

## CCBE response to the public consultation “European Border and Coast Guard – update of EU rules”

27 November 2025

### About you

\* Language of my contribution

English

\* I am giving my contribution as

Non-governmental organisation

\* First name

Anna

\* Surname

Smolinska

\*Email (this won't be published)

smolinska@ccbe.eu

\* Organisation name

Council of Bars and Law Societies of Europe (CCBE)

\* Organisation size

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\* Country of origin

Belgium

\* Contribution publication privacy settings

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## General questions on the EBCG and Frontex

### \* 1. How familiar are you with the European Border and Coast Guard (EBCG), which comprises Member States' border, coast guard and return authorities as well as the European Border and Coast Guard Agency (Frontex), and its legal basis (Regulation 2019/1896)?

I don't know about the EBCG and its legal basis

I am aware of Frontex and its activities, but I do not have detailed knowledge of the EBCG Regulation

I am somewhat familiar with the EBCG and its legal basis

I am very familiar with the EBCG and its legal basis

### 2. Please select to what extent you agree with the following statements with regard to issues identified in the EBCG Regulation and Frontex.

	Not at all	To a limited extent	To some extent	To a large extent	To a very large extent	Do not know
*Frontex's cooperation with third countries is hampered by various challenges (legal and political in nature)			<input checked="" type="checkbox"/>			
*Member States' border and return authorities do not sufficiently coordinate amongst each			<input checked="" type="checkbox"/>			

other to protect the external borders of the EU or to carry out effective returns						
*The number of officers and equipment at Frontex's disposal is insufficient to support Member States in protecting the EU external borders;						X
*The lack of a mandatory EU-wide training for national border and coast guard officers (including authorities responsible for returns) hinders the implementation of European integrated border management (EIBM)			X			
*The existing mechanisms for strategic and operational planning between Member States and Frontex are insufficient			X			
*Frontex's external and internal oversight mechanisms are not sufficiently robust			X			
*Frontex's mandate in relation to cross-border crime is not sufficiently clear or defined						X
*Frontex's fundamental rights framework is not sufficiently robust				X		
*Other problems					X	

2a. Please specify (if "Other problems")

500 character(s) maximum

Some activities or practices of Frontex are not defined and regulated in the Regulation while the agency does carry them out. This is the case of debriefing activities. They should be included in the Regulation, the rules and requirements for them (e.g. informed consent of the migrant to take part in the debriefing), the conditions in which they take place and their consequences should be described, as well as the safeguards at the disposal of persons who agreed to take part in the debriefing.

## The future of the EBCG and Frontex

### 3. What do you think are the main threats the EU faces at its external borders?

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*Maximum 3 selection(s)*

Irregular migration

Cross-border crime (i.e., illegal activities that involve movement across national borders, such as organized crime networks)

Trafficking in human beings (i.e., exploitation of people through force, fraud, or coercion, often for labour, sexual exploitation, or slavery)

Migrant smuggling (i.e., illegal transportation of people across borders, typically with their consent, but often in dangerous conditions and for profit)

Terrorism-related threats (i.e., movement of individuals linked to terrorist groups, the smuggling of weapons or explosives, and attempts to carry out attacks within the EU)

Smuggling of illicit goods (drugs, weapons, counterfeit goods, etc)

Other

#### 3a. If other, please specify

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*500 character(s) maximum*

### 4. In your opinion, which of the following areas should the EU strengthen with regard to managing its external borders and migration?

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*Maximum 3 selection(s)*

Enhanced operational control and surveillance at the external borders of the European Union

Better cooperation with third countries to prevent irregular migration (departures) towards the EU;

More effective returns of third country nationals who have no legal right to stay in the EU (e.g. have not received asylum)

More effective fight against cross-border crime (migrant smuggling, trafficking in human beings, etc.)

More effective search and rescue operations (e.g. to prevent migrant deaths)

More measures to share the burden of border management between EU Member States (e.g., through secondment of Member State staff, or sharing of equipment)

Better respect for the rights of migrants

More consistent standards across the EU on the management of external borders, especially on border surveillance and fundamental rights

Other

#### 4a. If other, please specify

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*500 character(s) maximum*

### 5. In your view, what should be the main priorities for Frontex in the coming years?

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*Maximum 3 selection(s)*

Strengthening support to Member States for border surveillance (at land, sea and air borders) and for border checks at border crossing points

Strengthening support to Member States in return of third country nationals who have no legal right to stay in the EU

Supporting third-country authorities in returning nationals of other third countries to their country of origin

Strengthening support to Member States in detecting cross-border crime (e.g. trafficking in human beings, migrant smuggling)

Ensuring that fundamental rights are respected in all Frontex operations at the external borders, in third countries and in returns

Enhancing cooperation with third countries to prevent irregular migration

Improving its capacities (in terms of human resources and technical equipment) to support Member States in border crisis situations

Facilitating and coordinating the cooperation between Member State as regards the management of their borders

