

## Frontex response to European Ombudsman strategic inquiry - OI/4/2021/MHZ

Subject: Strategic inquiry<sup>1</sup> OI/4/2021/MHZ on how Frontex complies with its obligations and ensures accountability in relation to its new enhanced responsibilities under Regulation (EU) 2019/1896<sup>2</sup>

### 1. Joint operations

- (i) *Regulation 2019/1896 states that 'operational plans' for joint operations should include the description of responsibilities, including with regard to the respect of fundamental rights<sup>3</sup>, and instructions on how to ensure the safeguarding of fundamental rights<sup>4</sup>. However, neither the plans nor the handbooks for joint operations (if they exist) are in the public domain. Given the clear public interest in these joint operations, it should be possible for the public to understand who is responsible for what aspects of these operations. Could Frontex publish this material?*

The Operational Plan of the Joint Operations is composed of the General Part and the Specific Activity Plan (the "SAP"). The General Part defines the general provisions of the operational activities and is in large extent the same for all the joint operations in a standard way, while the SAP includes specific provisions for each joint operation.

The description of responsibilities regarding the respect of fundamental rights and instructions on how to ensure the safeguarding of fundamental rights are included in the Operational Plans of the Joint Operations. Due to the nature of the activity, the full content of the operational plans for ongoing joint operations cannot be disclosed.

The requested information is included in the chapters 2.3 "General instructions on how to ensure the safeguarding of fundamental rights during the operational activity including the complaints mechanism", 2.4 "Code of Conduct applicable to all persons participating in Frontex Operational Activities" and, where applicable, 2.5 "Code of Conduct for return operations and return interventions coordinated or organised by Frontex" of the General Part of the operational plans for all Joint Operations. The text of these provisions is attached as an Annex to this letter and parts of it are copied under question 4.

### 2. Not launching/Termination of operations and pilot project

<sup>1</sup> 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 promote good administrative practice, in the interest of the institution concerned.

<sup>2</sup> 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: <https://eur-lex.europa.eu/eli/reg/2019/1896/oj>

<sup>3</sup> Article 38.3(d) of Regulation (EU) 2019/1896. <sup>5</sup> Article 38.3(l) of Regulation (EU) 2019/1896 <sup>6</sup> Article 46 of Regulation (EU) 2019/1896

*Regulation 2019/1896<sup>6</sup> states that the Executive Director may decide not to launch any activity where there could already be serious concerns at the outset that the activity could lead to serious violations of fundamental rights or international protection obligations. These decisions may be taken after consultation with the Fundamental Rights Officer and should be based on duly justified grounds.*

- (i) *What procedures and criteria does Frontex use to identify situations in which an activity could lead to serious violations of fundamental rights or of international protection obligations? The Ombudsman notes the recent decision in relation to Hungary, which followed the judgement of the EU Court of Justice<sup>4</sup>. Could a national court judgment or the views of an ombudsman/National Human Rights Institution about such violations also serve as a criterion?*

In 2020, FRO put forward a procedure (Fundamental Rights due Diligence Procedure) to assess the fundamental rights risks prior to launching an operation and during an ongoing activity, to preclude Frontex' potential involvement in fundamental rights (FR) violations by its partners. The procedure was designed to provide advice to the Executive Director for his/her decision to suspend, withdraw or terminate in line with Art 46 (4) and (5) of the 2019/1896 Regulation.

The FRO assessment is based on information from a range of sources, including from relevant international organizations, European Union institutions, bodies, offices and agencies (ex. EEAS Annual Report on Human Rights and Democracy in the World<sup>5</sup>; EASO Country Reports<sup>6</sup>; as well as thematic and geographically focused information of the relevant national entities, including the national court decisions or information from the National Human Rights Institutions (NHRI), where available. While providing the advice, the FRO also considers the substance and follow up on Serious Incident Reports and Complaints submitted in the given operational area [Art. 46 (6)]. For the FRO to recommend action to the Executive Director under Art. 46 (4) and (5), the alleged violations must be of persistent or of serious nature, including acts in respect of which states have an obligation under the European Convention on Human Rights (ECHR), and in the light of the Court's case-law, to enact criminal law provisions<sup>7</sup>. The ECHR jurisprudence defines further the notion of 'seriousness' of human/fundamental rights violations, in connection with their persistence - when violations are repeatedly<sup>8</sup> committed following a common pattern, which indicates that they might be tolerated by the authorities and preventive or remedial measures are missing or insufficient to prevent or avoid the violation.

- (ii) *Where the Executive Director decides to suspend or terminate an operation, what other steps could Frontex envisage to help remedy the detected violations of fundamental rights and/or international protection obligations?<sup>9</sup>*

The FRO developed a catalogue of measures to mitigate the fundamental rights risks identified as a result of the fundamental rights due diligence assessment. The extent of the recommended actions depends on the scope and intensity of the identified fundamental rights risks. The following can be recommended to the Agency (not exhaustive list):

- Tailored fundamental rights training and strengthening the capacity of the IBM professionals;
- Fundamental rights promotion in organizational culture/ leadership for fundamental rights, ex:
  - Promoting learning and capacity building with regards to ethics, gender-sensitive and human rights training;
  - Communicating organizational mission and vision inclusive of Agency's focus on fundamental rights;
  - Promoting of an in-office environment that enables professional development of all personnel;
  - Development of common and joint messaging on the EU's / FX' commitment to fundamental rights.

<sup>4</sup> Such the 22 December 2020 judgement in case C-808/18 Commission v Hungary referring to the situation in the specific transit zones at the Hungarian-Sorbian border

(<http://curia.europa.eu/juris/document/document.jsf?isessionid=875DA20DFAF154351FEE48F8173A9D3C?text=&docid=235703&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1677268>)

<sup>5</sup> Eu Annual Report On Human Rights And Democracy In The World 2018 Country Updates ([https://eeas.europa.eu/sites/eeas/files/complete\\_eu\\_country\\_updates\\_on\\_human\\_rights\\_and\\_democracy\\_in\\_the\\_world\\_2018-29.05.pdf](https://eeas.europa.eu/sites/eeas/files/complete_eu_country_updates_on_human_rights_and_democracy_in_the_world_2018-29.05.pdf))

<sup>6</sup> Country reports: (<https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports>)

<sup>7</sup> Such obligations arise in the context of the right to life (Article 2 ECHR), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 ECHR), the prohibition of forced labor and slavery (Article 4 ECHR) and with regard to certain aspects of the right to liberty and security (Article 5, paragraph 1, ECHR) and of the right to respect for private and family life (Article 8 ECHR). According to the Council of Europe, not all violations of these articles will necessarily reach this threshold.

<sup>8</sup> The notion of repetition is defined as "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system - ECHR, Ireland v. The United Kingdom, no. 5310/71, 19 January 1978, par. 159).

<sup>9</sup> In the conclusions of the Management Board's meeting on 20-21 January 2021 on the preliminary report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea the Management Board recommended that Frontex establish transparent rules on the Frontex-internal process to follow-up on serious incidents that have been established, including on the application of Art. 46 of the EBCG Regulation." (emphasis added) <sup>9</sup> Article 48 1(a)(iv) of Regulation (EU)2019/1896.

The list is not exhaustive, and the Executive Director can consider other sources that could be relevant in a given situation.

Additionally, the Executive Director shall inform the Management Board about such decisions and provide justifications.

After a decision to suspend or terminate an activity, the Regulation does not provide how the Executive Director should restore the implementation of the suspended/terminated operation. In accordance with Article 106(4)(m), the Executive Director has the function and power to assess, prior to any operational activity of the Agency, whether there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 46(4) and (5) of the Regulation.

Therefore, in the case of suspension or termination of an activity, it can be concluded that the activity is to be restored once the reasons which led to the suspension/termination cease to exist. For that reason, the Agency can consider continuing to monitor and assess the situation in the MS (or TC) concerned.

