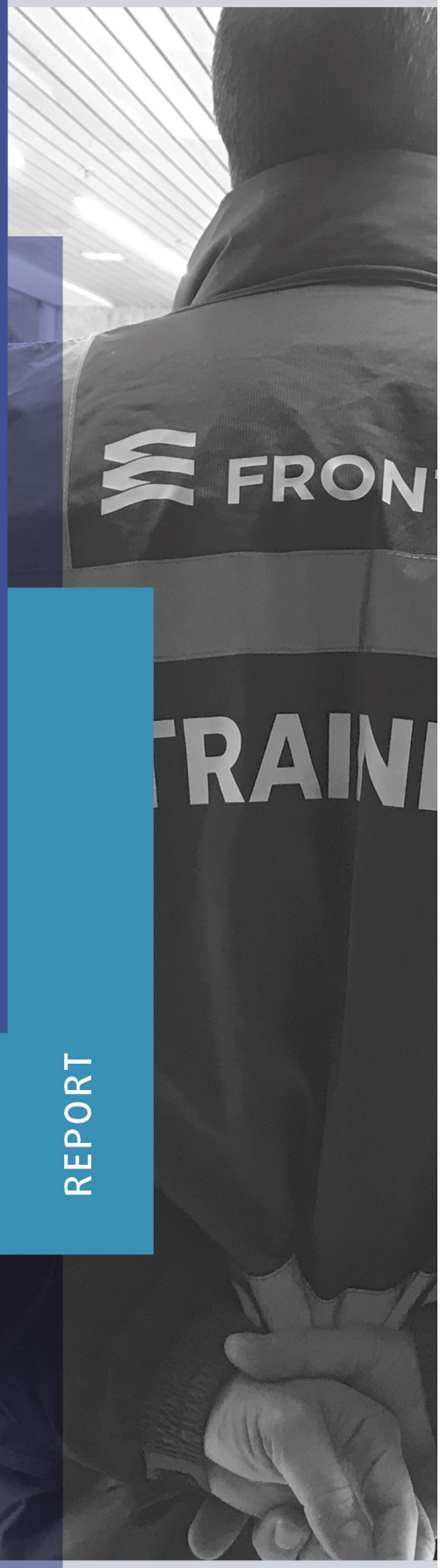
FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

THE EUROPEAN BORDER AND COAST GUARD AND FUNDAMENTAL RIGHTS

REPORT



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Introduction

Fundamental rights are an important consideration in border management. Safeguards in laws regulating European border management aim to protect rights under the Charter of Fundamental Rights of the EU (the Charter). The review of the European Border and Coast Guard Regulation (EU) 2019/1896, hereafter referred to as the EBCG Regulation, offers an opportunity to reflect on how best to improve the fundamental rights situation at the external borders of the EU.

This is FRA's contribution to the first evaluation of the EBCG Regulation pursuant to Article 121 (3) and (6).

The European Border and Coast Guard is established in law under the EBCG Regulation. The European Border and Coast Guard is composed of the European Border and Coast Guard Agency (Frontex) and Member State authorities responsible for border management and return.

Over the last 15 years, the European Union Agency for Fundamental Rights (FRA) has engaged extensively in the field of border management and return by issuing reports, opinions, and practical tools, as well as providing training and other capacity building activities to the European Union (EU) and its Member States. FRA has also engaged in real-time response actions. In 2010, FRA concluded a cooperation arrangement with Frontex and since then has been providing Frontex with fundamental rights expertise. In 2018, following a request by the European Parliament, FRA issued an opinion on the fundamental rights implications of the then proposed EBCG Regulation.

The EBCG Regulation contains several references to fundamental rights. For the evaluation, Article 121 of the EBCG Regulation requires the European Commission to seek input from both FRA and the Frontex Consultative Forum. This contribution is the Agency's response to the European Commission's request of 2 February 2023.

Fundamental rights are an integral part of the European integrated border management under Article 3 (2) of the EBCG Regulation. Virtually all activities by Member States and Frontex may impact on fundamental rights – from risk analysis to training, border checks and border surveillance. Activities such as these may impact on absolute rights such as the right to life, the prohibition of torture and other forms of ill-treatment, and the principle of *non-refoulement*. The fundamental rights safeguards included in the EBCG Regulation and, more generally, in applicable EU law relating to border management, aim to ensure that interferences with fundamental rights conform with the Charter. Safeguards also aim to promote fundamental rights, which is one of Frontex' task in Article 10 (1) (ad) of the EBCG Regulation.

