

Annex

1. **When did you decide to launch the internal inquiry you refer to in your letter of 27 October? Who is conducting this inquiry? Is the Fundamental Rights Officer involved? By when will the internal inquiry be terminated? Please share the full results with us once the inquiry is terminated.**

The internal inquiry was launched on the 26 October, when the Executive Director held a series of meetings taking place also across the next days. All relevant internal Agency services were addressed, namely the Operational Response and Situational Awareness and Monitoring Divisions. The Fundamental Rights Officer (FRO) was requested to provide an assessment of the situation on 29 October.

During the Extraordinary Management Board Meeting which was attended by representative from the LIBE Committee held on 10 November, the preliminary results of the internal enquiry were presented, as well as an assessment on the situation by the Fundamental Rights Officer a.i. was provided. FRO a.i. in her independent function will further analyse the activities in Greece based on reports and information received from different external and internal sources (regarding land and sea borders). With this analysis and the FRO visits to Evros region and islands which are planned in the coming weeks, FRO a.i. will take further actions in monitoring the Agency's compliance with fundamental rights, including by conducting investigations (Reg Art. 109).

As a next step, the Management Board will deliberate on the establishment of the Working Group on Legal and Operational aspects of Maritime Operations on its composition and its mandate. The Management Board shall also decide on the spokesperson of this working group. The objective of this Working Group will be to conduct further inquiries on the alleged push backs in the Eastern Mediterranean, as well as to provide the interpretation of EU regulations' provisions related to operational activities at sea and "hybrid threats" to Member States national security at external borders.

2. **Can Frontex confirm that the assets mentioned in the investigation as being involved in the incidents on 8 June 2020 and 15 August 2020 were part of an operation/intervention coordinated by the Agency? If yes, have you identified the exact date and time of these incident(s) and the assets involved?**

Indeed, the assets mentioned in the media reports were/are part of JO Poseidon/RBI Aegean 2020.

All the below information was presented during the Extraordinary Management Board meeting, which was also attended by LIBE representative.

On the 08.06.2020 the Portuguese Coastal Patrol Boat (CPB) Nortada performed the scheduled patrol at the sea area North of Lesvos between the hours 08:00 and 14:00. In the mission report issued by the Portuguese CPB, no suspicious incidents have been reported.

On the 07-08.06.2020 the Romanian Coastal Patrol Vessel (CPV) MAI 1103 performed the scheduled patrol at the sea area North of Lesvos between the hours 07.06.2020 22:00 and 08.06.2020 10:00. In the mission report issued by the Romanian CPV, no suspicious incidents have been reported.

Incident reported as a prevention of departure corresponds with the timing, location and number of migrants in a claimed pushback incident. Neither the claimed active involvement of the assets deployed under Frontex Joint Operations nor a pushback itself can be confirmed in relation to the reports in the media. The videos posted by the media do not show the full data (such as dates) nor the whole context. The images of the locations of the assets and dinghies are only presumable, based on what cannot be confirmed from the article only.

On 15th August at 05:00 LT a rubber boat with approximately sixty migrants on-board was early detected by the Romanian CPV and Hellenic Coast Guard Offshore patrol vessel (OPV) 070 at the sea area North East of Lesvos Island inside Turkish Territorial Waters. After detection Joint Rescue Coordination Centre (JRCC) Piraeus informed Maritime Rescue and Coordination Centre (MRCC) Ankara and at 11:40 LT three (03) Turkish Coast Guard boats which were already patrolling in the area took over responsibility of the incident.

3. Does the Agency accept that Frontex assets were in range of the alleged “proximity incidents” on 28-29 April, 4 June, 5 June and 19 August? Has the Agency received reports/ ship logs/ flight and/or aerial surveillance reports / serious incidents reports on the duties performed by the involved assets at the time of all the different incidents referred to? How many and If not, why is such information not available? If yes, please transmit these reports to us.

