

ANNEX 1 - Complaint No. 1452/2022/MHZ

How Frontex organises and conducts debriefing interviews of migrants detained in the Centros de Atencion Temporal de Extranjeros

I. General introduction

To put the debriefing activities conducted in Spain into context, it is important to provide some information on the applicable legal framework in broader terms, namely how the Agency launches and implements joint operations.

In short, a joint operation, such as Joint Operation Indalo in Spain, is launched based on the request of a Member State (MS).

More precisely, the European Border and Coast Guard Agency (Frontex), on the basis of the European Border and Coast Guard Regulation¹ (the Regulation), ensures, together with the national authorities of the MS responsible for border management (including coast guards to the extent that they carry out border control tasks), the effective implementation of European integrated border management with a view to efficiently managing the crossing of external borders. More specifically, Frontex is responsible for organising appropriate technical and operational assistance to MSs at the EU's external borders. In this respect, Frontex organises and coordinates operational activities in cooperation with MSs, deploys the European Border and Coast Guard Standing Corps and provides necessary technical equipment. The Regulation also sets out that Frontex shall provide technical and operational assistance to the MSs in support of search and rescue operations for persons in distress at sea, which may arise during border surveillance operations at sea. The main legal framework, objectives, tasks and responsibilities of Frontex are laid down in the Regulation. Operational plans for operational activities are established according to Article 38 of the Regulation.

Frontex operations are based on detailed risk analyses of situations at the external borders, migratory trends, situations in countries of origin and transit, methods used by people-smuggling networks, and strengths and vulnerabilities of border controls at specific points on the EU's external borders. Prior to a joint operation a detailed operational plan is drawn up in cooperation with the MS facing upcoming challenges to its obligations regarding external border control. Such challenges include illegal immigration, current or future threats at its external borders and cross-border crime. An operational plan includes the type and amount of technical equipment required and the profiles of operational staff needed for the joint operation, including staff with executive powers.

It is important to stress that all deployed officers perform their duties under the command and control of the authorities of the MS hosting the joint operation.

Turning to the activity of debriefing, it refers to gathering information by interviewing migrants after they have crossed the EU external border irregularly. Interviews are conducted with the agreement of the person interviewed on a voluntary, anonymous and confidential basis. The information collected is then processed and used for risk analysis as well as for identifying suspects of cross-border crime as referred to in Article 90 of the Regulation.

Debriefing interviews are carried out by the Joint Debriefing Teams (JDT), which consist of debriefing officers, cultural mediators or interpreters, under the instructions of a host MS team leader, who represents the national authority.

a. Preparation for debriefing

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

Prior to a debriefing, the debriefing officer should ensure that the proper conditions are met for interviewing, including adequate privacy and the necessary equipment. If the conditions for debriefing are unsuitable, the members of the debriefing team should report the deficiencies to the host MS team leader assigned to the team and to the Frontex officer responsible for managing the team.

The debriefing officer should be informed about any medical condition of the migrant(s) and any measures which have been taken by the national authorities before the interview. In any case, the priority upon arrival is to address the basic needs of the migrants and provide medical assistance if required.

Debriefing officers do not interview minors. This is carried out by the competent national protection authorities. Before performing interviews, the debriefing team should be briefed by the local authorities about the migrants available for interviews.

Any migrant who has previously been identified by the national authorities or screening teams as a minor or is presumed to be a minor must not be interviewed by the debriefing officer. If a migrant claims that he or she is a minor during an interview, the debriefing officer must discontinue the interview and immediately inform the host MS representative for referral to the competent authorities/organisation.

To sum up, the host MS team leader and the debriefing officer, with the assistance of a cultural mediator/interpreter, must ensure that the interviewee is fit and able to undertake an interview and that he or she understands the purpose, and that an element of trust is engendered, sufficient to make natural conversation possible. If a migrant is unwilling to participate, the debriefing officer shall not insist and shall look for another person who is willing to be interviewed. However, it is sometimes the case that migrants offer themselves for interview at a later stage, possibly feeling mentally or physically stronger, having discussed the process with others, or if they have specific information they wish to impart outside of the official process.

b. Conducting debriefing interviews

After the security and medical checks and once the applicable national procedures have been completed by the MS authorities, the MS team leader allows the JDT access to the migrants who crossed the EU external border irregularly. Debriefing officers are not allowed to establish contact with these migrants without the permission and coordination of the national authorities.