This contribution identifies six key areas where evidence suggests that legislative adjustments might be the most appropriate solution to address identified fundamental rights gaps.

For other issues, FRA refers to the contribution submitted by the Frontex Consultative Forum and,

for the Frontex complaints mechanism, to the inquiry by the European Ombudsman.

Methodology

This contribution is based on FRA's extensive work at the EU's external borders and in the field of return, including research carried out for different FRA publications, such as FRA's annual Fundamental Rights Reports, regular migration bulletins, and forced return monitoring updates.

It also builds on FRA's work on fundamental rights monitoring at external borders, country visits to Member States, and FRA's interactions with Frontex on a wide range of issues under the 2010 cooperation arrangement. In addition, FRA visited Frontex headquarters on 22 March 2023 for bilateral discussions with staff on the issues covered in this contribution.

1. Asymmetry between safeguards at EU and national level

The European Border and Coast Guard consists of both the Member State authorities responsible for border management and return, and Frontex as their EU level counterpart. Nevertheless, the EBCG Regulation sets out more obligations for Frontex than Member States, related to the protection and promotion of fundamental rights.

Legal and policy developments following the EBCG Regulation point to a gradual alignment of national and EU-level fundamental rights obligations. The 2023 Commission Communication establishing the multiannual strategic policy for European integrated border management (EIBM) highlights that "Frontex and the Member States should foster an EIBM culture characterised […] by the full respect for fundamental rights, and they should integrate fundamental rights safeguards throughout all their activities." It goes on to emphasise that "[f]fundamental rights monitors are to protect and promote the respect for fundamental rights as a core element of all activities of the European Border and Coast Guard, under every component of EIBM." Its annex recommends Member States to develop "tailored national fundamental rights strateg[ies] and action plan[s]," or including an explicit fundamental rights component within their national EIBM strategy. The revamped Schengen evaluation and monitoring mechanism significantly strengthened the fundamental rights dimension of Schengen evaluations.

Although general provisions of the EBCG Regulation, such as Article 1 (subject matter), Article 3 (2) on integrated border management, and parts of Article 80 (general fundamental rights safeguard clause) apply to both Frontex and the Member States, more concrete and detailed measures to protect and promote fundamental rights are envisaged only for Frontex. The following examples illustrate this:

- Article 5 (4): Frontex must contribute to the continuous and uniform application of the EU *acquis* on fundamental rights, in particular the Charter of Fundamental Rights of the EU;
- Article 80 (1): Frontex must adopt a fundamental rights strategy and action plan;
- Article 81: Frontex must draw up a code of conduct;
- Article 110 (1)-(2): Frontex must constantly assess the fundamental rights compliance of all its operational activities;
- Article 110 (6): Frontex must recruit and deploy at least 40 fundamental rights monitors.

The EBCG Regulation does not sufficiently operationalise corresponding duties for Member States. Through its regular work on borders, FRA observed that the divergence between the safeguards at EU (Frontex) level and the national level is prone to have adverse implications on fully upholding fundamental rights when conducting operational activities within the single EU border management space. Three examples illustrate this:

1. Fundamental rights monitoring remains uneven. Frontex has the duty to constantly assess the fundamental rights compliance of all its operational activities by its fundamental rights monitors. There is no similar obligation for Member States under EU law,. although the European Commission has recently encouraged this. National border monitoring mechanisms have a preventative function. They can also support domestic investigations of allegations against border management authorities by providing objective, evidence-based and unbiased analysis and reporting. This improves transparency and accountability, and thus enhances trust in relevant public authorities. [1]
2. In some Member States, the officers that Frontex deployed did not patrol critical sections of the external border where they could witness alleged fundamental rights violations. [2] When deployed to operations through Frontex, officers are obliged to report (potential) violations of fundamental rights through the serious incident reporting (SIR) mechanism. There is no such duty under domestic law, although other reporting mechanisms may exist in some Member States.
3. Third countries may get conflicting messages on EU fundamental rights law standards. Frontex and Member States deploy officers to third countries. Figure 1 illustrates Member States which deployed officers to Serbia and North Macedonia in mid-April 2023. In Serbia, such deployments coexist with Frontex deployment, whereas in North Macedonia, all parallel deployments by Member States were subsumed into the Frontex joint operation which began in mid-April. [3]

Figure 1 – Bilateral deployments to Serbia and North Macedonia, 14 April 2023

The map shows that Austria and Hungary deploy officers to Serbia and Austria, Croatia, Czechia, Hungary, Slovakia and Slovenia deploy officers to North Macedonia.