First of all, none of the incidents claimed by the media have been reported as a SIR (Serious Incident Report) within Frontex operations. On the alleged “proximity incidents” on 28-29 April, please note that no Frontex Surveillance Aircrafts’ (FSA) Mission report can be correlated to the incident reported by the media. Regarding FSA flights: FSA performed a mission on 27-28 April 21:00 - 01:00 and FSA was not deployed on 29 April. As regards the 4 June, 5 June, and 19 August, kindly note that no incidents were detected by FSA.

To be more precise, please see some further information below:

- **28-29 April**

In the media reports, an arrival of a group of 22 migrants on Samos has been described for 28.04.2020. No matching incident has been reported within the Frontex Joint Operations. The media further describes that the same group has been allegedly further put and towed back to the sea during 28.-29.04.2020. The media reflected on the two overflights of the FSA in the area and timings are matching with the conducted patrolling flights. However FSA did not report any described activity nor migration incident. In addition FSA was deployed from 21:00 27 April to 01:00 28 April and no flights were performed by FSA on 29 April. Accusations only assume that the FSA should have detected the claimed incident at sea.

- **4 June**

A Portuguese Coastal Patrol Boat (CPB) has been in the area of a media claimed incident. No factual reporting on pushbacks has been issued by the Portuguese CPB. Accusations only assume that the Portuguese CPB should have observed the claimed incident at sea.

- **5 June**

A Portuguese CPB has been in the area of a media claimed incident. No factual reporting on pushbacks has been issued by the Portuguese CPB. Accusations only assume that the Portuguese CPB should have observed the claimed incident at sea.

- **19 August**

A Portuguese CPB has been in the area of a media claimed incident. No factual reporting on pushbacks has been issued by the Portuguese CPB. Only NGO information is available on Facebook. Accusations only assume that the Portuguese CPB should have observed the claimed incident at sea.

Access to the relevant report could be granted to selected MEPs nominated by the European Parliament provided that following conditions are met:

- a. Any document shall be handled by the MEPs in line with the relevant EU or national applicable rules depending on the status or classification of the document;*
- b. In case access is requested by MEPs to reports prepared by national officers deployed by Member States (such as commanders of vessels), Frontex should first request authorisation from the competent national authorities before the reports could be disseminated to the relevant MEPs.*

4. Can you definitely exclude that pushbacks were undertaken or observed by Frontex staff and/or staff participating in an operation or intervention in Greece?

Operational activities of Frontex in the Aegean Sea are conducted within very specific geographical, political and geopolitical circumstances. This makes these operational areas unique. Therefore, our operational responses have to adapt to the complex geography and sometimes difficult relationship between Greece and Turkey. Having said that, Frontex is always committed to the highest European standards in border management and has zero tolerance for any violations of international obligations of Member States involved.

5. In your letter you also pointed out that at this point of time, the still ongoing inquiry in the Agency has not identified any other suspicious cases than those already reported by you to Greek authorities. Nevertheless, following the publication of the investigation, in a posting on social media² Frontex stated that you have been in contact with the Greek authorities regarding some incidents at sea in recent months. Can you provide us with detailed information about these contacts (when, where and what was discussed)?

Indeed, there was an exchange of letters between Frontex and the Greek authorities, and we have received replies on our both letters.

The first letter was sent to Mr Ioannis Plakiotakis, the Minister of Maritime Affairs and Insular Policy of Greece on 8 May as regard to sighting of a migrant boat by Frontex contracted aircraft operating in the Aegean Sea on 18 April. The reply was received on 10 July. During the LIBE hearing attended by the Executive Director on 6 July, the answer was still awaited.

On 24 July, a letter to LIBE Committee was sent as a follow up to the abovementioned LIBE meeting and just after the Executive Director's visit to Greece which took place on 22-23 July. In the letter the Executive Director has provided answers to 16 questions including 2 questions on push backs (Q 4 & Q5).

The second letter to the Greek authorities addressed to Mr Theodoros Kiliaris, Vice Admiral H.C.G. Hellenic Coast Guard Commandant was sent on 6 August in relation to the incident involving Danish helicopter which took place on 27 July. The reply from the Greek authorities was received on 14 October.

