

European Parliament scrutiny of Frontex

SUMMARY

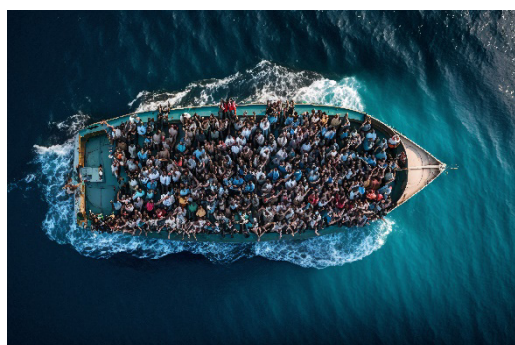
Regulation (EU) 2019/1896 transformed Frontex into the European Border and Coast Guard Agency and considerably increased its tasks, powers, responsibilities and budget. The regulation extended the agency's tasks and competences while also balancing them with stronger fundamental rights safeguards and increased liability and accountability, including by giving the European Parliament oversight of the agency's activities. As part of this oversight, Parliament endorses the agency's budget, can ask the agency for information, plays a key role in appointing the agency's executive director, and a Parliament expert, on invitation, can attend Frontex management board meetings. All this makes Parliament the key player in terms of democratic oversight of the agency.

Yet, the agency has been accused in recent years of failing to comply with some of its own rules and of being involved in pushbacks and violations of fundamental rights by Member States' authorities at the EU's external borders. In 2020, Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) decided to investigate these allegations, using the above range of oversight tools.

In January 2021, LIBE established the Frontex Scrutiny Working Group (FSWG) to monitor all aspects of the functioning of the agency, including compliance with fundamental rights, transparency, and accountability towards Parliament. The FSWG did a fact-finding investigation, collected evidence and presented its final report in July 2021. Parliament's scrutiny and pressure led to the agency to take a series of actions to address the identified inefficiencies and the allegations of fundamental rights violations. In April 2022, the Frontex Executive Director, Fabrice Leggeri, resigned with immediate effect.

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

This is a further update of a briefing published in November 2021 and updated in September 2022.



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Background

In the past few years, media, international players and NGOs have repeatedly 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, [Romania](#) and Serbia, [Croatia](#) and [Bosnia](#), [Belarus](#) and [Poland](#) or Belarus and [Lithuania](#). The alleged violations included collective expulsions – 'pushbacks' – by EU Member States' authorities. The UN Special Rapporteur on the human rights of migrants, Felipe González Morales, concluded in April 2022 in a [report](#) that 'pushbacks remain the de facto general policy in many States and continue to seriously impede the enjoyment of the human rights of migrants who cross international borders'. He added that 'the full spectrum of such violations often remains hidden, due to State-led attempts to dismiss or cover up allegations of wrongdoing'.

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'. In [2021](#), 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 – such as the one issued following a [joint investigation](#) by Lighthouse Reports, *Der Spiegel*, SRF Rundschau, *Republik* and *Le Monde* – mentioned the involvement of the European Border and Coast Guard Agency (Frontex). In [2023](#), Parliament insisted that Member States should lead by example, by strictly upholding their obligations under international refugee law.

Besides facing allegations of fundamental rights violations, Frontex has also been accused of not complying with its [transparency and accountability](#) obligations or with its own rules on the use of force. Furthermore, the agency has been accused of delays in the implementation of obligations arising from its revised mandate, including with regard to recruiting fundamental rights monitors (FRMs).¹ Moreover, the [role of the \(now former\) executive director](#), Fabrice Leggeri, was repeatedly called into question, for example, in relation to the fact that he did not trigger a comprehensive assessment by the agency on the measures taken to prevent fundamental rights violations. Furthermore, there have been several data protection concerns. The European Data Protection Supervisor (EDPS) [reprimanded](#) Frontex of moving to the cloud without proper data protection assessment, and several media accused the agency of intrusive personal data collection from [migrants, refugees](#) and [NGO staff](#).