Source: International Organization for Migration, 2023.

Notes: As of 20 April, deployments to North Macedonia are part of a Frontex joint operation. Bilateral deployments discontinued.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 (1999) and the International Court of Justice's Opinion on the Kosovo declaration of independence.

Deployments in third countries under the aegis of Frontex need to follow a strict fundamental rights scrutiny (such as adherence to the Frontex code of conduct, establishment of a complaints mechanism, oversight by the fundamental rights officer, etc.) which is not required to the same degree when Member States deploy officers outside the Frontex framework. Bilateral deployments are thus not subject to the same fundamental rights guarantees as those reflected in status agreements and working arrangements governing the cooperation between Frontex and third countries under Article 73 of the EBCG Regulation. [4] Any deployment under Frontex requires a prior fundamental rights impact assessment. Vague fundamental rights safeguards increase the risks for fundamental rights.

Therefore, should the EBCG Regulation be revised in future, consideration could be given to

approximate the fundamental rights safeguards (such as a fundamental rights strategy and action plan and fundamental rights monitoring) applicable to Member States with those of Frontex.

2. Frontex internal fundamental rights mechanisms

Respect and promotion of fundamental rights is a core part of the Frontex mandate. The EBCG Regulation equips Frontex with several internal dedicated fundamental rights safeguarding mechanisms: a fundamental rights officer (Article 109), fundamental rights monitors (Article 110), a complaints mechanism (Article 111), a fundamental rights strategy and its implementing action plan (Article 80). These internal fundamental rights safeguarding and monitoring mechanisms are all now in place. With its targeted legal and operational advice, the Frontex Consultative Forum established under Article 108 of the Regulation significantly strengthened Frontex' attention to fundamental rights. [5]

In June 2021, the fundamental rights officer was recruited by Frontex followed by a deputy fundamental rights officer in March 2022. The size of the fundamental rights office increased from 10 staff in June 2021 to 65 by the end of April 2023, according to the fundamental rights officer. This growth has brought Frontex significant fundamental rights expertise and capacity. However, the overall number of Frontex staff increased and the Standing Corps were established in parallel. With the number of Standing Corps Officers expected to grow to potentially 10,000 by 2027, the expanded fundamental rights office should continue to grow at the same pace as the overall growth of the Agency.

Frontex is required to have fundamental rights monitors to "constantly assess the fundamental rights compliance of operational activities" and to "provide advice and assistance" under Article 110 of the EBCG Regulation. However, there was a significant delay in the recruitment of fundamental rights monitors, who were not in place by 5 December 2020, as required by Article 110 (6) of EBCG Regulation. [6] The positions were only filled in the course of 2022. [7] Through a pilot project running from November 2019 until June 2021, FRA assisted Frontex in establishing fundamental rights monitoring. [8] FRA developed monitoring tools and other materials, provided advice on methodologies and conducted pilot monitoring visits to Frontex operational areas to test such tools and to tailor them to the modalities of work and to the tasks of the monitors. In March 2023, Frontex adopted Standard Operating Procedures (SOPs) describing the roles and responsibilities of the fundamental rights monitors. Although monitors have been facing challenges to access certain documents or to observe certain Frontex activities, as reported in theannual report of the fundamental rights officer, FRA expects that the SOPs will address the remaining obstacles.

Article 111 of the EBCG Regulation further developed Frontex' internal complaints mechanism. The mechanism is available to individuals who consider that their fundamental rights have been violated in the context of Frontex operations. In 2021, the European Ombudsman noted in an own-initiative inquiry the very low number of complaints submitted, delays and other issues regarding replies by national authorities and inadequate transparency about the mechanism's activities. The Ombudsman provided nine suggestions for improvement, including allowing anonymous complaints and providing a procedure for appealing decisions by the fundamental rights

officer. [9] In 2021, the Consultative Forum also issued a dedicated recommendation on the draft rules on the complaints mechanism. Some of the concerns raised – for example the need for timely response by national authorities – may require an adjustment to Article 111 of the EBCG Regulation.