### 3. Returns

- (i) *Does Frontex have implementing rules for its new role<sup>9</sup> in assisting voluntary returnees in the post-arrival and post-return phases, taking into account the needs of vulnerable persons? Has Frontex considered working with the International Organisation for Migration (IOM)<sup>10</sup> in relation to voluntary returns?*

Currently the Agency is developing specific rules for supporting the MS in implementing post-arrival and post-return support. Support coordinated by the Agency is foreseen to include also vulnerable groups. Nevertheless, the MS will be solely responsible for indicating who is entitled to receive (how much and what type) reintegration support.

At the same time the Agency is closely working together with the FRO on the development of a guideline and tools on Frontex support in voluntary returns to MS for the return of UAM and stateless persons.

With IOM, discussions are ongoing in general to explore possible areas of cooperation in the pre-return, returns and post-arrival and post-return stages of the return process. Currently a dedicated Working Group on Return, Readmission and Reintegration is being set up, which will serve as a platform for institutional and technical discussions.

- (ii) *How will Frontex ensure independent monitoring of Frontex return operations by its own staff, when taking into account that the escorts of returnees may be carried out by Frontex staff members as well?*

The return operations organised or coordinated by the Agency are monitored by MS national monitoring Institutions in accordance with Article 8(6) of Directive 2008/115/EC. Since each MS has a different forced return monitoring system in place, discussions are being held in a spirit to foster a common EU approach with a proper functioning and effective forced return monitoring system.

The Agency has established also a pool of forced-return monitors from competent bodies of the MSs who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC, and will contribute to it with 5 fundamental rights monitors assigned by the Fundamental Rights Officer according to Art. 110 (REG 2019/1896). When deployed, upon request of MS/SAC<sup>11</sup>, these Fundamental Rights Officer will still act as forced-return monitors in accordance with Article 8(6) of Directive 2008/115/EC, thus within the applicable MS monitoring system.

- (iii) *Frontex is obliged to make forced-return monitors available upon request from its pool of forced-return monitors. In its 2018 report, the Frontex Consultative Forum stated the need to explore how the national return monitoring mechanisms interplay with the Frontex-governed pool of return monitors in order to bridge the gap between the number of monitored national returns (low) and*

<sup>10</sup> IOM plays a major role in voluntary returns operations. Its Knowledge Management Hub is funded by the EU (<https://www.iom.int/assisted-voluntary-return-and-reintegration>).

<sup>11</sup> Schengen-Associated Countries



*Frontex's coordinated returns (high)<sup>12</sup>. What can Frontex do to encourage and assist Member States in creating more sustainable monitoring systems?*

In order to increase the number of national return operations with physical presence of monitors during all phases of the return operation, MS are encouraged to implement the following measures:

- To enhance the communication channels between the institutions enforcing forced returns and the national monitoring institutions. With a timely and accurate communication on planned return operations, it is expected that the national monitoring bodies will increase their preparedness and join more return operations
- To increase the human resources capacity of the national monitoring bodies in order to be able to physically participate in a higher number of return operations

The Frontex pool of monitors consists mainly of forced-return monitors nominated by the MS/SAC from their national monitoring bodies. All the limitations that the national monitoring bodies are facing at national level, have an impact in their participation in the framework of the Frontex pool of monitors.

The capacity of the Frontex pool of monitors has been increased: Frontex has nominated 5 fundamental rights monitors which are assigned by the Fundamental Rights Officer pursuant to Art. 110 of Regulation 2019/1896 into the pool of forced-return monitors that may act as forced-return monitors upon request from a MS/SAC.

*(iv) Article 50 (5) of Regulation 2019/1896 states that forced-return monitors shall submit a report on each forced return operation to the Executive Director, the Fundamental Rights Officer and the national authorities of all the Member States involved in the given operation. In the first semester of 2019, the Fundamental Rights Officer received monitoring reports from 57.5% of all forced-return operations organised by Frontex, and all reports received were from Frontex monitors. How does Frontex explain this relatively low percentage? What can Frontex do to change the situation?*

Such specific provision (that forced-return monitors shall submit a report on each forced return operation to the Executive Director, the Fundamental Rights Officer and the national authorities of all the MSs involved in the given operation) has been also included among the provisions set out in the Implementation Plan that Frontex draws up for each return operation coordinated by the Agency.

The Agency has already clarified in the past to the MS` relevant Institutions that the monitors` reports can be also sent to the Agency in their own national language (and not necessarily in ENG), as this was identified as a possible limitation/blocking element. Regular reminders/recommendations are regularly addressed also in periodical meetings with MS contact persons responsible for the implementation of returns at national level.

*(v) In her investigation OI/9/2014/MHZ, the European Ombudsman suggested that Frontex publish monitors' reports on its website. Frontex replied that it would consider this. Moreover, Frontex stated that it would continue to encourage transparency and consider all possibilities for increasing transparency. However, monitoring reports are still not published, nor are the Fundamental Rights Officer's observations summarising these reports.*

*Could Frontex publish monitors' reports on its website, taking into account data protection concerns?*

FRO shares on a regular basis the FRO bi-annual Report (Observations on Returns) with the relevant monitoring institutions of the organising and participating MSs also encouraging the MS/SAC to submit their national reports. Other fora are also held to inform about the FRO observations.

As Frontex stated under the inquiry in case 2273/2019/MIG on the public register of documents, Frontex is in the process of taking stock of all important documents it holds as part of the development of a dedicated register of

<sup>12</sup> During the first semester of 2017, 86 forced-return operations were monitored out of 168, which amounts to **51%** (100% of CROs, 82% of JROs and 12% of NROs).

During the second semester of 2017, 102 forced-return operations were monitored out of 173, which amounts to **59%** (details for the different types of operations are not provided). During the first semester of 2018, 113 forced-return operations were monitored out of 165 operations, which amounts to **68.5%** (100% of CROs, 99% of JROs and 16% of NROs). During the second semester of 2018, 119 forced-return operations were monitored out of 180 operations, which amounts to **66%** (100% of CROs, 93% of JROs and 27% of NROs). During the first semester of 2019, 137 forced-return operations were monitored out of 163 operations, which amounts to **84%** (100% of CROs, 100% of JROs and 55% of NROs).

documents webpage. In doing so, Frontex will consider Article 11(1) and (2) of Regulation (EC) No 1049/2001 and Article 114(2) of the European Border and Coast Guard Regulation.

Furthermore, several FRO reports were released as part of applications for public access to documents.

#### 4. Migration management support teams

*(i) Frontex statutory staff may act as migration support teams, providing technical and operational reinforcement to the Member States. This includes the screening of non-EU nationals arriving at external borders, including identifying, registering, debriefing, and fingerprinting these individuals, as well as providing information regarding the purpose of these procedures.<sup>13</sup> There is a risk of potential fundamental rights violations in relation to these procedures.*

*Does Frontex provide the migration support teams with specific guidance/instructions on how to ensure the protection of fundamental rights in the context of the above activities? If so, please share this material with the Ombudsman's Office. If not, please set out Frontex's plans in this regard.*

FRO provides training material, delivered trainings in the past in the hotspots (including the monitoring mechanism such as Serious Incidents Reporting and Complaints Mechanism), and conducted a number of missions to Greece and Italy hotspots including EURTFs in the period 2016-2020.

[REDACTED] FRO also provided in 2020 general instructions on how to safeguard Fundamental Rights in operational activities as part of all Operational Plans. A series of trainings was provided to Maritime Border Surveillance Officers on fundamental rights in sea border operations.

In addition, a number of materials on the complaints mechanism has been distributed and is available in those locations. Within the fundamental rights protection framework under the REG 2019/1896 FRO intends to ensure more awareness raising and monitoring on the compliance with fundamental rights with the support of the to be recruited fundamental rights monitors which will be assigned to the operational areas. Frontex Fundamental Rights Office staff provided in 2020/2021 training on Fundamental Rights to the Frontex standing corps, mainly on general aspects of fundamental rights (mentioning procedures); more focus on the procedures as such will be made in the respective training modules focusing on procedures which are currently delivered by the respective experts on these topics.