The debriefing officers should identify themselves, the cultural mediator/interpreter and any other person present, to the migrant, explaining in a language they understand the role of the debriefing officer, the procedure to be followed and the reasons for the interview.

In accordance with the respective operational plan, the debriefing officer should observe the following instructions during interviews:

- If the debriefing officer identifies that a migrant suffers from clear signs of post-traumatic stress (physiological disturbance, physical harm, constant loss of memory, etc.), or has other health issues, the interview should not take place and the debriefing officer should notify the local authorities that the migrant in question may require special care.
- If, during debriefing, the migrant expresses in any form his or her willingness or interest to seek asylum or international protection or has been a victim of a crime (trafficking, etc.), the debriefing officer stops the interview and explains the referral mechanism of the host MS and refers the migrant to the competent national authorities.
- If, during a debriefing interview involving experts deployed to operations coordinated by Frontex, the interviewee claims a possible breach of fundamental rights, the debriefing officer should ask whether the interviewee wants to submit a complaint and proceed according to the Frontex Complaint Mechanism².

² As laid down in Management Board Decision 19/2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism.

If the debriefing officer identifies a vulnerable person, he or she should inform the host MS team leader before the interview commences or immediately afterwards if the information came to light during the interview.

As already mentioned, the collection of information during debriefing is conducted with the agreement of the migrant on a voluntary basis, ensuring the anonymity of the interviewee. No negative legal consequences arise with regard to the national procedures as a result of a migrant's agreement to being debriefed.

If interviewees disclose personal data related to persons suspected of cross-border crime, the debriefing team informs the interviewee that such personal data may be shared and used by competent MS law enforcement authorities for the purposes of preventing, detecting, investigating or prosecuting serious cross-border crime.

The reporting system including the reporting of debriefing officers is regulated in the operational plan of the Joint Operation which is agreed with the host MS. Debriefing reports are sent, stored and treated with confidentiality and are separated from other reports according to the operational plan. Persons other than the assigned officers from the national authorities (the analyst supporting the operation and the operational manager) should not be entitled to receive the interview reports. As a general rule, they should be distributed strictly on a need- and right-to-know basis. This is because debriefing reports often contain sensitive data. Disclosing information from interviews may seriously jeopardise the confidential nature of the debriefing activities and negatively impact the final outcome.

II. Reply to the specific concerns raised by the complainants

a. Fails to ensure access to legal aid for migrants in the context of debriefing interviews

Pursuant to Article 80(1) of the Regulation, Frontex shall guarantee the protection of fundamental rights in the performance of its tasks under the Regulation in accordance with relevant Union law and relevant international law. In this light, Frontex acknowledges that an individual can claim a right to legal assistance (respectively, legal aid) within the context of both the right to a fair trial and the right to liberty and security, as guaranteed, respectively, by Article 47 and Article 6 of the EU Charter of Fundamental Rights, and as resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law of the European Court of Human Rights (ECtHR). However, neither of those Articles as far as they guarantee a right to legal aid applies to debriefing interviews carried out by Frontex, for the reasons set out below.

According to the case-law of the ECtHR, legal aid should be provided primarily where a person is “charged with a criminal offence”. The ECtHR considers the notion of “criminal charge” to exist “*from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him*” (see [ECtHR, Ibrahim and Others v. the United Kingdom \[GC\], nos. 50541/08 and 3 others, 13 September 2016, § 249](#), and the case-law cited therein). This points towards a “substantive” approach, rather than a “formal” one in determining whether a “criminal charge” exists. According to ECtHR case-law, even a person questioned in respect of his/her suspected involvement in an offence, although formally treated as a witness, could be regarded as being “charged with a criminal offence”.