Frontex's accountability

As clearly stated in recital 103 of [Regulation \(EU\) 2019/1896](#) (the Frontex Regulation), the agency has to respect 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](#) (CFR). 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), the right to 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 its activities; 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 Frontex executive director. Frontex 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 of fundamental rights violations

The alleged violations of fundamental rights and the possible role of Frontex have been closely followed by the Parliament and in particular by the [LIBE committee](#). The latter has, among other things, included the task of monitoring all aspects of the functioning of Frontex in the mandate of the Frontex Scrutiny Working Group ([FSWG](#)) (see Section on Parliament's scrutiny of Frontex below).

Since the ECA Special report No°[08/2021](#) – Frontex's support to external border management: not sufficiently effective to date – did not discuss respect of fundamental rights, the LIBE committee asked the ECA in an [opinion](#) 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'.

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.

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](#))² in this regard. The Ombudsman's conclusions pointed to a number of shortcomings, including a very low number of complaints, lack of transparency, delay in recruiting 40 FRMs and lack of cooperation between the FRO and the Member States' national authorities. In March 2021, the Ombudsman opened another [own-initiative inquiry](#) into Frontex's compliance with its fundamental rights and transparency obligations. In the report drawn up following the inquiry, the Ombudsman [invited](#) Frontex to be more transparent, including by publishing summaries of its operational plans and carrying out further training of its FRMs; to publish its reply to each negative opinion of the FRO about a planned activity; and to ensure the presence of 'cultural experts' during screening interviews. In response to the [Adriana shipwreck](#) off the coast of Greece in June 2023, the Ombudsman opened yet another [own-initiative inquiry](#), this time into the agency's fundamental rights obligations in the context of its search and rescue activities.

In December 2020, OLAF also opened an [investigation](#) into Frontex, but the final report was not made publicly available. In Parliament, it was made available only to members of the Committee on Budgetary Control (CONT) (Parliament grants – or can decide not to grant – Frontex discharge for the implementation of its budget). Some media organisations [claimed](#) to have seen the report and said it confirmed that Frontex 'covered up and helped to finance illegal pushbacks of asylum-seekers in Greece'. Versions of the report later appeared [online](#). In a [statement](#) from October 2022, the Frontex executive management acknowledged that the OLAF investigation report included findings of serious misbehaviour of several individuals employed by Frontex, and that it had identified three key issues. Firstly, that the FRO was prevented from accessing operational information and secondly, that he was not assigned as a case-handler for reports on serious incidents with alleged violations of fundamental rights. Thirdly, staff reporting these types of serious incidents to their superiors had been 'blatantly ignored' by members who had been investigated by OLAF.

Legal action against Frontex has been initiated in a number of cases. In 2019 and January 2021, two communications were submitted to the Office of the Prosecutor of the International Criminal Court (ICC). [The first](#) argued that EU and Member States' officials and agents had 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](#) argued that

'...the combined treatment of refugees in Greece by Greek government officials and their agents, in conjunction with Frontex officials and their agents, since the EU–Turkey Deal's entry into force in March 2016, constitutes a widespread and systematic attack against an identifiable civilian population for the purpose of deterring vulnerable individuals from seeking asylum in Europe, and amounts to crimes against humanity under Article 7 of the Rome Statute'. [An update on the matter and new evidence](#) from the ground were submitted in November 2021. In November 2022, the European Center for Constitutional and Human Rights (ECCHR), with the support of Sea-Watch, urged the ICC to [investigate](#) the possible involvement of EU Member States' and EU agencies' high-ranking officials in alleged crimes against humanity committed against migrants and refugees intercepted at sea and returned to Libya.

In May 2021, for the first time ever, two applicants brought an action ([T-282/21 SS and ST v Frontex](#)) against Frontex before the European Court of Justice (CJEU), on the grounds that the agency had 'failed to act' in accordance with [Article 265](#) TFEU. Their action was supported by three pleas in law and concerned 'serious or persisting violations of fundamental rights and international protection obligations in the Aegean Sea Region', 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, as well as 'unlawful *refoulement*, collective expulsion, and prevention of access to asylum'. In April 2022, the Court [dismissed](#) the action as inadmissible.