As required by Article 80 (1) of the EBCG Regulation, Frontex adopted a new fundamental rights strategy in February 2021 and the Management Board approved an Action Plan for the operational aspects of its implementation in November 2021. [10] Frontex developed both documents in consultation with the Consultative Forum, which suggested that they be kept as living documents and be regularly assessed by independent experts with fundamental rights expertise. [11] Frontex' fundamental rights strategy and action plan could constitute a blueprint for similar national strategies.

One of the guiding principles of the Frontex fundamental rights strategy is to apply fundamental rights due diligence. [12] Under the European Convention on Human Rights (ECHR), rights relevant to border management (e.g. right to life, prohibition of torture, inhuman or degrading treatment or punishment, right to liberty and security) entail positive obligations. [13] Pursuant to Article 52 (3) of the Charter, such positive obligations are also implied in the corresponding Charter rights. A key aspect of such positive obligations is to carry out prior fundamental rights assessments.

Consequently, the fundamental rights office adopted a due diligence policy (not publicly available) setting out a procedure for a fundamental rights impact assessment before starting cooperation activities with third countries. [14] Such a procedure would, however, also be relevant in the context of Article 46 of the EBCG Regulation relating to not launching, suspending or terminating Frontex activities in case of violations of fundamental rights or international protection obligations that are of a serious nature or likely to persist. As the European Commission pointed out in the fundamental rights assessment of North Macedonia pursuant to Recital (8) of the EBCG Regulation, the Frontex Executive Director and the fundamental rights officer remain bound by the rules in Article 46 on suspending and terminating operational activities in case of serious and persistent fundamental rights violations. [15]

Overall, the Frontex internal fundamental rights mechanisms now established are expected to function more effectively following a certain period of implementation. However, some legislative adjustments to the complaints mechanism and clearer wording setting out the parameters for a fundamental rights assessment to inform any decision under Article 46 of the EBCG Regulation would further strengthen the internal fundamental rights protection architecture of Frontex.

3. Processing of personal data

Articles 86 to 92 of the EBCG Regulation establish specific rules for Frontex to process personal data. In the context of its cooperation with Frontex, FRA noted the following fundamental rights challenges relating to data protection:

- The risk of processing personal data by Frontex within Eurosur without a clear legal basis (see Section 4);
- Multiple purposes of many Frontex activities combining migration management and law enforcement blurring the distinction between the applicable data protection framework of Regulation (EU) 2018/1725;
- Unclear purposes of processing personal data during operational activities;
- Imbalance between the large amount of data to be processed by the European Travel Information and Authorisation System (ETIAS) Central Unit and the limited staffing of the data protection officer to meaningfully conduct the necessary advice and oversight functions and handle data subject requests.

The European Data Protection Supervisor recently audited the processing of personal data by Frontex in the context of joint operations. The report of this audit further illustrates the challenges linked to processing of personal data by Frontex and how these could be addressed.

Multipurpose activities blur the applicable data protection regime. Regulation (EU) 2018/1725 applies to all data processing except for personal data in the field of police cooperation and judicial cooperation in criminal matters, with specific rules set out in Chapter IX of the regulation. A clarification by the EU legislator would facilitate the correct implementation of data protection rules by stating which Frontex activities fall within the field of police cooperation and judicial cooperation in criminal matters (and are thus regulated by Chapter IX of Regulation (EU) 2018/1725) and which activities are regulated by the other chapters.

Concerning operational activities, FRA understands that Frontex essentially processes personal data in support of Member States, e.g., during screening and fingerprinting. However, personal data – in particular those collected during debriefings – may also be further processed by the agency in a pseudonymised form for risk analysis purposes under Articles 29 and 87 of the EBCG Regulation. Therefore, it would be beneficial to have more legal clarity on the personal data which Frontex may process beyond the specific criminal law enforcement situation regulated in Article 90, thus clarifying rules about who is the controller of such data.

