

Border controls and fundamental rights at external land borders

Under Article 51 (1) of the **Charter of Fundamental Rights of the European Union (EU)** ('the Charter'), which has the same legal value as the Treaties, EU Member States must implement EU law in **full compliance** with the rights and requirements of the **Charter**. In areas not covered by EU law, Member States have to comply with the rights protected by the European Convention on Human Rights (ECHR) and other human rights and refugee law instruments to which they are party. Many Charter rights are the same as those set out in the ECHR.

EU law instruments regulating border controls, notably the **Schengen Borders Code**, contain **fundamental rights protection clauses**. These clauses underline the need to comply with the fundamental rights enshrined in the Charter that are more frequently at stake in border management.

To protect fundamental rights, **national legal systems** must fully incorporate the requirements and safeguards flowing from EU law, the ECHR, as well as international human rights and refugee law. **National integrated border management (IBM) strategies** must also adequately reflect fundamental rights.

The protection of fundamental rights requires an effective system to **prevent or mitigate risks of violations**. For example, in its **practical guidance on the principle of non-refoulement**, when establishing operational cooperation with third countries, the EU Agency for Fundamental Rights (FRA) recommends a prior and ongoing assessment – based on a wide range of sources – of the human rights situation, including access to international protection. Independent monitoring at borders can help flag fundamental rights risks before violations may occur. Effective protection of fundamental rights requires systematic reporting of violations, effective investigation of all allegations, and effective and dissuasive sanctions when violations occur.

This practical guidance addresses border-management staff in European Union (EU) Member States who work at the operational level. It aims to support them in implementing the fundamental rights safeguards of the Schengen Borders Code (Regulation (EU) No. 2016/399) and related EU law instruments in their daily work, when carrying out controls at external land borders.

The **protection of fundamental rights must exist in law and in practice.**

To protect and promote fundamental rights and to uphold the highest professional and behavioural standards in border management, the European Border and Coast Guard Agency (Frontex) drew up a Fundamental Rights Strategy, a Code of Conduct containing a duty to report, a complaint mechanism, as well as training and guidance materials.

To **facilitate adherence with fundamental rights in the daily operational work of border-management staff**, after consultations with the Croatian Presidency of the EU Council, FRA developed this practical guidance. It contains ten 'dos' and 'don'ts'. These suggest concrete actions that border guards and other competent authorities should take at operational level to uphold fundamental rights in their daily work. The 'dos' and 'don'ts' are also an integral part of the training for border-management authorities at different levels. They **focus on** the following **five core areas**:

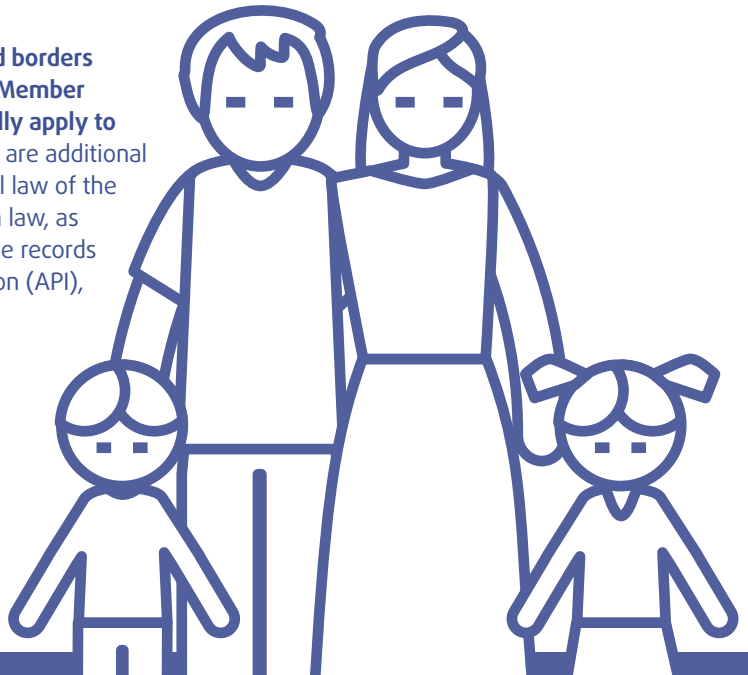
- treating everyone with **dignity**;
- identifying and referring **vulnerable** people;
- respecting the legal basis, **necessity and proportionality when using force**;
- applying **safeguards when holding people** at borders; and
- respecting **procedural safeguards** and **protecting personal data**.

