



Valletta Harbour, 30 June 2023

Ref.: SI/4/2022/MHZ

EUAA/ED/2023/259

Ms Emily O'Reilly
European Ombudsman
Rue Froissart 87
B-1000 Bruxelles

Subject: Strategic initiative SI/4/2022/MHZ concerning how the EU Agency for Asylum complies with its fundamental rights obligations and ensures accountability for potential fundamental rights violations

Dear Ms O'Reilly,

Thank you very much for your letter of 23 February 2023 and for providing the Agency with your observations on the replies provided in the course of the strategic initiative concerning how the EUAA complies with its fundamental rights obligations.

In your letter, you also shared suggestions for improvement which continue to be carefully considered by the EUAA in its ongoing work to ensure the full implementation of its new mandate.

In this letter, I would like to address each of these recommendations and offer further information about their implementation by the Agency:

(i) The fundamental rights officer should be appointed without further delay.

I am pleased to inform you that this recommendation has been fully implemented. Following the EUAA Management Board's appointment of Mr. François Deleu as the Agency's first Fundamental Rights Officer, Mr Deleu took up duties on 16 May 2023¹.

¹ Press Release available here: <https://euaa.europa.eu/news-events/european-union-agency-asylum-appoints-its-first-fundamental-rights-officer>



(ii) Once the fundamental rights officer becomes operational, all related safeguards for fundamental rights compliance (fundamental rights strategy, complaints mechanism, codes of conduct, the procedure to terminate or suspend deployment due to violations of fundamental rights) should be finalised.

Following his appointment, the fundamental rights officer is being involved in all work related to the establishment of all safeguards for fundamental rights compliance laid down in Regulation (EU) 2021/2303² (the 'EUAA Regulation').

The Agency recalls, with regard to the fundamental rights strategy, that this will be adopted by the Agency on a proposal from the fundamental rights officer. In the next months, the fundamental rights officer will carry out consultations with internal and external stakeholders to define the scope of the fundamental rights strategy with the aim to make a proposal to the Agency by the end of 2023. The Agency would then be able to adopt its fundamental rights strategy in March/April 2024.

In relation to the complaints mechanism, the Agency is finalising its consultations with internal and external stakeholders with a view to submitting its proposal for the consultation of the fundamental rights officer and the consultative forum. The establishment of the complaints mechanism is envisaged to follow shortly thereafter. Until then the Agency continues to apply the procedures currently in place to ensure that all complaints and expressions of concern received from stakeholders and individuals in relation to its operational activities are properly followed up.

As regards the codes of conduct and the procedure to terminate or suspend deployment due to violations of fundamental rights, it is incumbent on the Agency to establish them. Nevertheless, given his role in ensuring the respect of fundamental rights in all of the Agency's activities, the fundamental rights officer will be consulted on their design, establishment and implementation. For this reason, the fundamental rights officer is currently undertaking a series of meetings with the Agency's services to agree on a timeframe and on modes of cooperation with the Agency's internal entities for the finalisation of these fundamental rights safeguards.

Having the above in mind, and also taking into consideration the earlier recommendations from the Ombudsman relating to the European Border and Coast Guard Agency, the EUAA is also laying the grounds for these safeguards to be properly implemented by securing the independence of the fundamental rights officer. To that effect, the Agency will propose that the EUAA Management Board adopts a decision on the functioning and internal organisation and cooperation with the fundamental rights officer, which will establish safeguards for the independent performance by the fundamental rights officer of his duties as laid down in Article 49 of the EUAA Regulation, and will establish the governance framework for cooperation between the fundamental rights officer and the Agency.

² Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, p. 1–54

(iii) The fundamental rights officer should review all operational plans signed between the EUAA and the Member States after Regulation 2021/2303 entered into force. The EUAA should seek input from the fundamental rights officer before agreeing to proposals by Member States to amend the operational plans.

The Agency welcomes this recommendation, and is pleased to inform that following his appointment, the fundamental rights officer has already had the opportunity to provide his observations on the new Operational Plans agreed by the EUAA with Spain, Bulgaria and Lithuania.

