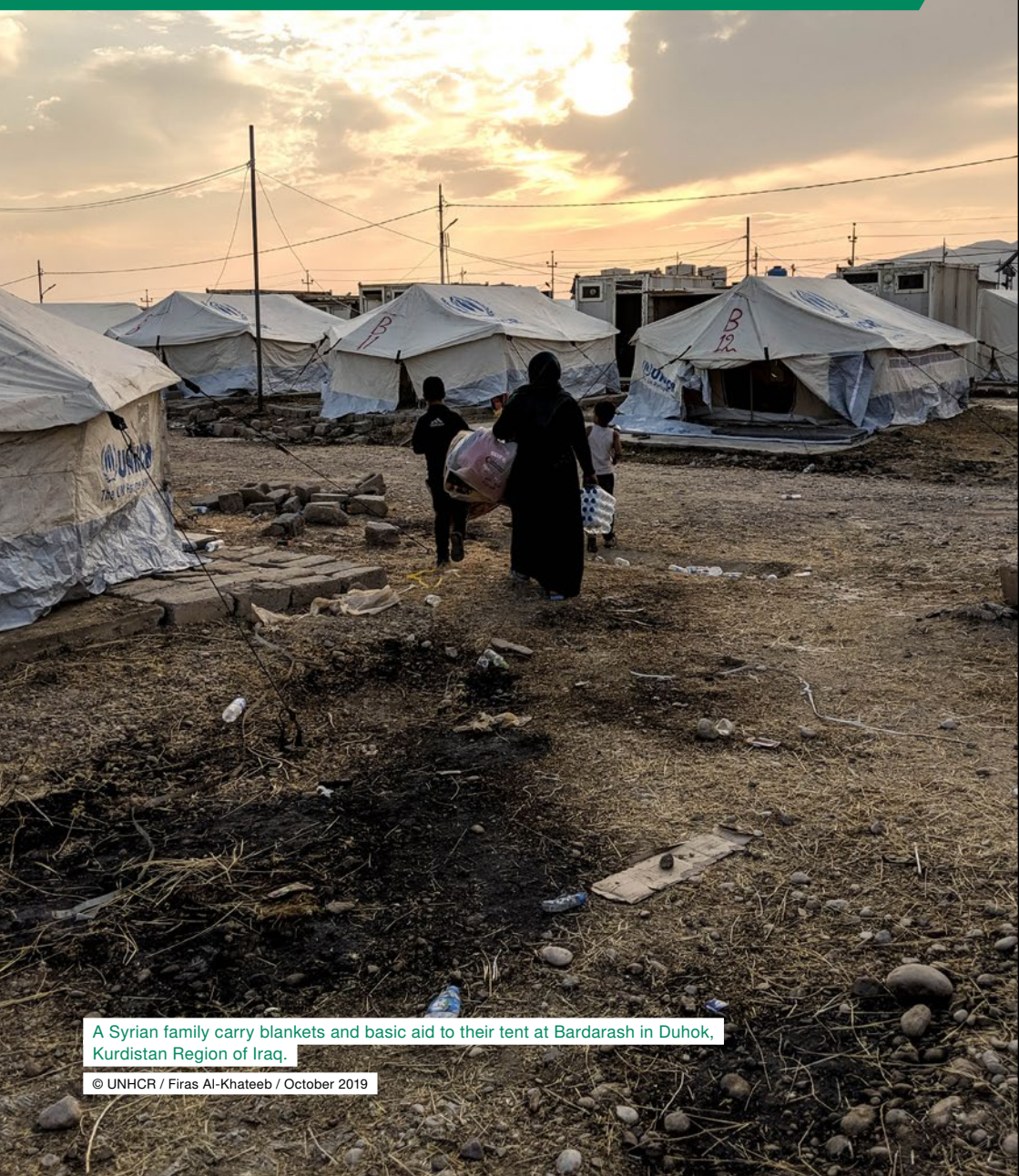
© UNHCR / Alessandro Penso / November 2019

launching any activity that could lead to violations of fundamental rights or international protection obligations. This obligation extends existing responsibilities to terminate or suspend operations in the case of fundamental rights violations.

The Regulation further strengthens the role of the Frontex Fundamental Rights Officer, extends the requirement of independence to all staff of the Fundamental Rights Office and foresees the adoption of clear rules to safeguard this provision. It also provides for the strengthening of the Individual Complaints mechanism with a view to increasing accessibility and awareness, as well as the relationship with the Consultative Forum and the European Union Agency for Fundamental Rights (FRA).

The full operationalisation of these provisions will be essential to addressing continued concerns regarding violations of fundamental rights at external borders. The year was also characterised by a sharp increase in public attention towards Frontex fundamental rights responsibilities and accountability.

3 COMPOSITION AND ROLE



A Syrian family carry blankets and basic aid to their tent at Bardarash in Duhok, Kurdistan Region of Iraq.

© UNHCR / Firas Al-Khateeb / October 2019

The Frontex Consultative Forum was officially established in October 2012 and has been operational since January 2013. It provides independent advice to the Agency on respect for, protection and promotion of fundamental rights in Frontex activities.

The adoption of EBCG Regulation 2019/1896⁶ brought small but relevant changes to the rules governing the work of the Consultative Forum mainly covering the following:

- **Status within the Agency** - The Regulation clarified that the Consultative Forum is not to be considered part of the Agency's administrative and management structure,⁷ something that the Consultative Forum has also maintained.
- **Appointment** – While the Management Board remains responsible for deciding on the terms for the transmission of information to and composition of the Consultative Forum, the Regulation foresees that such decisions should be based on a proposal from the Frontex Fundamental Rights Officer, a task previously held by the Executive Director.
- **Role** – The Regulation specifies that Frontex should consult the Consultative Forum on matters such as 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 Curriculum. It also envisages that the Executive Director and the Management Board, in coordination with the Fundamental Rights Officer, may also consult the Consultative Forum on any matter related to fundamental rights.⁸

⁶ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

⁷ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, Article 99.

⁸ Article 108(1) and Article 108(5) of EBCG Regulation 2019/1896.

- **Access to information** – The Regulation reinforces the Agency's responsibility to provide the Consultative Forum with access in a timely and effective manner to all information related to the respect of fundamental rights in all activities of the Agency.⁹ The Regulation also maintains provisions regarding the Consultative Forum's visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas and to return operations and return interventions, including in third countries.¹⁰
- **Follow-up to Consultative Forum recommendations** – Probably the most significant change in the functioning of the Consultative Forum was brought by Article 108 (3) of EBCG Regulation 2019/1896, which obliges the Agency to inform the Consultative Forum of follow-up made in regard to its recommendations.

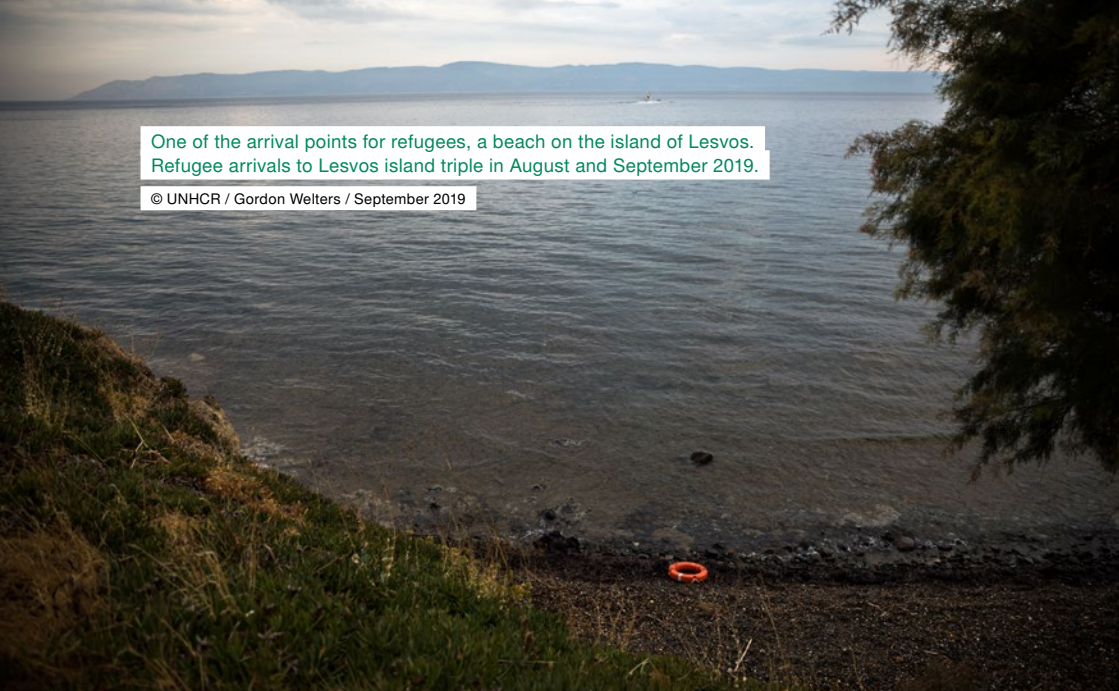
In 2019, the Consultative Forum was composed of **15 organisations**,¹¹ which contributed their expertise and resources on a voluntary basis.

It was chaired by UNHCR and the Jesuit Refugee Service. It was also supported by a Consultative Forum Secretariat provided by Frontex (one staff member).

⁹ Article 108(3) and Article 108(5) of EBCG Regulation 2019/1896.

¹⁰ Article 108(5) of EBCG Regulation 2019/1896.

¹¹ Following Management Board Decision 18/2018 of 18 September 2018 the mandate of the Consultative Forum had been renewed until 30 June 2019. It was then subsequently extended until 31 December 2019 by Management Board Decision 4/2019 of 27 March 2019. The full list of Consultative Forum members in 2019 is described page 1.



One of the arrival points for refugees, a beach on the island of Lesbos. Refugee arrivals to Lesbos island triple in August and September 2019.

© UNHCR / Gordon Welters / September 2019

Following the launch of an open call by the end of 2019,¹² the following organizations were invited to join the Consultative Forum for a period of three years, from January 2020 to December 2022.

- The European Asylum Support Office (EASO);
- the European Union Agency for Fundamental Rights (FRA);
- the United Nations High Commissioner for Refugees (UNHCR);
- the Office of the High Commissioner for Human Rights (OHCHR);
- the Council of Europe (CoE);
- the International Organisation for Migration (IOM);
- the Organisation for Security and Cooperation in Europe — Office for Democratic Institutions and Human Rights (OSCE-ODIHR);
- Amnesty International European Institutions Office;
- Churches' Commission for Migrants in Europe (CCME);
- International Commission of Jurists (ICJ);
- Jesuit Refugee Service Europe (JRS);

¹² Management Board Decision 26/2019 of 14 October 2019 on the launch of an open call for applications for the new composition of the Consultative Forum and on setting out main composition criteria.

- Platform for International Cooperation on Undocumented Migrants (PICUM);¹³
- Red Cross EU Office;
- Save the Children.

The Consultative Forum members would like to express their appreciation for the excellent contribution that the European Council on Refugees and Exiles and the AIRE Centre have made to its work over recent years. The Consultative Forum expresses its heartfelt gratitude to Stefan Kessler, and the Jesuit Refugee Service Europe, for his strategic and able steering as co-Chair of the Consultative Forum for the last seven years, and to Covadonga Bachiller for her commitment and tireless support while running the Consultative Forum Secretariat.

The Consultative Forum would also like to warmly welcome the Office of the High Commissioner for Human Rights as a new member.

¹³ The membership of PICUM was pending the organisation's acceptance, which Frontex was yet to receive at the end of the year.

Under the European Border and Coast Guard Regulation, the Consultative Forum has neither the mandate nor the capacity to monitor or systematically assess fundamental rights compliance in Frontex activities. The work of the Consultative Forum complements the role of the Fundamental Rights Officer and should not preclude the necessary oversight by stakeholders such as the European Parliament, national parliaments, national human rights institutions, civil society and the judiciary.

As in previous years, the Consultative Forum regrets that no steps were taken by the Agency in 2019 to adequately staff the Fundamental Rights Office. Against the advice of this Consultative Forum, the number of posts allocated to the Fundamental Rights Office has not changed during the year. The absence of senior staff within the team constitutes a major concern.

The Consultative Forum welcomes provisions introduced by EBCG Regulation 2019/1896 on the creation of the position of Deputy Fundamental Rights Officer¹⁴ and on the independence of the Fundamental Rights Officer and his/her staff.¹⁵

¹⁴ Article 109(6) of EBCG Regulation 2019/1896.

¹⁵ In line with Article 109(4) of EBCG Regulation 2019/1896, the Management Board shall lay down special rules applicable to the Fundamental Rights Officer in order to guarantee that the Fundamental Rights Officer and his or her staff are independent in the performance of their duties.

4 MAIN ACTIVITIES IN 2019



Children wander the war-damaged streets of Al-Qusour neighbourhood of Homs, Syria. Families who were driven from their homes are returning to the city, scene of heavy fighting for years.

© UNHCR / Christopher Reardon / March 2019

4.1 The European Border and Coast Guard Regulation and its fundamental rights implications

4.1.1 Provision of strategic advice on the implementation of the European Border and Coast Guard Regulation

All activities falling within the mandate of the European Border and Coast Guard Agency must comply with international and EU law, including the Charter of Fundamental Rights. Compared to Regulation 2016/1624,¹⁶ EBCG Regulation 2019/1896 significantly increases the scope of the Agency's tasks. The Regulation also expands the Agency's role and functions with regards to fundamental rights.

Throughout the year, the Consultative Forum offered its collective expertise on fundamental rights to the Agency and the Management Board and sought to contribute to preparations for the Agency's extended mandate.

Likewise, the Consultative Forum followed the Agency's work on the European Travel Information and Authorisation System (ETIAS, Regulation (EU) 2018/1240),¹⁷ a new pre-authorisation system applicable to nationals of visa-free countries.

The creation of the ETIAS and Interoperability Task Force within the Agency were discussed at the 18th meeting of the Consultative

¹⁶ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

¹⁷ ETIAS is a system for granting authorisation to travel across the external borders of the Member States. The ETIAS Regulation was passed by the European Parliament on 5 July 2018. The adoption was confirmed formally by the Council of the EU on 5 September and signed by the two co-legislators on 12 September. It entered into force on 9 October 2018. The ETIAS legal framework is still in the course of completion with Commission implementing and delegated acts. ETIAS is due to become operational by the end of 2021. Full implementation is expected in the course of 2022.

Forum. The main discussions focused on the aim and role of the task force as well as crucial aspects of ETIAS such as the definition of screening rules, the establishment of the ETIAS Screening Board and of the ETIAS Fundamental Rights Guidance Board, of which the Consultative Forum will be a member. Consultative Forum members identified fundamental rights challenges in relation to the establishment of ETIAS.

4.1.2 Frontex fundamental rights monitoring

As in previous years, the Consultative Forum remains highly concerned about the functioning of the Frontex Serious Incident Reporting mechanism¹⁸ (SIR). During 2019, the Forum continued to underline the shortcomings of the SIR mechanism, which need to be urgently addressed. As a response to these deficiencies, Frontex announced that the SIR mechanism would be modernised, revamped and upscaled. By the end of the year, the Consultative Forum was assured that the Agency would seek its advice on the reform of the SIR mechanism in the course of 2020, after the entry into force of the EBCG Regulation 2019/1896.

In parallel, and as indicated in its Programme of Work, the Consultative Forum continued to focus on the Frontex Individual Complaints

¹⁸ A Serious Incident is an event or occurrence, natural or caused by human action, which may affect, or be relevant to a particular Frontex activity, to the safety and security of participants in Frontex activities, to the Agency's mission and reputation, or to any combination thereof. Among other events and occurrences as defined by SOP on SIRs, SIs also include situations of possible violations of Fundamental Rights and of the European Union acquis or international law, particularly related to international protection obligations, and possible violations of the Frontex Code of Conduct applicable to all persons participating in Frontex operational activities as well as of the Code of Conduct for Return Operations and Return Interventions coordinated or organized by Frontex. The aim of SIR including incidents with possible violations of Fundamental Rights is to inform Frontex Senior Management, the Frontex Management Board, Member States, and other stakeholders, as soon as possible, about the occurrence of a SIRs as defined in Category 4 of the "Frontex Serious Incident Catalogue".



The porthole of an abandoned boat on the island of Lampedusa.

In the six years from 2014 to the end of the decade, 15,000 refugees and migrants died attempting to cross the Central Mediterranean route from North Africa to Europe. Many suffered detention or human rights abuses in Libya, having fled conflict, persecution and poverty in their countries of origin.

© UNHCR / Alessandro Penso / November 2019

Mechanism¹⁹ and promoted a revision of its rules in line with its earlier recommendations on the matter. In May, the Fundamental Rights Office sought the views of the Consultative Forum on a draft booklet developed to raise awareness among persons potentially affected by the Agency's activities of the possibility to lodge a complaint. The Fundamental Rights Office confirmed that the comments and suggestions of the Consultative Forum helped to produce information materials²⁰ which were subsequently translated and are now available in 12 languages.

¹⁹ The Agency is obliged to set up and further develop, in cooperation with the Fundamental Rights Officer, an independent and effective complaints mechanism to monitor and ensure respect for fundamental rights in all the Agency's activities. According to Article 111(2) of EBCG Regulation 2019/1896, any person directly affected by actions or failure to act by staff involved in a 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 third country, and who considers himself or herself to have been the subject of a breach of his or her fundamental rights due to those actions or that failure to act, or any party representing such a person, may submit a complaint in writing to the Agency.

²⁰ Information booklet about the Complaints Mechanism as well other information materials could be found on the Agency's website: [URL: <https://frontex.europa.eu/contact/lodge-a-complaint/>].

An important provision in the new Regulation will be the recruitment of at least 40 Fundamental Rights Monitors to oversee Frontex activities.²¹ The Consultative Forum has welcomed Frontex's initiative to closely engage the Fundamental Rights Agency in setting up a framework for the implementation of this key development under the lead of the Fundamental Rights Officer, and remains available to support the process in 2020.

4.2 Frontex Fundamental Rights Strategy and action plan

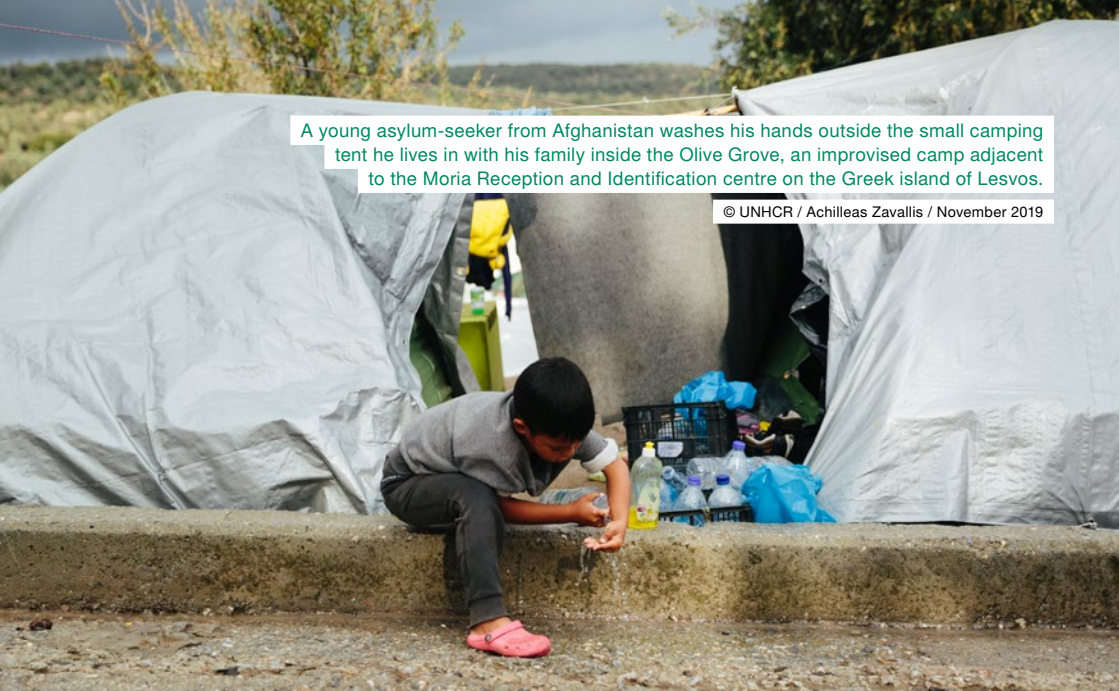
The Consultative Forum was informed that the revision of the 2011 Fundamental Rights Strategy²² (FRS) had been delayed pending adoption of the new EBCG Regulation. The last exchange with the Consultative Forum on this matter was held in February 2016, when its views were discussed in the framework of a meeting with the Fundamental Rights Officer and Frontex representatives.

During this period Frontex developed and published the technical European Integrated Border Management Strategy,²³ which

²¹ Article 110 of Regulation 2019/1896 creates Fundamental Rights Monitors (FRMs). At least 40 FRMs shall be recruited by the Agency by 5 December 2020 (Article 110(6)). They shall be appointed by the FRO (Article 109(3)). FRMs are selected and managed by the Fundamental Rights Officer (Article 109(2)(j)) and report to him or her on any concerns related to possible violation of fundamental rights within the Agency's operational activities (Article 110(2)(d)). FRMs are tasked to constantly assess the fundamental rights compliance of operational activities, provide advice and assistance in this regard and to contribute to the promotion of fundamental rights as part of European integrated border management (Article 110(1)).

²² In line with the new Regulation, Frontex is obliged to guarantee the protection of fundamental rights in the performance of its tasks. For that purpose, the Agency, with the contribution of and subject to endorsement by the Fundamental Rights Officer, shall draw up, implement and further develop a Fundamental Rights Strategy and Action Plan, including an effective mechanism for monitoring respect for fundamental rights in all the activities of the Agency (Article 80(1) of Regulation 2019/1896).

²³ The technical and Operational Strategy for European Integrated Border management can be accessed here: [URL: <https://frontex.europa.eu/about-frontex/key-documents/?category=european-integrated-border-management-strategy>].

A photograph of a young boy with dark hair, wearing a grey long-sleeved shirt and dark trousers, crouching on a concrete ledge. He is washing his hands with water from a small container. Behind him is a large, makeshift tent made of white plastic sheeting. Inside the tent, various items like bottles and bags are visible. The background shows a hilly landscape under a clear sky.

A young asylum-seeker from Afghanistan washes his hands outside the small camping tent he lives in with his family inside the Olive Grove, an improvised camp adjacent to the Moria Reception and Identification centre on the Greek island of Lesbos.

© UNHCR / Achilleas Zavallis / November 2019

includes fundamental rights. The fundamental rights provisions in the European Integrated Border Management Strategy are likely to provide guidance in the process and influence the overall Fundamental Rights Strategy. Regrettably, and despite initial discussions, the expertise and advice of the Consultative Forum were not sought in the development of the Frontex European Integrated Border Management Strategy.

The Consultative Forum reiterates the crucial importance of these strategic documents for the promotion, respect and protection of fundamental rights in Frontex activities and appreciates the interest expressed by the Chair of the Frontex Management Board in seeking its expertise on the execution of the Agency's roadmap for the implementation of the EBCG Regulation 2019/1896 in early 2020. At its meeting on 30 October, the Consultative Forum recommended that a clear plan for the development of the Agency's Fundamental Rights Strategy, its implementing documents, as well as other aspects of the new EBCG Regulation with an impact on fundamental rights, be jointly developed as a matter of priority.

