

**Submission to the European  
Ombudsman's Inquiry OI/3/2023/MHZ  
into the Role of Frontex in  
Search and Rescue Operations**



**Border Violence  
Monitoring Network**



## ***Border Violence Monitoring Network submission to the European Ombudsman's inquiry OI/3/2023/MHZ into role of Frontex in search and rescue operations***

**Border Violence Monitoring Network (BVMN)** is a non-profit coalition of organisations working to document in the form of testimonies and consolidated into reports human rights violations at border, pushbacks, collective expulsions and state violence along the EU's external borders in the Western Balkans, Greece and Türkiye since the network's formulation in 2016. BVMN is registered under the framework of RigardU e.V. in Germany.

### **1. Frontex's Responsibility in Joint Operations**

In its role, the European Border and Coast Guard Agency, referred throughout this submissions as the EBCG or Frontex or the Agency, frequently disavows accountability for human rights violations that occur on-site, often contending that it is merely providing support to Greece and participating states. Nevertheless, as this section will elucidate, Frontex's extensive involvement in various facets of the operation renders this argument untenable.

#### **1.1 Indirect Responsibility**

For the question of indirect responsibility, a point of reference that can be drawn on is Article 14 of the Draft Articles on Responsibility of International Organizations (ARIO). Accordingly, the agency "may incur indirect responsibility for a wrongful act that is not attributed to it but solely to the host state, if it has contributed to it, facilitating its commission."<sup>1</sup> Such assistance may not only encompass active actions, but also omission or failure to fulfil its obligations (Article 4 ARIO). Vital hereby is the question whether Frontex knew or should have known about the violation. As will be shown in this report, evidence that Greece has been conducting pushbacks and violating international (human rights) law is well established. Among others, the Frontex Scrutiny Working Group (FSWG) findings of 15.07.2021 clearly state that there are fundamental rights violations and illegal pushbacks at the EU's external borders, including in Greece. It also acknowledges that Frontex knew about these fundamental rights violations and did not act. Not only that, the internal report by the EU anti-fraud agency OLAF also shows how Frontex even

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<sup>1</sup> Gkliati, Mariana. 2021. "The First Steps of Frontex Accountability: Implications for its Legal Responsibility for Fundamental Rights Violations", 13 August 2021, *EU Immigration and Asylum Law and Policy*, Blog of the Odysseus Network, <https://eumigrationlawblog.eu/the-first-steps-of-frontex-accountability-implications-for-its-legal-responsibility-for-fundamental-rights-violations/>



tried to cover up human rights violations in Greece. Despite its legal obligation to guarantee respect for human rights during its operations under EU and international law, OLAF established that instead of taking appropriate measures to prevent human rights violations from occurring, the agency recurrently and deliberately tried to make sure that violations that were occurring would not be witnessed, investigated or accounted for.<sup>2</sup>

Even if it is not Frontex officers who are pushing people back, by tracking down boats and people, calling the Greek authorities and then leaving the scene, Frontex is enabling the pushbacks of people on the move. The agency is, therefore, complicit and involved, deterring the agency's ability to guarantee fundamental rights during operations. In this regard, Frontex breaches its positive obligation to prevent violations by failing to utilise its monitoring commitment. As Dr. Mariana Gkliati, Assistant Professor of International and EU Law at Radboud University in Nijmegen, well puts it: "[I]f it can be reasonably presumed that Frontex has been aware of a violation, or wilful ignored it, it may incur indirect responsibility for assisting in that violation by financial, operational and practical means, or by failing to exercise its positive obligations to prevent it."<sup>3</sup>

### 1.2 Direct Responsibility

Human rights legislation obliges Frontex to take all reasonable measures to protect individuals from human rights risks that the agency is aware of or should be aware of. Article 53(3) of the EU Charter of Fundamental Right (EU Charter) requires EU law to ensure the same level of protection as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>4</sup> Frontex's obligation to ensure respect for human rights is endorsed in Article 80 of the Regulation (EU) 2019/1896 and reiterated in the Operational Plans for each operation.<sup>5</sup> Furthermore, Dr. Melanie Fink hints to the fact that Frontex has established Codes of Conduct setting out behavioural standards such as fundamental rights and international protection obligations as well as rules on ethical and professional behaviour for all persons participating in Frontex activities, including during joint operations, and that due to their inclusion in the relevant Handbooks to the Operational Plans, these Codes of Conduct become legally binding.<sup>6</sup>

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<sup>2</sup> Izuzquiza, Luisa et al. 2022. "Revealed: The OLAF report on Frontex", *FragDenStaat*, 13 October 2022, <https://fragdenstaat.de/en/blog/2022/10/13/frontex-olaf-report-leaked/>

<sup>3</sup> Gkliati, Mariana. 2022. "The Next Phase of The European Border and Coast Guard: Responsibility for Returns and Push-backs in Hungary and Greece", *European Papers*, Vol. 7, Issue No. 1, 2022, pp. 171-193, p. 185, [https://www.europeanpapers.eu/en/system/files/pdf\\_version/EP\\_ej\\_2022\\_1\\_10\\_Articles\\_SS1\\_5\\_Mariana\\_Gkliati\\_00553.pdf](https://www.europeanpapers.eu/en/system/files/pdf_version/EP_ej_2022_1_10_Articles_SS1_5_Mariana_Gkliati_00553.pdf)

<sup>4</sup> European Union. 18 Decemver 2000. European Convention for the Protection of Human Rights and Fundamental Freedoms, 2000/C 364/01, Official Journal of the European Community

<sup>5</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council, L 295/74, Art. 80 (1)

<sup>6</sup> Fink, Melanie. 2017. "Frontex and human rights : responsibility in 'multi-actor situations' under the ECHR and EU public liability law", Doctoral Thesis, *The Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University*, 13 December 2017, p. 77, <https://hdl.handle.net/1887/58101>



Frontex's role goes well beyond that: It provides technical and human resources, it (co-)finances the operations; it is involved in the coordination of the operations; and it has Frontex officers present on the ground and in the bodies running the operations, the Joint Coordination Board and the International Coordination Centre. Moreover, it has to supervise the conduct of member state authorities during joint operations and holds a monitoring role to ensure among others compliance with the legally binding rules and with EU fundamental rights.<sup>7</sup> If it has no full access to all information and is not able to fully monitor the operations (e.g. by means of being held back from the scene by order of Greek authorities), it is not able to carry out these obligations. However, if there is even abundant evidence of human rights violations, as is the case for Greece, it even more bears the urgency for Frontex to take all necessary steps to obtain access to all relevant information required to prevent human rights violations from further occurring. And if this is not possible, Frontex has Article 46 EU Regulation 2019/1896 at its disposal to withdraw financial support or suspend or terminate joint operations. The fact that Frontex has the power to stop an operation in order to avoid wrongful conduct, must be seen as qualifying as effective control. As such, intentionally omitting to act despite knowledge of human rights violations, Frontex can be held responsible for failing to act.

