



Plenary sitting

B9-0499/2023

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MOTION FOR A RESOLUTION

European Parliament resolution

pursuant to Rule 132(2) of the Rules of Procedure

on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny (2023/2729(RSP))

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on behalf of the Committee on Civil Liberties, Justice and Home Affairs

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European Parliament resolution on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny (2023/2729(RSP))

The European Parliament,

- having regard to the Universal Declaration of Human Rights of 1948,
- having regard to the UN Convention of 1951 Relating to the Status of Refugees and the 1967 Protocol thereto,
- having regard to Chapter V, Regulation 33 of the International Convention for the Safety of Life at Sea (SOLAS) on Distress situations: obligations and procedures,
- having regard to Chapter 4 and 5 of the International Convention on Maritime Search and Rescue (SAR Convention) on operating procedures,
- having regard to the European Convention on Human Rights,
- having regard to Article 1, Article 2(1), Article 3, Article 6, Article 18, Article 19 and Article 24(2) of the Charter of Fundamental Rights of the European Union,
- having regard to Article 67(1), Article 77(1) and Article 77(2) of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union¹,
- having regard to Regulation (EU) No 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624²,
- having regard to the Commission communication of 14 March 2023 establishing the multiannual strategic policy for European integrated border management (COM(2023)0146),
- having regard to Special Report 08/2021 of the European Court of Auditors (ECA),
- having regard to the final report of the European Anti-Fraud Office of 31 January 2022 on serious misbehaviour in Frontex and its conclusions,
- having regard to the European Ombudsman's decision in Case OI/4/2021/MHZ on how

¹ OJ L 189, 27.6.2014, p. 93.

² OJ L 295, 14.11.2019, p. 1.

the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities,

- having regard to its resolution of 19 May 2021 on human rights protection and the EU external migration policy³,
 - having regard to the Commission communication of 14 April 2021 on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025 (COM(2021)0171),
 - having regard to the Commission communication of 29 September 2021 entitled ‘A renewed EU action plan against migrant smuggling (2021-2025)’ (COM(2021)0591),
 - having regard to its Decision (EU, Euratom) 2021/1613 of 28 April 2021 on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2019⁴ postponing the discharge decision,
 - having regard to its Decision (EU) 2022/1808 of 4 May 2022 on the closure of the accounts of the European Border and Coast Guard Agency (Frontex) for the financial year 2020⁵ postponing the discharge decision,
 - having regard to its decision of 18 October 2022 on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency (Frontex) for the financial year 2020⁶ refusing to grant the Frontex executive director discharge,
 - having regard to its decision of 10 May 2023 on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2021⁷,
 - having regard to the report of the UN Independent Fact-Finding Mission to Libya of 27 March 2023 (A/HRC/52/83),
 - having regard to the working document of 14 July 2021 entitled ‘Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations’ by the Working Group on Frontex Scrutiny of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), and to its recommendations,
 - having regard to the ruling of the General Court of 6 September 2023 in Case T-600/21 *WS and Others vs Frontex*,⁸
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas in 2021 the FSWG was constituted within the LIBE Committee for the purpose of monitoring all aspects of the functioning of Frontex, including its reinforced

³ OJ C 15, 12.1.2022, p. 70.

⁴ OJ L 340, 24.9.2021, p. 324.

⁵ OJ L 258, 5.10.2022, p. 416.

⁶ OJ L 45, 14.2.2023, p. 13.

⁷ Texts adopted, P9_TA(2023)0165.