4.3 Fundamental rights in Frontex operations and return support activities

During the year, Consultative Forum members continued to express concerns in relation to fundamental rights violations at borders where Frontex is operational. Concerns were also raised about the potential impact of increased Frontex aerial surveillance over the Central Mediterranean and the provision of information on search and rescue incidents identified by Frontex to the Libyan Maritime Rescue Coordination Centre. In this regard, the Consultative Forum highlighted the increased number of persons being brought back to face arbitrary detention and horrific conditions in Libya. Similar concerns were expressed about the Agency's Multipurpose Aerial Surveillance (MAS) in Croatia, given the consistent reports of police violence and pushbacks by Croatian authorities as documented by media and various organisations, including those represented in the Consultative Forum.²⁴

²⁴ See e.g. Amnesty International, Pushed to the edge: Violence and abuse against refugees and migrants along Balkan Route, 13 March 2019, available at: [URL: <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>]; Save the Children, Reports about push backs and violence against children on the move at the Western Balkans borders: January - June 2019, 14 August 2019 available at: [URL: <https://nwb.savethechildren.net/news/reports-about-push-backs-and-violence-against-children-move-western-balkans-borders-january>]; Save the Children, Reports about push backs and violence against children on the move at the western Balkan borders: July – September 2019, 11 December 2019, available at: [URL: <https://nwb.savethechildren.net/news/reports-about-push-backs-and-violence-against-children-western-balkans-borders-july-september>]; Amnesty International, 'Croatia: EU complicit in violence and abuse by police against refugees and migrants', 13 March 2019, available at: [URL: <https://www.amnesty.org/en/latest/news/2019/03/croatia-eu-complicit-in-violence-and-abuse-by-police-against-refugees-and-migrants/>]; OHCHR, End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, 1 October 2019, available at: [URL: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25088&LangID=E>]; ECRE, 'Report on Illegal Pushback and Border Violence', 30 August 2019, available at: [URL: <https://www.ecre.org/legal-pushback-and-border-violence-reports/>]; FRA, Migration, Key Fundamental Concerns, 1.7.2019 - 30.9.2019, Quarterly bulletin [URL: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-4_en.pdf]; Council of Europe, Report "Pushback policies and practice in Council of Europe member States", CoE, Committee on Migration, Refugees and Displaced Persons, 8 June 2019, available at [URL: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=27728&lang=EN>]; UN official 'concerned' about denial of access to asylum procedures in Croatia, 27 December, 2019, available at: [URL: <https://www.euractiv.com/section/justice-home-affairs/>]

Persistent allegations of pushbacks at the Greek-Turkish border in Evros were also a matter of great concern and led the Consultative Forum to request information on Frontex activities and reported incidents in the region. Once again, the Consultative Forum noted the low number of serious incidents reported through the Agency's SIR mechanism, which Frontex attributed to the fact that officers deployed by the Agency were not deployed on the frontline where pushbacks have been reported.

The Consultative Forum has also maintained its recommendation regarding Frontex operational activities in Hungary. At its meeting in May, the Consultative Forum highlighted the Commission infringement procedure against Hungary²⁵ concerning its asylum laws, and recommended that Frontex refrain from supporting returns from Hungary and suspend any return-related activities from the country. This recommendation was motivated by the direct responsibility of the Agency to ensure respect for the principle of non-refoulement in all its activities. Against the Consultative Forum's repeated advice, the Agency maintained its operational support to Hungary, suggesting that its presence on the ground could improve the situation. The Consultative Forum noted, however, that even though the situation did not improve, the Agency increased the number of staff deployed at the Serbia-Hungary border.

[interview/un-official-concerned-about-denial-of-access-to-asylum-procedures-in-croatia/](https://data2.unhcr.org/en/documents/details/72482); UNHCR, Desperate Journeys, Refugee and Migrant Children arriving in Europe and how to Strengthen their Protection, January to September 2019, available at [URL: <https://data2.unhcr.org/en/documents/details/72482>], p.6; ODIHR -OSCE, 'Countering racism, xenophobia and hate crimes against migrants at borders focus of OSCE/ODIHR event in Zagreb' - April 2019, available at [URL: <https://www.osce.org/odihr/417458>].

25 Detailed information about the Commission infringement procedures against Hungary can be found here: [URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260].

The Consultative Forum continued to advise that operational support by the Agency must be contingent upon Frontex being satisfied that people arriving at EU borders are duly registered by the competent national authorities; are given access to an individualised procedure and to asylum, if they so wish; are not summarily returned; and that instances of police abuse and violence are investigated in an independent and impartial manner. In the absence of guarantees to this effect, Frontex operational support should be suspended or terminated in application of (then) Article 25 of the EBCG Regulation 2019/1896.

4.3.1 Fundamental rights in Frontex return support activities

As a follow-up to observing four return operations in 2017 and 2018, the Consultative Forum held a focus group meeting with Frontex and representatives of its Management Board. The purpose of the focus group meeting was to jointly reflect on the preliminary findings of the observations and to assess ways to address potential shortcomings.

In follow-up to this and further internal reflections, the Consultative Forum issued 25 recommendations,²⁶ which present, in a consolidated manner, the most important points in relation to forced returns which require further action by the Agency. The Consultative Forum formulated these recommendations with the purpose of equipping Frontex to react adequately to increasing demands for support. They complement the suggestions put forward during the revision of the Frontex guidelines for return operations.

²⁶ Recommendations on return in the activities of the European Border and Coast Guard Agency were submitted to the Management Board and Executive Director on 4 July 2019.



A shipwrecked boat used by migrants and refugees in the coast of Cadiz, near Punta Paloma, in Spain.

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The recommendations cover four thematic areas: recruitment and training; management of forced returns; return operations; and monitoring of forced returns. The Forum's recommendations include:

- All staff recruited by the Agency should receive fundamental rights training that is developed with accredited fundamental rights experts and covers the concrete challenges emerging in the field of return. Training should also be provided to all experts in the pool of forced return escorts, cultural mediators and any other participants in return operations, including third country officials;
- When supporting the exchange of return-related information by Member States, the Agency should ensure that neither the fact that a person has sought international protection nor information from the asylum file and the state of the asylum procedure is used in the context of returns;

- The Agency should support the early identification, referral and documentation of stateless persons to facilitate fundamental rights-compliant return interventions. Such return interventions should be planned and implemented with the involvement of statelessness expertise;
- The Agency should continue its policy of not including unaccompanied children in its forced return operations, as such returns are not suitable for this category of vulnerable persons. Returns of children should be carried out only when it is in their best interests, and should not involve any use of force;
- The Agency has an obligation to ensure respect for the principle of non-refoulement. In the event of violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist, the Agency must suspend or terminate its activities. The Agency should adopt clear rules and a procedure for the suspension of operations and seek the views of the FRO as to whether planned activities may entail a risk of serious violations of fundamental rights. The FRO should regularly assess the situation in Member States and in third countries, taking into account a variety of sources, including information from EU bodies as well as non-governmental organisations and international organisations;
- The Agency should assess, in consultation with the FRO and the Consultative Forum, how to strengthen the effectiveness and independence of the pool of forced return monitors.
- The Agency should create incentives for Member States that do not have an effective monitoring mechanism in place to establish one. The Agency should not facilitate or finance return operations from Member States that do not have a functioning monitoring mechanism in place.



Piles of lifejackets used by refugees and migrants to cross the Aegean Sea from Turkey to Greece are seen at a dumping ground near the town of Molyvos on the Greek island of Lesbos.

© UNCHR / Socrates Baltagiannis

EBCG Regulation 2019/1896 entails new return-related tasks for the Agency, including implementation of assisted voluntary returns, provision of technical and operational assistance to post-arrival and post-return activities of the Member States and the establishment of an integrated return management platform.²⁷ The Consultative Forum stands ready to further contribute its advice to Frontex on the implementation of these new tasks, which all have a clear fundamental rights dimension. Additionally, the Forum welcomes the Agency's plan to update the guidance on return operations and to develop specific guidance for readmissions.

4.3.2 Frontex engagement with third countries and its impact on fundamental rights

During 2018, the Consultative Forum commissioned advice on the fundamental rights implications of the Agency's enhanced cooperation with third countries on matters covered by its mandate. In view of this advice, and subsequent reflections, the Consultative Forum adopted 14 recommendations on the fundamental rights

²⁷ Article 41(1)(a)(iv) and Article 41(1)(d) of EBCG Regulation 2019/1896.

implications of the Agency's engagement with third countries. The recommendations aim at supporting Frontex in complying with its fundamental rights responsibilities in the context of its activities in, or together with, third countries. They were shared with the Executive Director and the Chair of the Management Board in July 2019.

The Consultative Forum recommends that the Agency:

- Carry out an effective fundamental rights impact assessment prior to engaging with a third country.
- Ensure that future Working Arrangements contain a designated fundamental rights clause.
- Ensure that the updated Fundamental Rights Strategy of the Agency adequately reflects the enhanced engagement of Frontex with third countries.
- Enhance the role of the Fundamental Rights Officer and her monitoring capacity.
- Ensure respect for fundamental rights and international protection obligations in the sharing of personal data with third countries.
- Ensure that in all external relations a fundamental rights training component is included.
- Ensure that the Codes of Conduct²⁸ apply to all participants in all Frontex activities.
- Define the duties and powers of third country observers and liaison officers.

²⁸ Frontex Code of Conduct applicable to all persons participating in Frontex operational activities: https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf. Frontex Code of Conduct for return operations and return interventions coordinated or organized by Frontex: [URL: https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf].

- Ensure that a return monitor can effectively prevent fundamental rights violations.
- Enhance the complaints mechanism in relation to cooperation with third countries.
- Apply a restrictive definition of “operational personal data”.
- Improve reporting on cooperation with third countries.
- Create a dedicated page on external relations on the Frontex website.
- Increase transparency on fundamental rights complaints.

Following the launch of the first joint operation outside the European Union, in Albania, and building on the substantial advice provided in this regard, the Consultative Forum visited Frontex operations in that country on 16-20 December.

During the mission, the Consultative Forum representatives visited two Border Crossing Points as well as Border Crossing Units (BCU Korce/BCP Kapshtice and BCU Gjirokastra/BCP Kakavija). They also met with the Albanian authorities, Frontex representatives and officers deployed by the Member States. Side discussions were organised with representatives of civil society organisations (the Albanian Helsinki Committee) and international organisations (UNHCR Representation in Albania, OSCE Presence in Albania). As per established practice, the preliminary observations of the visit will be discussed at a Focus Group meeting to be held in 2020. The Consultative Forum will then discuss preliminary observations and questions with Frontex representatives and interested members of the Frontex Management Board, upon the invitation of the latter.

The Consultative Forum appreciates the invitation extended by the Albanian authorities to host the visit as well as efforts by Albanian representatives and Frontex staff in facilitating the visit. The Consultative Forum particularly appreciated the readiness of Albanian officials to provide comprehensive and exhaustive information about their activities at the Albanian-Greek Border as well as those related to the asylum procedure in the country. At the same time, the Consultative Forum regrets that its delegation was not allowed to directly observe officers deployed by Frontex in the performance of duties such as screening, debriefing and border surveillance, which constituted a crucial step towards understanding the role of the Agency in third countries and its Joint Operation in Albania.

4.4 Training activities

In line with its Programme of Work, the Consultative Forum commissioned an independent assessment focused on Frontex training activities with a view to better understanding current developments as well as the extent and further need for fundamental rights mainstreaming in Frontex training courses and products. The Consultative Forum primarily engaged such expertise to better orient its advice and recommendations in this area, particularly in the context of the ongoing reform to the Frontex Training Portfolio. The work will also allow the Consultative Forum, pursuant to its mandate, to provide strategic advice to Frontex in view of the foreseen extension of the Agency's purview.

The independent consultant engaged by the Consultative Forum started working in February 2019 and presented her main conclusions on 30 October. The findings were based on desk research and review of course materials, guidelines and past inputs provided



Joint Operation Flexible Operational Activities - Western Balkans 2019 in Albania. The main aim of the operation is to control migratory flows, to tackle cross-border crime, including migrant smuggling, trafficking in human beings and terrorism, and to enhance European cooperation at the land border between Albania and Greece.

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by the Consultative Forum, observation of various training sessions and development meetings, assessment of reports and interactions with the Consultative Forum and its members (relevant for the training of border guards), as well as exchanges with Frontex officers. Upon a thorough assessment of the report, the Consultative Forum will develop a set of recommendations in this area.

Contrary to the approach in previous years, and despite the increasing responsibilities of Frontex in this area, the Consultative Forum was not approached for advice on the development and implementation of Frontex training activities and courses during 2019.

4.5 Child protection and safeguarding in the context of Frontex activities

In 2019 the Consultative Forum continued to support the further development of the VEGA Children initiative²⁹ with a focus on its extension to land and sea borders. Following a constructive coordination meeting with the Frontex team, the Forum accepted an invitation to nominate experts to support the implementation of the VEGA concept at both air and land borders.

The experts were deployed at the Polish/Ukrainian and Romanian/Serbian borders within the framework of Joint Operation Focal Points 2019. They observed, advised and assisted the deployed Frontex team members and hosting authorities in the implementation of the VEGA Children Standard Operating Procedures.

The experts were also deployed to support the mainstreaming of VEGA within regular Frontex air border operations. The Consultative Forum appreciates the interest and availability of Poland, Romania, Germany, Italy, Lithuania, Croatia, Portugal and Spain to receive its experts. Upon completion of deployments, the Forum will hold a meeting with Frontex to assess the impact and adequacy of this new framework and to identify lessons learned in the process.

²⁹ The aim of the VEGA initiative is to identify children at risk arriving in EU Member States and Schengen-associated countries, identifying any criminality associated with their movements as well as developing good practices in identification and referral. Operational mixed teams composed of border guards and International organisations/NGO experts were deployed with the aim of combating child trafficking at air borders, identifying children at risk on the move as well as other vulnerable persons, and referring them to welfare and protection institutions.



Unaccompanied boys from Afghanistan and Syria
in Section A of the Moria reception centre.

© UNHCR / Gordon Welters / September 2019

4.6 External evaluation of the Consultative Forum

An external evaluation on the effectiveness and impact of the Consultative Forum's work was launched during the year. The evaluation assessed the relevance, impact, effectiveness, efficiency and internal coherence of the Consultative Forum, to obtain an understanding of the obstacles and challenges and to identify possibilities for improvement.

It was commissioned as per Terms of Reference (TOR) that had been jointly developed with Frontex, the Management Board and the European Commission between June and November 2018. As envisaged in the TOR, the Consultative Forum set up a Steering Board which worked closely with the Fundamental Rights Officer and strove to ensure that the views of Frontex and the Management Board were duly reflected at all stages of the process. The Consultative Forum appreciates the support and relevant input provided by the Frontex Deputy Executive Director and Management Board Chair, as well as those Management Board members and Frontex staff who contributed their time and views as part of the 323 stakeholders consulted in the process. Of these, 107 were Frontex staff, 39 present or past

Management Board representatives, 33 Consultative Forum members/alternates and 77 others including Civil Society, Academia, Commission and European Parliament representatives.

In May 2019, the Consultative Forum, Management Board and Frontex representatives were presented with the initial findings of the evaluation at a workshop that also included an open exchange of views. While not initially foreseen in the TOR, the Steering Board shared the draft final evaluation report with Frontex and the Management Board Chair for comments and ensured that the views of all parties were provided to the external evaluators.

The final evaluation report was issued on 3 July. Upon confirming that it met the criteria set in the TOR, the Steering Board approved its content and shared it with Frontex, the Management Board and the Consultative Forum members on 5 July.

The Consultative Forum then recommended that a meeting be held between Frontex, the Management Board and Consultative Forum representatives to jointly assess the findings and recommendations made by the external evaluators. The adoption of EBCG Regulation 2019/1896 and a new Consultative Forum term starting in 2020 provide unique opportunities to address some of the findings made by the evaluation.

In the meantime, the Consultative Forum has taken good note of the recommendation to increase the transparency of its activities. Additional information was incorporated in this report, including the full text of the recommendations issued during the year and the text of the external evaluation.



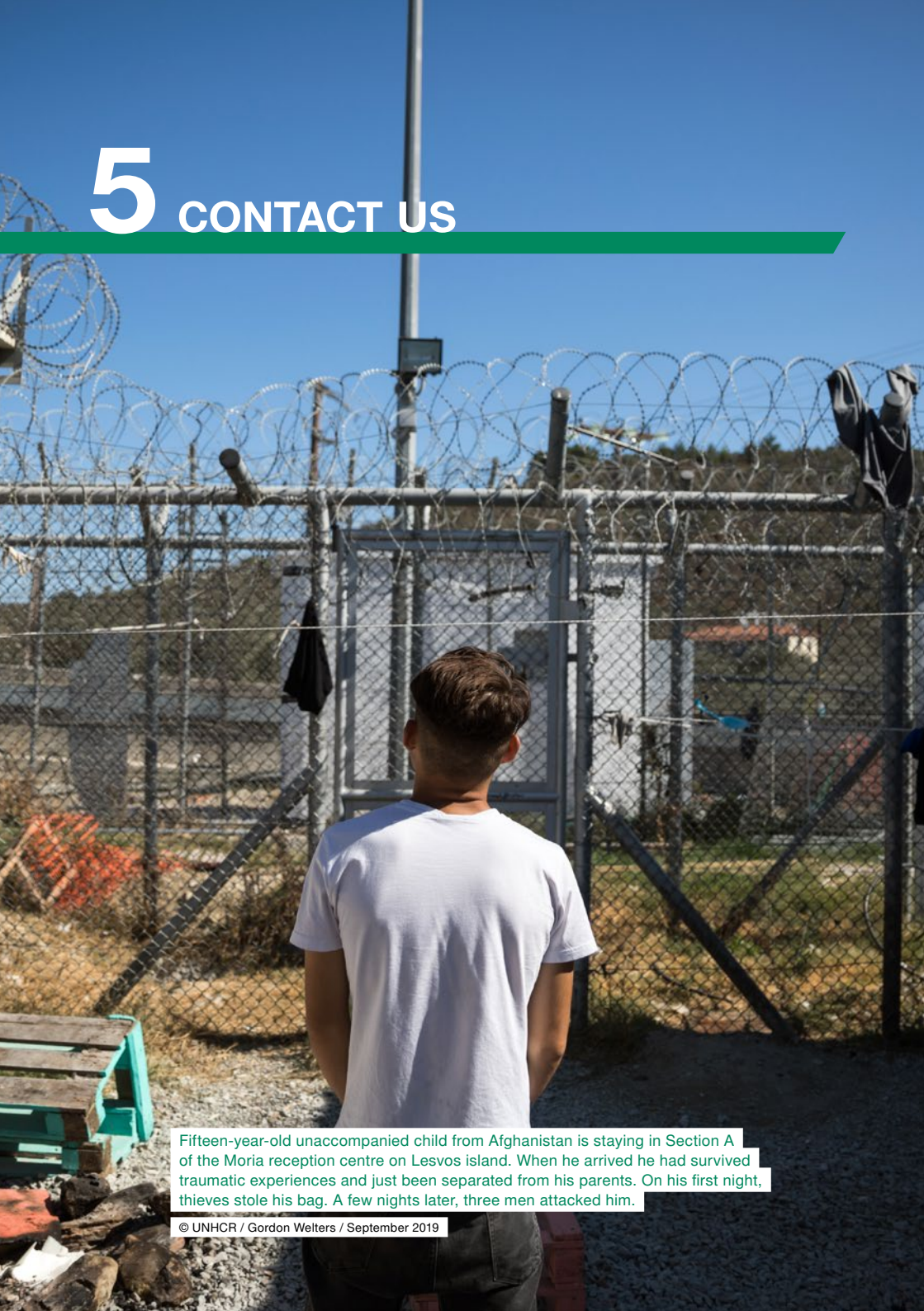
Shipwrecked boats used by migrants and refugees piled up in the port of Barbate, Spain.

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The evaluation recommended that:

- Frontex reinforce the Consultative Forum Secretariat.
- Frontex provide the Consultative Forum with more timely and effective access to information.
- Frontex and the Consultative Forum improve follow-up to official meetings, activities and recommendations and promote informal consultations.
- The Consultative Forum increase the transparency of its work, including of its recommendations and opinions.

5 CONTACT US



Fifteen-year-old unaccompanied child from Afghanistan is staying in Section A of the Moria reception centre on Lesbos island. When he arrived he had survived traumatic experiences and just been separated from his parents. On his first night, thieves stole his bag. A few nights later, three men attacked him.

If you are interested to know more about the work of the Consultative Forum or have any comment about this Annual Report, please contact our Secretariat at: consultative.forum@frontex.europa.eu

6 ANNEXES



Jordan. Elderly Syrian refugees brave the cold in Irbid
Seventy-two-year-old Syrian refugee, lives with his 63-year-old wife,
a son with learning disabilities, and his grandchildren, in the city of Irbid, northern Jordan.
The elderly couple have other married sons and daughters living in Syria and Europe.

6.1 ANNEX I: List of activities

9-10 January The Consultative Forum provided a briefing to officers to be deployed by Frontex at land and sea borders, Warsaw

12 February The Consultative Forum presented its Sixth Annual Report / 2018 at the 73rd meeting of the Frontex Management Board, Warsaw

18 February Frontex engaged the services of ICF for an independent External Evaluation of the effectiveness and impact of the Consultative Forum (hereafter the CF Evaluation)

18 February Vacancy notice for the position of the Consultative Forum Secretariat

19 February Frontex engaged an independent consultant to undertake an assessment on the Extent and Further Needs for Fundamental Rights Mainstreaming in Frontex Training Courses and Products (hereafter training consultancy)

22 February Kick-off meeting for the training consultancy, Warsaw

28 February Assistant to the Consultative Forum Secretariat left the Agency, staff of the Fundamental Rights Office covered the function part-time until the arrival of a new staff member

1 March Frontex published the Sixth Annual Report of the Consultative Forum/2018

7 March Kick-off meeting for the CF Evaluation

11-12 March 18th meeting of the Consultative Forum, Warsaw

21 March The Consultative Forum presented its Sixth Annual Report/2018 and exchanged views with the EP LIBE Committee, Brussels

27 March At its 74th meeting, the Frontex Management Board renewed the mandate of the Consultative Forum until 31 December 2019

4 April The Consultative Forum presented its work to the International Commission for Missing Persons (ICMP) in the context of their visit to Frontex, Warsaw

5 April Inception report of the CF Evaluation was submitted

17 April The Consultative Forum held a meeting with Frontex to agree on the modalities of CF involvement in the Frontex VEGA Children initiative at air borders

16-17 May 19th Consultative Forum meeting, Brussels

17 May ICF presented its draft evaluation report and held a workshop with CF, MB and Frontex representatives to discuss the preliminary results, Brussels

21 May The Consultative Forum issued recommendations on the fundamental rights implications of the Agency's engagement with third countries

4 June The Consultative Forum attended the Operational Briefing for JO VEGA Children Air, phase I, Warsaw

4-5 June The Consultative Forum was invited to attend the Operational Heads of Airports Conference, Gdynia

5-18 June The Consultative Forum deployed experts to JO VEGA Children Air, phase I, in various locations

18 June The Consultative Forum briefed officers to be deployed by Frontex at land and sea borders

19 June The Consultative Forum presented its Annual Report / 2018 to the EU Council's Working Party on Frontiers

25 June The Consultative Forum met with Frontex to agree on the modalities of the Forum's engagement in Frontex VEGA Children initiative at land borders

25-26 June The Consultative Forum was invited to the 1st Annual Lessons Learned Meeting of the EU-funded project "Forced Return Monitoring III" (FReM III), Bratislava

3 July ICF delivered the final report of the CF Evaluation

4 July The Consultative Forum issued recommendations on return in the activities of Frontex

2 September The new assistant to the Consultative Forum Secretariat joined Frontex

9-24 October A Consultative Forum Expert was deployed to JO VEGA Children Land, Focal Point Moravita

8 October The Consultative Forum attended the Operational Briefing for JO VEGA Children Air, phase II, Warsaw

9 October - 6 November The Consultative Forum deployed experts to support JO VEGA Children Air, phase II, various locations

18 October The Agency launched an open call for applications for the selection of civil society organisations to become members of the Consultative Forum

29-30 October 20th Consultative Forum meeting, Warsaw

30 October The final report of the training consultancy was presented at the 20th Consultative Forum meeting, Warsaw

6-21 November An expert from the Consultative Forum was deployed within JO VEGA Children Land, Focal Point Dorohusk

11-15 November The Consultative Forum was invited to attend the 2nd Training for forced return monitors of the project "Forced Return Monitoring III" (FReM III), Rome

20 November The Consultative Forum presented its Activity Report for 2019 at the 77nd Management Board meeting, Warsaw

2 December The Management Board decided on the composition of the Frontex Consultative Forum from 1 January 2020 until 31 December 2022

16-19 December The Consultative Forum visited Frontex activities in Albania

6.2 ANNEX II: List of consultations

25 February Frontex request for the Consultative Forum's contribution to the implementation of VEGA Children activities through the deployment of experts within Frontex JO Focal Points Air

21 May Fundamental Rights Officer's consultation on the development of an information booklet for potential complainants on the Frontex complaints mechanism

2 August Frontex request for the Consultative Forum's contribution to the implementation of VEGA Children Land pilot project within JO Focal Points 2019 Land

6.3 ANNEX III: List of requests for information filed by the Consultative Forum

Request date	Information requested	Response received	Status
16 January	Frontex staffing plan for 2019, including but not limited to FRO staffing plan. Clarifications about the reporting lines of the employees of the Fundamental Rights Office, including the Fundamental Rights Officer and the Associate Fundamental Rights Officer.	15 May	Information partially provided
5 February	Monthly reports from Frontex Liaison Officers to Third Countries.	12 February	Information not provided
14 February	Information regarding Frontex SAR capacity, including: – Current number of vessels deployed in operational areas, and – Number of rescues conducted and rescued persons in the context of Frontex activities during 2018 and 2019.		Pending
19 February	1.Details of Frontex operational response in Greece (particular operational plans relevant to the Evros region from JO flexible operational activities land 2019, JO focal points Land 2019); 2.Serious incident reports (SiRs) related to alleged violations of fundamental rights reported to Frontex and investigated in Greece from 2016 to date, including facts and findings as well as follow-up measures taken by the Agency; 3. Complaints received from 6 October to date which are relevant to the Evros region, and measures taken to follow up on them; 4.FRO observations further to the mission to the Evros region in January 2019.	8 March	Information provided
9 April	Joint Operational Plans: Indalo, JO focal points air and Alexis.	18 September	Information partially provided
10 September	1.Details of Frontex operations in Croatia, particularly at the Croatian border with Bosnia and Herzegovina; 2.Serious incident reports (SiRs) related to alleged violations of fundamental rights in the relevant operational area reported to Frontex and investigated to date, including facts and findings as well as follow up measures taken by the Agency; 3.Complaints received to date which are relevant to the region, and measures taken to follow up on them; 4.Relevant FRO observations; 5.Relevant reports of the Liaison Office (LO) in Belgrade; 6.Information on how Frontex is assessing relevant reports and concerns and their impact on its current operations and future plans.	23 September	Information partially provided

6.4 ANNEX IV: Recommendations on the fundamental rights implications of the Agency's engagement with third countries

In the exercise of its powers in relation to third countries, Frontex is bound by EU primary and secondary law, which contain safeguards to promote compliance with fundamental rights. Article 54(1) of the European Border and Coast Guard Regulation³⁰ (EBCG Regulation) stipulates that the Agency's cooperation with third countries must take place within the framework of the EU's external relations policy, including the protection of fundamental rights. Furthermore, the Agency must also comply with Union law when cooperation with third countries takes place on the territory of those countries. This includes the duty to respect the rights and principles of the EU Charter of Fundamental Rights. Finally, as an Agency of the EU, the actions and omissions of Frontex engage the international responsibility of the European Union under international law.