However, Frontex’s debriefing activities do not form part of criminal proceedings, nor are they conducted in a context which may be associated with such proceedings. As already explained above, the interview is conducted on a voluntary basis (and not based on suspicion against the person concerned), the anonymity of the interviewee is ensured, and no negative legal consequences can follow for the interviewee. In fact, and moreover, the ECtHR has ruled that a person is not considered to be under a “criminal charge” where that person is questioned in the context of border control and where the authority questioning him/her is not required to determine the existence of a reasonable suspicion that he/she committed an offence (see [ECtHR, Beghal v. the United Kingdom, no. 4755/16, 28 February 2019, § 121](#)). Therefore, Frontex considers that there is no obligation for it to provide legal aid. The debriefing interview is an anonymous source of information in the context of border management..

Simply because a person is detained (e.g. in the case of Article 5(1)(f) of the ECHR) does not automatically imply that a “criminal charge” exists (and therefore that legal aid should be provided). The legal test for the notion of “criminal charge” (as outlined above) does not support this.

Furthermore, legal aid should also be provided in proceedings where the person detained seeks review of the lawfulness of that detention. **However, it is clear from the purpose of debriefing interviews that no such proceedings to determine the lawfulness of any detention are at stake.** Simply put, debriefing interviews are not *habeas corpus* proceedings where guarantees to the right to a fair trial would apply (for comparison and contrast, see [ECtHR, Istrate and Others v. Moldova, nos. 8721/05, 8705/05 and 8742/05, 27 March 2007, §§ 86-87](#)). Therefore, there is no obligation for legal aid to be provided also from this point of view.

To conclude, while Frontex considers that it has no obligation to provide legal aid in the context of debriefing interviews, it does not mean that a potential “vacuum” of protection exists. From the EU law perspective, it is the Member States’ obligation to implement both Directive 2013/48/EU³ and Directive (EU) 2016/1919⁴, which envisage safeguards for suspects and accused persons in criminal proceedings (including as regards access to a lawyer and legal aid).

Finally, it should be noted that, in accordance with Article 82(4) of the Regulation, standing corps officers deployed as members of the teams shall only perform tasks and exercise powers under instructions from border guards of the host Member State. The description of the tasks and special instructions for the teams are, by definition, part of the operational plan (Article 38(3)(d) of the Regulation), which is binding on Frontex, the host Member State and the participating Member States.

Therefore, if a given host Member State wishes to provide special instructions to the members of the teams on debriefing interviews (for instance, that they should be conducted in the presence of a lawyer), such instructions are to be referred to in the respective operational plan. However, no such obligation as regards those interviews stems for Frontex from the applicable EU and international law as described above.

b. Does not keep a record of migrants’ consent for debriefings

Although the EBCG regulation allows the Agency to process the personal data of persons who crossed the EU external borders unauthorised⁵, keeping a record of consent in the context of debriefing interviews would reveal the interviewee’s identity. This defeats the purpose of anonymity, as the information provided could be connected to the interviewee. Ensuring anonymity in this way is further evidence that (i) there is no “criminal charge” against the person concerned (and, therefore, that Frontex does not have an obligation to provide legal aid); and (ii) more generally, that there are no negative legal repercussions for the person concerned.

c. Fails to ensure external oversight of debriefings

According to the Regulation, the Agency shall cooperate with Union institutions, bodies, offices and agencies, and may cooperate with international organisations, within their respective legal frameworks.

FRA and EASO are referred to among the Union agencies with which Frontex shall cooperate. Among the international organisations the following are mentioned: Office of the United Nations High Commissioner for Refugees, the Office of the High Commissioner for Human Rights, the International Organization for Migration and the Council of Europe and the Commissioner for Human Rights of the Council of Europe.