It can further be argued that the basis for responsibility lies in the agency's mandate. According to Jan Klabbers, "an organisation can be held responsible for not living up to its mandate, and that mandate will be defined in terms of the general (or main) function assigned to the organisation."<sup>8</sup> The same can well be argued for Frontex. In Regulation (EU) 2019/1896, it is enshrined that Frontex has the obligation to "guarantee the protection of fundamental rights in the performance of its tasks"<sup>9</sup> and that "members of the teams, in particular those requiring executive powers, shall be subject (...) to applicable Union, national or international law."<sup>10</sup>

### 1.3 Shared Responsibility

Article 7 of the EBCG Regulation 2019/1896 stipulates that Frontex and the Member States implement European integrated border management as a shared responsibility. Even if the Member States retain primary responsibility for the operation of their borders, the aforementioned sections have shown that Frontex is involved and holds responsibilities at different levels of such joint operations. The tasks of Frontex, Greece and the participating

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<sup>7</sup> European Commission. 11 December 2012. 'Communication: The operating framework for the European Regulatory Agencies, COM(2002) 718 final, [https://ec.europa.eu/governance/docs/comm\\_agence\\_en.pdf](https://ec.europa.eu/governance/docs/comm_agence_en.pdf)

<sup>8</sup> Klabbers, Jan. 2018. "Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act", *European Journal of International Law*, Volume 28, Issue No. 4, November 2017, pp. 1133–1161, p. 1137, <https://doi.org/10.1093/ejil/chx068>

<sup>9</sup> EBCG Regulation 2019/1896 at Art. 80

<sup>10</sup> *ibid* at Art. 82



states are closely intertwined. As such, Dr. Gkliati's suggestion of drawing upon the *Nexus Theory* should be followed. Accordingly, she argues for an approach to address all actors involved in a joint operation as a collective instead of looking at each actor individually. In this regard she concludes:

“Frontex can incur legal responsibility mainly indirectly for aiding and assisting in a violation, either by action (e.g. technical, financial and other support) or by omission (e.g. failure to suspend or terminate an operation), as the agency is under the positive obligation to prevent a violation committed by the Member States, but also directly for conduct of its statutory staff, or conduct of other members of teams over which it has effective control. At the same time host Member States or third States, and participating States may also be responsible for a violation either on its own right or in relation to the violation of another actor. None of the actors may deny their responsibility on the ground of the responsibility of another actor (see ILC Articles on State Responsibility for Internationally Wrongful Acts (ASRIWA) and Articles on the Responsibility of International Organisations (ARIO)).”<sup>11</sup>

### 1.4 Conclusion

As has been pointed out in this section, Frontex has, by and large, a legal responsibility that can be identified at several levels in the operations. It has at least the duty and the means to monitor the operations in order to ensure that the operations are carried out in compliance with international human rights and EU fundamental rights law. Frontex failed to fulfil its overall duties as it should have concluded to stop the operation before the event of 14 June 2023, as Greece's track record of human rights violations is well established. At least during the event, Frontex should not have simply pulled out of the rescue, as it had knowledge of the overcrowded conditions and the fact that the vessel was in distress (not least through its own photographic imagery).

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<sup>11</sup> Gkliati, Mariana. n.d. “Demystifying Shared Responsibility: The Nexus Theory in the Multi-actor Reality of the External Borders, SHARED Project - Shared Responsibility at the EU's External Borders.”



## 2. Non-Compliance with Maritime Human / Fundamental Rights Law

### 2.1 The Issues

The issues for discussion in this section will be whether Frontex's systemic practices are compliant with maritime law reflected in the EU Regulations and the EU Charter of Fundamental Rights, and whether Frontex is effectively protecting the rights and safety of people on the move by their presence in the Aegean sea.

### 2.2 Legal Framework

#### 2.2.1 A General Commitment to Fundamental and Human Rights

As an EU Agency, Frontex is bound to the Union's ideals, key commitments, and legislation. As such, it must adhere to the EU Charter of Fundamental Rights which protects human dignity and prohibits torture and inhuman or degrading treatment or punishment.<sup>12</sup> Regulation (EU) 656/2014 of the European Parliament and of the Council further solidifies this commitment to fundamental rights when it says "[Frontex] should fulfil its tasks in full compliance with relevant Union law, including the EU Charter and relevant international law" and "any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and should fully respect human dignity, fundamental rights and the rights of refugees and asylum seekers, including the principle of non-refoulement".<sup>13</sup> Regulation (EU) 2019/1896 reiterates this point strongly in the opening paragraph of Article 80.<sup>14</sup>

#### 2.2.2 Fundamental Rights in a Maritime Law Context

Frontex has specific human rights duties with regard to their operation in a maritime context. The Regulation (EU) 656/2014 notes that the general duty of border surveillance includes "arrangements intended to address situations such as search and rescue... taking into account that some situations may involve humanitarian emergencies and rescue at sea."<sup>15</sup> This legislation also states that vessels must "render assistance without delay" insofar as their own vessel is not in serious danger, "regardless of the nationality or status of the person to be assisted or the circumstances in which they are found."<sup>16</sup> Further, it states that when a unit is faced with a situation that they consider "uncertainty, alert or distress, they shall promptly

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<sup>12</sup> EU Charter of Fundamental Rights, C 326/396, Articles 1, 4

<sup>13</sup> Regulation (EU) 656/2014 of the European Parliament, L 189/94, (9-10)

<sup>14</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council, L 295/74, Art. 80 (1)

<sup>15</sup> Regulation (EU) 656/2014 of the European Parliament, L 189/93, (1)

<sup>16</sup> *ibid* at L 189/95, (14)





transmit all available information to the Rescue Coordination Centre... and they shall place themselves at the disposal of that Rescue Coordination Centre”.<sup>17</sup>

The Regulation then goes on to describe in Article 9 factors to use to assess whether a vessel is in one of the conditions above, such as “the seaworthiness of the vessel”, “the number of persons on board in relation to the type and condition of the vessel”, “fuel, water and food” necessary to reach the shore, “qualified crew”, “safety, navigation and communication equipment”, “presence of persons in urgent need of medical assistance” as well as pregnant women, children or deceased persons, and “weather and sea conditions, including forecasts”.<sup>18</sup> Lastly, the Regulation outlines that the participating unit “shall fulfil a duty of care by surveying the vessel and taking any measure necessary for the safety of the persons concerned, while avoiding to take any action that might aggravate the situation or increase the chances of injury or loss of life”.<sup>19</sup>

Regulation (EU) 2019/1896 also defines pertinent maritime legal duties for Frontex. It firstly outlines that a key role of the Agency is “to provide technical and operational assistance in support of search and rescue operations for persons in distress at sea”.<sup>20</sup> It also stipulates that the Regulation does not affect principles laid down in Regulation 656/2014, and that “sea operations should be carried out in a way that, in all instances, ensures the safety of the persons intercepted or rescued, the safety of the units that take part in the sea operation in question and the safety of third parties”.<sup>21</sup> More specifically to Frontex, Regulation (EU) 2019/1896 calls upon the Agency to carry out search and rescue operations at sea “in accordance with Regulation (EU) No 656/2014 and with international law”.<sup>22</sup>

Furthermore, the UN Convention on the Law of the Sea stresses “establishment, operation and maintenance of an adequate and effective search and rescue service”<sup>23</sup>, and the International Convention for the Safety of Life at Sea further adds that these arrangements should “[have] regard to the density of the seagoing traffic and the navigational dangers and should, so far as possible, afford adequate means of locating and rescuing such persons.”<sup>24</sup> The Convention on Maritime Search and Rescue stresses that, “search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed”.<sup>25</sup>

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<sup>17</sup> *ibid* at L 189/103, Art. 9(2)(a)

<sup>18</sup> *ibid* at L 189/104, Art. 9(2)(f)

<sup>19</sup> *ibid* at L 189/105, Art. 9,(2)(h)

<sup>20</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council, L 295/2, (3)

<sup>21</sup> *ibid* at L 295/4, (21)

<sup>22</sup> *ibid* at L 295/20, Art. 3 (1)(b)

<sup>23</sup> UN Convention on the Law of the Sea 1994, Art. 98 (2), p. 60

<sup>24</sup> International Convention for the Safety of Life at Sea 1974, Ch. 5, Reg. 15

<sup>25</sup> Convention on Maritime Search and Rescue



Moreover, Regulation (EU) 2019/1896 declares that Frontex must “monitor compliance with fundamental rights in all of its activities”, assist Member States through joint operations “taking into account some situations may involve humanitarian emergencies and rescue at sea” and “provide technical and operational assistance (...) in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea”.<sup>26</sup> The Agency shall also “take into account the special needs of (...) persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.”<sup>27</sup> Most importantly, Regulation (EU) 2019/1896 gives these fundamental rights obligations tangible, actionable importance in Article 46, where it stipulates that “The executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.”<sup>28</sup>

