

# European Parliament scrutiny of Frontex

## SUMMARY

Regulation (EU) 2019/1896 transformed Frontex into the European Border and Coast Guard Agency, and gave the European Parliament a range of tools affording it oversight of the agency's activities. In addition to budgetary discharge, these include an obligation for the agency to provide information to the Parliament, a key role for the Parliament in appointing the agency's executive director, and attendance on invitation by a Parliament expert at Frontex management board meetings. These tools effectively make the Parliament the key player in terms of democratic oversight of the agency.

In 2020, amidst allegations of Frontex's possible involvement in pushbacks and violations of fundamental rights by Member States' authorities at the EU's external borders, the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) decided to investigate the allegations. The Parliament used both ex-ante and ex-post accountability instruments, as part of which it asked questions demanding oral and written answers, requested the Frontex executive director to appear before the LIBE committee to answer Members' questions, and decided to postpone the discharge of Frontex' accounts in respect of the financial year 2019 (discharge was subsequently given in October 2021).

In January 2021, LIBE decided to step up its action and established the Frontex Scrutiny Working Group (FSWG) to monitor all aspects of the functioning of the agency, including compliance with fundamental rights, and transparency and accountability towards Parliament. The FSWG conducted a fact-finding investigation, collected evidence and presented its final report in July 2021. While the report 'did not find evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined', it found 'serious shortcomings'.

This briefing looks at the accountability mechanisms at Parliament's disposal and how they have been used to ensure that migrants' fundamental rights are respected and upheld at the EU's external borders.



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## Background

Over the course of 2020, media, international actors and NGOs published [reports](#) alleging violations of migrants' fundamental rights by EU Member State authorities at the EU's external borders, in particular in the [Aegean Sea](#), but also at land borders, e.g. between Hungary and Serbia, Croatia and Bosnia, and Belarus and Poland. The alleged violations included collective expulsions – '[pushbacks](#)' – by EU Member States' authorities. In the absence of an internationally agreed definition, the term 'pushbacks' is used when individuals, who irregularly cross a border, are apprehended and returned without consideration of their individual circumstances and in violation of the principle of [non-refoulement](#), the right to asylum and the prohibition of inhuman and degrading treatment. The European Parliament has consistently taken a firm stance in favour of these principles and fundamental rights. In [2016](#) and [2018](#), it strongly condemned the practice of 'pushbacks'. More recently, it [took note](#) of an increasing number of reports alleging violations of fundamental rights at the EU external borders, and recalled that 'automatic refusal of entry, *refoulement* and collective expulsions are prohibited under EU and international law'.

Several such reports mentioned the involvement of the European Border and Coast Guard Agency (Frontex).

## Frontex's accountability

As clearly stated in its recital 103, [Regulation \(EU\) 2019/1896](#) (the Frontex Regulation) respects the fundamental rights and values established in Articles 2 and 6 of the [Treaty on European Union](#) and in the [Charter of Fundamental Rights of the EU](#). These include respect for human dignity (Article 1), the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the prohibition of trafficking in human beings (Article 5), the right to asylum (Article 18) and to protection against removal and expulsion (Article 19), non-discrimination (Article 21) and the rights of the child (Article 24).

Frontex has political, administrative and legal accountability. Politically, it is accountable to the Parliament and the EU national parliaments. Administratively, it is accountable to the Parliament and the Council of the EU, which authorise its budget and grant it discharge for the implementation of its budget; to the European Court of Auditors ([ECA](#)), which has the power to audit; to the European Anti-fraud Office ([OLAF](#)) and the [European Ombudsman](#), which have scrutiny powers within their respective remits; and to the Frontex Management Board, which has disciplinary authority over the executive director. It is legally accountable to courts and tribunals. Finally, interest groups, NGOs, the public, stakeholders and the public at large can hold Frontex socially accountable.