During 2018, the Consultative Forum commissioned advice on the fundamental rights implications of the Agency's enhanced cooperation with third countries on matters covered by its mandate. The notes on such advice, which was discussed at the Consultative Forum meeting on 17 October 2018 and served as a resource for these recommendations, are provided as an Annex³¹.

In line with its mandate, as enshrined in Article 70 of the EBCG Regulation, the Consultative Forum has adopted the following 14 recommendations on the fundamental rights implications of the

³⁰ Regulation (EU) No. 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard Regulation, OJ L 251, 16.9.2016, pp. 1–76.

³¹ Jorrit Rijpma and Melanie Fink, Advice on the Fundamental Rights Implications of Frontex' Cooperation with Third Countries, November 2018.

Agency's engagement with third countries. The recommendations aim at supporting the Agency in complying with its fundamental rights responsibilities in the context of its activities in or together with third countries. The recommendations are not exhaustive.

1. Carry out an effective fundamental rights impact assessment prior to engaging with a third country

The potential fundamental rights consequences of cooperation with a third country should be assessed beforehand through an effective fundamental rights impact assessment. The assessment should be general before concluding a working arrangement, as well as specific before concrete operational activities, such as joint operations, are planned with a third country.

The assessment should draw on a variety of sources, take into account publicly available information and reports, including from civil society and international organisations, and be documented in a transparent manner. It should be conducted by the Agency in close cooperation with its Fundamental Rights Officer and establish whether border management practices in a third country comply with the human rights obligations the Agency is bound to uphold. It should assess the human rights situation in the third country and identify potential risks of directly or indirectly assisting in the commission of human rights violations in relation to the foreseen engagement by the Agency.

Where the Agency's assessment reveals violations of fundamental rights or international protection obligations that pertain to the context in which the engagement should occur, and that are of a serious nature or are likely to persist, it should not engage in (operational) cooperation until the third country has taken the necessary measures to prevent serious human

rights violations in the area of planned cooperation. If specifically requested by the third country, the Agency may engage in activities within its mandate that support the third country in taking measures to prevent serious human rights violations in the area of planned cooperation.

In any case in which engagement is recommended, measures should be clearly outlined and implemented to avoid exposing the Agency, or persons deployed in the context of its activities, to a direct or indirect contribution to fundamental rights violations. Prior to engagement with a third country, the Agency should ensure that effective accountability mechanisms are put in place to address any violations that may occur in the context of its foreseen activities.

The fundamental rights impact assessment should approach respect for fundamental rights from a broader perspective than merely that of strict tort responsibility for fundamental rights violations committed directly. It should take into account possible unintended consequences of broader actions, including financial or logistical support, as well as the contribution of technical equipment. The fundamental rights implications of Frontex engagement with third countries should be closely monitored, with the need to revisit the assessment in the event of a change in the situation in the countries or in the details of Frontex engagement.

2. Ensure that future Working Arrangements contain a designated fundamental rights clause

Since Working Arrangements form part of the framework within which cooperation with third countries is developed, a designated fundamental rights clause should be included in future

working arrangements or when current working arrangements are amended. Such a clause should include provisions on the applicability of the Agency's standards and fundamental rights mechanisms as well as on adherence by third country officers to them when participating in the Agency's activities.

3. Ensure that the Agency's updated Fundamental Rights Strategy adequately reflects the enhanced engagement of Frontex with third countries

The Frontex Fundamental Rights Strategy should elaborate on the ways in which the Agency will seek to ensure and promote fundamental rights compliance in its cooperation with third countries. This could be done by incorporating the recommendations made here, in particular as regards fundamental rights impact assessments and monitoring.

4. Enhance the role of the Fundamental Rights Officer and her monitoring capacity

The Fundamental Rights Officer (FRO) should have the same powers whether the Agency operates within or outside the EU. The FRO should give her views on whether or not to initiate or continue cooperation with a particular third country and under what conditions. For this purpose, she should be provided with up to date information from the Agency and the Liaison Officers network as well as information from reputable human rights organisations and international organisations. For the same purpose, it is also recommended that the FRO establish links with the European External Action Service, EASO, FRA and other relevant actors.

The Agency should ensure that independent actors, including child protection and civil society representatives, have full access to Frontex activities in third countries.

The respective operational plans or other documents adopted by the Agency in relation to its engagement with third countries should clearly envisage the role of the FRO as well as mitigating measures and monitoring procedures proposed in the initial fundamental rights impact assessment. Details on the concrete applicability of the Agency's fundamental rights and accountability mechanisms (including the complaints mechanism) should also be included. The FRO's office should be provided with sufficient funding, staff and autonomy to fulfil its role, including independent monitoring, including in relation to Frontex activities in third countries.

5. Ensure respect for fundamental rights and international protection obligations in the sharing of personal data with third countries

Given that the cooperation with third countries may entail the sharing of personal data, in particular in the field of return, the FRO should work in close cooperation with the Agency's Data Protection Officer. The Agency should follow their recommendations to ensure that no data that could undermine the security or protection of persons is shared with third countries and that data protection equivalency agreements, including with regard to the effectiveness of the remedies in case of breach, are ratified before any exchange of data takes place.

6. Ensure that in all external relations a fundamental rights training component is included

The Agency should continue to offer and promote fundamental rights training to third country officials as part of its technical assistance activities in third countries. The provision of fundamental rights training should also be ensured in the context of joint operational cooperation, including to third country liaison officers and observers.

7. Ensure that the Codes of Conduct apply to all participants in all Frontex activities

The Agency should ensure that its Codes of Conduct apply in full to third country observers and other third country participants in Frontex activities. To this end, all agreements and guiding documents adopted by the Agency should include a clear provision on their applicability.

8. Define the tasks and powers of third country observers and liaison officers

Even though the tasks of third country observers are limited, they are described in very general terms. Operational plans should clarify which tasks, powers, and obligations they have and that they are bound by EU and national law of the host Member State, and responsible to conduct themselves in accordance with the Agency's fundamental rights standards.

9. Ensure that a return monitor can effectively prevent fundamental rights violations

When fundamental rights violations are committed by third country representatives, including escorts, the return monitor should have the power to suspend or call off the operation or at least to directly request the Executive Director to explicitly do so. Reporting obligations cannot suffice to ensure effective enforcement of fundamental rights.

10. Enhance the complaints mechanism in relation to cooperation with third countries

It should be clear in which situations persons whose rights may have been violated in the context of the Agency's activities on third country territory can lodge a complaint to the Agency's complaints mechanism or to the third country equivalent as designated in the respective status agreement.

Operational plans or implementing agreements on Frontex activities should envisage the modalities for the transmission of complaints related to potential violations by third country actors in the context of a Frontex activity to the relevant/competent fundamental rights institutions.

The complaints mechanism should also be applicable to the Agency's activities with third countries outside joint operational areas, where they affect individual rights.

A web portal should be made available to lodge complaints since it may be more difficult to lodge a complaint from a third country.

The Agency should insert clauses in working arrangements with third countries to ensure access to effective remedies in the country against human rights violations that have occurred in joint operations.

11. Apply a restrictive definition of “operational personal data”

The Management Board Decision on the processing of personal data will need to be brought into line with Regulation (EU) No. 2018/1725. When aligning the internal rules on the processing of personal data, the Management Board should adopt a restrictive interpretation of “operational personal data”, ensuring that the regime set out in Chapter IX of the Regulation applies only to the processing of personal data which is solely carried out for the purposes of prevention, detection, investigation or prosecution of criminal offences.

12. Improve reporting on cooperation with third countries

The Agency should ensure timely, consistent, transparent, complete, and accurate reporting on cooperation with third countries in line with Article 54(11) of the EBCG Regulation.

Reporting provided under Article 54(11) of the EBCG Regulation should include information on the amount, purpose, and source of funding provided to third countries as well as detailed information on any other potential support measures provided.

13. Create a dedicated page on external relations on the Frontex website

All activities of the Agency in relation to its cooperation with third countries should be made public on the website. This should include a detailed list of activities by country, the working arrangements, the fundamental rights impact assessments conducted, the relevant Management Board Decisions, status agreements, command and control arrangements, support measures undertaken as well as the amount, purpose, and source of funding provided to third countries.

14. Increase transparency on fundamental rights complaints

The Agency should regularly report on complaints lodged, as well as on their follow-up, and on the outcomes.

In light of the specific fundamental rights challenges that cooperation with third countries entail, the Consultative Forum would appreciate having the opportunity to present these recommendations and the findings of the underlying study to the Management Board in 2019.

The Consultative Forum looks forward to continuing to provide its fundamental rights expertise to the Agency on this difficult topic.

6.5 ANNEX V: Recommendations on return in the activities of the European Border and Coast Guard Agency

States are entitled to return individuals who have no right to stay in their territory, provided they do so with full respect for fundamental rights and treat them with dignity. Returns may, however, interfere with fundamental rights enshrined in the EU Charter of Fundamental Rights ('the Charter'), such as the principle of *non-refoulement* (Articles 18 and 19 of the Charter), the prohibition of torture, inhuman or degrading treatment or punishment (Article 4 of the Charter), the right to liberty (Article 6 of the Charter) and the right to an effective remedy (Article 47 of the Charter). The Return Directive (2008/115/EC), which sets out common rules for Member States to implement returns, includes safeguards to ensure compliance with fundamental rights. The Return Handbook³² provides guidance on the implementation of the directive including its fundamental rights safeguards.

The European Border and Coast Guard Agency ('the Agency') has been supporting Member States in the field of return since its creation. Over the years, the Agency's activities in the field of return have expanded, leading to the creation of the European Centre for Returns. On 28 June 2018, the European Council highlighted the need to step up effective returns of migrants in an irregular situation calling for a stronger supportive role by the Agency. This will be reflected in the 2019 European Border and Coast Guard Regulation.

Aware of the fundamental rights risks that return operations entail, the Agency's training, guidance and best practices include advice to practitioners on how to deal with various fundamental rights challenges. A revised [Code of Conduct](#) for Return Operations and Return

32 European Commission Return Handbook (2017): https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf.

Interventions coordinated or organised by the Agency published in May 2018 further enhances the Agency's commitment to ensure full respect for fundamental rights in activities related to returns.

The Consultative Forum has been dealing with returns since 2013, when it established a working group on return operations, which continues to exist. Return features in each of the Work Programmes and Annual Reports of the Consultative Forum.³³ Consultative Forum members observed four return operations in 2017 and 2018, and held a focus group meeting to jointly reflect with Agency and Management Board representatives on areas where the protection of fundamental rights could be enhanced.

Building on the extensive work of the Consultative Forum on returns, the following recommendations present, in a consolidated manner, the most important current points in relation to returns, which would require further action by the Agency. The Consultative Forum has formulated these recommendations with the purpose of equipping the Agency to react adequately to Member States' increasing requests for support. These recommendations complement the work that the Consultative Forum committed to do by commenting on the updated guides for return operations and on the guidance for readmissions, which the Agency is developing.

The 2019 European Border and Coast Guard Regulation entails new return-related tasks for the Agency. These concern assisted voluntary returns, technical and operational assistance post-return and the setting up of an integrated return management platform.

³³ See, for example, Consultative Forum work programmes 2018 & 2019: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Consultative_Forum_Program_of_Work_2018.pdf https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_work_programme_2019.pdf and annual reports: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2018.pdf.

The Consultative Forum stands ready to work with Frontex on such new tasks in the future, which all have a fundamental rights dimension to consider.

The following 25 recommendations are grouped into four categories. The first group covers recruitment and training. The second group focuses on the management of returns where the Agency provides support to the Member States. The third group deals with return operations and the fourth concerns the monitoring of forced returns.

Recruitment and training

Having adequate fundamental rights knowledge and targeted skills is a pre-condition for Agency staff, seconded officers and team members to carry out their duties in full compliance with fundamental rights. The Consultative Forum proposes the following three recommendations.

1. As the European Centre for Returns is likely to continue recruiting new staff, the Agency should aim at gender balance and consider intercultural competences as additional assets in future vacancy announcements;
2. The Agency's Human Resources and Security Unit should provide fundamental rights training to newly recruited staff (including Liaison Officers) and seconded officers working for the European Centre for Returns tailored to their responsibilities. The training should be developed with accredited fundamental rights experts covering the concrete challenges emerging in the field of return using methodologies which address knowledge, skills as well as attitudes. Such training could build on the fundamental rights training concept for Agency staff developed in cooperation with FRA in the past and should cover:

- fundamental rights
- *non-refoulement*
- child protection
- identification, specific needs and treatment of stateless persons
- identification, specific needs and treatment of vulnerable persons
- data protection and the right to respect for private and family life
- de-escalation and communication skills (including child-friendly communication skills)
- use of the Frontex complaints mechanisms (including scope, functioning and skills to inform returnees and respond to questions on its use)
- medical and psychosocial matters
- diversity, non-discrimination and cultural sensitivities.

The Agency should ensure that the training content remains relevant for day-to-day work by periodically reviewing and adjusting it, taking into account the recommendations from forced return monitors.

3. The Agency's Training Unit should ensure adequate training for all members of the pool of forced return escorts, for the cultural mediators and for all other participants in return operations, such as medical staff and interpreters as well as third country officials. Such training should cover the content listed in recommendation two.

Management of returns

Under Regulation (EU) No. 2016/1624 and also pursuant to the 2019 European Border and Coast Guard Regulation, the Agency may

provide technical and operational assistance to support Member States' return systems. This may also include support on consular cooperation for the identification of third country nationals and the acquisition of travel documents. The Agency will also operate an integrated return management platform, which is linked to and communicates with the national return management systems. In light of the duty for EU bodies to promote and respect fundamental rights, as set out in Article 51(1) of the Charter, the support activities related to return should only include actions at national level which are compatible with fundamental rights and international protection obligations. This is particularly important when establishing and operating an information exchange system for return management, which communicates with similar systems at the national level and processes personal data. To support this, the Consultative Forum presents the following four recommendations:

4. Efforts to increase synergies between the asylum and the return procedures should not undermine the confidentiality of asylum information as stipulated in Articles 15, 30 and 48 of the recast Asylum Procedures Directive (2013/32/EU). When supporting the exchange of return-related information by Member States, the Agency should ensure that neither the fact that a person has sought international protection nor information from the asylum file and the state of the asylum procedure is used in the context of returns. Measures should also be put in place to ensure that the returnee's biographical data (e.g. name, nationality and date of birth) is only made available to third countries upon confirmation on the existence of an enforceable return decision following a fair procedure in which the asylum claim was assessed in a complete and exhaustive manner.
5. Operational support to facilitate identification and documentation of third country nationals, which involves direct contact

of third country officials with returnees or persons subject to readmissions, should be governed by strict safeguards. These should prevent consular or similar staff – when they visit holding facilities hosting asylum applicants as well as persons in return procedures – from meeting individuals whose asylum application is still pending or who have not yet had an effective opportunity to submit an asylum application. Third country nationals must be adequately informed in advance before they meet representatives of their (presumed) country of origin, taking into account the requirements flowing from Article 36 (1) b)-c) of the 1963 Vienna Convention on Consular Relations.

6. Given the particular fundamental rights challenges for stateless persons in return procedures (notably the fact that late identification and practical obstacles to return them often result in their prolonged detention), the Agency should ensure early identification, referral and documentation of stateless persons to facilitate fundamental rights compliant return interventions. Such interventions should be planned and implemented with the involvement of statelessness expertise, which the Consultative Forum can provide or facilitate.³⁴ Practical obstacles in the return procedure, including long statelessness determination procedures, should not result in prolonged detention. Alternatives should be in place to avoid long-term detention of stateless persons.
7. The processing of personal data through the integrated return management platform to be set up and operated by the Agency when communicating with Member States' return management systems needs to adhere to strict data protection safeguards

³⁴ As an example, UNHCR's Stateless Persons in Detention: A tool for their identification and enhanced protection, June 2017, available at: <https://www.refworld.org/docid/598adacd4.html>.

at all times, including data minimisation and purpose limitation, in line with Regulation (EU) 2018/1725 and Article 8(2) of the Charter. Personal data processed via this system must never include information from the asylum file. The non-binding reference model for national return management IT systems, to be developed by the Agency in consultation with the Fundamental Rights Officer (FRO), could devote a specific section to the key fundamental rights implications, to promote a fully fundamental rights-compliant framing of such national systems. The European Data Protection Supervisor should also be consulted in the process of setting up this new information exchange mechanism for return management. Sensitive data, including information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, data concerning health or data concerning a person's sex life or sexual orientation should be protected at all time.

Return operations

The Agency has already developed important guidance for the implementation of return operations, which include joint return operations, collecting return operations and national operations funded by the Agency. The Consultative Forum welcomes the Agency's plan to update the guidance on return operations and to develop specific guidance for readmissions, and has committed to share its fundamental rights expertise when finalising these. The new guidance to be developed also constitutes an opportunity to address some of the recurrent fundamental rights challenges which were identified through forced return monitoring and which are subject to these recommendations. To support fundamental rights compliance during return operations, the Consultative Forum presents the following 14 recommendations:

8. The Agency should continue its policy of not including unaccompanied children in its forced return operations, as such operations are not suitable for this category of vulnerable persons. Returns of children should be carried out only when it is in their best interests and should not involve any use of force. Children should not witness any use of force.
9. Standards developed by the Agency for joint and collecting return operations should also apply, as relevant, to national operations the Agency is financing.
10. Readmissions, such as those implemented from Greece to Turkey, should be regulated by the same standards as return operations.
11. The Agency should inform every returnee, escort, monitor, medical staff, observer, interpreter and other staff involved in return operations of the Agency's complaints mechanism. For this, the Agency should use tailored information developed by the FRO which is easy to understand, clearly describes the scope of the mechanism to avoid raising false expectations (perhaps providing concrete examples of types of complaints) and is translated into the languages used in return operations. The Agency should equip the FRO with the necessary staff and resources to follow up on complaints.
12. The Agency should ensure that the system which was put in place (ticking a box in Frontex Application for Return – FAR) to request confirmation from the Member State concerned that all returnees covered by a return operation organised or coordinated by the Agency have received a return decision which is enforceable, is systematically used and its functioning

is regularly monitored. The Agency should apply this system also for readmissions.

13. The Agency has an obligation to ensure respect for the principle of *non-refoulement*. In the event of violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist, the Agency must suspend or terminate its activities. This also applies to return operations. The Agency should adopt clear rules and a procedure for the suspension of operations under Article 25 of the Regulation (EU) No. 2016/1624. The 2019 European Border and Coast Guard Regulation will also include a provision not to launch any activity if there are risks of fundamental rights violations or international protection obligations that are of a serious nature. In this context, the Agency should seek the views of the FRO as to whether planned activities may entail a risk of serious violations of fundamental rights. The FRO should be consulted on a regular basis. The FRO should regularly assess the situation in Member States and in third countries, taking into account a variety of sources, including information from EU bodies as well as non-governmental organisations and international organisations. In case of new developments which may give rise to a serious risk of fundamental rights violations, the FRO should inform the Executive Director.
14. The Agency should not plan any return operation from Member States with serious deficiencies in their national asylum and return system (including where asylum applications are not duly assessed or effective remedies are absent) which give rise to substantial grounds for believing that returnees would face a real risk of treatment in violation of Articles 4, 18 or 19 of the Charter.

15. The guidance for return and readmission operations the Agency is preparing should underline that returnees and those readmitted are allowed within the framework of the Asylum Procedure Directive to submit a request for international protection at any moment in the return process until the point where the persons are handed over to the authorities of the receiving country.
16. The Agency's updated guidance for return and readmission operations (updated guidance) should encourage Member States who participate in joint or collecting return operations to share basic information on the profile of returnees with the organising Member State. For this, they could use a standard checklist, which the Consultative Forum can help develop. Such sharing of information will help ensure dignified treatment of all persons, including those with potential vulnerabilities, such as children or pregnant women who may require specific care and or other arrangements during the flight. Families should not be separated during the return and should be hosted in dedicated waiting areas.
17. The Agency's updated guidance should underline that returnees, particularly families, should be provided sufficient time to prepare for the return to allow them to collect their belongings and contact family members. Such time is particularly important to ensure the welfare and safeguarding of children during return. It will also facilitate a smoother removal, as returnees will have resolved their personal issues before leaving.
18. The Agency's updated guidance should stress that the procedure to inspect luggage, to collect and to return belongings to the returnees should be carried out in a setting respectful of the returnee's privacy, giving concrete advice on how this could be

achieved, taking into account the setting in which these activities take place.

19. Whilst respecting confidentiality of medical information, the Agency should require in its updated guidance for return operations that Member States systematically provide the medical staff necessary to ensure a dignified treatment of returnees with medical issues. The organising Member State must know in advance of returnees who will require medical support during transit or the flight. The completion of a fit-to-fly form for each individual returnee shortly before removal should be enforced, as it enables identification of all cases with medical conditions. Inclusion of other specialists as needed, such as social workers and psychologists to accompany children, should be considered.
20. The Agency should ensure that well trained interpreters and/or cultural mediators are available during removal operations, to facilitate communication with escorts, medical staff and monitors. As a good practice, the Agency should promote the presence of cultural mediators in waiting areas at airports, which are used by returnees immediately before the removal. Child protection focal points should be available in case of return of children.
21. In all return operations supported by the Agency, returnees should be provided with the possibility to call their family members or lawyers, without having to rely on the good will of escorts or return monitors.

Monitoring forced return operations

The most recent FRO report sheds light on discrepancies emerging between well-developed tools (such as the code of conduct and guidelines) and their implementation during operations. As the

Agency steps up its return activities significantly, the following four recommendations seek to assist the Agency to better operationalise the fundamental rights safeguards anchored in its Founding Regulation, in particular the monitoring of forced returns.

22. The Agency should assess, in consultation with the FRO and the Consultative Forum, how to strengthen the effectiveness and independence of the pool of forced return monitors. In this regard, the Agency should consider increasing the monitoring of national return operations and more consistently using the members of the pool of forced return monitors. To enhance effectiveness of the monitors' recommendations, the Executive Director should regularly report to the pool, the FRO and the Consultative Forum on any follow up measures taken. The Agency's annual activity report should contain a section on return monitoring findings to ensure transparency.
23. The Agency should ensure cooperation with the Committee for the Prevention of Torture to monitor return operations in line with the 2019 European Border and Coast Guard Regulation as well as with the Nafplion group of National Preventive Mechanisms (NPMs).
24. The FRO should increase its own monitoring of return operations and should report to the Management Board, the Executive Director and the Consultative Forum concerning the treatment of vulnerable persons, including children in return operations, as a standing item.
25. The Agency should create incentives for Member States that do not have an effective monitoring mechanism in place to establish one. The Agency should not facilitate or finance return operations from a Member State that does not have a functioning monitoring mechanism in place.

