



Border Violence
Monitoring Network

Frontex Regulation Recast

Submission to the European Commission's
Public Consultation 2025



Submission to the European Commission Public Consultation on the Initiative to strengthen EU rules on the European Border and Coast Guard, specifically Frontex

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Glossary of Acronyms

AVR Assisted Voluntary Return	FOIA Freedom of Information Application
BVMN Border Violence Monitoring Network	FRO Fundamental Rights Officer
EBCG European Border and Coast Guard	IBM Integrated Border Management
ECHR European Convention on Human Rights	SIR Serious Incident Report
ED Executive Director	TFEU Treaty on the Functioning of the European Union
EU European Union	WG Working Group

The Border Violence Monitoring Network is a coalition of organisations working to document violent pushbacks, police violence and detention along the European Union’s external borders in the Western Balkans, Greece, Turkey, France and Poland. The collection of data is done by a consortium of independent voluntary field-experts, who are part of and cooperate with humanitarian support groups united through the BVMN.

BVMN notes that throughout this submission, ‘people on the move’ will be used as an umbrella term to encompass all persons who have left their country of origin due to, among other reasons, climate emergency, economic and social inequalities, political conflicts, terrorism, colonial legacies, organised crime, and also includes those who are in the process of moving and are still in transit, or those who are stranded. The term also attempts to acknowledge and consider the legislations, policies and external circumstances which may force people into a precarious status’ outside of any legal framework.

Executive Summary

The BVMN is submitting this position paper to contribute to the European Commission's Public Consultation on its initiative to strengthen EU rules on the European Border and Coast Guard, specifically Frontex

The Network's findings and evidence indicate that systematic violations of fundamental rights of people on the move occur in Frontex (hereafter the Agency) operational areas. These patterns constitute serious violations of the EU Charter of Fundamental Rights and raise concerns of acquiescence or at minimum informed tolerance of practices incompatible with the obligations arising from the EU Treaties.

The Commission's initiative aims to address gaps in the implementation of Regulation (EU) 2019/1896 and to prepare the Agency for an expanded role as the EU's operational arm in border management and returns. We express serious concern in this direction as the initiative fails to engage with years of evidence showing that Frontex operates in environments marked by fundamental-rights violations, ill-treatment and deaths at borders. Instead of prioritising accountability, oversight, and compliance, the Commission's proposal focuses on expanding powers, resources, and operational reach.

In response to the Commission's objective to 'enhance cooperation on return operations', this paper provides evidence from AVR procedures in Bulgarian detention facilities challenging the principle of the 'voluntariness' of such return decisions and the Agency's role in them. We further express concern on the Agency's growing operational engagement in third countries, including support to return procedures between said countries.

We express deep concern over the objective to further 'improve situational awareness' and increase the acquisition and deployment of border-surveillance equipment. Surveillance technologies deployed through Frontex risk, in practice, to enable apprehension, tracking, and subsequent violent pushbacks.

Finally, the level of responsibility of Frontex in fundamental rights violations should call into question the very existence of the Agency as part of the EU's migration policy framework. Evidence from the Greek context, that is provided here as a case study, supports this assessment. At the very minimum, any regulatory change in Frontex's mandate must be conditional on robust, enforceable, and independent accountability mechanisms. Absent such safeguards, the continuation and expansion of the Agency's activities entrenches a system that normalises violations against people on the move.

Concerns over Enhanced Cooperation on Return Operations Including Return Operations from Third Countries to Third Countries

The Agency has become a central instrument for EU member states to pressure people on the move into so-called “voluntary” returns. While presented as support and counselling, these practices often take place under conditions that limit free and informed choice, create coercion, and reinforce EU externalisation dynamics. In April 2021, the European Commission published its first EU-wide strategy on voluntary return and reintegration, formally establishing Frontex as ‘the operational arm of the EU’s common return system’.¹ To this regard, a less often highlighted aspect of Frontex’s involvement in the EU’s deportation framework is its responsibility for providing return counselling to people under deportation orders or held in detention.² The counselors inform people on the move about the ‘obligation to leave’ and the consequences of not doing so.³ In the first half of 2024 Frontex supported 26,789 returns.⁴ By June 2025, the Agency facilitated 26,656 returns, 64% of which were categorised as ‘voluntary’.⁵

In Cyprus since March 2021, Frontex’s Return Counsellors have been deployed within detention facilities and reception centres.⁶ In 2023 alone, Frontex reportedly offered so-called return counselling in 6806 sessions to almost half of the people residing in Pournara, Cyprus’ only asylum reception centre.⁷ The vast majority of Pournara’s residents at the time were Syrian nationals whose application for asylum had not been processed yet. Meanwhile, Frontex’s own Consultative Forum were raising the alarm, stating that these returns were, in fact, not so voluntary.⁸ Despite this, Frontex decided to reproduce Cyprus’ model of returns in Bulgaria. In fact, in 2023, Frontex return counselors were deployed inside Bulgaria’s detention facilities to address the final requirements for Bulgaria’s Schengen accession.⁹ Bulgaria has hence served as a pilot for the EU Pact’s accelerated return procedures and ‘voluntary’ return counselling.