Strengthening support for search and rescue operations by the Member States

Strengthening support to Member States in training of national border guard officers and return specialists

Improving its framework for good governance, transparency, and accountability to its stakeholders”

Other

5a. If other, please specify

500 character(s) maximum

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**6. To what extent do you agree with the following statements regarding the role of the EU and Frontex in external border management?**

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
*Frontex should have a more independent role in managing the EU's external borders and return (i.e., going beyond simply supporting Member States' border guard and coast guard authorities, as well as authorities responsible for returns)						X
*Member States and Frontex should exchange data to ensure effective cooperation in border management (e.g. through EUROSUR)						X
*Frontex should contribute to the fight against cross-border crime by cooperating more with relevant EU institutions and agencies (in particular Europol) to ensure a more coordinated and effective response						X
*Frontex should cooperate more with international organisations, including NATO, to counter threats to EU's external borders						X
*The EU should invest more in technology and assets, in particular European solutions, to manage the EU's external borders effectively (e.g., surveillance drones, patrol ships and aircrafts)		X				

*Frontex should increase its support to Member States' authorities at different stages of the return process (e.g., pre-return, forced and voluntary return, post-return, reintegration)			X			
*Frontex should cooperate with relevant third countries (countries of origin and countries of transit) to help them manage migration towards the EU		X				

**7. Please indicate how you expect each of the following policy measures to affect the areas listed across the top of the table (security, migration trends, social impact, compliance with fundamental rights, economic impact and environmental impact). Select the response that best reflects your views.**

**Please use the scroll bar at the bottom of this table to see the rest of the columns.**

*(One of these to be chosen for every box: Very positive impact/Somewhat positive impact/ No impact/Somewhat negative impact/Very negative impact/Do not know)*

	Security (e.g., fighting cross-border crime, terrorism)	Migration trends (e.g., irregular migration, returns)	Social impact (e.g., fundamental rights, public trust)	Compliance with fundamental rights	Economic impact (e.g., efficiency, cost-effectiveness)	Environmental impact
Frontex should have a more independent role in managing the EU's external borders and returns (i.e., going beyond simply supporting Member States' border guard and coast guard authorities, as well as authorities responsible for returns)	Somewhat positive impact	Do not know	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	No impact
Member States and Frontex should exchange data to ensure effective cooperation in border management (e.g.	Somewhat positive impact	Somewhat positive impact	Do not know	Do not know	Somewhat positive impact	Do not know

through the 'EUROSUR' system)						
Frontex should contribute to the fight against cross-border crime by cooperating more with relevant EU institutions and agencies (in particular Europol) to ensure a more coordinated and effective response	Somewhat positive impact	Do not know	Somewhat negative impact	Somewhat negative impact	Somewhat positive impact	Do not know
Frontex should cooperate more with international organisations, including NATO, to counter threats to EU's external borders	Do not know	Do not know	Do not know	Do not know	Do not know	Do not know
The EU should invest more in technology and assets, in particular European solutions, to manage the EU's external borders effectively (e.g., surveillance drones, patrol ships and aircrafts)	Do not know	Do not know	Somewhat negative impact	Do not know	Somewhat negative impact	Somewhat negative impact
Frontex should increase its support to Member States' authorities at different stages of the return process (e.g., pre-return, forced and voluntary return, post-return, reintegration)	Do not know	Do not know	Somewhat positive impact	Somewhat positive impact	Do not know	Do not know
Frontex should cooperate with relevant third countries (including countries of origin and countries of transit) to help them manage migration towards the EU	Do not know	Do not know	Very negative impact	Very negative impact	Do not know	Do not know

## Trainings and harmonisation

**8. To what extent do you agree with the following statements about EU border management and the role of Frontex in training and the harmonisation of the applicable rules?**

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	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
*The EU should promote uniform standards in border management across all Member States				X		
*The EU should promote uniform standards for returns across all Member States				X		
*Common training for national border and coast guards, as well as national officers responsible for returns, is important, and should be consistently ensured across the EU					X	
*Frontex should play a greater role in professional training and capacity building for border and coast guard authorities, as well as for authorities responsible for returns				X		
*Frontex should help Member States in training their border management and return officers to ensure all officers are equally competent when carrying out their tasks				X		

**9. Please indicate how you expect each of the following policy measures to strengthen Frontex’s mandate to affect the impact areas listed across the top of the table (security, migration trends, social impact, compliance with fundamental rights, economic impact and environmental impact). Select the response that best reflects your views.**

**Please use the scroll bar at the bottom of this table to see the rest of the columns.**

*(One of these to be chosen for every box: Very positive impact/Somewhat positive impact/ No impact/Somewhat negative impact/Very negative impact/Do not know)*