This guidance applies to checks at **border-crossing points** as well as controls during **border surveillance**, unless otherwise specified. It applies to all persons, except where it refers only to third-country nationals.

This guidance does not cover specific benefits EU law provides for certain categories of people, such as persons enjoying the Union right of free movement, their third-country national family members, or holders of local border traffic permits.

This guidance **focuses on EU external land borders and land borders with non-Schengen EU Member States**. However, **many of its points equally apply to sea and air borders**. At sea borders, there are additional safeguards deriving from the international law of the sea. At airports, international civil aviation law, as well as EU instruments on passenger name records (PNR) and advanced passenger information (API), contain further protective provisions.

Nothing in this guidance restricts or adversely affects applicable fundamental rights standards and safeguards.





TREAT EVERY PERSON WITH DIGNITY AND IN A PROFESSIONAL AND RESPECTFUL MANNER

+ 1.1.

Familiarise yourself with basic expressions

in the most common languages of people approaching or crossing the land border.

+ 1.2.

Use easy-to-understand communication tools

(leaflets, posters or IT tools) to inform travellers about the nature and aim of the border checks.

+ 1.3.

Put information on how to make complaints,

and the actual complaint forms – including child-friendly versions – in visible places.

+ 1.4.

Respond to questions

in a factual and polite manner.

+ 1.5.

Provide first aid and refer people who need urgent healthcare to appropriate medical services.

Familiarise yourself with relevant parts of the **WHO International Health Regulations** that apply at the borders (Part IV). Use protective equipment provided to staff and stay up-to-date with relevant public health recommendations.

+ 1.6.

Be sensitive

to the person's age, gender and culture.

+ 1.7.

Limit interferences with the person's privacy

– for example, when checking personal belongings – to what is necessary and proportionate to the aim and nature of the border control.

+ 1.8.

Pay particular attention to vulnerable persons.

Adjust your behaviour when interacting with people who may have special needs (e.g. children, victims of trafficking in human beings or other violent crime, pregnant women, people with medical conditions, persons with disabilities, etc.). Be aware that some persons may be traumatised. Consult the **EASO Tool for Identification of Persons with Special Needs** in case of doubt.

+ 1.9.

Inform persons placed in holding facilities at points of entry or at police stations on their rights and the procedure applicable to them.

Do this without delay, both orally and in writing, in a language they understand. Read carefully the **Factsheet on Immigration Detention** of the European Committee for the Prevention of Torture (CPT) to know the safeguards and the material conditions to respect.

+ 1.10.

Whenever possible, work in mixed male-female shifts,

as this fosters a gender-sensitive approach.

Relevant legal sources: Charter, Art. 1; **Schengen Borders Code**, recital 7, Arts. 2 (21) and 7; **European Border and Coast Guard (EBCG) Regulation**, Art. 3 (1) (a); **Anti-Trafficking Directive**, recital 3; **Return Directive**, Arts. 15-17; **Schengen Handbook**, pp. 14, 16-17, 5.6 (for checks on children) and Annex VII.6 (special rules); ECHR, Art. 5 (1) (f) and (2); **CPT Standards on Immigration Detention**; **WHO International Health Regulations**, Part IV; CJEU, *Zakaria* (C-23/12), 17 January 2013; **ECtHR case law on deprivation of liberty**

2

DON'T USE FORCE AND DON'T CONFISCATE PROPERTY UNLESS NECESSARY, PROPORTIONATE, AND JUSTIFIED UNDER NATIONAL, EU AND INTERNATIONAL LAW TO ACHIEVE A LEGITIMATE AIM

+ 2.1.

Be aware that the use of force can have different forms.

These include the use of your hands and body; the use of any instruments of constraint; the use of weapons, including firearms; and the use of service dogs or equipment.

+ 2.2.

Make every reasonable effort to resolve a situation using non-violent means first,

including by means of persuasion, negotiation, or mediation.

+ 2.3.

Take all necessary steps

to minimise the risk of injury and damage.

+ 2.4.

Follow the rules on the use of force and weapons, notably the principles of necessity, proportionality and precaution.