### 2.2.3 Application of the Law to the Evidence and Legal Analysis

In practice, however, it seems these legal requirements Frontex claims to comply with are not reflected in their actions. In a paper reflecting on her firsthand research speaking with Frontex officers, Covadonga Bachiller Lopez notes that officers she interviewed before 2020 considered their presence in the Aegean to be ensuring ‘safety at sea’ and ‘rescue’, with the main takeaway of their Operational Plan being to make sure people on the move make it safely to shore.<sup>29</sup> However, she notes that after 2020, this human rights-driven *modus operandi* has fallen to the wayside in favour of “deter[ence]”, with officers claiming it was clear the frame of their operation was to not allow persons on the move to reach Greek islands.<sup>30</sup>

This deterrence approach then acts as a guide for how Frontex navigates its encounters with persons at sea, specifically in which vessels they deem unseaworthy enough to offer assistance to and when Frontex chooses to intervene. In a document containing answers to questions from the 2020 LIBE meeting, Fabrice Leggeri, former Executive Director of Frontex, was asked if an overcrowded dinghy containing women and children was *per se* in distress. The response outlined that “[t]he Commanding Officer of the patrolling asset makes a decision in each case individually, preferably in consultation with the respective Rescue Coordination Centre (RCC).

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<sup>26</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council, L 295/24, Art. 10 (1)(h-i)

<sup>27</sup> *ibid* at L 295/73, Art. 80 (3)

<sup>28</sup> *ibid* at L 295/48 Art. 46 (4)

<sup>29</sup> Bachiller Lopez, Covadonga. 2022. “Border Policing at Sea: Tactics, Routines, and the Law in a Frontex Patrol Boat”, *The British Journal of Criminology*, Vol. 63, Issue No.1, January 2023, pp. 1-17, p. 7, <https://academic.oup.com/bjc/article/63/1/1/6546429?guestAccessKey=30eee7f0-204a-4733-b90f-11f6d5a7d2b2&login=false>

<sup>30</sup> *ibid*





Frontex deployed assets have an obligation to rescue every person in distress at sea. For each incident, RCC decides whether it will be considered a rescue incident as such.<sup>31</sup> This response is vague, as it does not provide a proper answer as to whether or not a vessel being overcrowded or containing women or children, two factors explicitly laid out in Article 9 of Regulation (EU) 656/2014, gives indication as to a state of unseaworthiness. Marie Martin points this out in her article, where she writes that such vague qualifications for when a vessel is in distress, when a vessel is “to be intercepted”, and other terms creates a “shield” from Frontex’s stated legal obligations to offer rescue assistance to persons at sea.<sup>32</sup>

Additionally, Frontex’s presence on the seas is further made ineffective by an organisation-wide pattern of sanitising and softening reports of pushbacks or other forms of violence against people on the move in their reports.

For example, the 2021 OLAF inquiry into Frontex notes that the Fundamental Rights Office (FRO) was left out of many incidents despite many of them having serious fundamental rights implications, as well as units being sent to activity sites elsewhere in what the OLAF report suspects was “to avoid [the FSA METIS] witnessing incidents in the Aegean Sea with a potential [fundamental rights] component.”<sup>33</sup> It also specifically calls out how reports were amended to exclude direct reference to fundamental rights violations as well as altering word choice to be less vivid.<sup>34</sup> Covadonga Bachilier Lopez supplements these observations, commenting on how data being passed through JORA and the hands of officials to be processed into records can change the tone of the data and turn it from an accurate documentation of a ‘pushback’ to the more mundane ‘prevention of departure’ which can easily be categorised as falling within legality and therefore obscure instances where Frontex may have a duty to give assistance or have gone against fundamental rights protection obligations.<sup>35</sup>

Another repeated issue is the tendency for Frontex to hand over responsibility of search and rescue operations to the coast guard and military. Covadonga Bachilier Lopez highlights this principle in another interview, noting how after 2020, the common formula for a maritime encounter would be Frontex detecting a vessel, calling the Hellenic Coast Guard, and then

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<sup>31</sup> Statewatch. Written Questions Following the LIBE Committee Meeting 1 December 2020, p. 19,

<https://www.statewatch.org/media/1709/eu-frontex-written-questions-answers-libe-hearing-1-12-20.pdf>

<sup>32</sup> Martin, Marie. 2021. “To SAR or not to SAR, Part 2: Legal Firewalls of a Very Political Agency”, 22 July 2021, Sect. 4,

<https://www.statewatch.org/analyses/2021/to-sar-or-not-to-sar-part-2-legal-firewalls-of-a-very-political-agency/>

<sup>33</sup> FragDenStaat. OLAF Final Report on Frontex, May 2021, p. 33,

<https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>

<sup>34</sup> *ibid* at p. 97

<sup>35</sup> Covadonga Bachiller Lopez and Niamh Keady-Tabbal, “Validating Border Violence on the Aegean: Frontex’s Internal Records”, *Faculty of Law Blogs*, University of Oxford, 13 January 2021,

<https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/01/validating-border>



leaving the area.<sup>36</sup> Doing so means that Frontex is unable to properly assess the situation themselves, which is imperative when adhering to Article 9 of Regulation (EU) 656/2014, which establishes therein a duty of care and criteria for such an evaluation.<sup>37</sup> This procedure is known, as demonstrated in the 2020 LIBE question form where Fabrice Leggeri was asked if, since Frontex is aware of fundamental human rights violations on behalf of Greek authorities like the Hellenic Coast Guard (HCG), Frontex will continue to hand over boats to Greek officers and leave the scene. He responded that “Frontex will consequently apply the binding legal provisions and in particular its mandate, making the best possible use of the available legal and operational tools and duly examining each and every operational situation, in consultation with relevant stakeholders.”<sup>38</sup> This response fails to answer the question at hand as to whether the practice will cease.

This practice ensures Frontex cannot check for supplies, a competent crew, do a proper capacity evaluation, assess the conditions of passengers, see if children or pregnant women are on board, or any of their other baseline duties. This is in clear violation of their EU obligations under Regulation (EU) 656/2014. And as above, even if they do investigate and find such factors of concern, the reliance on the deterrence approach as opposed to putting more focus on the safety of persons on the move at sea may incline officers to consider benign what would ordinarily be a situation of distress.

The OLAF report similarly makes note of instances of credible allegations stating the HCG was involved in pushbacks and other illegal practices at sea through Joint Operations that Frontex bodies like the RAU and VAU were aware of, yet no Serious Incident Report (SIR) was launched by Frontex.<sup>39</sup> Within that incident, there seemed to be a concern regarding “Frontex reputation...considering the potential violation of fundamental rights” as to why a SIR was not launched.<sup>40</sup> Even though Frontex was not a part of the alleged activity themselves, their deliberate reluctance to investigate and report on potential fundamental rights violations by the HCG due to the risk to Frontex’s image combined with their pattern of calling in the HCG before leaving the scene creates a concerning opening for violence against people on the move.