¹ EU voluntary return and reintegration strategy (Commission communication) European Commission. Communication from the Commission to the European Parliament and the Council: The EU strategy on voluntary return and reintegration (COM(2021) 120 final).

<https://www.statewatch.org/media/2860/eu-com-voluntary-return-reintegration-strategy-4-21.pdf>

² Barker, H., & Ambri, A. (2025) Deportations: New role for Frontex as EU pushes for more “voluntary” returns. Statewatch.

<https://www.statewatch.org/news/2025/january/deportations-new-role-for-frontex-as-eu-pushes-for-more-voluntary-returns/>

³ European Migration Network. (2023). Ad-Hoc Query on 2023.7 Policies and practices on return and reintegration counselling for migrants in EU+.

https://www.emn.it/uploads/Products/product_2021/78348b01-ae12-43da-ad79-cd7e542b8c72_en.pdf

⁴ Frontex. (2024). Frontex Evaluation Report on the Results of the Returns Implemented in the first half of 2024. <https://prd.frontex.europa.eu/wp-content/uploads/fer-2024-1st-half.pdf>

⁵ Frontex. (2025). Frontex written answer to parliamentary question E-001723/2025 to the Commission. Threats at the external borders – the role of FRONTEX, (2).

<https://prd.frontex.europa.eu/document/frontex-written-answer-to-parliamentary-question-e-001723-2025-to-the-commission-threats-at-the-external-borders-the-role-of-frontex/>

⁶ The New Arab. (2025). €1,500 and a one-way ticket: how Cyprus has been quietly deporting Syrian refugees. <https://www.newarab.com/investigations/eu-deports-syrians-under-guise-voluntary-returns>

⁷ *ibid.*

⁸ *ibid.*

⁹ Barker, H., & Ambri, A. (2025). Deportations: New role for Frontex as EU pushes for more “voluntary” returns. Statewatch.

<https://www.statewatch.org/news/2025/january/deportations-new-role-for-frontex-as-eu-pushes-for-more-voluntary-returns/>

After the fall of the Assad regime, this coercion into so-called voluntary returns has focused almost exclusively on Syrian nationals.¹⁰ Detainees at Bulgaria's deportation centres speak of threats of prolonged detention to coerce them to agree to leave for Syria.¹¹

According to Statewatch, the Assisted Voluntary Returns financial incentives that Frontex could offer rose from €150 to €900, with additional reintegration assistance.¹² The Agency's role in encouraging AVR in Bulgaria and stressing the consequences of non-departure¹³ began with four counselors conducting 1,547 sessions in 2023, including in detention where access to legal aid is limited, and, like in Cyprus, most of the counselling was offered to individuals who had recently arrived in the country.¹⁴

We question in principle the 'voluntariness' of such return decisions, given that they take place in detention, a context that inherently entails elements of coercion. In fact, Schweitzer, Research Professor of Migration, proposes that returns from detention cannot be considered voluntary as free and informed choices are limited when there is an absence of a) an alternative but to face 'the consequences if not leaving', b) 'trustworthy information', and c) 'situations of detention, deportation, or exclusion from basic support'.¹⁵

Moreover we are concerned over the proposed initiative to enhance Frontex cooperation with third countries, including support for returns to and from them, which reinforces EU's externalisation dynamics. As the Commission's initiative provides, the Agency would provide enhanced support to member states through 'return specialists,' a 'comprehensive planning system' and 'more effective resource pooling'.¹⁶ However, these tools do not address persistent gaps in accountability, data-handling or fundamental rights obligations.¹⁷

¹⁰ Barker, H., & BIRN Correspondent. (2025). 'Consent is Key': Bulgaria Accused of Coercion Over Syrians' 'Voluntary' Deportations. Balkan Insight.

