EUROPEAN ANTI-FRAUD OFFICE

Directorate A - Expenditure –
Operations and Investigations
The Director

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By e-mail only

Brussels
OLAF.A.1(2022)31112

Subject: Your application for public access to documents

OC No: OC/2021/0451/A1 (Please include this number in all correspondence)

Dear Ms Strik,

We refer to your email of 26 September 2022 by which you submitted an application for access to documents under Regulation (EC) No 1049/2001[1] regarding public access to European Parliament, Council and Commission documents.

You have requested access to the following document: "the OLAF final report on the European Border and Coast Guard Agency (FRONTEX), including all annexes". We have interpreted your request as concerning the final report and annexes in OLAF's investigation OC/2021/0451/A1 that was closed on 15 February 2022.

1. Preliminary remarks

OLAF wishes to recall, firstly, that it is legally bound to treat all information it obtains during its investigations as confidential and subject to professional secrecy, in particular pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013[2] and Article 17 of the Staff Regulations.

Secondly, the purpose of Regulation 1049/2001 is to give access to documents to the public at large. Any document disclosed to an individual under this Regulation then becomes automatically available to any other member of the public whenever there is a subsequent request. Consequently, your attention is drawn to the fact that documents disclosed under this Regulation enter the public domain.

In this regard, we would like to underline that any documents provided under the public access regime can be considered as lawfully disseminated and officially made public. This

[1] OJ L 145, 31.05.2001, pages 43-48.
[2] OJ L 248, 18.9.2013, pages 1-22.

is quite different from the case where, for example, a third party has obtained the documents without authorisation and made them public. Documents officially made public are the only ones which may be regarded as authentic copies of the original.

2. Access to the final report

Please find enclosed the final report in investigation OC/2021/0451/A1.

Complete disclosure of the final report is prevented by a number of exceptions in Regulation 1049/2001 and partial access is given in accordance with Article 4(6) of Regulation 1049/2001. We explain below the reasons for which parts of the final report have been redacted or not disclosed.

A. Redaction of the part of the content of the final report

Having regard, firstly, to the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of the Regulation, the following personal data contained in the final report have been redacted:

- the names/initials and contact information of Commission and OLAF staff members not pertaining to the senior management;
- the names/initials, job titles and contact details of other natural persons;
- other personal information relating to an identified or identifiable natural person;
- other identifying information, such as pronouns, which could allow a natural person to be identified.

Article 9(1)(b) of Regulation 2018/1725[3] does not allow the transmission of these personal data, except if you establish that it is necessary to have the data transmitted to you for a specific purpose in the public interest. As you have not put forward arguments to establish the necessity of a transmission for a specific purpose in the public interest, access to the personal data in the final report cannot be granted to you.

Secondly, Article 4(1)(a), third indent of Regulation 1049/2001 provides that access to a document shall be refused where disclosure would undermine the protection of the public interest as regards international relations. According to settled case-law, the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation 1049/2001, combined with the fact that access must be refused if disclosure would undermine those interests, the institutions have a wide discretion for the purpose of determining whether the disclosure of documents could undermine the public interest[4].

In this case, the final report contains information on events involving one or more EU Member States and a third country which, if made public, could harm relations between the European Union and that third country. Given the sensitive nature of the information in question, the risk of the public interest being undermined is reasonably foreseeable and not purely hypothetical[5]. OLAF's final report has therefore been redacted to remove all references to information concerning relations between the European Union and third countries, on the other.

B. Non-disclosure of the annexes to the final report

[3] OJ L 295, 21.11.2018, pages 39-98.

[4] Judgment of 3 July 2014, *Council v in 't Veld*, C-350/12 P, EU:C:2014:2039, para. 63.

[5] Judgment of 17 October 2013, *Council v Access Info Europe*, C-280/11 P, EU:C:2013:671, para. 31

Although you have requested access to the annexes to the final report, OLAF regrets to inform you that disclosure of these documents is precluded by exceptions to the right of access in Regulation 1049/2001.

Indeed, the two aforementioned exceptions concerning the protection of privacy and the integrity of the individual in Article 4(1)(b), and the protection of the public interest as regards international relations in Article 4(1)(a) are equally applicable to the annexes as they contain information as described above in part (2A). In addition, the annexes are protected by the exception in Article 4(3), second subparagraph of Regulation 1049/2001, which provides that access shall be refused where disclosure would seriously undermine the institution's decision-making process.

In effect, the annexes provide an account of the information transmitted to OLAF or obtained by OLAF in the course of its investigation. They constitute the evidence underpinning the decision of the Director-General of OLAF to close an investigation, either with or without recommendations. Disclosure of the annexes would risk seriously affecting the decision-making process of OLAF, as it could jeopardise the full independence of future OLAF investigations and their objectives by revealing the Office's strategy and working methods and by reducing OLAF's chances of making independent assessments and of consulting its stakeholders about very sensitive issues.

More specifically, disclosing OLAF's working methods in a given investigation could enable potential fraudsters to anticipate investigative actions that OLAF may take in other (similar) investigations and to adapt or create new fraudulent schemes in a way that would render OLAF's investigative methods ineffective. Such disclosure would also run the risk of discouraging individuals (potential witnesses and informants) to cooperate with OLAF and to provide information concerning possible cases of fraud and thereby deprive OLAF of information that is of use for undertaking investigations for the protection of the financial interests of the European Union[6]. Such persons must be reassured that their statements and the information they provide to OLAF will be kept confidential, otherwise they might be inclined to censor the information they give or to hold back sensitive information[7]. As a result, OLAF's internal decision-making process with regard to other investigations could be seriously affected and this could seriously impinge on the effectiveness of OLAF's investigations.

The General Court has acknowledged a general presumption of non-accessibility of OLAF investigative documents and ruled that this presumption must be applied in order to prevent any risk of seriously undermining the institution's decision-making process within the meaning of Article 4(3), second subparagraph of Regulation 1049/2001[8]. This presumption extends to closed cases. The presumption is based on the consideration that, to determine the scope of Regulation (EC) No 1049/2001, account must be taken of relevant sectoral rules governing the administrative procedure under which the document requested (or concerned) under Regulation (EC) No 1049/2001 was gathered[9]. In the case at hand, this is Regulation (EU, Euratom) No 883/2013, which governs OLAF's administrative activity and provides for an obligation of confidentiality with regard to all information gathered during investigations.

In this regard, OLAF is legally bound, pursuant to Article 339 of the Treaty on the Functioning of the European Union, Article 10 of Regulation (EU, Euratom) No 883/2013, and Article 17 of the Staff Regulations, to treat the information it obtains during an investigation as confidential and subject to professional secrecy. These provisions regulate and restrict the use of information in OLAF's case files before, during and after an OLAF investigation. These

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[6] Judgment of 26 April 2016, *Strack v Commission*, T-221/08, EU:T:2016:242, para. 153.

[7] *Ibid*.

[8] *Ibid*, para. 162.

[9] See, notably, judgment of 26 May 2016, *IMG v Commission*, T-110/15, EU:T:2016:322, paras. 29-34.

considerations also apply to the communications and case file documents based on which the final report of case OC/2021/0451 and its recommendation(s) were grounded on since they form part of the OLAF decision-making process.

Consequently, the annexes to the final report are exempt, in principle and in full, from disclosure to the public, unless it is demonstrated that the presumption is not applicable or that an overriding public interest justifies the disclosure of the document concerned[10]. The presumption recognised by the case-law entails that the documents covered by that presumption are not subject to the obligation to assess whether a partial access should be granted to them pursuant to Article 4(6) of Regulation (EC) No 1049/2001. In your request for access, no such overriding interest was identified.

3. Partial access

In accordance with Article 4(6) of Regulation 1049/2001, OLAF has examined the possibility of granting partial access to the annexes to the final report.

Partial access is not possible, given that the information contained in the annexes falls entirely under the general presumption of non-accessibility under Article 4(3), second subparagraph of Regulation 1049/2001 in the context of the protection of the decision-making process. In addition, the exceptions as regards the protection of personal data in Article 4(1)(b) of the Regulation and of international relations in Article 4(1)(a), third indent also apply.

4. Overriding public interest in disclosure

The exception laid down in Article 4(3), second subparagraph of Regulation 1049/2001 is applicable unless there is an overriding public interest in disclosure of the documents. For such an interest to exist, it, firstly, has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access. In your application, you refer to the principle of transparency and the case-law of the Court of Justice according to which the use of presumptions of non-disclosure must be based on reasonable grounds and applied and interpreted strictly. You also mention, firstly, that there is a public interest in Frontex and, secondly, that access to the report is necessary for Members of the European Parliament in order for the Parliament to be able to carry out its functions of reviewing Frontex's activities. You indicate in this regard that the colleagues who are not members of the Parliament's CONT or LIBE committees did not have access to the final report, although they would be involved in the decisions taken in the plenary concerning Frontex.

It should be recalled that, according to the case-law, general considerations alone cannot provide an appropriate basis for establishing that the principle of transparency is of particularly pressing concern and capable of prevailing over the reasons justifying the refusal to disclose the documents in question, and that it is the task of the party requesting information to make specific reference to circumstances showing that there is an overriding public interest to justify the disclosure of the documents concerned[11].