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<sup>36</sup> Bachiller Lopez, Covagonda. 2022. “Border Policing at Sea: Tactics, Routines, and the Law in a Frontex Patrol Boat”, *The British Journal of Criminology*, Vol. 63, Issue No. 1, January 2023, pp. 1-17, p. 9,

<https://academic.oup.com/bjc/article/63/1/1/6546429?guestAccessKey=30eee7f0-204a-4733-b90f-11f6d5a7d2b2&login=false>

<sup>37</sup>Keady-Tabbal, Niamh, Bachiller Lopez, Covadonga. 2021. “Dividing Labour, Evading Responsibility: Frontex-Hellenic Coast Guard’s Modus Operandi in the Aegean”, *Faculty of Law Blogs*, University of Oxford, 27 July 2021,

<https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/07/dividing-labour>

<sup>38</sup> Statewatch. Written Questions Following the LIBE Committee Meeting, 01 December 2020, p. 27,

<https://www.statewatch.org/media/1709/eu-frontex-written-questions-answers-libe-hearing-1-12-20.pdf>

<sup>39</sup> FragDenStaat. OLAF Final Report on Frontex, May 2021, p. 25,

<https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>

<sup>40</sup> *ibid* at p. 23



Lastly, Article 46 of Regulation (EU) 2019/1896 indicates that the executive director “shall” suspend or terminate Frontex activity if they consider there to be fundamental rights violations.<sup>41</sup> The use of the word ‘shall’ indicates that once fundamental rights violations have been found, it is a legal obligation to either withdraw funding or cease activity in that area. However, Frontex continues to operate despite not complying with its obligations under EU law.<sup>42</sup> This, therefore, is another violation of Regulation (EU) 2019/1896 and must be dealt with accordingly.

Frontex’s responsibility equally lies in the reluctance to trigger Article 46 of Regulation (EU) 2019/1896. It circumvents to suspend, withdraw or terminate operations through investigations that are neither independent nor effective. In 2020, the Management Board of Frontex created the Working Group on Fundamental Rights and Legal and Operational Aspects of Operations (WG FRaLO) to inquire into allegations of pushbacks in the Aegean Sea. The EU Regulation does not foresee powers for a Working Group nor the Management Board to inquire into allegations of fundamental rights. On the contrary, the FRO is the sole competent to investigate fundamental rights violations perpetrated by the Agency and its officers. Additionally, the CF has an advisory role to Frontex in accordance with its Regulation in “providing independent advice in fundamental rights matters” (Article 108).

Secondly, with regards to the lack of independence and overstepping the mandate of the FRO and CF, a working group cannot interpret EU law as that is mandated to the Court of Justice of the European Union. Yet, Management Board Decision 39/2020, Article 2 (d) empowers the WG to

“contribute to the interpretation of those provisions of Union regulations related to operational activities at sea and discuss possible operational responses to situations related to “hybrid threats” to Member States’ national security at the external borders which may arise in the context of maritime operations of the Agency.”<sup>43</sup>

The argumentation presented above applies identically to the creation and mandate of the Working Group on the application of Article 46. The Regulation states explicitly that the FRO and the CF are mandated to advise or investigate violations of fundamental rights related to the work of the Agency. Yet, the Working Group’s composition was Frontex officials (director of operation response division, head of field operations unit, coordinating officer of the JO Poseidon and of the JO terra for Greece, without a mandate and an expertise in fundamental

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<sup>41</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council, L 295/48 Art. 46 (4)

<sup>42</sup> EU Council Frontex Operational Activities Report, 06 September 2023, pg. 6, <https://www.statewatch.org/media/4059/eu-council-frontex-operational-activities-report-first-half-2023-12561-23.pdf>

<sup>43</sup> Management Board Decision 39/2020, Article 2 (d)



rights. The FRO was afforded an advisory role in the Working Group and no role for the CF was foreseen<sup>44</sup>.

### 2.3 Conclusion

One of Frontex's many duties is the protection of fundamental human rights, including administering the proper support to persons on the move at sea. However, especially in recent years, Frontex has demonstrated that these duties are not put to practise on a systemic level.<sup>45</sup> The practices of favouring a *modus operandi* based on deterrence, the sanitising of incident reports and failing to see through encounters with people on the move to properly fulfil their maritime obligations indicate clear and present violations of fundamental rights and maritime law. Therefore, Frontex has been ineffective in their implementation in the Aegean, which should trigger Article 46 of Regulation (EU) 2019/1896. However, no action with regards to Article 46 has been taken, which is again in violation of Frontex's legal obligations. More so, in multiple instances, Frontex has intentionally frustrated investigations and covered up fundamental rights violations by breaching its own Regulation, creating parallel unlawful structures to "inquire" into allegations and "interpret" EU legislation, or to circumvent the FRO. This failure to investigate shows repeated disregard for respect for fundamental rights of the Agency and systematic violations of Regulation 2019/1896.

Frontex's responsibility extends to its apparent avoidance of invoking Article 46 of Regulation (EU) 2019/1896. This article empowers the agency to suspend, withdraw, or terminate its operations, especially in cases of alleged violations or misconduct. However, Frontex seems to employ a strategy of circumvention, conducting investigations that lack both independence and effectiveness. In doing so, it fails to uphold its obligation to ensure that its operations adhere to legal standards and human rights principles. This avoidance of the regulatory framework raises significant concerns regarding the Agency's commitment to accountability and transparency in its operations.

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<sup>44</sup> Frontex. Article 46 Working Group, Published on 05.05.2023.

<https://prd.frontex.europa.eu/document/article-46-working-group/>

<sup>45</sup> Bachiller Lopez, Covadonga. "Border Policing at Sea: Tactics, Routines, and the Law in a Frontex Patrol Boat", *The British Journal of Criminology*, Vol. 63, Issue No. 1, January 2023, pp. 1-17, p. 13,

<https://academic.oup.com/bjc/article/63/1/1/6546429?guestAccessKey=30eee7f0-204a-4733-b90f-11f6d5a7d2b2&login=false>



### 3. Chain of Command

From the arguments described above, it can be deduced that Frontex bears responsibility in joint operations and that Frontex staff have a responsibility to ensure that international human rights are upheld in their actions.

BVMN would like to bring to the attention of the European Ombudsman two incidents that are reflective of the fact that Frontex officers can and did refuse to engage in behaviour that could lead to fundamental rights violations.

On 30 October 2020, outside Chios, Greece, a Swedish Frontex vessel detected a rubber boat with approximately 25 people - men, women, and children - on board, moving slowly towards the Greek shore. The Swedish vessel followed the boat until it stopped. The crew of the vessel informed the harbour and the HCG. The national authorities instructed the crew to wait for the arrival of the HCG. Once the HCG arrived, they were instructed to proceed north. Some minutes later, the crew observed on their radar that the HCG vessel was heading east towards Turkish territorial waters. The commander of the Swedish vessel stated they believed that the HCG engaged in unlawful behaviour, a pushback, and reported the incident. The commander was obstructed from filing a SIR which led to a complaint and an inquiry. In their statement, the commander made statements to the following: they said that despite being instructed to head north, the vessel went south “because we thought that we might find other rubber boats” and that “the Liaison officer gives the orders which I had to obey unless other reasons would prevail. We were ordered to move north. If the people had been in distress I would have stayed in place”.

The obligation to provide assistance is stipulated in Regulation (EU) 656/2014 under Article 9, which delineates specific scenarios related to search and rescue. Notably, Article 9(2)(f) is pertinent to the incident under consideration, and it mandates that rescue operations be executed in compliance with the provisions including assessing the number of people on board in relation to the type and condition of the vessel (Art. 9(2)(f)(iii)), the availability of necessary supplies such as fuel, water and food to reach the shore (subpara. (iv)), the presence of qualified crew and command of the vessel (subpara. (v)), the availability and capability of safety, navigation and communication equipment (subpara. (vi)), the presence of pregnant women or of children on board (subpara. (ix)), the weather and sea conditions, including weather and marine forecasts (subpara. (x)).

In accordance with the statement provided by the commander, the decision not to offer assistance was in clear contravention of the Regulation. As per the commander's account, the rubber boat was carrying 25 individuals, surpassing the typical capacity for such a vessel. This number also included children among the passengers. Moreover, the boat was operating at a



reduced speed, and the commander made no mention of the presence of a qualified crew or proper command structure on board. Additionally, the commander failed to evaluate the availability of essential supplies, such as fuel, water, and food for a potential journey to shore, or the presence of navigation and communication equipment.