<https://balkaninsight.com/2025/10/09/consent-is-key-bulgaria-accused-of-coercion-over-syrians-voluntary-deportations/>;

¹¹ Barker, H., & BIRN Correspondent. (2025). 'Consent is Key': Bulgaria Accused of Coercion Over Syrians' 'Voluntary' Deportations. Balkan Insight

<https://balkaninsight.com/2025/10/09/consent-is-key-bulgaria-accused-of-coercion-over-syrians-voluntary-deportations/>; Border Violence Monitoring Network. Balkan Regional Report. January 2025.

<https://borderviolence.eu/reports?category=press-release>

¹² Barker, H., & Ambri, A. (2025). Deportations: New role for Frontex as EU pushes for more "voluntary" returns. Statewatch.

<https://www.statewatch.org/news/2025/january/deportations-new-role-for-frontex-as-eu-pushes-for-more-voluntary-returns/>

¹³ *ibid.*

¹⁴ Barker, H., & Ambri, A. (2025). Deportations: New role for Frontex as EU pushes for more "voluntary" returns. Statewatch.

<https://www.statewatch.org/news/2025/january/deportations-new-role-for-frontex-as-eu-pushes-for-more-voluntary-returns/>

¹⁵ Schweitzer, R. (2022). Voluntary Return" without Civil Society? Berghahn Open Anthro: Migration and Society. <https://doi.org/10.3167/arms.2022.050104>

¹⁶ Frontex. (2025). Frontex written answer to parliamentary question E-001723/2025 to the Commission. Threats at the external borders – the role of FRONTEX, (2).

<https://prd.frontex.europa.eu/document/frontex-written-answer-to-parliamentary-question-e-001723-2025-to-the-commission-threats-at-the-external-borders-the-role-of-frontex/>

¹⁷ *ibid.*

Against this background, we are particularly concerned about the Agency supporting return operations from third countries to third countries, where access to independent monitoring, legal assistance and effective remedies is already limited. Moreover, Frontex cooperation with third countries grants far-reaching privileges and immunities to members of the standing corps deployed on their territory.¹⁸ Article 96 of the 2019 Frontex Regulation makes Protocol (No 7) on the Privileges and Immunities of the European Union applicable to Frontex and its statutory staff, so that officials in the first category of the standing corps enjoy functional immunity from national civil and criminal proceedings for acts performed in their official capacity.¹⁹

Additional concerns are raised in the face of the Commission's recast proposal for a Return Regulation.²⁰ The so-called return hubs in third countries proposed in the latter, paired with accelerated border procedures, and the concurrent extension of Frontex powers in AVR processes would replicate Frontex's operational approach in third countries, maintaining a role in coercing rejected asylum seekers into 'voluntarily' deporting themselves.

This evidence shows that Frontex's current role in "voluntary" return procedures risks entrenching coercion. Any regulatory or operational change must therefore exclude Frontex from conducting, facilitating, or supporting returns, including counselling, operational support, and activities in third countries.

Concerns Regarding Situational Awareness Technologies and the Processing of Personal Data

We express deep concern over the initiative to further 'improve situational awareness' and the planning and acquisition of equipment for border surveillance. Frontex has massively increased its border surveillance arsenal in the past years, and poured large parts of its budget into procuring equipment for member states and operations in third-countries²¹.

¹⁸ E.g. Article 6(2)-(4) of the 2019 Status Agreement with Albania European Union, & Republic of Albania. (2019). Status agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania (OJ L 46, 18.2.2019, pp. 3–10). https://eur-lex.europa.eu/eli/agree_internation/2019/267/oj

¹⁹ For operations in third countries, 'status agreements' specify that immunity from the host state's criminal jurisdiction may be waived by the Frontex Executive Director for statutory staff and by the competent national authority of the home Member State for other team members, in both cases by expressed written declaration. European Commission. (2021, December 21). Model status agreement as referred to in Regulation (EU) 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) 2016/1624 (COM(2021) 829 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0829>

²⁰ Commission press release (Common European System for Returns). European Commission. (2025, March 11). Commission proposes a new Common European System for Returns [Press release]. Press corner. https://ec.europa.eu/commission/presscorner/detail/en/ip_25_724

²¹ Statewatch. (2025). €2 billion in 15 years: How Frontex finances Fortress Europe. Statewatch. <https://www.statewatch.org/analyses/2025/2-billion-in-15-years-how-frontex-finances-fortress-europe/>

