

FRONTEX'S ACTION PLAN IN RELATION TO THE EUROPEAN OMBUDSMAN'S RECOMMENDATIONS - OI/5/2020/MHZ

I. OPERATIONAL PLANS

RECOMMENDATION 1 - *Frontex should clearly stipulate, in all operational plans, that participants in Frontex operations should accept complaints from individuals who believe they have been victims of fundamental rights violations, or their representatives, and transmit them to Frontex via the complaints mechanism.*

Points 11-12 of the detailed assessment:

11. Regulation 2019/1896 states that the ‘operational plans’, which apply to all participants in Frontex operations, should include provisions for “a mechanism to receive and transmit to the Agency complaints (...) alleging breaches of fundamental rights”. In the Ombudsman’s view, this obligation should be clearly listed in the operational plans, among the tasks and responsibilities for ensuring the respect for fundamental rights, and alongside the obligation to provide information about the complaints mechanism. It would also be beneficial if the **Code of Conduct applying to all persons participating in Frontex’s operations were to mention the obligation to receive complaints and transmit them to Frontex**, and not only the obligation to provide information about the mechanism.

12. The fact that this is not currently the case could help explain why no complaints have yet been transmitted to the mechanism through participants in Frontex operations. Moreover, the FRO stated that the **subjects of forced returns are not always provided with complaint forms**, even though a member of Frontex’s staff is present on every forced return coordinated by Frontex. While the Ombudsman hopes that the presence of fundamental rights monitors on the ground will improve the situation, she is making a suggestion for improvement to address this.

Actions	Status / Timeframe
1/ Include in all operational plans a reference that a complaint can be handed over directly to Frontex staff present in the operational area who will forward it to the Complaints Team within the Frontex Fundamental Rights Office.	Completed Operational plans already include this information
2/ Amend the Code of Conduct applying to all persons participating in Frontex’s operations, and the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, to mention the obligation to receive complaints and transmit them to Frontex via Frontex staff present at the operational area.	Ongoing - planned adoption of the revised Codes of Conduct after review by the Consultative Forum is completed
3/ Oblige all participants of Frontex operational activities as defined in the operational plans, including the Fundamental Rights Monitors on the	Completed

ground, to provide the subjects of forced returns with information to ensure their effective access to the complaint mechanism. Ensure that complaint forms are made available to the returnees expressing a wish to complain or alleging in any way fundamental rights violations, subject to compelling security considerations based on the outcomes of the individual risk assessment of each returnee.	Operational plans already include this obligation
4/ Include additional stipulation on the complaints mechanism procedure in the Implementing Plans for all future Pilot Projects.	Ongoing¹ The action will be implemented in all new Pilot Projects to be launched

II. MEMORANDA OF UNDERSTANDING WITH NON-EU COUNTRIES

RECOMMENDATION 2 - *In its memoranda of understanding or other relevant documents concluded with non-EU country bodies, Frontex should stipulate that Frontex (via the FRO) is responsible for receiving all complaints on non-compliance with fundamental rights. After classifying them, the FRO would then transfer complaints to the relevant national body, where necessary.*

Point 47 of the detailed assessment

47. To make it easier for potential victims of fundamental rights violations to report incidents in non-EU countries where Frontex operations are ongoing, Frontex should be responsible for receiving complaints in the first instance, and deciding whether they need to transfer the complaint to the relevant national body. In its memoranda of understanding with the national human rights bodies of non-EU countries, Frontex should consider including provisions to this end.

Actions	Status / Timeframe
5/ Raise awareness on Frontex' complaints mechanism via dedicated information (i.e. booklet available in 14 languages, complaint form and privacy statement in the operational area; video on Frontex website) with a view to encouraging its use by complainants as established also in the operational plans.	Ongoing Action is being implemented with third countries
6/ Promote the information via respective EU Delegations, Frontex Liaison Officers in third countries as well as in the framework of relevant capacity building projects implemented by the Agency.	Ongoing

III. PUBLIC INFORMATION MATERIAL ON THE COMPLAINTS MECHANISM

RECOMMENDATION 3 - *In its public information material, Frontex should make clearer to potential complainants the benefits of the complaints mechanism, notably that it is free of charge. Frontex should also draw attention to the fact that complainants are not*

¹ Action was Completed

supposed to be penalised for submitting complaints, and that submitting complaints should not prejudice other procedures, such as asylum applications.

Point 14 of the detailed assessment

14. Migrants and refugees from different backgrounds may not be aware that redress mechanisms are standard and/or are free of charge in EU countries, or may fear that submitting a complaint may prejudice other procedures, such as potential asylum applications. The public information material about the complaints mechanism could be adapted to draw greater attention to this.