Likewise, according to Article 80(1) of the EBCG Regulation, the Agency's Fundamental Rights Strategy (FRS), adopted by Management Board in February 2021<sup>14</sup>, provides the basis for an effective mechanism for monitoring respect for fundamental rights in all activities of the Agency (FRS available on Fx webpage/key documents<sup>15</sup>). The implementation of the FRS is foreseen within the framework of an Action Plan, drawing up practical fundamental rights safeguards for the implementation of the Agency's operational activities, integrated into the Agency Annual Work Programme.

The provision of the migration management support by Frontex to the MSs is implemented in the framework of joint operations. The legal framework for the provision of this type of support is set out by the article 38 of EBCG Regulation<sup>16</sup>.

Further to the specific instructions on safeguarding of fundamental rights that are applicable to all members of the teams, as provided in the response to the question number 1, Frontex issues specific additional guidelines for the screening activities. [REDACTED]

More specific, screening in the framework of an operational activity is the process performed by the members of the screening teams to establish the assumed nationality of an undocumented person having crossed, or having attempted

<sup>13</sup> Article 40(4) of Regulation (EU) 2019/1896.

<sup>14</sup> Management Board Decision 12/2021 of 14 February 2021 adopting the Fundamental Rights Strategy

<sup>15</sup> <https://frontex.europa.eu/about-frontex/key-documents/?category=fundamental-rights-strategy>

<sup>16</sup> 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.

to cross, an external border irregularly in view of registering the arrival of the person and returning the person to his/her country of origin when applicable.

Member of the teams (TM) with certain profile perform screening interviews at the request of the host Country authorities. The screening interviews carried out by deployed TM should, as a general rule, be conducted in close cooperation with an officer from the host Country and assisted by an interpreter. To facilitate the screening, it is also advised that the age and the gender of the person to be interviewed is taken into account when appointing the member of the team and the interpreter. Screening activities can be conducted at advanced and basic level by specialised Debriefing Officers (DO) and other Border Guard Officers (BGO) profiles of the Standing Corps (SC) respectively.

The advanced level of screening includes the following tasks:

- to carry out screening interviews by applying appropriate and specific techniques and methods for conducting the interview: from preparing the interview, addressing the questions to the migrants and assessing the answers to recognising any discrepancies and concluding the interview, in order to identify the assumed nationality of the migrants and to collect information on migration patterns and on migration profiles in compliance with fundamental rights.
- to coordinate the activities of deployed BGO-SC in conducting basic level nationality screening in order to establish the assumed nationality of an interviewed person.

The Debriefing Officer with tasks for interviewing / screening advanced activities (DO-SCR) should carry out their activities according to a pre-defined method or model that encompasses the thorough preparation for the interview, the check of belongings and preliminary information available, as well as the conduct of in-depth interviews with or without interpreter / cultural experts, and the reporting.

During the interview the members of the teams should use their knowledge and experience and the tools available such as the screening booklet to acquire the necessary information to complete the screening form to establish a presumed nationality.

The TM should be aware of the location where the screening interview is to be performed. The location should allow for privacy and satisfy conditions for properly conducting interviews. It is recommended that, when possible, the TM have water and dry food for the person to be screened as they may have to wait for a long time before being screened.

The TM have no mandate to check the belongings of an irregular migrant, however they can offer advice to the responsible officer of the national authority based on their own experience, for instance, of locating hidden documents inside belongings or indicators of trafficking. Advice provided shall also take into account the need to ensure privacy and dignity of the persons involved.

Since the screening is the first step in any national identification process, the screening interviews are performed in a systematic manner and are mandatory for any non-EU nationals arriving at external borders.

At the start of each interview the DO-SCR should introduce themselves and anyone else present to the migrant, explain the procedure that will be followed, the reasons for the screening interview and the role of the interpreter if present. This provision of information should be done in an age, gender and context-appropriate manner.

The persons alleging a violation of their fundamental rights shall be informed of the procedure for reporting such FR violations, including the possibility to file a complaint with Frontex in accordance with the Annex on General instructions on how to ensure the safeguarding of fundamental rights during the operational activity including Complaints Mechanism of the OPLANs. The potential asylum seekers will be informed of the procedure for launching an asylum application and shall be referred by the DO-SCR to the respective national authority.

If the TM identifies a vulnerable person\* he/she should inform the hosting authority before the interview commences or immediately afterwards if the information came to light during the interview.

“Vulnerable persons” refers to children / unaccompanied children, persons with disabilities, elderly people, pregnant women or girls, single parents with minor children, victims of human trafficking, persons in need of international protection, persons with serious illnesses, persons with mental disorders, persons in need of medical assistance, victims of gender-based violence, victims of female genital mutilation, persons in distress at sea, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and other persons in a particularly vulnerable situation. Note that vulnerabilities can appear at any moment of the screening process.



When screening minors, adequate adapted language to their level of maturity should be used, and this may also involve kneeling to their eye level, inviting an interpreter to assist and draw pictures to make sure children understand the TM indications and questions. Families with small and unaccompanied minors should always be prioritized in border procedures, including screening.

In case the expert presumes that a person claiming to be an adult, is a minor, the situation must be immediately reported to the national authorities so that adequate procedures can be initiated. In the meantime, a presumption of underage should be applied on the treatment of the person.

Screening interviews can be performed without an Interpreter when the communication is possible, but often the TM used to be supported by an interpreter.

The Border Guard Officer with tasks for basic interviewing / screening activities (BGO-SC) assists/supports officers of the national authority to screen irregular migrants at reception and detention facilities in the operational area of the host Country in order to establish a presumed nationality. They must also refer vulnerable persons and persons in need of international protection, and unaccompanied minors to the national authority.

**ANNEX:** Specific provisions of the Operational Plans as regards the *“description of responsibilities, including with regard to the respect of fundamental rights, and instructions on how to ensure the safeguarding of fundamental rights”*

### (Excerpts from Operational Plan)

General instructions on how to ensure the safeguarding of fundamental rights during the operational activity including the complaints mechanism<sup>17</sup>

#### European Border and Coast Guard obligations in regard to safeguarding fundamental rights

##### Frontex's obligations

The Agency, as part of the European Border and Coast Guard, shall guarantee the protection of fundamental rights in the performance of its tasks under the Regulation in accordance with relevant EU law, in particular, the Charter of Fundamental Rights of the European Union, and relevant international law, including the Convention Relating to the Status of Refugees of 1951, the 1967 Protocol thereto, the respect for fundamental rights, in particular the access to international protection, and the principle of *non-refoulement*, and taking into account the recommendations of the Frontex Consultative Forum on fundamental rights and of the Fundamental Rights Officer (FRO).

The Regulation requires Frontex to put in place an effective mechanism to monitor and ensure respect for fundamental rights in all the activities of the Agency. The Regulation also establishes fundamental rights monitors, employed as statutory staff, assessing the fundamental rights compliance of operational activities in support of the FRO. Frontex, has developed a Fundamental Rights Strategy, adopted a Code of Conduct (“CoC”) applicable to all persons participating in Frontex operational activities, established serious incident reporting system, and a complaints mechanism, with the contribution of the FRO.

The CoC lays down procedures intended to guarantee the principles of the rule of law and the respect for and promotion of fundamental rights with particular focus on vulnerable persons, including children and other persons in a vulnerable situation, as well as on persons seeking international protection, including the obligation of referral to national authorities competent for receiving asylum requests.