In September 2021, an action for damages ([T-600/21 WS and Others v Frontex](#)), was brought against Frontex before the CJEU on behalf of a Syrian family pushed out of Greece in 2016 on a flight operated by Frontex and Greece. The applicants claimed compensation for material and non-material damages as a result of the return operation. The action was sustained by eight pleas in law that included, among others: alleged violations of several articles of the CFR, alleged violations of the Frontex Regulation, and the fact that Frontex had failed to take measures to mitigate the risks of violations to fundamental rights. The General Court [ruled](#) in September 2023 that Frontex could be held responsible for damages incurred by the applicants during the return operation, as the agency lacked the authority to assess the merits of return decisions or applications for international protection.

In March 2022, a new action was brought before the CJEU, ([T-136/22 Hamoudi v Frontex](#)). The applicant claimed that Frontex owed him compensation for the damages he suffered during and following his collective expulsion from Greece on 28-29 April 2020 in the Aegean Sea. The claimant believed that the alleged violations of the CFR and of the Frontex Regulation would give rise to a non-contractual liability of the agency. In particular, the claimant argued that: 'the unlawful collective expulsion of the applicant on 28–29 April 2020 is attributable to Frontex, its "true author"', because it was executed in line with the legally binding operational plan for [Rapid Border Intervention Aegean](#), drafted by the Frontex executive director. The case is ongoing.

Experts have divided views on Frontex's accountability regarding pushbacks. [Some](#) argue that Frontex's set-up and working methods allow all players 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. Researcher Mariana Gkliati, in a [report](#) for UK charity Statewatch, recalled that while Frontex may not be directly responsible for the (in)effectiveness of national procedures and the misconduct of national officers, 'it still has a positive duty to ensure that the operations it conducts will not result in violations of fundamental rights'. Also, to the extent that the agency is informed that a violation is taking place, 'it is obliged to act within its powers to prevent that or similar violations in the future'. Tamás Molnár goes further by [suggesting](#) in the Blog of the *European Journal of International Law* that international law, as codified in the Articles on the Responsibility of International Organizations (ARIO), may be invoked to establish Frontex's derivative responsibility for international wrongs committed by a Member State. 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. Melanie Fink and Jorrit J Rijpma argue in the [EU Law Analysis](#) journal that 'joint responsibility carries a need for joint liability'. They believe that the accession of the EU to the European Court on Human Rights could be a way of holding Frontex judicially accountable. According to an article by Gkliati, again in the [EU Law Analysis](#), Frontex's expanded mandate and powers are not accompanied by an equally strong accountability regime. In particular, the role of the European and national parliaments remains fairly limited to be able to ensure effective political accountability, Gkliati said. She added in an [interview](#) with *Euronews* that reforming Frontex is a matter of 'volatile political will and good intentions'.

Personal data protection concerns

In addition to facing allegations of involvement in pushbacks, Frontex has also been accused of intrusive surveillance. In the aftermath of the 2015 terrorists attack in Paris, Frontex developed PeDRA, short for Processing of Personal Data for Risk Analysis, an operational project for collecting personal data of individuals suspected of involvement in cross-border criminal activities, such as migrant smuggling, trafficking in human beings or terrorism. In July 2022, allegations of intrusive personal data collection from migrants and refugees were reported by the Balkan Investigative Reporting Network ([BIRN](#)) and other media against Frontex. The agency was accused inter alia of enlarging the scope of the PeDRA project to collect sensitive data, such as sexual orientation and political preferences of individuals; sharing migrants' personal data, including with Europol; sidelining EU data protection provisions; and ignoring Frontex's own data protection officer's recommendation to consult the EDPS. Other media [reported](#) that by 2021, the agency had 'collected personal data on 11.254 people and passed it on to Europol. This information was obtained by Frontex during initial interviews with refugees'. The allegations were discussed at the LIBE committee and several Members asked for clarifications, including through [written questions](#) to the Commission. In September 2022, the European Ombudsman opened an [investigation](#) into the rights of migrants in such 'debriefing' interviews, but no maladministration was found. In June 2023, the EDPS launched an [investigation](#) into the alleged provision of migrants' personal data to Europol. According to *EUobserver*, the transfers also include personal data from [NGO staff](#).