Actions	Status / Timeframe
7/ Make the information on the complaint mechanism available to potential complainants in a comprehensive booklet.	<p>Completed</p> <p>The booklet available for potential complainants, translated into 14 languages, includes information that complaints can be submitted regardless of situation of the complainants. It specifies that personal information of the complainants will be shared with the competent authorities only with the consent of the complainant, and will not be processed for any purpose other than the investigation of the complaint. Finally, it mentions that complainants can also address their cases to other institutions, such as national courts.</p>
8/ Inform potential complainants by the means of a poster that the complaints mechanism is free of charge and that complainants have the right to complain to Frontex.	<p>Q1 2022²</p> <p>New poster on the mechanism to be designed</p>
9/ Provide complainants with complaint forms which specifically mention that filing a complaint is free of charge and that Frontex will treat all complaints as confidential.	<p>Completed</p>
10/ On Frontex website, provide video information on the complaints mechanism explaining in which situations complaints may be submitted to the Agency with examples.	<p>Completed</p>
11/ Update the Frontex website to include information that submitting a complaint is free of charge and does not prejudice other procedures, such as an application for asylum.	<p>Completed</p>

RECOMMENDATION 4 - The FRO should seek to develop permanent channels of cooperation with civil society organisations present on the ground where Frontex operates and provide

² Modified timeframe – Q3 2022

them with information material on the complaints mechanism, which explains the procedures for those representing individuals that wish to submit complaints.

Points 16-17 of the detailed assessment

16. It is therefore crucial that civil society organisations specialised in human rights are able to help individuals by not only submitting complaints on their behalf to the complaints mechanism, but also actively following how complaints are handled.

17. The Ombudsman is convinced that cooperation with civil society is essential for the complaints mechanism to function well. It would be useful for the FRO to develop formal channels of cooperation with civil society organisations present on the ground where Frontex operates, and Frontex's Consultative Forum which includes representatives of civil society could play an important role to this end. The FRO should also make clear to civil society organisations how it considers the complaints mechanism applies to border guards of a host Member State who are present in the area of Frontex operations but are not directly part of the operation.

Actions	Status / Timeframe
12/ The Fundamental Rights Monitors to strengthen their cooperation with civil society by holding regular meetings, providing information materials and exchanging of relevant information.	Q1 2022 ³
13/ The FRO to stress this in exchanges with Frontex's Consultative Forum which includes representatives of civil society.	Q3 2021 onwards ⁴

IV. REVISED IMPLEMENTING RULES FOR COMPLAINTS MECHANISM

RECOMMENDATION 5 - *Frontex should consider allowing anonymous complaints and rewording its complaint form in relation to anonymised complaints being rejected by the certain national authorities. When forwarding complaints submitted by representatives of individuals who wish to stay anonymous, the FRO should encourage the national human rights body and the national authority dealing with the complaint to use all means at their disposal to resolve the alleged issues, in cooperation with the representatives.*

Points 18-20 of the detailed assessment

18. Already in 2016, the Consultative Forum recommended that anonymous complaints be accepted as this could encourage individuals to use the complaints mechanism. The first step to this end would be to ensure the new complaints mechanism implementing rules include a provision allowing complainants to remain anonymous, even if there is a requirement for such complainants to have non-anonymous representatives.

19. Certain national authorities and/or human rights bodies may be procedurally precluded from dealing with anonymous complaints. However, this does not mean that there is no purpose served by the FRO forwarding such complaints to them. After having received such a complaint, these bodies are informed about the issues and may tackle them on their own initiative or otherwise. They may

³ Action was Completed

⁴ Action was Completed

also make contact with potential representatives of anonymous complainants, if they believe there are additional steps the complainant should take.

20. In the same vein, the complaint form contains information on confidentiality, which may lead to confusion.

RECOMMENDATION 6 - For complaints alleging violations of the rules on the use of force, the revised implementing rules should make it clear which rules on the use of force are concerned (notably by referring to Annex V of Regulation 2019/1896). The implementing rules should also set out which specific procedural steps, if any, are foreseen within the complaints mechanism to deal with such complaints.)

Points 21-22 of the detailed assessment

21. Apart from complaints about alleged violations of fundamental rights (both actions and failure to act), the mechanism will now also deal with complaints about violations of the rules on the use of force. Complainants alleging violations of the rules on the use of force do not need to be affected by the violations about which they complain.