Given the tight timeframes under the EUAA Regulation for the agreement of Operational Plans between the EUAA and the concerned host Member State, the Agency agrees that the fundamental rights officer should review all operational plans currently in place. This would allow him to familiarise himself with the context in which the Agency provides operational and technical assistance and, as a consequence, will enable a more efficient consultation process for new Operational Plans.

With regard to the consultation of the fundamental rights officer on amendments to Operational Plans, the Agency will consider how to implement your recommendation in the framework of the ongoing discussions on the Management Board Decision on the functioning and internal organisation and cooperation with the fundamental rights officer, which will govern the cooperation between the Agency and the fundamental rights officer also as regards all the stages of an Operational Plan's duration, such as its drafting, implementation, amendment and evaluation.

(iv) The EUAA should include, in each contract it concludes directly with 'other experts' or their employer, unequivocal provisions on accountability for violations of fundamental rights, after having consulted the fundamental rights officer. Complaints about such violations should be admissible under the EUAA's complaints mechanism. The applicable rules should specify how investigations concerning such experts should be carried out.

It should be recalled that complaints against the actions of such "other experts" participating in asylum support teams, referred to in Article 19(1)(d) of the EUAA Regulation, would clearly be admissible under Article 51 of the EUAA Regulation, and therefore the Agency is under an obligation to ensure that, in case of violations of fundamental rights, such experts are held accountable.

The current legal framework already includes mechanisms which regulate the accountability for violations of fundamental rights by such "other experts", namely: temporary agency workers, contracted personnel (such as interpreters and cultural mediators provided by a contractor under a public contract for services) and remunerated external experts.

All contracts concluded directly with external remunerated experts include an obligation on the part of the expert to carry out their services properly and in full compliance with the provisions of the contract, including the Code of Conduct for experts. By signing this contract, the expert confirms that they have read, understood and accepted the Contract and all its obligations and conditions, including - inter-alia - the Code of Conduct. Breaches of the Code of Conduct, which includes obligations relating

to the respect of fundamental rights by the expert, as well as cases of gross professional misconduct, are grounds for suspension and/or termination of the contract.

Likewise, public framework contracts concluded by the EUAA with contractors and with temporary work agencies include clauses obliging these entities to comply with any applicable laws and to include in their contracts with their own employees or collaborators, obligations on the latter's part to observe the EUAA Code of Conduct. Under the public framework contracts in place, the EUAA has the option of requesting a replacement of a deployed expert by a contractor or temporary work agency in cases of professional misconduct, such as breaches of the Code of Conduct.

Despite the above-mentioned safeguards, the Agency, in consultation with the fundamental rights officer, will further investigate how the existing legal and contractual framework, including documents such as technical specifications, public framework contracts and the model contract with external remunerated experts, may be revised with a view to strengthening and clarifying the existing clauses. The same effort will be undertaken when the existing Code of Conduct will be revised, in consultation with the fundamental rights officer and the consultative forum.

(v) The EUAA should adopt, without delay, a separate code of conduct for its asylum support teams that participate in the migration management support teams. This code and the standard operating procedure for following up on reports of violations of the code should make clear how the members of the EUAA's asylum support teams should react to violations of fundamental rights by the members of teams of other agencies or national authorities, of which they become aware.

As explained in the Agency's reply of 27 October 2022, members of asylum support teams participating in migration management support teams will still be bound by the code of conduct for experts participating in asylum support teams.

Within the context of the revision of the code of conduct, in consultation with the EUAA fundamental rights officer and the consultative forum, the Agency is committed to explore how best to ensure that violations of fundamental rights by the members of teams of other agencies or national authorities are reported by its deployed experts via the appropriate channels. Based on our analysis, we have identified that this can be done either by including clear obligations in this regard in the code of conduct applicable to all members of asylum support teams, or by adopting a separate code of conduct applicable only to experts participating in migration management support teams.

Whilst thanking you for your office's constructive engagement with the EUAA, I look forward to our continued cooperation with a view to ensuring the EUAA's enhanced compliance with and respect for fundamental rights.

Kind regards,



Executive Director