Concurrently, the national authorities failed to conduct a subsequent assessment based on the information provided by the commander and to issue orders for a rescue operation. Upon the arrival of the HCG at the scene, the vessel's captain instructed the Swedish vessel to depart and refrained from initiating a rescue mission, instead pushing the individuals back into Turkish waters. This action was in direct contradiction to the obligations outlined in the Regulation.

Given this context, the commander has further asserted that if they had determined the vessel to be in distress, they would not have departed from the scene. This statement underscores that, even in the face of an initial erroneous assessment, the commander would have defied an order to vacate the scene, had a proper assessment mandated their involvement in a rescue operation. This highlights a recognition from the commander that international human rights standards take precedence in maritime operations.

In light of the commander's report to Frontex, alleging that the HCG participated in unlawful conduct by pushing back the individuals on the boat, it is pertinent to note that the commander explicitly conveyed that their vessel had been repositioned away from patrolling "the most frequented areas." Furthermore, when questioned whether they perceived this reassignment as a form of "punishment," the commander responded with a tentative acknowledgment, stating, "It might be."<sup>46</sup>

BVMN does not hold knowledge of whether an investigation was initiated within internal Frontex structures or by the Greek authorities.

A second incident, widely covered by the media, pertains to the refusal of a **Danish Frontex** asset to partake in human rights violations<sup>47</sup>. On March 2, 2020, in the vicinity of Kos, Greece, a Danish vessel intercepted a boat carrying 33 people. The initial order issued by the Greek authorities to the vessel's commander was not to disembark the rescued individuals onshore but rather to return them to the rubber boat and tow them back into Turkish territorial waters. The commander of the vessel declined this order and promptly alerted the Danish National Officer at the International Coordination Center (ICC). Subsequently, a new order was issued, instructing the vessel to transport the individuals to Kos Harbor and transfer them to the HCG. According to information obtained by BVMN member organisations in Greece, the Danish patrol

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<sup>46</sup> Frontex. Hearing Commander of Swedish Vessel CPB 475. Internal Documents. 08.12.2020.

<sup>47</sup> Semsrott, Arne. No investigation of human rights violations, FragDenStaat, 18 November 2020, <https://fragdenstaat.de/en/blog/2020/11/18/frontex-pushbacks-denmark-march/>





boat was withdrawn shortly after this incident from Kos operational area, similarly to the incident reported above.

The two reported incidents indicate that there is an understanding within Frontex structures that search and rescue obligations supersede contrary orders given and that commanders are able and willing to defy an order that violates these obligations. Moreso, the commander of the Danish patrol boat upon notification of the Danish National Officer at the ICC, overturned the order and was issued a new order that was in compliance with EU law and international human rights standards. We can conclude that in line with Regulation 2019/1896 and other EU law provisions, including the Charter on Fundamental Rights, Frontex officers should and have the ability to circumvent orders issued in situations where human rights of people on the move are at risk, and therefore cannot justify its failure to safeguard fundamental rights in their operational area.

#### **4. Need of Investigation of Land Pushbacks**

##### **BVMN requests that the inquiry is extended to rescue operations in Greece due to continuous violations occurring at the land border between Greece and Türkiye**

BVMN kindly requests that the European Ombudsman extends the inquiry to Frontex's operations in Greece in its entirety, due to the failure or omission to engage in rescue operations by Frontex, leading to loss of life at the Evros border between Greece and Türkiye. Alternatively, BVMN requests that the European Ombudsman open a separate inquiry into Frontex.

BVMN has recorded 186 testimonies of pushbacks from Greece to Türkiye, operations during which we estimate that approximately 13,027 people were pushed back at this border area, since 2019 to date.

##### **4.1 Short Background Information**

Since 2010, Frontex officers have been deployed along the Evros River to assist Greek authorities in 'controlling the border areas, as well as identifying apprehended irregular migrants'.<sup>48</sup> On 12 March 2020, despite objections<sup>48</sup> from the Frontex Fundamental Rights Officer, an additional 100 Frontex officers were deployed to the Evros border, as part of 'Operation

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<sup>48</sup> European Commission. "Frontex and the RABIT operation at the Greek-Turkish border", MEMO/11/130, 02 March 2011, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_11\\_130](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_11_130)



Rapid Border Intervention Evros 2020'.<sup>49</sup> As of March 2023, there are currently 518 Frontex officers and staff working in Greece.<sup>50</sup>

From 2020 onwards there has been an increasing movement of armed forces into migration management, the introduction of pushbacks from Reception and Identification Centres (RICs), the development of targeted torture-like practices, and the use of lockdown measures to stage even more aggressive rights suspensions.<sup>51</sup> Evidence compiled by BVMN, as well as consistent reports from other independent monitoring organisations and UNHCR, indicates extensive and consistent human rights abuses occurring within Frontex operational land areas in Greece.<sup>52</sup>

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<sup>49</sup> Frontex. "Frontex launches rapid border intervention on Greek land border", 13 March 2020, <https://frontex.europa.eu/media-centre/news/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-J7k21h>

<sup>50</sup> Frontex. "Frontex Executive Director and Greek officials agree on cooperation on returns", 14 March 2023, <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-executive-director-and-greek-officials-agree-on-cooperation-on-returns-INUJcF>

<sup>51</sup> BVMN. "Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece", 01 July 2022, <https://borderviolence.eu/reports/20548-2/>

<sup>52</sup> e.g. Amnesty International. "Europe: Caught in a political game: Asylum-seekers and migrants on the Greece/Turkey border pay the price for Europe's failures", 03 April, 2020, <https://www.amnesty.org/download/Documents/EUR0120772020ENGLISH.PDF>;

BVMN. "Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece", 01 July 2022, <https://borderviolence.eu/reports/20548-2/>;

BVMN. Balkan Regional Report May 2023, <https://borderviolence.eu/reports/balkan-regional-report-may-2023/>;

BVMN. Balkan Regional Report February 2023, 11 April 2023, <https://borderviolence.eu/reports/balkan-regional-report-february-2023/>;

BVMN. Balkan Regional Report December 2022, 10 January 2023, <https://borderviolence.eu/reports/balkan-regional-report-december-2022/>;

BVMN. Balkan Region Report June 2020, <https://www.borderviolence.eu/wp-content/uploads/JUNE-REPORT.pdf>;

BVMN. Balkan Region Report August 2020,

<https://www.borderviolence.eu/wp-content/uploads/Working-Doc-August-Report-BVMN-2.pdf>; Euractiv, EU border force Frontex accused of allowing abuse of migrants, 6 August 2019,

<https://www.euractiv.com/section/global-europe/news/eu-border-force-frontex-accused-of-allowing-abuse-of-migrants/>;

FragDenStaat. PAD-2021-00171-document, FRO Mission Report - Evros, n.d.,

<https://fragdenstaat.de/dokumente/156247-pad-2021-00171-document/?page=5>;

Human Rights Watch. "Greece: Violent Pushbacks at Turkey Border", December 2018,

<https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>;

Greek Council for Refugees, ARSIS-Association for the Social Support of Youth, and HumanRights360. "The New Normality: Continuous Push-Backs of Third Country Nationals on the Evros River", February 2018,

[https://www.gcr.gr/en/news/press-releases-announcements/item/download/492\\_22e904e22458d13aa76e3dce82d4dd23](https://www.gcr.gr/en/news/press-releases-announcements/item/download/492_22e904e22458d13aa76e3dce82d4dd23);

Human Rights Watch. "Greece: Violent Pushbacks at Turkey Border. End Summary Returns, Unchecked Violence", December 18, 2018, available at <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>;

Mobile Info Team. "Illegal Pushbacks in Evros. Evidence of Human Rights Abuses at the Greece/Turkey Border", Annual Report 2018-2019, November 2019,

[https://static1.squarespace.com/static/597473fe9de4bb2cc35c376a/t/5dcdd1da2fefabc596320f228/1573723568483/Illegal+Evros+pu%20shbacks+Report+Mobile+Info+Team\\_final.pdf](https://static1.squarespace.com/static/597473fe9de4bb2cc35c376a/t/5dcdd1da2fefabc596320f228/1573723568483/Illegal+Evros+pu%20shbacks+Report+Mobile+Info+Team_final.pdf);

UNHCR. "Desperate Journeys. Refugees and migrants arriving in Europe and at Europe's borders" January-August 2018, p. 17, 21,

[https://data2.unhcr.org/en/documents/download/65373#\\_ga=2.113530311.1350135585.1536653508-2022578857.1536218621](https://data2.unhcr.org/en/documents/download/65373#_ga=2.113530311.1350135585.1536653508-2022578857.1536218621)



Notably, recurrent testimonies indicate a practice of pushbacks at the Evros land border, whereby authorities arbitrarily apprehend people on the move, summarily arrest and detain them (irrespective of legal status and documentation), and violently expel them to Türkiye.