First, research by the BVMN conducted in seven countries along the so called ‘Balkan Route’, as well as testimonies from people on the move in the BVMN Database, confirm that the deployment of so-called situational awareness technologies often help facilitate the apprehension and subsequent violent pushback of people on the move.²² At least 205 testimonies attest to the presence of a drone or camera prior to being pushed back. Pushbacks in themselves constitute a violation of international law, and are linked to additional human rights violations: 92% of pushbacks in the BVMN Database involve direct violence or a form of torture or inhuman treatment. Very frequently the equipment used to detect people on the move is donated or even developed or commissioned by Frontex. Thereby we argue that Frontex not only directly supports the detection, apprehension and violent pushbacks by funding intrusive border surveillance equipment, but the Agency actively accepts and allows for them to occur.²³

Secondly, Frontex has repeatedly justified the need for new technical situational awareness equipment with the need to improve search and rescue operations. Yet it has become evident that technologies are rarely used for such a purpose.²⁴ This is evident in cases where people on the move were stranded off islets in the Evros river between Greece and Turkey. The practice was also evident in the Pylos Shipwreck off the coast of Greece where 600 people are estimated to have died. During the investigation of the incident, it became clear that essential surveillance equipment on the boats of Frontex and the Greek Coast Guards were not working properly and could not provide the footage from the time of the incident.²⁵ In Bulgaria, despite Frontex being actively engaged in a Joint Operation with the Bulgarian Border Police and having provided extensive border surveillance, the Agency failed to support the search and rescue operation and to prevent loss of life.²⁶ For instance, in October 2025 the Frontex Fundamental Rights Office confirmed that the Bulgarian authorities had an obligation to rescue people on the move during a serious incident that occurred in December 2024 along the Bulgaria- Turkey border, which resulted in the deaths of three minors.²⁷

Third, evidence from the Western Balkans illustrates the concrete risks of the de facto expansion of unlawful biometric system surveillance: In 2022, the EU announced the implementation of a Western Balkan Action Plan, to ‘reduce irregular flows’, ‘take action against smuggling’ and ‘fostering readmission cooperation and return and achieving the alignment of visa policies’.²⁸ 201.7 million Euros

²² *ibid.*

²³ Chereseva, M., & Stavinoha, L. (2024). Schengen in sights, EU and Frontex overlook violent Bulgarian pushbacks. *Balkan Insight*.

<https://balkaninsight.com/2024/02/26/schengen-in-sights-eu-and-frontex-overlook-violent-bulgarian-pushbacks/>

²⁴ Frontex. (2025). Coast Guard evolution: AI and unmanned systems enhancing SAR operations.

<https://www.frontex.europa.eu/media-centre/news/news-release/coast-guard-evolution-ai-and-unmanned-systems-enhancing-sar-operations-piX5O0>

²⁵ Malichudis, S., Papangeli, I., & Petridi, C. (2023). Under the unwatchful eye of the authorities’ deactivated cameras: Dying in the darkest depths of the Mediterranean. *Solomon*.

<https://wearesolomon.com/mag/format/investigation/under-the-unwatchful-eye-of-the-authorities-deactivated-cameras-dying-in-the-darkest-depths-of-the-mediterranean/>

²⁶ Border Violence Monitoring Network (2024). Surveillance Technologies at European Borders: Bulgaria

<https://borderviolence.eu/reports/surveillance-technologies-at-european-borders-bulgaria>

²⁷ Melting Pot (2025).”Frontex Conferma le Responsabilità delle Autorità Bulgare nella Morte di Tre Minori”

<https://www.meltingpot.org/2025/11/frontex-conferma-le-responsabilita-delle-autorita-bulgare-nella-morte-di-tre-minori/>

²⁸ European Commission. (2022). EU action plan on the Western Balkans

https://home-affairs.ec.europa.eu/system/files/2022-12/Western%20Balkans_en.pdf

were made available from the IPA III instrument in Bosnia-Herzegovina, Montenegro, Kosovo and Serbia. The specific outputs under the Western Balkan strategy include ‘strengthened technical capacities to implement EU-compliant identification and registration systems’ and ‘increased capacities to implement effective border control and efficient integrated border management (IBM) systems’.²⁹ As such Frontex has been instrumental in setting up the so-called Asylum Fingerprint and Identification systems in the Western Balkans, including in Serbia³⁰, Bosnia-Herzegovina³¹ and North-Macedonia. The expansion of biometric data collection to fill newly set up data bases in the Western Balkans, has raised serious concerns particularly regarding how biometric data collection takes place. Of the 1824 pushback testimonies uploaded in the BVMN database, 281 testimonies recount incidents in which the fingerprints and facial images of people were forcibly taken prior to being pushed back. Of the 281 testimonies, 265 expressed their intention to apply for asylum prior to being pushed back. Moreover biometric data collection in the Western Balkans very often takes place in a coercive environment: people are often forced to give their fingerprints, while in informal detention sites and sometimes after being heavily beaten. In other cases, people are made to believe that providing their fingerprints will give them access to asylum, other times they are physically forced to give their biometric data.³²