**6.6 ANNEX VI: External Evaluation on the work of the
Consultative Forum**



External Evaluation of the effectiveness and impact of Frontex Consultative Forum on Fundamental Rights

Final Report

3rd July 2019

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LIST OF ABBREVIATIONS

Abbreviation	Definition
AI EIO	Amnesty International European Institutions Office
AWP	Annual Work Programme
CCME	Churches' Commission for Migrants in Europe
The Forum	Consultative Forum
CCC	Common Core Curriculum
CoC	Code of Conduct
CoE	Council of Europe
DFR	Draft Final Report
EASO	European Asylum Support Office
EBCG Regulation	Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard
EBCGT	European Border and Coast Guard Teams
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
FR	Fundamental Rights
FRA	European Union Agency for Fundamental Rights
FRO	Fundamental Rights Officer
Frontex	European Border and Coast Agency
ICJ	International Commission of Jurists
IOM	International Organization for Migration
JO	Joint Operation
JRS	Jesuit Refugee Service Europe
MB	Management Board
MS	Member State
OSCE	Organisation for Security and Co-operation in Europe
PAD	Public Access to Documents
PICUM	Platform for International Cooperation on Undocumented Migrants
ToR	Terms of Reference
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. BACKGROUND

1.1. Introduction

1.1.1. Objectives and scope of the evaluation

The objective of the study is to carry out an external evaluation of the Frontex Consultative Forum on Fundamental Rights (thereafter referred to as “the Forum”) since its establishment in 2012. More specifically, this evaluation assesses the relevance, impact and effectiveness, efficiency and internal coherence of the Forum, to obtain an understanding of the obstacles and challenges encountered to achieve results as well as to identify possibilities for improvements.

The evaluation covers the period from October 2012 to December 2018 and consists of an analysis based on desk research as well as stakeholder views collected through interviews and one online survey. Moreover, to validate the preliminary findings of the evaluation, the evaluation team organised a workshop on the 17th May 2019, which was attended by the Forum and representatives of the Management Board and the Frontex Senior Management.

Therefore, the evaluation draws on evidence stemming from both the Forum’s Work Programmes and Annual Reports and other relevant documents for the 2012-2018 period³⁵ as well as the feedback from stakeholders’ interviews, the online survey and the outcomes of the workshop.

35 See Annex 1.

1.1.2. Outcomes

The outcomes of the evaluation are presented in this Final Report which aims at:

- ♦ providing the Forum, Frontex Executive Director and the Management Board with an in-depth analysis on the performance and achievements of the Forum;
- ♦ setting out clear and evidence-based findings as well as informed recommendations for further improvements, considering the ongoing evolution of the Agency and its mandate;
- ♦ informing the establishment of the new Consultative Forum in 2019.

1.2. Rationale and objectives of the Forum

The Forum **was officially established by the Frontex Management Board in 2012** and became operational in January 2013. The Forum is an **independent body** established to assist the Agency's Executive Director and Management Board with advice on fundamental rights matters. The mandate, composition and functioning of the Forum are regulated in Article 70 of the EBCG Regulation.³⁶

1.2.1. Rationale and objectives of the Forum

Article 26(a) of the Frontex Regulation (EU) 1168/2011 first introduced the requirement for Frontex to *“put in place an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency”* consisting of different components, including **the establishment of the Forum** with the aim *“to assist the Executive Director and the Management Board in fundamental rights matters”*.³⁷

³⁶ Regulation (EU) 2016/1624.

³⁷ Frontex Regulation (EU) 1168/2011, Article 26(a).

The European Border and Coast Guard (EBCG) **Regulation (EU) 2016/1624** further defined the responsibilities and activities of the Forum. **Article 70** of the Regulation (EU) 2016/1624 regulates the mandate, composition and functioning of the Forum. It states that *“the Consultative Forum shall have effective **access to all information concerning respect for fundamental rights**, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas, return operations and return interventions.”* Thereby, the Forum is entitled to request and obtain any information from Frontex that the Forum considers of relevance to fundamental rights. During the visits to joint-operations and others, the role of the Forum is not to monitor compliance with fundamental rights but rather to better understand the work of the Agency so that it can provide practicable and relevant advice on fundamental rights matters.

Article 70(3) of the EBCG Regulation provides a non-exhaustive list of areas where the Frontex shall be consulted including the further development and implementation of the **Fundamental Rights Strategy**, the establishment of the **Complaints Mechanism**, **Codes of Conduct (CoCs)** and **Common Core Curricula (CCC)**.

1.2.1.1. The Fundamental Rights Strategy

The Frontex **Fundamental Rights Strategy** was approved in March 2011. It constitutes the main document specifically addressing fundamental rights in Frontex activities and setting out how to effectively ensure their promotion, respect, and protection. Thus, the Fundamental Rights Strategy primarily aims at³⁸:

³⁸ Frontex Fundamental Rights Strategy. Available at: http://www.statewatch.org/observatories_files/frontex_observatory/2011-03-31-frontex-fundamental-rights-strategy.pdf.

- ♦ Strengthening the commitment of Frontex and the entire EU border-guard community to respect and promote the fundamental rights in their activities;
- ♦ Promoting the role of Frontex as an example of the highest fundamental rights standards in border management and of transparency in border management activities;
- ♦ Contributing to building a fundamental rights culture within Frontex and the EU border-guard community.

A revision process of the Fundamental Rights Strategy and the development of an Action Plan for its implementation started in 2016 and is ongoing despite the CF repeated advice on the relevance of its adoption.

1.2.1.2. The Complaints Mechanism

Since becoming operational in 2013, the Forum advocated for the establishment of an individual **Complaints Mechanism**. In this context, the Forum supported the European Ombudsman's recommendation to set up a mechanism allowing for the reception and follow-up of **individual complaints from persons whose fundamental rights have allegedly been violated** in the context of Frontex-coordinated JOs.³⁹ In 2015, the Forum met with the European Parliament's Civil Liberties (LIBE) and Petitions (PETI) Committees to discuss the issue which led to the adoption of a European Parliament Resolution supporting the establishment of an individual Complaints Mechanism.

³⁹ Consultative Forum on Fundamental Rights First Annual Report. 2013. Available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2013.pdf.

The Complaint Mechanism was established by the EBCG Regulation in 2016. In particular, Article 72 of the Regulation,⁴⁰ provides that **any person believed to be a victim of a fundamental rights violation caused by the actions of any staff member involved in any of the Agency's activities⁴¹ may submit a complaint in writing to the Agency.**⁴² The Fundamental Rights Officer (FRO) oversees the admissibility of the complaint and forwards complaints to the competent authority.⁴³ The Forum provided its advice on the setting up of the complaints mechanism and has **continued to provide recommendations** on its development and implementation.⁴⁴ As described in its annual reports, the views of the Forum were only partially taken into account with concerns remaining on both the accessibility and effectiveness of the complaints mechanism. The Forum continued to advise on the need to amend the existing rules to render the mechanism effective. In response, the Agency agreed to develop guidance on the interpretation of the rules (which may address some of the issues recommended by the Forum) as well as to work on the visibility and accessibility of the mechanism.

1.2.1.3. Serious Incident Reporting Mechanism

The Serious Incident Report Mechanism, is the **Frontex reporting mechanism** obliging staff/deployed officers, among others, **to report** an event or occurrence, natural or caused by human

⁴⁰ Article 72 of the EBCG Regulation.

⁴¹ More specifically, in a joint operation, pilot project, rapid border intervention, management support team deployment, return operation or return intervention.

⁴² Article 72.2. of the EBCG Regulation.

⁴³ Depending on the situation, the competent authority will be the Agency's Executive Director or the competent fundamental rights body in a Member State. See Regulation (EU) 2016/1624, art. 72 (4).

⁴⁴ Frontex. Consultative Forum on Fundamental Rights Forth Annual Report. 2016. Available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2016.pdf.

action, which may affect, or can be relevant to a particular Frontex activity⁴⁵, the safety and security of participants in Frontex activities, the Agency's mission and reputation, or any combination thereof. Serious Incidents can also include alleged fundamental rights violations, violations of the EU law *acquis* or international law (particularly related to international protection obligations) and of the Frontex Code of Conduct for all persons participating in Frontex activities and for Joint Return Operations coordinated by Frontex. All Frontex Operational Plans establish that any officer who has reason to believe that fundamental rights have been violated during any Frontex operations, has the obligation to report this immediately to Frontex by means of such a **Serious Incident Report (SIR)**.⁴⁶ In 2018, the Agency only received 3 serious incident reports for alleged violations of fundamental rights and 10 complaints. The almost negligible number of reports received by the Agency, with an average of 1 500 officers deployed along the EU's external borders, led the Forum to raise concerns about the effectiveness of the SIR. The Forum further encouraged the Agency to revise the SIR mechanism and take additional measures to set up an effective system to monitor respect for fundamental rights in the context of its activities.⁴⁷

1.2.1.4. Codes of Conduct

Frontex approved the general **Frontex CoC** in March 2011 in close cooperation with Member States' authorities, UNHCR and

⁴⁵ Including joint operations, pilot projects and rapid interventions.

⁴⁶ A Serious Incident Report is an alert message that shall be reported immediately in case a relevant incident occurs that needs urgent attention as the incident may affect or be relevant to, the Frontex mission, its obligation, image, the safety and security of participants in activities coordinated or led by Frontex, or any combination thereof, having special regard to any violation of Fundamental Rights.

⁴⁷ Frontex Consultative Forum on Fundamental Rights, Sixth Annual Report, 2018, available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2018.pdf.

the Fundamental Rights Agency (FRA).⁴⁸ A revised version of the CoC, which the Forum contributed to, was approved in April 2017. The CoC **establish procedures** that aim to ensure **the principles of the rule of law and respect for fundamental rights** with a focus on vulnerable persons, including children, unaccompanied minors and other persons in a vulnerable situation as well as on persons seeking international protection which includes the obligation of referral to national authorities competent for receiving asylum requests. The CoC is **applicable to all border control operations coordinated by the Agency** and is binding for all persons participating in Frontex activities. Any suspected violations of the provisions of the Frontex CoC are required to be reported immediately to Frontex.

The **Code of Conduct for return operations** complements the general Code of Conduct for **all persons participating in Frontex return operations**. The Forum provided its views on the revision of the Code of Conduct for return operations and return interventions adopted by the Agency in 2018.⁴⁹

1.2.1.5. Common Core Curricula

Fundamental rights are also an integral part of the **Common Core Curricula (CCC)** for border guards developed by Frontex that **establishes common standards for the training of border guard officers in the EU**. In fact, according to the Frontex Fundamental Rights Strategy, the CCC must contain a chapter on the respect of fundamental rights and international protection obligations as

⁴⁸ Frontex. Code of Conduct. Available at: https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf.

⁴⁹ Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex, available at: https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf

well as practical guidance on its implementation. Moreover, according to Article 36(5) of the EBCG Regulation the CCC should be developed in consultation with the Consultative Forum and the FRO to ensure that fundamental rights are taken into consideration during the drafting process.

On the basis of the CCC, Frontex has developed an **extensive training offer that includes both in-class trainings and on-line courses**. According to Article 36(2) of the EBCG Regulation, Frontex has the obligation to ensure that all Frontex staff, border guards and members of other relevant authorities from Member States that participate in Frontex operations **receive training on fundamental rights, access to international protection, and search and rescue** (when necessary) prior to their participation in operational activities. Since its establishment, the Forum has played a key role in developing and updating the **Common Core Curricula** making sure that fundamental rights references are included across all Frontex training activities.

1.3. Overview of structure, working methods and activities of the Forum

1.3.1. The Forum Governance and Composition

The Forum is **composed of 15 members** that include EU agencies (two members), international organisations (four members) and civil society organisations (nine members) (see Figure 1.1). As these are specifically mentioned in Article 70 of the EBCG Regulation, Frontex invited EASO, FRA and UNHCR to become permanent members of the Forum. Other members are either directly invited by the Management Board (CoE, IOM, OSCE)⁵⁰ or selected on the basis

50 See Management Board Decision No 12/2012 of 23 May 2012.

of a public and open call for expression of interest (the CSOs). The non-permanent members have a three-year mandate that can be renewed upon expiry of the mandate.

Figure 1.1 Composition of the Forum

Members based on Article 70 of EBCG Regulation	Members invited by Frontex Management Board	Members selected on the basis of an Open call for expression of interest
<ul style="list-style-type: none"> • European Asylum Support Office (EASO) • Fundamental Rights Agency (FRA) • United Nations High Commissioner for Refugees (UNHCR) 	<ul style="list-style-type: none"> • Council of Europe (CoE) • International Organization for Migration (IOM) • Organization for Security and Cooperation in Europe - Office for Democratic Institutions and Human Rights (OSCE ODIHR) 	<ul style="list-style-type: none"> • AIRE Centre - Advice on Individual Rights in Europe • Amnesty International European Institutions Office (AI EIO) • Churches' Commission for Migrants in Europe (CCME) • European Council on Refugees and Exiles (ECRE) • International Commission of Jurists (ICJ) • Jesuit Refugee Service Europe (JRS) • Platform for International Cooperation on Undocumented Migrants (PICUM) • Red Cross EU Office • Save the Children

Source: ICF based on desk research.

All Members to the Forum must appoint a representative and an alternate within one month after confirmation of their membership by the Management Board. The term of mandate of the current members of the Forum ends in December 2019.

The Forum has **two Chairs** elected for a period of two years among and by its members following the candidatures proposed by the Forum members. The two-year mandate of the Chairs can

be renewed based on re-election.⁵¹ The current Chairs of the Forum are UNHCR and the Jesuit Refugee Service representatives. The Chairs represent the Forum vis-à-vis Frontex ED and staff, the Management Board, the FRO and external interlocutors and ensure the strategic direction and overall coordination of the Forum's work.⁵²

1.3.2. The Working methods of the Forum

1.3.2.1. General principles

According to the Forum's Working methods, all 15 members contribute to the work of the Forum with their expertise and resources **on a voluntary basis** and in accordance with the **principles of independence, transparency, mutual respect, informed participation and collegiality**. Moreover, the work of the Forum is supported by the Forum Secretariat provided by Frontex. The Secretariat provides both administrative and technical support at the request of the Chairs. Depending on the thematic area, the Forum is represented vis-à-vis Frontex, the FRO and external stakeholders, by the Chairs of the Forum or by the Working Group coordinator/s for the specific area of work.

To enhance the Working methods, an additional **Internal Working Structure** complementary to the Working methods was adopted by the Forum in March 2015. The structure brought more clarity to the role and responsibilities of the Forum Chairs as well as the support provided by the Forum Secretariat. The CF has also adopted ad-hoc procedures to facilitate engagement with Frontex and the Management Board including on the drafting and adoption of its

⁵¹ Working Methods of the Frontex Consultative Forum on fundamental rights, https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_Working_Methods_2017.pdf.

⁵² Ibid.

annual reports and requests for information. It has also adopted and communicated to Frontex its position on requests for access to information from external parties.

1.3.2.2. Meetings

The Forum **meets at least three times a year** and it is headed by the two Chairs. In the formal meetings of the Forum, Frontex should be represented by the Executive Director the Management Board Chair, and the FRO⁵³. In addition to the regular meetings, the Forum organises thematic and working level meetings with Frontex or the Management Board representatives. Meetings with the Secretariat and the FRO are also held regularly.

The Forum's **internal, formal, working level and thematic meetings** can be convened by the Chairs or at the request of the Forum members. Formal, working-level and thematic meetings can also be convened by the Chairs upon recommendation of and in coordination with the Executive Director and/or the Management Board Chair.

1.3.2.3. Working Groups and Thematic rapporteurs

Following its creation, the Forum established **Working Groups** to focus on subjects of relevance (e.g. Working Group on Joint Operations, risk analysis, training etc.) for carrying out its work in line with the respective Annual Work Programmes.⁵⁴ On average, each member of the Forum takes part in two Working Groups. Each Working Group elects their own coordinator/s who represent the Consultative Forum vis-à-vis relevant Frontex staff and contribute

⁵³ Over the last years, the Executive Director has delegated representation at the Forum's meetings to the Deputy Executive Director.

⁵⁴ Working Methods of the Frontex Consultative Forum on fundamental rights, https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_Working_Methods_2017.pdf.

to the drafting of the Forum's substantive Annual Work Programme for the specific area of work.⁵⁵

Additionally, from 2015 onwards, the Forum also appointed **thematic rapporteurs** focussing on different areas of Frontex' work, including:

- ♦ Frontex accountability;
- ♦ Gender;
- ♦ Cooperation with third countries.

1.3.2.4. Cooperation with the Fundamental Rights Officer

The Forum works in **close cooperation with the FRO**, which is crucial for the effectiveness and success of its work because of the complementary nature of their respective roles.⁵⁶ Originally, the Fundamental Rights Officer reported directly to the Management Board as well as to the Forum, however since the approval of the 2016 regulation, the FRO only reports directly to the Management Board.⁵⁷

Areas of cooperation include:

- ♦ Secretariat support: The FRO currently supervises the Forum Secretariat. Given the limited staffing of the FRO, the assistant to the Forum Secretariat has also assisted the FRO in her functions.
- ♦ Joint work: The Forum regularly invites the FRO to join its **visits to Frontex operational areas** and to take part in the **focus group discussions** held to jointly reflect on the observations

⁵⁵ Ibid.

⁵⁶ Frontex. Consultative Forum on Fundamental Rights Second Annual Report 2014. Available at : https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2014.pdf.

⁵⁷ EBCG Regulation (2016/1624), Article 71.

of the Forum with Frontex and Management Board Representatives; and,

- The FRO takes part in the meetings of the Forum and presents **her periodic reports and activities**.⁵⁸
- Regular exchange of information and sharing of expertise relevant for the work of the FRO and the Forum.
- The Forum contributions are followed up and operationalized by. The FRO also seeks the FRO advise of the Forum in her activities (e.g. child recommendations and their integration into the FRS; advice the FRO consulted the Forum on her proposal for the amendment of the complaints mechanism); or the revision of the Fundamental Rights Strategy). Frontex relies on the FRO to ensure follow up on Forum advise and recommendations.

1.3.3. Activities of the Forum

Some of the activities carried out by the Forum include:

- Providing **strategic advice and support** to the Frontex Executive Director and the Frontex Management Board on **fundamental rights related matters**;
- Providing **advice on fundamental rights issues** in the context of Frontex **operational activities** (including on Frontex' cooperation with third countries and return activities);
- On-site **visits to Frontex JOs, Rapid Border Interventions, hotspots, return operations and return interventions** and follow up focus group meetings with Frontex and Management Board representatives;

⁵⁸ Frontex. Consultative Forum on Fundamental Rights Second Annual Report 2015. Available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2015.pdf.

- ♦ **Observation of trainings** and support to the **development of training** and quality tools and activities;
- ♦ **Organisation of studies, workshops and discussions** around key fundamental rights issues.
- ♦ **Participation to the Management Board of the Forum Co-Chairs** twice a year for the presentation of the Forum's work program and the annual report

The Forum publishes an **Annual Report**, which covers the main activities undertaken during the year and includes observations and recommendations made to Frontex and its Management Board. The Forum's **Programme of Work** for the following year is discussed with the Frontex Executive Director and Chair of the Management Board during the last Forum meeting of the year after which it is also published. Other outputs include studies and expertise commissioned by the Forum, the actual recommendations and opinions issued, including in response to consultations by the Agency. With the support of its Secretariat, the Forum records all meetings held with Frontex, the Management Board and other stakeholders during its work as well as the requests for information made to the Agency.

2. METHODOLOGY

2.1. Methodological approach and data collection tools

This section provides an overview of all the data collection exercises carried out so far for the evaluation.

Desk Research

The evaluation team has reviewed publicly available information as well as all relevant documentation provided by Frontex and the Forum. These documents are listed in Annex A1.1.

Interviews

During the inception phase, scoping interviews were organised in Warsaw with two representatives of the Frontex Management and the MB Chair. ICF representatives were also invited to participate as observers to the Forum annual meeting.

The Steering Group in agreement with Frontex provided a list of 24 interviewees across all groups of relevant stakeholders. Email invitations for interviews were circulated from early April onwards. The evaluation team conducted interviews with 18 stakeholders. A small number of stakeholders initially responded to our invitation but failed to confirm their participation or declined. A summary of the number of stakeholders consulted per stakeholder group is presented in Annex A1.2.

Survey

With a view to obtain comparable information from key stakeholders, the evaluation team has prepared one online survey targeting three stakeholder groups, as indicated in Annex A1.2.

The survey was open from the 12th April 2019 to the 3rd May 2019. The link to the survey was sent to 232 contacts provided by Frontex and the Steering Group. The survey received 69 responses which are analysed and incorporated in this Final Report.

Workshop

The workshop took place on the 17th May 2019 in Brussels and focussed on discussing the preliminary results of the evaluation and seeking additional input and validation from Frontex, Forum and MB. The workshop, coupled with the attendance to the Forum annual meeting as well as the extensive stakeholder consultation and desk research, further complemented the overall analysis and contributed to validate the evaluation findings.

Observation of a Forum meeting and work

As part of the research, ICF representatives took part as observers in the annual meeting of the Forum, which was held in Warsaw in March 2019. This was a relevant activity in the context of the evaluation as it allowed the team to observe the dynamics and interactions between the Forum and Frontex and further to understand the activities carried out by the Forum during the evaluation period.

2.2. Methodological challenges and limitations

The following limitations should be noted with respect to the data collection activities undertaken as part of this evaluation:

- **Short duration of the evaluation:** At the outset of the evaluation, the short duration and public holidays were highlighted as a potential risk. However, the evaluation team has successfully carried out the survey and interviews over this period. The limited number of stakeholders consulted through the interviews was compensated with a wider consultation via the survey.
- **Limitations in analysing the impact of the Forum activities:** The documentation received from Frontex for the period after 2015 is overall limited in terms of the follow-up actions taken by the Agency as a response to the recommendations, therefore it is not always possible to establish whether and what actions were taken following the Forum's advice.
- **Limitations in analysing the efficiency of the Forum.** The documentation received from the Agency was not sufficient to carry out an analysis of the cost per output. The budget provided by Frontex provides only very general information and it was not possible to identify the exact number of activities per year for the full evaluation period. There was also a lack of information on the number of people who participated in training, visits, JOs or working meetings.
- **Low response rate on some specific questions:** Some questions that required familiarity with the processes of the Forum were difficult for certain stakeholders to answer. For instance, most of the questions related to cost-effectiveness and efficiency could only be answered by Frontex representatives or other stakeholders. For that reason, there was a lack of, or limitations to, stakeholder views expressed in this area. To mitigate this, the evaluation team relied on information obtained

through Frontex and the Forum to provide answers to the evaluation questions concerned.

- ♦ **Stakeholder bias:** The risk of bias of any group of stakeholders in the evaluation is low because all relevant stakeholder groups were sufficiently covered through different data collection methods. However, there is a slight risk of positive bias as many stakeholders work closely with the Forum.

3. EVALUATION FINDINGS

3.1. Presentation of the evaluation findings

This section presents the findings of the evaluation per evaluation criteria.

3.2. Relevance

The Relevance criterion assesses whether the Forum has been relevant in addressing fundamental rights challenges and needs within Frontex, as well as whether the Forum's structure, composition and working methods are relevant for the its work.

3.2.1. EQ 1 Does the Forum help Frontex to address the key challenges and needs in the field of fundamental rights? How relevant is the Forum in relation to Frontex (i.e. its mission) and the respect of fundamental rights in the current context?

Overall, the Forum has been able to support Frontex to address key challenges and needs in the field of fundamental rights, which arise mainly in the area of operations. The Forum's activities appear to be relevant in the current context and in relation to Frontex mandate. However, several challenges exist in relation to both the Forum and the Agency when exercising their mandates, which in turn might have hampered the full achievement of this objective.

In order to answer this evaluation question, we have analysed evidence of the activities carried out by the Forum in the area of fundamental rights as well as analysed the extent to which the

stakeholders find that the Forum supports Frontex to address the key challenges and needs in this field⁵⁹.

Current key fundamental rights challenges and needs

Frontex' mission is to ensure the well-functioning of the EU's external borders. The Agency considers respect for and the protection of fundamental rights to be an unconditional and essential component of effective integrated border management.⁶⁰

The Frontex Regulation gives strong obligations to the Agency regarding the respect for fundamental rights, as well as tools to terminate the activity in the case of confirmed breach of fundamental rights (during a JO). However, several stakeholders identified a wide range of **fundamental rights challenges that Frontex faces in exercising its mandate**. In particular, key challenges identified include the fundamental rights risks during **Frontex operations**, most notably return operations⁶¹, and cooperation with and activities in third countries.⁶² Other fundamental rights protected by the Charter of Fundamental Rights of the European Union,⁶³ that might be at risk, according to several stakeholders, include human dignity⁶⁴,

⁵⁹ In order to avoid overlaps between the different evaluation questions, we have further developed the analysis of the Forum's activities under the Impact and Effectiveness criteria, while in this section we focused on the stakeholders' perception of the extent to which the Forum supports Frontex in addressing the key challenges and needs in the field.