For the use of specific weapons and equipment, read carefully the guidance in Annex V to the **EBCG Regulation** (Regulation (EU) 2019/1896) concerning rules on the use of force by Frontex statutory staff.

+ 2.5.

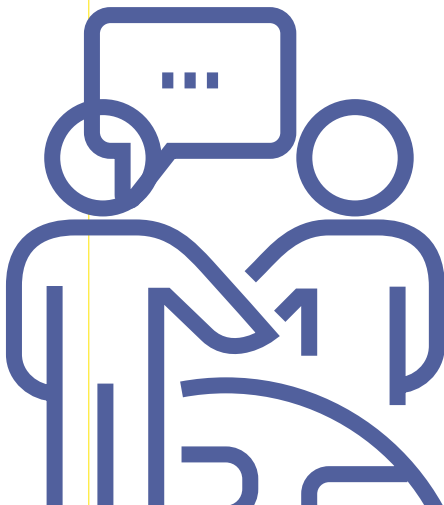
Inform people who wish to complain on how to do this.

Register complaints you receive according to the established procedure.

+ 2.6.

Keep records of all incidents of force used and all confiscated items, the reason and legal basis for their confiscation

(e.g. evidence in criminal proceedings, dangerous items, or other reasons), and the further procedure applied to them.



— Relevant legal sources: Charter, Arts. 3-4 and 17; **Schengen Borders Code**, Annex II (registration of information); **EBCG Regulation**, Annex V (formally applicable to Frontex statutory staff only); ECHR Arts. 2-3 and Art. 1 of Protocol No. 1 to ECHR, **ECtHR case law on Arts. 2-3 and 8**; United Nations (UN) **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**; UN Code of Conduct for Law Enforcement Officials

3

PAY ATTENTION TO FUNDAMENTAL RIGHTS RISKS WHEN COOPERATING WITH NEIGHBOURING THIRD COUNTRIES

+ 3.1.

Be aware that there are strict limitations on sharing personal data with third countries.

Before sharing them, verify that you are complying with all EU law and refugee protection requirements as outlined in your data protection policy.

+ 3.2.

Inform yourself

on how neighbouring third countries' authorities treat people they intercept near the EU external border.

+ 3.3.

If you are responsible to communicate operational information to neighbouring third countries,

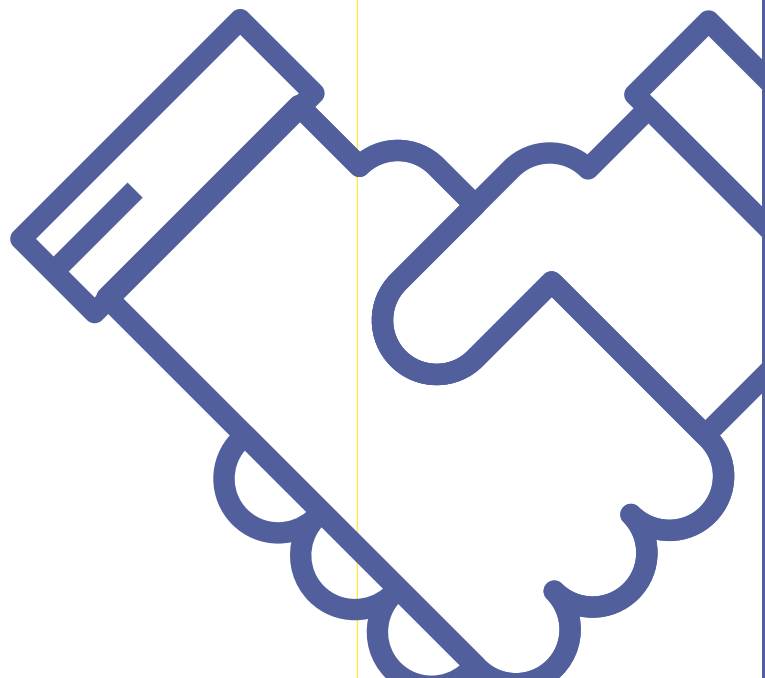
before asking them to intercept people approaching the EU external border outside a border-crossing point, assure yourself that, once intercepted, they will not face ill-treatment, persecution or other forms of serious harm.

+ 3.4.