## Follow-up on the allegations

The alleged violations of fundamental rights and the possible role of Frontex have been closely followed up on by the Parliament and in particular by its Committee on Civil Liberties, Justice and Home Affairs ([LIBE](#)), which has, amongst other things, included the task of follow-up in the mandate of the Frontex Scrutiny Working Group ([FSWG](#)) (see Section on Parliament's scrutiny of Frontex). Though Frontex is still subject to scrutiny by other EU bodies, such as the ECA, the European Ombudsman and OLAF, at the time of writing, none of them had specifically looked into the allegations of Frontex involvement in fundamental rights violations. In June 2021, the ECA published its special report No°[08/2021](#), entitled 'Frontex's support to external border management: not sufficiently effective to date', where respect of fundamental rights was not discussed. This is why in an [opinion](#) of September 2021, the LIBE committee asked the ECA to carry out 'such a specific audit in the future'. In its September 2021 [draft](#) conclusions, referring to the ECA special report, the Council said that it recognised the 'challenges posed by Frontex's new mandate', the need to improve the agency's operational response and the 'common integrated risk analysis'. In November 2020, the European Ombudsman opened an [own-initiative inquiry](#) into the implementation of the Frontex complaints mechanism used for reporting fundamental rights violations, and the role and

independence of the Frontex fundamental rights officer ([FRO](#))<sup>1</sup> in this regard. The Ombudsman's conclusions pointed to a number of shortcomings, including a very low number of complaints, a lack of transparency, a delay in recruiting 40 fundamental rights monitors ([FRMs](#)),<sup>2</sup> and a lack of cooperation between the FRO and the Member States' national authorities. In December 2020, OLAF opened an [investigation](#) the scope of which has not been disclosed.

Since November 2020, other accountability actions generated by the allegations have come from NGOs such as [Human Rights Watch](#) and [Amnesty International](#). Moreover, the [media](#) and some non-profit investigative journalism networks have also been keeping a close watch on Frontex.

Legal action has been initiated in a number of cases. In 2019 and January 2021, communications were submitted to the Office of the Prosecutor of the International Criminal Court. [The first one](#) argued that EU and Member States' officials and agents have somehow been involved in crimes against humanity, 'committed as part of a premeditated policy to stem migration flows from Africa via the Central Mediterranean route, from 2014 to date' (2019). [The second one](#) argued that 'Greek government officials and their agents, in addition to Frontex officials and their agents, have perpetrated a widespread and systematic attack against refugees since the European Union – Turkey Deal ("EU-Turkey Deal") was entered into force in March 2016'.

In May 2021, for the first time ever, two applicants brought an action ([T-282/21](#)) against Frontex to the European Court of Justice (CJEU), on the grounds that the agency had 'failed to act' in accordance with [Article 265](#) TFEU. Their action is supported by three pleas in law. The first is about 'serious or persisting violations of fundamental rights and international protection obligations in the Aegean Sea Region', which resulted in a 'policy of systematic and widespread attack directed against civilian populations seeking asylum in the EU'. The second is about the agency's failure to fulfil 'its positive obligations under the Charter of Fundamental Rights' or take any action to prevent fundamental rights violations in the context of its operation. The third involves the applicants' claim of having been directly and individually affected by Frontex operations, which resulted into 'unlawful *refoulement*, collective expulsion, and prevention of access to asylum'. Most recently, in October 2021, Dutch lawyers lodged the [first legal action for damages](#) against Frontex at the CJEU on behalf of a Syrian family pushed out of Greece in 2016 on a flight operated by Frontex and Greece.

Experts have divided views on Frontex's accountability regarding pushbacks. [Some](#) argue that Frontex's set-up and working methods allow all actors involved to shift the blame to others, while individuals face many practical and legal obstacles in bringing Frontex to court. [Others](#), however, insist that Frontex's involvement in illegal pushbacks in the Mediterranean – if proven – would mean that the EU incurs 'derivative responsibility' for a violation of the principle of *non-refoulement* and of the duty to assist persons in distress at sea. Furthermore, some [experts](#) argue there may be circumstances where Frontex may be held jointly responsible alongside a host Member State for alleged human rights violations occurring during joint operations (shared responsibility), or where it may incur responsibility for complicity if it assists a state in violation of human rights obligations. According to Mariana Gkliati ([EU Law Analysis](#)), Frontex's increased accountability under the Frontex Regulation 'does not correspond to the expansion of powers and competencies of the agency'.