With regard to the annexes, these were not disclosed by OLAF to the Parliament and, having regard to the need to protect OLAF's decision-making process, as set out in part (2B) above, there is no overriding interest to justify the disclosure of these documents. In this regard, it should be underlined that the annexes to a final report have, as a general rule, a purely

[10] *Ibid*, para. 38.

[11] Judgment of 5 February 2018, *MSD Animal Health Innovation and another v European Medicines Agency*, T-729/15, EU:T:2018:67, para. 121.

evidential and instrumental function[12] and do not contain assessments of the conduct of the persons concerned that goes beyond what is already indicated in the text of the final report.

5. Confirmatory application

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting OLAF to review this position. Pursuant to Article 4 of Commission Decision 2001/937/EC, ECSC, Euratom, such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director General of OLAF.

Any confirmatory application to OLAF should be sent to the following address:

Mr Ville ITÄLÄ
Director General OLAF
European Commission
B-1049 BRUXELLES
BELGIUM

You may also send a confirmatory application to the email address: OLAF-FM-D2@ec.europa.eu.

Your attention is drawn to the privacy statement below.

Yours sincerely,

Signed Electronically

on 31/10/2022 at 16:27 by KRZEMINSKA-VAMVAKA Joanna,
Director

Privacy notice

Pursuant to Articles 15 and 16 of Regulation No 2018/1725 on the protection of natural persons with regard to the processing of personal data by Union Institutions, bodies, offices and agencies and of the free movement of such data, please be informed that your personal data are stored in OLAF's electronic and paper files concerning this matter for the purposes of or in relation to the activities carried out in order to fulfil OLAF's tasks referred to in Article 2 of Decision 1999/352/EC, ECSC, Euratom and Regulation (EU, Euratom) 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The categories of your personal data being processed are contact data, identification data, professional data, and case involvement data. Your data may originate from various sources, including publicly accessible information. Your data may be transferred to other EU institutions, bodies, offices and agencies, competent Member State and third country authorities and international organisations. There is no automated decision process by OLAF concerning any data subject. Your data will be stored for a maximum of 15 years.

You have the right to request access to, rectification or erasure, or restriction of processing of your personal data and to object to their processing on grounds relating to your particular situation. If you wish to request access to your personal data processed in a specific file, please provide the relevant reference or description in your request. Any such request should be addressed to the Controller (OLAF-FMB-Data-Protection@ec.europa.eu).

The complete privacy statement for this and all other OLAF personal data processing operations are available at http://ec.europa.eu/anti_fraud. If you have questions as regards the processing of your personal data or your rights you may contact the OLAF Data Protection Officer (OLAF-FMB-DPO@ec.europa.eu)

You may lodge a complaint concerning the processing of your personal data with the European Data Protection Supervisor (edps@edps.europa.eu) at any time.

[12] See, by analogy, judgment of 12 May 2021, *Alba Aguilera v EEAS*, T-119/17 RENV, EU:T:2021:254, para. 120.

EUROPEAN ANTI-FRAUD OFFICE

Directorate A - Expenditure - Operations and Investigations

Unit A1 – Internal Investigations

Brussels
olaf.03(2021)21088

SENSITIVE: *OLAF Investigations*[1]

FINAL REPORT

Case No OC/2021/0451/A1

Type of case	Investigation
Legal basis for the opening decision	Article 4 of Regulation (EU, Euratom) No 883/2013 combined with Article 2 of the Commission Decision 1999/352
OLAF Staff	[redacted], Head of Unit [redacted], Deputy Head of Unit [redacted], Lead Investigator
Date of creation of OLAF case	30 April 2021
Date of opening decision	3 May 2021 (the case OC/2021/0451/A1 was opened as a split of the initial case [redacted], the opening date of which is [redacted])
EU institution, body, office or agency concerned	European Border and Coast Guard Agency (FRONTEX)
Person(s)concerned	[redacted]
Source of information	[redacted]
Fraud Notification System (FNS)	☒ Yes ☐ No
Offence category	Serious misbehavior
Area concerned	EU Decentralised Agencies

[1] Handling instructions for SENSITIVE are given at https://ec.europa.eu/anti-fraud/sites/antifraud/files/handling_instructions_documents_sensitive_olaf_investigations_en.pdf

Investigative or Coordination activities carried out	Collection and analysis of information from open sources Inspection of FRONTEX premises Digital Forensic Operations and Operational Analysis of digital data Interview of [redacted] witnesses Collection and analysis of information from FRONTEX Collection and analysis of information from the European Commission Collection and analysis of information from sources and witnesses, including through questionnaires Interview of the persons concerned Analysis of provided information and case material
Has the person concerned been notified of the opening of an investigation? Reason(s) for deferral?	**Notified on:** [redacted]
	Deferred on: N/A
Has the person concerned been given the opportunity to comment on facts concerning him? Reason(s) for deferral?	**Given opportunity to comment**: all persons concerned were given the opportunity to comment on 4 October 2021
	Deferred on: N/A
Evidence of irregularity or fraud	☒ Yes ☐ No

Financial and other impact	
Impact on EU financial interests	☐ Yes ☒ No
Serious matters relating to discharge of professional duties	☒ Yes ☐ No
Estimated financial impact of the facts established	N/A
Amounts prevented from being unduly spent/evaded	N/A
Judicial proceedings	☐ Yes ☒ No

Summary

On 8 October 2020, OLAF received information [redacted] referring to possible irregularities affecting the European Border and Coast Guard Agency (FRONTEX). The initial allegations, complemented with additional information provided by the source, referred to serious irregularities [redacted]. These irregularities included:

- possible witnessing of illegal pushbacks by FRONTEX-deployed assets (Multipurpose Aerial Surveillance - MAS);
- exclusion of the Fundamental Rights Officer (FRO) of FRONTEX from the reporting line;
- [redacted];
- [redacted];
- [redacted];
- [redacted].

Some of the allegations, notably those referring to FRONTEX covering or being involved in illegal pushbacks of migrants, received wide coverage during 2020 through online media outlets.

Taking into account the allegations received, on 11 November 2020 OLAF opened the internal investigation [redacted] into:

[redacted]

Having made significant progress with regard to the allegations under point A above, on 3 May 2021 OLAF decided to split the case, in order to expedite matters, and to extend the scope to be able to also investigate additional persons. As a result, case OC/2021/0451/A1 was opened; the scope of the new case was to investigate potential misconduct and/or irregularities related to FRONTEX in relation to possible involvement in and/or cover-up of illegal pushbacks committed, in particular, by [redacted].

[redacted] were identified as persons concerned in case OC/2021/0451/A1.

In order to prove or disprove the allegations, OLAF collected and analysed information and documentation from FRONTEX, from the European Commission, from open sources and from the persons concerned. Between 8 and 11 December 2020, OLAF carried out an inspection of the offices of the [redacted] persons concerned, together with digital forensic operations. Subsequently, OLAF conducted the operational analysis of the significant amount of digital data acquired.

In addition to the interviews of the [redacted] persons concerned and of [redacted] witnesses, OLAF also collected information from [redacted] witness through questionnaires.

OLAF concludes, based on the evidence collected during the investigation, that the allegations are proven. [redacted], within their differing roles and responsibilities, committed serious misconduct and other irregularities. In doing so they hindered the capacity of FRONTEX to fully comply with its responsibilities, namely monitoring compliance with fundamental rights in its activities at the external borders, and ensuring respect for, protection and promotion of, fundamental rights, as enshrined in particular in the Charter of Fundamental Rights of the EU.

The evidence collected and the facts established by OLAF are set out in Section 2 of this report. The failings of the persons concerned can be grouped into three main categories; failure to follow procedures and processes, failure in their duty of loyalty and failure in their [redacted] responsibilities.

Section 2.2.1 of this report demonstrates how [redacted] failed to ensure compliance with the applicable Standard Operating Procedures on Serious Incident Reporting. This led to the exclusion of [redacted] from the assessment and handling of some incidents and to the failure to initiate Serious Incident Reports for some incidents with a potential fundamental rights component.

Section 2.2.1 also demonstrates how the [redacted] persons concerned decided to relocate a FRONTEX aerial asset to a different operational area of activity. One reason for doing so appears to have been to avoid witnessing incidents in [redacted] with a potential FR component.

Section 2.2.2 demonstrates how [redacted], the latter conveying the instructions [redacted] received, acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access by [redacted], [redacted] and [redacted] to information available within the Agency, including in the EUROSUR system. This had a negative impact on the ability of [redacted] Office to effectively perform its tasks, notably monitoring the Agency's compliance with, and promoting the Agency's respect of, fundamental rights.

Sections 2.2.1, 2.2.9 and 2.2.5 demonstrate that [redacted] did not ensure appropriate follow-up actions, including with regard to the application of the Article 46 of the 2019 FRONTEX Regulation, in relation to two incidents witnessed by FRONTEX in which the actions undertaken by the officers of the host Member State (MS) appear to have seriously endangered the lives of the migrants concerned. [redacted] failed to take appropriate action, including the initiation of a SIR, after having been informed that some FRONTEX co-financed assets appeared to have been involved in some incidents included in the digital material that FRONTEX received from the [redacted] Authorities. [redacted] failed to take appropriate action once informed (on three different occasions) that FRONTEX-deployed officers might have preferred not to report officially some incidents that occurred under FRONTEX operations due to fears of repercussions from the Authorities of the host MS.

