

Letter from the European Ombudsman to the European Border and Coast Guard Agency (Frontex) concerning its Complaints Mechanism

Correspondence - 08/06/2022

Case OI/5/2020/MHZ - **Opened on** 10/11/2020 - **Decision on** 15/06/2021 - **Institutions concerned** European Border and Coast Guard Agency (No maladministration found) | European Border and Coast Guard Agency (No further inquiries justified) |

Mr Fabrice LEGGERI

Executive Director

European Border and Coast Guard Agency (Frontex)

Strasbourg, 10/11/2020

Subject: Strategic inquiry [1] 5/2020/MHZ concerning the functioning of the European Border and Coast Guard Agency's (Frontex) Complaints Mechanism for alleged breaches of fundamental rights

Dear Mr Leggeri,

In 2013 [2] , I submitted a Special Report to the European Parliament recommending that Frontex set up an individual complaints mechanism and that the Fundamental Rights Officer at Frontex be in charge of the mechanism. Parliament supported my Special Report. The EU legislators subsequently adopted legislation [3] providing for the complaints mechanism, while subsequent amendments to the regulations governing Frontex (notably, Regulation 2019/1896) [4] have further developed the role of the Fundamental Rights Officer. The intention of the legislators is to ensure that the expanded mandate of Frontex should be balanced with strengthened fundamental rights safeguards, as well as increased accountability and redress for those impacted by its actions. [5]

Seven years on from my Special Report, and aware of concerns having been expressed, I believe it is timely to assess how the Complaints Mechanism is functioning and have therefore



decided to launch an inquiry on my own initiative. [6] To assist the inquiry, I would be grateful if Frontex could reply to the questions set out in annex by 15 January 2021. It would be helpful if the Fundamental Rights Officer could also reply, as was the case in my inquiry OI/9/2014/MHZ concerning how Frontex ensures respect for fundamental rights in joint return operations. I would also be grateful if, in the meantime, Frontex could organise an electronic inspection of documents relating to the Complaints Mechanism, including those setting out how Frontex followed up on reports sent to the Fundamental Rights Officer, either by Frontex or by national authorities.

In the course of this inquiry, I would like to publish Frontex's reply and the report from the inspection of Frontex's documents (with confidential information withheld) on my website. I may also give interested stakeholders the opportunity to make observations.

Finally, I will be informing my ombudsman colleagues in the European Network of Ombudsmen about this inquiry. Some of these ombudsmen are involved in monitoring the work of their national administrations in the context of the Complaints Mechanism, where the Fundamental Rights Officer forwards complaints regarding 'national deployed officers' [7] . I will therefore ask them to provide any relevant information, including relevant complaints or inquiries.

Should you require any further information or clarifications concerning this inquiry, including how to arrange for the inspection of documents, please do not hesitate to contact Marta Hirsch-Ziembinska (+33 388 17 27 46), Principal adviser on Charter compliance, who is responsible for the inquiry.

Yours sincerely,

Emily O'Reilly European Ombudsman

Procedural issues

1) How is Frontex preparing for the expected increase of complaints due to its reinforced border management tasks?

2) Bearing in mind that Regulation 2019/1896 entered into force on 4 December 2019, what is the process for drafting and implementing rules to update the Complaints Mechanism? Please set out who or what is involved in this process.

3) What, if any, action can Frontex take if a forced return is scheduled for an individual whose



complaint to the Fundamental Rights Officer is pending?

4) Do complainants try to appeal decisions [8] taken by the Complaints Mechanism? If so, using what means?

5) Does Frontex consider it useful to set a specific timeframe for the Executive Director to examine the complaint forwarded to him by the Fundamental Rights Officer, reach a preliminary view and ensure follow-up? [9]

6) Should the Fundamental Rights Officer also have a set timeframe within which to deal with a complaint?

7) According to Regulation 2019/1896, the Fundamental Rights Officer's annual report must now include *"specific references to Member States' findings and the follow-up to complaints"*. [10] What action can and does Frontex take if no report is received from the authority in question or if the report is delayed, after it has been referred by the Fundamental Rights Officer?

8) How does Frontex intend to follow up on the requirement in Regulation 2019/1896 [11] that it should provide for an appropriate procedure in cases where a complaint is declared inadmissible or unfounded?

The Fundamental Rights Office

9) What provisions does Frontex have in place to ensure that its Fundamental Rights Officer can operate independently? What capacity and resources are made available to enable the Fundamental Rights Officer to conduct thorough and prompt investigations based on evidence?

10) Could Frontex clarify the ongoing procedure for appointing a new Fundamental Rights Officer?

Accessibility of the CM

11) What steps has Frontex taken to ensure that its Complaints Mechanism is accessible in practice?

12) Regulation 2019/1896 requires that the standardised complaint form *"be easily accessible, including on mobile devices"*, and obliges Frontex to provide *"further guidance and assistance"* to complainants. What has Frontex done to comply with this obligation?

13) How does Frontex ensure that individuals in non-EU countries, who wish to complain about possible fundamental rights violations in the context of Frontex operations, can effectively use the Complaints Mechanism? This issue has become even more pertinent now that Frontex's



mandate has been expanded, and includes operations in non-EU countries. How will Frontex ensure the dissemination of information on fundamental rights protection procedures, notably in these non-EU countries?

14) What arrangements does Frontex have in place to deal with complaints drafted in the language of the individual in question?

[1] The Ombudsman undertakes strategic inquiries on her own initiative where she finds grounds to do so. As well as inquiring into any possible maladministration, these inquiries are intended to be helpful to the particular institution and to promote good administrative practice.

[2] <https://www.ombudsman.europa.eu/en/special-report/en/52465>

[3] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1624> [Link].

[4] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard: <https://eur-lex.europa.eu/eli/reg/2019/1896/oj> [Link].

[5] Recital 24 of the Regulation (EU) 2019/1896.

[6] I am aware of certain concerns from the following reports: Consultative Forum 4th and 5th Annual Reports issued in 2017 and 2018 (<https://frontex.europa.eu/fundamental-rights/consultative-forum/general/> [Link]); Fundamental Rights Officer annual reports for 2018 and 2019.

[7] In accordance with article 111(7) of the Regulation (EU) 2019/1896 and article 11 of the Rules on the complaints mechanism (Annex of the Decision No R-ED-2016-106 of the Executive Directive of the European Border and Coast Guard Agency of 6 October 2016 on the Complaints Mechanism).

[8] “Decisions” in this context mean: (i) the FRO’s decision on admissibility of the complaint; (ii) the FRO’s decision on recommendations to the Executive Director; (iii) the ‘preliminary view’ of the Executive Director (Article 10.3 of the Agency’s Rules on the Complaints Mechanism); (iv) the decision of the Executive Director about “the follow-up” (Article 10.4 and 10.6 of the Agency’s Rules on the Complaints Mechanism).

[9] Article 10(6) provides for a deadline of six months to report to the FRO, which counts however as from the date of the follow-up only. There is no timeframe in the current implementing rules for the Director’s examination of the complaint and for him to reach a ‘preliminary view’.



[10] Article 111(9) of the Regulation (EU) 2019/1896.

[11] Article 111(5) second paragraph of the Regulation (EU) 2019/1896.