## Frontex's response to the allegations

The agency has taken a series of actions to address the identified inefficiencies and the alleged violations. Since 2020, the European Union Agency for Fundamental Rights (FRA) has [attended](#) the agency's management board meetings that touch upon fundamental rights, as provided for by Article 104(6) of the Frontex Regulation. In November 2020, the Frontex management board – composed of one representative from each EU Member State and two European Commission representatives – held an extraordinary meeting to investigate the incidents at the Greek-Turkish Aegean Sea border, following which the Frontex Executive Director, Fabrice Leggeri, [reported](#) to the European Parliament President, David Sassoli, that there had been 'no evidence of a direct or indirect participation of Frontex staff or officers deployed by Member States under Frontex operations in

alleged pushbacks in the Aegean Sea' as of that moment. Nevertheless, the agency decided to set up a Working Group on Fundamental Rights and Legal Operational Aspects of Operations, which released its [final report](#) in March 2021. The report concluded that, notwithstanding the difficulties involved in investigating the events retrospectively, it found no indication 'of anybody injured,

#### Frontex's fundamental rights protection and monitoring system - main tools and instruments

- fundamental rights strategy
- fundamental rights officer (FRO) and fundamental rights monitors (FRMs)
- serious incident report (SIR) procedure  
*Obliges every participant in Frontex operational activities to immediately report in the form of a SIR any situation of possible violations of fundamental rights.*
- individual complaints mechanism (CM)  
*Allows for the submission of individual complaints from persons who are directly affected by the actions or failure to act, of staff involved in Frontex activities, and who consider themselves to have been subject to a breach of their fundamental rights due to those actions or failure to act.*
- Consultative Forum on Fundamental Rights  
*Brings together key European institutions, and international and civil society organisations to advise Frontex on fundamental rights matters.*
- supervisory mechanism on the use of force  
*Provides a framework for monitoring the application of the provisions on the use of force by Frontex statutory staff and relevant follow-ups.*

Source: [Annual Report Fundamental Rights Officer 2020](#) and [Frontex website](#).

reported missing or having died in connection with the respective incidents'. However, it recalled that possible violations of fundamental rights should be reported to the Frontex fundamental rights officer. In relation to that, the report pointed to identified deficiencies in the reporting and monitoring system that should be addressed.

It has been reported that in January 2021, Frontex decided to [suspend](#) its operations in Hungary since the country continued to push back migrants into Serbia, in violation of a December 2020 [judgment](#) in which the CJEU [ruled](#) that the country had 'failed to fulfil its obligations ... on common procedures for granting and withdrawing international protection'. In spite of the suspension, Frontex continues to assist Hungary with return operations.<sup>3</sup>

In February 2021, the agency adopted a new [fundamental rights strategy](#) as provided for by Article 80(1) of the Frontex Regulation. After recalling the basic principles and values that the agency must respect, the strategy stresses that Member States and agency staff are accountable in their professional conduct to the Parliament and the Council. In that context, the strategy insists that border checks and border surveillance at sea, land and air must

always be conducted in a way that respects fundamental rights with particular attention to vulnerable categories such as children. Also, whenever the agency supports Member States in return operations, it must comply with EU and international law, respect the principle of *non-refoulement* and the prohibition of collective expulsions. The FRO, who is totally independent in the performance of their duties, follows up and reports on the implementation of the strategy. A new FRO was appointed in June 2021.

