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## PICUM's input into the European Ombudsman's strategic inquiry on the role of the European Border and Coast Guard Agency in SAR operations (OI/3/2023/MHZ)

PICUM welcomes the European Ombudsman's initiative to open a strategic inquiry concerning the role of the European Border and Coast Guard Agency (Frontex) in the context of search and rescue (SAR) operations.

In the past two years, we acknowledge that Frontex underwent important organisational changes, including hiring a [Fundamental Rights Officer](#) (FRO) and fundamental rights monitors, and adopting a fundamental rights [action plan](#). However, [concerns](#) remain in terms of how fundamental rights and the work of the FRO has been taken into account in the context of Frontex's operational activities.

While PICUM does not directly engage SAR operations, as a member of Frontex Consultative Forum between 2012 and 2019, we witnessed with concern the expansion of Frontex, increased reports of fundamental rights violations, and limited and inadequate accountability mechanisms. On a broader scale, we also saw restricted involvement of civil society in overseeing and providing guidance on upholding fundamental rights when we were a member of the Consultative Forum.

We are thus of the opinion that providing the Ombudsman with an overview of the factors that led to PICUM's withdrawal from the Consultative Forum may offer pertinent background information for the ongoing inquiry.

### **PICUM's withdrawal from the Frontex Consultative Forum**

After seven years of membership in the Consultative Forum (between 2012 and 2019), and after long internal discussions, PICUM came to the conclusion that the Consultative Forum's working methods did not allow for our meaningful participation.

As a membership organisation representing more than 160 NGOs, our ability to provide input within the Forum was strongly limited by a very strict confidentiality clause, which entailed risks of criminal liability if we shared sensitive or non-public information with our members. While the Consultative Forum has had some key [achievements](#) in the past years, PICUM regrets that the modalities of the Forum often failed to provide us with the space for meaningful inputs. In some cases, the Consultative Forum was not consulted on human rights related matters, or was consulted only after key decisions were taken. We were often not given enough time to review and process information from the Agency in a meaningful way. And Frontex often failed to acknowledge or consider the Consultative Forum's comments.

In the time period preceding our withdrawal from the Forum, PICUM had also been increasingly concerned by increasing reports of Frontex's involvement in illegal pushbacks, the lack of adequate investigation and follow-up, as well as the insufficiency of mechanisms to ensure accountability. This was prompted by evidence of Frontex involvement in illegal pushbacks in

the [central Mediterranean](#), the [Balkans](#) and [Greece](#). Another [independent report](#) published in July 2020 found that Frontex lacked an effective system for monitoring, investigating, addressing, and preventing fundamental rights violations at Europe's external borders.

PICUM was also concerned by the approach taken by Frontex towards civil society, including the harassment of [pro-transparency activists](#). The costs that Frontex claimed from activists who sought access to the name, flag and type of each vessel deployed by the Agency in the central Mediterranean were judged excessive by the [EU general court](#).

In May 2020, PICUM wrote a private letter (see Annex I) to Frontex's Executive Director Fabrice Leggeri to raise our concerns in relation to media reports on the agency's involvement in human rights violations, as well as the Forum's working methods. In the letter, PICUM explained its concerns, in the hope that they could be addressed in order to enable its continued contribution to the work of the Forum in future years.

In July 2020 – while still a member of the Consultative Forum - PICUM suddenly stopped receiving emails regarding the work of the Consultative Forum, and was removed from the list of Consultative Forum members on Frontex's website. We were not informed of the decision to withdraw PICUM from the Consultative Forum website and mailing list, neither before our removal nor in any of the following exchanges with Frontex.

Frontex's formal reply to our letter came in September 2020 (Annex II), and significantly failed to engage on the substance of our concerns, or mention the unilateral withdrawal of our status.

Due to the approach taken by Frontex, the lack of progress on engagement on the issues raised, and the lack of procedures in terms of the unilateral decision by Frontex to withdraw our application for membership, PICUM wrote to Frontex in January 2021 to formally withdraw its membership from the Consultative Forum (Annex III).

### **PICUM's ongoing engagement**

Following the conclusion of its membership in the Consultative Forum, PICUM continued to closely monitor the ongoing expansion of Frontex's role, especially in light of a significant budget increase (from 85 million EUR in 2012 to a proposed budget of 839 million EUR in [2023](#)) and its evolving operational functions. Statewatch published a [decision](#) of the Frontex management board on the agency's technical equipment for 2023, which foresees lethal weapons, various surveillance devices such as drones, vehicles, aircrafts, as well as personal equipment like metal handcuffs, a rubber elastic baton, telescopic batons, and two types of knives.

Despite the strengthening of monitoring and accountability mechanisms within the Agency, its increasingly prominent role in supporting border controls and return decisions will undoubtedly pose significant and enduring challenges to fundamental rights.

PICUM stands ready to further collaborate with the Ombudsman's office, offering any necessary clarifications on the statement's content, and participating in forthcoming consultations with civil society.