Finally, Frontex has a documented history of non-compliance with data protection rules. This record raises serious concerns in light of current proposals to expand the Agency’s data-collection and data-processing powers under the guise of counter-smuggling efforts. Under the 2019 Regulation, Article 90 explicitly limits Frontex to a supporting role in data processing for crime prevention, detection, and investigation, and prohibits the Agency from collecting personal data on people on the move for law-enforcement purposes. These safeguards already clearly define the limits of Frontex’s mandate. Reopening Article 90 to broaden its scope or weaken existing restrictions would remove essential protections and risk endangering the rights and safety of those affected. Moreover, such changes risk legitimising Frontex’s unlawful collection of personal data and could encourage both member states and third countries to do the same.³³

This evidence shows that the current surveillance infrastructure, far from improving the protection of lives or combating cross-border crime, entrenches a system of structural violations. Any regulatory change must therefore refrain from enhancing Frontex’s role in surveillance activities and data collection.

²⁹ Specific activities include the “procurement of IT and communication infrastructure for identification and registration of migrants based on Frontex masterplan. See: Vavoula, N. (2020). Transforming Eurodac from 2016 to the New Pact: From the Dublin system’s sidekick to a database in support of EU policies on asylum, resettlement and irregular migration (ECRE Working Paper No. 13). European Council on Refugees and Exiles. <https://ecre.org/wp-content/uploads/2021/01/ECRE-Working-Paper-Transforming-Eurodac-from-2016-to-the-New-Pact-January-2021.pdf>

³⁰ European Commission. (2022). Serbia 2022 report (SWD(2022) 338 final) [Commission staff working document]. <https://www.stat.gov.rs/media/358410/serbia-report-2022-1.pdf>

³¹ “Regular IPA II assistance on migration & border control” annex European Union. Regular IPA II assistance on migration & border control. <https://www.statewatch.org/media/2454/annexe-5-clean.pdf>

³² Border Violence Monitoring Network. (2023). Denied any medical assistance after falling from a bridge. <https://borderviolence.eu/testimony/27925-2>

See also: Border Violence Monitoring Network. (2022). “They told him, ‘If you come back, we will beat you again, so you have to go now’.”. <https://borderviolence.eu/testimony/march-25-2022-0000-41-128306-22-517528>

³³ European Data Protection Supervisor.(2025) EDPS reprimands Frontex for non-compliance with Regulation (EU) 2019/1896 https://www.edps.europa.eu/press-publications/press-news/press-releases/2025/edps-reprimands-frontex-non-compliance-regulation-eu-20191896_en

Concerns Regarding Accountability and Oversight Mechanisms

Internal Accountability

Ensuring fundamental rights compliance within Frontex relies on a set of formal internal mechanisms designed to monitor operations and recommend corrective action. In theory, these mechanisms - principally the Fundamental Rights Officer (FRO) and the Consultative Forum on Fundamental Rights - are meant to provide independent oversight and safeguard against serious rights violations. In practice their authority is severely limited, and the Agency's leadership consistently prioritises operational continuity over accountability even in cases of operational areas signed by severe fundamental rights violations, pushbacks and even death of people on the move (see case study below).

Frontex's internal accountability architecture is structurally weak and provides limited constraints on the Agency's operational behaviour. The FRO can document violations, issue opinions, and recommend the suspension of activities under Article 46. Article 46(4) of the 2019 Frontex Regulation requires the Executive Director (ED), after consulting the FRO and informing the Member State concerned, to withdraw funding for, suspend, or terminate any Frontex activity where they consider that serious or likely persistent violations of fundamental rights or international protection obligations are linked to that activity.³⁴ The FRO can only recommend the trigger of Article 46 and it cannot halt or modify operations, even in the face of serious, well-substantiated rights violations.³⁵ Ultimate decision-making power rests with the Executive Director (ED) and Management Board.

As many reports of abuse involve national border guards, the FRO can only forward those to the member state's authorities, and often those authorities default-deny any wrongdoing.³⁶ There is also an issue with complainants becoming unreachable. In 2023, some complaints filed by people on the move were deemed inadmissible because the individuals who submitted them could have disappeared or stopped responding.³⁷ This is particularly concerning because people on the move are the primary affected parties. Any accountability framework that fails to centre their ability to seek redress is structurally inadequate.