Frontex's response to the allegations

The agency has taken a series of actions to address the identified inefficiencies and the allegations of fundamental rights 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 then Frontex Executive Director, Fabrice Leggeri, [reported](#) to the then 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. Over the course of 2020 and 2021, Leggeri met several times with the LIBE committee and the FSWG to respond to Members' questions and discuss the allegations of fundamental rights violations. Due to mounting criticism, coupled with continuing allegations of fundamental rights violations and mismanagement, Leggeri resigned with immediate effect during the Frontex [extraordinary management board meeting](#) of 28-29 April 2022. At the same meeting, convened to discuss OLAF's 'investigations against three Frontex staff members including its' executive director, it was decided that Aija Kalnāja, being the most senior deputy executive director, would become the executive director *ad interim*. The [statement](#) released by the management board on the occasion of the meeting clearly says: 'that effective border control and the protection of

fundamental rights are fully compatible. The mandate of the agency is clearly set out in the European Border and Coast Guard (i.e. Frontex) Regulation'.

Earlier on, the agency had set up a Working group on fundamental rights and legal operational aspects of operations in the Aegean Sea, 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, reported missing or having died in connection with the respective incidents'. The working group nevertheless recalled that possible violations of fundamental rights should be reported to the Frontex FRO. In relation to that, the report pointed to identified deficiencies in the Frontex reporting and monitoring system that should be addressed.

Frontex's fundamental rights protection and monitoring system – Main tools and instruments

- fundamental rights strategy and action plan
- fundamental rights officer (FRO) and fundamental rights monitors (FRMs)
- Frontex Codes of Conduct
- 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: [Frontex website](#).

In January 2021, Frontex decided to [suspend](#) its operations in Hungary, after the country's continued pushback of 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'. An ongoing cross-border crime prevention programme undertaken at the Hungarian border with Frontex support continued, and the agency's support to return operations was only partially suspended.³ At the [July 2022](#) meeting of the FSWG, the Frontex Executive Director *ad interim*, Aija Kalnāja, confirmed that, in spite of Frontex continuing return support to Hungary, the agency had never been involved in returns from the transit zone. Moreover, Kalnāja said that Frontex had reduced its presence significantly in Lithuania and stopped helping the country on the disputed part of its border with Belarus in July 2022, following a CJEU [ruling](#) against Lithuania in June. Both Kalnāja and the Frontex FRO, Jonas Grimheden, called for a 'reversed' Article 46 of the Frontex Regulation (decision to suspend, terminate, or not to launch a Frontex activity), arguing it would be better from a fundamental rights perspective to have greater rather than lesser Frontex presence in EU countries where violations are taking place.

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. Moreover, 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 his/her duties, follows up and

reports on the implementation of the strategy. A new [FRO](#) – Jonas Grimheden – was appointed in June 2021. The Frontex Regulation also provides for the recruitment of at least 40 fundamental rights monitors by 5 December 2020 (Article 110(6)). The recruitments were heavily delayed but by the end of 2022, the agency finally had 46 FRMs in place.

The FRO 2020 [annual report](#), released in June 2021, acknowledged the challenges posed by Frontex's extended mandate. The report noted that some 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 with and respect of fundamental rights. These tools include, inter alia, the fundamental rights monitors, the serious incident reporting procedure and the individual complaints mechanism.

The FRO 2021 [annual report](#), released in June 2022, stated that the FRMs had conducted several monitoring missions in different countries, in particular: Lithuania and Poland (land borders with Belarus); Hungary (land border with Serbia); Greece (Greek islands in the eastern Aegean and the Evros region); Bulgaria (border with Turkey); Italy (central Mediterranean) and Spain (Canary Islands). The report pointed out several areas of concern, including collective expulsions of migrants and violation of the *non-refoulement* principle; use of immigration detention without exploring alternative measures; and poor identification procedures for vulnerable persons.

Moreover, the Frontex Consultative Forum on Fundamental Rights' 2020 [annual report](#), 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'.

In November 2021, the Frontex management board adopted the [fundamental rights action plan](#) for the implementation of the fundamental rights strategy, envisaging actions for both Frontex and the EU Member States.

In March 2022, during an [exchange of views](#) with the LIBE committee, Frontex's FRO, Jonas Grimheden, confirmed that the agency had taken action to address the accusations of violations of fundamental rights at the EU external borders, though the situation remained critical, for instance, at the border between Lithuania and Belarus. He confirmed that a cultural change was happening within the agency, with more frequent incident reports being filed.