The Frontex Regulation also provided for the recruitment of at least 40 fundamental rights monitors by 5 December 2020 (Article 110(6)). However, despite several calls by both Parliament and the Commission, as of September 2021, 20 fundamental rights monitors still had not been recruited. The Fundamental Rights Office released its 2020 [annual report](#) in June 2021, acknowledging the challenges posed by Frontex's extended mandate. The report noted that media and NGOs had reported several fundamental rights violations at the EU borders in 2020. Moreover, it mentioned that more than 200 alleged incidents had been reported at the Greek-Turkish border, potentially resulting in illegal deportation, excessive use of force and other fundamental rights violations. The report assessed the functioning of the different tools that Frontex has at its disposal to ensure compliance and respect of fundamental rights. These include, inter alia, the fundamental rights

monitors, the serious incident reporting procedure and the individual complaints mechanism. Finally, the Consultative Forum on Fundamental Rights' [annual report](#) 2020, published in October 2021, recalled that 'the adoption of a rights-based approach in all the agency's policies and procedures is a legal requirement, not an option'. It furthermore added that 'as much as an internal fundamental rights monitoring mechanism is required, external oversight bodies, such as the European Parliament, remain crucial to ensure a greater level of accountability and transparency'.

Notwithstanding the action taken by the agency and the close oversight ensured by Parliament, a FRA report on [Migration: Key Fundamental Rights Concerns](#), published in September 2021, confirms that concerns at the EU external borders persist. It says that around 61 000 individuals crossed the EU's external borders irregularly between January and June 2021 (up 59 % from 2020). It also mentions that pushbacks, some of which involving children, were reported by NGOs and the media in several Member States, including Croatia, Cyprus, France, [Greece](#), Hungary, Malta, Romania and Slovenia. In a December 2020 [report](#) on fundamental rights issues at land borders, published at the request of the Parliament, the FRA focused on 'the correct application of the safeguards in the European asylum acquis and the provisions of the [Schengen Borders Code](#). The report recalled, inter alia, that according to Article 4 of the Schengen Borders Code, Member States must respect fundamental rights when carrying out border controls as a general safeguard clause. Previously, the FRA worked on a summary of [fundamental rights of refugees, asylum applicants and migrants](#) at the EU borders and on a [practical guide](#) for border-management staff.

## Parliament's scrutiny of Frontex

Article 6 of the Frontex Regulation provides that Frontex is accountable to the Parliament and the Council. As explained in the 2018 EPRS study on [EU agencies, common approach and parliamentary scrutiny – European Implementation Assessment](#), parliamentary control over EU agencies takes place in various forms, both formally, by means of budgetary discharge, involvement in the appointment of the executive director and the members of the management board, and through an annual report, and informally, through the linking up of an MEP to each agency. The study, which puts forward several recommendations on how to increase parliamentary scrutiny of agencies, predates the entry into force of the Frontex Regulation. According to a 2019 [analysis](#) on the accountability of Frontex in relation to possible human rights violations during its operations, the most significant changes introduced by the new Frontex Regulation concern the FRO, the individual complaints mechanism and scrutiny by the Parliament. Indeed, the Frontex Regulation provides for a plethora of tools that Parliament can use for its oversight of the agency's activities; their main goal in particular is to ensure the flow of information from Frontex to the Parliament. Other provisions touch upon the financial oversight of the agency (see Table 1). The procedure for appointing the Frontex executive director deserves particular mention (see Section on Appointment of the agency's executive director).

Table 1 – List of tools provided for in [Regulation \(EU\) 2019/1896](#)

	Instrument
Art. 6	The <b>agency is accountable</b> to the Parliament and to the Council in accordance with the Frontex Regulation.
Art. 8(4)	The Commission <b>submits</b> the multiannual strategic policy cycle for European integrated border management to the Parliament and to the Council for discussion.
Art. 8(7)	Four years after the adoption of the multiannual strategic policy for European integrated border management, the Commission carries out an evaluation of its implementation and <b>communicates</b> the results of that evaluation to the Parliament and to the Council.