⁸ CJEU, judgment of 6 September 2023 in Case T-600/21, *WS and Others v Frontex*, ECLI:EU:T:2023:492.

role and resources for integrated border management, the correct application of the EU acquis and its execution of Regulations 2019/1896 and 656/2014;

- B. whereas the FSWG was mandated to carry out a fact finding investigation, gathering all relevant information and evidence regarding alleged violations of fundamental rights in which the Agency was involved in, was aware of and/or did not act, the Agency's internal management, including procedures for reporting and handling of complaints; and transparency and accountability of the Agency towards the European Parliament; whereas the FSWG adopted its report in July 2021 which contained 42 specific recommendations to the Agency, the Management Board, the Commission, Member States and the Council;
- C. whereas in response to the FSWG report, the Agency and its Management Board have made efforts to implement the recommendations of FSWG and have reported that they have implemented 36 FSWG recommendations to date; whereas a limited number of recommendations are still pending including those relating to Frontex operations in Greece and Hungary, better whistle-blower protection, exceptional reporting under the Serious Incident Reports mechanism, communication with national governments, adequate handling of allegations of fundamental rights violations by Member States;
- D. whereas the OLAF report of 15 February 2022 on investigations into Frontex revealed serious misconduct and other irregularities by three individuals employed by the Agency, including the former Executive Director, as well as three other key issues, namely the fact that the FRO was prevented from accessing operational information, the fact that the FRO was not assigned as case handler for reports on serious incidents with alleged violations of fundamental rights, and the fact that staff members who reported serious incidents to the hierarchy were ignored by the individuals investigated by OLAF; whereas there was a long delay for Members of the Parliament and the FRO to be granted access to the OLAF report; whereas the decision not to make the OLAF report on Frontex' activities promptly available to Parliament, affected the powers of democratic scrutiny over the Agency's responsibilities for fundamental rights violations; whereas - despite multiple requests - based on legal concerns related to the procedural rights of the persons of interest, the report was not made public until 31.10.22 whereas two additional OLAF reports are expected to be presented this year in relation to Frontex;
- E. whereas serious problems affecting Frontex' internal oversight mechanisms, and the Agency's serious shortcomings regarding fundamental rights protection of asylum seekers and migrants, transparency, data protection, alleged sexual harassment and maladministration within Frontex, led the European Parliament to refuse discharge of the Agency's 2020 budget;
- F. whereas the Court of Justice of the European Union (CJEU) has ruled that return decisions issued by the Hungarian authorities are incompatible with Directive 2008/115/EC and the Charter of Fundamental Rights of the European Union (the Charter) and has failed to fulfil its obligations under Directive 2013/32/EU and Directive 2013/33/EU[1]; whereas Frontex performed verifications and concluded that the Agency had never been involved in returns related to the Hungarian legislation deemed incompatible with EU law by the CJEU (HU national Act LXXXIX of 2007

and Act LVIII of 2020); whereas the Agency requires Hungary to make specific commitments concerning the procedures followed when requesting Frontex' support; whereas Frontex has also officially requested Hungary to systematically share all available reports prepared by the Prosecutor's Office of Hungary, which is the responsible authority to monitor the detention and forced returns of third country nationals; [1] CJEU, Case of 17 December 2020, C -808/18, Commission vs Hungary;