As a follow up to the Schengen Scrutiny Group on 1 September and a subsequent letter by MEP Clare Daly with supplementary questions received by the Agency on 3 September, a comprehensive explanations were provided on 24 September.

6. Since this journalists' investigation also revealed an involvement of Romanian vessels and a Portuguese aircraft, have you been in contact in relation to these incidents with authorities from those or other Member States (when, where and what was discussed)?

In fact, journalists' investigation referred to the possible involvement of Romanian and Portuguese vessels (not a Portuguese aircraft as mentioned in the question). After conducting a thorough internal enquiry aimed to clarify all operational aspects and details, the mentioned countries were addressed with letters by me to provide their observations and position on the claims posed by the articles in media on 9 November 2020.

7. Against the backdrop of your duties under Article 46 of the EBCR Regulation, what is your own assessment of the actions performed / incidents as published in the journalists' investigation? Besides information from the host Member State, what information do you assess in order to fulfil your duties under this Article?

When assessing such cases, and in order to fulfil my duties under Article 46 of the Regulation (EU) 2019/1896, different types of sources are taken into consideration. They include relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of incidents/serious incidents, media monitoring products, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by Regulation (EU) 2019/1896.

8. What procedures does Frontex follow when it becomes aware, either by having an operation/intervention in the vicinity, or by being made aware through media reporting, of allegations such as those described in the report published by Bellingcat, Lighthouse Reports, Der Spiegel, Report Mainz (ARD) and TV Asahi?

Depending on the Incident there are two channels for reporting:

- **Regular reporting:**

For every Operational Activity, there are operational objectives and indicators, which refer to reported incidents.

The reporting line, structure and the procedure in the relevant reporting application is defined in the Operational Plan (OPLAN) and the Specific Activity Plan (SAP) that is shared and formally accepted by the host Member State (MS) and (where applicable) participating Member States also. This reporting line has specific structure (per operational activity) and timeline. The information is collected within the Activity via the reporting application, Joint Operations Reporting Application (JORA) by officers assigned by the host MS. After the incidents are validated at different levels (Local Coordination Centre, International Coordination Centre), all the reported incidents undergo the final validation step executed by Frontex. In case there are any issues with the reported incidents (such as for example doubts about time, location, nature of the incident), these incidents are not validated until all information and data is clarified/confirmed. The clarification/confirmation involves all stakeholders: reporting entity and the various entities that have a role in incident validation e.g. LCC, ICC, Frontex.

- **Serious Incidents Reporting:**

The reporting of serious incidents (SI) are in line with the reporting structure of the operational activities. A Serious Incident Report is an alert message that shall be reported in case an event or occurrence, natural or caused by human action, may negatively affect, or be relevant to a particular Frontex activity, the safety and security of participants in Frontex activities, the Agency's mission and reputation, or any combination thereof.

Serious Incidents also include situations of possible violations of European Union (EU) acquis or international law, in particular related to Fundamental Rights (FR) and international protection obligations. Finally, SIs include any violation of the Frontex Code of Conduct (CoC) applicable to all persons participating in Frontex operational activities.

A SIR aims to inform the Frontex Executive and Senior Management, the Member States, the Frontex Management Board (MB) and other relevant stakeholders, as soon as possible, about the occurrence of a SI as defined in the "Frontex Serious Incident Catalogue". The production and timely dissemination of a SIR contribute towards enhancing situational awareness and increasing Frontex reaction capabilities. The dissemination of a SIR is the first internal step for possible follow-up measures. Every participant shall report immediately serious incidents (SI) to Frontex, in case he/she witnesses, is involved, or has grounds to suspect about the occurrence of an incident representing a possible violation of fundamental rights or international protection obligations (Category 4 of SI Catalogue).

SI involving allegations on possible violation of fundamental rights and/or CoC can be reported via standard SIR procedure in accordance to the SI reporting lines defined in the operational plan or they can be reported via the exceptional reporting mechanism explained below. An exceptional reporting mechanism can be applied, for example when the reporting person has concerns that the disclosure of sensitive information on possible violation of fundamental rights or the CoC via the SIR mechanism could have consequences on their or others' integrity, reputation or deployment. After acknowledgement of such information, the participant shall immediately report such incidents to Frontex.