In July 2022, the Frontex management board issued a [decision](#) introducing rules for the executive director and the management board to inform the Consultative Forum on Fundamental Rights about the follow-up to its recommendations and to ensure that action be taken with regard to recommendations of the FRO.

Following the leaking of the OLAF investigation report, the Frontex executive management [insisted](#) in October 2022 that the findings 'were practices from the past' and that a number of remedial measures had been taken, such as a procedure to assess the need to trigger Article 46 of the Frontex Regulation, and making the reporting procedure on serious incidents more robust. In his [2022 annual report](#), Grimheden committed to continuing reinforcing all established reporting procedures (the serious incident report, the complaints mechanism and the Consultative Forum on Fundamental Rights). In [April 2023](#), in a meeting to provide an update to the FSWG on the interim results of the ongoing evaluation of Frontex, Grimheden highlighted that Frontex now 'has clear fundamental rights reporting obligations ... and clear fundamental rights monitoring and follow-up on what goes wrong', something he said he does not see in all EU Member States. He believes that Frontex is starting to have a positive effect on the ground and that a revised regulation may further consolidate this trend and help to strengthen the foothold for fundamental rights.

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 a 2018 [EPRS study](#) on parliamentary scrutiny of EU agencies, which predates the entry into force of the new Frontex Regulation, parliamentary control over EU agencies takes place in various forms. Formal scrutiny entails budgetary discharge, involvement in the appointment of the executive director and the members of the management board, and the issuance of an annual report. Informal scrutiny takes place through the linking up of an MEP to each of the EU agencies liable to parliamentary scrutiny. 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 being to ensure the flow of information from Frontex to the Parliament. Other provisions touch upon the financial oversight of the agency (see Table 1 in the Annex). The procedure for appointing the Frontex executive director deserves particular mention.

Appointment of the Frontex executive director

The procedures for appointing the EU regulatory agencies' executive directors vary significantly from one agency to the other, as documented by the aforementioned [EPRS study on parliamentary scrutiny of EU agencies](#), which listed no less than 12 different appointment procedures. 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. It is worth mentioning that, concerning the appointment of the executive director, other agencies' founding regulations are less prescriptive and establish that candidates 'may' be invited to Parliament to make a statement and answer questions. Also, some agencies' founding regulations do not provide for Parliament's involvement at all. The EPRS study, however, argued 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, then Frontex Executive Director Leggeri [assured](#) the LIBE committee that Frontex staff had not been involved in any pushback. In December 2020, Leggeri [spoke](#) again before the LIBE committee about the alleged involvement of Frontex staff in pushback of asylum-seekers by Greek border guards in the Aegean Sea, as well as about the results of the Frontex 2020 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 pushback 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, on a [recommendation](#) by the CONT committee, [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 were many fundamental rights concerns that had been identified but were yet to be addressed, and until the OLAF investigation had 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 2021 plenary session, though in the accompanying [resolution](#) it asked – [unsuccessfully](#) – for part of the 2022 Frontex budget to be frozen and only made available once the agency had 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 2022, Frontex had a budget of [€754 million](#).

In May 2022, Parliament once again [decided](#) – unlike what it had decided for all the other agencies – to postpone granting discharge to Frontex, this time in respect of the implementation of its budget for the financial year 2020. Parliament explained, in the accompanying [resolution](#) (492 votes in favour, 145 against and 8 abstentions), that its position was justified by the fact that Frontex had failed to address Parliament's concerns expressed in previous resolutions as well as the fact that the OLAF investigation report regarding fundamental rights incidents was not yet available. Therefore, Parliament lacked information to take an informed decision. Frontex reacted to Parliament's observations with [an overview of responses and measures](#) taken so far. Discharge was finally granted in [November 2022](#).

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). In March 2022, the LIBE committee [appointed](#) Lena Düpont (EPP, Germany) as the FSWG chair, as Roberta Metsola had been elected to the post of European Parliament president.

The FSWG's 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 4 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.