⁶⁰ <https://frontex.europa.eu/>.

⁶¹ Interviews: 3 Frontex Staff.

⁶² Interviews: 3 Forum Members.

⁶³ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

⁶⁴ Article 1, European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02; Interviews: One Frontex staff, 1 Other, 1 Forum Member.

the right to health⁶⁵ (such as a lack of medical assessment of migrants), family rights, children's rights and procedural rights, foremost in operational activities.⁶⁶

Desk research has shown that, while an external monitoring system exists for return operations, namely the 'forced-return monitors'⁶⁷ (where competent bodies from Member States carry out forced-return monitoring activities), the internal monitoring of Frontex' other activities is limited to the FRO, who is at times unable to monitor all Frontex' activities, foremost due to resource constraints.⁶⁸ There is **no additional external monitoring system** for Frontex' other activities⁶⁹. In this context, a few interviewed stakeholders expressed concerns about a general lack of accountability within the Agency for potential fundamental rights violations.⁷⁰

⁶⁵ Article 35, European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

⁶⁶ Interviews: one other stakeholder, one Forum Member. Several other fundamental rights were also said to be at risk, such as women's rights, physical integrity, and data protection.

⁶⁷ EBCG Regulation 2016/1624, Article 29, Pool of forced-return monitors and Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third country nationals, Article 8, Removal.

⁶⁸ Frontex Consultative Forum, Annual Report 2018, p. 16.

⁶⁹ In this context, one stakeholder has suggested the need for an additional external monitoring body that could look into potential fundamental rights violations in addition to the FRO. The additional staff and the additional powers given to the FRO in appointing fundamental rights monitors as forced return monitors in the upcoming recast of the EBCG Regulation have the potential to remedy this, to some extent. Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/ JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council Articles 1-49, Article 107(2)(b) 'The fundamental rights officer shall be assisted by a deputy fundamental rights officer.'

⁷⁰ Interviews: 2 Forum Members, one Frontex staff.

Addressing the key challenges

Overall, the Forum's activities appear to be **relevant in the current context and in relation to Frontex mandate**, as also underlined by a few Frontex staff representatives who recognised that the **work of the Forum was very relevant to their work** and that it **raised awareness** in their units about fundamental rights.⁷¹ Other Frontex staff also argued that the added value of having the Forum was predominantly the **enhanced credibility that they brought to the work of Frontex**⁷² as well as to influence Frontex' agenda-setting with fundamental right matters.⁷³

A majority of stakeholders⁷⁴ agreed that **the Forum helped Frontex in addressing the main challenges**, although the level of agreement varied between stakeholders, with 83% of the Frontex Management Board respondents, 74% of Frontex staff and 61% of other stakeholders agreeing. Overall, the views on the Forum were positive from all stakeholder groups, and most of them found the Forum to be useful for their work.⁷⁵ Nevertheless, 17% of Frontex Management Board members did not find the Forum's work useful to their work⁷⁶.

Some of the fundamental rights challenges that the Forum helped to address were **those which arise in Frontex JOs, including**

⁷¹ Interviews: 2 Frontex staff, 3 Forum Members.

⁷² Interviews: 1 Frontex staff.

⁷³ Interviews: 2 Frontex Staff. On the other hand, 1 Forum member stated that the structure of Frontex does not allow for the prioritisation of fundamental rights as the promotion and protection of fundamental rights are not the main purpose of the Agency.

⁷⁴ Survey: 83% of the Frontex Management Board respondents, 74% of Frontex staff and 61% of other stakeholders agreed.

⁷⁵ Survey: 75% of Frontex Management Board found the Forum's work useful to their work and 84% of Frontex staff.

⁷⁶ Without specifying the reason.

return operations and in relation to child protection. Furthermore, the Forum contributed to meeting the needs in this field by **including fundamental rights components in training courses**, and more specifically by contributing to **the design and development of several training and courses** for border guards and other staff. In the period under evaluation, members of the Forum were actively involved **in the development of relevant training courses** from the beginning, with a member of the Forum's respective Working Group taking part in the meetings of the Training Unit that worked on the development of the training courses.⁷⁷ This way, the Forum significantly contributed to the development of at least six courses for Frontex, such as the Fundamental Rights Training for Border Guards.⁷⁸

Mandate of the Forum and follow-up to recommendations

As the Forum has solely an **advisory role**, it has only been able to **address to some extent** other more **overarching challenges** (e.g. the lack of an external monitoring mechanism) in the area of fundamental rights. In this context, the Forum commissioned a study titled "*Advice on the Fundamental Rights Accountability of Frontex*",⁷⁹ setting out when responsibility of Frontex or the EU can be triggered by actions or omissions by Frontex under EU and international law.

The **mandate of the Forum** was regarded by some as inadequate to effectively help Frontex address fundamental rights, as it hampered the Forum's role in strengthening fundamental rights

⁷⁷ Interviews: 1 Frontex staff.

⁷⁸ Further details in the Impact section.

⁷⁹ "Advice on the Fundamental Rights Accountability of Frontex", Advice commissioned by the Fundamental Rights Consultative Forum of Frontex Drafted by M. Fink (Mag. Iur.), under supervision and responsibility of Dr. J.J. Rijpma Europa Institute, Leiden Law School.

within Frontex.⁸⁰ Especially given the legislative changes in Frontex' mandate since 2012 and the foreseen revised mandate in the 2018 proposal, opinions were divided on whether the Forum's structure and mandate were still up to date. A majority of Frontex staff⁸¹ and Frontex Management Board members⁸² found that it was still fit for purpose, while a majority of Forum members⁸³ found the opposite.

Moreover, the **advisory nature of the Forum** represents a constraint in the mandate of the Forum also in relation to the lack of implementation of the Forum's work. The Forum's work was described as **relevant and useful** by Frontex staff⁸⁴, but the **Forum's advice was not always acted upon**⁸⁵. While a majority⁸⁶ of respondents to the survey stated that the Forum did play a very important role in upholding fundamental rights within Frontex, a minority of stakeholders believed it only had a limited role⁸⁷ and cited as a reason the lack of practical implementation of the Forum's advice.⁸⁸ The **lack of follow-up from Frontex' side** on some the recommendations meant that these outputs could not always translate into better protection of fundamental rights, as

⁸⁰ Survey: 3 Frontex staff, 1 member of the Forum, 3 members of the Management Board and two other stakeholders found that the limited mandate of the Forum hampered the Forum's role in upholding fundamental rights within Frontex.

⁸¹ Survey: 61% of Frontex staff.

⁸² Survey: 58% of Management Board members.

⁸³ Survey: 67% of Forum members.

⁸⁴ Interviews: 2 Frontex Staff.

⁸⁵ Interviews: Forum staff, Frontex staff.

⁸⁶ Survey: 67% of Forum members, 50% of Frontex Management Board members, 55% of Frontex staff and 48% of other stakeholders said that the Forum plays a very important role in upholding fundamental rights within Frontex.

⁸⁷ Survey: 33% of Forum members, 25% of Frontex Management Board members, 42% of Frontex staff and 26% of other stakeholders found that the Forum only has a limited role in upholding fundamental rights within Frontex.

⁸⁸ Interviews: Three Frontex staff, three other stakeholders and one Forum member.

although recommendations are operational and targeted, they were not always implemented.⁸⁹ One such instance was the recommendation issued by the Forum on Frontex' involvement in operational activities at the Hungarian-Serbian border, which the Forum stated could have fundamental rights implications.⁹⁰ The Executive Director responded to the recommendation by stating that the Frontex involvement in these operations would continue. The new Frontex Regulation that was proposed in September 2018, is set to remedy this issue to some extent, as Frontex will be obliged to inform the Forum on the follow-up on its recommendations.⁹¹ In addition to the mandate of the Forum having been slightly amended,⁹² this new provision will create more transparency about Frontex' follow-up to the Forum's recommendations.

Based on the analysis so far and the stakeholder consultation, it can be concluded that overall the Forum has been able to support Frontex to address key challenges and needs in the field of fundamental rights. The Forum's activities appear to be relevant and adequate in relation to Frontex mandate and overall the Forum has raised awareness on fundamental rights. However, several challenges exist in relation to both the Forum and the Agency when exercising their mandates which have hampered the full achievement of this objective.

⁸⁹ Ibid.

⁹⁰ Recommendation by the Consultative Forum to the Executive Director and Management Board of the European Border and Coast Guard Agency (Frontex), 10 November 2016.

⁹¹ Article 106, new Frontex proposal.

⁹² Under the new EBCG regulation, the Forum will assist Frontex as such and no longer just the Executive Director and the Management Board. Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/ JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council Articles 1-49, Article 107(1).

3.2.2. EQ 2a Is the Forum fit for its purpose (i.e. to what extent are the design, organisational structure and working methods of the Forum relevant and appropriate to achieving its objectives)? Is the current membership (i.e. in terms of number, scope and expertise) appropriate for the Forum to achieve its objectives?

Overall, the Forum's design, organisational structure and working methods are relevant and appropriate to achieve its objectives⁹³, though some factors might have hampered its effective functioning.

Among respondents to the survey, a majority of stakeholders found that the working methods (70%), the type of activities that the Forum does (74%), the organisational support structures such as the Secretariat (63%) and the composition of the Forum (63%) enable the Forum to achieve its purpose.⁹⁴ Only 4%⁹⁵ found that the organisational support structures and the composition of the Forum do not contribute to the Forum achieving its objectives.⁹⁶

The main constraint affecting the well-functioning of the Forum is **the limited availability of Forum members⁹⁷** as the workload is perceived as high and members only work on a **voluntary basis**. Several organisations were seen to be able to commit more time to the Forum, mainly UNHCR and FRA, while other Forum members faced more stringent resource constraints, with the Forum work

⁹³ Interviews: 2 Frontex staff, 4 Forum members.

⁹⁴ Survey: The number of respondents for this question was 46.

⁹⁵ Survey: Two out of 46 respondents.

⁹⁶ Survey: The other stakeholders didn't know.

⁹⁷ Interviews: 2 Frontex Staff, 5 Forum members.

only being one part of their commitments⁹⁸. Therefore, **the Forum was at times overburdened**, especially given the great amount of activities within Frontex, and Forum members found it difficult to keep up with the Agency's developments.⁹⁹ This **advisory nature** of the Forum needs to be borne in mind to ensure its proper functioning and avoid overburdening its members.

The **working methods**¹⁰⁰ were overall viewed positively and respondents stated that the Forum managed to organise regular meetings. Some stakeholders suggested that the allocation of Forum members to work in the different Working Groups and with the Frontex units should be done yearly or biannually. Overall, the communication between Frontex and the Forum did not seem to raise any issues.¹⁰¹

One aspect that prevented the achievement of the Forum's objectives was the provision of information as defined in Article 70 of the EBCG Regulation (EU) 2016/1624¹⁰², as the **requests for information** by the Forum were not always followed up on by Frontex.¹⁰³ Forum members cited **difficulties in obtaining information**, especially confidential information,¹⁰⁴ as well as the problem that they might

⁹⁸ For all Forum members, the participation only represents part of their work, including for UNHCR and FRA.

⁹⁹ Interviews: 1 Forum member.

¹⁰⁰ Interviews: 1 Frontex staff, 3 Forum members and Surveys: 70% of respondents.

¹⁰¹ Interviews: One Forum member found a need for better cooperation and communication between Frontex and the Forum, which could be improved by the establishment of mandatory regular meetings between the Forum, the FRO and different Frontex units.

¹⁰² Article 70(5) "Without prejudice to the tasks of the fundamental rights officer, the consultative forum shall have effective access to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas, return operations and return interventions."

¹⁰³ Interviews: 2 Frontex staff, 4 Forum members.

¹⁰⁴ Forum members are also required to sign a confidentiality agreement.

not always be aware about information that they could request. As a result, the Forum often relied on the FRO for information as their requests for information were not sufficiently followed up on. One system that the Forum was able to use is the 'Frontex One Stop Shop' (FOSS)¹⁰⁵, through which documents could be accessed directly. The FOSS is subject to an upcoming change, which could potentially facilitate improved access to documents by the Forum. Nevertheless, it was also noted that the Forum is not able to use the request for information under the Public Access to Documents, as the Forum forms part of Frontex.¹⁰⁶ In order to better implement its mandate, the Forum's **access to documents which are relevant to its work could be more pro-actively enforced by Frontex** itself, to ensure that the Forum is aware of new developments and receives all the necessary information in a timely manner.

Transparency and publicity of the Forum's work provide for a mixed picture.¹⁰⁷ While overall Forum transparency was perceived positively, opinions were split on whether it is sufficient. While several stakeholders pointed to limitations in transparency as an obstacle¹⁰⁸ and wanted to be able to publish Forum documents other than the Annual Reports, such as the recommendations made to Frontex or the studies commissioned by the Forum, others stated

¹⁰⁵ Frontex One Stop Shop (FOSS), Access online at: <https://foss.frontex.europa.eu/>.

¹⁰⁶ Interviews: One Forum member.

¹⁰⁷ Working Methods of the Frontex Consultative Forum on fundamental rights (2017), "5.2 Transparency: The Annual Report shall be made publicly available on the Frontex website after presentation to the Executive Director and the Management Board during the first quarter of the year. Public access to the opinions and recommendations of the Consultative Forum shall be provided in accordance with the Regulation (EC) No 1049/2001. As a matter of principle, the Consultative Forum has no objection to the public sharing of documentation and information related to its work. Requests for information shall be addressed to Frontex given that decisions on requests under Regulation (EC) No 1049/2001 are the sole competence of the Agency." Available online at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_Working_Methods_2017.pdf.

¹⁰⁸ Interviews: 2 Frontex Staff, 5 Forum members.

that increasing the publicity of the Forum should be treated with caution.¹⁰⁹ The sensitivity of the documents that could be published, some of which are based on information provided by Frontex under CF's confidentiality agreements, was cited as an obstacle.¹¹⁰

On the composition of the Forum, the number of Forum members (15) is considered appropriate, and an increase in the number of its members could make the coordination between members more difficult.¹¹¹ The mix of international and civil society organisations as well as EU agencies was seen as appropriate for the Forum to be able to optimise its relevance because it provides for expertise from different stakeholders and multiple areas and viewpoints.¹¹² The amount of expertise from the members was therefore generally viewed positively and the areas of expertise were seen as relevant to the work of the Forum. Nevertheless, a number of Frontex staff found that the interest groups represented in the Forum were limited and that there is a need for more diverse organisations to be involved.¹¹³ Stakeholders also provided reflections on the strong role of in particular three permanent members of the Forum, which are invited to become members of the Forum in Article 70 of the EBCG Regulation (EU) 2016/1624¹¹⁴, namely the EU agencies FRA and EASO, and the international organisation UNHCR¹¹⁵.

¹⁰⁹ Interviews: 1 Frontex Staff.

¹¹⁰ Interviews: 1 Frontex Staff.

¹¹¹ Interviews: 1 Frontex Staff, 3 Forum members.

¹¹² Interviews: 2 Frontex staff, 4 Forum members.

¹¹³ Survey: Two Frontex staff.

¹¹⁴ EBCG Regulation (EU) 2016/1624, Article 70(2) "The Agency shall invite EASO, the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the consultative forum".

¹¹⁵ The presence of EASO in the Forum was questioned by a Forum member as they are working closely with Frontex on a range of other operations and activities.

3.2.3. EQ 2b Is the Secretariat provided by Frontex relevant and adequate in terms of its composition and activities in order to achieve the Forum's objectives?

The Secretariat is relevant to the Forum's work. Nevertheless, the composition and mandate of the Secretariat is inadequate to fully support the Forum achieve its objectives.

According to interviewees, the work of the Secretariat is useful in several areas, namely in the commissioning of external studies for the Forum¹¹⁶ as well as in identifying information within Frontex that could be relevant to the work of the Forum.¹¹⁷ Although the work of the Secretariat was praised as excellent, all respondents agreed that the **composition of the Secretariat is problematic**, due to the Secretariat being staffed by a single person who is working for the Secretariat of the FRO and the Forum.¹¹⁸ While 61% of Frontex staff argued that the composition and functioning of the Secretariat was fit for its purpose, only a (albeit large) minority of the respondents¹¹⁹ to the survey thought that it is not fit for its purpose. One of the three Forum members replying to the survey did not find the Secretariat fit for purpose as well as 6% of Frontex staff and 4% of other stakeholders who did not find the composition and functioning of the Secretariat fit for its purpose. A majority of Frontex staff and other stakeholders did not know whether it was fit for purpose or not.¹²⁰

¹¹⁶ Interviews: 1 Forum member.

¹¹⁷ Interviews: 1 Forum member.

¹¹⁸ Interviews: 2 Frontex Staff, 4 Forum members.

¹¹⁹ Survey: 39% of other stakeholders, 33% of Frontex Management Board members and 33% of Forum members found the Secretariat fit for its purpose.

¹²⁰ Survey: 57% of other stakeholders and 67% of Frontex Management Board did not know whether the composition and functioning of the Secretariat are fit for its purpose.

The composition of the Secretariat is therefore not viewed as suitable to help the Forum achieve its objectives. Respondents identified the following problems in the composition and responsibilities of the Secretariat:

- The workload is too high for one person in the Secretariat and respondents recommended that the **Secretariat be expanded**¹²¹ to at least two persons and include:
 - More senior staff¹²²
 - **Administrative and technical posts**¹²³ (staff with a legal background and/or knowledge about border management)
- The **lack of independence of the Secretariat** due to it being part of Frontex staff, resulting in a lack of negotiating power vis-à-vis Frontex¹²⁴
- **Limited responsibilities.** Additional responsibilities were pointed out to include screening Frontex documents, facilitating consultations, preparing briefings and drafts as well as compiling input from all members of the Forum and a more effective role regarding the provision of information to the Forum¹²⁵

Nevertheless, the Secretariat is **relevant to the Forum, due to the lack of resources of the Forum members** themselves, who rely on the Secretariat especially for **administrative work**. Therefore, the expansion of the Secretariat is essential to the Forum and its ability to achieve its objectives. Especially in view of the growth in Frontex' financial and human resources the Secretariat is understaffed for the well-functioning of the Forum. Due to the voluntary nature of the Forum and the resulting resource and time constraints

¹²¹ Interviews: 2 Frontex Staff, 4 Forum members.

¹²² Interviews: 1 Forum member, 1 Frontex staff and Surveys: 1 Forum member, 1 Frontex staff.

¹²³ Interviews: 3 Forum members.

¹²⁴ Interviews: 2 Frontex Staff, 3 Forum members and Surveys: 1 Frontex staff.

¹²⁵ Interviews: 4 Forum members.

of its members, strengthening the Secretariat would enhance the Forum's capacities, an option perceived as preferable by stakeholders over adding more members to the Forum.¹²⁶ However, the establishment of an independent Secretariat could be subject to some constraints as it would require changes to be made to both the EU and Frontex staff regulations.¹²⁷ Therefore, the solution for the staffing of the Secretariat needs to take into account possible limitations. In addition, there is a potential risk to the well-functioning of the Forum if the Secretariat is not enhanced.

3.3. Impact

This section reports on the extent to which certain changes in Frontex can reasonably be attributed to the Forum's work. More specifically, this section looks at whether the Forum has contributed to furthering Frontex's compliance with fundamental rights and the promotion of fundamental rights with the Agency as well as at the actions taken by Frontex based on the Forum's advice and any unplanned or unintended results.

3.3.1. EQ 3 To what extent did the Forum contribute to Frontex' compliance with fundamental rights requirements?

Overall, the work of the Forum has had a positive impact on Frontex's compliance with fundamental rights requirements. This was particularly true in the context of Frontex-coordinated JOs and return activities¹²⁸. On the other hand, there is no evidence of the Forum's contribution to better compliance with fundamental rights in Frontex's support to SAR operations,

¹²⁶ Interviews: 2 CF members.

¹²⁷ This statement was made by Frontex staff during the Workshop.

¹²⁸ Primarily Joint Return Operations.

Frontex's cooperation with third countries and on the reinforcement of the FRO's structure and staffing. Additionally, the Forum's contribution to Frontex's compliance with fundamental rights in the framework of the Individual Complaints Mechanism was only limited.

The analysis of the documentation provided by the Steering Group showed that overall, the Forum's activities have enhanced Frontex's compliance with fundamental rights. This was confirmed by the majority of the stakeholders interviewed¹²⁹ and most of the survey respondents (81%) who believed that the Forum has positively impacted Frontex's compliance with fundamental rights requirements.¹³⁰ Only a few survey participants (4%)¹³¹ believed that the Forum did not improve compliance with fundamental rights.

The Forum has played an important role in furthering Frontex compliance with fundamental rights in the context of Frontex-coordinated JOs. The Forum has regularly observed Frontex JOs (i.e. Poseidon, Triton, VEGA children, Focal Points 2016 Land and Flexible Operational Activities on Border Surveillance 2016) and contributed to identifying potential risks of fundamental rights violations and raising awareness of fundamental rights among all participants. Forum recommendations following their observations to JOs have had a positive impact on Frontex compliance with fundamental rights particularly in the **prevention of potential fundamental rights violations** and the promotion of a common

¹²⁹ Four Frontex staff, four Forum members agree that the Forum has had a positive impact on Frontex's compliance with fundamental rights.

¹³⁰ Most other stakeholders (79%), Frontex staff (84%), members of the Management Board (83%) and a majority of members of the Forum (67%) agree or strongly agree that the Forum has positively impacted Frontex's compliance with fundamental rights.

¹³¹ Only a few Frontex staff (3%), members of the Management Board (8%) and other stakeholders (4%) did not believe that the Forum had a positive impact on Frontex's compliance with fundamental rights.

understanding of Frontex challenges in respecting fundamental rights. This was confirmed by several stakeholders¹³² interviewed who highlighted the Forum's contribution to the inclusion of fundamental rights considerations in the operational plans, operational briefings, the Frontex CoC and in the processes for the debriefing and screening of migrants and refugees carried out by Frontex debriefing officers (see also Section 3.3.3)¹³³. Moreover, the analysis of the documentation provided by the Steering Group as well as the answers provided by several stakeholders interviewed¹³⁴ also showed that the work of the Forum has significantly contributed to developing a **child-sensitive approach in Frontex JOs and helped to enhance Frontex's compliance with its obligation to protect children rights**. The Forum's contribution to JOs VEGA Children, the development of the VEGA Children Handbooks and their recommendation on a child protection strategy were identified as some of the best examples of the Forum's impact on better compliance of Frontex with fundamental rights.

Conversely, the impact of the Forum's activities on better compliance with fundamental rights in the context of Frontex's support to **SAR operations could not be confirmed**. It is important to highlight that Frontex has a very limited mandate in this field as the Agency's role in SAR operations consists only on the provision of technical and operational assistance to Member States and non-EU countries¹³⁵. In this area, the Forum has certainly carried out important activities,¹³⁶ thus contributing to raising awareness

¹³² Two Frontex staff and two Forum members interviewed.

¹³³ Analysis of Frontex documentation, one Frontex staff and one Forum member interviewed.

¹³⁴ Analysis of Frontex documentation, Four Frontex staff and one Forum member interviewed.

¹³⁵ See <https://frontex.europa.eu/operations/search-rescue/>.

¹³⁶ Examples include the organisation of discussions around the importance of reinforcing SAR capabilities and on the roles and responsibilities of the different actors involved, views on SAR activities in the

on the issue among key stakeholders (see also 3.3.2.3). However, despite Frontex's commitment to discuss with relevant stakeholders the potential ways to reinforce SAR capabilities and save more lives at sea, neither the analysis of the documentation provided by the Steering Group nor the stakeholder consultation showed that the Forum's activities directly translated into enhanced respect for fundamental rights in this area. In the context of Frontex-coordinated operations, the establishment of an Individual Complaints Mechanism is directly related to the Agency's compliance with fundamental rights as it enables individuals who believe their fundamental rights have been violated to file a complaint. The study findings show that the **Forum has only partially contributed to the establishment and development of the Individual Complaints Mechanism.**¹³⁷

The European Ombudsman was the main promoter of the establishment of the Complaints Mechanism even before the Forum became operational¹³⁸. Nonetheless, since its establishment, the Forum has supported the Ombudsman's recommendations and provided Frontex with advice for the implementation of the Complaints Mechanism. In 2015, the Forum met with the European Parliament Civil Liberties (LIBE) and Petitions (PETI) Committees to discuss the issue that led to the adoption of a European Parliament Resolution supporting the establishment of the Individual Complaints Mechanism. After its establishment following the approval of the EBCG Regulation, the Forum continued providing recommendations on its effective development and implementation (see also 4.3.3). However, the number of complaints received is still very low (10 complaints in 2018) and the main concerns of the Forum on the functioning of the Complaints Mechanism remain (e.g. time

context of JOs Triton and Themis etc.