A Serious Incident must be reported through an initial SIR as soon as possible and preferably within the first 2 hours after such knowledge has been attained. The initial SIR shall contain a summary of the information known at that point of time. This initial SIR serves as preliminary information to obtain immediate knowledge about the incident, and does not need, at this stage, a specific confirmation of the incident. The initial SIR is not bound by any form and can be reported to Frontex via any available means of communication.

9. Do you consider that the Agency requires additional powers to investigate incidents in case of joint operations or interventions?

The legislator has foreseen that the Agency's extended powers call for a robust monitoring of the situations which result in or entail the use of force. Following the obligations related to art 55 of the Regulation (EU) 2019/1896, the Agency has drafted a decision on a supervisory mechanism on the use of force. The Executive Director has indicated to the Commission that this mechanism has to be in place before the deployment of

the standing corps scheduled on 1 January 2021. As a matter of fact, use of force situations may unfortunately arise at any time with a standing corps staff member who might have to resort to use of force in a legitimate defence situation.

One of the major challenges the Agency is currently addressing is the reinforcement of its Inspection and Control Office which will have to be able to address any incidents related to the specific missions of the standing corps. Namely the Inspection and Control Office will have to be able to conduct investigations in the field. It will draw its powers from the Staff Regulations' disciplinary framework which are not ideally adapted to the standing corps employment rhythm and management structure and it will be able to rely on the supervisory mechanism to address very specific cases such as conservatory measures to be taken in the Third Countries where standing corps staff will be immune from local prosecution.

The Agency has a challenge to be able to address with efficiency and fluidity the increasing complexity in the field where staff under different status will be working jointly each of them accountable to their own authorities. Smooth cooperation with third party inspection services and judiciary not to mention internally with the Fundamental Rights Officer will be a key to success.

Moreover, the Agency's Fundamental Rights Officer's mandate and available tools have been considerably expanded with the adoption of the Regulation. The Agency is taking necessary steps and measures in order to ensure and speed up the recruitment of the relevant number of Fundamental Rights Monitors as soon as possible. This will considerably increase the capacity of the Agency to monitor, investigate and report on any incidents related to violation of fundamental rights within Frontex operational activities.

10. What further serious incidents and reports regarding the operation in Greece has the Agency received since the information sent to us by your letter of 4 May this year?

The three following "category 4" Serious Incident Reports have been received:

- **27 July 2020 - SIR Danish Helicopter sighting - Cat 4(11860/2020)**
 - *status: on-going;*
 - *SI Coordinator: HoS.OIS is the SI Coordinator for this case. FRO also received the SIR;*
 - *A letter to the Greek authorities was sent on the 8 August 2020;*
 - *A reply from the Greek authorities was received on the 14 October 2020.*
- **04-05 August 2020 - FSA sighting resulting in the creation of SIR - Cat 4 (11934/2020)**
 - *status: on-going;*
 - *SI Coordinator: after consultation with ORD, HoU.FDU was proposed to act as SIR coordinator (accepted by FDU). Upon request from FDU, FSC provided detailed information about the event on 14 August. No further information is available in FSC. FRO also received the SIR.*
- **30 October 2020 - SIR Cat 4 (12604/2020)**
 - *status: on-going;*
 - *SI Coordinator: DORD was assigned to coordinate it from the operational perspective; in parallel, FRO was assigned to coordinate it from the perspective of fundamental rights;*
 - *FRO inquired Hellenic authorities about this event and received a reply;*
 - *Frontex Inspection and Control Office (ICO) launched a fact finding missions due to accusations against an operational Frontex staff expressed by Swedish authorities during the Extraordinary MB meeting on 10 November.*

- **21 November 2020 - SIR Cat 4 (12790/2020)**
 - *status: on-going;*
 - *SI Coordinator: FRO was assigned to coordinate and with close support by ORD.*