	Security (e.g., fighting cross-border crime, terrorism)	Migration trends (e.g., irregular migration, returns)	Social impact (e.g., fundamental rights, public trust)	Compliance with fundamental rights	Economic impact (e.g., efficiency, cost-effectiveness)	Environmental impact
The EU should promote uniform standards in border management across all Member States	Somewhat positive impact	Do not know	Somewhat positive impact	Somewhat positive impact	Do not know	Do not know
The EU should promote uniform standards for returns across all Member States	Do not know	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	Do not know
Common training for national border and coast guards, as well as national officers responsible for returns, is important, and should be consistently ensured across the EU	Do not know	Do not know	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	Do not know
Frontex should play a greater role in professional training and capacity building for border and coast guard authorities, as well as authorities responsible for returns	Do not know	Do not know	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	Do not know
Frontex should help Member States in training their border management and return officers to ensure all officers are	Do not know	Do not know	Somewhat positive impact	Somewhat positive impact	Somewhat positive impact	Do not know

equally competent when carrying out their tasks						
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## Standing corps

### 10. How familiar are you with the EBCG standing corps?

*(The standing corps is the EU's uniformed service of border guard, coast guard and return officers, composed of both Frontex staff and personnel seconded by Member States.)*

Very familiar – I know in detail how the standing corps works (including the different categories)

Somewhat familiar – I have a general understanding of the standing corps

Not very familiar – I've heard of the standing corps but don't know much about it

Not familiar at all – I've never heard of it before

*(Questions 11-12 to be answered only if "very familiar" or "somewhat familiar" are chosen)*

### 11. To what extent do you agree with the following statements on the standing corps?

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
Increasing the overall size of the standing corps would help counter the threats at the EU external borders						X
*Increasing the overall size of the standing corps would help support third countries prevent irregular migration towards the EU						X
*Increasing the overall size of the standing corps would help return						X

more third country nationals with no legal right to stay in the EU to their country of origin;						
*EU Member States should contribute more national officers to the standing corps						X
*EU Member States should get more benefits from contributing national officers to the standing corps (e.g. financial compensation, training)						X
*The standing corps should have the same powers as Member States' national border management authorities (e.g. use of force, use of operational personal data, use of special vehicles.)				X		

## 12. How would you rate the impact strengthening the EBCG standing corps (possible measures in Q11) would have on the following areas?

	Very negative impact	Somewhat negative impact	No impact	Somewhat positive impact	Very positive impact	Do not know
*Security (e.g., fighting cross-border crime, terrorism)				X		
*Migration trends (e.g., irregular migration, returns)						X
*Social impact (e.g., public trust)				X		
*Compliance with fundamental rights				X		
*Economic (e.g., efficiency, cost-effectiveness)						X
*Environmental impact						X

## 13. In your view, what could be improved or strengthened in the functioning of the standing corps?

*(For example, you may comment on recruitment, training, deployment, roles, cooperation with Member States, or working conditions.)*

There should be clear rules regarding its responsibility. It should be clear that both Frontex Standing Corps and national border guards can be held accountable for any fundamental rights violations and there are independent mechanisms and remedies for that.

## Fundamental rights

### 14. To what extent do you agree with the following statements regarding the protection of fundamental rights during Frontex operations and more generally?

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
*It is essential that Fundamental Rights Monitors are deployed during Frontex operations					X	
*Mechanisms to prevent, detect, and effectively address fundamental rights violations in Frontex operations should be reinforced					X	
*Frontex should ensure that the rights of migrants are respected in all of its operations at the external borders, in third countries, and during return and post-return activities					X	
*Cooperation between Frontex's Fundamental Rights Officer and national fundamental rights monitoring bodies should be increased				X		
*An external and independent oversight body (e.g. ombudsman, supervisory board) would help improve accountability in Frontex's operations			X			

**\* 15. To what extent do you agree that the measures outlined above would help improve compliance with fundamental rights obligations in the management of the EU's external borders?**

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To a very large extent

To a large extent

To some extent

To a limited extent

Not at all

**\* 16. To what extent do you agree that the measures outlined above would help improve compliance with fundamental rights obligations in the return of third-country nationals who have no legal right to stay in the EU?**

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To a very large extent

To a large extent

To some extent

To a limited extent

Not at all

## Governance and oversight

**\* 17. To what extent are you familiar with the governance framework of the European Border and Coast Guard and of Frontex? (e.g., relations between Frontex and national authorities competent in border management and return, the structure of Frontex, the functions of the Management Board, Executive Director, Fundamental Rights Officer, Data Protection Officer, oversight mechanisms, accountability and transparency)**

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Very familiar

Somewhat familiar

Slightly familiar

Not familiar at all

(Questions 18-... to be answered only if “very familiar” or somewhat familiar” selected above)

**18. To what extent do you agree with the following statements on governance and oversight in the EBCG framework?**

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
*A common governance framework should also clearly determine the roles for national authorities responsible for border management and returns, alongside Frontex.					X	
*Frontex internal oversight mechanisms and bodies (e.g., Fundamental Rights Officer, Data Protection Officer, Inspection and Control Office) should be strengthened, e.g. in terms of their independence and powers					X	
*External oversight over Frontex (e.g., by the European Parliament, national parliaments, EU Ombudsman, the European Commission, other independent external bodies) should be strengthened					X	