Finally, without commensurate resources the Frontex data protection officer will not be in a position to cover the needs that will arise from the operation of ETIAS. As of May 2023, the data protection officer in Frontex has six staff members which may not be sufficient.

4. European Border Surveillance System (Eurosur)

Eurosur is the framework for information exchange and cooperation between the Member States and Frontex, established under Articles 18-28 of the EBCG Regulation. Additional rules on what information can be processed under Eurosur and how this should be done are set out in the Commission Implementing Regulation (EU) 2021/581.

Although the horizontal fundamental rights safeguards in the EBCG Regulation remain applicable in this operational context, there is no explicit general reference to fundamental rights in the provisions of the EBCG Regulation relating to Eurosur, except for the reference to protecting and saving lives at sea in Article 18. This may result in deprioritising fundamental rights issues in documents governing the functioning of Eurosur. The fact that the reference to a horizontal fundamental rights clause is absent in the Commission Implementing Regulation illustrates this risk.

In September 2018, FRA published a short report on how Eurosur affects fundamental rights. FRA noted that, overall, Frontex pays attention to fundamental rights but certain aspects could be improved. These include, for example, better capturing search and rescue incidents and information on children; improving data quality; and, reducing fields with narrative text to limit the risk of inadvertently processing personal data by Frontex. As Eurosur still uses the same incident template as in 2018, these suggestions have yet to be implemented.

Article 75 of the EBCG Regulation regulates the information exchange with third countries in the context of Eurosur. Article 89 (4), which regulates the processing of personal data in Eurosur, contains an important fundamental rights safeguard, prohibiting the exchange of data if it "provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights". This safeguard should equally apply to other information, the sharing of which would expose individuals to such risks, as illustrated also in section 2.4 of the Eurosur Handbook (point 8) and as suggested in FRA's 2018 opinion.

In its 2018 opinion, FRA also highlighted the importance of assessing the fundamental rights situation in third countries more systematically before sharing border surveillance information with them. For Member States, a duty to that effect is included in Article 72 (3) of the EBCG Regulation. However, FRA did not have the capacity and resources to verify if and how Member States carry out such assessments (if at all).

Although Eurosur is primarily intended for sharing situational information on events, incidents, operations etc., Frontex activities may result in the processing of personal data which has no clear legal basis. The processing of personal data in Eurosur is limited and regulated in Articles 89 the EBCG Regulation. In the European context and in specific situations envisaged under Eurosur, Frontex is only allowed to process ship and aircraft identification numbers. The Regulation is

unclear on processing of personal data in the context of Eurosur fusion services under Article 28 of the EBCG Regulation. In practice, Frontex activities falling under the Eurosur framework may result in processing personal data beyond ship and aircraft identification numbers. For example, through its multipurpose aerial surveillance, Frontex operates aircrafts equipped with cameras which may allow – provided there are good weather conditions and the aircraft flies low – to depict faces with a sufficiently high resolution to enable the subsequent identification of the person, for example by comparing it with pictures taken upon disembarkation. Some of the activities listed in Article 28 of the Regulation on Eurosur fusion services (e.g., analysis of internet activities) may also result in the processing of personal data. Such processing of personal data by Frontex has no clear legal basis.

FRA considers that rules establishing clear safeguards for aligning the type of personal data Frontex can process in Eurosur with justified operational needs and realities would avoid the risk that Frontex captures, stores and possibly shares personal data outside the EU data protection framework.

5. Vulnerability Assessment and multiannual strategy

Pursuant to the Recital (10) of Regulation (EU) 2022/922 which revised the Schengen evaluation and monitoring mechanism, synergies between Frontex' vulnerability assessment and the Schengen evaluation and monitoring mechanism should be maximised. Article 33 of the EBCG Regulation unpacks and further details this duty. However, the embedded fundamental rights safeguards for these two mechanisms differ significantly.