¹³⁷ The individual complaints mechanism allows individuals who believe their fundamental rights have been violated during a Frontex-coordinated JO to file a complaint.

¹³⁸ European Ombudsman Own-initiative inquiry OI/5/2012/BEH-MHZ. Available at: <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/11316/html.bookmark>

limit for submission of complaints, the provision of information on the Complaints Mechanism, the possibility to submit anonymous complaints, lack of reference to the possibility to appeal, the role of the FRO etc.).

The Forum has significantly contributed to Frontex's compliance with fundamental rights in the context of return activities¹³⁹. Frontex-coordinated return operations have traditionally been considered as the Agency's activity with the highest risks of fundamental rights violations by civil society organisations, international organisations and the European Ombudsman who in 2014 opened an investigation on Frontex' respect for fundamental rights in the context of forced returns.¹⁴⁰

A good example of the Forum's contribution to reinforcing the protection of fundamental rights in the context of return activities was its input to the revision of the CoC for JROs¹⁴¹. Additionally, the Forum has also observed several Frontex return support activities (JROs and collecting return operations) and provided recommendations on how to improve compliance with fundamental rights on issues related to non-refoulement, provision of information, medical attention, data protection etc.

One of the stakeholders interviewed¹⁴² highlighted that, following the recommendations made by the Forum after its visit to Frontex-coordinated return operations, the participants in return activities started to separate families from single men in the shuttle buses

¹³⁹ Analysis of Frontex documentation, two Frontex staff, one Forum member.

¹⁴⁰ <https://www.ombudsman.europa.eu/en/press-release/en/58136>.

¹⁴¹ In 2018, the Forum also provided advice on the revision of the Code of Conduct for return operations and return interventions which replaced the Code of Conduct for Joint Operations.

¹⁴² Interview with a Frontex staff.

used for transportation to the airports in order to avoid potential conflicts and to protect children rights. Another interviewee¹⁴³ mentioned that thanks to the work of the Forum, Frontex developed a tool for Member States to confirm whether a return decision has been issued before an individual is effectively returned. In fact, the Forum contributed to the establishment of the respective procedure for returns so Member States could declare the existence of final return decisions (see also Section 3.3.3).

With the expansion of Frontex returns mandate and the establishment of the pool of forced returns monitors, the importance of the role of the Forum in helping Frontex complying with fundamental rights in return activities became even more tangible. The Forum has been advising in the establishment of the pool of forced return monitors and on the profiles of return experts engaged by the Agency. Additionally, the Forum, cooperates with ICMPD on a project on forced return monitoring, which focuses on guidelines and training for monitors, on strengthening the national return monitoring system and on the establishment and well-functioning of the Frontex governed pool.

The extent of the Forum's contribution to Frontex compliance with fundamental rights in its cooperation with third countries could not be ascertained. Neither the analysis of the documentation provided by the Steering Group nor the survey responses and interviews with key stakeholders provided evidence of the Forum's contribution to better compliance with fundamental rights in this area. Nonetheless, it is important to highlight that the work of the Forum on Frontex's cooperation with third countries has evolved in parallel with the changes in the Agency's mandate and therefore, most of the Forum's activities in this area took place

¹⁴³ Interview with a Frontex staff.

only after 2016 when Frontex's mandate with third countries was considerably expanded.

Within this context, the Forum has carried out some important activities related to Frontex's cooperation with third countries (particularly in the area of risk analysis) including the provision of opinions on the Africa–Frontex Intelligence Community Joint Reports (AFIC), recommendations on Frontex's cooperation with Turkey, Libya and Afghanistan and the commission of a study on the fundamental rights implications of Frontex's cooperation with third countries. In 2018 the Forum undertook several activities that aimed to better understand Frontex's engagement with third countries (i.e. meetings with Frontex Liaison officers to third countries and the commission of a study on the fundamental rights implications of Frontex cooperation with third countries) and to provide recommendations on existing fundamental rights challenges.

Another important element related to Frontex compliance with fundamental rights is the functioning and operability of the **FRO**. The FRO plays a key role in monitoring Frontex compliance with fundamental rights and promoting respect for fundamental rights within the Agency. The Forum has been advocating for more resources for the FRO to ensure that Frontex activities are adequately monitored and in line with fundamental rights obligations. However, despite the Forum's recommendations, **the FRO still lacks human resources** required to adequately fulfil its tasks and to ensure the Agency's ability to comply with its fundamental rights obligations.

3.3.2. EQ 4 To what extent did the Forum contribute to the promotion of fundamental rights in Frontex?

The Forum has played a key role in promoting fundamental rights and disseminating knowledge about fundamental rights both within Frontex and among key stakeholders.

All stakeholders interviewed¹⁴⁴ and a majority of survey respondents (67%), have seen an improvement in the promotion of fundamental rights in Frontex' activities since the establishment of the Forum in 2012¹⁴⁵. With its activities, the Forum has contributed to making Frontex staff and stakeholders more sensitive to fundamental rights issues. Some of the Forum's activities that have had an impact on the promotion of fundamental rights included its contribution to strengthening the **fundamental rights components of Frontex training activities**, the organisation of **studies on specific fundamental rights challenges** and the organisation of and participation in **focus groups, conferences, workshops and discussions** on key fundamental rights issues.

3.3.2.1. The Forum's contribution to Frontex training activities

The Forum's input to Frontex CCC (in particular CCC basic level) and to the development of specific training activities

¹⁴⁴ This was also confirmed by the analysis of the documentation provided by Frontex and the Steering Group. Only one of the stakeholders consulted mention that despite the positive impact of the Forum on the promotion of fundamental rights, more strategic advice on fundamental rights issues is still missing.

¹⁴⁵ All members of the Forum and a majority of other stakeholders (57%), Frontex staff (71%) and members of the management board (67%) agree that the establishment of the Forum has had a positive impact on the promotion of fundamental rights in Frontex's activities. Only a few of the other stakeholders (13% or 3 responses) and Frontex staff (3% or 1 response) were of the opinion that the promotion of fundamental rights within Frontex has not improved with the establishment of the Forum and a minority of other stakeholders (30%), Frontex staff (26%) and members of the Management Board (33%) did not know.

has contributed to raising awareness on fundamental rights among Frontex staff and key Frontex stakeholders¹⁴⁶.

The Forum has contributed to the revision of all the modules of the **CCC basic level** including the module on fundamental rights and supported the preparation of a module on return and readmission. Although to a lesser extent, the Forum has also contributed to the development of the **CCC mid-level**. For the latter, the assistance of the Forum was less needed as Frontex had already incorporated lessons learnt from the CCC basic level into the revision of CCC mid-level¹⁴⁷.

Additionally, the Forum has also contributed with its fundamental rights expertise to the development of several Frontex's training activities including¹⁴⁸:

- Frontex Fundamental Rights Training for Border Guards (2017 and 2018);
- Frontex training for EBCGT (2013);
- The European Joint Master's Programme on Strategic Border Management and made several suggestions on fundamental rights issues (e.g. use the correct terminology, inclusion of references to Dublin II, reception conditions Directive and references to the influence of the Refugee Convention, ECHR and other international law instruments on the CEAS, issues of subsidiary protection and non-refoulment) (2014 and 2015);
- Frontex e-learning course on fundamental rights training for border guards (2016);

¹⁴⁶ Analysis of Frontex documentation, four Frontex staff interviewed and three survey respondents.

¹⁴⁷ Findings from the Workshop organised in the context of this evaluation.

¹⁴⁸ The positive impact of the Forum's contributions to Frontex training activities was highlighted by several survey respondents (four Frontex staff, two members of the Management Board and one Forum member).

- The course manual for Frontex fundamental rights trainers (2018);
- The VEGA Children handbooks (airports, land and sea) that aimed at improving the identification and assistance of children at risk at the EU external borders (2014 and 2017).

The Forum's contribution to the **VEGA children handbooks** was highlighted by several stakeholders¹⁴⁹ as one of the best examples of the Forum's impact on the promotion of fundamental rights. With its work, the Forum contributed to raising awareness on the importance of adopting a child-sensitive approach and to putting the best interest of the child at the heart of Frontex operations. Since 2014, some of the Forum members have also participated as observers in the JOs VEGA Children and assisted Frontex's deployed officers in the application of the 'VEGA Handbook: Children at airports' issuing recommendations on how to improve child protection at airports (see also Section 3.3.1).

In addition to the above, the Forum's nomination (upon Frontex request) of a fundamental rights expert to teach the **fundamental rights module of the Joint Master's Programme** was highlighted by one of the survey respondents as a very good example of the Forum's positive impact on Frontex's training activities¹⁵⁰. Moreover, one of the stakeholders interviewed¹⁵¹ also highlighted the importance of the Forum's advice for developing the **training curriculum for forced-return monitors and escort leaders**. Furthermore, some of the Forum members have also participated as observers in several training courses and made recommendations on how

¹⁴⁹ Two Frontex staff and one Forum member interviewed as well as two Frontex staff who participated in the survey.

¹⁵⁰ One Frontex staff who responded to the survey.

¹⁵¹ One Frontex staff interviewed.

to strengthen the fundamental rights components of the courses. Some examples of the Forum's participation in trainings include:

- ♦ Participation in the pilot EU Mid-Management in Border Guarding course (2015);
- ♦ Participation in the European Joint Master's Programme on Strategic Border Management where they provide a lecture on human trafficking and the right to equality and non-discrimination (2015);
- ♦ Participation in the Regional Profile Training Course for Screening Experts (2016);
- ♦ Participation in the 2016 Frontex Annual Training Conference that focused on fundamental rights training for border guards and coast guards (2016).

3.3.2.2. The organisation of studies on key fundamental rights challenges

The organisation of studies on key fundamental rights challenges has played an important role in the promotion of fundamental rights within Frontex. The study on **Frontex's fundamental rights accountability in multi-actor situations** commissioned by the Forum was key to raise awareness of potential fundamental rights violations and on Frontex liability for fundamental rights breaches¹⁵². One of the main outcomes of this study and the follow-up discussions was the consensus reached on the importance of understanding the attribution of responsibility under EU and international law to the various participants in Frontex operations and a higher awareness of the consequences of potential fundamental rights violations. Moreover, the study also highlighted the need for further research on the **fundamental rights implications of the Agency's enhanced cooperation with third countries** which eventually led to a second study on the issue in 2018.

¹⁵² Analysis of Frontex documentation, three Forum members and one Frontex staff interviewed.

The Forum's Study on Gender Mainstreaming in all Frontex activities also represents one of the best examples of the Forum's impact on the promotion of fundamental rights within Frontex¹⁵³.

In the context of this study the Forum reviewed Frontex documentation (i.e. operational plans, reports, projects guidelines) to identify whether the Agency included gender considerations, using gender-sensitive language, collecting sex-disaggregated data and identifying gender-based needs in its activities. Additionally, the study also looked at the presence of gender stereotypes in Frontex publications and documentation. This study contributed to enhancing gender awareness within Frontex and served as a basis for a set of recommendations that translated into important actions for the improvement of gender mainstreaming in Frontex (see Section 3.3.3 for a more detailed information on the actions taking by Frontex following the Forum's recommendations).

3.3.2.3. The organisation of focus groups, thematic meetings, conferences, workshops and discussions on fundamental rights

The organisation of focus groups, tactical meetings, conferences, workshops and discussions on fundamental rights also helped Frontex identify fundamental rights challenges.

Apart from the Forum's official meetings (organised three times a year) where key fundamental rights issues are discussed, the Forum has also organised multiple **Focus groups** that brought together Frontex representatives and key stakeholders to discuss specific fundamental rights concerns. For example, in 2018, the Forum organised a Focus Group on **return support activities** with Frontex representatives, the Management Board and the European

¹⁵³ Analysis of Frontex documentation, three Frontex staff and two Forum members interviewed and one Frontex staff who participated in the survey.

Commission. During the focus group the participants involved had the chance to exchange views on issues related to due diligence, non-refoulement, data protection, access to the Complaints Mechanism, health issues and vulnerable people. The Forum has also organised several focus groups to discuss their observations following their visits to **Frontex JOs** as well as a focus group on Frontex **fundamental rights accountability**. The Focus Groups discussions organised as a follow up to the Forum's visits were regarded as very positive by the Forum members, Frontex and the members of the Management Board. In fact, the participants in the focus groups found the format of the discussions very helpful to clarify potential misunderstandings and to jointly identify initiatives that Frontex or the Management Board could implement to enhance fundamental rights in the Agency's operational activities¹⁵⁴.

In addition to the focus groups, the Forum has also **promoted dialogue and discussions** around key fundamental rights challenges. For instance, the Forum organised a discussion on the impact of Frontex's activities on **stateless people** and submitted a recommendation on the issue to the Frontex Executive Director and the Management Board (including a recommendation to update the debriefing guidelines to include considerations on statelessness) which contributed to raising awareness on the topic¹⁵⁵. Moreover, the Forum has also organised several discussions on **child protection and children rights** based on which Frontex adopted several important measures to enhance the protection of children in all Frontex activities (see Section 3.3.3). Likewise, the Forum has also promoted discussions and issued recommendations around Frontex's **pre-identification and screening activities**, as well as

¹⁵⁴ Analysis of the minutes of the Focus Groups meetings.

¹⁵⁵ Analysis of Frontex documentation, one Frontex staff interviewed and one member of the Management Board who participated in the survey.

on how to improve procedural safeguards, reinforce fundamental rights compliance and better identify vulnerable cases and ensure referral during the screening process. A meeting to discuss existing fundamental rights challenges and the role of Frontex and NGOs in the context of **SAR** was also organised by the Forum and counted with the participation of Médecins sans Frontières, the International Maritime Rescue Federation, Frontex and the Management Board.

The Forum's **organisation of and participation in conferences and workshops** also contributed to raising awareness and promoting fundamental rights. For example, thanks to the Forum's participation in a workshop on risk profiles in **trafficking in human beings**, they had the opportunity to contribute to raising awareness and to provide advice on ways to eliminate the risk of discriminatory profiling¹⁵⁶. The discussions held during the workshop also fed into the 2015 Frontex Handbook on Risk Profiles on Trafficking in Human Beings. The joint capacity building workshop organised by the Forum and the FRA on **forced-return monitors** is also a good example of the Forum's contribution to the promotion of fundamental rights in the field of returns.

3.3.3. EQ 5 Which concrete actions were taken by Frontex as a result of the advice of the Forum?

While there are numerous examples of measures taken by Frontex as a result of the advice of the Forum, an important number of the Forum's recommendations and opinions did not translate into concrete actions or were only partially incorporated by the Agency. The analysis of the documentation provided by the Steering Committee as well as the interviews carried out with key stakeholders and the survey results show

¹⁵⁶ Analysis of Frontex documentation and one survey respondent.

that the fields where Frontex more often took action following the Forum's recommendations are the return¹⁵⁷, children rights¹⁵⁸, gender¹⁵⁹, training¹⁶⁰ and also in the context of JOs¹⁶¹. Before proceeding with the analysis, it is important to highlight that the Forum's recommendations and opinions are not binding and merely advisory, and that Frontex has discretionary competence to decide whether (and how) to follow the Forum's advice on a specific issue. Moreover, Frontex has currently no obligation to reply the Forum's recommendations/opinions or to inform the Forum on any actions taken on the basis of their advice. This aspect will however change with the approval of the new EBCG Regulation that foresees an obligation for Frontex to inform the Forum on the follow-up of its recommendations¹⁶².

3.3.3.1. Follow-up to the Forum's recommendations on Frontex-coordinated operations and return activities

In the context of Frontex return activities, many of the Forum's recommendations on the development of the **CoC for JROs** were taken on board by Frontex and incorporated in the final version

¹⁵⁷ Analysis of Frontex documentation, two Forum members and two Frontex staff interviewed and one Frontex staff, one Forum member and one member of the Management board who participated in the survey.

¹⁵⁸ Analysis of Frontex documentation, five Frontex staff interviewed and three Forum members interviewed and Three Frontex staff, one member of the Management Board who participated in the survey,

¹⁵⁹ Analysis of Frontex documentation, three Frontex staff interviewed and one Forum member interviewed and one Frontex staff who participated in the survey.

¹⁶⁰ Analysis of Frontex documentation, four Frontex staff, two members of the Management Board and one Forum member who participated in the survey.

¹⁶¹ Analysis of Frontex documentation and one Frontex staff who participated in the survey.

¹⁶² See Article 106.3 of the Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council.

of the document that came into force in October 2013. This was highlighted as a good example of actions taken by Frontex upon advice of the Forum by several of the stakeholders consulted¹⁶³. Some of the recommendations incorporated in the CoC included provisions on the use of force and coercive measures, the health assessments, the monitoring of return flights and the mechanism to file complaints by returnees (see also Section 3.3.1). However, some of the recommendations of the Forum such as the need for clear rules for the termination or suspension of JROs and the establishment of a system to follow up on complaints received by forced return monitors were not included in the final version of the CoC. In 2017, the Forum also provided its views on the revision of the CoC for JROs that was renamed as **CoC for Return Operations and Return Interventions**. Some of the fundamental rights aspects highlighted by the Forum in the context of the revision of this CoC included the provision of information to returnees and their access to the complaint mechanism as well as the fundamental rights implications of Frontex increasing engagement with third countries. The new CoC for Return Operations and Return Interventions was approved by the Agency in April 2018.

Another example of actions taken by Frontex in the field of returns was the establishment of a **tick-box sheet for Member States** to indicate whether a final return decision has been issued before any individual is returned (see also Section 3.3.1).

In the context of Frontex-coordinated operations, Frontex has also adopted several actions following the Forum's opinions and recommendations. Some important measures were taken with

¹⁶³ Four Frontex staff, two members of the Management Board and one Forum member interviewed as well as one Frontex staff, one Forum member and one member of the Management board who participated in the survey.

regard to the CoC and the debriefings guidelines that are now part of Frontex operational plans¹⁶⁴.

For the revised **Frontex CoC** and following a recommendation of the Forum, Frontex included a new preamble on 'core values and principles' which expressly highlights the need to respect fundamental rights. Moreover, also in line with the Forum's advice, the CoC contains references to the 'promotion, protection, respect and fulfilment' of fundamental rights throughout the text as well as a new provision on the 'commitment to prevent exploitation and sexual abuse'. However, Frontex did not take on board the Forum's recommendation on the inclusion of specific references to omissions or failures to act or the obligation not to comply with instructions that are not in line with EU or national legislation and the CoC.

Following the Forum's recommendations, Frontex has also taken important actions in the **area of risk analysis**. For instance, the Agency has considerably reinforced the fundamental rights aspects of **the debriefings procedures** by incorporating important fundamental rights safeguards in Frontex debriefing guidelines. Some of the safeguards included were¹⁶⁵:

- The obligation to ensure that all debriefers can identify fundamental rights violations and vulnerable people;
- The provision of information to interviewees in a language they understand on the role of the debriefer, the specific purpose of the debriefings and the possibilities of referral for persons who seek international protection as part of the debriefing process;
- The obligation to ensure that interpreters are clearly instructed to provide neutral, accurate and full interpretation.

¹⁶⁴ Analysis of Frontex documentation, one Frontex staff interviewed, one Forum member interviewed and one Frontex staff who participated in the survey.

¹⁶⁵ Analysis of Frontex documentation and one survey respondent.

One of the stakeholders interviewed mentioned that, following the advice of the Forum, the **mechanism for referral of vulnerable cases** after debriefing has considerably improved¹⁶⁶. However, despite the changes incorporated in the debriefing guidelines, some of the Forum's concerns remain as Frontex did not incorporate in the final document all the Forum's recommendations. Some of the recommendations not taken into consideration by Frontex included the possibility to file a complaint for fundamental rights violations, the establishment of a clear procedure to record the number of referrals and the inclusion of data protection safeguards.

Another specific example of actions taken by Frontex following the Forum's advice on JOs are the measures adopted by the Agency following the **Forum's visit to operation Poseidon**. Some of these measures included:

- Incorporating more fundamental rights issues in pre-deployment briefings;
- Developing a new training on "Fundamental rights and international protection in the EU" in cooperation with EASO;
- Introducing changes in the handbook attached to Frontex operational plans providing better guidance on referral mechanisms;
- Revising the debriefing guidelines (in cooperation with the FRO).

On the other hand, Frontex did not follow the Forum's recommendation to suspend **Frontex operational support at the Hungarian-Serbian Border** despite existing fundamental rights concerns in that area. Several of the stakeholders consulted highlighted this as one of the main examples of a Forum's recommendation that was not followed by the Agency¹⁶⁷. On the contrary, as a response to the situation at the Hungarian-Serbian border, Frontex argued that

¹⁶⁶ One Forum member interviewed.

¹⁶⁷ Two Frontex staff and two Forum members interviewed.

its presence in the area could contribute to minimising the risks of fundamental rights violations and decided to only temporarily reduce the number of deployed officers and assets in Hungary (see also 3.4.1.1).

On the establishment of an **Individual Complaints Mechanism**, the Forum made some recommendations in the context of the European Ombudsman's own inquiry¹⁶⁸, and after the establishment of the Individual Complaints Mechanism, they provided Frontex with recommendations on the internal rules that govern its functioning¹⁶⁹. However, most of the opinions issued by the Forum on this issue were not incorporated by Frontex (see also Section 3.3.1). In 2018, the Forum also provided comments on the draft revised rules on the Complaints Mechanism which has not yet been adopted by the Agency. In this context, and directly linked to the effective functioning of the Complaints Mechanism, the Forum's **recommendations to increase the resources allocated to the FRO** have not yet been taken on board by Frontex.

3.3.3.2. Follow-up to the Forum's recommendation on the protection of specific groups

The work of the Forum has also translated into concrete actions to **enhance the protection of specific groups in Frontex's activities**.

¹⁶⁸ European Ombudsman own-initiative inquiry OI/5/2012/BEH-MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), case opened on 6 March 2012. All related documents available at: <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/11316/html>.

¹⁶⁹ Two Frontex staff and one Member of the management Board who participated in the survey highlighted the actions taken by Frontex in the context of the establishment of the complaints mechanism as a good example of the practical implementation of the Forum's advice.

In particular, the Agency's actions to improve the identification and protection of vulnerable groups including **children** (particularly in the context of VEGA children) and **stateless individuals** (see also under Section 3.3.2) were highlighted by several stakeholders as one of the best examples of Frontex's follow up to the Forum's advice¹⁷⁰. More specifically, as a result of the Forum's recommendations and discussions on how to enhance child protection in Frontex operations, the Agency developed a specific training course on border-related child protection and committed to reinforcing child protection provisions in the revised Fundamental Rights Strategy and to the creation of a child protection video together with the FRA (see also Section 3.3.2).

Based on the Forum's recommendations, Frontex has also taken significant steps in ensuring **gender mainstreaming** within Frontex including in the Agency's communication and recruitment activities. More specifically, following the Forum's study on gender mainstreaming and the follow up discussions on the issue, Frontex agreed to integrate gender considerations in the revised Frontex Fundamental Rights Strategy and Action Plan and to reinforce the Agency's cooperation with the European Institute for Gender Equality. Additionally, in line with the Forum's recommendation, Frontex also started collecting sex and age-disaggregated data, both during joint operations and when receiving data from Member States (see also Section 3.3.2). Frontex also made some efforts to increase the representation of women in several roles and their visibility in Frontex's publications. This was confirmed by several of the stakeholders interviewed who highlighted the measures taken by

¹⁷⁰ One Frontex staff, three members of the management Board and one member of the Forum highlighted Frontex's actions to improve the protection and identification of vulnerable groups.

Frontex with regard to gender issues as one of the best examples of concrete actions that followed the Forum's advice¹⁷¹.

3.3.3.3. Follow-up to other Forum's recommendations

The Forum has also provided recommendations in the context of Frontex's AWP for 2014 and 2015. Most of the Forum's recommendations for Frontex 2014 AWP were incorporated by Frontex in the final version of the document. However, the Forum failed to incorporate fundamental rights as a priority in all activities of the Agency. Similarly, on the implementation of the Eurosur Regulation, Frontex did not take on board the Forum's recommendation to expressly include in the AWP a reference to the Agency's role in coordinating cooperation with Member States to ensure the fulfilment of the Eurosur objective of saving migrants' lives. Similarly, the Forum's opinions on the 2015 AWP were also only partially taken on board by Frontex. Some of the Forum's opinions finally included in the AWP were related to data protection issues and the use of the term irregular migration instead of 'illegal migration' (see below). On the contrary, some other recommendations of the Forum, including on the implementation of the Eurosur regulation or on cooperation with third countries, were either disregarded or incorporated only partially.