If the border is fenced,

indicate to third-country nationals who reach the fence and wish to request asylum how they can reach a place where they can physically request asylum in safety. Consider using written signs as well.

Relevant legal sources:
Charter, Arts. 4 and 18; **Schengen Borders Code**, combined reading of Arts. 3-4 and 13; ECtHR, *N.T. and N.D. v. Spain*, 13 February 2020



4

IDENTIFY ASYLUM APPLICANTS AND PROTECT THEM FROM *REFOULEMENT*

+ 4.1.

Treat any third-country national's expression of fear or risk of suffering serious harm or persecution

if returned as a wish to seek international protection.

+ 4.2.

Remember that anybody can be in need of international protection, regardless of nationality, age or appearance.

It is not your task to decide if the third-country national is in need of asylum or not.

+ 4.3.

Look out proactively for indications that a third-country national may wish to seek asylum,

as described in the joint European Asylum Support Office and Frontex Practical Tools for First-Contact Officials on "**Access to the Asylum Procedure**". Pay attention to who the person is, what the person says, but also to what you observe. Carry the tool's pocket booklet with you.

+ 4.4.

Once you have identified that a third-country national wishes to seek international protection, provide information on how to apply for asylum

in a language that he or she understands or may reasonably be presumed to understand. Use pictograms, especially for children.

+ 4.5.

If a third-country national expresses the wish to apply for asylum,

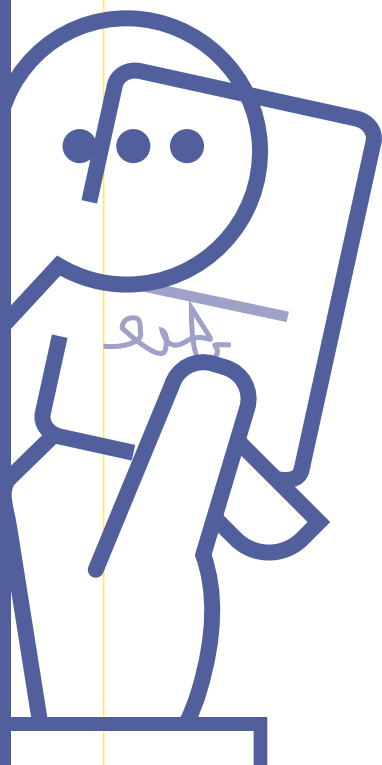
refer the applicant to the authorities responsible for registration or, if this falls under your responsibility, register the application in full respect of confidentiality.

+ 4.6.

Do not return third-country nationals who have expressed a wish to apply for asylum.

Identify any special needs and refer the person to actors who provide support.

Relevant legal sources: Charter, Arts. 18-19; 1951 Geneva Convention Relating to the Status of Refugees; Schengen Borders Code, Arts. 3-4; Asylum Procedures Directive, Arts. 6 and 8; Qualification Directive, Art. 2 (d) and (f); Schengen Handbook, Part Two – 12.1 and 12.2 (asylum seekers), ECtHR, M.A. and Others v. Lithuania, 11 December 2018



5

PROTECT VICTIMS OF CRIME

+ 5.1.

Be aware of risk indicators on trafficking in human beings and regularly update your knowledge.

+ 5.2.

In case of indications of trafficking in human beings, take immediate steps to protect the presumed victim(s)

and separate them from the suspected trafficker. Be aware that victims of trafficking may also apply for asylum.

+ 5.3.

Refer presumed victims of trafficking in human beings to assistance and support services.

Assistance and support must not be conditional on the victim's willingness to cooperate with the justice system.

+ 5.4.