**19. To what extent do you agree with the following statements about specific governance reforms at Frontex?**

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Do not know
*The Management Board of Frontex should play a stronger role in shaping and overseeing the Agency's strategic direction			X			
*The Management Board of Frontex should have a stronger role in operational oversight of Frontex						X
*National authorities responsible for returns should be better represented in the Agency's Management Board and/or governance framework						X
*Establishing an internal affairs unit within Frontex would be beneficial (e.g., to support investigations of potential wrongdoing or misconduct conducted by Frontex staff)			X			
*The role of the Fundamental Rights Officer of Frontex should be reinforced in monitoring Frontex's activities					X	

**20. How would you rate the impact of measures referred to in Q18 and Q19 on the governance and external/internal oversight of Frontex and of the European Border and Coast Guard?**

	Very negative impact	Somewhat negative impact	No impact	Somewhat positive impact	Very positive impact	Do not know
*Security (e.g., fighting cross-border crime, terrorism)						X
*Migration trends (e.g., irregular migration, returns)						X
*Social impact (e.g., public trust)						X
*Compliance with fundamental rights				X		
*Economic impact (e.g., efficiency, cost-effectiveness)						X
*Environmental impact						X

**21. What changes, if any, would you suggest to improving the oversight and accountability of the European Border and Coast Guard, and specifically of Frontex, and its activities?**

*Please share any suggestions on improving the transparency, oversight, or accountability of Frontex or the European Border and Coast Guard, including through national authorities, EU institutions, or (internal or external) independent oversight bodies*

*500 character(s) maximum*

Clear rules regarding respective responsibility should be set for joint investigations. It is important to increase accessibility and visibility of the complaint mechanism and foresee free legal assistance for the mechanism. Serious Incident Reporting must be regulated in the regulation and followed by an independent and proper investigation. For joint activities, the reliance on national authorities for investigations can limit effectiveness and thus obligations must be foreseen. The accountability mechanisms should be applicable to engagement in third countries.

## Technical equipment

**\* 22. To what extent do you agree that Frontex should own or have access to more technical equipment (e.g., patrol vessels for Search and Rescue operations, patrol vehicles for land borders) to carry out its tasks effectively?**

To a large extent

To some extent

Not at all

Do not know

**23. Are there specific types of equipment you believe Frontex should have more of to effectively carry out its core tasks at different types of borders (e.g. land, sea, or air)? (e.g. patrol vehicles for land borders, vessels for maritime surveillance, aerial surveillance tools, etc.):**

*500 character(s) maximum*

If Frontex is given more powers to carry out search and rescue, it should have vessels to be able to carry out these tasks.

**24. How would you rate the impact strengthening Frontex's technical equipment would have on the following areas?**

	Very negative impact	Somewhat negative impact	No impact	Somewhat positive impact	Very positive impact	Do not know
*Security (e.g., fighting cross-border crime, terrorism)						X
*Migration trends (e.g., irregular migration, returns)						X
*Social impact (e.g., public trust)						X

*Compliance with fundamental rights						X
*Economic impact (e.g., efficiency, cost-effectiveness)						X
*Environmental impact						X

## Concluding questions

### 25. You can share any other comments on the EBCG Regulation or on Frontex here

*500 character(s) maximum*

“Nor agree nor disagree” was chosen when it was considered that the reply depends and should be nuanced, and there are pros and cons to the option.  
“Do not know” was chosen when the CCBE considered it does not have enough data or knowledge to answer.

In addition, in case of the changes/measures envisaged above, it is often difficult to estimate their impact on for example security or migration trends, because these areas are affected by many other external factors (e.g. position and policies of third countries) and not only on the organisation, competencies and capacities of Frontex.

Thank you for participating in this public consultation. Your feedback is valuable and appreciated.

**You can upload a policy paper, a position paper or other supporting documents here, if you wish.**

# CCBE's comments to the public consultation "European Border and Coast Guard – update of EU rules"

The CCBE has been a member of the Consultative Forum of Frontex since 2021 and engages with Frontex mainly within this format. In addition to the answers to the questionnaire of the public consultation, the CCBE wishes to provide the following additional comments in view of the upcoming proposal revising the EBCG Regulation.

## General remarks

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When it comes to the planned revision of the EBCG Regulation, the CCBE believes it might be premature. First, the evaluation published in 2024 concluded that no revision is needed and the regulation should be given time to be fully implemented. Second, the new rules from the New Pact on Migration and Asylum were not yet implemented and the new Return Regulation not even adopted. As these rules concern also Frontex, it might be advisable to adopt and implement them first and then choose a proper new legal framework for Frontex.

## Fundamental rights

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**Regarding general provisions**, it is important to maintain in the future regulation the provisions that make clear that it is one of Frontex responsibilities to monitor FRs, such as recital 42 or Article 3 (2) or Article 10(1)(e) or Article 80. Moreover, it is important to maintain the fundamental rights safeguards present in the regulation – the revision shall not serve as an excuse to reduce them.