Section 2.2.3 demonstrates that as a result of concerns that some members of the Management Board (MB), including [redacted], might have tried to protect [redacted] (to the point that [redacted] alleged the existence of a conflict of interest situation, including "political" conflict of interest, involving some of the members of the MB) [redacted] and [redacted] instructed the relevant FRONTEX entities to publish, under strict confidentiality, the vacancy notices for the FRO and Deputy FRO posts (among others), without the prior involvement of the MB (for the FRO post) or the FRO (for the Deputy FRO post). [redacted] also appears to have acted in this way so that the matter could be settled in advance of the appointment of the new [redacted] Commissioner, whom [redacted] considered to be too supportive of fundamental rights issues.

Section 2.2.4 demonstrates how, in the framework of an administrative inquiry against [redacted], [redacted] overruled the applicable Decision of the Management Board of FRONTEX, attributing to [redacted] the responsibility to launch the administrative inquiry. [redacted] did not ensure compliance with the EU administration standards in relation to the reasonable duration of the inquiry, as set in the European Code of Good Administrative Behaviour (mirrored in the FRONTEX Code of Conduct). [redacted] also disclosed to persons with no direct need-to-know some details about the allegations against [redacted] ([redacted] being the subject of the inquiry) and about allegations against [redacted] which had not been formalised officially. [redacted] also provided misleading information to some members of [redacted] Cabinet about the conclusions of the administrative inquiry against [redacted].

The evidence in Section 2.2.7 shows that, animated as they were by their personal considerations regarding European legislators, [redacted] demonstrated a lack of loyalty towards the Union. [redacted] partly based [redacted] decisions on [redacted] personal prejudices and the low esteem in which [redacted] held the European Commission (EC), particularly some officials of DG HOME. [redacted] considered the latter to be overly focused on fundamental rights matters and too bureaucratic, with no understanding of the operational challenges of external border management. [redacted] also failed to demonstrate a constructive approach with the EC regarding the implementation of the new legal framework of the Agency, in particular regarding the

fundamental rights architecture, thus causing severe delays to the whole process. In this context, despite [redacted] role as [redacted] of FRONTEX, [redacted] also suggested to a member of the MB which issues to raise during a MB meeting so as to put the EC representative at the MB in a difficult position.

The evidence gathered by OLAF in Section 2.2.8 demonstrates that between 2017 and 2019, [redacted] disclosed information to [redacted], some of it delicate or sensitive, concerning the Agency under [redacted], prior to it being made public. There was no justification for this as [redacted] did not have a legitimate need-to-know.

While requesting information about some incidents from the Authorities of a host Member State, as well as while providing to EU Institutions (the EC and the EP) information about the way the Agency had dealt with fundamental rights-related matters, [redacted] did not ensure the highest standards of impartiality and objectivity, presenting an incorrect or biased description of facts. The evidence is set out in Section 2.2.7 of this report.

[redacted] also gave OLAF incorrect information about the process of the revision of the Standard Operating Procedure on Serious Incidents Reporting. The evidence is set out in Section 2.2.6 of this report.

During a meeting with the members of the FRaLO Subworking Group, [redacted] provided incorrect information about the involvement of [redacted] in the handling of a Serious Incident Report. OLAF did not gather elements indicating the intentionality of such provision (see Section 2.2.1).

OLAF considers the repeated misconduct of the persons concerned to be in breach of the Staff Regulation of Officials of the EU, of the FRONTEX Code of Conduct and of the legal framework stipulated by the FRONTEX Regulations [Regulation (EU) 2016/1624 and Regulation (EU) 2019/1896] in particular in relation to the protection and respect of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union, in the performance of the Agency's tasks.

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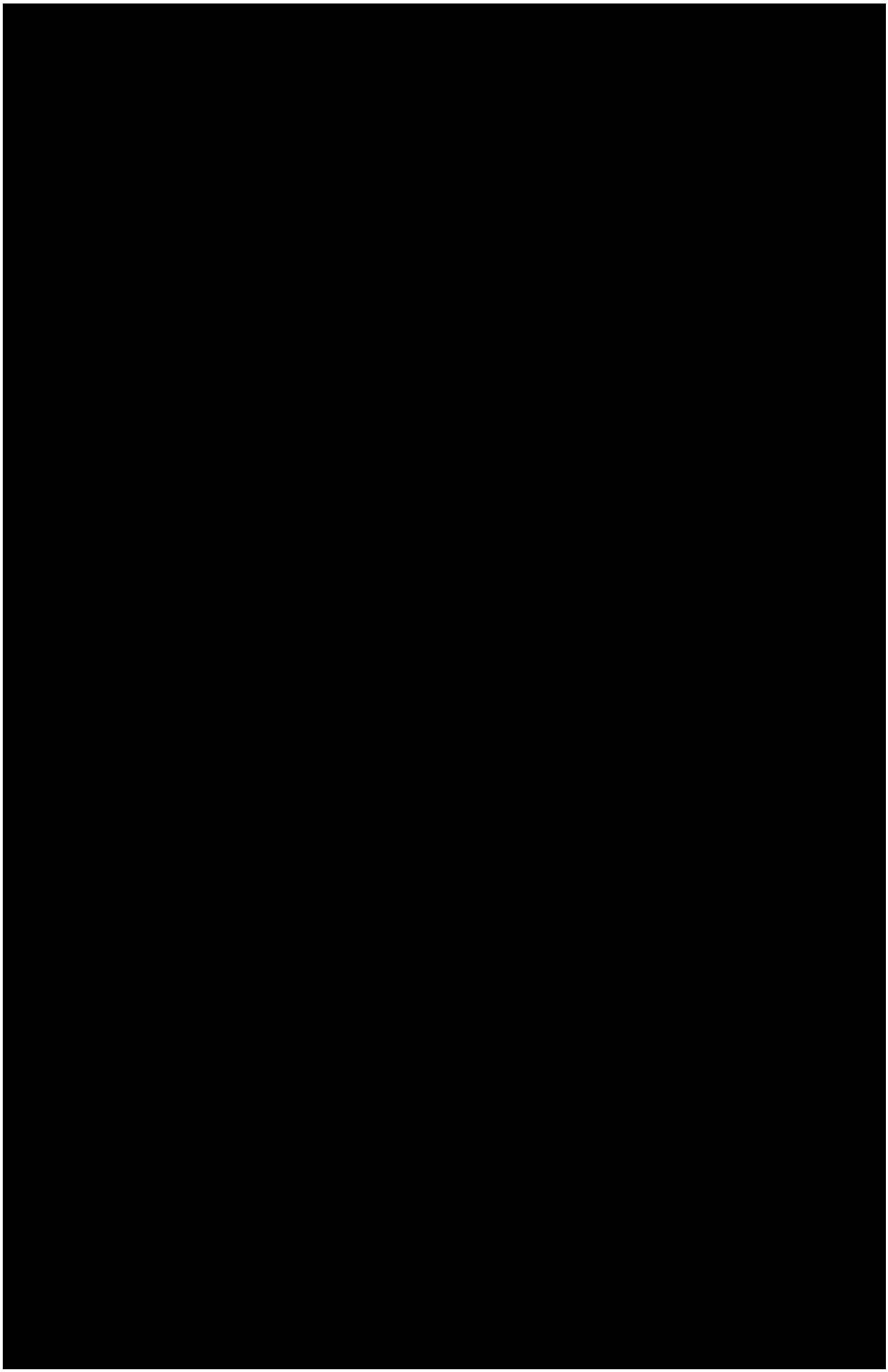
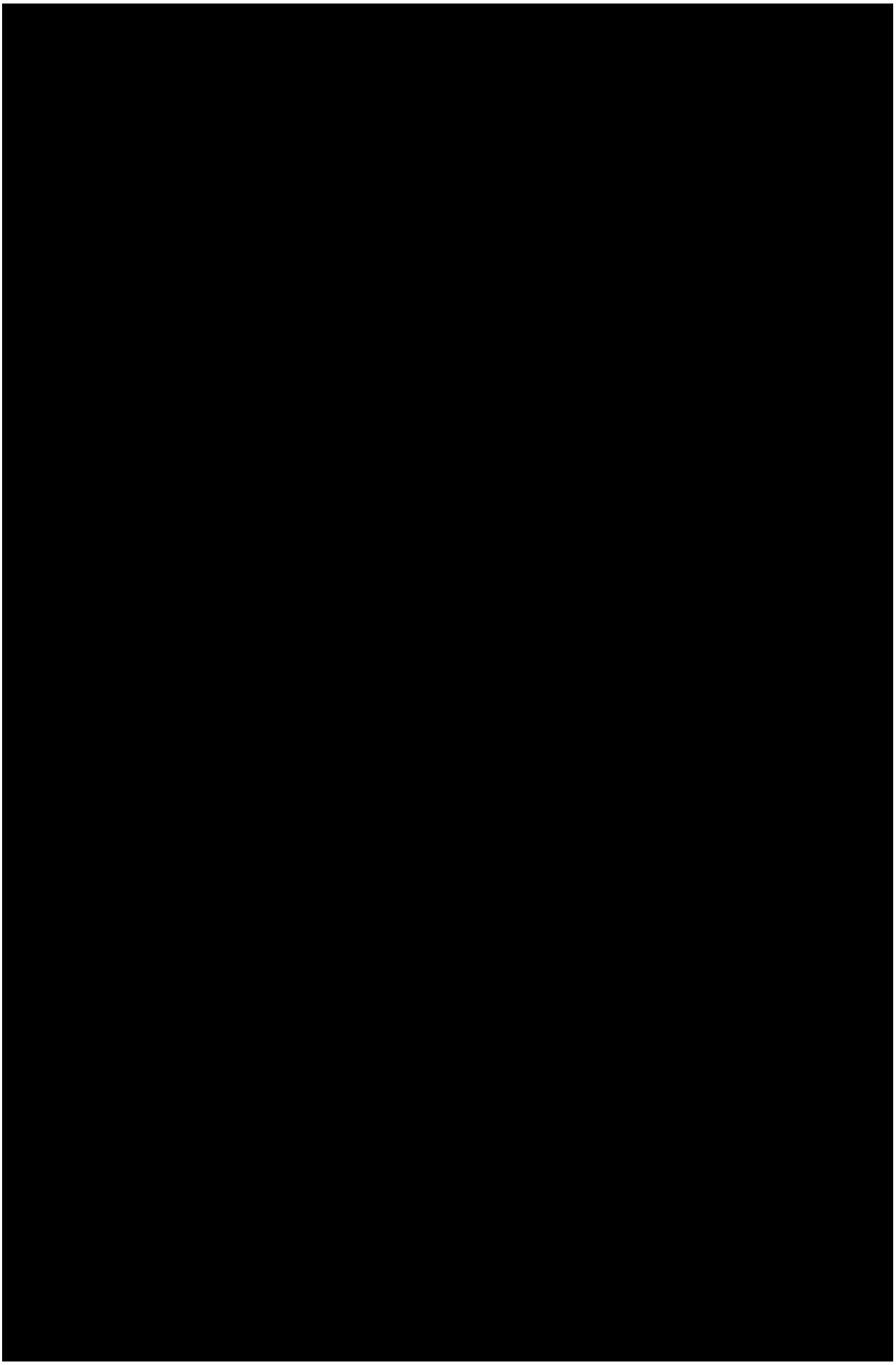
List of acronyms