Already in 2018, reports on systematic pushbacks in Evros region were published by the Greek Council for Refugees<sup>53</sup>, Human Rights Watch<sup>54</sup> and other relevant watchdog organisations. Greek Council for Refugees<sup>55</sup>, UNHCR<sup>56</sup>, and Human Rights Watch<sup>57</sup> have previously published corroborating reports on systematic returns.

As an organisation, BVMN has been collecting testimonies of pushbacks from Greece to Türkiye since 2019. In 94% of these testimonies, respondents have reported acts of violence against themselves, or other people in their group. These findings present compelling evidence of a systematic pattern of violence and inhuman and degrading treatment towards people on the move. Included in these testimonies are repeated references to the presence of Frontex officers.

It is safe to assume that these cases are merely the tip of the iceberg - the Evros border area is a military zone, inaccessible to the majority of the public, isolated from civil society organisations and human rights monitors, and largely inhabited by local farmers, fisherman and military personnel. This fact, alongside the well-established practice of confiscating belongings during the pushback process, particularly recording and communication devices like phones, obscures accurate data and concrete evidence collection.

As established, Regulation (EU) 2019/1896 emphasises the overwhelming importance of fundamental rights and the necessity for Frontex to adhere to such principles in their border operations in Article 80. Article 43(4) specifically ensures that ‘members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures and human dignity, and shall pay particular attention to vulnerable persons’.

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<sup>53</sup> Greek Council for Refugees. “The New Normality: Continuous Push-Backs of Third Country Nationals on the Evros River”, December 2018, [https://www.humanrights360.org/wp-content/uploads/REPORT\\_EN.pdf](https://www.humanrights360.org/wp-content/uploads/REPORT_EN.pdf).

<sup>54</sup> Human Rights Watch. “Greece: Violent Pushbacks at Turkey Border”, December 2018, <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>

<sup>55</sup> Greek Council for Refugees, ARSIS-Association for the Social Support of Youth, and HumanRights360. “The new normality: Continuous Push-Backs of Third Country Nationals on the Evros river”, February 2018, [https://www.gcr.gr/en/news/press-releases-announcements/item/download/492\\_22e904e22458d13aa76e3dce82d4dd23](https://www.gcr.gr/en/news/press-releases-announcements/item/download/492_22e904e22458d13aa76e3dce82d4dd23)

<sup>56</sup> UNHCR, “Desperate Journeys. Refugees and migrants arriving in Europe and at Europe’s borders” January-August 2018, p. 17, 21 [https://data2.unhcr.org/en/documents/download/65373#\\_ga=2.113530311.1350135585.1536653508-2022578857.1536218621](https://data2.unhcr.org/en/documents/download/65373#_ga=2.113530311.1350135585.1536653508-2022578857.1536218621);

<sup>57</sup> Human Rights Watch. “Greece: Violent Pushbacks at Turkey Border. End Summary Returns, Unchecked Violence”, December 18, 2018, <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>



Furthermore, as established above, Frontex must fulfil its tasks in full compliance with relevant Union law, including the EU Charter, and relevant international law”.

As will be expanded on below, the constituent elements of a pushback – illegal detention in clandestine locations, serious forms of ill-treatment, denial of access to asylum and violent summary expulsion - are manifestly unlawful acts that amount to serious breaches of this Charter. In particular, the practice of pushbacks is in direct violation of Article 1 - Human Dignity; Article 2 - Right to Life; Article 3 - Right to Integrity of the Person; Article 4 - Prohibition of Torture and Inhuman or Degrading Treatment or Punishment; Article 6 - Right to Liberty and Security and Article 7 - Respect for Private and Family Life.

### 4.2 Frontex (Active) Involvement in Pushbacks

In scores of testimonies collected by BVMN, survivors of pushbacks describe the presence and active involvement of officers who match descriptions of Frontex personnel. These testimonies suggest that Frontex are not only on-site during the apprehension and detention of individuals, but are involved in the course of physical expulsions and the dehumanising treatment of people on the move.<sup>58</sup> It is important to note that there are often multiple testimonies taken from the same group pushback incident, which helps to cross-check and corroborate the accounts.

Numerous testimonies include references to officers speaking in foreign European languages (often German or English).<sup>59</sup> As there are no other international officers present in Greece, these accounts are almost certainly referencing Frontex officers. When detailing the attire of the

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<sup>58</sup> Forensic Architecture. “PUSHBACKS ACROSS THE EVROS/MERIÇ RIVER: SITUATED TESTIMONY: The Case of Fady”, 19 October 2020, <https://forensic-architecture.org/investigation/evros-situated-testimony>

HumanRights360, Greek Council for Refugees, ARSIS-Association for the Social Support of Youth. “The New Normality: Continuous Push-Backs of Third Country Nationals on the Evros river”, December 2018;

Human Rights Watch. “Greece: Violence Against Asylum Seekers at Border: Detained, Assaulted, Stripped, Summarily Deported”, 17 March 2020, <https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>;

BVMN. “YOU CAN’T IMAGINE HOW SOMEONE IS SLEEPING AND THEN SOMEONE TOOK ME BY FORCE FROM THIS PLACE”, 30 September 2020, <https://www.borderviolence.eu/violence-reports/september-30-2020-0700-evros-border/>;

BVMN. “IF YOU COME BACK TO GREECE, WE WILL KILL YOU”, 02 July 2020,

<https://www.borderviolence.eu/violence-reports/july-2-2020-2000-orestiada-greece/>;

BVMN. “YES, THIS BLUE BAND WITH THE EU FLAG!” 26 September 2020,

<https://www.borderviolence.eu/violence-reports/september-26-2020-2300-near-orestiada/>;

BVMN, “IF YOU DON’T KNOW HOW TO SWIM, YOU DEAD”, 21 December 2020,

<https://www.borderviolence.eu/violence-reports/december-21-2021-0000-neo-cheimonio-elcili/>;

Mobile Info Team. “Testimony 9”, 2019, <https://www.mobileinfoteam.org/testimony-9/>;

Mobile Info Team. “Testimony 21”, 2019, <https://www.mobileinfoteam.org/testimony-21/>.

<sup>59</sup> See: <https://borderviolence.eu/testimonies/september-26-2020-2300-near-orestiada/> &

<https://borderviolence.eu/testimonies/september-30-2020-0700-evros-border/> &

<https://borderviolence.eu/testimonies/february-4-2021-0000-soufli-umurca/> &

<https://borderviolence.eu/testimonies/september-5-2021-1000-neo-cheimonio-elcili/>



officers' present at the scene, respondents have also described what appears to be Frontex uniforms. Most notably, at least seven testimonies reference officers wearing a full black uniform that has a light blue armband with the EU flag across it (Frontex operational uniform).