- G. whereas national human rights institutions, Council of Europe bodies, UNHCR, media and NGOs have issued further reports on alleged push-backs and other serious fundamental rights violations including violence against migrants at the EU's external land and sea borders, including in the context of joint border surveillance operations in which Frontex participated; whereas four legal actions in relation to alleged push-backs have been brought against Frontex before the General Court of the EU, of which one was ruled inadmissible and three are pending;
- H. whereas, following the opinions and recommendations of the FRO regarding his assessment of the situation in Greece, including his Opinion of 1 September 2022 in which he advised that 'well-founded allegations of fundamental rights violations in Greece have reached the level at which the conditions for triggering Article 46(4) of the EBCG regulation are met', the former Executive Director ad interim set up a working group and engaged in a process with the Hellenic authorities in operational activities carried out in Greece; whereas further to these discussions, the Hellenic authorities have drawn up a plan to implement fundamental rights safeguards; whereas the FRO acknowledged in the 36th report to the MB of March 2023 the efforts made by the Greek authorities and the endorsements from the Agency of the actions to be taken to address fundamental rights concerns, but that despite the action plan, the allegations of pushbacks, accompanied by ill-treatment of migrants, persist; whereas, the FRO reiterated at the Management Board meeting in June 2023 that the conditions triggering Article 46 are fully met and advocated a suspension of activities, which should be resumed only when a relationship of trust with the Greek authorities has been re-established, and that the meantime, Frontex should maintain a presence on the ground in the country;
- I. whereas, in its judgement of 30 June 2022, the CJEU found that Lithuanian legislation permitting the denial of international protection and the placing in automatic detention of applicants solely on the grounds that they have irregularly crossed the border is incompatible with Union law; whereas, as of July 2022, Frontex no longer participates or supports Lithuania with border surveillance; whereas, the Agency maintained its joint operation Terra in Lithuania, with agents working on border checks and returns, even after the judgment of the CJEU;
- J. whereas, in its 2023 Opinion on the Agency's Discharge for 2021, the LIBE Committee expressed concern over reports that revealed that the implementation of the Processing of Personal Data for Risk Analysis Programme (PEDRA) lead to an intrusive collection of personal data by Frontex from migrants and refugees to feed into Europol's criminal databases; whereas the Agency claimed that the project had been implemented between 2015 and 2017; whereas upon the receipt of the European Data Protection Supervisor (EDPS) opinions on the Agency's Management Board decisions 56/2021, 68/2021 and 69/2021, the Agency's Data Protection Officer prepared an Action Plan for the

implementation of the EDPS recommendations; whereas the Management Board Decision 56/2021 was revised in March 2023;

- K. whereas, in the 36th report to the Management Board, the Fundamental Rights Officer addressed increasing concerns regarding Bulgaria including allegations of unlawful returns ('pushbacks'), accompanied by ill-treatment of migrants during apprehensions by the national authorities, and underlining the need for effective and impartial investigations by the national authorities;
- L. whereas the Agency has been and is in a transition process: in June 2021 the new Fundamental Rights Office of Frontex has taken office; end of 2021 and beginning of 2022 three Deputy Executive Directors have taken office for the first time in the Agency's history; in April 2022 a new Chair of the Management Board has started his term; following an investigation by the European Anti-Fraud Office (OLAF) into the mismanagement of the Agency, the Executive Director has resigned in April 2022, after which Frontex' Management Board chose one of the Deputy Executive Directors to lead the Agency as Executive Director ad interim; a new Executive Director was appointed in December 2022 and took office in March 2023;
- M. whereas in its Resolution⁹ granting the Agency's Discharge for 2021, Parliament noted the steps taken by the Agency to improve the management culture and promote staff well-being, including the decentralization of decision-making to distribute responsibility and ownership of decisions, encouragement of open dialogue through Agency's Management meetings, the development of a comprehensive internal communication strategy, strengthening of internal communications team, and the enlargement of the network of Confidential Counsellors;
- N. whereas Frontex' role in practical and operational cooperation with third countries, including the Western Balkan, Moldova and Morocco, has significantly increased, inter alia on return and readmission, the fight against human trafficking, the provision of training, operational and technical assistance to authorities of third countries for the purpose of border management and border control, carrying out operations or joint operations at the EU's external borders or in the territories of third countries, and deploying liaison officers in third countries;
- O. whereas the Commission is currently negotiating to significantly expand the Agency's mandate in the EU's neighbourhood by concluding new or upgraded Status Agreements with North Macedonia, Albania, Montenegro, Serbia, Bosnia and Herzegovina and Moldova;
- P. whereas the Commission is in negotiations with the governments of Senegal and Mauritania with a view to concluding status agreements with those countries; whereas such status agreements would be the first with third countries outside Europe;
- Q. whereas, on 20 March 2023, the Council decided to extend the mandate of the EU CSDP operation EUNAVFOR MED IRINI until March 2025, tasked, inter alia, to

⁹ European Parliament resolution of 10 May 2023 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2021, Texts adopted, P9_TA(2023)0165.