[redacted]





[redacted]

1. Background information

1.1 Initial information

On 8 October 2020, OLAF received [redacted] referring to possible irregularities affecting the European Border and Coast Guard Agency (FRONTEX).

The same information was also sent [redacted] to the EC (Commissioner [redacted]) and forwarded to OLAF by the Directorate General for Migration and Home Affairs (DG HOME) on 3 November 2020.

[redacted]. OLAF got successfully in contact [redacted] with the source who provided additional information to complement the initial allegations of serious irregularities, involving [redacted], including:

- possible witnessing by FRONTEX-deployed assets (Multipurpose Aerial Surveillance - MAS) of illegal pushbacks involving the Hellenic Coast Guard (HCG). Following the incidents, FRONTEX staff deployed on the plane would have been explicitly ordered by [redacted] and [redacted] to exclude the Fundamental Rights Officer (FRO) of FRONTEX from the reporting line in order to "*avoid politicization of such events*". [redacted] appeared to have been fully informed;
- [redacted];
- [redacted];
- [redacted];
- [redacted];
- [redacted].

Some of the allegations, in particular those referring to FRONTEX covering or being involved in illegal pushbacks of migrants, received wide coverage, with articles being published during 2020 on several online media outlets (EU Observer, Bellingcat, De Spiegel, Respond, and others).

On 4 November 2020, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (EP) addressed a letter to [redacted] of FRONTEX referring to the press releases which had mentioned the alleged implication of FRONTEX in illegal pushbacks in Greece. The letter by LIBE raised a number of questions and asked FRONTEX for clarifications on the matter.

On 10 November 2020, an extraordinary meeting of the Management Board (MB) of FRONTEX was held at the request of the EC. Among other topics of discussion, the MB also decided to set up a working group to follow further the allegations of the involvement of the Agency in illegal pushbacks.

In the context of the MB, the European Commission, also a Member of the MB, addressed to [redacted] a number of questions related to the allegations of pushbacks in 2020 for which a written reply was provided by [redacted] on 20 November 2020. The clarifications were discussed during the following MB meeting on 25-26 November 2020.

On 10 November 2020, the European Ombudsman (EO) opened an inquiry on her own initiative to look into how FRONTEX deals with alleged breaches of fundamental rights through its 'complaints mechanism', and to address the role and independence of FRONTEX'S Fundamental Rights Officer in this regard. In opening the inquiry, the Ombudsman also sent a set of detailed questions to FRONTEX.

On 11 November 2020, [redacted] addressed a letter to EC's Vice President, [redacted], and to the Commissioner for Home Affairs, [redacted], informing [redacted] had presented to the MB of FRONTEX a proposal to establish an evaluation committee, possibly composed by the EC and volounteering Member States, which would follow up the preliminary findings of the internal inquiry [redacted] had launcehd after the publication of news referring to alleged fundamental rights violations involving FRONTEX. In [redacted] letter, [redacted] stressed that the preliminary findings of the inquiry, which concluded about lack of evidence of a direct or indirect participation of FRONTEX in illegal pushbacks in [redacted], had been already presented to the Management Board.

On 23 November 2020, [redacted] sent to [redacted] EP's LIBE Committee, the answers to the insightful questions posed to FRONTEX by the Committee. One week later, on 1 December 2020, [redacted] appeared before the LIBE Committee for a hearing.

On 24 November 2020, [redacted] addressed a letter to [redacted] and to [redacted]. The letter replied to the questions received by FRONTEX from the European Commission, Germany and Switzerland and included a *fact finding report* encompassing the Agency's answers.

On 26 November 2020, FRONTEX's MB decided the establishment of an internal "Working Group on Fundamental Rights and Legal and Operational aspects of Frontex operations" (WG FRaLO) to investigate into all aspects related to the alleged violations of fundamental rights or international protection obligations and FRONTEX's subsequent actions.

On 27 November 2020, [redacted] addressed a letter to the German Federal Minister [redacted], [redacted], to the EC's Vice President, [redacted], to the Commissioner [redacted], and to [redacted] the LIBE, [redacted]. [redacted] shared with the adressees a report prepared by FRONTEX for the 82nd Management Board meeting, along with two letters that [redacted] had sent to the Greek authorities inquiring into allegations on the so-called pushbacks in [redacted]. [redacted] also informed them that the Agency had launched an internal inquiry to provide adequate information on some incidents.

On 4 December 2020, [redacted] updated the Commissioner [redacted] to update the EC on the state of play of the Agency's framework for fundamental rights protection and monitoring in line with Regulation 2019/1896.

On 18 December 2020, [redacted] DG HOME replied to sent a letter to [redacted] in reply to a note that [redacted] had addressed, on 4 December 2020 to Commissioner [redacted]

On 23 February 2021 the EP's LIBE Committee established the "European Parliament's FRONTEX Scrutiny Working Group" (FSWG) to "*carry out a fact-finding investigation, gathering all relevant information and evidence regarding alleged violations of fundamental rights in which the Agency was involved*". The FSWG, composed of 14 Members of the European Parliament, held eight public hearings (including on 4 March and 26 June 2021, with the FRONTEX's [redacted] and with Commissioner [redacted]).

On 25 February 2021, OLAF received a letter from the Ambassador of the Permanent Delegation of [redacted] to the EU expressing, among others, concerns about the protection of migrants and asylum seekers at EU borders, possible push-backs including severe human rights violations by Greek Authorities at Greek borders. The letter enclosed a portable device containing digital data. The same letter (and annexed digital data) was also addressed by the [redacted] authorities to FRONTEX's [redacted]. On 4 March 2021, [redacted] forwarded to OLAF the letter FRONTEX had received form the [redacted] Authorities.

On 1 March 2021, the WG FRaLO released to the MB the final report of its inquiry. Overall, the working Group assessed 13 incidents. 8 incidents, out of 13, were clarified to the effect that no third-country nationals were turned back in contravention of the principle of non-re-foulement, or otherwise in violation of Article 80(2) of Regulation (EU) 2019/1896. For the other 5 cases (plus an additonal one) the WG stressed that it has not been possible to completely resolve the incidents beyond any reasonable doubt. The WG FRaLO also made recommendations to the Agency.

On 5 March 2021, the MB released publicly its conclusions on the final report of the WG FRaLO and issued recommendations to the Agency to revise its reporting system, to establish a systematic monitoring of the reporting mechanism and to clarify the relation between its system of protection of the whistle-blowers and the exceptional reporting mechanis under the SIRs reporting mechanism.

On 23 March 2021, Members of the Budgetary Control Committee (CONT) of the EP decided to postpone the final decision on the discharge of the 2019 budget of FRONTEX, expecting clarifications of alleged cases of complicity of the Agency in fundamental rights violations concerning its involvement in migrants' pushbacks.

On 19 May 2021, [redacted] sent a letter to the LIBE's FSWG to reply to a number of questions the FSWG had presented to the Agency.

On 25 May 2021, [redacted] DG HOME sent a letter to [redacted] LIBE's FSWG providing, in relation to FRONTEX, explanatory timelines on the development of the implementing frameworks concerning: the fundamental rights monitoring framework, the new administrative structure and the Standing Corps.