Furthermore, Frontex shall ensure that all participants of the operational activity, have received, prior to their participation in operational activities, an adequate training in relevant EU and international law, including on fundamental rights, access to international protection, guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of

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<sup>17</sup> According to the Article 38(3)(f) of the Regulation, the operational plan shall cover i.a. general instructions on how to ensure the safeguarding of fundamental rights during the operational activity of the Agency.

children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance and other particularly vulnerable persons, and, where it is intended that they participate in sea operations, search and rescue, prior to their initial deployment in operational activities organised by the Agency.

According to Annex V to the Regulation, FRO shall ensure that incidents related to the use of force and use of weapons, ammunition and equipment by statutory staff deployed as members of the teams are thoroughly investigated and reported without delay to the ED. The results of such investigations shall be transmitted to the consultative forum. All activities related to the use of force, weapons, ammunition and equipment by statutory staff deployed as members of the teams shall be regularly monitored by the FRO, and all incidents shall be reported in the FRO's reports as well in the annual report of the Agency.

Pursuant to Article 46(4) of the Regulation, after consulting the FRO and informing the MS concerned, the Executive Director shall withdraw the financing the operational activity, or suspend or terminate the activity, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.

Pursuant to Article 46(5) of the Regulation, after consulting the FRO, the ED shall not launch any activity where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature.

The decisions on Article 46(4) and (5) of the Regulation shall be based on duly justified grounds.

### **Obligations of all persons involved in operational activities coordinated by Frontex**

All persons involved in Frontex operational activities are obliged to maintain the highest standards of integrity, ethical conduct and professionalism and respect for fundamental rights. They are expected to meet obligations imposed upon them by the provisions of the present Operational Plan and are obliged to comply with the rules applicable to their duties. While performing their tasks and duties, they are obliged to comply with international and European Union law, ensure the respect for fundamental rights, as well as comply with the national law of the host MS.

All persons involved in Frontex operational activities are expected to act responsibly and proportionately to the current operational objectives. While performing their duties they shall not discriminate against persons on any grounds such as sex, race, ethnic or social origin, genetic features, language, religion or belief, nationality, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. They are expected to treat every person with courtesy, respect and due consideration for the nature of any legitimate activity in which they are engaged. They are obliged to report any alleged violation of fundamental rights that has occurred or is about to occur via the appropriate reporting channel, such as the Frontex Serious Incident Reporting (SIR) system.

In addition to the obligations set forth above, all persons involved in the operational activities must act with discretion and with respect for the right to privacy of other persons and the right to the protection of personal data concerning them. Unless explicitly authorised by Frontex Coordinating Officer and the national authorities, it is forbidden to make any type of records (e.g., photos, videos) of the activities carried out under the operational activities, except recordings performed during the border surveillance activity as listed under the chapter 4.3. in the General Part of the Operational Plan and further defined in the respective SAPs (if applicable).

*The Code of Conduct is presented in respective chapter of the General Part of the Operational Plan.*

#### **1.1.1. Tasks and responsibilities with regard to respect for fundamental rights<sup>18</sup>**

Under the overall tasks to monitor compliance with fundamental rights in activities and to follow high standards for border management and ensuring respect for, and protection and promotion of fundamental rights, foreseen in Article 10(1)(e) and (ad) of the Regulation, as during the time of the deployment and within their mandate, participants of the operational activities have the following tasks and responsibilities with regard to respect for fundamental rights:

- Identify and refer to the competent authorities vulnerable persons, including persons in need of international protection.

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<sup>18</sup> According to Article 38(3)(d) of the Regulation, the operational plan shall cover i.e. a description of the tasks, including those requiring executive powers, responsibilities, including with regard to the respect for fundamental rights.



- Share expertise and best practices on fundamental rights compliance and protection.
- Provide information about the Frontex complaints mechanism.
- Report about potential fundamental rights violations and challenges.

The general instructions to fulfil these tasks include:

1. Identify and refer the persons in need of international protection, medical assistance, unaccompanied minors, victims of trafficking in human beings, and other persons in a vulnerable situation to the competent national authorities for appropriate assistance.

- Instructions applicable with regard to persons in need of international protection

Members of the Teams (TM)<sup>19</sup> shall address the special needs of persons in need of international protection, including of statelessness, in accordance with EU law and national legal framework.

The TM shall refer without delay to the officers of the respective national authority with whom they cooperate, when a person is identified who expressed, in any way, a fear of suffering serious harm if (s)he is returned to his/her country of origin or former habitual residence, or if he/she asks or claims for asylum or any other form of international protection as well as persons claiming to be stateless.

Persons applying for international protection shall be informed on where and how their application can be lodged in accordance with the EU law and following the guidance of the EASO/Frontex practical tool on access to the asylum procedure (see the tool available on FOSS).

The national officer shall hand over those persons referred by the TMs to the competent host authority for an examination of their status and further processing.

- Instructions applicable with regard to other vulnerable persons

As per Article 38(3)(m) of the Regulation, the participants shall identify vulnerable persons and persons in vulnerable situations.

TMs shall refer without delay to the national officer with whom they work vulnerable persons as described below. The national officer shall hand over the vulnerable persons including potential victims of trafficking of human beings to the competent national authority.

A non-exhaustive list of the categories of persons in vulnerable situations and applicable immediate actions:

- children, in particular unaccompanied minors. In situations when the age of a person is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child, and should be referred to child protection authorities for further age determination proceedings.
- victims of trafficking in human beings, and due to the risk of exploitation, should be always separated from their potential traffickers during arrival proceedings. Specific referral mechanisms are available in each MS for their urgent protection, and they are available on FOSS.
- persons in need of urgent medical assistance, should be always referred to medical facilities without delay.
- persons with disabilities, should be provided with adequate support that prevents their isolation and ensure their basic needs are covered.
- elderly people.
- pregnant women.
- families consisting of single parents with minor children are not to be separated.
- persons with mental disorders, should be provided with adequate medical and psychological support.
- persons who could have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, should be referred to specialised protection services and receive adequate assistance also during arrival.

<sup>19</sup> Members of the European Border and Coast Guard Standing Corps deployed through border management teams, migration management support teams and return teams.

Each case should be evaluated individually during different operational activities.

The participants should pay extra attention and consider the gender of the vulnerable persons taking into account their dignity and cultural diversity by engaging female officers in their proceedings, if available. Where communication is needed with a potential vulnerable person, interpretation should be made available where appropriate and the conversations should be performed with tact and confidentiality<sup>20</sup> in view of their personal circumstances. The information obtained during Frontex activities regarding vulnerable persons should be passed on as soon as possible to the national officer to be used in further national protection proceedings by the competent national authorities (see the Questionnaire available on FOSS).

*The answers to the "Questionnaire on the Legislative framework and procedural safeguards in host MS and cooperating third countries" (Appendix 2), including referral mechanisms, provided by MSs and third countries, are available on FOSS.*

## **2. Share expertise and best practices related to the protection and compliance with fundamental rights**

The participants shall gather best practices and share their expertise in relation to the protection and compliance with fundamental rights while performing their tasks and are encouraged to share them through the reports, in line with the obligation to follow high standards for border management (Article 10(1)(ad) of the Regulation).

The participants should also inform the respective coordinating staff from Frontex and Host MS about any challenges related to safeguarding of fundamental rights in the operational activities. The FCO and the FROMs and/or FRO hold regular briefings to exchange relevant information on possible concerns related to fundamental rights within the Agency's operational activities reported by participants.

## **3. Provide information on Frontex complaints mechanism and the right to submit a complaint**

### **Background information**

In accordance with Article 111 of the Regulation, the Agency sets up, in cooperation with the FRO, a complaints mechanism to monitor and ensure the respect for fundamental rights in the activities of the Agency. Further, Article 33(3)(n) of the Regulation states that the Operational Plan contains procedures setting out a mechanism to receive and transmit a complaint to the Agency complaints against any person participating in an operational activity of the Agency, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency.