On 4 March 2021, the FSWG had its [first meeting](#) with Leggeri and the Home Affairs Commissioner, Ylva Johansson. MEPs asked Leggeri about delays in the hiring of the FRMs and about the allegations of pushback, 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. 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, 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, the 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.⁴

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, as he reconfirmed at the LIBE committee meeting of 16 March 2022.

Following Leggeri's resignation in April 2022, FSWG Chair Lena Düpont [recalled](#) that Frontex is facing the greatest challenges because of the expansion of its tasks and powers and because of the geopolitically strained situation at the EU's external borders. Düpont urged the Commission to give much more and clearer guidance and warned that the Parliament would continue to subject all aspects of internal administration and effective border management to thorough scrutiny.

During the May 2022 [LIBE committee meeting](#), Frontex Executive Director ad interim Aija Kalnāja told MEPs that Frontex had implemented 23 of the 43 recommendations of the FSWG, and that a timeline for the implementation of the remaining ones had been submitted to the Frontex management board. On 12 [July 2022](#), the FSWG met again with Kalnāja and Grimheden to discuss the follow-up to the recommendations, as well as the implementation of Article 46 of the Frontex Regulation. Concerning the latter, Kalnāja recalled that according to Article 46(4), action by the executive director can be triggered whenever 'he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist'. Kalnāja also said that the standard operation procedure on the implementation of Article 46 had been adopted by Frontex. On [13 July 2022](#), Kalnāja told the CONT committee members that all but two recommendations had been taken on board by Frontex. In reply to the observation that Frontex still needs to recruit another nine of the 40 FRMs, Kalnāja insisted that the agency would have 46 FRMs rather than the recommended 40 by the end of November. In reply to a second observation that Frontex was still involved in return activities from Hungary, Kalnāja assured that these were very limited and insisted that Frontex and its FRO would

not assist in cases of non-compliance with EU- and international law. Kalnāja furthermore recalled that Frontex had not received any complaints from people who had been returned or serious incidence reports from the FRMs, organisations or any other individuals. Concerning the postponed [discharge for the financial year 2020](#), Kalnāja reassured that Frontex had made considerable progress regarding staff occupancy, gender balance, the prevention and follow-up of harassment cases, and transparency.

In November 2022, a [hearing](#) by the LIBE committee of the candidates for the post of Frontex executive director took place. In December 2022, the Frontex management [appointed](#) Hans Leijtens to the post, after taking Parliament's opinion into account. The FSWG had a first [exchange of views](#) with Leijtens in March 2023. He promised that he would restore confidence in the agency and provide full transparency on incidents reported at the EU's external borders.

During the [April 2023](#) FSWG meeting, Corinna Ulrich from the European Commission's Directorate General for Home Affairs announced that the Commission was doing an [evaluation](#) of both the Frontex Regulation and its standing corps (as envisaged in Articles 121 and 59 of the regulation) and that the implementation of the fundamental rights framework would be one of the core elements of this evaluation. The outcome of this exercise is expected to be presented to the Parliament and the Council at the end of 2023 and will be the basis for further discussion, potentially on a revision of the Frontex Regulation.

In June 2023, in the wake of the *Adriana* shipwreck, a LIBE delegation [visited](#) the Frontex headquarters in Warsaw. The agency's management committed to continuing its path towards an efficient border management, to being transparent and to upholding fundamental rights standards in its activities and at the EU's external borders, through a continuous and constructive dialogue between the agency and the Parliament. One month later, an [exchange of views](#) on the shipwreck took place in the LIBE committee, during which MEPs quizzed Commissioner Johansson and Hans Leijtens on how this tragedy could have been avoided and how to prevent such incidents from happening in the future.

In October 2023, the LIBE committee [adopted](#) a [draft resolution](#), wrapping up the fact-finding investigation by the FSWG. MEPs recognised the efforts made to implement [36 out of 42 recommendations](#) made by the FSWG and recommended specific further actions, in particular a more proactive approach to protecting EU principles and values. MEPs also insisted that Frontex should scale down its operations to mere monitoring and presence on the ground in cases where a Member State is unable to respect EU principles and values; such a scaling down of operations has not happened in the case of Greece so far. They also called on the new Frontex leadership to undertake the deep reforms that are needed and called on the management board to evaluate how it can step up its involvement and scrutiny of the way in which the agency is run.