FRA's 2018 opinion on the proposed EBCG Regulation noted that the provisions in the proposal relating to multiannual strategic planning (current Articles 8 and 9) and to the vulnerability assessment do not mention fundamental rights, thus creating a risk that fundamental rights will not be adequately considered. In contrast, Regulation (EU) 2022/922 contains a series of concrete fundamental rights safeguards as well as provisions on cooperation with FRA, some of which could also inform a potential revision of the EBCG Regulation in view of contributing to mainstreaming fundamental rights in vulnerability assessments. Under Recital (11) of Regulation 2022/922, Schengen evaluations should pay particular attention to "verifying respect for fundamental rights in the application of the Schengen acquis" for which "additional measures should be implemented". This could be used as a source of inspiration when adjusting the provisions on vulnerability assessment, should the regulation be reopened, and as a possible follow up to recommendations on vulnerability assessments by the European Court of Auditors. [16]

Every year, as part of the bilateral cooperation arrangement, Frontex requests FRA to submit information relating to fundamental rights challenges and good practices at the external borders, which Frontex uses for its vulnerability assessments. In an environment of shrinking resources, unless expressly tasked by the EU legislator and sufficiently resourced, FRA may not be able to continue to provide this support to Frontex in future.

Over the years, FRA's annual fundamental rights reports have documented serious, systemic and persistent fundamental rights violations at the EU's external borders. [17] FRA's report, titled 'Asylum and Migration: Progress achieved and remaining challenges', illustrates the fundamental rights challenges as of the end of March 2023. Article 8 of the EBCG Regulation provides for a multiannual strategic policy cycle for European integrated border management which sets out how the challenges in the area of border management and return are to be addressed in a coherent, integrated and systematic manner. Considering the recurrent and widespread fundamental rights issues at the EU's external borders, it would be helpful to require the drafters of such a strategy to ensure that it also envisages how to duly address related fundamental rights challenges.

In conclusion, should the EBCG Regulation be revised, considerations could be given to strengthen the fundamental rights components of the vulnerability assessment and the multiannual strategic policy cycle, for which Regulation (EU) 2022/922 could offer inspiration.

6. Return monitoring

Monitoring of forced returns is a key safeguard against fundamental rights violations during return operations.

FRA has regularly highlighted in its reporting on forced return monitoring systems in EU Member States, that monitoring by the same authority that carries out returns is not sufficiently independent to qualify as 'effective' under Article 8 (6) of the Return Directive (Directive 2008/115/EC). Relevant expertise and sufficient budgetary resources to conduct monitoring in an independent manner and with sufficient frequency are further important elements of effectiveness.

Frontex set up an internal pool for forced return monitors pursuant to Article 51 of the EBCG Regulation. By the end of 2022, the pool included 60 monitors, all but two of which were affiliated with the national entity in charge of forced return monitoring and were formally appointed to the Frontex-governed pool. The pool, coordinated by the fundamental rights officer since the end of 2021, monitored some 56 % of all Frontex-coordinated forced return operations by charter flights in 2022. This monitoring covered 100 % of collecting return operations, 71 % of joint return operations and 36 % of Frontex-funded national return operations.

FRA observed that the pool of forced return monitors conducted its tasks without interference, however, formally, the management of the pool remains with Frontex, thus within the same agency that carries out the forced returns. In FRA's 2018 opinion, FRA suggested that to ensure its effectiveness, the EU legislator should revise the relevant provision in the then proposed EBCG Regulation to entrust an external actor to manage the pool of forced return monitors.

One way to enhance the independence of the pool without undermining what works well would be to entrust an actor with fundamental rights expertise external to Frontex with specific review and oversight functions. Such an entity could, for example, receive and analyse the monitoring reports and provide an annual assessment. In addition, as the forced return monitoring pool is composed of members of national forced return monitoring bodies established under Article 8 (6) of the Return Directive, such an entity could also be engaged in developing guidance, tools and training materials, similar to the role that the proposed Screening Regulation envisages for FRA. [18] This could also help address some of the shortcomings of the national monitoring mechanisms under Article 8 (6) of the Return Directive identified through Schengen evaluations. [19]

In addition, FRA would also like to draw attention to the absence of a legal definition of the term 'voluntary return', considering that Article 48 of the EBCG Regulation tasks Frontex to provide assistance in relation to voluntary returns. The term 'voluntary return' should be defined in law, clarifying that it concerns people who do not have the right to stay in the EU and how it relates to the concept of 'voluntary departure' as defined in Article 3 (8) of the Return Directive. In doing so, express references to the principle of *non-refoulement* and access to asylum safeguards could also be considered.

Conclusions

In this contribution, FRA highlights six priority areas relating to fundamental rights which may require legislative adjustments to enable the European Union and its Member States to fully live up to the obligations stemming from the Charter of Fundamental Rights of the EU.