**Regarding the Fundamental Rights Officer (FRO)**, as FRO is independent and fundamental rights compliance is one of the obligations of the agency, **giving more power to FRO** would allow him to gain more autonomy as for the best way forward. In the regulation, several options (e.g. the ability to escalate unresolved issues to the Management Board or the European Commission, or adopt binding decisions) could be included and the choice of the proper action could be left to FRO's choice based on their assessment.

In the past, there were not enough **fundamental rights monitors**. While the number of Frontex officers increased significantly, the same effort was not put into boosting monitoring of fundamental rights. The number of monitors should be further increased to ensure that there is capacity to properly monitor. The obligation of Member States to ensure full access to all the monitors to any kind of operation or facilities and documents where Frontex is involved should be reinforced. In the past, there have been some issues with access to certain facilities or while an operation was underway. It should be expressly stated that the FRO must be granted access to all Frontex activities, including debriefing and patrolling. There must be obligation for Member States and Frontex to allow fundamental rights monitors access to Frontex activities by default.

The FRO's independence must be guaranteed. However, the CCBE is not in favour of giving this role to an external body, even partially. FRO needs to know Frontex from within in order to find appropriate solutions. The CCBE's assessment of the work done till now by the current FRO and his independence is positive. Also, the fact that the FRO moved to a building separated from Frontex was a good step. We consider that FRO gained extensive experience and has built its autonomy and boosted effectiveness over the past years and outsourcing this role would mean a loss of knowledge and know-how.

It would perhaps be more adequate to speak, in the new regulation, about a Fundamental Rights Office headed by FRO, with a deputy, composed of monitors etc. This would better reflect the reality and would point to the fact that this is an independent entity. Designing "Officer" does not correspond anymore to the role and size of this function in Frontex, which will probably further expand along the expansion of the agency. It cannot be compared either to similar positions in other agencies. Moreover, designating an "office" would avoid confusion by those less familiar with Frontex various components that FR Officer is not a Frontex Officer, i.e. part of Standing Corps Officers.

At the same time, the CCBE understands that there are aspects for which having the oversight of fundamental rights compliance by an external body might be beneficial. Moreover, various JHA agencies have a role to play in the implementation of the New Pact and borders' management. Therefore, the CCBE is in favour of a reflection regarding one body that would monitor the compliance with fundamental rights on the EU's borders. Before creating a new body, the CCBE would suggest looking into how to use existing ones – for example reviewing FRA's or European Ombudsman's mandate.

The future regulation could reinforce the follow-up obligations of Executive Director when he receives recommendations from FRO. For example, Article 109 of the regulation now says: "The executive director shall reply to the fundamental rights officer as to how concerns regarding possible violations of fundamental rights as referred to in point (e) of the first subparagraph have been addressed." It could rather stipulate that the executive director shall consider how to implement, further consult if needed, and reply to the FRO as to how concerns (...) can be addressed.

The current limits for FRO to escalate concerns externally are also related to limits of particular national institutions and the pressures they are put under, see for example the debates that surrounded the investigations in Greece in relation to the Pylos shipwreck.<sup>1</sup>

Giving FRO a possibility to conclude bilateral agreements with national monitoring bodies, to set reciprocal obligations and formalise cooperation, would allow to strengthen this cooperation. There could be a strong referral mechanism that allows FRO to refer some complaints to these bodies. Also, some awareness raising efforts among national institutions would probably boost the cooperation, e.g. training provided by FRO about its office and mechanisms.

There exists several mechanisms against wrongdoing by Frontex. Regarding the **complaint mechanism**, it seems to be underused. It is important to increase accessibility and visibility of the mechanism. It should be better promoted among migrants who under the rules of the New Pact will even more be subject to procedures in which Frontex is involved. In general, the

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<sup>1</sup> Statement of the CoE Commissioner for Human Rights, "Greece: the Ombudsman institution opening an independent investigation into the Pylos shipwreck is a welcome step", available [here](#).

possibility to lodge a complaint should be communicated to migrants.<sup>2</sup> The information about the mechanism should be, by default, provided by Frontex officers to migrants. This obligation could be foreseen in the upcoming revised Regulation. This information should be provided as part of information provision during screening and also by the Return Counsellors.

Moreover, Member States should foresee free legal assistance for migrants who would like to use the mechanism. There is a pending decision of the CJEU with this aspect: legal assistance for the complaint mechanism. For the moment, the AG Opinion said that legal aid is not mandatory for the administrative procedure and that is the state of play. However, it should be considered that the lack of legal assistance undermines the use of the mechanism as migrants themselves might not be able to make use of it. Therefore, the future regulation could foresee that “Member States shall/can ensure legal assistance for persons wishing to use the complaint mechanism”. It could also be made clear in the regulation that complainants may be represented by a representative.