The presence of Frontex officers (including those who speak the languages overheard by pushback survivors) being deployed in Evros is evidenced by information provided to the European Parliament,<sup>60</sup> research material documenting the presence of German police vehicles in the Evros region,<sup>61</sup> and Frontex social media posts documenting the presence of German-speaking Frontex officers and others in the area.<sup>62</sup> A FFRO report and a SIR also suggest that there has been internal documentation of the potential involvement of German-speaking deployed officers in pushbacks.<sup>63</sup>

#### 4.2.1 Pushbacks in violation of the prohibition of torture or inhuman or degrading treatment

Included in these testimonies are repeated evidence of dehumanising treatment by Frontex officers; including beatings<sup>64</sup>, being forced to undress, having personal belongings confiscated and the use of verbal intimidation and degrading language. One testimony in October 2020 recounted how officers forcefully strip-searched members of the group, including women. When the respondent refused to remove his t-shirt, the officers beat him with batons.<sup>65</sup> Another testimony in September 2020, included evidence of two officers inciting racial attacks on an Afghan and a Libyan man before beating them<sup>66</sup>. This is in direct contravention of Article 43(4) of Regulation (EU) 2019/1896 which states that “while performing their tasks and exercising their powers”, officers “shall not discriminate against persons on the basis of any grounds such as ‘sex, race, colour, ethnic or social origin, genetic features, language, religion or belief.”

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<sup>60</sup> European Commission, “Subject: Frontex Operations in Greece”, 10 June 2020, [https://www.europarl.europa.eu/RegData/questions/reponses\\_qe/2020/001650/P9\\_RE\(2020\)001650\(ANN1\)\\_XL.pdf](https://www.europarl.europa.eu/RegData/questions/reponses_qe/2020/001650/P9_RE(2020)001650(ANN1)_XL.pdf)

<sup>61</sup> Karamanidou, Lena & Kasperek, Bernd, Fundamental Rights, Accountability and Transparency in European Governance of Migration: The Case of the European Border and Coast Guard Agency Frontex, 2020, Zenodo, <http://doi.org/10.5281/zenodo.3967784>;

Karamanidou, Lena & Kasperek, Bernd, What is Frontex Doing about Illegal Pushbacks in Evros?, 01 August 2020, RESPOND Blog. <https://respondmigration.com/blog-1/what-is-frontex-doing-about-illegal-pushbacks-in-evros>

<sup>62</sup> <https://twitter.com/Frontex/status/1298938876090814464>; <https://twitter.com/Frontex/status/1263386853912305665>

<sup>63</sup> Frontex. 2014. VIII Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights, <https://aleph.occrp.org/entities/39051113.eddad5c8f4b33afe05b554e8763ff88a0d3eb127>, p.2; Frontex SIR 10048

<sup>64</sup> BVMN. “I need asylum and I can prove that I do, but they took all my papers and my belongings”, 20 December 2021, <https://borderviolence.eu/testimonies/december-20-2021-2000-orestiada-karakasim/>

<sup>65</sup> BVMN. “Asylum is in Athens”, 17 October 2021, <https://borderviolence.eu/testimonies/october-17-2021-0000-405633-8n-262108-2e/>

<sup>66</sup> Border Violence Monitoring Network, “You can’t imagine how someone is sleeping and then someone took me by force from this place”, 30 September 2020, available at: <https://www.borderviolence.eu/violence-reports/september-30-2020-0700-evros-border/>



These findings present compelling evidence of a systematic pattern of torture and inhuman and degrading treatment towards people on the move, in violation of the absolute right to be free from torture or inhuman or degrading treatment and punishment, encompassed in Article 3 of the ECHR and EU Charter, Article 4. With reference to Regulation 2019/1896, these testimonies also present compelling evidence of breaches of Article 80 and 43(4) - the above testimonies indicate a complete lack of respect for the respondent's 'human dignity'.

#### 4.2.2 Pushbacks in violation of *non-refoulement*

Testimonies also reference the involvement of Frontex officers in systematic round-up activities. Respondents have been loaded into military trucks, before being subsequently taken to detention camps and eventually pushed back to Türkiye.<sup>67</sup> Alongside BVMN, other independent organisations have also reported a similar pattern whereby Frontex officers are present at the scene of push backs. A joint investigation by Bellingcat, Lighthouse Reports, Der Spiegel, ARD and TV Asahi found 6 instances between March and August 2020, where Frontex officers were either in close proximity to a pushback, or were themselves directly involved.<sup>68</sup>

The summary expulsion of a person may give rise to an issue under Article 3 ECHR and it's correlative provision in the EU Charter, Article 4, where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture, inhuman or degrading treatment or punishment in the receiving country. Pushbacks deny individuals the requisite due process that should be carried out before a decision of expulsion is made. As expressed by the UN Special Rapporteur on the Human Rights of Migrants,

“the right to individual assessment is the cornerstone of human rights and refugee protection [...] returning people without due process will inevitably result in cases of refoulement to situations where they may face the risk of death, torture, ill-treatment, persecution or other irreparable harm”.<sup>69</sup>

Article 19 of the Charter protects people on the move from unlawful removal without due process and access to asylum enshrined in Article 18 EU Charter.

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<sup>67</sup> BVMN. “You can't imagine how someone is sleeping and then someone took me by force from this place”, 30 September 2021, <https://borderviolence.eu/testimonies/september-30-2020-0700-eyros-border/>;

BVMN. “The officer asked if they knew the computer game PUBG and told him they would play it with them”, 4 February 2020, <https://borderviolence.eu/testimonies/february-4-2021-0000-soufli-umurca/>;

BVMN. “In the middle of the river they [just] told us to jump”, 05 September 2021, <https://borderviolence.eu/testimonies/september-5-2021-1000-neo-cheimonio-elcili/>

<sup>68</sup> Waters, Nick et al. 2020. “Frontex at Fault: European Border Force Complicit in ‘Illegal’ Pushbacks”, 23 October 2020, Bellingcat,

<https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>

<sup>69</sup> United Nations, ‘Greece: Rights Violations against Asylum Seekers at Turkey-Greece Border Must Stop’, (23 March 2020), available at:

<https://www.ohchr.org/en/press-releases/2020/03/greece-rights-violations-against-asylum-seekers-turkey-greece-border-must>





### 4.3 Frontex' Knowledge of Pushbacks

In addition to evidence suggesting the active involvement of Frontex officers' in pushbacks. Internal documents<sup>70</sup> and relevant research<sup>71</sup> attest that Frontex has at the very least been aware of the dire situation at the Evros border for a number of years. The FRO twice recommended that Frontex consider suspending its operations: first in February 2019, following her visit to the Evros region, and again in March 2020, soon after the start of the Rapid Border Intervention (RBI) 2020, compellingly due to the suspension of the right to apply for asylum by the Greek government.<sup>72</sup>

BVMN has submitted several letters of concern to Frontex,<sup>73</sup> addressing illegal pushbacks at the Greek-Turkish border and compelling evidence of the Agency's involvement or presence in pushbacks, and numerous urgent calls for intervention in cases of people on the move at Evros, prevented from accessing shelter, food, water, medical care, and asylum and at risk of their fundamental rights being violated. BVMN and other civil society organisations have shared the coordinates with Frontex and requested that Frontex actively safeguards fundamental rights in its operational area.

As per Article 46(4) of Regulation (EU) 2019/1896, the executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist.

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<sup>70</sup> Frontex. 2018b. 16th Meeting Frontex Consultative Forum on Fundamental Rights, [https://www.asktheeu.org/en/request/documents\\_on\\_Frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_Frontex_consultativ#incoming-18575). Frontex, 2019a, 18th Meeting Frontex Consultative Forum on Fundamental Rights, Released to the authors; Frontex, 2019. Mission Report.