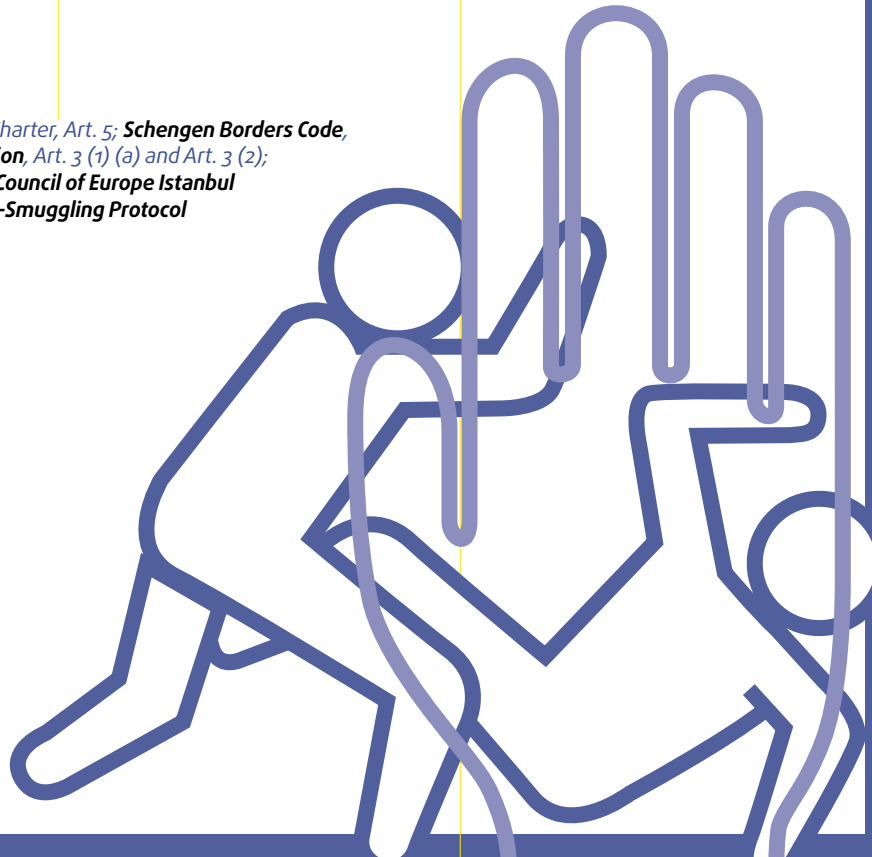
Be attentive to victims of other violent crimes, including gender-based violence.

Provide assistance and support to victims in cooperation with relevant support organisations.

+ 5.5.

Preserve any evidence of crime.

Relevant legal sources: Charter, Art. 5; **Schengen Borders Code**, recital 6 and Art. 16; **EBCG Regulation**, Art. 3 (1) (a) and Art. 3 (2); **Anti-Trafficking Directive**, Art. 11; **Council of Europe Istanbul Convention**, Ch. IV and VII; **UN Anti-Smuggling Protocol**



6

PROTECT CHILDREN AT RISK OF ABUSE OR VIOLENCE

+ 6.1.

Be familiar with the requirements for children to leave and enter the country

(e.g. parental permission or affidavit), as well as with basic child protection concepts.

+ 6.2.

Inform children about their rights and procedures in a child-friendly manner.

Give priority to the child's best interests.

+ 6.3.

Use the guidance in the Frontex Vega Handbook

to identify and protect children at risk.

+ 6.4.

Check that the persons accompanying a child have parental care over them,

especially where only one adult is accompanying the child and there are serious grounds for suspecting that the child may have been unlawfully removed from the parent(s). Observe and report any unusual behaviour by, including physical or emotional signs from, the child or the accompanying adult(s).

+ 6.5.

When apprehending third-country nationals who cross or attempt to cross the border in an irregular manner, do not separate families,

except when this is strictly necessary and proportionate to protect family members or required in a particular case for criminal investigation purposes.

+ 6.6.

Observe and actively identify any children travelling on their own.

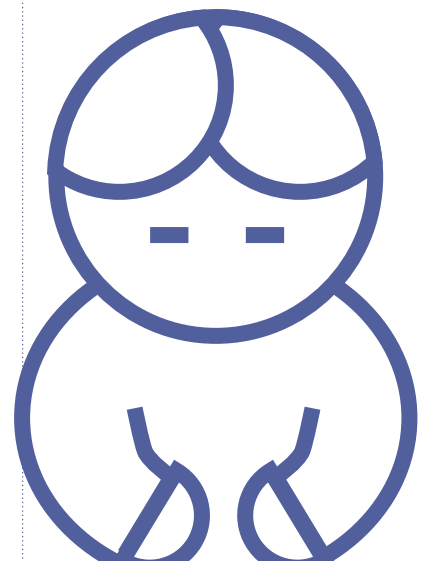
Check the Schengen Information System (SIS) to see whether the child is reported as missing.

+ 6.7.