Art. 15(1)	The agency may take all necessary measures to <b>facilitate the exchange of information</b> relevant to its tasks with the Parliament, the Council, the Commission, the Member States, and others.
Art. 29(2)	The agency prepares general annual risk analyses and submits them to the Parliament, the Council and the Commission. Every two years, Frontex <b>prepares and submits</b> to the Parliament, the Council and the Commission a strategic risk analysis for European integrated border management.
Art. 32(11)	The vulnerability assessment is <b>transmitted</b> on a regular basis and at least once a year to the Parliament, the Council and the Commission.
Art. 36(4)	The agency informs the Parliament, the Council and the Commission without delay about substantial additional financial needs that have arisen due to a situation at the external borders.
Art. 42(2)	The Parliament should be <b>informed</b> without delay about situations requiring urgent action, as well as about the measures and decisions taken in response.
Art. 50(7)	Every six months, the executive director <b>transmits</b> to the Parliament, the Council and the Commission a detailed evaluation report of the return operations.
Art. 59(1)	By 31 December 2023, the Commission <b>presents</b> to the Parliament and the Council a review of the overall number and composition of the standing corps.
Art. 64(13)	The Commission <b>informs</b> the Parliament and the Council about its assessment of the composition and deployment of equipment that is part of the technical equipment pool.
Art. 65(1)	The agency's management board <b>submits</b> to the Parliament, the Council and the Commission an annual report on the implementation of Articles 51, 55, 56, 57, 58, 63 and 64 (annual implementation report)
Art. 66(1)	The agency <b>disseminates</b> the results of its research and innovation activities for European integrated border management to the Parliament, the Commission and the Member States.
Art. 68(2)	The agency <b>informs</b> the Parliament and the Council of any cooperation with Union institutions, bodies, offices and agencies, as well as international organisations.
Art. 73(7)	The agency <b>informs</b> the Parliament, the Council and the Commission about the activities related to technical and operational assistance in the field of border management and return in third countries, and the deployment of liaison officers, and provides them with detailed information on compliance with fundamental rights.
Art. 76(4)	Before any working arrangement between the agency and third countries' competent authorities is concluded, the agency <b>provides Parliament with detailed information</b> on the parties to the working arrangement and its envisaged content.
Art. 76(5)	<b>Parliament shall be kept informed</b> of any decision to deploy liaison officers to third countries.

Art. 100 (2)(j) and (k), (6)	<p>The agency's management board:</p> <ul style="list-style-type: none"> <li>– adopts and <b>transmits</b> to the Parliament, the Council, the Commission and the Court of Auditors the agency's annual activity report, multiannual programming and work programme for the following year;</li> <li>– <b>sends</b> annually to the Parliament and the Council (the budgetary authority) any information relevant to the outcome of the evaluation procedures conducted by the agency.</li> </ul>
Art. 102(1)	<p>The single programming document is adopted taking into account a positive opinion of the Commission and, as regards the multiannual programming, after having <b>consulted</b> the Parliament and the Council.</p> <p>If the management board decides not to take into account elements of the opinion of the Commission, it should provide a thorough justification. The <b>obligation to provide a thorough justification</b> also applies to the elements raised by the Parliament and the Council during the consultation. The management board forwards the document to the Parliament, the Council and the Commission without delay.</p>
Art. 104(7)	<p>The chair of the management board <b>may invite</b> an expert<sup>4</sup> of the Parliament to attend the meetings of the management board.</p>
Art. 106(2) and (3)	<p>The Parliament or the Council may <b>invite the executive director to report</b> on his/her tasks, including reporting on the agency's activities, the implementation and monitoring of the fundamental rights strategy, the annual activity report, the work programme for the following year, the multiannual programming and any other matter related to the activities of the agency. The executive director shall also <b>make a statement before the Parliament</b>, if requested, and shall <b>answer in writing any question put forward by a Member</b> of Parliament within 15 calendar days from receipt of such question. The executive director shall <b>report regularly</b> to the appropriate bodies and committees of the Parliament.</p> <p>Except where specific deadlines are provided for in this regulation, the executive director shall ensure that <b>reports are transmitted to the Parliament</b>, to the Council and to the Commission as soon as possible, and in any event within six months of the end of the reporting period, unless the executive director duly justifies a delay in writing.</p>
Art. 107	<p><b>Appointment</b> of the executive director (see next section).</p>
Art. 112(1) and (2)	<p>The Parliament and the national parliaments <b>may cooperate</b> with each other to ensure that scrutiny functions over the agency are effectively exercised. The executive director and the chair of the management board <b>attend</b> meetings <b>when invited by the Parliament</b> and the national parliaments.</p>
Art. 115(5)	<p>The management board <b>forwards</b> to the Parliament, the Council and the Commission a provisional draft estimate of the agency's revenue and expenditure, including the provisional establishment plan.</p>
Art. 116(3), (7), (10) and (11)	<p>The agency <b>sends a report</b> on the budgetary and financial management for year N to the Parliament, to the Council and to the Court of Auditors by 31 March of year N + 1.</p> <p>By 1 July of year N + 1, the executive director <b>sends</b> the final accounts, together with the opinion of the management board, to the Parliament, to the Council, to the Commission and to the Court of Auditors.</p> <p>The executive director <b>submits</b> to the Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N.</p>