Alongside the FRO, the Consultative Forum on Fundamental Rights was established to provide independent advice from civil society and international organisations. In practice its influence is minimal and its recommendations often go unimplemented or receive limited follow-up.³⁸ As such, we argue that the Forum functions largely as a symbolic façade, intended more to polish the Agency's image than to enable any substantive accountability. In fact, the Forum faces systemic transparency barriers: it is

³⁴ Regulation (EU) 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) 2016/1624 [2019] OJ L 295, 14.11.2019

³⁵ Border Violence Monitoring Network. (2022, October 3). Submission to the EU Commission on the evaluation of the implementation of Regulation 2019/1896 on the European Border and Coast Guard Agency (Frontex). <https://borderviolence.eu/uploads/document/file/342/Frontex-submission-with-annexes-1.pdf> p.9

³⁶ Ibid; Annual report of the Fundamental Rights Officer of Frontex 2023. <https://doi.org/10.2819/437257>

³⁷ Ibid.

³⁸ Loschi, C., & Slominski, P. (2022). Frontex's consultative forum and fundamental rights protection: Enhancing accountability through dialogue? *European Papers*, 7(1), 195–214. <https://doi.org/10.15166/2499-8249/554>

routinely denied access to key documents and excluded from core operational decisions, preventing it from meaningfully assessing or shaping the Agency's fundamental rights compliance.³⁹

Case Study: Greece

In 2022, Frontex's Fundamental Rights Officer, Jonas Grimheden, issued three opinions on Greece, with the first two (5 April and 1 June) citing 'well-founded and substantiated' reports of collective expulsions and ill-treatment in the Aegean and at the Evros border.⁴⁰ While he did not find Frontex directly responsible, he warned that continued cooperation with Greek authorities exposed the Agency to legal and reputational risks due to indirect involvement and failure to act.⁴¹ He recommended several mitigation measures⁴², and by July signalled that he would advise triggering Article 46 if violations persisted.⁴³

The FRO published a third opinion on 1st September 2022 noting the persistence of fundamental right violations.⁴⁴ The Opinion refers to mitigating measures adopted by the then Executive Director ad interim, Aija Kalnaja, and increased engagement with the Greek authorities, as well as an Implementation Plan adopted by the Greek authorities in response to the first two opinions⁴⁵. The FRO therefore recommended that the Executive Director trigger Article 46 and either withdraw Frontex from all operations in Greece or suspend its involvement in surveillance and migration-management activities in the Aegean and Evros.⁴⁶

Although Greece submitted a revised implementation plan agreed with Frontex on the 22 of September, the ED triggered Article 46 five days later and established a Working Group (WG) to assess the

³⁹ Frontex Consultative Forum on Fundamental Rights. (2025). Twelfth annual report: Frontex Consultative Forum on Fundamental Rights 2024. European Border and Coast Guard Agency (Frontex), p.11 <https://prd.frontex.europa.eu/document/twelfth-annual-report-frontex-consultative-forum-on-fundamental-rights-2024/>

⁴⁰ Opinion by the Fundamental Rights Officer Greece - on the fundamental rights situation in areas where Frontex is Operating, April 5th, released through FOIA; Opinion by the Fundamental Rights Officer Greece - on the need for urgent actions related to fundamental rights situation on Frontex operational areas, <https://prd.frontex.europa.eu/document/documents-concerning-operations-in-evros-greece/>

⁴¹ Ibid.

⁴² Ibid.

⁴³ Opinion by the Fundamental Rights Officer Greece on the need for urgent actions related to fundamental rights situation on Frontex operational areas, <https://prd.frontex.europa.eu/document/documents-concerning-operations-in-evros-greece/>

⁴⁴ Frontex Fundamental Rights Officer. (2023). Opinion on Greece: Advice to suspend or terminate Frontex operations in Greece in accordance with Article 46 of the EBCG Regulation. European Border and Coast Guard Agency (Frontex).

<https://prd.frontex.europa.eu/document/documents-concerning-operations-in-evros-greece/>

⁴⁵ Ibid.