On 7 June 2021, the European Court of Auditors (ECA) released its report on the effectiveness of FRONTEX's support to external border management. The ECA conluded that "*Frontex has not fully implemented its 2016 mandate and (…) that there is a significant risk that Frontex will struggle to carry out the mandate assigned to it by the Regulation (EU) 2019/1896*".

On 15 June 2021, the EO published its "Decision n. OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights". The European Ombudsman concluded that it "*(…) considers it regrettable that there has been delay by FRONTEX in implementing the important changes introduced by Regulation 2019/1896. However, since the situation is in the process of being resolved, the Ombudsman does not find it justified to pursue this matter further*".

On 14 July 2021, the LIBE's FSWG released its Working Document on Report on the fact-finding investigation on FRONTEX concerning alleged violations of fundamental rights. In its report, among others, the FSWG concluded that:

- several reliable actors, such as national and international human rights bodies and organisations, consistently reported about fundamental rights violations at the border in a number of Member States, but FRONTEX generally disregarded these reports;
- the Agency failed to adequately respond to internal observations about certain cases of probable fundamental rights violations in Member States which were raised by [redacted], the Consultative Forum (CF) or through incident report;
- the FSWG did not find conclusive evidence on the direct performance of pushbacks and/or collective expulsions by FRONTEX in the serious incident cases examined;
- the Agency found evidence in support of allegations of fundamental rights violations in Member States with which it had a joint operation, but failed to address and follow-

up on these violations promptly, vigilantly and effectively. As a result, FRONTEX did not prevent these violations, nor reduced the risk of future fundamental rights violations;

- the FSWG was concerned about the lack of cooperation of [redacted] to ensure compliance with some of the provisions of the EBCG Regulation, notably on fundamental rights, which led to significant delays in the implementation of the Regulation. In this context, the FSWG regretted [redacted] recurrent refusal to implement the recommendations of the Commission to ensure compliance with the newly adopted Regulation;
- the FRONTEX MB should have played a much more proactive role in acknowledging the serious risk of fundamental rights violations and in taking action to ensure that the Agency fulfils its negative and positive fundamental rights obligations as enshrined in the Regulation.

On 29 November 2021, the online newspaper *EUobserver* published some extracts of an interview with [redacted] at FRONTEX, [redacted]. The article ([redacted]) reported some sort of "*frustration*" expressed by [redacted] with regard to the way the Agency handles the fundamental rights matter. In particular, [redacted] reported to have suggested to the Agency's management "*a number of mitigating measures that could be introduced to ensure that Frontex support is underpinning EU and international obligations to a greater extent"*, however, to the date of the article, the measures had not been implemented yet. [redacted] also warned that even if the Agency is not directly involved in actions which might entail violations of fundamental rights "*the mere fact that they* (FRONTEX, note added by OLAF) *are supporting national authorities that does, implicates the agency to some extent*".

1.2 Scope of the investigation

On 11 November 2020, the Director-General of OLAF decided to open an investigation on the basis of Article 4 of Regulation (EU, Euratom) No 883/2013 with the purpose to investigate:

A. potential misconduct and/or irregularities related to the European Boarder and Coast Guard Agency (FRONTEX), possible involvement in and/or cover-up of illegal pushbacks committed by [redacted], and

B. [redacted].

As OLAF was about to complete the investigative activities on the point (A) above, unrelated to the allegations under part (B), on 3 May 2021 the OLAF's Director-General decided to split the case and extend the scope so as to:

- close the part of the investigation concerning the allegations under point A, without waiting for the completion of the investigation on the remaining allegations as this would cause significant delay in the finalisation of the case;
- be able to also investigate, if necessary, additional persons suspected to be involved in the alleged illegal pushbacks and/or their cover up.

As a result of the decision to split and extent the scope, the case OC/2021/0451/A1 was opened pursuant Article 4 of Regulation (EU, Euratom) No 883/2013 combined with Article 2 of the Commission Decision 1999/352 to investigate potential misconduct and/or irregularities related to FRONTEX in relation to possible involvement in and/or cover-up of illegal pushbacks committed, in particular, by [redacted].

1.3 Persons concerned

In accordance with Regulation (EU, Euratom) No 883/2013, a person concerned is any natural person or economic operator suspected of having committed fraud, corruption or any other illegal activity affecting the financial interest of the Union, or any Member of staff member suspected of having committed a serious wrongdoing related to the discharge of professional duties or obligations who is, therefore, subject to investigation by OLAF.

The information already available at the opening of the investigation led OLAF to identify the following as persons concerned:

[redacted];

[redacted];

[redacted].

1.4 Issues investigated

This report addresses the following potential issues relating to the [redacted] persons concerned who have been subject of the OLAF investigation:

- possible irregularities concerning the handling of incidents possibly entailing violations of fundamental rights or international protection obligations;
- possible irregularities in application of the FRONTEX's Standard Operating Procedure (SOP) on Serious Incidents Reporting (SIR);
- possible lack of appropriate and proportionate action by the Agency with regard to detected possible illegal pushbacks;
- possible irregularities concerning the working relationship between the persons concerned and the Fundamental Rights Officer and, more generally, [redacted] Office;
- possible unlawful restriction of, or exclusion to, access to information to [redacted];
- possible irregularities or flaws in the communication by the persons concerned to stakeholders and external individuals, in particular concerning the fundamental rights related issues involving the Agency.

1.5 General context

1.5.1 Regulatory framework and Fundamental Rights Officer

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) was established in 2004 by Council Regulation (EC) 2007/2004 with a view to improving the integrated management of the external borders of the EU.

The legal framework of the Agency was repealed by the Regulation (EU) 2016/1624 (entered into force on 6 October 2016) establishing the European Border and Coast Guard Agency and, more recently, by the Regulation (EU) 2019/1896, entered into force on 1 December 2019. The last two Regulations deeply changed the Agency's structure and staffing in parallel with a significant increase in its mandate and tasks, as well as an enhanced role in monitoring the compliance with fundamental rights in its activities.

The protection of fundamental rights has played a pivotal role in the legal frameworks of the Agency. The Regulation (EU) 1168/2011, which amended the Council Regulation 2007/2004, introduced the need to develop and implement an Agency's Fundamental Rights

Strategy and introduced the figure of the Fundamental Rights Officer (FRO), independent in the performance of his/her duties and appointed by the Management Board.

The importance of the, role, tasks and duties of the FRO has been further detailed with the following FRONTEX Regulations in 2016 and 2019. In this respect, as of 2016 the FRO is part of the Agency's administrative and management structure, also including the Management Board, the Executive Director and the Consultative Forum.

Currently, the appointment of the FRO, his/her tasks, responsibilities, rights and reporting line are stipulated in Article 109 of Regulation (EU) 2019/1896. In particular, the Article 109 tasks the FRO with the monitoring of the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities, and promoting the Agency's respect of fundamental rights. In order to fulfil his/her tasks the FRO shall have access to all information concerning respect of fundamental rights in all the activities of the Agency.

The [redacted] was [redacted]. [redacted] was appointed by virtue of the Management Board's Decision 17/2012.

[redacted] acted as [redacted] until October 2018 when [redacted]. Subsequently, by Decision 27/2018 dated 5 November 2018, the MB appointed [redacted] within the Agency's [redacted] as [redacted].

In August 2019, [redacted] returned to work. After some weeks of temporary reassignment to another position (decided by [redacted]), [redacted] resumed [redacted] function as [redacted] on 1 October 2019. However, [redacted] had to leave again [redacted] in February 2020. In this circumstance, [redacted] deputised for [redacted] until September 2020 when the Management Board appointed again [redacted].

Finally, on 1 June 2021, a new [redacted], [redacted], took up with [redacted] duty.

1.5.2 Decisions to suspend, terminate or not launch activities and relevance of fundamental rights

According to Article 46 of Regulation (EU) 2019/1896 (which reflects and details further the content of the Article 25 of the previous Regulation 2016/1624), the ED has the duty to terminate any activity of the Agency if the conditions to conduct those activities are no longer fulfilled. The ED may also decide to withdraw the financing, to suspend or to terminate FRONTEX activities in case of serious or persisting violations of fundamental rights or international protection obligations. In this respect, the FRO is assigned a significant advisory role. In particular:

"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.

The executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by the Agency where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.

The decisions referred to in paragraphs 4 and 5 shall be based on duly justified grounds. When taking such decisions, the executive director shall take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The executive director shall inform the management board of such decisions and provide it with justifications therefor (…)".

1.5.3 Serious Incident Reporting

According to Article 38(3) of the Regulation 2019/1896 (which reflects and details further the content of the Article 16 of previous Regulation 2016/1624), the operational plan for a FRONTEX-led joint operation (JO) shall cover all aspects considered necessary for carrying out the operation, including detailed provisions on immediate incident reporting by the Agency to the management board and to relevant national authorities.

By virtue of the ED's Decision 2014/55 on 31 July 2014, the Agency adopted its Standard Operating Procedure (SOP) on Serious Incident Reporting (SIR) concerning the reporting of Serious Incidents (SIs) occurred under its operational activities. On 19 April 2021 the ED adopted a new SOP on SIR, currently applied (Decision R-ED-ED-2021-51 of 19 April 2021).