On a recommendation from the Council acting by qualified majority, the Parliament, before 15 May of the year N + 2, **gives a discharge** to the executive director in respect of the implementation of the budget for the year N.

Source: Authors' compilation.

## Appointment of the agency's executive director

The procedures for appointing the executive directors of the EU's regulatory agencies vary significantly from one agency to the other, as documented by a 2018 [EPRS study](#), which listed no less than 12 different appointment procedures. The study recommends following the practice established by the [2010 Interinstitutional Agreement](#) between the Commission and the Parliament, according to which: 'nominees for the post of Executive Director of regulatory agencies should come to parliamentary committee hearings' (para 32). Moreover, the study looks at the different procedures and, based on two criteria, namely the appointing authority and Parliament's degree of influence, it classifies them in eight main categories. Parliament's stance is most influential in the cases where it has to 'confirm' the candidate appointed by the Board of Supervisors (as in the case of the European Banking Authority in accordance with Article 51 of Regulation [No 1093/2010](#)). Should the Parliament refuse to confirm the candidate, the latter cannot be appointed (i.e. the Parliament has veto power). In the case of Frontex, Article 107 of the Frontex Regulation stipulates that, following the publication of a vacancy for the post of Frontex executive director, the Commission should propose at least three candidates. The management board appoints the executive director based on merit and professional experience. Before the appointment, the candidates 'shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members'. Afterwards, the Parliament adopts an opinion in which it may indicate its preferred candidate. In its appointing decision, the management board has to take this opinion into account. More specifically, should the management board decide not to appoint the Parliament's preferred candidate, it should justify its decision in writing and inform the Parliament and the Council about it.

The European Council on Refugees and Exiles ([ECRE](#)) considers that the Parliament should have a more prominent role 'in appointing and dismissing the executive director. For instance, Parliament should confirm the candidate'. In addition to that, ECRE suggests other ways to strengthen Parliament's oversight role, including by giving it a seat on the management board, by regularly inviting the FRO to LIBE meetings, or by the Parliament refusing to discharge the agency's budget for the financial year 2019 before all of the 40 fundamental rights monitors have been recruited.

Nonetheless, concerning the appointment of the executive director, it is worth mentioning that other agencies' founding regulations are less prescriptive, and establish that candidates 'may' be invited to Parliament to make a statement and answer questions. Also, there are agencies' founding regulations that do not provide for Parliament's involvement at all. The same EPRS study argues that, over the years, a more favourable practice than parliamentary scrutiny has emerged and has been 'codified' in the most recent agency founding acts (e.g. the Frontex Regulation). It further suggests that the diverse procedures should ideally be rationalised in line with Article 107 of the Frontex Regulation.