MAIN REFERENCES

[Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations](#), working document, Committee on Civil Liberties, Justice and Home Affairs, European Parliament, July 2021.

Del Monte M., [The European Parliament's appointing powers](#), EPRS, European Parliament, May 2021.

Luyten K., [Addressing pushbacks at the EU's external borders](#), EPRS, European Parliament, October 2022.

Voss E., [EU Agencies, Common Approach and Parliamentary Scrutiny](#), EPRS, European Parliament, 2018.

ENDNOTES

- ¹ The fundamental rights monitors (FRMs) monitor and assess Frontex activities in light of their compliance with fundamental rights and provide advice and assistance in this regard.
- ² 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.
- ³ The final report of the FSWG 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' (i.e. the return activities) 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'.
- ⁴ See the Annex to the report for a detailed account of the investigative work done by the FSWG.

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ANNEX

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

	Instrument
Art. 6	The agency is accountable to the Parliament and to the Council in accordance with the Frontex Regulation.
Art. 8(4)	The Commission submits 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 communicates the results of that evaluation to the Parliament and to the Council.
Art. 15(1)	The agency may take all necessary measures to facilitate the exchange of information 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 2 years, Frontex prepares and submits to the Parliament, the Council and the Commission a strategic risk analysis for European integrated border management.
Art. 32(11)	The vulnerability assessment is transmitted 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 informed without delay about situations requiring urgent action, as well as about the measures and decisions taken in response.
Art. 50(7)	Every 6 months, the executive director transmits 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 presents to the Parliament and the Council a review of the overall number and composition of the standing corps.
Art. 64(13)	The Commission informs 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 submits 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) of the regulation.
Art. 66(1)	The agency disseminates the results of its research and innovation activities for European integrated border management to the Parliament, the Commission and the Member States.

	Instrument
Art. 68(2)	The agency informs 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 informs 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 provides Parliament with detailed information on the parties to the working arrangement and its envisaged content.
Art. 76(5)	Parliament must be kept informed 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"> ➤ adopts and transmits 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; ➤ sends annually to the Parliament and the Council (the budgetary authority) any information relevant to the outcome of the evaluation procedures conducted by the agency.
Art. 102(1)	<p>The management board adopts the single programming document⁵ taking into account a positive opinion of the Commission and, as regards the multiannual programming, after having consulted 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 obligation to provide a thorough justification also applies to the elements highlighted 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)	The chair of the management board may invite an expert ⁶ of the Parliament to attend the meetings of the management board.
Art. 106(2) and (3)	<p>The Parliament or the Council may invite the executive director to report on his/her tasks, including reporting on the agency's activities, implementing and monitoring of the fundamental rights strategy, drawing up the annual activity report and the work programme for the following year, developing the multiannual programming, and on any other matter related to the activities of the agency. The executive director is also required to make a statement before the Parliament, if requested, and answer in writing any question put forward by a Member of Parliament within 15 calendar days from receipt of such question. The executive director is required to report regularly to the appropriate bodies and committees of the Parliament.</p> <p>Except where specific deadlines are provided for in this regulation, the executive director is required to ensure that reports are transmitted to the Parliament, to the Council and to the Commission as soon as possible, and in any event within 6 months of the end of the reporting period, unless the executive director duly justifies a delay in writing.</p>
Art. 107	Appointment of the executive director (see next section).

	Instrument
Art. 112(1) and (2)	The Parliament and the national parliaments may cooperate with each other to ensure that scrutiny functions over the agency are effectively exercised. The executive director and the chair of the management board attend meetings when invited by the Parliament and the national parliaments.
Art. 115(5)	The management board forwards to the Parliament, the Council and the Commission a provisional draft estimate of the agency's revenue and expenditure, including the provisional establishment plan.
Art. 116(3), (7), (10) and (11)	<p>The agency sends a report 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 sends 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 submits to the Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for year N.</p> <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.</p>

Data source: Authors' compilation.

- ⁵ The single programming document sets the framework for all strategic planning documents as outlined in the Frontex Regulation.
- ⁶ The expert is selected from among the expert staff working for the European Parliament administration.