22. However, it is important to specify, in the new complaints mechanism implementing rules, what rules on the use of force are concerned and, in a separate section, which specific procedural steps are foreseen in the mechanism regarding such complaints.³⁴ It would also be important to specify what a failure to act could be; this could include situations such as the failure to refer migrants who asked for international protection to the relevant authorities. The complaints mechanism implementing rules ('The Agency's rules on the complaints mechanism') are published on Frontex's webpage dedicated to fundamental rights. The new complaints mechanism implementing rules should avoid ambiguity and be so explicit that there is no need for guidelines on their application.

RECOMMENDATION 7 - The revised rules should:

- **clarify what is meant by a 'failure to act', including by giving examples, and clarify how individuals may complain about such a failure. (Points 22 of the detailed assessment.)**
- **specify what information should be contained in the reports sent by the national authorities to the FRO, after it has forwarded a complaint to them. For example, a template for such reports could be included as an annex to the rules. (Point 31 of the detailed assessment)**
- **stress that Member States are obliged to cooperate with the FRO, and specify the potential sanctions for violations. (Point 34 of the detailed assessment.) define a deadline for the FRO to determine the admissibility of a complaint. (Point 23 of the detailed assessment).**
- **provide for a procedure for appealing decisions of the FRO, in line with Article 111(5) of Regulation 2019/1896, which states that the FRO "shall reassess the complaint if the complainant submits new evidence in situations where the complaint has been inadmissible of unfounded". (Point 25 of the detailed assessment).**
- **stipulate that the FRO reports directly to the Management Board, and reports to the Executive Director only concerning possible violations of fundamental rights reported to the FRO by the fundamental rights monitors as the FRO "deems necessary".**

Point 44 of the detailed assessment

44. Regulation 2019/1896 reinforced both the role and the independence of the FRO. The FRO is to be assisted by the deputy FRO and at least 40 fundamental rights monitors, who will act on the ground under the supervision of the FRO. The fundamental rights monitors may also be assigned complaints mechanism tasks. The FRO's independence was confirmed by the rules issued by the Management Board in January 2021. In particular, according to Regulation 2019/1896, the FRO should report directly to the Management Board, and to the Executive Director only on possible violations of fundamental rights reported to the FRO by the fundamental rights monitors as the FRO "deems necessary". The new implementing rules for the mechanism should take into account this difference.

Actions	Status / Timeframe
14/ Revise the complaints mechanism.	<p>Q4 2021⁵</p> <p>The decision of the Executive Director adopting the revised complaints mechanism is planned for adoption in November 2021⁶</p>
15/ Adopt special rules to guarantee the independence of FRO and his or her staff.	Completed

V. REPORTING AND PUBLICATIONS

RECOMMENDATION 8 - Frontex should publish on its website the FRO's annual reports for 2017, 2018, 2019 and 2020, and consider publishing the FRO's closing decisions on complaints (so-called 'final reports'), if necessary after having anonymised their content. Annual reports of the FRO could include a section on the concrete actions undertaken by Frontex and the Member States on the basis of the FRO's observations and recommendations, one year on.

Points 39 and 53 of the detailed assessment

39. However, simply publishing these reports will not be sufficient to ensure Frontex can be held accountable for the actions of the mechanism. To this end, the Ombudsman suggests that Frontex publish on its website the FRO's closing decisions on complaints (so called 'final reports'), if necessary after having anonymised their content.

53. However, it is essential that the FRO's advice is acted on to the greatest extent possible, and that the FRO monitors this. To this end, the FRO's annual reports could include a section on the concrete actions taken by the Frontex and the Member States following the FRO's observations and recommendations.

Actions	Status / Timeframe
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⁵ Action was Completed

⁶ The decision was adopted by Management Board Decision 19/2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism

16/ The FRO to include as of the 2021 Annual Report an overview on complaints, and to consider how to make public more information without compromising the situation of the complainants.	Completed: In the FRO public Annual Report 2020 - Annex, the individual complaints are listed including relevant information.
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RECOMMENDATION 9 - The FRO's rules on dealing with serious incident reports should be made public together with the implementing rules on the complaints mechanism.

Point 56 of the detailed assessment

56. It would be in compliance with the principles of good administration that once the FRO receives SIRs, the FRO could use a similar procedure to that employed by the complaints mechanism. To this end, the FRO's procedural rules on dealing with SIRs concerning suspected violations of fundamental rights should be made public, together with the mechanism's implementing rules.

Actions	Status / Timeframe
17/ Publish the SOPs on SIR on Frontex website.	Completed The SOP is published on Frontex website in the 'Key Documents' section. ⁷

⁷ As of 1 March 2022 – under 'Public register of documents' section