

Warsaw, 11 July 2024

## Observations of the Fundamental Rights Officer

on the Annual report 2023 on the implementation of Regulation (EU) 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 Frontex.

The Fundamental Rights Officer takes note of the Annual report 2023 on the implementation of Regulation (EU) 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 Frontex and welcomes the consultation. The Fundamental Rights Officer also appreciates being consulted on the report, which ensures increased impact and accountability among Agency's operational activities.

### Concerns in the preparation and implementation of sea border surveillance activities

The Fundamental Rights Officer welcomes the progress made in the Operational Plans of the maritime operations and the integration of some of the requirements defined in the Regulation 656/2014. Nevertheless, concerns continued to be reported in 2023 in relation to the effective implementation of Regulation 656/2014, particularly under Joint Operation Poseidon as described below.

The Fundamental Rights Officer would like to draw attention within the Agency to the following issues related to the preparation and implementation of the following Frontex Joint Operations:

#### 1. Joint Operation Themis 2023

In the course of 2023, the Fundamental Rights Office was involved in the entire operational cycle of the Joint Operation (JO) Themis 2023. The Fundamental Rights Office was consulted during the preparation and planning of the JO (through its observations and recommendations to the Operational Plan), participated in implementing the operational activities, and provided its observations to the Frontex Evaluation Report (FER).

The Fundamental Rights Office conducted seven (7) monitoring visits to the operational area (one of the missions jointly with JO Seaports). This notably included the participation in a maritime patrol onboard a Frontex asset deployed in Lampedusa, in which the Fundamental Rights Monitor participated in a Search and Rescue (SAR) operation onboard the vessel. In addition to providing advice on fundamental rights and monitoring operational activities, the Fundamental Rights Office on-site visits also included meetings with national authorities of the Host Member State (MS), Frontex teams deployed in the JO and external stakeholders. These activities were supplemented by the assessment of incidents occurred in the operational area as well as desk monitoring (including open sources and review of internal reports).

No allegations involving Frontex staff in incidents regarded as violations of fundamental rights were identified in the reference period in the activities effectively monitored by the Fundamental Rights Monitors.

The Fundamental Rights Office did not receive any complaints (under the Frontex complaints mechanism) during the operational year 2023. One (1) Serious Incident Report (SIR) relating to fundamental rights (SIR Category 1) was launched during the implementation of the joint operation [see section Serious Incident Reporting below].

During the operational year 2023, the Fundamental Rights Office provided presentations on fundamental rights and Frontex fundamental rights mechanisms in thirteen (13) operational briefings. The aim was to ensure that all new participants in the JO, including the Frontex Team Leaders, received guidance on fundamental rights at the beginning of each deployment, reinforcing their knowledge of the Frontex fundamental rights mechanisms (including SIRs, complaints mechanisms and the role of Fundamental Rights Office and Fundamental Rights Monitors) and their corresponding obligations.

The Fundamental Rights Office also supported the Agency in its participation in the Working Group on Vulnerabilities, set up by the Italian authorities with the purpose of developing a Handbook for the identification, referral, and care of persons with vulnerabilities, adopted by the Italian Ministry of the Interior in June 2023. The Handbook is intended as an operational tool to help taking more uniform approach to the early identification of vulnerabilities. This initiative is considered a best practice which contributes to further ensuring effective protection of fundamental rights.

As to the implementation of the operational activities falling within the scope of the Regulation 656/2014, the Fundamental Rights Office would like to highlight the following concerns:

#### **Concern 1: Support to search and rescue activities**

National authorities with the support of Frontex assets assigned to JO Themis made notable efforts to rescue people at sea and disembark them in ports of safety in Italy. The Fundamental Rights Officer welcomes the high priority assigned to the SAR operations by Frontex and the significant contribution of Frontex-coordinated assets to SAR activities. This can be seen as essential to saving lives at sea, given the increased migration flows in the Central Mediterranean and the significant number of persons arriving in Italy. The Fundamental Rights Monitors participated in a SAR operation onboard a Frontex maritime asset in Lampedusa and welcomed the fact that the assistance provided by the crew members, both at the rescue of the boat and during their transfer to the coast was of a high standard and professionalism and in line with fundamental rights principles.

In 2023, the Central Mediterranean route remained the deadliest of all areas covered by land and sea Frontex Joint Operations. The Fundamental Rights Officer continues to emphasize the importance of ensuring that further resources are deployed to increase the SAR capabilities in the operational area covering the Italian SAR zone. This is particularly important following the adoption of national legislation in 2023 in Italy, which toughens the measures for the management of migration flows (including by private / NGOs vessels) and may lead to the decrease of the SAR assets and capabilities in the Mediterranean.