If, after second-line checks, there are still doubts about the well-being of an accompanied or unaccompanied child,

contact the responsible guardianship and/or child protection authority and refer the child to them.

Relevant legal sources: Charter, Art. 24; **Schengen Borders Code**, recital 36 and Art. 4 (general fundamental rights safeguard clause), Art. 20 (1) and Annex VII, points 6.2 and 6.5 (special rules on children); **EBCG Regulation**, Art. 3 (1) (a); **Schengen Handbook**, Part Two – 5.6.3 (border checks on children)



7

RESPECT PROCEDURAL REQUIREMENTS AND SAFEGUARDS

+ 7.1.

Inform all travellers referred to a second-line check, as well as persons stopped during border surveillance, about the nature of the control in a professional, friendly and courteous manner.

Do this in a language they understand or may reasonably be presumed to understand. For second-line checks, inform the person about the name or service identification number of the border guards.

+ 7.2.

Make sure that border checks do not prevent persons enjoying the Union right of free movement

from returning to their country of nationality or residence.

+ 7.3.

When refusing entry at border-crossing points,

adopt a substantiated written decision using the Schengen standard form, stating the precise reasons, in fact and in law, for the refusal.

+ 7.4.

Make sure that the third-country national who is refused entry acknowledges receiving the form,

notably by signing it. Read carefully any comments the person adds to the form and, if necessary, act upon them.

+ 7.5.

Hand over a copy of the completed standard form to the person concerned

and make sure they understand its content. Use a qualified interpreter if needed. Clarify any doubts the person may express.

+ 7.6.

Inform all third-country nationals who are refused entry about procedures for appeal.

Do this both orally and using the standard form.

+ 7.7.

Hand over a written list of contact points who can give information on professional providing legal assistance.

Post such list at visible points at border-crossing points.

+ 7.8.

In case the appeal concludes that refusal of entry was ill-founded, correct the cancelled entry stamp,

and make any other necessary cancellations and corrections.

+ 7.9.

Record every refusal of entry in a register, including the reasons for refusing entry.

+ 7.10.

When stopping undocumented persons during border surveillance and asking them to explain their reasons for being in the border area,

communicate in a language they presumably understand. In case of communication barriers, use a qualified interpreter.

+ 7.11.

If further action is necessary after someone is apprehended during border surveillance,

bring the person to the nearest border guard station and carry out an individualised interview in a language the person presumably understands. Use a qualified interpreter if needed.

+ 7.12.

Give sufficient opportunity to third-country nationals apprehended after crossing the green border

to put forward arguments against their removal and examine their individual circumstances. Inform them about their right to appeal against any decision taken.

Relevant legal sources: Charter, Art. 41; **Schengen Borders Code**, recital 7, Arts. 4, 13-14 and Annex V, part A (refusal of entry) and part B (standard form); CJEU, *Air Baltic (C-575/12)*, 14 September 2014; **Schengen Handbook**, Part Two – 1.3 (border checks), 8.4, 8.7 (refusal of entry), and Part Three (border surveillance); ECtHR, *Hirsi Jamaa and Others v. Italy*, 23 February 2012; ECtHR, *N.T. and N.D. v. Spain*, 13 February 2020 and ECtHR, *Asady and Others v. Slovakia*, 25 March 2020

8

TAKE ALL NECESSARY PRECAUTIONS TO PROTECT PERSONAL DATA

+ 8.1.

Ensure that any personal data, including health data and other sensitive data,

is collected and processed in accordance with data protection rules.

+ 8.2.

Inform all travellers about the processing of their personal data,

including which data is processed, for what purpose, and who will have access to it. Use leaflets or posters to be better understood.

+ 8.3.

When you take fingerprints for Eurodac, follow the guidance

included in the FRA checklist to act in compliance with fundamental rights when obtaining fingerprints for Eurodac [[available online](#)].

+ 8.4.

When you take fingerprints for Eurodac, inform people adequately.

You may use the brochure FRA developed together with the Eurodac Supervision Coordination Group [[available online](#)].

+ 8.5.