In addition, the Agency established, in accordance with the Regulation, a consultative forum⁶ which provides independent advice on fundamental rights matters. The consultative forum shall be consulted on the further

³ Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

⁴ Directive (EU) 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

⁵ See Article 88 of the Regulation

⁶ See Article 108 of the Regulation.

development and implementation of the fundamental rights strategy, on the functioning of the complaints mechanism, on codes of conduct and on the common core curricula. The Agency shall inform the consultative forum of the follow-up to its recommendations.

The Agency invites EASO, FRA and the United Nations High Commissioner for Refugees as well as other relevant organisations to participate in the consultative forum.

d. In selecting migrants and conducting debriefing interviews, does not take into account the potential vulnerabilities of migrants or the difficult situations of their detention in the Centros de Atencion Temporal de Extranjeros.

As already described, before interviewing migrants, the debriefing officer should ensure that proper conditions are met for interviewing, including the availability of adequate privacy and the necessary equipment. In addition, the debriefing officer will make sure that the interviewee is both fit and able to undertake an interview.

When a debriefing officer, during the selection or during the interview, identifies a vulnerable person in need of international protection or an unaccompanied minor, the debriefing officer must refer this person to the host MS team leader for further handling or through the established procedures to the competent national authority if the MS team leader is not available.

In all Frontex-coordinated Joint Operations, debriefing officers take into consideration potential and real vulnerabilities and report them in accordance with the procedures available (i.e. Serious Incidents Reports regarding possible breaches of fundamental rights, referrals of vulnerable people to national authorities, periodic reports on the facilities where debriefing activities take place).

ANNEX 2 - Complaint No. 1452/2022/MHZ

Response by the FRO to the letter of the European Ombudsman dated 21 September 2022

I. Scope of the response

1. On 21 September 2022, the European Border and Coast Guard Agency (Frontex or the Agency) received a letter (dated the same day) from the European Ombudsman concerning a complaint (no. 1452/2022/MHZ) on “how Frontex ensures respect of migrants’ rights in the context of ‘debriefing’ interviews”. In the letter, the European Ombudsman informs about the opening of an inquiry into two aspects of the complaint, and requests Frontex to provide a written reply to the following:

- (a) How Frontex organises and conducts debriefing interviews of migrants detained in the *Centros de Atencion Temporal de Extranjeros*.
- (b) How Frontex’s Fundamental Rights Officer (FRO) dealt with concerns raised by the complainants, including regarding the activities of fundamental rights monitors.

2. On the same day, the Agency requested the Fundamental Rights Officer (FRO) to provide a response to point (b) of the inquiry initiated by the European Ombudsman, namely on how the FRO dealt with the concerns raised by the complainants, including regarding the activities of Frontex’ Fundamental Rights Monitors (FROMs).

3. Accordingly, the present document focus on aspect (b) of the inquiry and provide information on the exchange of emails and meetings held with the complainants, monitoring missions and measures taken by the FROMs, and other actions taken by the FRO in relation to debriefing activities. Hence, the FRO will not enter into the merits of the aspects of the complaint concerning the compliance of debriefing activities with fundamental rights, which are the subject of the examination by the European Ombudsman under the point (a).

II. Function and role of the Fundamental Rights Office and Fundamental Rights Monitors

4. As provided for in the Regulation on the European Border and Coast Guard (EBCG Regulation)¹, the FRO is appointed by the Frontex management board to perform a number of tasks, which include advising the Agency and monitoring its compliance with fundamental rights. He (and his staff) is independent in the performance of his duties, and reports directly to the management board. The FRO is the Head of the Fundamental Rights Office, and accordingly manages the FROMs and is responsible for handling complaints received by the Agency.

5. The FROMs constantly 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. They are assigned to each operation and operational activities coordinated or organised by Frontex.

¹ 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.