#### **Recommendation related to Search and Rescue activities:**

Frontex should consider increasing the number of maritime assets in the Mediterranean under JO Themis/JO Italy with the tasks of patrolling and supporting search and rescue activities in the Italian SAR area, including when such activities may be supported by Frontex Surveillance Aircrafts operating under the Multipurpose Aerial Surveillance Services.

#### **Concern 2: Activities at disembarkation points**

The Fundamental Rights Officer considers that the Agency should put in place an adequate legal framework to protect fundamental rights in activities performed at disembarkation points (including gathering general information for risk analysis purposes), currently without clear regulation in the Operation Plan. The Fundamental Rights Officer is of the opinion that the Agency should ensure without delay that the Operational Plan of forthcoming editions of JO Themis (or its successor JO Italy) includes

clear guidelines on such activities specifying, *inter alia*, the purpose and objective of those activities as well as applicable safeguards, including on fundamental rights. In the absence of such guidelines, the Agency should consider refraining from gathering general information for risk analysis purposes at disembarkation activities.

During the implementation of this type of activities, the Fundamental Rights Monitors identified some risk factors that may affect Frontex activities and, particularly when assessed together, have an impact on fundamental rights:

- i. on some occasions, activities were conducted immediately upon migrants' entrance at the pier, before the medical screening and the receipt of immediate assistance (water, food);
- ii. on some occasions, cultural mediators / interpreters gathered general information for risk analysis purposes on their own, without any oversight by the Standing Corps Officers or team leaders;
- iii. some members of the teams (particularly cultural mediators) did not always use vests, armbands or other insignia enabling their identification as participants of the Frontex activities;
- iv. members of the teams gathered information from groups of migrants that possibly included children (also unaccompanied)<sup>1</sup>, who actively participated in answering questions.

Notwithstanding the foregoing, it is also worth noting that some of those issues were immediately addressed by the operational team after the Fundamental Rights Monitors raised their concerns.

#### **Recommendations related to activities at disembarkation points:**

- Frontex should issue specific guidelines to ensure that its activities at disembarkation points (gathering general information for risk analysis purposes) are conducted in full respect for fundamental rights. Those guidelines should be included in the Operational Plan, specifying the purpose and objective of those activities as well as applicable fundamental rights safeguards.
- Frontex should ensure that activities at disembarkation points are only conducted after the relevant medical checks/ emergency socio-sanitary intervention (including the provision of water, food items and other required assistance depending on the particular circumstances) upon disembarkation is completed.

#### **Concern 3: Participation in Operational Briefings and other awareness-raising activities**

Frontex team leaders and cultural mediators did not regularly take part in the session on fundamental rights provided in the operational briefings (or similar awareness sessions prior to joining Frontex). Also, during missions conducted by the Fundamental Rights Monitors in different operational areas under JO Themis 2023, it was brought to the Office's attention that the cultural mediators, despite their key role in the operational dynamics, do not receive training/ awareness-raising sessions on fundamental rights and Frontex fundamental rights mechanisms prior to joining Frontex teams.

To this end, awareness sessions on fundamental rights were organised during 2023, and further were planned for 2024, addressed to Frontex teams (including cultural mediators and Frontex Team Leaders) and national authorities, in the context of different joint operations including JO Themis 2023. These initiatives, together with the continued participation of Fundamental Rights Monitors in operational briefings and training activities, have greatly contributed to raising awareness and promoting the respect for fundamental rights within the Agency's activities and beyond.

#### **Recommendations related to awareness-raising sessions:**

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<sup>1</sup> As observed by the Fundamental Rights Monitors during their on-site visits to operational areas, there was significant presence of children among new arrivals in Italy during 2023. The Fundamental Rights Officer calls for special attention when approaching migrants in case there may be doubts as to whether they have reached the age of majority.

- Frontex should ensure participation of Team Leaders in operational briefings to reinforce their knowledge of Frontex fundamental rights mechanisms (including SIRs, complaints mechanisms and the role of Fundamental Rights Officer and Fundamental Rights Monitors) and obligations.
- Frontex should ensure that Frontex cultural mediators receive a briefing/training on the Frontex fundamental rights mechanisms and obligations (including their duty to report) prior to their participation in operational activities, similar to those received by the Frontex teams.

### **Serious Incident Reporting**

One (1) SIR relating to fundamental rights (SIR Category 1) was launched during the implementation of the joint operation. The incident was referring to the shipwreck off the coasts of Crotone on 25 February 2023 and alleged violations of the right to life, prohibition of inhuman or degrading treatment, and respect for human dignity. The case has been closed by the Office, after the issuance of a final SIR report. In assessing the case, the Fundamental Rights Office analysed the specific elements related to this incident, including date/time of initial notifications alerting about the existence of the boat and their content; how and whether the situation was monitored and whether/what safeguards were applied; the modalities in which Frontex offered an early departure of Frontex Surveillance Aircraft to support the ongoing rescue operation.