Pursuant to the SOP on SIR in force between 2014 and 2021, a SIR was to be considered an alert message informing about a Serious Incident (SI). According to paragraph 2.1 of the SOP on SIR approved in 2014 "*Serious Incident is an event or occurrence, natural or caused by human action, which 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 Incident also includes situations of possible violations of Fundamental Rights and of the European Union acquis or international law, particularly related to international protection international protection obligations and of the FRONTEX Code of Conduct (…)*".

The purpose of a SIR is to inform the FRONTEX Executive and Senior Management, the Member States, the FRONTEX MB and other relevant stakeholders about the occurrence of a Serious Incident falling within "FRONTEX Serious Incident Catalogue".

The 2014 SOP on SIR clustered the SIs into four main categories:

- Category 1 - Situations of high political and/or operational relevance especially with the potential to affect EU border management of one or more MS or Schengen Associated Countries, including crisis situations;
- Category 2 - Incidents occurring in FRONTEX activities/joint operations and not related to FRONTEX staff and/or other participants in FRONTEX activities;
- Category 3 - Incidents involving FRONTEX staff and/or other participants in FRONTEX activities;
- Category 4 - Situations of possible violations of Fundamental Rights or international protection obligations.

The 2014 SOP on SIR also clarified the roles and responsibilities for each actor. In particular it provided for an obligation on every participant to FRONTEX activities to report immediately to the FRONTEX Situation Centre (FSC), in accordance with the chain of command, any SI he/she was aware of, or involved in.

Once received a SIR, Senior Duty Officer of the FSC was in charge of its assessment, coordination of information exchange and nomination of a SIR Coordinator. The latter was responsible for internal follow up and the closure of the SIR in line with other applicable SOPs.

The 2014 SOP on SIR also stipulated that the role of SIR Coordinator within FRONTEX was to be assigned according to the category of the SIR. In this respect, any SIR categorized as Category 4 (Situations of possible violations of Fundamental Rights or international protection obligations) was to be assigned to the FRO, as SIR Coordinator, with no exceptions.

The vast majority of the tasks and responsibilities under the 2014 SOP on SIR were attributed to the FSC and to the SIR Coordinator. The role of FRONTEX Senior Management was limited exclusively to "*report relevant SI immediately to members of the Management Board*". No other involvement of the senior management was stipulated.

As reminded above, the 2014 SOP on SIR has been recently replaced with new SOP, in force from 20 April 2021 and applicable once all relevant Operational Plans are amended accordingly, with the agreement of the host Member States and Third Countries.

The incidents which are presented in this Final Report occurred before April 2021 and, therefore, were to be handled according to the 2014 SOP on SIR.

1.5.4 Definition of illegal pushbacks

As clearly indicated by the FRO Office in its report "*Pushbacks at the European Union's external borders: a tentative definition*", released in July 2020 (Annex 42), the term "**pushback"** is not a legal one and it is not defined in any EU legal text.

This term is commonly used, especially by media outlets, international and non-governmental organizations, and even by the Members of the European Parliament (MEPs), to refer to the controversial practice of intercepting third country migrants as they cross the land borders of a state or enter the territorial waters, and pushing them back into another jurisdiction.

Such a practice becomes **illegal** under international or EU law, as well as the European Convention on Human Rights (ECHR) of 4 November 1950 and its case-law, in two particular situations: firstly, when it breaches the principle of "non-refoulement" and, secondly, when it is inconsistent with the international law of the sea.

1.5.4.1 Principle of "non-refoulement"

The "**non-refoulement**" is a **fundamental right** enshrined in both international and EU law. It prohibits the return of individuals to territories where they may be at risk of persecution, torture or other ill treatment.

The 1951 Refugee Convention provides, at Article 33(1), that "*[n]o State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*". Article 33(1) applies not only to refugees but also to asylum-seekers irrespective of whether they have been formally acknowledged as refugees. The United Nations High Committee for Refugees (UNHCR) has affirmed the provision's extraterritorial application. In this respect, it applies regardless of the manner in which an act of return is qualified and it has been interpreted by the UNHCR as applying wherever states have effective control over persons seeking asylum or when the states' actions directly affect such persons.

Article 19(2) of the Charter of Fundamental Rights of the EU of 7 December 2000 establishes that "*[n]o-one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*". Article 19(1) prohibits collective expulsion, while Article 18 guarantees the right to asylum in accordance with the 1951 Geneva Convention and the 1967 Protocol. Member States are required to comply with the Charter when implementing EU law. In accordance with Article 52(3) of the Charter, Article 19(2) has the same meaning and scope as Article 3 ECHR and the latter provision as interpreted by the European Court of Human Rights (ECHR) constitutes the minimum standard of protection.

The External Sea Borders Regulation (Regulation EU 656/2014) at Article 4(1) enshrines the principle of *non-refoulement*. Article 4(3) requires the personnel of EU Member States taking part in a sea operation "*to identify the intercepted or rescued persons, assess their personal circumstances, inform them of their destination in a way that those persons understand […] and give them an opportunity to express any reason for believing that disembarkation in the proposed place would be in violation of the principle of non-refoulement*".

FRONTEX Regulation (EU) 2019/1896 at Article 80(1) states that FRONTEX shall guarantee the protection of fundamental rights in the performance of its tasks, in particular the Charter, the 1951 Convention and the principle of non-refoulement.

1.5.4.2 Duty to assist under international law of the sea

Article 98(1) of the United Nations Convention on the Law of the Sea (UNCLOS) provides that "*[e]very State shall require the master of a ship flying its flag […]:*

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him".

The '**duty to assist persons in distress**' applies to all ships which have reasonable means to provide salvage without endangering themselves. 'Distress' can been seen in the light of the 1979 Convention on Maritime Search and Rescue which defines a '*distress phase*' as "a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance."

UNCLOS was ratified by the EU by Council Decision 98/392. As a result, the EU carries all rights and obligations under UNCLOS which are within the competences transferred to it by its members.

In terms of when a **breach of the duty to assist** persons in distress takes place, this would happen when the authorities involved in the sea operations become aware that the vessels are unseaworthy and there is a risk of imminent danger to the passengers' lives. This could, for example, be the case where the boats are severely overcrowded with migrants and do not have sufficient propulsion to make progress towards a port, particularly if sea conditions are rough. If the authorities do not intervene in such circumstances or, even worse, create extra danger, for example by making waves, it can be argued there is a clear breach of the duty.

1.5.4.3 Liability for illegal pushbacks

Liability for illegal pushbacks can be incurred both by FRONTEX and Member States.

By virtue of Article 97 of the FRONTEX Regulation (EU) 2019/1896, the Agency is liable for any activities undertaken in accordance with the Regulation.

By virtue of Article 53(3) of the Charter of Fundamental Rights, EU law is required to guarantee the same level of protection as the ECHR. The result is that FRONTEX is under an obligation, long recognised under the ECHR, to take all reasonable measures to protect individuals from human rights risk the Agency knows or should know of.

FRONTEX's obligations are also reiterated at Article 80 of the FRONTEX Regulation 2019/1896 (whose content is equivalent to the Article 34 of previous FRONTEX Regulation 2016/1624), which requires the Agency to guarantee that human rights are complied with. FRONTEX, in other words, has to make reasonable efforts to ensure that all participants, not just its own staff, act in conformity with fundamental human rights. Reading in conjunction with the relevant ECtHR case-law, 'reasonable' means those measures that could have a real and concrete prospect of mitigating the harm without imposing a disproportionate burden on FRONTEX. This could cover, for example, communicating views to the host Member State through the FRONTEX Coordinating Officer (CO), withdrawing financial support, suspending or terminating a joint operation or positively influencing the course of action on the ground through informal advice.

The more persistent a human rights violation is, the more actively FRONTEX can be expected to take measures to prevent or stop it.

2. Investigative activities carried out and evidence collected

2.1 Investigative activities carried out

OLAF carried out the following investigative activities:

- Collection of information and documentation from FRONTEX;
- Collection and analysis of information from open sources;
- Collection and analysis of information from FRONTEX staff members and witnesses, including through questionnaires;
- Collection and analysis of information from the European Commission;
- Inspection of premises at FRONTEX with digital forensic operations (8-9 December 2020);
- Interviews of [redacted] witnesses (between 10 December 2020 and 31 May 2021);
- Digital forensics operations on the digital data collected during the inspection of premises and extracted from the devices work laptop of the interviewed witness;
- Operational Analysis of the digital data collected during the inspection of premises;

- Interview of [redacted] persons concerned (on 21 April, 13 July and 16 July 2021);
- Collection and analysis of information from the persons concerned;
- Analysis of all case material.

2.2 Evidence collected

General remark by OLAF: the relevant parts of the text of messages and emails hereinafter has been highlighted in **bold** and in *italic* font by OLAF for the sole purpose of this report.

2.2.1 Classification, handling of serious incidents, decisions taken by the persons concerned and follow up actions

a. SIR 11022/2020 (incident occurred on 10-11 April 2020)

Between 10 and 12 April 2020, a FRONTEX Surveillance Aircraft (FSA) deployed in [redacted] detected four rubber boats in distress, with around 250 migrants on board, moving from the [redacted] Search and Rescue Region ([redacted]) to the Maltese SRR. Maltese Authorities did not cooperate with FRONTEX in the search and rescue operations, nor provided FRONTEX with information about the exact locations of the boats following the detection by the FSA.