III. Handling of the concerns raised by the complainants

III.1. Exchange of emails and Meeting with the complainants

6. On 28 March 2022 (at 10:07 am), the FRO received a first email sent by one of the complainants (with the other complainant in copy). The two complainants introduced themselves as a lawyer practising in Almeria (Spain) and a PhD candidate conducting research on Frontex (respectively) and stated that they had been “researching the conduct of debriefing activities in [Joint Operation] Indalo”. After describing some concerns relating to the practice of debriefing activities by Frontex, referring specifically to the conduct of such activities in Almeria, the complainants requested information and asked a series of questions in order to supplement their research, expressing that “[t]here are a number of questions that we have been unable to assess but that we hope you (and your team) might be able to help us clarify” and ending their email stating that “[w]e would really appreciate any information you might have”. The questions concerned how Frontex conducted debriefing activities and the FRO position on the impact of debriefing practices on the right to legal assistance. The complainants also informed the FRO that they had submitted a complaint concerning debriefing activities to the Spanish Ombudsman.

7. In that first communication the complainants referred to the practice of debriefings in general. They did not make reference to any particular incident and, despite emphasising that they had been “documenting how interviews work and, importantly, how they feed national criminal proceedings often against alleged smugglers”, they failed to submit any evidence or concrete information that could have triggered an immediate investigation into a specific case by the FRO. Furthermore, the complainants had not been adversely affected by the actions or a failure to act on the part of staff involved in Frontex activities, and they were not representing or acting on behalf of a person who may have been directly affected. They were acting as members of the public, in their private interest (to enrich their academic research into Frontex activities).²

8. On the same day, 40 minutes after receiving the email (on 28 March 2022 at 10:46), the FRO replied to the complainants. He thanked them for the communication and concerns raised, noted that the FRO was already looking into some of the concerns raised by the complainants in the context of Frontex debriefing activities, informed the complainants that the FRO had already made some recommendations in that regard, and committed to find out more details by enhancing the monitoring activities on debriefing. The complainants were expressly informed that the FROMs, one of the tools at the FRO’s disposal, would look into the topic. The FRO also committed himself to get back to the complainants with more detailed information as soon and as far as possible, once the FRO/FROMs could perform their assessment.

9. On the next day, 29 March 2022 (at 14:26), the complainants sent a new email. They did not provide any new information on Frontex debriefing activities, but asked the FRO to initiate a Serious Incident Report (SIR) and/or an Expression of Concern (referring to Article 6 of the Agency’s rules on the complaints mechanism).³

10. On the same date, only approximately 30 minutes after receiving the email (on 29 March 2022 at 14:54), the FRO again replied to the complainants. He reiterated his previous commitments to take further monitoring measures and revert to the complainants with further information. As to the possibility to use the tools provided for in the Frontex complaints mechanism, the FRO referred the complainants to the appropriate channels and procedure (including a link on the complaints mechanism and how to submit a complaint). In relation to the possibility to initiate a Serious Incident Report (procedure to report serious incidents which can only be triggered by participants in Frontex activities), the FRO acknowledged that this is something to which the Fundamental Rights Office may resort to. However, here again it is important to note that the complainants did not refer to any particular incident or event which at the time may have justified the immediate opening of a SIR.⁴ Nonetheless, the initiation of a SIR remains

² A number of papers have been published by the complainants, including a recent article in Statewatch.org focusing on debriefing activities (published on 3 August 2022, i.e. one day after the complainants submitted the complaint to the European Ombudsman).

³ This reference should be understood to have been made to the former Agency’s Rules of the Complaints Mechanism. At the time of the exchange with the complainants, new rules had been entered into force. See Management Board Decision no. 19/2022 of 16 March 2022 adopting the Agency’s rules on the complaints mechanism.