The internal investigation concluded that Frontex had collected all relevant information available at that time and had transmitted it in a timely manner to the Italian authorities, both the International Coordination Centre (ICC) in Rome, under the leadership of the Guardia di Finanza and the Italian Maritime Rescue Coordination Centre (MRCC). In addition, Frontex continued monitoring the case. In the SIR Final Report, the Fundamental Rights Officer recommended Frontex to:

- review the sighting report template with specific sections to ensure its standardized filling by different Team Leaders and completeness of information for effective SAR;
- develop clear rules as to when Frontex sends sighting reports directly to the MRCC in Ankara (Türkiye);
- standardize when and how Frontex offers support to SAR in form of an additional flight; and review how Frontex gathered data and information about specific migratory routes can inform Team Leaders' risk assessment of events detected at sea and hence, Frontex's assessments of whether vessels are or could be in a state of emergency.

The Fundamental Rights Officer also recommended Italian authorities to: i) provide the Agency with feedback on actions undertaken following a sighting shared by the Agency, including how the case has been classified (SAR or not) and what services have been performed, particularly if such information becomes relevant in the context of a SIR investigation; and ii) introduce a mechanism to ensure collaboration between different national agencies to double check information provided by Frontex, irrespective of the primary addressee of the sighting report.

## **2. Joint Operation Poseidon 2023**

The Fundamental Rights Office was consulted during the preparation and planning of the JO Poseidon (through its observations and recommendations to the Operational Plan), participated in implementing the operational activities, and provided its observations to the FER.

The Fundamental Rights Office conducted several monitoring visits to the operational area, and more specifically, they conducted 211 monitoring days in JO Poseidon 2023 and provided 21 operational briefings. The Fundamental Rights Office Monitors provided the trainings during the operational year, more specifically: i) training of the Hellenic Coast Guard, in Athens, on 28 November 2023 and 12

December 2023, ii) awareness raising on SIRs, in Samos, on 23 November 2023, and iii) awareness raising session on the identification of vulnerable groups, in Lesvos and Samos, on 10 August 2023 and 17 August 2023 respectively.

The Fundamental Rights Office received two (2) complaints, which were closed. Eleven (11) Serious Incidents happened in 2023 and led to opening a SIR Category 1 in 2023. Seven (7) of them have been closed during the operational year [see section *Serious Incident Reporting* below].

As to the implementation of the operational activities falling within the scope of the Regulation 656/2014, the Fundamental Rights Office would like to highlight the following concerns:

**Concern 1: Application of Article 4 entitled 'Protection of fundamental rights and the principle of non-refoulement'**

The Fundamental Rights Office continued to receive allegations of collective expulsions from leading and credible international organisations concerning incidents where migrants are forcibly returned to Türkiye without conducting an individual assessment of their personal circumstances as required by Article 4 of the Regulation 656/2014. In several Serious Incident Reports, the Fundamental Rights Office confirmed or concluded that the Hellenic Coast Guard had likely intercepted migrants in Greek territory. In addition, the Fundamental Rights Office documented cases where it is likely or proven that Frontex assets were instrumentalised or indirectly involved in such fundamental rights violations (e.g., in the case reported by the New York Times in May 2023, where the vessel involved was co-financed). Such allegations lead to the conclusion that Regulation 656/2014, applicable under JO Poseidon, cannot be considered fully implemented in line with fundamental rights standards and the requirements of Article 4 of the Regulation.

To address this concern, the Fundamental Rights Officer issued three Opinions in 2022 followed by a fourth Opinion in 2023 expressing serious concerns about numerous and credible accounts of ill-treatment and collective expulsions of migrants on land and at sea by Greek authorities, and the risks of Frontex being indirectly or directly implicated in such fundamental rights violations. To tackle the concerns raised, the Fundamental Rights Office is working in cooperation with the Agency to monitor the implementation of the Greek Implementation Plan proposed by the Greek authorities to address the concerns raised in the Fundamental Rights Officer opinions. To assess the progress of the Implementation Plan, the Fundamental Rights Officer suggested at the end of 2023 a set of indicators and actions to be taken by the Greek authorities and the Agency. This would allow an objective assessment and the reinforcement of the measures foreseen in the Greek Implementation Plan.

The Fundamental Rights Office acknowledges the enhanced cooperation between the Agency, the Fundamental Rights Office, and the host Member State to adopt the measures included in the Implementation Plan. Nevertheless, the Fundamental Rights Officer noted that many of the core measures related to allegations of pushbacks included in the Implementation Plan have not yet been effectively implemented. Alleged technical obstacles as well as lack of clear guidelines from the Greek authorities contributed to delaying the implementation of the requested measures.