Inform people how they can access and obtain a copy of their personal data stored

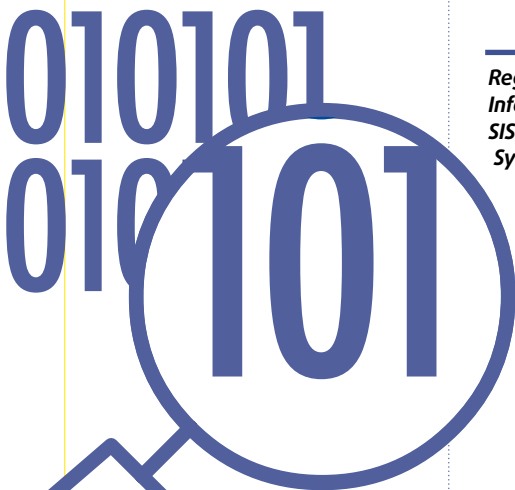
and what steps they can take to have inaccurate or unlawfully stored information corrected or deleted.

+ 8.6.

Provide travellers with the contact details of the competent national authorities,

including data protection authorities, to enable them to exercise their rights.

— Relevant legal sources: Charter, Art. 8; **General Data Protection Regulation**, Chapter 3; **Directive (EU) 2016/680**, Chapter 3; **Schengen Information System (SIS) Border Checks Regulation** 2018/1861, Chapter 9; **SIS Police Cooperation Regulation** 2018/1862, Chapter 16; **Visa Information System (VIS) Regulation** 767/2008, Chapter 6; **Eurodac Regulation** 603/2013, Art. 29; **Entry/Exit System (EES) Regulation** 2017/2226, Arts. 50 and 52; **European Travel Information and Authorisation System (ETIAS) Regulation** 2018/1240, Art. 64; **Interoperability Regulations** 2019/817 and 2019/818, Arts. 47-48; **Schengen Handbook**, pp. 14, 16



9

COOPERATE WITH HUMAN RIGHTS MONITORING BODIES AND HUMANITARIAN ACTORS

+ 9.1.

Be aware of and respect the mandate and powers of independent national, European and international monitoring bodies, of fundamental rights and refugee protection agencies,

as well as other organisations present at the border. Grant them access to information, documents and people in accordance with the law.

+ 9.2.

Stay informed of any guidance issued by these bodies

related to the respect of fundamental rights in border management activities.

+ 9.3.

Interact with them cordially and in a spirit of cooperation,

respecting rights to access information, documents and people as set out in the legal instruments establishing their individual mandates.

+ 9.4.

Be aware of the role of Frontex fundamental rights monitors

and support them in fulfilling their tasks.

Relevant legal source: **EBCG Regulation**, Arts. 3 (1) (e), 3 (2) and 110; **Asylum Procedures Directive**, Art. 29; **European Anti-Torture Convention (ETS No. 126)**, Arts. 2-3



10

TAKE TIME FOR LEARNING AND DEVELOPMENT

+ 10.1.

Attend training on fundamental rights,

comprising how to use force, on a regular basis, including through practical exercises and simulations in the field.

+ 10.2.

Allow staff under your supervision to receive the necessary training,

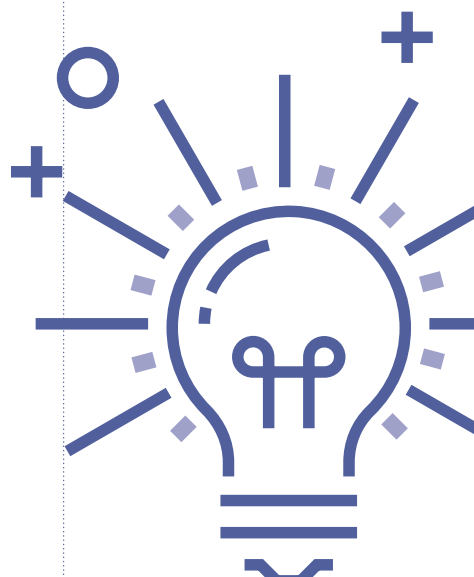
including on first aid, as well as on the health and well-being of staff, on a regular basis, to improve continuously their service-oriented and professional behaviour.

+ 10.3.

Learn, and refresh your knowledge of,

the languages necessary for carrying out your tasks.

Relevant legal sources: **Schengen Borders Code**, Art. 16 (1); **EBCG Regulation**, recital 51, Arts. 3 (2) and 62; **Anti-Trafficking Directive**, recital 25 and Art. 18 (3); **Asylum Procedures Directive**, Art. 6 (1)



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