A great number of the Forums' recommendations and opinions on **training activities** have translated into concrete Frontex actions¹⁷². For instance, the Forum's advice contributed to the development of a fundamental rights training course for EBCGT members, the incorporation of fundamental rights issues in the Frontex' Joint

¹⁷¹ Analysis of Frontex documentation, three Frontex staff interviewed and one Forum member interviewed.

¹⁷² Analysis of Frontex documentation and 4 Frontex staff, 2 members of the Management Board and 1 Forum member who participated in the survey.

Master's Programme on Strategic Border Management, the development of an e-learning course on fundamental rights training for border guards and a revision of the Frontex Fundamental Rights Training for Border Guards (see also Section 3.3.2). On the other hand, some of the Forum's suggestions on, for example, the need to organise refresher trainings or to reduce the time between training and deployment were not taken on board by Frontex or were still under discussion by the end of the period under evaluation.

The Forum has also emphasised the importance of **using adequate terminology in Frontex's publications, communications and training materials**. In this context, one of the main recommendations of the Forum was to avoid using the term 'illegal migration/illegal migrants'. As a result of the Forum's recommendations, Frontex eventually replaced the term 'illegal migration' by 'irregular migration' in its AWP and in most of the Agency's publications (e.g. Annual Risk Analysis).

EQ 6 Have there been any unintended results?

There have been very few unplanned or unintended results (of a positive or negative nature) deriving from the work of the Forum.

Most of the survey respondents (72%)¹⁷³ did not identify any unintended outcome brought by the work of the Forum and only a few stakeholders believed that the Forum's activities led to some unplanned results (7%). Some examples of unintended results as highlighted by the stakeholders consulted included the **Forum's positive impact on fundamental rights awareness at Member**

¹⁷³ Most of the members of the Management Board (92%) and a majority of Frontex staff (65%) did not identify any unintended/unplanned results brought about by the work of the Forum.

State level, and the **Forum's contribution to the discussions** around the EBCG Regulation back in 2016.

The work of the Forum has had a positive impact on compliance with fundamental rights at national level¹⁷⁴. Even though the Forum does not have a mandate at the level of EU Member States, by observing and providing recommendations in the context of Frontex JOs, the Forum also had an impact on Member States compliance with fundamental rights as national border authorities also participate in JOs. The analysis of the documentation provided by Frontex also showed that, following the Forum's visit to the JO Poseidon, Greek authorities designated a focal point for fundamental rights and a new training on fundamental rights was developed and then replicated at national level in Greece¹⁷⁵. Additionally, one interviewee¹⁷⁶ also highlighted the importance of Frontex setting an example of compliance with fundamental rights for national border authorities carrying out forced returns.

Additionally, the participants in the workshop highlighted as one example of unplanned result the Forum's contributions **to the process of amending the Frontex Regulation in 2016** (Proposal for the establishment of the EBCG). In this context, the Forum shared its views on the amendment of the Regulation with Frontex and the Management Board to assist the Agency in shaping its position during the discussions of the EBCG Regulation. Even though Frontex had limited power to influence the outcome of the discussions deciding on the amendment of its own mandate, the Forum's advice fed into the Agency's contribution to the process. The Forum's recommendations were also **shared with the LIBE**

¹⁷⁴ One Frontex staff interviewed.

¹⁷⁵ Analysis of Frontex documentation and the Forum Annual Reports.

¹⁷⁶ One Forum member interviewed.

Committee of the European Parliament and some of the members of the Forum also published individual opinions on the issue. Nonetheless, most of the Forum's recommendations were eventually not incorporated in the final text of the EBCG Regulation¹⁷⁷.

3.4. Effectiveness

The effectiveness section analyses the extent to which the Forum has achieved its objectives as defined in its mandate as well as the challenges faced in meeting these objectives. The section also focuses on the extent to which the Forum has met the needs and expectations of its key stakeholders.

3.4.1. EQ 7 To what extent has the Forum effectively met its objectives as defined in its mandate (Article 70 Regulation 2016/1624)? Are there any challenges faced by the Forum in meeting its objectives?

The Forum has achieved most of its objectives as laid down in Article 70 of the EBCG Regulation. The Forum has provided independent advice on Fundamental Rights matters to the Executive Director and Management Board, as well as advice on the CoC and the CCC. While the Forum has supported the establishment of the Complaints Mechanism, this remedy is however, not yet effective. The objective of providing advice on the further development and implementation of the Fundamental Rights Strategy could not be fully achieved as the Strategy has not been revised yet. Challenges faced by the Forum in meeting these objectives include obtaining relevant

¹⁷⁷ Findings from the Workshop organised in the context of this evaluation and Consultative Forum Annual report 2016.

information from Frontex and the fact that Frontex does not proactively seek for their advice.

3.4.1.1. Independent advice on fundamental rights matters to the Frontex Executive Director and Management Board

Since its establishment in 2012, the Forum has played a key role in *“assisting the executive director and the management board with independent advice in fundamental rights matters”*¹⁷⁸. The analysis of the documentation as well as the interviews and the survey responses show that the Forum has regularly advised the Executive Director and the Management Board, effectively enhancing fundamental rights protection and voicing potential fundamental rights issues in the context of the Agency’s activities. In particular, the majority of respondents (56%)¹⁷⁹ considered that this objective was achieved to a great extent and a large minority of respondents found that it was achieved to some extent (37%)¹⁸⁰.

During the evaluation period, the Forum has issued **recommendations** to the Management Board and the Executive Director on its own initiative and issued **opinions** at their request.¹⁸¹ The Forum’s advice on fundamental rights matters ranges from recommendations and opinions in the **context of return activities**¹⁸², to others

¹⁷⁸ Art. 70(1) Regulation 2016/ 1624.

¹⁷⁹ 7 other stakeholders, 16 Frontex staff, 6 members of the Management Board, 3 members of the Forum.

¹⁸⁰ 8 other stakeholders, 9 Frontex staff, 4 members of the Management Board.

¹⁸¹ The opinions and recommendations of the Forum were adopted by consensus of its members and whenever consensus was not reached, by simple majority.

¹⁸² The reinforcement of fundamental rights provisions across the EBCG Regulation has led to the inclusion of the possibility to conduct on-spot visits to operational areas and activities. Besides these on-spot visits, and in line with Article 70(5) of the EBCG Regulation, the members of the Forum also carried out on-the-spot visits to Joint Operations and Rapid Border Interventions as well as to hotspots areas, return operations and return interventions. The role of the Forum during these visits is not to monitor compliance with fundamental rights but rather to issue recommendations based on their observations.

in the context of **Frontex coordinated operations**¹⁸³ and **risk analysis**, as well as with regard to **Frontex's Annual Programmes of Work**¹⁸⁴ and **training activities**.

For example, in the context of visits to Frontex Joint Operations¹⁸⁵, the Forum was able to identify existing fundamental rights issues and to share its observations with the Executive Director and the Management board, including practical advice on how to address fundamental rights concerns. In particular, as a result of a visit to the operation "Poseidon", the Forum suggested to improve the training on fundamental rights provided to border guards which eventually led to a review of the debriefing guidelines and the creation of a short video on "*relevant fundamental rights issues from a border guard perspective*". In the context of Frontex operational support at the Hungarian-Serbian Border, and in view of existing fundamental rights concerns, the Forum recommended the suspension of Frontex operational activities in the region. Although Frontex did not follow the recommendation, the number of deployed officers and assets in Hungary was temporarily reduced. Furthermore, following the approval of the EBCG Regulation and the expansion of the Agency's mandate on returns, the Forum observed three return operations and shared its observations and concerns with the Frontex Return Support Unit.

The Forum has also taken part in and/or organised several **focus groups, discussions and meetings** aiming at identifying potential

For example, the recommendations on the Code of Conduct for Joint Return Operations (JROs) were incorporated in the final version of the document.

183 For example, the Forum submitted a recommendation on the issue of stateless people to the Frontex Executive Director and the Management Board.

184 For example, 2014 and 2015 Work Programmes.

185 For example, Poseidon, Triton, Attica, VEGA Children, Focal Points 2016 Land, Flexible Operational Activities on Border Surveillance 2016.

gaps and good practices in some of the Frontex's activities and contributing to the debate on fundamental rights in border management. For example, the Forum has organised several focus groups to discuss their observations following their visits to Frontex Joint Operations as well as a focus group on Frontex fundamental rights accountability and one on return support activities in 2018. The Forum has also organised a meeting in the context of Search and Rescue operations, with the participation of several NGOs, Frontex and the Management Board¹⁸⁶. Moreover, the Forum organised a discussion on the impact of Frontex's activities on stateless people and submitted a recommendation on the issue to the Executive Director and the Management Board as well as a recommendation to update the debriefing guidelines to include considerations on statelessness.

In addition to this, the Forum has also carried out several **studies** to reinforce the protection of fundamental rights of certain groups during Frontex's activities. For instance, in 2015 the Forum launched a study on gender mainstreaming¹⁸⁷ in Frontex activities and in 2016, a study on specific child safeguarding duties and concerns arising through Frontex activities.¹⁸⁸

Although recommendations and opinions are not binding, Frontex has taken several measures as a result of the advice of the Forum, showing that its activities are crucial to pointing out potential fundamental rights challenges and to raising awareness on fundamental rights within the Agency. However, analysis of documentation has shown that there is still a significant number of recommendations

¹⁸⁶ Amongst others, Médecins sans frontières and the International Maritime Rescue Federation.

¹⁸⁷ 2015 Annual Report, available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2015.pdf.

¹⁸⁸ 2016 Annual Report, available at: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Frontex_Consultative_Forum_annual_report_2016.pdf.

which were not taken on board by the Agency, i.e. did not translate into any concrete actions or were partially implemented (see Section 3.2).

3.4.1.2. Advice on the development and implementation of the Fundamental Rights Strategy.

The Frontex Fundamental Rights Strategy was approved by the Management Board in 2011 and is currently being reviewed by the Agency. The revision process and the development of an Action Plan for its implementation started in 2016 and is still ongoing. In this context, the Forum provided its views on the draft revised Strategy to the FRO in 2016 but no further actions have been taken by Frontex since then. As highlighted by all the stakeholders interviewed and confirmed by the survey¹⁸⁹, on the one hand the delays in the process of revision of the Strategy have made it difficult for the Forum to achieve this objective, on the other hand the Forum “is ready to contribute¹⁹⁰”.

3.4.1.3. Advice on the establishment of the Complaints Mechanism.

The Forum has been advocating for the establishment of an individual Complaint Mechanism since 2012. In 2015, the Forum met with the European Parliament Civil Liberties (LIBE) and Petitions Committees (PETI) to discuss the issue which led to the adoption of a European Parliament Resolution supporting the establishment of an **Individual Complaints Mechanism**. Following the

¹⁸⁹ Only a short majority of the survey respondents were of the opinion that the Forum has achieved this objective to a great extent (39%) or to some extent (52%), while a few respondents believed that the Forum has not achieved this objective (2%) or achieved it only to a small extent (7%).

¹⁹⁰ Interview with one Frontex representative.

development of the Complaint Mechanism after the approval of the EBCG Regulation¹⁹¹ in 2016, the Forum has continued providing recommendations on the effective establishment of a Complaint Mechanism that ensures access to an effective remedy and on the internal rules that govern its functioning. In 2018, the Forum provided comments on the draft revised rules on the Complaint Mechanism which have not yet been followed-up by Frontex¹⁹².

During the Workshop organised by ICF, participants highlighted how the Forum's work has been useful and effective in this area since 2012, contributing to raise awareness in this field for especially the Frontex mid-level. It was recognised that although in the last two years the Forum has not done much to contribute to further develop the mechanism, there is great potential for the members to follow-up on the work again. The Forum efforts in this area were also recognised by the majority of the survey respondents, which believed that the Forum has achieved this objective to a great extent (56%)¹⁹³ or to some extent (33%)¹⁹⁴. However, overall this objective has not been fully achieved as the mechanism is still not effective.

In particular, the Complaint Mechanism has neither been fully used, nor does it fulfil all the needs that should be covered by such a mechanism. The number of complaints is still very low, with only 2 complaints received by Frontex in 2016, 15 in 2017 and 10 in 2018. Moreover, the Forum (as well as several NGOs) has stressed that the mechanism should not be a substitute for a proper judicial

¹⁹¹ Article 72 EBCG Regulation.

¹⁹² FRO is currently working on explanatory guidelines for the implementation of the current rules.

¹⁹³ 4 other stakeholders, 17 Frontex staff, 8 members of the Management Board, 2 members of the Forum.

¹⁹⁴ 7 other stakeholders, 7 Frontex staff, 3 members of the Management Board, 1 member of the Forum.

remedy¹⁹⁵. Other shortcomings on the Complaints Mechanism raised by the Forum include:

- the lack of information on the roles of the different actors involved in the procedure;
- the timeframe for the processing of complaints;
- the absence of a possibility for the submission of anonymous complaints; and
- the fact that only individual complaints are accepted, and then only in writing rather than directly when the fundamental right abuse takes place.

The Forum has advised on ways to improve accessibility of the mechanism, and in particular to adopt a dissemination strategy to ensure access to the relevant information by the concerned individuals¹⁹⁶. The Forum has stressed several times how the design of the Complaint Mechanism poses a threat to its effectiveness, but also to the internal procedures of Frontex that handle the complaints.

On the other hand, some stakeholders¹⁹⁷ suggested during the interviews that the Forum has not fully achieved this objective because of the lack of technical expertise of the Forum in this area: although the Forum's efforts are recognised in the establishment of the mechanism, they have not made it effective, and should do more in this area.

¹⁹⁵ Joint briefing on the European Border and Coast Guard Regulation; 2016 Consultative Forum Annual Report.

¹⁹⁶ 2017 Consultative Forum Annual Report.

¹⁹⁷ One Frontex representative and two Forum members.

3.4.1.4. Advice on the development of Frontex Codes of Conduct.

The Forum was successfully consulted in the drafting process of the CoC for JROs that came into force in 2013 and was then replaced in 2018 by the CoC for Return Operations and Return Interventions. On the revision of the CoC for JROs, the Forum highlighted the importance of including provisions related to, among others, the fundamental rights implications of Frontex increasing engagement with third countries and to returnees' access to the Frontex complaint mechanism. Other recommendations incorporated in the CoC for Return Operations and Return Interventions included provisions on health assessment, the use of force and coercive measures and the monitoring of return flights.

The Forum was also consulted on the revision of the Frontex CoC and provided recommendations to Frontex to ensure respect for fundamental rights. Following a recommendation of the Forum, Frontex included a new preamble on "core values and principles" which expressly highlights the need to respect fundamental rights.

The majority of survey respondents believed that the Forum has achieved this objective¹⁹⁸, while several interviewed stakeholders¹⁹⁹ underlined the high level of expertise of the Forum members in this area, some of them flagged the short deadlines the members were given to carry out the consultations. Among the main factors contributing to the Forum's achievements in this area as highlighted by the survey respondents²⁰⁰ are the good cooperation between

198 65% of respondents believed this objective has been reached "to a great extent", while 25% "to some extent".

199 Three Frontex representatives, two members of the Forum.

200 13 respondents.

Frontex and the members of the Forum as well as the constructive approach adopted by both parties.

3.4.1.5. Advice on the development of the Common Core Curricula (CCC).

Both the analysis of the documentation and the stakeholder consultation suggest that since its establishment, the Forum has played a key role in developing and updating the CCC and making sure that fundamental rights are present across all Frontex training activities. Some of the Forum's main contributions to Frontex training activities include:

- Revision of the structure, methodology and content of the training, as well as the trainers' profiles and participants of the European Border Guard Team Induction Training;
- Revision of the Frontex Fundamental Rights Training for Border Guards;
- Recommendations to Frontex on training, some of which were adopted;
- Contribution to the incorporation of fundamental rights issues in the Frontex' joint master's programme on strategic border management;
- Contribution to the development of the e-learning course on fundamental rights training for border guards.

The good cooperation between Frontex and the Forum as well as the commitment and pro-activeness of the members in raising awareness on fundamental rights were highlighted as some of the main factors contributing to the Forum's achievements in this area.²⁰¹

²⁰¹ 13 survey respondents.

3.4.1.6. Challenges faced by the Forum in meeting its objectives

As stated in its Annual Reports and identified by several stakeholders interviewed,²⁰² one of the main challenges faced by the Forum in fulfilling its mandate is related to the need to **access information about the respect for fundamental rights**. Although the Regulation stipulates that *“the consultative forum shall have effective access to all information concerning the respect for fundamental rights”*, the Forum itself has reported some challenges in its ability to access the necessary information for carrying out its mandate in a timely and effective manner. For example, in the context of risk analysis, the accessibility of Frontex’ risk analysis related work posed an obstacle to providing hands-on and tailored recommendations²⁰³.

With the support of the Secretariat, in 2015 the Forum standardised its procedures for requesting information from Frontex on issues relevant to fundamental rights. However, it still takes a long time for Frontex to respond to such requests, and/or the quality of the received information is considered problematic, as the Forum receives a lot of factual information for which they have to carry out a time-consuming screening to be able to identify any fundamental rights issues. For example, in 2017 the Forum requested details of current operational activities of Frontex in Hungary, including reports by the FRO, information on submitted serious incidents reports and individual complaints: the request was granted but the information provided, in particular the operational plans, were incomplete.

Because of the lack of information from Frontex and/or the limitations in the access to the requested information, the Forum is not always aware of potentially problematic issues in the area of fundamental

²⁰² Five interviews with Frontex representatives and Forum members.

²⁰³ 2013 Annual Report, page 32.

rights. At the same time, requesting information from Frontex has almost become an activity of its own, thus very time-consuming.

Several stakeholders²⁰⁴ also pointed out that **Frontex does not always proactively seek the Forum's advice**, but it is rather the Forum, which actively assists the Agency in fundamental rights matters. Informal consultations are also regarded as important, though these are rare.

Other challenges mentioned by several survey respondents²⁰⁵ include that the Forum's advice is non-binding and therefore Frontex does not always follow-up.

3.4.2. EQ 8 Has the Forum met the expectations and needs of the key stakeholders involved?

Overall, the Forum has met the expectations and needs of the key stakeholders involved. The Forum has given advice to the Frontex Management Board and Executive Director as well as to the Frontex staff involved in training, returns and operations. It also met the needs of the FRO by effectively and regularly offering its strategic expertise. The Forum, on the other hand, would have expected Frontex to more proactively seek advice on existing or emerging fundamental rights challenges.

The majority of the survey participants believed that the Forum has met the needs and expectations of their organisation²⁰⁶. The key role of the Forum in providing independent advice to the Frontex

²⁰⁴ Forum representatives, Frontex staff in both interviews and survey.

²⁰⁵ 5 respondents.

²⁰⁶ 61% other stakeholders, 65% of Frontex representatives, 58% of members of the Management Board and 67% of the Forum members.

Management Board and Executive Director was recognised by the stakeholders interviewed²⁰⁷. On the other hand, the Forum would have expected a more proactive dialogue and concrete follow-up actions from the Agency.

Frontex staff representatives interviewed mentioned that the Forum meets its expectations and in particular they appreciate the fact that the Forum's members bring different perspectives and opinions. Examples mentioned by several stakeholders include providing advice on operations and in particular Joint Return Operations; providing advice on the treatment of vulnerable groups; giving awareness sessions to Frontex units; contributing in the context of investigations on the establishment of the complaint mechanism. Many stakeholders underlined the crucial role of the Forum in introducing and/or reinforcing the awareness of fundamental rights within their work, which in turn made their work more effective.

Overall, Frontex considers the cooperation with the Forum as fruitful and constructive, while the Forum's members are seen as generally available and supportive when asked to provide inputs and contribute with their expertise. One of the most effective examples of cooperation seems to be in the context of the VEGA children handbook, where border guards were made more aware of fundamental rights and were instructed on how to conduct interviews with minors. At the same time, cooperation with Frontex is also seen as a mutual learning process where both parties bring a different perspective: for example, Forum members were informed about a few instances where border guards were attacked by migrants, which made them aware of the need to protect the rights of the border guards.

207 According to only one Frontex representative, the Forum should have better matched the main concerns of the Agency.

The Forum has fully met the needs of the FRO by providing more strategic advice on fundamental rights matters.

The Forum supported the work of the European Ombudsman and, in particular, the recommendation on the establishment of the complaint mechanism.

One of the Forum members highlighted that the Forum is mostly seen as a service provider rather than an advisory body, which makes it more difficult to cooperate with certain Frontex units. Another main obstacle to cooperate with Frontex has been the recent rapid growth of the Agency which has increased workload and its inability to keep up with the increasing number of requests for information.

3.5. Efficiency

This section measures the extent to which the costs of the actions undertaken by the Forum are justified compared to the benefits and whether the Forum's interventions make good use of the available resources for realising the desired results.

3.5.1. EQ 9 To what extent is the Forum efficient? How cost-effective were programme activities? How efficient was the implementation modality chosen for the intervention? Could the interventions have been dealt with in a different way?

The budgetary information available did not enable a thorough assessment of the efficiency of the Forum and the cost-effectiveness of its activities. However, the majority of the stakeholders interviewed²⁰⁸, and a short majority of the sur-

²⁰⁸ Four Frontex staff and two Forum members interviewed.

vey respondents (44%)²⁰⁹ believe that the resources available to the Forum have been efficiently used²¹⁰.

The budget allocated to the Forum covers all costs for its activities as well as those for the participation of its members and other participants at the Forum meetings in accordance with the relevant Frontex financial rules. Moreover, it is important to highlight that, in addition to the budget allocated to the Forum by Frontex, and because of the voluntary nature of the members' contribution to the work of the Forum, there is also a significant amount of **in-kind contributions from the members of the Forum** to its activities²¹¹.

For the purpose of this analysis and based on the information provided by Frontex, the budget allocated to the Forum's activities has been divided into five main budget lines:

- The organisation of and participation in the Forum official meetings (two/three times a year);
- The organisation of and participation in the Forum thematic and working level meetings (i.e. Focus groups, participation in Management Board meetings, participation in LIBE committee meetings etc.);
- Participation in training activities;
- Field visits (e.g. observation of JOs);

209 33% of the members of the Management Board and 48% of Frontex staff who participated in the survey.

210 A large minority of survey respondents (49%) did not know whether the Forum made optimal use of its resources and only 7% of the respondents believed that the resources had not been efficiently used (6% of Frontex staff and 8% of the members of the Management Board).

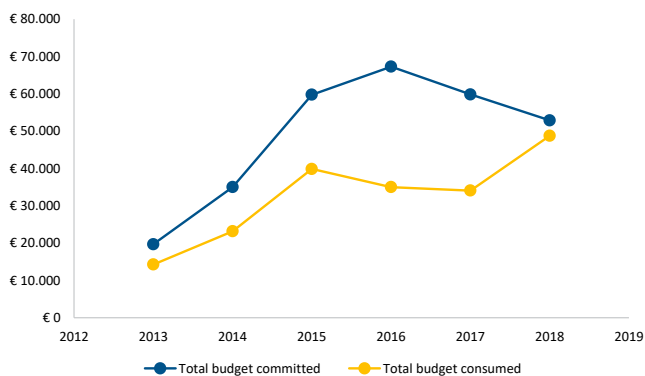
211 The in-kind contributions of the members of the Forum include: the provision of advice to the Executive Management and the Management Board, issuing recommendations and opinions, production of the Forum Annual Reports, cooperation and exchange of information with the FRO, relevant Frontex units, the Executive Management and the Management Board as well as research and analysis of information regarding fundamental rights in the context of Frontex's activities.

- Consultancy services (i.e. study on Frontex' accountability of fundamental rights violations and the study on the fundamental rights implications of Frontex cooperation with third countries).

represents the evolution of the budget allocated to the work of the Forum for the period 2013-2018 as well as a comparison between the budget committed and the budget finally consumed. As shows, the budget committed for the work of the Forum considerably increased between 2013 and 2016 (from €19.7 thousand in 2013 to €67.2 thousand in 2016), followed by a decrease in 2017 and again in 2018 (€59.8 in 2017 and € 52.8 thousand in 2018).

On the other hand, the budget consumed considerably fluctuated over the years with only 52% of the budget committed that was consumed in 2016, as opposed to 92% in 2018.

Figure 3.1 Total budget committed and total budget consumed for the period 2013-2018



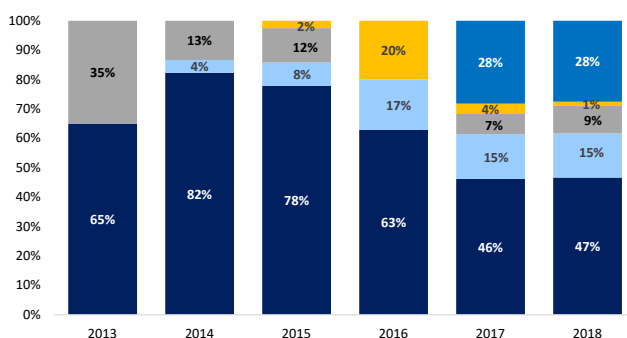
Source: ICF based on the documentation provided by Frontex.