As regard the assessment of complaints, some flexibility and margin of discretion should be left to the FRO. It should be specified that FRO considers all the elements presented to him and the “concrete violation” does not have to be indicated by the complainant at the time of lodging the complaint but rather can be found based on elements indicated by him/her.<sup>3</sup>

In addition, an explicit reference to the possibility for persons to anonymously lodge a complaint or for a third party to lodge a complaint on behalf of them should be introduced, as an important tool to alleviate fear of retaliation and encourage reporting. Anonymous reporting is an important tool that encourages those who fear retaliation.

The fact that the follow-up on the complaint is in the hands of Frontex, opens the way to play down some complaints. Moreover, apart from clarifying that the Frontex or State official must be removed immediately if there has been an established injury, the regulation does not clarify the further consequences once the decision has been taken by the FRO. It merely specifies that it will monitor the actions of the Executive Director or State following the Agency's decision. It is also not explicit about the possible recourse to the judicial authority by the individual once the decision has been received by the Agency. It is therefore necessary to establish a clear legal redress scheme for all types of operations in which Frontex is involved. It is important that Member States follow-up on the complaints.

There is a need for binding rules (i.e. enshrined in the EBCG Regulation) on complaint follow-up and a formal recourse mechanism to clearly set the obligations of those concerned. Member State authorities should have a clear obligation to cooperate with Frontex and with the FRO in relation to the follow up to complaints and serious incidents reports which should be anchored into the regulation. Structured cooperation between FRO and national ombuds institutions should be included in the future regulation. Moreover, FRO should also have the possibility, if the complainant agrees, to forward the inadmissible complaints/expressions of concern to relevant authorities and bodies competent for fundamental rights in Member States as this would allow to increase their awareness about potential fundamental rights issues and potentially undertake further action.

A positive thing about this mechanism is that it can be used in parallel to other redress schemes—it is without prejudice to other means of recourse.

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<sup>2</sup> This was mentioned in the CF recommendation on the complaint mechanism, available [here](#) (page 107).

<sup>3</sup> See also European Ombudsman conclusions about the mechanism, available [here](#).

When it comes to **Serious Incident Reporting (SIR)**, the SIR procedure and mechanism are not expressly mentioned in the current Regulation and thus only governed by Agency's internal Standard Operating Procedures (SOPs). Having it anchored in the Regulation would strengthen the obligation to report fundamental rights violations. Therefore, there should be a new provision in the upcoming regulation to regulate this matter. It should be linked to Article 46 as the number and nature of SIRs is a relevant element for Frontex in assessing the need to suspend or withdraw activities.

FRO should be involved in handling of reports (potentially) presenting fundamental rights dimension. In the past, this was not the case. The agency has worked on SOPs on SIRs which foresee FRO's involvement and it is a good step to improve practices. However, this could also be anchored in the revised regulation.

There must also be a requirement for Member States to ensure an independent and proper investigation based on SIRs. Frontex recognised itself that for joint activities (where there is Frontex and a Member State staff) the reliance on national authorities for investigations can be a limit. Any lack of cooperation of Member States may hamper the functioning of the mechanism.

Finally, when it comes to **Article 46 providing for withdrawal of Frontex in case of FRs violations**, it is a necessary and good safeguard and should remain. However, it does not seem to be fully effective in practice in the sense that if there is no political will from the Executive Director to trigger it, various excuses are found to avoid using the option of suspension or withdrawal. This is related to the fact that completely withdrawing is seen as a sudden, drastic measure. In order to better apply this provision, it could be envisaged to combine it with a new provision that would introduce a possibility to adopt progressive measures to react to reports of fundamental rights violations (a more progressive/escalatory approach).

It is also clear that a decision of the European Court of Justice cannot be considered as the only element allowing to conclude Frontex that the situation is serious enough to suspend or withdraw its support. There are other elements that need to be taken into account and that can be a basis for finding that the situation is serious enough.

Furthermore, the CCBE would encourage to include in the proposal some automatic safeguards/interim measures if very serious violations are alleged.

Support by Frontex to MSs must be dependent on compliance with EU and international law. In order to ensure Member States cooperation, the future regulation should foresee conditionality mechanisms, for instance financial or material support being dependent on the compliance with requirements stemming from the regulation.

Regarding Consultative Forum, the CCBE would suggest amending Article 108 in order to boost the CF capacity to provide advise on the fundamental rights matters. It should be specified that when consulted, the CF needs to be provided with enough time to analyse relevant documents and materials and give its feedback. The consultation needs to be meaningful. It should also be added that Frontex should give an explanation to the CF when its views are not taken into account.

## Responsibility/accountability

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**Regarding Frontex responsibility**, it is important to refer to the few cases that made their way to the General Court or the Court of Justice of the EU.<sup>4</sup> The decisions opinions and judgments rendered till now demonstrate the uncertainty of rules regarding Frontex responsibility, in particular in joint operations, where Frontex “only supports” the Member States. They also show the difficulty for individuals to access justice.