support capacity building and training of the Libyan Coast Guard and Navy; whereas Frontex has a working relationship with that operation; whereas Frontex assets have been transmitting information to the Libyan Maritime Rescue Coordination Centre about people in distress at sea (partially: 24 Greens/The Left; 120 Greens/The Left); whereas in its report A/HRC/52/83, the UN Independent Fact-Finding Mission to Libya, raised serious concerns about the involvement of Libyan actors in crimes against humanity and gross human rights violations against migrants;

- R. whereas, according to the SAR Convention, any authority or element of the search and rescue organisation having reason to believe that a vessel is in a state of emergency should give as soon as possible all available information to the rescue coordination centre or rescue sub-centre concerned;
- S. whereas the Commission is required to carry out an evaluation of the European Border and Coast Guard Regulation by 5 December 2023, assessing whether the rules are working as intended; whereas the Commission is required to review the Frontex standing corps by 31 December 2023, assessing the overall number and composition of the standing corps;
1. Highlights the need for an effective and well-functioning European Border and Coast Guard Agency that is able to assist Member States in efficiently managing the common external borders of the European Union and in ensuring integrated border management in full compliance with fundamental rights;
 2. Underlines that the Agency's budget grew exponentially from around EUR 114 million in 2015 to around EUR 750 million in 2022; adds, moreover, that the revised mandates of the Agency in 2016 and 2019 corresponded to major increases in the Agency's responsibilities and competences, including in terms of staff and technical equipment; stresses that such increases in responsibility and budget for the Agency need to be accompanied by a corresponding increase in accountability and transparency and increased scrutiny of the Agency's respect for Union law;

Changes in Agency management

3. Notes that over the course of the last two years the Agency has seen significant managerial changes, including a new fundamental rights officer (FRO), a new chair of its Management Board, three new deputy executive directors and a new executive director; expects that the change in management will bring about the necessary change in culture with regard to respect for the Union's principles and values, most notably fundamental rights, and with regard to transparency and efficiency in internal procedures and to increased accountability towards Parliament and the Council in accordance with the applicable legal framework; considers that this could further strengthen the Agency's capacity to fulfil its mandate; welcomes the measures already implemented to improve the management culture and to strengthen integrity and accountability within the Agency; calls on the new leadership to undertake the deep reforms that are needed and calls on the Management Board to evaluate how it can step up its involvement and scrutiny of the way in which the Agency is run;
4. Considers that the second European Anti-Fraud Office (OLAF) investigation into management practices at the Agency, which is underway only nine months after the first

OLAF investigation was closed, demonstrates the need for change in the culture of the Agency;

Process for appointing the executive director

5. Expresses disappointment that, during the appointment procedure and unknown to Members of Parliament, one of the candidates proposed for the post of executive director of the Agency was a person of interest in the second ongoing OLAF investigation;
6. Draws attention to the fact that the Commission, the Management Board and OLAF failed to share this information with Parliament despite the Frontex Scrutiny Working Group (FSWG) highlighting how arguments related to confidentiality had hampered democratic control by Parliament and despite the FSWG's specific request that the Commission keep it regularly informed of any activities or initiatives that might have an impact on fundamental rights; takes the view that this failure constitutes a breach of the principle of mutual and sincere cooperation which governs relationships between institutions, agencies, bodies and offices of the Union;

Implementation of FSWG recommendations

7. Recognises the efforts made by the Agency to implement 36 out of 42 FSWG recommendations and the tangible progress made in this respect; recommends, on the basis of the FSWG recommendations, that the following further specific actions be taken:
 - The Agency should ensure that the FRO is consulted earlier on in the process of developing operational plans, is granted sufficient time for giving his or her opinions and is equipped with established methods and channels to escalate if his or her opinion is ignored;
 - A transparent reporting mechanism should be integrated into every operational plan in which the host Member State includes assets used in the operational area, regardless of the way these are financed; operational plans should also guarantee that Frontex teams have access to all assets participating in joint operations, relevant information and locations within the operational area; acknowledges that the Agency cannot achieve these outcomes alone as they require the consent of the Member States in question;
 - Formal guarantees should be established to ensure that rules and safeguards on whistleblower protection are applicable to seconded national experts, trainees, interim staff and local agents;
 - The Agency should continue with the full implementation of the outstanding recommendations currently not deemed implemented by the Agency itself;