## The Frontex Scrutiny Working Group

In July 2020, Frontex Executive Director Leggeri [assured](#) the LIBE committee that Frontex staff had not been involved in any pushbacks. In December 2020, Leggeri [spoke](#) again before the LIBE committee about the alleged involvement of Frontex staff in pushbacks of asylum-seekers by Greek border guards in the Aegean Sea, as well as about the results of the Frontex internal inquiry. Meanwhile, MEPs addressed several [oral and written questions](#) to the Commission, in which they repeatedly expressed their concerns. For instance, they asked the Commission to what extent it was aware of the allegations and what action it would take; inquired about the existence of [monitoring](#)

[mechanisms](#) for identifying pushbacks and about the [situation in particular Member States](#); asked about [specific incidents](#) and about why certain [information](#) (figures) was not made available to Parliament; and demanded to be informed on how the Commission would use the instruments at its disposal to [ensure compliance with the rule of law](#) in the EU.

In April 2021, the Parliament's plenary, following a [recommendation](#) made by the Budgetary Control Committee (CONT), [decided](#) (528 votes in favour, 127 against and 43 abstentions) to postpone granting [discharge](#) to Frontex in respect of the implementation of its budget for the financial year 2019 and the closure of its accounts. The decision was based on several grounds, including Parliament's concerns over the delays in the recruitment of the FRO and FRMs, the gender imbalance among the agency's staff, and the alleged violations of fundamental rights by the agency.

Along the same lines, a LIBE committee [opinion](#) of September 2021 suggested that the CONT committee, given that there are many fundamental rights concerns that have been identified but are yet to be addressed, and until the OLAF investigation has been completed, not grant discharge. The discharge procedure is Parliament's most important tool for checking how public funds have been spent and EU projects carried out. Parliament has the exclusive right to approve the budget implementation of the EU institutions and agencies for a specific year. Parliament ultimately granted Frontex [discharge](#) for the financial year 2019 during its October II plenary session, though in the accompanying [resolution](#) it asked for part of the 2022 Frontex budget to be frozen and only made available once the agency has fulfilled a number of conditions, such as recruiting the remaining 20 FRMs and three deputy executive directors as planned, setting up an adapted mechanism for reporting serious incidents at the EU's external borders, and putting in place a fully functioning fundamental rights monitoring system.

In January 2021, the LIBE committee decided to set up the Frontex Scrutiny Working Group ([FSWG](#)) with a broad mandate not limited in time. Amongst other things, the FSWG was tasked with addressing and further investigating the 'serious allegations of pushbacks and the management concerns' regarding Frontex. Another key task included investigating not only whether the agency was involved in violations of fundamental rights but also whether it was aware of violations and did not act. The working group – composed of two standing Members per political group – [formally began work](#) on 23 February and appointed its chair (Roberta Metsola, EPP, Malta) and rapporteur (Tineke Strik, Greens/EFA, The Netherlands). The FSWG mandate is quite broad and includes monitoring 'all aspects of the functioning' of Frontex, with a particular focus on fundamental rights compliance, correct application of the [EU acquis](#) and 'transparency and accountability of the agency towards the European Parliament'. The working group was asked to carry out its investigative work (including fact-finding missions, collection of documents, hearings of experts, etc.) for a period of four months, and then to present its findings, conclusions and recommendations in a written report. In preparing the report, the FSWG collected documents from NGOs, national and international organisations and the Commission, including correspondence between the Commission and the agency's executive director. It also conducted a legal [analysis](#) of the nature and extent of Frontex's obligations in the context of joint maritime operations at the EU external sea borders.