Complaints include personal data and therefore should be dealt with in confidentiality and not transmitted via any other channel than those specifically designated by the complaints mechanism and established in the rules and procedures that follow.

For general information on the complaints mechanism please consult the Frontex website [www.frontex.europa.eu/complaints/](http://www.frontex.europa.eu/complaints/). Specific information on how personal data is being processed in the case where a complaint is submitted is available in the Privacy Statement (Appendix 3).

### **General information**

#### ***Who can submit a complaint?***

<sup>20</sup> Training material on how to interview persons with trauma is available from EASO.

Any person who is directly affected by the actions or failure to act of staff involved in an Agency activity<sup>21</sup> and who considers him 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 may submit a complaint. The complaint may be presented by any party representing such a person.

### *What is the subject of the complaint?*

A concrete fundamental rights violation resulting from an action or failure to act by a participant in an operational activity coordinated or organised by Frontex.

### *Possible ways to submit a complaint*

A complaint must be made in writing and may be made using the official complaint form (Appendix 4). Although the use of the complaint form is preferable, complaints can be submitted in any format, provided that the complaint is in writing.

The complainant has four possible ways to submit a complaint:

- Sending the complaint electronically:  
Complainants can use the official complaint forms available in Frontex website in several languages.  
  
It is possible to download complaint forms and submit them electronically via Frontex website <https://microsite.frontex.europa.eu/en/Complaints>
- Sending the complaint via email to [complaints@frontex.europa.eu](mailto:complaints@frontex.europa.eu)
- Sending the complaint by post:  
*Frontex Fundamental Rights Officer, Complaints*  
*Frontex, Plac Europejski 6, 00-844 Warsaw, Poland*
- Handing over the complaint to Frontex staff present in the operational area

### Duty to inform

Frontex staff and TMs have the obligation to provide information about the complaints mechanism, including information on the complaint form, the privacy statement and relevant leaflets on the applicable procedures to any person who expresses a wish to report an alleged fundamental rights violation against the staff involved in an Agency activity.

A booklet in several key languages and a poster will be available for distribution to be displayed in operational areas. The booklet explains how the complaint procedure works, who can submit a complaint and how the mechanism works. In addition, a printable PDF version of the booklet is available in Frontex website at [www.frontex.europa.eu/complaints](http://www.frontex.europa.eu/complaints) and upon request to [complaints@frontex.europa.eu](mailto:complaints@frontex.europa.eu).

Frontex staff and TMs shall provide information on the right to submit a complaint when a deployed TM in the course of any activity indicates any potential violation of fundamental rights. They shall also provide such information to any individual who is an alleged victim of a fundamental rights violation or expresses in any way a complaint or an interest or will to lodge a complaint.

### Availability and using the hard copy of the complaint form

Hard copies of the complaint form, privacy statement and leaflets are available and accessible to everyone in the operational areas.

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<sup>21</sup> Agency activity means 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.



Persons who want to file a complaint using the hard copy of the form, will be granted the form by the Frontex staff or the TMs, the privacy statement and leaflets on the complaints procedures.

*The Complaint Form including the Privacy Statement are stored on FOSS.*

#### 4. Submit a serious incident report in case of alleged violations of fundamental rights

SI involving allegations on possible violation of fundamental rights and/or CoC can be reported via standard SIR procedure in accordance to the SI reporting lines defined in the operational plan or the exceptional reporting mechanism explained below.

An exceptional reporting mechanism can be applied, for example when the reporting person has concerns that the disclosure of sensitive information on possible violation of fundamental rights or the CoC via the SIR mechanism could have consequences on their or others' integrity, reputation or deployment. After acknowledgement of such information, the participant shall immediately report such incidents to the FSC. The FSC will immediately inform the Host MS, when relevant.

##### 1.1.2. Fundamental Rights Monitors

The role of Fundamental Rights Monitors (FROM), employed as statutory staff, is to continuously assess the fundamental rights compliance of operational activities, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of European integrated border management.

*The tasks of FROM are defined in respective chapter of the General Part of the Operational Plan.*

##### 1.1.3. Specific fundamental rights safeguards on Third Country observers<sup>22</sup>

Activities of Third Country observers (TC Observers) shall not affect the safety of TC nationals or pose any risk to their fundamental rights, including with regard to access to asylum and the principle of *non-refoulement*.

In addition to fundamental rights safeguards applicable to all participants of the operational activities, the following additional obligations to TC Observers apply:

- TC Observers shall not collect or transmit in any way to the participating Third Country authorities' personal data to which they had access while acting in their observer role.
- TC Observers shall be required to adhere to the codes of conduct of the Agency while participating in its activities.
- TC Observers shall not actively participate in readmission/return activities due to the risks of violation of the principle of *non-refoulement*.

*The general tasks and responsibilities of TC Observers are defined in respective chapter of the General Part of the Operational Plan.*

*The detailed tasks of the TC Observers per each operational activity are defined in the respective SAPs.*

<sup>22</sup> In accordance with Article 78(1) of the Regulation, detailed rules on the participation of observers shall be included in the operational plan. Article 70(3) of the Regulation states that the Agency shall ensure that the presence of observers does not pose any risk related to respect for fundamental rights.

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### *Application, scope and objectives*

1. This code of conduct applies to all Frontex operational activities, including those which take place outside the territory of the Union and, subject to paragraph 2, to all persons participating in them.
2. The basic principles set out in this code of conduct should serve as a framework for persons who are seconded national experts, other law enforcement officers or officers or participants from third countries. This code of conduct is without prejudice to the provisions of any status agreement pursuant to Article 54 of the European Border and Coast Guard Regulation<sup>24</sup>.
3. This code of conduct aims to promote general values intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on vulnerable persons, as well as on persons seeking international protection, and is applicable to all persons participating in Frontex operational activities.

#### Article 2

##### *Definitions*

For the purpose of this code of conduct, the following definitions apply:

- (a) The term 'participant' refers to any person participating or engaged in a Frontex operational activity.
- (b) The term 'Frontex operational activity' means any activity coordinated, assisted, financed or co-financed by Frontex in the context of assisting Member States in undertaking border control and return tasks, in accordance with Article 8 of the European border and coast guard regulation. Frontex operational activities include joint operations, pilot projects, return operations and training of relevant staff.
- (c) The term 'law enforcement officers' includes members of European Border and Coast Guard teams and/or relevant staff from the Member States and/or from third countries, who have law enforcement prerogatives.
- (d) The term 'vulnerable persons' may include women, children (unaccompanied or with family members), persons with disabilities, the elderly, victims of torture or trauma, persons susceptible to exploitation and victims of exploitation or trafficking in human beings.
- (e) The term 'Member State' also includes the Schengen associated countries.
- (f) The term 'discrimination' means any unequal treatment or arbitrary action or distinction based on a person's sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, nationality, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation or other status.
- (g) The term 'harassment' means intentional behaviour which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile or offensive environment.
- (h) The term 'social media' includes blogs, business networks, social networks, forums, photo sharing, products/services review, social bookmarking, social gaming, video sharing and virtual worlds.

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<sup>23</sup> ED Decision No R-ED-2017-32 adopting the Code of Conduct applicable to all persons participating in Frontex Operational Activities. The terms and references in the CoC should be read from 1896/2019 (EU) Regulation.

<sup>24</sup> Pursuant to Article 54 of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.09.2016, p. 1), a status agreement shall be concluded by the Union with the third country concerned in cases where it is envisaged that teams will be deployed to a third country in actions where the TMss will have executive powers, or where other actions in third countries require it.

## CHAPTER II

### PRINCIPLES

#### Article 3

##### *Lawfulness*

Participants must:

- (a) comply with international law and Union law as well as the national law of both home and host Member States.
- (b) meet the obligations imposed upon them by the provisions stated in the operational/implementation plan.