<sup>71</sup> Karamanidou, Lena & Kasperek, Bernd. Fundamental Rights, Accountability and Transparency in European Governance of Migration: The Case of the European Border and Coast Guard Agency Frontex, 2020, Zenodo. <http://doi.org/10.5281/zenodo.3967784>;

Karamanidou, Lena & Kasperek, Bernd, What is Frontex Doing about Illegal Pushbacks in Evros?, 01 August 2020, RESPOND Blog, <https://respondmigration.com/blog-1/what-is-frontex-doing-about-illegal-pushbacks-in-evros>

<sup>72</sup> Frontex Supplementary opinion to Fundamental Rights Officer's Observations to the Operational Plan on the Rapid Border Intervention Evros 2020 (23 March 2020)

<sup>73</sup> e.g. BVMN. "Letter of concern to Frontex", 25 November 2020,

<https://bordertviolence.eu/reports/letter-of-concern-to-frontex/>;

BVMN. "Letter of Concern to Frontex over Fundamental Rights Violations in Evros", 01 July 2022,

<https://bordertviolence.eu/reports/letter-of-concern-to-frontex-2/>



Thus, even ignoring the abundant evidence to suggest Frontex officers are actively involved in pushback operations at the Evros Border. Their continued lack of intervention, despite knowledge of such operations, is at the very least a breach of Article 46(4). Furthermore, with reference to Article 4, ARIO, the Agency may incur ‘indirect responsibility for a wrongful act that is not attributed to it but solely to the host state, if it has contributed to it, facilitating its commission.’ By continuing to operate in Greece, despite consistent reports of fundamental rights violations during pushbacks, Frontex has indirectly facilitated and contributed to breaches of EU and International Law. Frontex is enabling the pushbacks of people on the move and is, therefore, complicit and responsible, deterring the Agency’s ability to guarantee fundamental rights during operations.

#### 4.4 Pushbacks on the Islets in the Evros River

Furthermore, since 2020, BVMN has also reported a new practice initiated by the Greek authorities, whereby people on the move are intentionally pushed back and abandoned on islets in the Evros river.<sup>74</sup> Data gathered by BVMN shows that since the beginning of 2022, 40% of distress calls pertain to groups stuck on islets, of which only a third were successfully rescued.<sup>75</sup>

The testimonies of those who have been abandoned on islets indicate the life-threatening implications of these practices. Victims are left on their own, isolated with no means to cross the river. There is no access to food, safe drinking water, shelter, no means to keep warm, medical care, or any other form of material conditions. Keeping groups of people, (including children and vulnerable people), in such conditions, has led to the deterioration of pre-existing illnesses, bodily harm, mental suffering, and death in the most extreme cases.

Since April 2021, BVMN alone has reported five deaths relating to islet pushbacks. Three of these deaths were caused by drowning, including an incident confirmed by BVMN in April 2021, where two individuals drowned after being stranded on an islet.<sup>76</sup> In two other recorded cases, individuals stranded on islets died of pre-existing medical conditions, which became fatal as a result of a lack of access to medical attention. In August 2021, Josoor and Alarm Phone confirmed an ill Syrian man had died, after being abandoned on an islet, without access to the

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<sup>74</sup> BVMN. “They beat everyone. Even the women. Except the children...”, 19 August 2020, <https://borderviolence.eu/testimonies/august-19-2020-2200-north-east-of-nea-vyssa-greece/>;

BVMN. “One of us sank in the river. He died. We couldn’t find him later”, 03 January 2021, <https://borderviolence.eu/testimonies/january-3-2021-0200-dilofos-kapikule/>

<sup>75</sup> BVMN. ““A football between the Greek and the Turkish Army”: Evros Islets, One Year On” 09 August 2023, <https://borderviolence.eu/reports/a-football-between-the-greek-and-turkish-army-evros-islets-one-year-on/>

<sup>76</sup> BVMN. “If anyone can speak English, you can come work for them [Greek police] for six months and then you will be given papers for asylum”, 08 April 2021, <https://borderviolence.eu/testimonies/april-8-2021-0600-island-near-karayusufllu/>



necessary medical care.<sup>77</sup> In April 2022, a woman, who urgently required dialysis treatment for a long-term kidney problem, was left trapped on an islet.<sup>78</sup> On the 9th August 2022, a 5-year old girl reportedly died of a Scorpion bite, after a group of 40 Syrian refugees were left stranded on an islet.<sup>79</sup>

Once BVMN is notified of an abandonment, operatives will communicate, as a matter of urgency, the geo-location of the group, including identification information, their intention to seek asylum, and other relevant information (e.g. lack of food and water and any deteriorating medical conditions). This communication is transmitted to local Greek police stations, the UNHCR and to Frontex directly. In total, BVMN has submitted 4 letters of concern to Frontex since 2020, and over 22 urgent calls for intervention (that we would be willing to disclose to the your office).<sup>80</sup>

However, Frontex has never taken action in response to any of the cases brought to their attention by BVMN. In one such case in November 2020, 70 people (including children and a pregnant woman) were trapped on an island after being pushed back by the Greek authorities. BVMN member organisation, Josoor and long-term collaborator, AlarmPhone, published footage of this abandonment and sent an urgent letter to Frontex. This letter, along with multiple emails, were ignored for two days, during which the group's depleted resources ran down and their physical situation deteriorated further. The group spent a total of four days stranded without food and water.<sup>81</sup>

The general reasons cited for this lack of intervention were twofold: either the islets in question fell outside Frontex's designated operational area, or the Greek authorities did not request assistance from Frontex to intervene. Yet evidence suggests that Frontex have not only been notified of abandonment (as indicated above), but that they have also been present during some rescue operations. On May 3rd and May 10th 2023, two posts published on Twitter by the Hellenic Red Cross depict rescue operations of people abandoned on islets. In the photos published, Frontex officers are clearly present at the scene.<sup>82</sup>

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<sup>77</sup> Watch the Med Alarm Phone Investigations. "Deadly Push-Back in the Evros Region", 30 August 2021, <https://watchthemed.net/reports/view/1962>

<sup>78</sup> BVMN. "Islets, Interim Measures, and Illegal Pushbacks: Erosion of the Rule of Law in Greece", 01 July 2022, <https://borderviolence.eu/reports/20548-2/>

<sup>79</sup> BVMN. "Urgent Update: Continuous Violations of the Rule of Law in Greece as People Still Stranded on Islets in Evros", 09 August 2022, [https://borderviolence.eu/app/uploads/URGENT\\_UPDATE\\_Evros.pdf](https://borderviolence.eu/app/uploads/URGENT_UPDATE_Evros.pdf)

<sup>80</sup> BVMN. "Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece", 01 July 2022, <https://www.borderviolence.eu/20548-2/>

<sup>81</sup> *ibid.*

<sup>82</sup> BVMN. "Balkan Regional Report May 2023", 06 July 2023, <https://borderviolence.eu/reports/balkan-regional-report-may-2023/>



As established, both human rights legislation and Regulation (EU) 2019/1896, obliges Frontex to take all reasonable measures to protect individuals from human rights risks that the Agency is aware of, or should be aware of.

With reference to the testimonies above, those stranded on islets are left on their own on uninhabitable islands, with no access to food, safe drinking water, shelter, no means to keep warm, medical care, or any other form of material conditions. This is in direct contravention of EU Charter, Article 1 (Human Dignity) and Article 4 (Prohibition of Torture or Inhuman and Degrading Treatment). Furthermore, the above cases provide irrefutable evidence that persons trapped on islets are at immediate risk of irreparable harm, in violation of Article 2 (Right to Life). Finally, the testimonies collected of those trapped on Islets reveal a systematic violation Article 5 (Right to Liberty and Security). Provided Frontex knew about these fundamental rights violations and did not act, the Agency bears responsibility for the extensive violations, including the numerous reported deaths of those trapped on islets.

### **5. Concluding Remarks**

In light of the abundant evidence of Frontex's responsibility in the Joint Operations in Greece, the Agency is complicit in human rights violations both at sea and in land operations. Border Violence Monitoring Network, therefore, calls for Frontex to be held accountable in SAR operations and operations in the country should be terminated immediately as per Article 46, Regulation 2019/1896.