⁴ The Serious Incident Report (SIR) aims to inform as soon as possible primarily the Frontex Executive and Senior Management, the Fundamental Rights Officer as well as the Member States and Third Countries (where appropriate and in accordance with the relevant Status Agreement and Operational Plan), the Frontex Management Board and possible other relevant stakeholders, about the occurrence of a serious incident.

one of the mechanisms at the disposal of the FRO and the FROMs when warranted, even though it is first and foremost a tool for the participants in joint operations (with the FRO being the recipient of such reports).⁵

11. Later that same week, on Sunday 3 April 2022, a team of FROMs went a step further and met one of the complainants in person in Almeria. The FROMs replied to all questions raised by the complainants, to the extent possible having regard to the state of play of the FRO assessment on debriefing activities and their duty of confidentiality and not to disclose sensitive operational information (some of the information requested by the complainants is classified as sensitive and limited for use, not for public dissemination).⁶ The FROMs *inter alia* clarified the scope, nature and objectives of debriefing activities, their existing safeguards, and the difference with other activities performed by Frontex in the relevant joint operation (JO), Indalo (such as the so-called screening). The FROMs also seized the opportunity to gather further information from the complainant's insights into the topic, taking stock of all the issues raised by the complainant and his analysis (which had proven very useful and relevant). Having said that, the FRO regrets the way in which the complainants portrayed the meeting and exchange with the FROMs, omitting relevant information and in general misrepresenting or stating in a simplistic manner the statements, opinions and information given by the FROMs.⁷ This is noteworthy given the complexity of the issues at stake.

12. On Friday 8 April 2022 (at 11:51), one of the complainants sent a new email in which he acknowledged not only that he was not in a position to represent any persons affected by debriefing activities, but also that he was not even sure whether those whom he had represented (as a lawyer) may have been subjected to debriefing interviews.

13. After the weekend, on 12 April 2022 (at 16:23), the FRO replied to the complainants. After thanking them for the information, the FRO referred to the meeting that the FROMs had had with one of the complainants some days earlier (see paragraph 11). The FRO clarified that there were a number of avenues at the disposal of the Frontex Fundamental Rights Office that could be more effective in the current circumstances, and pointed out that other mechanisms were being used to gather further information on the practice of debriefing activities and their impact on fundamental rights. The FRO again reiterated that the Office would make use of all the tools available (including the SIR mechanism if and when appropriate).

14. On 5 May 2022 (at 15:47), the complainants sent a new email to the FRO. They asked again whether the Fundamental Rights Office had had time to look into their concerns, and whether the FRO had decided to take the information further. The complainants again noted that they had requested information "to help [them] with [their] research".

15. On 6 May 2022 (at 8:19), the FRO replied to the email. He reiterated that the Fundamental Rights Office had taken action, but at that moment he was unable to provide further details on the specific actions since they were under internal discussion. The FRO also referred to the meeting between one of the complainants and a team of FROMs (see paragraph 11), and informed that a member of his team would come back with further information, to the extent that the questions had not already been answered during the meeting.

16. On the same date (6 May 2022), one of the complainants swiftly replied to the FRO demanding a response in writing on the questions raised.

17. Since that date, the complainants did not address the FRO or the FROMs again, neither asked for a further update or information on the state of play of the FRO assessment (besides some postings on the subject published in the complainants' Twitter accounts). This is to note in the particular case, given the significant availability shown by the FRO and FROMs to engage with external stakeholders, lawyers, or the complainants themselves (not only within the framework of the issues raised in the current inquiry but also more generally in the context of the research conducted by one of the complainants). In any event, the FRO considers that the complainants' questions had been replied either by email or during the meeting with the FROMs, to the extent possible. With the purpose of comprehensively addressing the concerns raised, an internal assessment by the FRO was ongoing (further actions were needed, and required time), so the FRO and FROMs could only give further information on the concrete actions taken by the Agency

⁵ The FRO is responsible for handling serious incidents relating to situations of potential violations of fundamental rights or international protection obligations submitted under the SIR mechanism.

⁶ On the disclosing of information relating to operational activities and operational plans, see also the Decision of the European Ombudsman in OI/4/2021/MHZ on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities.

⁷ The findings and proposals on debriefing activities made by the FROMs is a clear demonstration of this. However, the FRO will not enter into the scope of such misrepresentations since they relate to the substance of the present inquiry (in respect of which Frontex has been asked for information), and therefore fall outside the remit of the point (b) of the inquiry. The FRO assessment on debriefing activities is currently under internal review.