With reference to measures to prevent collective expulsions at sea the Fundamental Rights Office closely monitors the effective use of **video recording devices** placed on Frontex co-financed assets as foreseen in the Greek Implementation Plan. The use of **video recording devices** is of particular importance to record all incidents and especially those occurred in the Greek territorial waters which are later reported as 'prevention of departure/entry'. Effective use and access to video footage by the Fundamental Rights Monitors will be part of the final evaluation and assessment of the Greek Implementation Plan, to be presented in November 2024

**Recommendations related to the application of Article 4 of Regulation 656/2014**

- The Agency in cooperation with the Fundamental Rights Office and the Greek authorities should work towards the fully and effective implementation of the measures indicated in the Greek

- Implementation Plan to ensure full compliance with fundamental rights standards including prohibition of *non-refoulement*.
- In line with the Greek Implementation Plan, ensure full implementation of WG FRaLO<sup>2</sup> recommendation to equip all the co-financed assets with recording equipment to ensure the necessary transparency.

### **Concern 2: Disembarkation in third countries: Assessment of the general situation in Türkiye**

As indicated by the Agency, while Frontex assets deployed within the operations are authorised by the Greek authorities to disembark in Türkiye persons intercepted or rescued in Greek territorial waters, such disembarkation did not take place in 2023 under the framework of Regulation 656/2014<sup>3</sup>. Nevertheless, disembarkation following authorisation received by the Greek authorities remains a possibility. In this regard, the Fundamental Rights Office remains concerned that the general assessment of the situation in Türkiye leading to the decision whether migrants can be disembarked in that country is conducted solely by the Greek authorities.

Article 4(2) of Regulation 656/2014 clearly states that when considering the possibility of disembarkation in a third country, in the context of planning a sea operation, the host Member State, in coordination with participating Member States and the Agency, shall take into account the general situation in that third country (i.e. Türkiye) to ensure that fundamental rights and in particular the principle of non-refoulement is fully respected according to Article 4(1) of the same Regulation.

Furthermore, this assessment should be conducted in coordination between the Host Member State, the participating Member States and the Agency. Each year, the Fundamental Rights Office notes that the assessment of Türkiye by the Greek authorities allows for disembarkation, whereas the one done by Bulgaria prevents disembarkation. In this respect, it is important to consider the heightened risk of “chain refoulement” along with obstacles for refugees to access to international protection, excessive use of force by Turkish authorities, arbitrary detention, and fundamental rights violations in detention, as well as to broader rule of law backsliding in Türkiye.

The Fundamental Rights Officer remains concerned that the lack of proper attention of fundamental rights considerations in relation to Türkiye may have an impact on the Agency’s obligation to respect fundamental rights as required by Regulation 656/2014. While Frontex assets have not been involved in any disembarkation in Türkiye, as allegations of pushbacks to Türkiye conducted by the Greek authorities may have a negative impact on the Agency’s direct and/indirect implication in the alleged fundamental rights violations. At the same time, sharing with the Turkish authorities information about detection of migrant boats could also raise concerns in some cases, especially if the persons concerned are Turkish citizens.

### **Recommendations related to the assessment of third countries for disembarkation purposes:**

The assessment on third countries should meet the requirement set out in Article 4 of the Regulation 656/2014 to justify that the disembarkation in a third country would not amount to a potential fundamental rights violation in particular the principle of non-refoulement.

### **Concerned 3: Communication and Cooperation Channel**

Based on the observations of the Fundamental Rights Monitors, Frontex assets and the staff deployed are aware of the procedure to be adopted to inform the competent authority in case of detection,

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<sup>2</sup> Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea (FRaLO).

<sup>3</sup> Based on the information collected by the FRO, migrants are forcibly returned to Turkey as part of the so called pushback practice described above without conducting the individual assessment required by Article 4 of the Regulation.

interception, and SAR operations in compliance with the obligations to render assistance to persons in situation of emergency and to save lives.

The Fundamental Rights Officer would like to highlight the importance of ensuring follow up information related to incidents communicated by Frontex in the context of Regulation 656/2014. The Fundamental Rights Officer is of the view that establishing an effective follow up system of communication would contribute to a more efficient and consistent reporting of all the incidents, promote transparency and accountability against potential allegations of fundamental rights violations and would allow the Agency to assess the available assets to be offered as further support to SAR operations whenever required. The tragic incident of Pylos is an example of the need to further increase cooperation and coordination with Frontex on actions taken following to a detection communicated by the Agency with its own assets including those deployed outside the framework of JO Poseidon as indicated above.

#### **Recommendations related to communications and cooperation channels**

- Ensure a more effective and transparent system of communications following to incidents detected by Frontex or communicated by Frontex also through SOS messages received by third parties.

#### **Concern 4: Participation in operational briefings and other awareness-raising activities**

During the year, the Fundamental Rights Office reported that cultural mediators had yet to participate in operational briefings or other sessions on fundamental rights or the Frontex fundamental rights mechanisms before or during their deployment with Frontex. Given the critical role of cultural mediators in gathering information that may have an impact on fundamental rights or providing information on the complaints mechanisms, it is essential to ensure that they are well acquainted with those mechanisms (including the complaints mechanism, SIRs, or the mandate and role of the Fundamental Rights Monitors) and their obligation to report any issue that may affect fundamental rights. The Operational team swiftly addressed the issue, inviting the cultural mediators to operational briefings.