#### Article 4

##### *Fundamental rights*

Participants must:

- (a) promote, respect, fulfil and protect human dignity and the fundamental rights of every individual, regardless of their sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, nationality, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation or other status, with particular focus on vulnerable persons.
- (b) ensure respect for the relevant international and European instruments regarding fundamental rights protection, including the asylum acquis.

#### Article 5

##### *International protection*

Participants must:

- (a) promote, respect, fulfil and protect the right of persons seeking international protection to be identified, receive adequate assistance and be informed in an appropriate way, preferably using a number of the most common languages that third-country nationals understand or are reasonably believed to understand, about their rights and relevant procedures.
- (b) ensure that persons in (a) above must be referred without delay to the national authorities responsible for considering their requests, in compliance with the principle of non-refoulement, the prohibition against arbitrary and collective expulsions and the right to seek asylum.
- (c) ensure that persons in their custody are treated in accordance with the right to human dignity, and are provided with basic necessities, including food, water, shelter and medical attention to meet their individual needs.
- (d) ensure that special consideration is given to vulnerable persons as well as to persons seeking international protection.

#### Article 6

##### *Performance of duties*

Participants must:

- (a) ensure that instructions, directives and required duties given to them are carried out promptly and in accordance with the training received on the protection of fundamental rights.
- (b) display that they are on a Frontex operational activity, unless such transparency would compromise either their personal safety or duly justified operational objectives.



- (c) use resources put at their disposal responsibly and avoid unnecessary waste: such resources may include mobile offices, cars, computers or phones.

## Article 7

### *Responsibility*

Participants are primarily responsible for all the actions in the context of their participation in a Frontex operational activity. Any breach of the participants' legal obligations or this code of conduct, or any failure by those participants to refer or report any suspected breaches of this code of conduct, should be reported using the appropriate channels.

## Article 8

### *Conflict of interests*

Participants must refrain from any activities which would undermine or compromise their impartiality and the appropriate performance of their duties.

## Article 9

### *Confidentiality*

1. The processing of personal data by participants must comply with the applicable Union as well as national data protection law.
2. Participants must not record any aspect of Frontex operational activities for private use. Professional information in the possession of a participant in current, past or planned Frontex operational activities must not be publicly disclosed, including on social media, unless the performance of the duty strictly requires disclosure, or such disclosure has been appropriately authorised in accordance with the applicable standards.
3. Participants must not express themselves regarding current, past and planned Frontex operational activities in the media, including social media, unless explicit authorisation is given, in accordance with the operational/implementation plan or other similar agreed rules.

## Article 10

### *Behavioural Standards*

Participants, whether on or off duty, must:

- (a) not behave in a way likely to compromise the prestige and the nature of the public mission in which they are invested, or to bring discredit upon their organisation, entity or Frontex.
- (b) act with fairness, impartiality and non-discrimination and treat all persons with dignity, courtesy and respect.
- (c) not take any actions contrary to public order.
- (d) not use vulgar, obscene or otherwise offensive speech or gestures that could be considered abusive.
- (e) not be ignorant of cultural differences when interacting with persons so as to cause misunderstandings.

## CHAPTER III

### PROHIBITED CONDUCTS

## Article 11

### *Prohibition of abuse of authority and position*

All improper use of a position of influence, power or authority is forbidden.

## Article 12

### ***Non-Discrimination***

All forms of discrimination as defined in Article 2(f) towards persons participating in, involved in or otherwise affected by Frontex operational activities, or the general public is forbidden.

### **Article 13**

#### ***Prevention of harassment***

All forms of harassment as defined in Article 2(g) towards persons participating in, involved in or otherwise affected by Frontex operational activities, or the general public is forbidden.

### **Article 14**

#### ***Consumption of alcohol***

1. The consumption of alcohol while on duty is forbidden.
2. The consumption of alcohol off duty must be moderate, unless the operational/implementation plan prohibits any such consumption.
3. A participant unexpectedly called out for duty is obliged, at no risk of discredit, to say that he/she has consumed alcohol and may not be fit for duty.
4. A participant in a state of intoxication due to the consumption of alcohol must not report for duty or appear in public.

### **Article 15**

#### ***Use of narcotics and drugs***

1. The use or possession of narcotics or drugs, unless prescribed for medical reasons, is forbidden.
2. A participant in a state of intoxication due to the use of narcotics or drugs must not report for duty or appear in public.

### **Article 16**

#### ***Prohibition on sexual services and sexual abuse***

1. Using or soliciting services of a sexual nature by participants, whether in public or in private, is forbidden. Engaging in abusive and exploitative sexual activities by participants is strictly prohibited.
2. Participants shall refrain from any conduct of a sexual nature that implies an abuse of their power and influence by virtue of their position.
3. Participants should show full awareness of cultural differences in particular related to gender issues when interacting with persons affected by Frontex operational activities in order to avoid any misperceptions.

### **Article 17**

#### ***Corruption and misconduct***

1. Participants must not engage in any form of corrupt activity.
2. The use by participants of their public position for illegitimate private gain as well as the acceptance of unjustified rewards for actions taken in Frontex operational activities is forbidden.

## **CHAPTER IV**

### **SPECIAL RULES AND PRINCIPLES APPLICABLE TO LAW ENFORCEMENT OFFICERS**

## Article 18

### *Use of force and weapons*

1. Pursuant to Article 40 of the European border and coast guard regulation, while performing their tasks, members of the teams may only use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State. The host Member State may, with the consent of the home Member State, authorise members of the teams to use force in the absence of border guards of the host Member State.
2. The host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards or staff involved in return-related tasks. This information is shared in advance with Frontex and the Member States.
3. The use of force, and in particular of weapons, must be as a last resort and not exceed the minimum degree necessitated by the circumstances. It has to be proportionate for the performance of duties or in legitimate self-defence or in legitimate defence of other persons and must be in strict compliance with the relevant guarantees provided for in national, Union and international law.

## CHAPTER V

### FINAL PROVISIONS

## Article 19

### *Awareness*

Participants must:

- (a) prior to their engagement in a Frontex operational activity, get acquainted with the content of this code of conduct, for example through appropriate means provided by national authorities responsible for the deployment of the participants or by Frontex.
- (b) keep themselves informed about the most up-to-date Frontex objectives, good practices and policies.

## Article 20

### *Duty to cooperate and to inform*

1. Participants have the duty to cooperate in the gathering of facts of any incident which was reported during a Frontex operational activity.
2. Participants must provide information about the complaints mechanism and complaint form to any person who wants to report an alleged fundamental rights violation under that mechanism.

## Article 21

### *Sanctions*

1. In the case of a violation of this code of conduct by a member of Frontex staff, the Executive Director must take adequate measures which may include the immediate removal of the member of Frontex staff from the Frontex operational activity, in accordance with the Staff Regulations<sup>25</sup> and the Frontex Disciplinary Procedure<sup>26</sup>.
2. If the violation was committed by a person deployed by a Member State, the Executive Director communicates the incident to the responsible Member State. The Executive Director expects the relevant authority of the Member State to use its powers regarding the necessary disciplinary measures and, if applicable, suspend or

<sup>25</sup> Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities (and the Conditions of employment of other servants of those Communities) (OJ L 561, 4.3.1968, p. 1).

<sup>26</sup> MB Decision 23/2012 adopting Frontex Disciplinary Procedure or its successor.



remove the person concerned from the respective pool for a defined period. Nevertheless, if the continued engagement of this person jeopardises the Frontex operational activity in question, the Executive Director may decide to suspend or remove him or her from that activity.

## CHAPTER I INTRODUCTION

### Article 1 Scope and subject matter

1. This Code sets out common standardised procedures and principles to be followed during all return operations (hereinafter “RO”) and return interventions (hereinafter “RI”) coordinated or organised by the European Border and Coast Guard Agency (Frontex).
2. This Code is addressed to all participants as defined below.