Transparency and scrutiny

8. Takes note of the recent efforts of the new executive director to provide Parliament and the Council with an up-to-date overview of Frontex activities through a new reporting

tool called the ‘dashboard’;

9. Recognises the general presumption of non-disclosure of public access for documents pertaining to ongoing OLAF investigations;¹⁰ reiterates nevertheless its call for OLAF reports on the Agency to be made public in cases of overriding public interest in disclosure and, in all cases, for the relevant Members of Parliament to be given access to such reports within a reasonable period of time in order to allow them to effectively carry out democratic scrutiny and hold the Agency to account for its actions; believes that the current rules need to be revised to ensure that Parliament is fully informed in its role as policymaker and co-legislator, in particular regarding its budgetary powers;
10. Endorses the Ombudsman’s recommendation¹¹ that Frontex should take a more proactive approach to transparency with a view to ensuring greater accountability for its operations; supports the most recent recommendations from the Ombudsman in relation to the practices of the Agency in dealing with requests for access to documents where it considers those requests imprecise or that concern a large number of documents or large documents¹²;
11. Encourages the chairpersons of the Management Board to continue inviting Parliament observers to its meetings and to consider extending the invitations to all agenda items, including in camera points, and to continue providing all supporting documents without exception and, if deemed necessary, in a confidential manner;

Ongoing concerns about fundamental rights

12. Acknowledges that the Agency finally has 46 fundamental rights monitors (FROMs) in place, despite the significant delay in complying with the requirements of the updated mandate; notes that 31 FROMs have been appointed at administrator (AD) level; continues to stress that those FRMs who were hired at the lower assistant (AST) grade should be upgraded to the higher AD level as soon possible through the appropriate procedures; points out that, based on the Agency’s updated mandate, the number of FROMs should continue to grow as the overall size of the standing corps increases; looks forward, in that regard, to receiving details of the Agency’s plans to increase the number of FROMs, accompanied by an assessment of the FRO regarding the estimation of the necessary number of FROMs;
13. Expresses severe concern regarding the serious and persistent allegations made against Greek authorities in relation to pushbacks and violence against migrants; is convinced that respect for the principles and values of the Union must be the condition *sine qua non* for Frontex to commit to a joint operation with a Member State; is further convinced that, should a Member State be unable to respect those principles and values, then the Agency should scale down and repurpose its operations towards monitoring activities in the light of Article 46 of its mandate, while maintaining its presence on the

¹⁰ The General Court has stated that ‘generalised access, on the basis of Regulation No 1049/2001, to documents in OLAF’s file, while OLAF’s investigation procedure is still ongoing, would, in principle, undermine the effective conduct of the investigation’; General Court, judgment in Case T-110/15 of 26 May 2016, *IMG v Commission*, par 33, ECLI:EU:T:2016:322.

¹¹ Case OI/4/2021/MHZ.

¹² Case OI/4/2022/PB.

ground in order not to leave a vacuum; regrets that the Agency has so far refrained from scaling down or repurposing its operations in Greece;

14. Takes note of the own-initiative inquiry launched by the EU ombudsman aimed at clarifying Frontex' role in search and rescue operations in the Mediterranean Sea following the drowning of hundreds of people off the coast of Greece on 14 June; Takes note that, after the shipwreck, the Agency issued a statement providing its timeline and version of events; expects the Agency to ensure full cooperation during the inquiry, including access to its assets if requested;
15. Welcomes the Agency's decision to scale down its activities in Lithuania in July 2022 in the light of the judgment of the Court of Justice of the European Union (CJEU) on 30 June 2022 as regards the Lithuanian law and decrees on asylum and migration¹³; notes that the Agency still has officers on the ground supporting national authorities with border checks at selected border crossing points and assisting return-related activities in Lithuania; recommends that the Agency take a more proactive approach to protecting the Union's principles and values in line with CJEU rulings;
16. Recalls that, although the Agency withdrew from operations in Hungary in January 2021 following a clear CJEU ruling in December 2020¹⁴, it continues to support Hungarian authorities in carrying out returns; reiterates the FSWG's calls on the executive director to immediately suspend support for return-related operations from Hungary;