⁴⁶ Ibid.

situation in line with the Standard Operating Procedures (SOP) adopted in January of the same year.⁴⁷ However, the WG's mandate quickly shifted toward monitoring Greece's implementation plan, rather than assessing the seriousness or persistence of rights violations.⁴⁸

The Group held six meetings between October 2022 and February 2023. The minutes of the meetings as well as other contemporaneous documents released by Frontex through Freedom of Information applications (FOIA) suggest that a suspension or termination of operations was an unlikely outcome from the outset. The ED, for example, had expressed a belief that the Greek Implementation Plan addressed the shortcomings identified by the FRO, especially by setting up a 3-tier Fundamental Rights monitoring mechanism within the Ministry of Asylum and Migration.⁴⁹ The WG appeared to take into account information submitted by Greece and Frontex's internal systems but no 'external independent findings', contrary to the view of the FRO.⁵⁰ The WG's final recommendation did not propose suspension or termination of the Joint Operations (Terra and Poseidon) in the territory of Greece'.⁵¹

After the WG final recommendation, serious violations continued to be documented. Collective expulsions and ill-treatment were recorded in Serious Incident Reports (SIR) filed in the first quarter of 2023.⁵² Following a pushback which was publicised by the New York Times involving a Hellenic Coast Guard patrol boat co-financed by Frontex, the Article 46 WG on Greece resumed meeting in June 2023.⁵³ While acknowledging the seriousness of the incident, the response of the WG was timid. The FRO urged the Agency to consider 'very concrete steps towards triggering Art 47 of the EBCG regulation' including withholding funding, making public statements, setting deadlines, and suspension of operations as a last step.⁵⁴ Deputy Executive Director Gerdes, however, argued that Frontex lacked investigative powers and maintained that the Agency's operational presence 'supports fundamental rights'.⁵⁵ The WG ultimately opted to send a letter requesting clarifications from Greek authorities and

⁴⁷ European Border and Coast Guard Agency (Frontex). (2022). Decision of the Executive Director No R-ED-2022-160 establishing a Working Group in order to facilitate the decision-making process under Article 46 of the European Border and Coast Guard Regulation [https://prd.frontex.europa.eu/document/article-46-working-group/doc 2](https://prd.frontex.europa.eu/document/article-46-working-group/doc%202); European Border and Coast Guard Agency (Frontex). (2021). Executive Director decision on standard operating procedure: Mechanism to withdraw the financing of, or suspend or terminate, or not launch Frontex activities.

<https://prd.frontex.europa.eu/document/frontex-executive-director-decision-on-standard-operating-procedure-mechanism-to-withdraw-the-financing-of-or-suspend-or-terminate-or-not-launch-frontex-activities/>

⁴⁸ Ibid. <https://prd.frontex.europa.eu/document/article-46-working-group/>, doc 2, 3

⁴⁹ European Border and Coast Guard Agency (Frontex). Article 46 Working Group. Letter from ED to FRO, 10/10/2024 <https://prd.frontex.europa.eu/document/article-46-working-group/>

⁵⁰ European Border and Coast Guard Agency (Frontex). (2022). Article 46 Working Group. Meeting 19/12/2022 <https://prd.frontex.europa.eu/document/article-46-working-group/>

⁵¹ European Border and Coast Guard Agency (Frontex). (2023). <https://prd.frontex.europa.eu/document/article-46-working-group/>,

⁵² SIR 15485/2023; 10263/2023; 10264/2023; 11023/2023; 11027/2023; 12070/2023; 12230/2023; 13563/2023;

⁵³ SIR 12070/2023

⁵⁴ European Border and Coast Guard Agency (Frontex). (2024). Operation Held in Evros, Greece in the Period between January 2023 and March 2024. Meeting 05/06/2023, <https://prd.frontex.europa.eu/document/operations-held-in-evros-greece-in-the-period-between-january-2023-and-march-2024/>

⁵⁵ Ibid.

to review their progress on the implementation plan, postponing any decision on suspending co-financing of assets.

The Pylos shipwreck, where over 600 people on the move are estimated dead, took place less than 10 days after this meeting.

On 10 of July 2023, the FRO issued another opinion on Greece, arguing that ‘violations of fundamental rights committed by Greek authorities remain frequent and of serious nature’ and ‘likely to persist’.⁵⁶ The FRO continued to record incidents of collective expulsions and mistreatment. Grimhenden also recounted several aspects of the implementation plan that the Greek authorities had not complied with, or had been implemented ‘in a manner that is merely of procedural nature’. In Grimhenden’s opinion, Frontex assets and resources were ‘directly involved’ or ‘effectively instrumentalised’ in incidents amounting to fundamental rights violations. He again recommended triggering article 46. Yet again no action was taken by the ED. 23 SIRs in 2023 and 16 in 2024 documented persistent violations of fundamental rights, including collective expulsions and ill-treatment.⁵⁷