Pending the outcomes of the ongoing litigation, the CCBE would suggest building on the discussions and research that these cases provoked<sup>5</sup>. The future EBCG Regulation should clarify the rules regarding respective Frontex and Member States responsibility and make sure that individuals affected by the actions of Frontex, being it in Frontex or joint activities, have an effective way to claim their rights and have Frontex declared as responsible if the competent judge finds so. That might require (or at least it would be greatly facilitated) by a provision expressly foreseeing that Member States establish procedures (or procedural guarantees and/or procedural obligations) before national courts (especially for cases of joint activities).

Any future decisions of the Court should be reflected in the revised regulation. The regulation should be in line with the case law and draw lessons from it.

Based on its experience as CF member, the CCBE thinks that the **dependence of Frontex on the national authorities** is sometimes underestimated, while it is an important factor when one discusses Frontex accountability or allegations of fundamental rights violations. Member States actions are more subject to internal political situation and can constitute a limit to Frontex. It can be as part of investigations into incidents, for example, where at national level things are not taken further even if Frontex followed properly its internal mechanisms. In this perspective, Frontex gaining some autonomy from Member States could be seen as a positive step. However, this would need to be coupled with reinforced oversight by independent bodies such as the EU Ombudsman for instance.

## Screening

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Given that Frontex is involved in screening activities in some countries (Article 8 of the Screening Regulation) it is important that the revised regulation is in line with the Screening Regulation. It could be foreseen to include in the revised regulation a cross-reference and specify the obligations that Frontex is bound by when it carries out screening. For instance, in relation to the provision of information of Article 11 and the screening form of Article 17.

Article 10 (3) on the monitoring of fundamental rights - mentions that this mechanism is ‘without prejudice’ to Frontex’s own fundamental rights monitoring activities, but it might be interesting to introduce more positive possibilities for collaboration (between Member States and Frontex fundamental rights monitors).

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<sup>4</sup> See cases T-600/22 and C 62/24 P; T 600/21 and C 679/23 P; T-136/22 and C – 136/24 P

<sup>5</sup> See for example M. Gkliati, “Shaping the Joint Liability Landscape? The Broader Consequences of WS v Frontex for EU Law”, available [here](#).

## Debriefings

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Debriefings are interviews with migrants that aim at collecting intelligence regarding cross-border crime such as smuggling. The question of **debriefings** is very important for the CCBE as it touches upon self-incrimination risks and remedies. It is one of the current vulnerable points/grey areas when it comes to compliance with fundamental rights. While debriefings have become a well established practice by Frontex and they take place, producing consequences for migrants, they are not defined in the regulation. It is not written in law what these are, what they imply, in which conditions they should take place and what are their consequences for migrants. Issues with debriefings were explained by the European Ombudsman<sup>6</sup> and by the EDPS.<sup>7</sup>

In particular, in its decision of 3 July 2023<sup>8</sup>, the European Ombudsman recommended that *“Frontex should provide interviewees with information about their rights, access to interpretation and to an independent complaints mechanism with proper oversight. **These safeguards could be more effectively implemented if migrants have access to legal aid.** Frontex should also consider adequate measures to ensure that the consent of migrants to participate in debriefings is recorded, that interviewees or their legal representatives review and sign the record of the interview, and that the records are treated confidentially. Frontex should insist with the host Member State that all these safeguards are included in the relevant operational plan.”* The CCBE supports these recommendations and thinks they should be included in the revised regulation.

In the past, the CCBE already recommended that legal information points for migrants should be established at the borders. These contact points should be established in consultation with the bar and staffed with lawyers from the legal aid system and/or be funded from national, regional or local budgets.<sup>9</sup> Such a solution would also provide useful in the context of debriefings as those subject to them could benefit in these points from access to legal assistance, in line with the recommendation of the European Ombudsman. This legal assistance point should guarantee the presence or availability of qualified lawyers during all procedures that may adversely affect applicants. Its role would be to provide independent legal advice, to ensure that consent is well informed and assist in safeguarding all fundamental rights of those concerned, in particular effectively guarantee the right to information, defence, and non-self-incrimination.

Therefore, in our opinion, the future regulation should define debriefings, as separate from screening and taking place after screening. It should also define conditions in which they take place (especially guaranteeing confidentiality), require written consent from the person to be subject to debriefing, foresee safeguards including possibility of legal assistance and provision of information on the Frontex complaints mechanism, and limit the capacity of Frontex to share the data collected only in specific cases, after a case by case assessment. It has to be clarified that if criminal proceedings are initiated as a result of the debriefing interview, procedural safeguards laid out in domestic law, including the requirement for the provision of legal aid should apply.

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<sup>6</sup> European Ombudsman, Decision on how the European Border and Coast Guard Agency (Frontex) ensures respect of the rights of migrants in 'debriefing' interviews, available [here](#).

<sup>7</sup> EDPS, EDPS reprimands Frontex for non-compliance with Regulation (EU) 2019/1896, available [here](#).