#### **Recommendations related to awareness-raising sessions:**

Frontex should continue ensuring that Frontex cultural mediators receive a briefing/training on the Frontex fundamental rights mechanisms (including SIRs, complaints mechanisms and the role of Fundamental Rights Office and Fundamental Rights Monitors) and obligations (including their duty to report) before they participate in operational activities, similar to those received by the Frontex teams.

#### **Serious Incident Reporting**

As mentioned in the Annual report 2023 on the implementation of Regulation (EU) 656/2014, during the implementation period of JO Poseidon 2023, eleven (11) serious incidents<sup>4</sup> were reported on alleged violations of fundamental rights and were subsequently examined by the Fundamental Rights Office. Based on the findings, eight (8) of them are closed while the rest are still open, pending conclusions.

The Fundamental Rights Officer is extremely concerned of the number and nature of the SIRs investigation launched under Joint Operation Poseidon in 2023 - a number significantly higher than for any other Host MS. Incidents refer to allegations of pushbacks, conducted both at land and at sea during and/or as result of sea operations conducted in the context of JO Poseidon.

One of the SIRs launched was referring to the shipwreck occurred off the coast of Pylos, on 13-14 June 2023. A Frontex surveillance aircraft was directed to investigate the position of a reported fishing vessel, located outside its normal patrolling route. The loss of lives registered included women and children and shows the need to continue providing prompt support and to enhance coordination to ensure

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<sup>4</sup> Update as of April 19th, 2024.

protection of the right to life. In assessing the case, the Fundamental Rights Office analysed some specific elements related to this incident including the internal coordination and exchange of information among all the actors involved, the criteria used to relay a Mayday based on available information at the time of the incident and the communications and follow-up with the competent MS regarding the status of the rescue operation and the Agency's offers to provide additional support. The internal investigation concluded that the Agency followed all the applicable procedures during the unfolding of the incident. Nevertheless, in the SIR Final Report, the Fundamental Rights Office recommended Frontex to: i) to review its reporting template to ensure standardized completion by different Team Leaders and completeness of information for effective SAR, specifically in sections linked with fundamental rights and their protection; ii) ensure awareness and increase sensitivity among Team Leaders via scenario-based training; iii) to identify a set of indicators to inform decision-making about whether a Mayday is issued based on risks identified by the Fundamental Rights Office; and 4) to standardize when and how Frontex follows up on its sightings with national authorities.

The Fundamental Rights Officer also recommended Greek authorities to: i) acknowledge receipt and respond to all request by Frontex for information and updates and to respond within reasonable time to offers of additional Frontex Surveillance Aircraft sorties and provide reasons when denying such offers; ii) provide the Agency with feedback on the actions undertaken following one of its sighting and, to inform in a timely manner, if the case has been classified as a SAR; iii) adopt clear and transparent procedures on how to deal with distress at sea, including in cases where persons object to being rescued; and iv) ensure the review of existing procedures for SAR.

### **3. Joint Operation Indalo**

The Fundamental Rights Office was involved in the entire operational cycle of the JO Indalo, providing observations to the Operational Plan, participated in implementing the operational activities, and provided its observations to the FER.

The Fundamental Rights Office conducted seven (7) visits to the operational area (two missions jointly with JO Minerva), including visits to all the locations where the Agency conducted its operational activities. This notably included participating in a maritime patrol onboard a Frontex national co-financed asset of Guardia Civil. Such on-site visits also included meetings with the Host MS national authorities, Frontex teams deployed in the JO and external stakeholders. The assessment of incidents supplemented these activities that occurred in the operational area and desk monitoring (including open sources and review of internal reports).

The Fundamental Rights Office presented fundamental rights and Frontex fundamental rights mechanisms in thirteen (13) operational briefings (plus five additional briefings only for the crew of deployed assets), covering all new participants to the JO at the beginning of each deployment period. The Fundamental Rights Office also conducted in-person awareness-raising sessions on fundamental rights for all the Frontex teams deployed under JO Indalo. This initiative should be replicated in other joint operations.

The Fundamental Rights Office received no complaints (under the Frontex complaints mechanism) during the operational year 2023.

One (1) SIR relating to fundamental rights (SIR Category 1) was launched during the joint operation's implementation. It concerned the use of force by police members.