### Article 2 Relation with Frontex Code of Conduct applicable to all persons participating in Frontex operational activities and other relevant documents

1. This Code complements the provisions of the Code of Conduct applicable to all persons participating in Frontex operational activities and is to be read and interpreted in line with the relevant international and EU law (see Annex).
2. Technical and detailed instructions for the practical implementation of Frontex coordinated or organised RO and RI are included in operational documents agreed between Frontex and the Member States involved.
3. Other documents adopting guidelines or best practices for RO and RI developed and updated by Frontex together with the authorities of Member States and the Frontex Consultative Forum, provide operational guidance for Frontex coordinated or organised RO and RI in order to standardise procedures and to simplify their organisation.

### Article 3 Definitions

1. For the purpose of this Code, the following definitions apply:
  - a) The term ‘Member State’ (hereinafter “MS”) also includes the Schengen Associated Countries.
  - b) The term ‘participant’ means any person, including escorts, monitors, interpreters and medical staff, taking part in a RO or RI, other than the returnee.
  - c) The term ‘return operation’ means an operation that is coordinated by Frontex and involves technical and operational reinforcement being provided to one or more MS under which returnees from one or more MS are returned either on a forced or voluntary basis.
  - d) The term ‘return intervention’ means an activity of the European Border and Coast Guard Agency providing MS with enhanced technical and operational assistance consisting of the deployment of European return intervention teams to MS and the organisation of RO.
  - e) The term ‘collecting return operation’ means a RO for which the means of transport and forced-return escorts are provided by a third country of return.
  - f) The term ‘Organising Member State’ (hereinafter “OMS”) means the MS which is responsible for the organisation of a RO.
  - g) The term ‘Participating Member State’ (hereinafter “PMS”) means a MS other than the OMS which participates in a RO or RI by providing technical equipment or staff.
  - h) The term “Escort Leader” means the forced-return escort who is, in accordance with the instructions given, in charge of managing a national group of escorts during a RO. Each organising and participating MS appoints there.
  - i) The term ‘forced-return escort(s)’ refers to the security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the MS.
  - j) The term ‘head of RO’ means the person appointed by the OMS as having the overall responsibility for a RO. Where no particular person is appointed, the OMS is to be considered as the head of the RO.

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<sup>27</sup> ED Decision No R-ED-2018-40 adopting the Code of Conduct for Return Operations and Return Interventions coordinated or organized by Frontex. The CoC is applicable to all participants who carry out operational activities related to the implementation of Readmission Activity in Greece. The terms and references in the CoC should be read from 1896/2019 (EU) Regulation.

- k) The term ‘forced-return monitor(s)’ refers to persons who monitor the RO in accordance with the effective monitoring system established by MSs pursuant to Article 8(6) of the Directive 2008/115/EC<sup>28</sup> (hereinafter “Return Directive”).
  - l) The term ‘fit-to-travel’ refers to a returnee’s medical condition (both physical and mental), which allows the person to travel safely.
  - m) The term ‘pre-departure phase’ means the period starting with transportation of the returnee(s) to the place of departure of the means of transportation used to implement the RO.
  - n) The term ‘vulnerable person’ may include minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illness, persons with mental disorders and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence.
  - o) The term ‘non-refoulement’ means a legal principle in accordance with which no persons should be returned to a country where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their life or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion.
2. Other definitions provided for in the European Border and Coast Guard Regulation<sup>29</sup> (hereinafter “Regulation”) apply.

## CHAPTER II GENERAL PRINCIPLES

### Article 4 Respect for Fundamental Rights

1. RO and RI are to be conducted in a humane manner and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and in other relevant international instruments, in particular human dignity, the right to life, the principle of non-refoulement, the right to asylum, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security, the rights of the child, the best interests of the child, the rights to the protection of personal data and non-discrimination, and the right to respect for private and family life and privacy.
2. RO and RI are to be conducted without discrimination on any ground such as gender, racial or ethnical origin, genetic features, language, religion or belief, nationality, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation or other status.
3. A RO or RI must be suspended or terminated in whole or in part if the Executive Director considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 25(4) of the Regulation.
4. In accordance with Article 27(4) of the Regulation, Frontex’s financial support to MS for the RO is conditional upon full respect of the EU Charter of Fundamental Rights.

### Article 5 Safety in return operations and return interventions

Returnees’ safety, as well as the safety of the participants and of the crew members, are paramount during RO and RI. The captain of the aircraft/vessel or head of RO/the competent authorities of the MS hosting an RI or Frontex, depending on the phase of the RO or RI, must suspend or terminate the RO or RI in case they consider its continuation unsafe.

### Article 6 Cooperation with returnees and duty to inform

<sup>28</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>29</sup> Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).



1. The competent authorities of the OMS and PMS as well as participants, taking into account individual risk assessments, shall seek cooperation with each returnee at all stages of the RO or RI in order to avoid or limit to the minimum extent necessary the use of force.
2. The competent authorities of the OMS and PMS are expected to give sufficient and clear information to the returnees about the RO or RI.
3. The head of RO or the competent authorities of the MS hosting an RI, as applicable, ensure that information about the possibilities to lodge a complaint concerning alleged fundamental rights violation during the RO or RI is provided, for example via Frontex complaints mechanism in compliance with the applicable rules.

#### **Article 7**

##### **Use of coercive measures**

1. The use of coercive measures must be legal, necessary and proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and their physical integrity. The use of coercive measures takes appropriate account of the individual circumstances of each person, such as their vulnerable condition.
2. Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property.
3. Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited. The relevant periodically reviews the continuing necessity and proportionality of deploying coercive measures, and particularly of applying means of restraint, when these are used for prolonged periods, based on a dynamic risk assessment.
4. The OMS and Frontex provide for a list of authorised restraints in the operational documents in advance of the RO or RI. Where applicable, this list must be distributed to the relevant PMSs prior to the RO or RI. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures under medical supervision to ensure flight security.
5. No PMS participants are required to use coercive measures not allowed under their national legislation even if those measures are accepted by the OMS and Frontex for that particular RO or RI.
6. Returnees must not be threatened in order for them to board a means of transport. They must not be punished for not having done so without prejudice to sanctions provided for by applicable legislation.

#### **CHAPTER III**

##### **ORGANISATION OF THE REMOVAL**

#### **Article 8**

##### **Fitness to travel and medical examination**

1. The returnees are to be removed only as long as they are "fit-to-travel" at the time of the RO or RI. The OMS must refuse the participation of a returnee who is not fit-to-travel.
2. In a reasonable time prior to the RO or RI, the authorities of the MS are required to provide for a medical examination of a returnee, subject to their agreement, where they have a known medical condition or where medical treatment is required. Medical procedures should be carried out in a manner that observes the principles of medical confidentiality and dignity.
3. Relevant PMS inform the OMS in advance about any medical condition of a returnee which would need special care and attention.
4. The processing of medical information must be carried out in line with applicable EU or national data protection legislation. The medical data may only be exchanged among doctors to the minimum necessary extent. In the case medical information cannot be exchanged amongst doctors, s will enable the exchange of this data with due confidentiality.

#### **Article 9**

##### **Selection and training**

MS and, where applicable, Frontex, carefully select participants taking into account their particular functions in RO and RI and ensure that, prior to their participation, they have received appropriate training in relevant Union and international law, including on the protection of fundamental rights and access to international protection.

#### **Article 10** **Referrals**

Participants must refer persons seeking international protection and vulnerable persons without delay to the competent authorities of the relevant MS that are responsible for considering their requests.

#### **Article 11** **Responsibility**

Without prejudice to individual responsibility pursuant to Article 7 of the Code of Conduct applicable to all persons participating in Frontex operational activities, the competent authorities of the MS have the overall responsibility in accordance with general principles of State responsibility (e.g. for investigating and sanctioning actions of their staff), and according to Article 20 of this Code as well as Articles 29(5), 30(5) and 31(5) of the Regulation, irrespective of whether the participants are State employees or employed by a private contractor.