FRA has repeatedly pointed out in reports in recent years that core fundamental rights protected by the Charter are at risk at the EU's external borders. These rights include the right to life, and the prohibition of torture, inhuman or degrading treatment, and the prohibition of *refoulement*. These are absolute rights which, under Article 15 of the ECHR, cannot be derogated from, even in times of emergency.

FRA notes the increased attention from the EU to uphold fundamental rights at borders, reflected, for example, in policy discussions on introducing independent national border monitoring mechanisms and in the increased attention on ensuring prompt and effective official investigations into alleged rights violations. The evaluation and review of the EBCG Regulation offers an opportunity to reflect on how best to improve the fundamental rights situation at the external borders of the EU.

Endnotes

[1] See in this context FRA (2022) 'Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders', 14 October 2022; FRA (2022), 'Establishing independent and effective national border monitoring mechanisms: Expert meeting', news item, 22 November 2022.

[2] See in this context also: European Parliament,Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, LIBE Committee on Civil Liberties, Justice and Home Affairs, 14 July 2021, para. 3A.

[3] Frontex, Frontex launches joint operation in North Macedonia, 20 April 2023.

[4] See in this context also the model instruments European Commission, Communication from the Commission to the European Parliament and the Council. Model status agreement as referred to in 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, COM(2021), 21 December 2021; European Commission, Communication from the Commission to the European Parliament and the Council Model working arrangement as referred to in Regulation (EU) 2019/1986 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, COM(2021) 830 final, 21 December 2021. For a list of all such working arrangements as of April 2023, see Frontex, Public Register of Documents.

[5] For an overview of the Consultative Forum's work the Frontex webpage on its work programmes and annual reports.

[6] FRA (2021), Fundamental Rights Report, 10 June 2021.

[7] Frontex (2022), Fundamental Rights at Frontex, Fundamental Rights Monitors.

[8] See Frontex, Fundamental Rights at Frontex, Fundamental Rights Monitors as well as FRA and Frontex to work together on developing fundamental rights monitors, news item, 10 June 2020.

[9] European ombudsman, Decision in [https://www.ombudsman.europa.eu/en/decision/en/1431088] on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer. Between 2016 and January 2021, the FRO had received 69 complaints of which 22 were admissible.

[10] Frontex (2021), Management Board adopts the new Frontex Fundamental Rights Strategy, news item, 15 February 2021 and Frontex, Management Board Decision 61/2021 of 9 November 2021 adopting the Fundamental Rights Action Plan for the implementation of the Fundamental Rights Strategy, 9 November 2021.

[11] Frontex (2022), Ninth Consultative Forum Annual Report 2021, October 2022, Annex 7.

[12] Frontex (2021), Fundamental rights strategy, Guiding Principles, Warsaw, 14 February 2021.

[13] Akandji-Kombe, J.F., Directorate General of Human Rights (2007), Positive obligations under the European Convention on Human Rights. A guide to the implementation of the European Convention on Human Rights, Human

rights handbook, No.7, Strasbourg, Council of Europe.

[14] Frontex (2023), Fundamental rights officer, Fundamental rights due diligence procedure on Frontex cooperation with third countries, March 2023.

[15] Council of the European Union, Commission Staff Working Document Fundamental rights assessment of the Republic of North Macedonia linked to the Proposal for a Council decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia of 23 September 2022, SWD(2023) 33 final, 2 February 2023.

[16] European Court of Auditors, Special Report 8/2021, Frontex's support to external border management: not sufficiently effective to date, 7 June 2021 recommendation 3, page 43.

[17] FRA (2022), Fundamental rights report, 8 June 2022, chapter 6.FRA (2021), Fundamental rights report, 10 June 2021, chapter 6; FRA (2020), Fundamental rights report, 11 June 2021, chapter 5.

[18] European Commission (2020), Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM/2020/612 final, Brussels, 23 September 2020.

[19] See, for example, recommendations to monitor all phases of the return process in the report in Austria (2020 evaluation) and The Netherlands (2021 evaluation), the need for more resources and more return monitoring in Latvia (2018 evaluation),and the need to ensure full independence of the monitoring body in Sweden (2022 evaluation).

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