As to the implementation of the operational activities falling within the scope of the Regulation 656/2014, the Fundamental Rights Officer would like to highlight the following concern:

### **Activities at disembarkation points**

It is important that the Agency puts in place an adequate legal framework in place to protect fundamental rights in activities performed at the disembarkation points, currently without clear regulation in the Operation Plan. The Fundamental Rights Officer believes that the Agency should, without delay, ensure that the Operational Plan of forthcoming editions of JO Indalo includes clear guidelines on such activities specifying, among other things, the purpose and objective of those activities and applicable safeguards (including on fundamental rights). In the absence of such guidelines, the Agency should consider refraining from gathering general information for risk analysis purposes at disembarkation.

#### **Recommendations related to activities at disembarkation points:**

Frontex should issue specific guidelines to ensure that Frontex activities at the disembarkation points are conducted with full respect for fundamental rights. Those guidelines should be included in the Operational Plan, specifying the purpose and objective of those activities and applicable safeguards (including fundamental rights related). They should support the team members in striking a fair balance between the need to conduct activities at disembarkation (on the quay) and the particular circumstances of the migrants concerned.

## **4. Joint Operation Opal Coast**

The Fundamental Rights Office was involved in the entire operational cycle of the JO Opal Coast 2023, providing observations to the Operational Plan, participated in implementing the operational activities, and provided its observations to the FER.

The Fundamental Rights Monitors did not conduct on-site visits to the operational area. Given the limited territorial and operational scope of JO Opal Coast 2023, as well as the nature of the operational activities implemented, desk research was considered to be the most adequate method for carrying out fundamental rights monitoring of potential risks to fundamental rights and therefore prioritised as such in the context of JO Opal Coast 2023.

To facilitate the Fundamental Rights Monitors' access to documents related to the operation and thus systematic review of issues about fundamental rights, in September 2023, it was agreed with the operational team that Fundamental Rights Monitors would receive a digest of all the incidents reported under JO Opal Coast every week. This practice continues today, although with some disruptions. In addition, in October 2023, the Fundamental Rights Monitors assigned to monitor the operation obtained direct access to the daily reporting included in the so-called daily packages (including the technical equipment mission report). They were granted access to all the incidents registered under this JO in JORA.

The Fundamental Rights Monitors carried out a follow-up assessment of seven incidents related to deceased and missing migrants. In addition, three incidents of dangerous manoeuvres undertaken in 2023 by the French authorities against small boats, as reported by the Le Monde, were reviewed. None of the incidents suggested the involvement of Frontex assets (e.g. sighting of the boat).

The Fundamental Rights Monitors provided online presentations on fundamental rights and Frontex fundamental rights mechanisms in eleven operational briefings.

The Fundamental Rights Office did not receive any complaints (under the Frontex Complaints Mechanism), and no SIR relating to fundamental rights (SIR Category 1) was launched during the joint operation's implementation.

As to the implementation of the operational activities falling within the scope of the Regulation 656/2014, the Fundamental Rights Office would like to highlight the following concerns:

### **Concern 1: Increase the operational area and the scope of the activities performed by Frontex**

The Fundamental Rights Office supported the Agency's recommendation to extend the operational area to include the French territorial sea and to increase the scope of the activities performed by Frontex under JO Opal Coast. This will contribute to positively enhancing the protection of fundamental rights during the joint operation's implementation and would benefit both Frontex and the Host Member States. Notably, it will also allow Frontex to further support SAR activities at sea, thus further contributing to saving lives. This is especially relevant considering the current migration flows and modi operandi (e.g. incidents of people drowning near the shore). Around half of the incidents detected occurred outside the operational area and at sea. At the same time, SAR events represent a considerable share (24%) of all incidents reported by France. Also, as far as the number of fatalities is concerned, 2023 saw an increase in missing migrants recorded in the English Channel as compared to the previous year.<sup>5</sup>

#### **Recommendation:**

Host MSs should be encouraged to consider enlarging the operational area to include France's territorial sea and increasing the scope of the Agency's activities (e.g., deployment of debriefing officers).

### **Concern 2: Potential risks deriving from developments in the migration policy of the United Kingdom and alleged dangerous tactics of French authorities against migrant boats**

During the implementation of the JO, the Fundamental Rights Office noted the impact that the United Kingdom Migration Plan (and the measures taken by the UK government to revisit their policy vis-à-vis Rwanda) may have in the JO. Key developments in this regard have been announced in recent days, after the elections in the UK.

Several reports (including video footage) by prominent media outlets and other stakeholders<sup>6</sup> published over the past months suggest that French authorities, throughout 2023, allegedly engaged in violent and dangerous tactics against migrant boats in the English Channel, which put migrants at serious risk. While analysis of internal information available to the Fundamental Rights Officer does not suggest a link between Frontex and the incidents reported so far by external actors, this type of malpractice, if confirmed, may pose fundamental rights risks which can impact the joint operation.