The Greek authorities regularly denied wrongdoing and refused to provide detailed and timely information to Frontex.⁵⁸ The assessments and recommendations of the FRO provide evidence for a belief that adequate investigations do not take place and Greek officers involved in fundamental rights violations are not brought to justice.⁵⁹ These conclusions are supported by reports by several human rights bodies which have criticised the Greek monitoring and accountability mechanisms and find that practically no reports of violations are upheld or judicially prosecuted. SIRs also evidence that Frontex assets do not remain in the location of incidents - for example because of being sent elsewhere by the Greek authorities, as in the case of Pylos. On the other hand, several SIRs explicitly mention the involvement of Frontex assets or officers during detection or interception.⁶⁰ Some also observe failures of Frontex officers to correctly report incidents.⁶¹

The case illustrates that Frontex is unlikely to ever trigger Art. 46 in Greece prioritising the control of the external borders and relying on the argument that the Agency’s presence reduces fundamental rights violations. On the other hand, what the SIR evidence underlines is a toleration of Greece ill-treatment. Instead of applying its own mechanism as designed, Frontex has relied on procedural escalation indicators, reviews, internal monitoring that delays or neutralises action. Within this system, the FRO’s role remains largely symbolic: despite extensive documentation and repeated recommendations, his interventions have not altered operational decisions. The lack of transparency reinforces this pattern as Frontex routinely withholds or heavily redacts documents in FOIA responses.

⁵⁶ Public Register of documents. Documents Concerning Operations in Evros, Greece. FRO opinion on Greece, <https://prd.frontex.europa.eu/document/documents-concerning-operations-in-evros-greece/>

⁵⁷ 46th Fundamental Rights Officer Report to the Management Board, obtained via FOIA; SIR 10998/2024; SIR 10463/2024; SIR 11023/2023,

⁵⁸ SIR 10998/2024, SIR 11023/2023,

⁵⁹ SIR 10998/2024; SIR 10463/2024; SIR 11023/2023,

⁶⁰ SIR 10998/2024; 10463/2024;

⁶¹ SIR 10998/2024; 10463/2024;

Taken together, these elements show that Frontex's internal accountability structure is unable to respond to serious and persistent violations, even when identified by its own oversight bodies.

External Accountability

As Frontex is an EU Agency, judicial review of its legally binding acts, and actions for non-contractual liability arising from its activities, lie with the EU courts (the General Court and, on appeal, the Court of Justice)⁶² pursuant to Articles 263, 265, 268 and 340 Treaty of the Functioning of the European Union.

We stand firm on our concerns on the risks of expansion of powers without effective oversight/monitoring. First, external remedies available to individuals are weak and clearly insufficient. People harmed in Frontex operations still have almost no realistic path to an effective remedy. The Agency's 'individual complaints mechanism' is not independent enough, cannot accept anonymous complaints, and is extremely difficult to access for people in detention or in transit. In joint and extraterritorial operations, responsibility risks being diffused between the host Member State, other participating States and Frontex itself. Without clear rules on liability and access to courts, 'monitoring' becomes a purely symbolic exercise.

Secondly, externalisation magnifies opacity. Widening Frontex's 'operational independence' and extraterritorial reach risks creating an even larger zone of enforcement power in which legal responsibilities can be blurred. The EU Court's approach in *WS and Others v Frontex* and related litigation, apply a very high threshold for causation and leave questions of joint responsibility largely open.⁶³ This would confirm that liability rules for Frontex's role in shared and extraterritorial border management remain unsettled. At the same time, surveillance capacities risk expanding much faster than the safeguards meant to constrain them. On this matter the Agency must at the very least: (a) Externalise the complaints mechanism and make it structurally independent; (b) Legally clarify Frontex liability in EU courts while EU legislation should codify that Frontex bears direct responsibility, and can be sued for damages, whenever its personnel, assets, or command structures contribute to violations (pushbacks, ill-treatment, denial of access to asylum, collective expulsion, unlawful data processing, etc.). Finally the level of oversight over the Agency should be able to trigger investigation.

⁶² Individuals can not bring an action before the European Court of Human Rights (ECtHR) as the EU is not a member as an entity, therefore the ECtHR does not have the competence to review the acts or institutions of the EU.

⁶³ Gkliati, M. (2024). Shaping the joint liability landscape? The broader consequences of *WS v Frontex* for EU law. *European Papers*, 9(1), 69–86; Nicolosi, S. F. (2024). The European Border and Coast Guard Agency (Frontex) and the limits to effective judicial protection in European Union law. *European Law Journal*, 30(1–2), 149–164.