(based on a proposal by the FRO) to enhance the safeguards applicable to debriefing activities after an internal review process could be concluded. Moreover, the strategic choice to use one or the other of the available internal mechanisms is for the FRO to decide, always in an objective and independent manner and based on the particular circumstances of the case in question, with the aim of ensuring compliance with fundamental rights in the most effective and appropriate manner.

III.2. Monitoring missions by the Fundamental Rights Monitors and other actions taken by the FRO

18. After examining the information submitted by the complainants as well as further information obtained from other sources (including internal sources and previous monitoring missions), the FRO and the FROMs assigned to monitor Frontex operational activities in Spain considered that further actions were required in order to be able to fully and thoroughly assess the scope of the concerns raised and their impact in the operational activities of the Agency, as well as to propose the Agency effective and concrete measures to mitigate potential risks. Those actions included on-site visits and monitoring missions to JO Indalo but also to other joint operations, since some of the issues raised by the complainants or identified by the FROMs may have an impact beyond Frontex activities in Spain.

19. Accordingly, the FROMs took immediate action to gather further information on the practice of debriefing activities by Frontex. The FROMs have to date conducted eight (8) on-site visits to Frontex operations in Spain during 2022, four (4) of them to JO Indalo (plus three further missions to JO Indalo to participate in operational briefings). This makes a total of 160 FROMs-days of deployment in Spain in 2022 (from January until the end of October). In addition, the same team of FROMs has conducted seven (7) on-site visits to Frontex activities performed in other Member States within their area of responsibility. The objective of those missions included visiting all the locations in which Frontex Standing Corps perform debriefing activities in order to be able to assess the conditions in which such activities take place. Other teams of FROMs have also conducted a significant number of additional visits to all the external borders of the European Union in which Frontex is present.⁸

20. Owing to the particular nature of Frontex joint operations implemented in Spain (the Agency is mainly present in disembarkations and the ensuing procedures, as well as border crossing points and seaports), the FROMs encountered certain difficulties to effectively monitor debriefing activities thoroughly. On the one hand, in some occasions, no debriefing interviews took place during the time in which the FROMs were present in the operational areas (generally because no disembarkations had taken place during or in the days immediately before the mission). For that reason, enhanced monitoring during summer (period with better sea and weather conditions) was necessary. On the other hand, the FROMs were refused access by Frontex to monitor debriefing activities and to be present in debriefing interviews during certain visits to operational areas. This significantly limited the capacity of FROMs to appropriately monitor compliance of operational activities with fundamental rights as mandated by the EBCG Regulation. Such difficulties had certainly the effect of delaying the FRO assessment.

21. Nevertheless, despite the above limitations, the FROMs were able to participate in some debriefing interviews, and also held meetings and discussions with debriefing officers, Frontex staff, team leaders and other participants in Frontex operations. The FROMs also met a number of external actors and stakeholders, including the Spanish Ombudsman, international organisations, NGOs and civil society organisations, as well as lawyers providing legal assistance to migrants upon disembarkation (during their detention in the Temporary Attention Centres for Aliens - CATE).

22. All the information gathered in the on-site visits or by examining internal documents as well as the further information obtained from external stakeholders, which supplemented the meeting and communications exchanged with the complainants, allowed the FROMs to gain a more comprehensive understanding of the practice of debriefing activities. As a result of this work, the FROMs have conducted an in-depth assessment of the impact of debriefing activities on fundamental rights (including both legal and practical implications), which is currently under internal review. The FRO has also made observations in the preparation of operational plans, evaluation of activities, and his regular reporting to the Management Board.

⁸ At the beginning of 2022, twenty (20) FROMs had been recruited. This number has progressively increased since the middle of the year, reaching forty-six (46) FROMs in November 2022.