#### **Recommendation**

- The Agency, with the assistance of the Fundamental Rights Office, should continue monitoring the latest developments relating to the situation of migrants and asylum seekers in the United Kingdom and their possible impact on the Frontex activities under the joint operation. This is with a view of taking swift and appropriate operational measures to mitigate potential risks related to safeguarding fundamental rights.
- The Agency, supported by the Fundamental Rights Office, should monitor the developments in the aftermath of publications revealing cases of aggressive techniques of French authorities and their possible impact on the Frontex activities under the joint operation.

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<sup>5</sup> IOM, Missing migrants project, [https://missingmigrants.iom.int/region/europe?region\\_incident>All&route=3896&incident\\_date%5Bmin%5D=&incident\\_date%5Bmax%5D=](https://missingmigrants.iom.int/region/europe?region_incident>All&route=3896&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=), accessed: 11.07.2024

<sup>6</sup> AlarmPhone, *The deadly consequences of the new deal to 'Stop the Boats'*, 28.01.2024, [https://alarmphone.org/en/2024/01/28/the-deadly-consequences-of-the-new-deal-to-stop-the-boats/?post\\_type\\_release\\_type=post](https://alarmphone.org/en/2024/01/28/the-deadly-consequences-of-the-new-deal-to-stop-the-boats/?post_type_release_type=post), accessed: 11.07.2024 ; Le Monde, *Dans la Manche, les techniques agressives de la police pour empêcher les traversées de migrants*, 23.03.2024, [https://www.lemonde.fr/societe/article/2024/03/23/dans-la-manche-les-techniques-agressives-de-la-police-pour-empecher-les-traversees-de-migrants\\_6223777\\_3224.html](https://www.lemonde.fr/societe/article/2024/03/23/dans-la-manche-les-techniques-agressives-de-la-police-pour-empecher-les-traversees-de-migrants_6223777_3224.html), accessed : 11.07.2024 ; InfoMigrants.

### **Concern 3: Collection of information on follow-up measures and inconsistencies in reporting**

The Fundamental Rights Office considers it important that the Agency collects information on the follow-up measures undertaken by the Host MS authorities on the sightings reported by the Frontex assets. The Fundamental Rights Office considers that enhancing the information on the follow-up measures, mainly when it concerns events or incidents involving the prevention of departure of migrants or the SAR, is important to ensure fundamental rights compliance of operational activities.

Certain inconsistencies in reporting in JORA were also detected during desk monitoring performed by the Fundamental Rights Monitors (e.g. discrepancies when reporting the same events in different reports or instances of recording incidents involving sightings of Frontex assets with an incorrect date or time). The Fundamental Rights Officer believes that accuracy in reporting, significantly when Frontex assets were involved, may impact accountability safeguards in the performance of Frontex activities.

#### **Recommendations related to collection of information and reporting:**

- Incident reporting should be further strengthened by ensuring that all incidents involving sightings of the Frontex asset are adequately recorded and thoroughly described in JORA, including information on the follow-up measures undertaken by the Host MS authorities as a result of detections conducted by the Frontex assets (mainly in relation to prevention of departure or search and rescue activities). This would support the assessment of potential fundamental rights risks which could have an impact on Frontex.
- In case of detecting boats in distress, Frontex assets should continue monitoring the area until adequate assistance is rendered by the authorities or until the asset is forced to leave the site because of its operational capabilities. This measure has often been taken by the Frontex asset under the JO and is considered a good practice to protect fundamental rights (including the right to life).

## **5. Joint Operation (Multipurpose Maritime Operation) Western Black Sea 2023**

No major concerns have been identified by the Fundamental Rights Office in relation to the implementation of Regulation 656/2014 for this JO.

The Fundamental Rights Officer welcomes the inclusion in the operational objectives of information on fundamental rights and access to international protection. This is important as, based on the available data, the Western Black Sea route remains an alternative route to the Eastern Mediterranean, although the opportunities and likelihood of occurrence in the Western Black Sea is still low compared to other geographical areas.

The Fundamental Rights Officer continues to encourage the invitation of the Fundamental Rights Monitors in SAR workshops organised within the interagency framework. The Fundamental Rights Office stands ready to provide a presentation on fundamental rights to promote the protection of fundamental rights in all Frontex activities and operations.

During the reporting period, the Fundamental Rights Monitors conducted two (2) operational visits. On 18 July 2023, Fundamental Rights Monitors participated in the SAR drill, organised in Romania and from 18 to 20 September of the same year, they performed a filed visit within the operational area.

There were no complaints and SIR investigations related to possible breaches of fundamental rights, during the implementation of this JO. The Office did not observe any major fundamental rights concerns in the framework of this inter-agency cooperation.

The Fundamental Rights Monitors delivered, a dedicated operational briefing on fundamental rights and international protection for vulnerable persons to the involved stakeholders at the beginning of this JO implementation. All general operational briefings, before each new deployment included general

knowledge and awareness sessions regarding fundamental rights and international protection for vulnerable persons.