<sup>8</sup> European Ombudsman, Decision on how the European Border and Coast Guard Agency (Frontex) ensures respect of the rights of migrants in 'debriefing' interviews (case 1452/2022/MHZ), available [here](#).

<sup>9</sup> CCBE recommendations on a framework on legal aid in the field of migration and international protection, available [here](#).

## Potential deployments of Frontex to third countries & returns

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**As regards Frontex deployments to third countries**, a preliminary and the regular assessment of fundamental rights risks should be carried out in the operational area – it should become an integral element of any operational plan that follows. As pointed in the CF submission<sup>10</sup>, the requirement for the Agency to carry out a fundamental rights assessment before entering into cooperation should be added to Article 73. It could specify, after par.2 that for the purpose of fulfilling obligations as in par.1 and 2, the agency should carry out a risk assessment. An assessment is currently required from the European Commission only as per the Recital (88) of the regulation.

As long as the accountability mechanisms do not work completely well in the EU (see above), it is difficult to see how they can work in third countries. However, clearly regulating respective obligations in binding agreements with the third country is an indispensable condition for any third country deployments. Moreover, the Agency's accountability mechanisms should be applicable to engagement in third countries – this can be explicitly foreseen in the new regulation.

**Concerning returns**, the CCBE believes that Frontex has a potential, provided it is fully and effectively complying with fundamental rights safeguards during return operations, to inspire national authorities and lead to harmonisation of standards in return operations. This is seen as a process starting from the proper fundamental rights training of Frontex staff which then demonstrates the high standard to national guards, coupled with the presence of Fundamental Rights Monitors that ensure an independent monitoring that the fundamental rights are respected during returns.

The Agency's good practice of requesting information on the existence of enforceable return decisions from the Member States should be a legally binding prerequisite for the Agency's support to the forced return of an individual.

Regarding forced returns, the pool of forced-return monitors should be independent from Frontex, hence Article 51 should be amended accordingly.<sup>11</sup>

The Agency has an obligation to ensure respect for the principle of non-refoulement. Therefore, it should not plan any return operation from Member States with serious deficiencies in their national asylum and return system (including where asylum applications are not accepted or duly assessed, effective remedies are absent and there is a lack of individualised non-refoulement assessments) which give rise to substantial grounds for believing that returnees would face a real risk of treatment in violation of Articles 4, 18 or 19 of the Charter.

**When it comes to return counselling**, the Regulation should make clear that it is without prejudice to the right to legal assistance and representation.

**When it comes to potential involvement of Frontex in the so-called return hubs**, the CCBE finds it difficult to analyse implications of such an involvement as the legal basis for them has not been yet established and they are not yet in place. As expressed in the CCBE position paper on

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<sup>10</sup> See the CF submission to the Commission regarding Frontex Regulation, available [here](#). In 2019, the Consultative Forum has also issued recommendations on the fundamental rights implications of the Agency's engagement with third countries – they remain valid.

<sup>11</sup> As also recommended by the Consultative Forum.

the proposal for a new Return Regulation<sup>12</sup>, many details regarding the way these centres would work are left unclear as they should be regulated subsequently in an agreement with the third country. The text of the proposal for a return regulation leaves uncertainty as to the applicable legal framework and the application of the European *acquis* on respect for fundamental rights. It raises concerns that exiled persons will be subjected to inhuman and degrading treatment, deprivation of liberty for indefinite periods with insufficient procedural guarantees, and a risk of chain refoulement. The issue of responsibility for organising such centres remains to be considered and this also involves determining the legal framework applicable within these centres, for example, rules on the modalities of the transfer.

Against this background, allowing Frontex to be involved in the hubs already at this stage is very risky. The CCBE anticipates that if Frontex is involved in the activities in the hubs, it risks facing violations of fundamental rights and undermine its reputation that it has tried to improve through various efforts regarding fundamental rights compliance. In addition, given the uncertainty around the applicable rules, uncertainties around Frontex accountability risk to be aggravated. The risk is for example that Frontex would be dependent on the authorities of third countries and their staff and would not be able to remedy any human rights violations due to the lack of competence (as it would be supporting the national authorities as it is the case now). It would then face accusations of complicity in the violations.

Therefore, it is the CCBE position that if hubs are established, the same standards and safeguards should apply in the hubs as in the EU. In any case Frontex as an EU agency should be totally bound by the EU law framework, even if it “only supports” a third country operations.

The CCBE is of the view that Frontex should not be involved in scenarios where return operations are based on third-country decisions or take place between two non-EU countries. It is unclear to us on which basis Frontex would be involved in these. It is an EU agency and should be acting within the EU law limits. If Frontex is involved in such operations, how would the question of responsibility be dealt with? For instance, would Frontex guards be judged by a third country tribunals, subject to third country jurisdiction?

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<sup>12</sup> CCBE position paper on the proposal for a new Return Regulation, available [here](#).