23. In parallel to the actions described above, the FRO continued engaging internally with the relevant units and senior management in order to gain further access to debriefing activities. In the view of the FRO, unimpeded access to operational activities of the Agency is paramount to appropriately monitor their compliance with fundamental rights as mandated by the EBCG Regulation. The FRO and more generally the Fundamental Rights Office (including FROMs) have taken part in numerous meetings aimed at discussing how to effectively obtain 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. Such engagement has not yet produced all the results that the FRO is seeking, but important developments have been made so far and some internal guidelines regulating the role of FROMs and their interaction with the participants in Frontex activities are in the adoption process (including a Standard Operating Procedure on FROMs and certain protocols to ensure the FROMs access to debriefing interviews). In addition to this internal dialogue, the FRO has also reported about limitations concerning access to operational activities, including debriefing, in his regular reporting to the Frontex Management Board.

24. Lastly, one of the complainants have also submitted a complaint to Frontex in representation of a person who was reportedly interviewed by Frontex teams in the Temporary Attention Centres for Aliens (CATE, *Centro de Atencion Temporal de Extranjeros*) of Almeria. The complaint was submitted on 6 September 2022 and is currently under examination by the FRO. Some of the issues raised also concern debriefing activities, referring in particular to an alleged lack of information on the voluntary nature of the interview and lack of assistance by legal counsel during the Frontex interview.

IV. Final Remarks

25. In light of the foregoing, the FRO is of the view that the complainants received a prompt and appropriate response to their emails, including all the information that could be shared at the time with third parties given the fact that (i) they were acting in their private interest with the purpose of enriching their research and had not clarified how they were going to use the information, (ii) they had not referred to any particular incident or submitted any evidence or concrete information that could have triggered an immediate investigation into a specific case, and (iii) they had not been adversely affected by Frontex activities. The complainants sent five emails to the FRO personally, mostly reiterating their initial request for information which had been addressed earlier. The emails were duly answered by the FRO himself (even minutes after receiving them) to the extent possible at the time.

26. Not only the FRO but also the FROMs showed instant availability and took immediate action. In addition to the exchange of emails, and taking into consideration the relevance of the issues raised by the complainants, the FROMs did not hesitate to further engage with the complainants by meeting one of them in person only days after the first contact. In the meeting, the FROMs answered the questions raised by the complainants and gathered further information in order to continue their examination of the concerns on debriefing activities. This demonstrates a FRO policy of transparency and open communication with stakeholders in order to promote fundamental rights within Frontex activities and ensure fundamental rights compliance.

27. The information provided by the complainants were general in nature, and therefore an appropriate analysis and assessment of Frontex debriefing activities in Spain and other Member States was required. Accordingly, the FROMs participated in a significant number of on-site visits to JO Indalo and other operational activities of the Agency (both in Spain and in other EU Member States), as well as reviewing and providing observations to internal documents. Although there were some difficulties and limitations in the access to Frontex operational activities, the FROMs were successful in meeting staff responsible for conducting debriefing activities as well as external stakeholders. This exhaustive and meticulous work has led to effective results, which has been translated in a comprehensive assessment of the matter, including the impact of debriefing activities on fundamental rights and possible measures to mitigate potential risks (currently under internal review). Additionally, one of the complainants has also submitted a complaint under the Frontex complaints mechanism raising issues similar to those subjected to the present inquiry, which is currently under examination by the FRO.

28. The FRO is convinced that he and his team have acted impartially, fairly and reasonably, in full respect of the principles of transparency and good administration and in line with the European Code of Good Administrative Behaviour. The monitoring and verification work may have taken longer than initially envisaged due to external factors and the complexity and implications of the issues raised by the complainants and identified by the FROMs, which is

unfortunate. However, the FRO reiterates his commitment to serious, professional, independent and thorough monitoring of Frontex activities, in compliance with the tasks and powers vested in him by the European Border and Coast Guard Regulation. As an internal mechanism directly accountable to the Frontex Management Board, visible results for the general public may take time; but the European Ombudsman can rest assured that the FRO will work independently and relentlessly to achieve the tasks entrusted to him by Frontex, the European Parliament and the Council.

Done in Warsaw, on 15 November 2022
Fundamental Rights Officer

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