## **6. Joint Operation (Multipurpose Maritime Operation) Adria 2023**

The Fundamental Rights Office was involved in the entire operational cycle of the JO Multipurpose Maritime Operation (MMO) Adria 2023, providing observations to the Operational Plan, partly participated in the implementation of the operational activities and provided its observations to the FER.

The Fundamental Rights Officer takes note that MMO Adria 2023 was aimed at increasing technical and operational assistance to the Host Member State by coordinating operational activities at the external borders to control illegal immigration flow, to tackle cross-border crime at sea and to enhance European cooperation on coast guard functions and law enforcement activities. Due to the short time span for the implementation of the operation, no monitoring mission was conducted by fundamental rights monitors to the operational areas. In this regard, there are no specific issues to underline here based on observations and/or recommendations to Frontex activities provided by the Fundamental Rights Office.

One of the objectives of the operational concept under MMO Adria was to support the Host MS capacity in conducting search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea with the deployed maritime and aerial assets. During the implementation of the MMO, there were two requests to Frontex co-financed maritime assets to actively engage in a SAR operation. Border surveillance activities at sea require the availability of deployed staff and assets to provide support to SAR operations and in saving lives at sea. While no specific SAR incidents related to migration have been reported, the Fundamental Rights Office underlines the need for all participants to the JO to be aware of fundamental rights requirements as regards people in vulnerable situation, including those in need of international protection.

Additionally, within MMO Adria 2023 neither SIR Category 1 nor complaints were recorded.

## **7. Joint Operation (Multipurpose Maritime Operation) Central and Eastern Baltic Sea 2023**

The Fundamental Rights Office provided observations to the Operational Plan, delivered a dedicated briefing on fundamental rights, and discussed the main elements of the JO with the NFPOC as part of monitoring visit.

During the reporting period, the Fundamental Rights Monitors conducted one visit to Estonia (17-21 July 2023) including meeting with the NFPOC on the JO MMO Central and Eastern Baltic Sea.

The Fundamental Rights Office did not receive any complaints (under the Frontex Complaints Mechanism), and no SIR investigation relating to fundamental rights (SIR Category 1) was launched during the joint operation's implementation. Nevertheless, the Fundamental Rights Officer would like to underline the need to reinforce information provision and training on the complaints mechanism, SIR mechanism, and the supervisory mechanism to monitor the use of force. Fundamental Rights Monitors are ready to contribute to that respect.

Furthermore, the Fundamental Rights Officer welcomes that the Operational Plan did not foresee any disembarkations in Russian territory in SAR cases, as this Third Country was not considered as safe country by the respective host Member States. No disembarkations in Russian territory were recorded during the JO implementation.

The Fundamental Rights Officer also takes note that irregular migration incidents and stowaways are historically rare in the Central and Eastern Baltic. No such incident was recorded in the operational area during the JO implementation period. Nevertheless, considering fundamental rights obligations in relation to SAR operations, and the evolving geopolitical context, the Fundamental Rights Office welcomes that SAR drills included irregular migration scenarios. They should include aspects related to vulnerability screening and access to procedures upon disembarkation (ie. awareness raising sessions, training). The assessment of the drill is not possible as the Fundamental Rights Office did not participate to the activity.

## Main Conclusions

Despite progress made in 2023, the Fundamental Rights Officer would like to raise concerns as to the insufficient implementation of all the requirements of Regulation 656/2014, especially as regards JOs where serious indications of fundamental rights violations persisted in 2023. This is particularly relevant for JO Poseidon 2023. Consequently, the Fundamental Rights Officer urges the adoption of the proposed recommendations to contribute mitigating some of the identified issues.

The Fundamental Rights Officer would also like to stress that the MSs and other involved actors are fully obliged to respect international maritime law, international human rights and refugee law, which require them to respect and protect fundamental rights obligations including protection of the right to life and the principle of non-refoulment. In this regard, while Regulation 656/2014 applies to operations coordinated by Frontex, the rules and obligations included therein reflect existing international maritime and human rights law binding for all actors involved in maritime operational activities, regardless of whether they are conducted with Frontex support or not.

The Fundamental Rights Officer recalls the recommendations of the Frontex Scrutiny Working Group of the European Parliament's LIBE Committee<sup>7</sup> that every Operational Plan should include a transparent reporting mechanism, in which the host Member States involve all assets used in the operational area, with the objective that every incident in the operational area is reported and properly followed up.

The Fundamental Rights Office stands ready to provide support to the Agency to effectively implement the requirements defined in Regulation 656/2014 in conjunction with the obligations set forth under EU law and international maritime law, human rights and refugee law.

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<sup>7</sup> LIBE Committee on Civil Liberties, Justice and Home Affairs, *Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations*, 14.7.2021, [https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG\\_en.pdf](https://www.europarl.europa.eu/cmsdata/238156/14072021%20Final%20Report%20FSWG_en.pdf), accessed: 11.07.2024