#### **Article 12** **Identification**

All participants should be identifiable and fully distinguishable from returnees. For this purpose, official vests, armbands, badges or some other distinguishing signs are required to be worn while on duty.

#### **Article 13** **Recording**

Any form of recording during a RO or RI is possible only when specifically agreed between the relevant MS, Frontex and/or the company operating the means of transport, and in compliance with applicable legislation on protection of personal data. Recording for private use is prohibited.

#### **Article 14** **Medical staff and interpreters**

1. During each RO and RI at least one medical doctor provided by the OMS should be present.
2. The OMS provides appropriate medical staff and, depending on an assessment of the returnees and escorts' needs and language skills, suitable interpreters during the RO or RI.
3. If necessary, the PMS may also provide own medical staff in a RO or RI.

### **CHAPTER IV** **MONITORING SYSTEM FOR FORCED-RETURN OPERATIONS**

#### **Article 15** **Scope and nature**

1. The monitoring of forced RO aims at gathering information and reporting of Fundamental Rights compliance and, where appropriate, making recommendations for the strengthening of the protection of returnees.
2. The monitoring system established in accordance with Article 8(6) of the Return Directive must be effective and involve monitoring by organisations/bodies independent from the authorities enforcing return. MS taking part in a forced RO are required to ensure that they have an effective forced return monitoring system in place.
3. The monitoring of forced RO should be carried out on the basis of objective and transparent criteria and covers the whole forced RO, from the pre-departure phase until the hand-over of the returnees in the country of return or back to the country of departure.

## **Article 16**

### **Forced-return monitors**

1. In order to ensure an effective monitoring system, forced-return monitors must have access to all relevant information concerning the RO, including:
  - a) timely communication of the date and time of the RO, the country(ies) of return and necessary travel documents, the number and origin of returnees particularly including any forms of vulnerability, e.g. pregnant women, families with children, elderly people, persons with disabilities or with a medical condition;
  - b) access to returnees, unless prevailing individual or collective risk assessment prescribes otherwise;
  - c) unimpeded access to all areas used for the RO.
3. Forced-return monitors have the right to attend the briefings prior to the RO as well as participate in the debriefings where they may provide a brief account of the main findings.
4. Forced-return monitors may inform the head of RO and/or the (s) of any perceived irregularities but may not interfere with the planned execution of the RO.
5. When feasible and subject to prior agreement between the MS concerned, forced-return monitors may also monitor on behalf of other MS taking part in an RO.
6. Forced-return monitors may use the services of participating interpreters in order to communicate with the returnees.

## **CHAPTER V**

### **FINAL PROVISIONS**

## **Article 17**

### **Data protection**

The processing of personal data by participants must comply with the applicable EU and/or national data protection law.

## **Article 18**

### **Awareness**

1. MS ensure that participants are:
  - d) acquainted with the content of this Code prior to their deployment in the RO or RI;
  - e) informed about the most up-to-date Frontex objectives, best practices and policies;
  - f) acquainted with relevant referral mechanisms according to Article 10.
2. Frontex ensures that the content of this Code is communicated to the national authorities of the countries of return.

## **Article 19**

### **Reporting**

Any participant in the RO or RI who has reasons to believe that a violation of this Code or of Fundamental Rights has occurred is required to report it to Frontex via the appropriate channels, such as the Frontex Serious Incident Reporting (SIR) system.

## **Article 20**

### **Investigation procedure and right to be informed**

1. If the violation was committed by a person assigned by a MS, Frontex must communicate the facts to the competent national authority concerned that provides for an effective and independent investigation.
2. The competent authorities of the MS are expected to inform Frontex of the conduct and results of such investigation.

3. The Executive Director may request information on the conduct and results of the investigation and may decide to inform the Management Board accordingly.
4. The returnee may request information from the competent authority and should be informed of the measures taken and possible remedies.

## Article 21 Sanctions

1. In the case of a violation of this Code by a member of Frontex staff, the Executive Director takes adequate measures in accordance with the relevant applicable rules<sup>30</sup>.
2. If the violation was committed by a person deployed by a MS, the Executive Director communicates the incident to the responsible MS. The Executive Director expects the relevant authority of the MS to use their powers regarding the necessary disciplinary measures and, if applicable, suspend or remove the person concerned from the respective pool for a defined period. Nevertheless, if the continued engagement of this person jeopardises the Frontex RO or RI in question, the Executive Director may decide to suspend or remove him or her from that activity.

### 7.3.2. Fundamental Rights Monitors (FROMs)

FROMs, employed as statutory staff, are entrusted with tasks related to monitoring compliance with fundamental rights, including through providing advice and assistance on fundamental rights in the preparation, conduct and evaluation of operational activities of the Agency.

#### FROMs shall:

- Contribute to the promotion of fundamental rights as part of European integrated border management.
- Provide advice and assistance on fundamental rights in the preparation, conduct and evaluation of operational activities of the Agency which the FRO has assigned them to monitor.
- Contribute to the training activities of the Agency on fundamental rights.
- Follow the preparation of operational plans and report to the FRO to enable him or her to fulfil his or her tasks.
- Contribute to the operational briefings and debriefings;
- Conduct visits, including long-term visits, where operational activities take place. In the implementation of the activities, the FROMs will work in close cooperation with the host MS and according to the Management Board rules of FRO independence including FROMs.
- Contribute to the evaluations of the operational activities by providing observations to the Frontex Evaluation Reports.
- Support FRO in monitoring fundamental rights compliance of the operational activities.
- Cooperate and liaise with the coordinating officer and provide advice and assistance to the coordinating officer<sup>31</sup> in his/her task to monitor the correct implementation of the operational plan, including as regards the protection of fundamental rights. For this purpose, regular briefings with FCO for the exchange of relevant information and updates will be held, also to facilitate contacts with other actors in the field.
- Inform the coordinating officer and report to the FRO on any concerns related to possible violations of fundamental rights within the Agency's operational activities.
- Act as forced-return monitors, if nominated by the FRO for the FROM pool.

FROMs shall have access to all areas in which the operational activity of the Agency takes place and to all its documents relevant for the implementation of that activity.

The FRO shall appoint the FROMs and they shall be under his or her hierarchical supervision. FROMs should be independent in the performance of their duties pursuant to Article 110(5) of the Regulation. When present in an operational area, FROMs shall wear insignia that clearly allow for their identification as a FROM.

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<sup>30</sup> Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities (and the Conditions of employment of other servants of those Communities) (OJ L 561, 4.3.1968, p. 1) and Frontex Management Board Decision No 23/2012 adopting Frontex Disciplinary Procedure.

<sup>31</sup> At least one fundamental rights monitor shall assist and advise the coordinating officer.



#### 8.3.4. Observers

##### Third Country Observer

The Agency may, with the agreement of the MS concerned, invite observers from TC to participate in the operational activities in order to enhance the cooperation and exchange of best practices.

Specific Activity Plan (extract from JO FOA Land 2021 OPLAN)

##### Third Country Observers

Frontex can invite border guards/coast guards/police officers etc. from third countries (TC), to be deployed as TC observers in the JO, after the prior consultation and agreement of respective MS authorities and according to Article 73(2) of the Regulation.

The observers, who have no executive powers and who are not authorized to take any measures, may only advise and exchange/obtain practical experience in implementation of Schengen Borders Code and will receive appropriate operational briefing and debriefing delivered by Frontex.

In particular, the observers from Third Countries can:

- Intermediate between the national authorities of the host MS and their national authorities on border related incidents and information sharing
- Assist with special language and/or professional skills
- Exchange intelligence information regarding the modus operandi, routes and criminal networks operating in the operational area detected during and in the framework of the operation, in accordance with their respective legislation
- Execute further tasks and duties according to the national legislation of the host MS

Observers cannot transmit to the deploying TC authorities personal data to which they had access while acting in their observer role.