On 13 April 2020, at 12:34, [redacted] within the Situational Awareness and Monitoring (SAM) Division disseminated to several internal recipients, including [redacted] (Annex 136), a Situational Report updating on the incident (Annex 135). The report, in line with the information that the FSC had shared earlier, stressed that all the sighted rubber boats were heavily overcrowded with migrants not wearing lifejackets. The information collected by the FSC on 13 April 2020 revealed that two of the detected rubber boats arrived in Sicily.

On 13 April 2020 at 13:37, [redacted], sent a WhatsApp message to [redacted] to inform [redacted] about the difficult on-going situation (Annex 137). In particular, [redacted] stressed the lack of cooperation by the Maltese Authorities, refusing to provide to FRONTEX the coordinates of the migrants' boats**.** In addition the "*(…) boat that arrived in IT had new water bottles on board from MT; so MT* ***probably towed them towards IT****. I wonder too whether political level could put pressure on MT since this becomes a* ***human irresponsible situation***"**.**

On 14 April 2020 at 10:53, [redacted], wrote an e-mail to [redacted] and to [redacted], stressing the need to launch a Serious Incident Report and asking guidance from [redacted] about the categorization: "(…) *regarding the situation of migrant boats being monitored by Frontex in the past days and the issues reported earlier in respect to Malta, we consider the need to initiate a SIR. Remaining question is the categorisation of the SIR. Please see the explanation below and the two categories we see relevant with some explanation on procedure and consequences"* (Annex 136).

The two categories of SIR presented to [redacted] in the email were:

- Category 2 (Subcategory 1): Incident in Frontex activities with a high public or political interest;
- Category 4: Incident related to possible Fundamental Rights/international protection violation.

In the last part of [redacted] email, [redacted] clarified that in case of categorization of the SIR as Category 4, the FRO will be appointed as SIR Coordinator, tasked to gather information on the facts and concludes on findings (Annex 136).

OLAF notes that all the information and Situational Reports released by the FSC on the incident, as stressed by the above WhatsApp message sent by [redacted] to [redacted], highlighted strong indications of violations of fundamental rights (FR).

Immediately after receiving the email, [redacted] consulted with [redacted]. Then, [redacted] sent an email to [redacted] advising [redacted] to categorize the SIR as

Category 2 since *the facts appeared to have occurred outside FRONTEX operations*. [redacted] also suggested to keep a relatively neutral profile in the "discussions" between Malta and Italy (Annex 136).

Following the advice by [redacted], on 14 April 2020 at 12:48 [redacted] instructed [redacted] to launch the SIR (11022/2020) as Category 2 rather than Category 4 (as suggested by the FSC in the body of the email that [redacted] forwarded to [redacted] that same day at 10:53) (Annex 1).

Further information collected by the FSC revealed that, on 15 April 2020, the migrants on board of one of the detected rubber boats were disembarked in [redacted] by a [redacted] fishing vessel, after being previously assisted by a commercial vessel dispatched in Maltese SRR by the Maltese Authorities. 51 survivors and 5 corpses were on board.

On 4 May 2020, the FSC requested to [redacted] to reconsider the classification of the SIR and to have it coordinated by [redacted] as the additional information they collected indicated a Category 4 incident, involving potential violation of fundamental rights, rather than Category 2. [redacted] forwarded the request by the FSC to [redacted] seeking for guidance. On [redacted] turn, [redacted] forwarded the email to [redacted] suggesting [redacted] not to reclassify the SIR and have it coordinated by [redacted], as it had been suggested by the FSC (Annex 2). On the same day [redacted] instructed orally [redacted] not to change the classification of the SIR. In particular [redacted] did not "(…) *see the interest of changing the classification of events nor the added value for having* [redacted] *potentially overlapping with the judicial inquiries opened in Malta*" (Annex 3).

During [redacted] interview with OLAF on 16 July 2021 (Annex 4), [redacted] explained [redacted] decision to categorize (and maintain the categorization of) the SIR as Category 2 by referring, in particular, to considerations related to the geopolitical context, the political interest surrounding the incident, the fact that the incident occurred outside FRONTEX joint operations, and finally the ongoing judicial inquiry in Malta, which FRONTEX didn't want to hamper.

During [redacted] interview with OLAF on 13 July 2021 (Annex 21), [redacted] explained [redacted] did not remember having advised [redacted] on the categorisation, as this is usually not the task of [redacted], rather the responsibility of the business Unit (the FSC). With regards to the reclassification from Category 2 to Category 4, as requested from the FSC, [redacted] stated [redacted] had simply raised [redacted] doubts about the opportunity to reclassify, especially as there was no FRONTEX staff or assets involved in the incident which was detected outside FRONTEX operations area. Based on this, [redacted] assessed the case still qualified as a Category 2, not requiring any recategorization. However, [redacted] also added that "*(…) the case, indeed, could have been also classified as Category 4. The SIR system at that time was not fit for the purpose any longer as not in line with the additional FRONTEX surveillance capacities and tasks*" (Annex 21).

During [redacted] interview with OLAF on 21 April 2021 (Annex 5), [redacted] reported [redacted] frustration with regard to the decision of [redacted] not to re-categorize the SIR as the additional information provided by the FSC clearly pointed towards a Category 4 incident. [redacted] also confirmed [redacted] did not see any link between the possible re-categorization of the incident and the need to avoid any overlapping of inquiries or to make FRONTEX data available to judicial authorities in case of need, as [redacted] had justified [redacted] decision.

With regard to the categorization of the incident, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] reported to OLAF to have expressed [redacted] opinion in a telephone call with [redacted]. In particular [redacted] had "*presented my point of view during a telephone conversation with* [redacted]*. I did so in my personal way, which is not confronting but factual. However, I was clear and firm in presenting my opinion and my preference. My preference was CAT 4: an incident related to possible FR/international protection violation. This was in line with what I wrote in the WHATSAPP message*". The occurrence of the phone call is confirmed in the email [redacted] sent to [redacted] on 14 April 2020 at 12:48 to instruct on the categorization of the SIR (Annex 1).

With regard to the incident, during [redacted] interview on 25 March 2021, [redacted] reported to OLAF (Annex 49) that "*On 16th of April 2020, I sent an e-mail to FSC requesting for more details about this case, in particular whether a respective SIR has been launched*

*in this regard as well as whether the incidents could occur in the FRONTEX operational area. On 20th of April 2020 I received a reply from FSC that "a SIR was produced on 14th April 2020" and "**it is clear that at a certain moment the incidents involved** [redacted] **operational area**". Furthermore, despite my suggestion during a meeting with FSC to categorise this SIR as a FR-related (Category 4), on 5th May 2020 I received a reply from the [redacted] (FSC) informing that finally [redacted] decided on that day to maintain SIR 11022/2020 as Category 2. In my reply on the very same day, I still requested sharing with [redacted] all follow-up related to this SIR as it might involve potential violations of FR. (…) [redacted] was not included in the communication flow concerning the SIR and, therefore, in order to ensure the mentioned monitoring, [redacted] office needed to get direct contact with the SIR coordinator or the FSC"* (Annex 49).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation, dated 28 October 2021 (Annex 203), [redacted] did not provide specific comment on the categorisation of the incident, while [redacted] stressed how the applicable SOP on SIR dating back to 2014 was "*(…) clearly outdated considering the extensions of Frontex's mandate brought by Regulation 2016/1624 and 2019/1896 and its increased operational footprint. Built in silo, it was not designed to address the operational situations the Agency own assets were able to spot, which has more and more led the colleagues on duty (SAM) to seek guidance, without avoiding mistakes in proposed classification (ex of SIR 11022/2020)*"**.**

[redacted] did not make any specific comment on the matter in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), transmitted to OLAF on 1 November 2021.

OLAF observes that according to the SIR catalogue annexed to the Standard Operations Procedure on Serious Incidents Reporting (SOP on SIR) applicable at that time, **the correct categorization of an incident of political interest occurred <u>outside</u> FRONTEX activities (as argued by [redacted] and [redacted]) should have been Category 1 and not Category 2.**

OLAF also notes that **the SOP on SIR approved in 2014 and applicable at that time (as well as the SOP on SIR approved in April 2021), when referring to Category 4 incidents including situations of potential violation of FR or international protection obligations, do not limit the scope to incidents occurred under FRONTEX joint operations or activities only (as it is the case for Category 2 instead).**

[redacted] was thoroughly aware of the content and different categories of the 2014 SOP on SIR as, already at the end of 2018, [redacted] had requested the SAM Division for a revision of the SOP to bring it in line with the new operational reality of the Agency (see following chapter 2.3.6 below). Likewise, [redacted] was also involved in the revision process and, subsequently, was also aware of the different categories of the SIRs.

b. SIR 11095/2020 (incident occurred on 18-19 April 2020)

During the night between 18 and 19 April 2020, the FSA [redacted] detected (and video recorded) the activities of some Hellenic Coast Guard (HCG) assets while dealing with a rubber boat of migrants intercepted within the Greek Territorial Waters (GTW). In particular, the migrants were taken on board of one of the HCG vessels only to be subsequently transferred back to the rubber boat. The boat was then towed by an HCG asset to the [redacted] Territorial Waters ([redacted]) where it was left adrift with no engine at around 06:20 local time (Annex 6).