On 4 March, the FSWG had its [first meeting](#) with Leggeri and Home Affairs Commissioner, Ylva Johansson. MEPs asked Leggeri about delays in the hiring of the FMOs and about the allegations of pushbacks, in particular in the Aegean Sea, but also elsewhere. For his part, Leggeri reported that the Frontex Working Group on Fundamental Rights and Legal Operational Aspects of Operations had not found evidence of violations. Commissioner Johansson recalled that external borders' protection cannot come at the expense of fundamental rights. In particular, the right to asylum and *non-refoulement* should be ensured even to those who cross the borders irregularly. Following the meeting, the FSWG chair and the rapporteur confirmed the need for a) improving the culture and structure of the agency as regards respect of fundamental rights; and b) ensuring that border control goes hand in hand with fundamental rights safeguards. Between March and June 2021, the group held eight meetings, at which it assessed, inter alia, the nature of Frontex operations, the role of the

fundamental rights officer, Article 46 of the Frontex Regulation (decision to suspend, terminate, or not to launch a Frontex activity), and the complaints mechanisms.

As part of its investigative activities, the working group met not only with EU institutions and bodies' representatives (e.g. Commissioner Johansson, Fabrice Leggeri, FRA and the European Ombudsman) but also with NGOs, legal experts, media reporting alleged violations, stakeholders and national coast guards. Due to the travel restrictions related to the coronavirus pandemic, the FSWG conducted a virtual mission to the agency's headquarters. It also opened a mailbox to which evidence and documents could be submitted.<sup>5</sup>

The FSWG published its [final report](#) and [annex](#) on 14 July 2021. Notwithstanding the fact that the scrutiny group 'did not find evidence on the direct performance of pushbacks and/or collective expulsions by Frontex in the serious incident cases that could be examined', the report clearly pointed to serious shortcomings. First, it acknowledged that serious allegations of fundamental rights violations had been 'consistently reported' by 'credible actors' both at national and international levels. Second, it stressed Frontex's failure to take action in order to prevent or even reduce the risk of such violations, and underlined deficiencies in the Frontex monitoring and reporting system for fundamental rights violations. Third, it voiced regret about the significant and unnecessary delay in the recruitment procedure of the FRMs and invited the agency to be more proactive in order to ensure the fulfilment of its 'negative and positive fundamental rights obligation' clearly established in the founding regulation. Finally, with regard to the Parliament's oversight, the FSWG concluded that Parliament had not been adequately informed; that confidentiality hampered Parliament's scrutiny and that Leggeri's statements to Parliament 'did not reflect the knowledge he had at the time of his statements'.

Frontex [acknowledged](#) the FSWG report and said it is 'determined to uphold the highest standards of border control within our operations' and to see how it can implement the report's recommendations 'to further strengthen the respect of fundamental rights in all our activities'. On 11 November 2021, during an [exchange of views on the FSWG report](#), Leggeri assured MEPs that half of the recommendations of the FSWG had been 'almost implemented'. Meanwhile, Frontex's new FRO, Jonas Grimheden, insisted that his work would require more staff than the 40 FRMs currently envisaged.

## MAIN REFERENCES

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Korver R., [EU Agencies, Common Approach and Parliamentary Scrutiny](#), EPRS, European Parliament, November 2018.

## ENDNOTES

- <sup>1</sup> The Fundamental Rights Officer (FRO) is tasked with monitoring Frontex's implementation of its fundamental rights obligations in accordance with EU and international law and with advising the Frontex executive director on fundamental rights-related issues.
- <sup>2</sup> The fundamental rights monitors (FRMs) monitor and assess the fundamental rights compliance of Frontex activities and provide advice and assistance in this regard.
- <sup>3</sup> The final report of the Frontex Scrutiny Working Group on the fact-finding investigation on Frontex concerning alleged fundamental rights violations states that 'the decision to suspend the activities in Hungary did not reveal that the operation on Return would continue. This decision goes against the conclusion of the CJEU that the return decisions issued by the Hungarian authorities are incompatible with the Return Directive and the Charter'.
- <sup>4</sup> The expert is selected from among the expert staff working for the European Parliament administration.
- <sup>5</sup> See the Annex to the report for a detailed account of the investigative work done by the Frontex Scrutiny Working Group.

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