Search and rescue

17. Notes the Agency's mandate to provide better situational awareness in the maritime domain and to transmit that information to the relevant authorities regarding competence for search and rescue operations; takes note of the Parliament's position that all actors in the Mediterranean should proactively transmit information and, where appropriate, relay mayday messages concerning persons in distress at sea to the authorities responsible for SAR operations and, where appropriate, to any vessels in the vicinity that could imminently engage in search and rescue¹⁵; reiterates the obligation under the international law of the sea to render assistance to persons found in distress at sea and to take them to the nearest safe port; notes that Regulation (EU) No 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex lays down the rules for the Agency's involvement in search and rescue operations; underlines that the Agency could do more to increase the capacity of the EU and Member States to carry out search and rescue operations, notably by investing in appropriate assets for such operations;
18. Notes that Parliament has previously taken the view that a permanent, robust and effective Union response in search and rescue operations at sea is crucial to prevent the

¹³ Judgment of the Court of Justice of 30 June 2022, *M.A. v Valsybès sienos apsaugos tarnyba*, C-72/22PPU, ECLI:EU:C:2022:505.

¹⁴ Judgment of the Court of Justice of 17 December 2020, *Commission v Hungary*, C-808/18, ECLI:EU:C:2020:1029.

¹⁵ European Parliament resolution of 13 July 2023 on the need for EU action on search and rescue in the Mediterranean, Texts adopted, P9_TA(2023)0293.

death toll of migrants attempting to cross the Mediterranean Sea from escalating¹⁶; remains convinced that the Agency could have a key role to play in a more proactive response by the EU and Member States to search and rescue, particularly in the Mediterranean Sea, and to the fight against criminal smugglers and human traffickers;

19. Considers that the absence of an EU-level search and rescue mission and the lack of search and rescue capacity provided by Member States has led other civil society and non-governmental organisations to fill the gap in providing such capacity; is concerned about the increasing number of attempts to criminalise such actions, further limiting the possibilities for those in distress at sea to be rescued;
20. Notes the conclusions of the fundamental rights officer that Libya cannot be considered a port of safety and the conclusion of the UN Independent Fact-Finding Mission to Libya;

External dimension

21. Urges the Commission to conduct fundamental rights impact assessments in the relevant areas covered by the agreement prior to concluding negotiations for a status agreement with a third country in order to be able to fully consider the fundamental rights impact of cooperating with that country; calls on the Agency to share periodical evaluations of joint operations in third countries and continuously assess the impact and scope of active operations, including in respect of fundamental rights;

The Russian invasion of Ukraine and the Agency's role

22. Welcomes the positive role played by the Agency in helping Member States deal with the large numbers of people crossing the Union's external borders during the early phases of the Russian invasion of Ukraine from 24 February 2022;
23. Welcomes the deployment by the Agency of about 500 standing corps officers along the eastern EU border from Finland to Romania, including more than 350 officers at the EU-Ukraine borders; welcomes also the signature of a grant agreement worth EUR 12 million between Frontex and the Ukrainian State Border Guard Service to support Ukrainian border officers in performing their duties;
24. Emphasises, in particular, the role played by the Agency in Moldova, following the adoption of a status agreement early in 2022, with over 50 standing corps officers deployed to help the Moldovan authorities in dealing with border management issues such as trafficking in human beings, drugs, detecting stolen vehicles, document fraud and terrorism;

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25. Instructs its President to forward this resolution to the European Border and Coast

¹⁶ European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, OJ C 58, 15.2.2018.

Guard Agency, the Commission and the Council.