The difference between the budget committed and the budget consumed is mostly because of a **higher forecast for the cost of the Forum's official meetings and working meetings** in almost every year (except for 2018). Additionally, in 2016, a total budget of €6,000 was forecasted for a report on child protection that was not carried out.

The costs associated with the organisation of the Forum's official meetings represent the highest share of the budget consumed in each of the years for the period 2013-2018 (between 82% in 2014 and 46% in 2017) (see). These costs include all the expenses related to the organisation of the meetings (i.e. use of technologies, catering services etc) as well as the reimbursement of travel,

accommodation and subsistence expenses for all the participants of the Forum meetings²¹².

Figure 3.2 Percentage of the total budget consumed for each of the activities for the period 2013-2018



Source: ICF based on the documentation provided by Frontex.

(*) For the year 2016, the cost of training activities and visits to JOs have been proportionally calculated on the basis of the official budget figures provided by Frontex and the additional information provided for each of the activities.

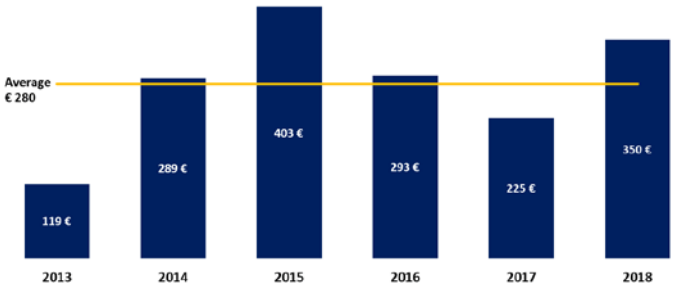
(**) The percentages for some of the figures do not sum 100% because of the use of rounded figures.

The **budget consumed for the organisation and participation in the official meetings fluctuated considerably over the years**, with an average annual cost of €20,000 (a total cost of €119,800 for

²¹² As established by the Management Board Decision 12/2012 of 23 May 2012 on the establishment and composition of the Frontex Consultative Forum.

the period 2013-2018). The Forum held three official meetings a year except for 2013 and 2014 when only two meetings were organised. An average of 72 participants (i.e. Forum members, Frontex staff, members of the Management Board and external participants) took part in the Forum official meetings each year²¹³. The official meetings of the Forum were generally organised in Frontex premises in Warsaw although in last four years they also took place in Brussels once a year. The **annual average cost per participant** in the Forum's official meetings was €280 (see).

Figure 3.3 Annual average cost per participant in the Consultative Forum official meetings



Source: ICF based on the documentation provided by Frontex.

The cost per participant in the Forum's official meetings in 2014, 2016 and especially in 2017 was lower than in other years. On the contrary, in 2015, the cost per participant was considerably above the average. In particular, the catering costs for the official meetings in that year were considerably higher than in other years (even though the catering provider was the same). One of the reasons that could potentially explain this higher cost in catering services could

213 Minutes from the Forum's official meetings.

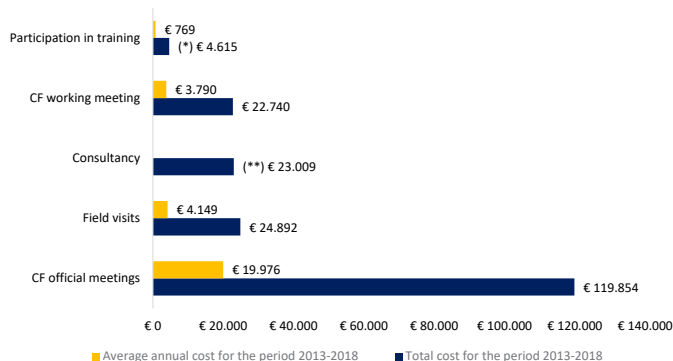
be a greater number of participants that did not attend these meetings, contrary to what was forecasted and planned for.

The budget's second most costly activity for the period 2013-2018 was the organisation of field visits with an annual average cost of €4,100 (€24,800 for the period 2013-2018) followed by **consultancy activities** with a total cost of €23,000²¹⁴ and the **organisation of thematic and working level meetings** with an annual average cost of €3,800 (€22,700 for the period 2013-2018). During the period 2013-2018²¹⁵, only €4,600 were spent on participation in **training activities** (see Figure 3.4).

²¹⁴ The consultancy cost corresponds to two studies commissioned to external consultants in 2017 and 2018.

²¹⁵ One of the Frontex representatives interviewed mentioned that initially, there was some confusion around whether the contribution to training activities should be paid from the budget of the Frontex Training Unit or from the Forum's budget. Whenever the contributions are made by a specific organisation (e.g. UNHCR, Red Cross, ICMC etc.) based on a bilateral agreement, the Training Unit is responsible for the cost, however, if the contribution is made by an organisation in its capacity of member of the Forum, then the contribution should be paid from the Forum's budget. Frontex discussed the issue with the Forum who agreed to specify for each situation in which capacity their members contribute to the training activities.

Figure 3.4 Annual average cost of the different Forum's activities for the period 2013-2018



Source: ICF based on the documentation provided by Frontex.

(*) The total cost for training activities corresponds to the period 2015-2018 as there was no cost for training in 2013 and 2014.

(**) The average annual cost for consultancy was not included in the figure as this activity only took place in 2017 and 2018.

With the budgetary information available it was not possible to conclude whether the Forum's activities were cost-effective. Moreover, neither the interviews carried out with key stakeholder nor the analysis of the survey responses allowed for measuring the cost-effectiveness of the Forum's processes and activities. **The majority of survey respondents did not know whether the Forum's processes and working methods were organised in an efficient way (58%).** Additionally, the individual categories of survey respondents were also divided on whether the Forum's processes and working methods were efficient. While the majority of members of the Forum (67%) and a short majority

of the members of the Management Board (42%) believed that the Forum's processes were efficiently organised, only a minority of Frontex representatives were of the opinion that the current process are efficient (29%).

Despite the above, the **study found no evidence of resource waste for any of the Forum's processes and activities** and only three survey respondents (out of 43)²¹⁶ explicitly pointed out that the Forum's processes were not efficient.

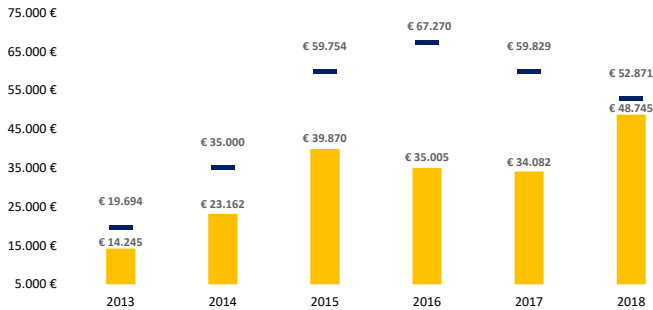
3.5.2. EQ 10 Were adequate resources foreseen for the efficient implementation of the Forum?

While adequate financial resources were foreseen for the implementation of the work of the Forum, the Forum faced a significant lack of human resources.

The fact that the budget consumed in each of the years (for the period 2013-2018) was lower than the budget committed shows that the Forum had enough financial resources to carry out its activities. shows the budget forecast for each of the years for the period 2013-2018 as opposed to the budget finally consumed.

²¹⁶ Three Frontex staff who participated in the survey.

Figure 3.5 Budget consumed and budget committed for the period 2013-2018.



Source: ICF based on the documentation provided by Frontex.

However, even though the Forum disposed of an adequate budget to carry out its activities, **most of the stakeholders interviewed highlighted a significant lack of human resources, in particular the limited time that Forum members have to contribute to the work of the Forum**²¹⁷. In this context, most stakeholders interviewed²¹⁸ agree that the lack of time and human resources to carry out the Forum's activities is also due to the Secretariat not having enough resources to assist the Forum with its substantive work. Thus, **most stakeholders interviewed**²¹⁹ **argued for an independent and permanent Secretariat with sufficient budget and human resources** to effectively assist the Forum not only with the administrative tasks but also with its substantive work.

²¹⁷ Three Forum members and two Frontex staff interviewed.

²¹⁸ Four Forum members and two Frontex staff interviewed.

²¹⁹ Four Forum members and two Frontex staff interviewed.

One of the stakeholders consulted also expressed concerns about some members of the Forum not having the financial and human capacity to devote more time to the Forum's activities. This was particularly the case for some CSOs that faced some difficulties in keeping up with the work of the Forum and at the same time continue with their work in their respective organisations. In this context, it was suggested that providing some sort of financial compensation for the contributions made by members of the Forum. These stakeholders argued that it could help in increasing the time that can set aside for the Forum.

From the perspective of Frontex, all representatives interviewed stated that they generally have enough time to familiarise themselves with the changes made by the Forum that affect their areas of work and they did not consider those changes too burdensome for carrying out their daily tasks.

3.6. Coherence

The Coherence sections focuses on the extent to which the activities of the Forum are coherent with its mandate and the Fundamental Rights strategy and explores the relation with the Fundamental Rights Officer.

3.6.1. EQ 11 To what extent are the Forum activities coherent with the Forum's mandate, the fundamental rights strategy and other components of the Forum such as the Fundamental Rights Officer?

Overall the Forum's activities are coherent with its mandate. However, since the Fundamental Rights Strategy has not been revised after 2011, the activities of the Forum are not fully aligned with the Strategy. The Forum works very closely with

the Fundamental Rights Officer, with which several synergies and complementarities have been identified.

This evaluation examines the overall level of coherence between the activities of the Forum for the period 2012-2018 outlined in the annual work programmes and the objectives set out in its regulatory framework. The **priorities and planned activities set out in the work programmes are coherent with, and can be traced back to, the objectives in the ECBG Regulation**. This is confirmed by the majority of the survey participants (80%) who responded that the Forum's activities are in line with its mandate. In line with these priorities, during the evaluation period, the Forum has issued opinions and recommendations on fundamental rights matters to the Frontex senior management and staff, demonstrating a high level of coherence with the main objective of *"assisting the Executive Director and the Management Board with independent advice on fundamental rights matters"*. The Forum has also successfully co-operated with Frontex units on operations, JOs, returns, on-the-spot visits, risks analysis and training, to provide advice and expertise on fundamental rights issues. Finally, in line with its mandate, the Forum has contributed to the development and revision of the CoC and CCC as well as advised on the establishment of the Complaints Mechanism, as described in Section 3.2.

Most survey respondents believed that the Forum's activities are also in line with the Fundamental Rights Strategy (89%). The Strategy constitutes the main document specifically tackling fundamental rights in Frontex activities and setting out how to effectively ensure their promotion, respect, and protection. However, since the Fundamental Rights Strategy has not been revised since 2011, the activities of the Forum are not fully aligned with the Strategy and

its Action Plan²²⁰. This was also confirmed by a few stakeholders during interviews²²¹. Elements of the Strategy, such as fundamental rights as part of Frontex capacity building activities, Frontex cooperation with third countries are currently outdated, and the Strategy is therefore currently not in line with the activities of the Forum.

The Forum works very closely with the **FRO**. Mapping of activities against the Forum and the FRO objectives highlight the existence of **synergies** and **complementarities** between the two bodies.

The Forum, as opposed to the FRO, does not have a mandate to systematically monitor compliance with fundamental rights. The Forum mostly has an advisory role and works only on selected areas of Frontex activities, always in the context of its annual programmes of work or in response to any ad-hoc request made by the Agency. The FRO has instead the role of monitoring compliance with fundamental rights within the Agency, which covers all Frontex-coordinated Joint Operations and activities and (unlike the Forum) has wider access to documents and officials.

Since their establishment, both the FRO and the Forum have contributed to the implementation and revision of the Frontex Fundamental Rights Strategy and to the establishment of the Individual Complaint Mechanism.

The FRO has also provided input into Frontex operational plans. During the planning of a Joint Operation and the drafting of the operational plan, the FRO often carries out a preliminary fundamental rights assessment and provides suggestions on the proposed Joint

²²⁰ The Fundamental Rights Strategy includes an Action Plan that describes the resources and activities necessary to implement the Fundamental Rights Strategy.

²²¹ 2 Frontex representatives.

Operation identifying potential situations that may have a negative impact on fundamental rights.

Both the Forum and the FRO are entitled to carry out on-the-spot visits to Frontex operations²²² and have also, to the extent of the respective capacities, supported the Agency's training activities in fundamental rights-related issues. Moreover, both bodies have contributed to incorporating fundamental rights in the CcC for border and coast guard training in the EU²²³.

The mandate of the Forum is therefore complementary to the mandate of the FRO. Stakeholders interviewed, as well as 75% of the survey respondents, consider the two bodies to be highly complementary and stressed how their cooperation is crucial for the fulfilment of their respective roles. On the other hand, the two fundamental rights bodies have separate mandates and they rely on each other to meet their objectives²²⁴. However, the survey respondents were divided on whether there is any overlap between the activities of the Forum and those of the FRO. While the majority of the Forum members (67%) believed that there is overlap between the activities of both bodies, most Frontex representatives (75%) did not identify any gaps or overlap²²⁵.

222 In 2013, the visit to Joint Operation Poseidon at the Greek-Turkish sea / land borders and at the Bulgarian-Turkish land border was planned and carried out together with the Fundamental Rights Officer. 2013 Annual report, page 28.

223 In 2013, in close cooperation with FRA and UNHCR, and with the support the Fundamental Rights Officer, Frontex developed the concept of the basic fundamental rights training for Frontex staff.

224 One Forum member highlighted that the downside of this good cooperation is that the FRO is increasingly considered as being not loyal to the Agency and the FRO work is becoming more and more difficult as this body is seen as working "for the Forum".

225 75% of the members of the Management Board.

4. RECOMMENDATIONS

This section presents the recommendations stemming from the conclusions, which are included in the introductory sections (in **bold**) under each evaluation criterion. The recommendations are organised according to the main themes of the evaluation.

4.1. Reinforcing the Forum Secretariat

The Forum Secretariat should be reinforced with more staff. Positions within the Secretariat should be created at a more senior level so that staff of the Secretariat are able to negotiate between Frontex and the Forum and carry out more substantial, rather than merely administrative, tasks. The independence of the Secretariat should be guaranteed. More senior and independent staff could, among other tasks, support in preparing briefings for the Forum, leading consultations, facilitate the drafting of opinions and recommendations with the input of all members and pre-screen Frontex documents to enable a smoother and effective access to documents. The establishment of an independent and permanent Secretariat with adequate human resources to effectively assist the Forum would also increase the cost-effectiveness of its activities.

4.2. Accessing information more effectively and timely

The rules for following up on the requests for information by the Forum need to be redefined, in view of the challenges faced by the Forum in the timely and effective access to the necessary information concerning fundamental rights.

In particular, the Forum should have as a minimum the same right to access information guaranteed to the Secretariat. One option

could be an expanded access to information through the use of an existing tool or server²²⁶ where the Forum could access the working documents. The enhanced role of Secretariat could play a role here in identifying and pre-screening documents. Another option could be to consider including the Forum as recipient of information within Frontex procedures for adopting certain documents (e.g. operational plans, guidance, programmes etc).

4.3. Improving follow-up to Forum official meetings activities and promoting informal consultation

The evaluation findings show that a good part of the budget is spent for the organisation of official meetings. In order to increase the Forum's cost-effectiveness, the Forum should initiate more informal consultations with Frontex, beyond the official meetings, an approach that should be promoted within the Agency to facilitate mutual understanding of the respective roles and remits. The variety of expertise within the Forum would therefore be better exploited by Frontex outside the more official or internal meetings.

4.4. Increase transparency on the Forum opinions and recommendations and Frontex follow up

The Forum should be enabled to publish a) recommendations and opinions on a more regular basis and/or b) Frontex follow-up actions and replies. This could be done for instance in newsletters or similar communication tools. Besides recommendations and opinions, the Annual reports could also include the follow-up replies and/or the description of the actions taken by the Forum, which would help making the Agency more transparent in the actions taken as a result of the advice of the Forum. In order to be able to deal with

²²⁶ This could be the Frontex One Stop Shop (FOSS).

the publication of recommendations, the Forum would need the enhanced capacity from the Secretariat (see the recommendation under Section 4.1).

Finally, to better understand the impact of the work of the Forum on Frontex compliance with fundamental rights, the Annual Report should not only report on the Forum's activities (and to some extent on Frontex's follow up actions) but also look at how fundamental rights in Frontex activities have evolved over time. This enables for a better assessment of existing needs and better define the Forum's priorities for the coming years.

ANNEXES

List of reviewed documents

Type	Received
On the procedures:	<ul style="list-style-type: none"> ■ Working Methods of the Frontex Consultative Forum on fundamental rights 2017 ■ Consultative Forum request for information template ■ MB Decision 3/2017 of 9 February 2017 on the terms of the transmission of information to the Consultative Forum ■ MB Decision 29 / 2015 of 9 September 2015 on the composition of the Frontex Consultative Forum on Fundamental Rights ■ Management Board Decision 12/2012 of 23 May 2012 on the establishment of the Frontex Consultative Forum ■ MB Decision 27_2016 on the vulnerability assessment methodology ■ MB decision 37_2016 ROP in FAR ■ Annex IV Eligibility and selection criteria ■ Consultative Forum's position on Public Access to Documents (PAD) requests (2016 09 26)
On substantive content of the Consultative Forum's work	<ul style="list-style-type: none"> ■ Consultative Forum budget structure and financial documents (Budgets 2013-2017 and Budget overviews 2015-2018) ■ Consultative Forum Programs of Work 2013, 2014, 2015, 2016, 2017, 2018, 2019. ■ Consultative Forum's Annual Reports 2013, 2014, 2015, 2016, 2017. ■ Consultative Forum's recommendations on child protection strategy (2017), on Frontex activities at the Hungarian-Serbian border (2016); on the Consultative Forum visit to JO Poseidon (2013), and other requests as well as Frontex replies. ■ List of information requests since 2015 including some examples of Frontex replies
Other documents	<ul style="list-style-type: none"> ■ Any other relevant document not available online ■ Standard Operating Procedure (SoP) for Consultative Forum Annual Report ■ List and contact details of the organisers of the Consultative Forum as well as participants ■ Several extracts on the fundamental rights provisions from Operational Plans ■ Consultative Forum meetings, agenda and minutes (2012-2018) ■ Examples of Focus group meetings agenda and minutes ■ Fundamental Rights in Frontex Activities 2016 ■ Exchange of letters and correspondence relevant for the evaluation

Stakeholder Consultation

Type of consultation	Stakeholder	Contacted	Responded
Interview	Frontex	8	8
	FRO	1	1
	Secretariat	1	1
	MB	6	2
	Forum	5	5
	Others	3	1
Total		24	18
Survey	Frontex	97	31
	MB	33	12
	CF	28 ¹⁹⁴	3
	Others	74	23
Total		232	69

²²⁷ Including CF alternates.

6.7 ANNEX VII: Consultative Forum Work Programme 2020

The Frontex Consultative Forum on Fundamental Rights brings together key European institutions, international and civil society organisations that are concerned with the fundamental rights of migrants and refugees.

In its current composition, the Consultative Forum is composed of representatives from:²²⁸

- Amnesty International European Institutions Office (AIEIO),
- Churches' Commission for Migrants in Europe (CCME),
- Council of Europe (CoE),
- European Asylum Support Office (EASO),
- European Union Agency for Fundamental Rights (FRA),
- International Commission of Jurists (ICJ),
- International Organization for Migration (IOM),
- Jesuit Refugee Service Europe (JRS Europe),
- Office of the High Commissioner for Human Rights (UN Human Rights - OHCHR),
- Organisation for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ ODIHR),
- Red Cross EU Office,
- Save the Children,
- United Nations High Commissioner for Refugees (UNHCR).

These organisations contribute their work on a voluntary basis in accordance with the principles of independence, transparency, mutual respect, informed participation and collegiality.

²²⁸ Following their selection by the Frontex Management Board, the Agency has also invited the Platform for International Cooperation on Undocumented Migrants (PICUM) to extend their membership in the Consultative Forum.

Given its diverse composition, the strength of the Consultative Forum is its ability to provide holistic analysis on respect for, protection and fulfilment of fundamental rights based on collective knowledge and expertise.

Introduction

In accordance with Article 108 of the Regulation on the establishment of a European Border and Coast Guard²²⁹ (hereinafter referred to as “Regulation 2019/1896”) the role of the Consultative Forum is to assist the Agency “by providing independent advice in fundamental rights matters”. To this effect, the Consultative Forum may be consulted on any matter related to fundamental rights, including “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”.

For the purpose of performing its duties, and in line with the Regulation 2019/1896, “the Consultative Forum shall be provided with effective access in a timely and effective manner to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State or the third country, as applicable, to hotspot areas, and to return operations and return interventions, including in third countries”.

With the adoption of its Programme of Work, the Consultative Forum sets its priorities for 2020. This document also defines specific outputs or results the Consultative Forum aims at achieving.

²²⁹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

The Programme of Work reflects priorities and activities jointly identified with Frontex and its Management Board, and remains flexible for ad-hoc consultation with the Consultative Forum by the Executive Director of Frontex and the Frontex Management Board in line with emerging needs.

The **priorities of the Consultative Forum in 2020** are:

- A. Implementation of EU Regulation 2019/1896 and its fundamental rights implications.
- B. Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents.
- C. Fundamental Rights implications of Frontex operational and return activities.
- D. Fundamental Rights implications of Frontex engagement with third countries.
- E. Child protection and safeguarding in the activities of the Agency.

In the implementation of this program of work, the Consultative Forum will continue working with and supporting the Frontex Fundamental Rights Officer and her team, while ensuring complementarity with her mandate and activities.

All activities and recommendations of the Consultative Forum will fully respect the right to protection of personal data.

Priorities and activities

Priority A: Implementation of EU Regulation 2019/1896 and its fundamental rights implications.

In line with its mandate, the Consultative Forum will make its collective fundamental rights expertise available to the Agency in relation to the implementation of the 2019 European Border and Coast Guard Regulation.

Activity A.1: Rules on the independence of the Frontex Fundamental Rights Office.

Output: Advice on the Agency's proposed rules on the independence of the Frontex Fundamental Rights Office.

Activity A.2: Setting up of a Frontex standing corps.

Output: Advice on fundamental rights aspects in relation to the setting up of a Frontex standing corps, including Frontex rules on the use of force.

Activity A.3: Enhancement of the Frontex Complaints Mechanism

Output: Advice on the enhancement of rules for the individual complaints mechanism as well as on the adoption and implementation of a dissemination plan.

Activity A.4: Frontex monitoring of fundamental rights implications in its activities

Output: Advice on the framework and modalities for the engagement of Fundamental Rights monitors and on the revision of the Frontex Serious Incident Reporting mechanism.

Activity A.5: Strengthening fundamental rights expertise for the development and delivery of Frontex training activities

Output: Advice on the establishment of a Training Quality Assurance System and Fundamental Rights components in the development and delivery of Frontex training activities.

Activity A.6: Modalities for the provision of feedback on the work of the Consultative Forum

Output: Consultations to establish modalities for Frontex to inform the Consultative Forum on the follow-up to its recommendations

Priority B: Revision and further development of the Frontex Fundamental Rights Strategy and its implementing documents.

Output: Advice on the amendment of the 2011 Frontex Fundamental Rights Strategy and its implementing documents.

Priority C: Fundamental Rights implications of Frontex operational and return activities.

Activity C.1: Consultative Forum visit to a Frontex operational activity

Output: Consultative Forum visit to a Frontex operational activity followed by a focus group discussion on findings with Frontex and Management Board Representatives.

Activity C.2: Frontex policy for the engagement of interpreters and cultural mediators in its operations

Output: Advice on the fundamental rights implications of Frontex engagement with cultural mediators and interpreters.

Activity C.3: Fundamental Rights Implications of Frontex return activities

Output: Ongoing advice and organisation of a focus group meeting with the European Centre for Returns to discuss progress on the implementation of the CF recommendation on return.

Priority D: Fundamental Rights implications of Frontex engagement with third countries.

Output: Organisation of a Focus group meeting with Frontex and the Management Board to discuss progress on the implementation of Frontex recommendations on third country engagement as well as observations of the Consultative Forum visits to Serbia and Albania.

Priority E: Child protection and safeguarding in the activities of the Agency.

Output: Organisation of a meeting with Frontex to discuss progress in the implementation of the Consultative Forum recommendation on child protection and safeguarding. Advice on next steps to enhance Frontex policy on child protection and child safeguarding taking into consideration the Agency's extended mandate.

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