On 19 April 2020 at 15:17, [redacted] informed [redacted], via WhatsApp message, about the incident occurred earlier that day. [redacted] preferred not to comment on the facts via WhatsApp messages (Annex 7).

On the same day, at 16:42, [redacted] informed [redacted] via WhatsApp about the incident, which [redacted] labelled "(…) *un nouveau cas (bien plus) problematique*" (Annex 8). [redacted] forwarded to [redacted] a PowerPoint presentation, prepared by the SAM Division with some extracts of the video recorded by the FSA (Annex 8). [redacted] made it clear to [redacted] that the migrants on the boat had been taken on board of HCG vessel and then towed to the [redacted] where they were left adrift. [redacted] also informed [redacted] to have requested the SAM Division to classify the SIR Report as EU Classified Information (EUCI) at level of

RESTREINT UE/EU RESTRICTED. [redacted] agreed with the suggestion to classify the SIR as EUCI (Annex 8).

On 19 April 2020 at 19:07, [redacted] instructed [redacted] via WhatsApp message that, in case no FRONTEX assets at sea had been involved, the SIR was to be categorized as Category 2 and not "*yet*" Category 4 (Annex 8), leaving the door open to possible reconsideration. [redacted] also instructed that the FRONTEX Liaison Officer (FLO) in Greece had to get in contact with the Greek Authorities to gather some information.

Later, at 19:21, [redacted] sent to [redacted] another message showing that [redacted] disregarded the possibility to involve [redacted] in the handling of the SIR, exclusively or with another FRONTEX entity, as this could give the impression that only [redacted] follows the incidents: "*(…) je pense qu'il ne faut pas tout de suite nommer [redacted] ou pas exclusivement car sinon cela enlève toute possibilité au commandement de l'agence de faire passer ses propres messages au commandement grec et cela donne l'impression que seul [redacted] suit les incidents(…)"* (Annex 8) [Translation by OLAF: *I think that we should not immediately appoint [redacted] or not exclusively because otherwise it removes any possibility for the agency's command to pass on its own messages to the Greek command and it gives the impression that only [redacted] is following the incidents]*.

At 20:57, following an earlier phone conversation, [redacted] of the [redacted] clarified to [redacted] the seemingly clear violation of fundamental rights by the Greek Authorities, since the video recorded by the FSA "*(…) demonstrated that HCG had deliberately towed and abandoned into [redacted] Territorial waters a large number of migrants without life jackets, adrift on an overcrowded rubber boat and apparently without any means of propulsion*" (Annex 9).

Given the gravity of the facts, at 21:24, [redacted] sent a Whatsapp message to [redacted] suggesting the swift launch of a SIR, on which also [redacted], the [redacted], had agreed since "(…) *it is not something we can leave aside (…) Therefore the agency shall think about being pro active at the right level and right time (for now we are still collecting info and assessing)*" (Annex 7).

[redacted] replied at 21:41 informing that the "[redacted] *has asked me to task* [redacted] ([redacted] in Greece, note added by OLAF) *to check with* [redacted] *HCG if* [redacted] *has been made aware. Let's discuss tomorrow based on* [redacted] *feedback"* (Annex 7).

[redacted] was aware of the seriousness and sensitiveness of the incident. With a view to a meeting scheduled with [redacted] that afternoon, at 12:18 of 20 April 2020, [redacted] sent an email to [redacted], the [redacted] stressing the need to launch a SIR. [redacted] also made it clear that the incident required a Category 4 SIR, and informed [redacted] that [redacted] and [redacted] disagreed with [redacted] assessment: (…) *From my perspective cat 4 might be the most relevant <u>while</u> others <u>consider</u> we <u>should have the cat 2</u> (since <u>this allows us to keep control</u> – however from my perspective the matter is already widely spread amongst internal and externals). <u>More in person</u>*" (see Annex 10, underscore added by OLAF).

Despite [redacted] personal considerations, at 14:01 on 20 April 2020, [redacted] instructed the [redacted] to <u>draft a Category 2 SIR</u> (Annex 11).

Due to the lack of any relevant feedback from the FLO in Greece, on 22 April 2020 at 10:37 [redacted] sent a WhatsApp message to [redacted] stressing the urgency of the launch of a SIR, also as a way to protect the FRONTEX reputation: "*(…) I don't think we can wait much longer to launch SIR. (…) by waiting longer it will only be something that we are gonna be questioned about and looked upon. Content is known anyway. We also have to think about our reputation once it gets fully investigated (…)*" (Annex 7)

Finally, as per [redacted] instructions, on 22 April 2020 at 19:14 a <u>Category 2 SIR was launched</u> (and disseminated to several recipients, including [redacted]) despite all the images from the FSA and the assessment by [redacted] highlighted strong indications of potential violations of fundamental rights. <u>The [redacted] within [redacted] was appointed as SIR Coordinator.</u>

The initial SIR was recalled the same 22 April to be replaced, on 23 April 2020, with a SIR report with the same content but distributed to a more restricted number of recipients (this element will be addressed in the following chapter 2.3.2.e.).

On 5 May 2020 at 19:03, [redacted] distributed via email (Annex 12) to [redacted], [redacted] and [redacted], the conclusions of the Final SIR report concerning the SIR 11095/2020 which had been released by the [redacted] on 1 May 2020 (Annex 40). In particular, [redacted] highlighted that: (…) *According to the SIR Coordinator assessment and bearing in mind the sequence of events already detailed on the formal SIR notification; migrants were safe when on-board the Greek patrol boat and they were left in a distress situation when placed back in a rubber boat and left adrift with no propulsion. There is a strong indication that these facts could support an allegation of possible violation of Fundamental Rights or international protection obligations such as the principle of non-refoulement*"**.**

OLAF notes that, despite the conclusions above, [redacted] did not receive the Final SIR Report (Annex 204).

On 8 May 2020, [redacted] addressed a letter to the Minister [redacted] of Greece, asking for an internal inquiry, informing FRONTEX about the outcome (Annex 13). The Greek Minister replied to FRONTEX on 10 July 2020 (Annex 54).

With regard to the categorization of the SIR, during [redacted] interview [redacted] explained to OLAF that "*The categorization of the event was dictated by the fact that the executive management needed to collect information from Greek operational and political authorities. Differently, categorizing the case as Cat. 4 would have entailed that* [redacted] *would be in contact with the Greek authorities, possibly not seeking for the same information that the executive management needed. The geopolitical context, at that time, led us to consider that the case needed to be discussed with the highest level of Greek Authorities and the categorization as Cat. 2 would have served this purpose"* (Annex 21)*.*

With regard to the topic of the categorization, during [redacted] interview [redacted] confirmed to OLAF that "(…) *the input to categorize the SIR as Cat 2 came from* [redacted]*. At that time,* [redacted] *was not fully available as* [redacted] *was in* [redacted] *due to* [redacted]*. (…) as regards with* [redacted] *involvement in the assessment of the categorization, surely I did not involve* [redacted] *(in case, it would have been for* [redacted] *to possibly involve* [redacted]*) and I do not know if* [redacted] *talked with* [redacted]" (Annex 5)**.** [redacted] also recognised that [redacted] " **(…)** ***was not comfortable with a situation where the Agency was trying to covering an incident by categorizing it as Cat 2 instead of Cat 4. It appeared to me that the Agency was clearly trying to cover the Greek Authorities and I was not comfortable at all with this choice***" (Annex 5)**.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] commented not to remember if [redacted] eventually talked with [redacted], as the latter had proposed via message on 19 April 2020 at 21:41 (see above) since "(…) *I do not find back any further emails or text messages on this topic. I do remember however that in this period* [redacted] ***and*** [redacted] ***very often reacted very tensed about the reporting of alleged pushbacks.*** *They explained their vision repeatedly and referred to fake news, manipulation by NGO's, hybrid threats coming from* [redacted]*, the geo-political situation, etc."* (Annex 138).

During [redacted] interview with OLAF (Annex 4), [redacted] explained that [redacted] decision to classify the incident as Category 2 was based on the need to swiftly escalate the issue to the level of the competent Greek Minister. In [redacted] decision, [redacted] took into considerations the geopolitical context and the tensions between Greece and [redacted] which made it difficult to ascertain, in real time, whether the rubber boat in the FSA video was transporting migrants or infiltrated [redacted] forces or even terrorists posing a threat to the Greece national security. Subsequently, [redacted] had opted to instruct the [redacted] to classify the incident as Category 2 instead of Category 4 considering that:

- the incident involved a political interest;
- it was necessary to quickly ascertain the situation with the Greek Authorities;
- no FRONTEX assets at sea was involved;
- [redacted] should not be in charge exclusively of handling an incident that could have been links to the national defense of a MS;
- the SOP on SIR applicable at that time did not gave the possibility to nominate two or more SIR Coordinators for an incident.

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), transmitted to OLAF on 1 November 2021, [redacted] implicitly confirmed [redacted] decision to classify the SIR in a way to have it handled by a SIR Coordinator other than [redacted] as "*(…) assigning [redacted] as the exclusive coordinator was depriving the management of the Agency from the power to properly manage the Agency and the operations in relations with these incidents. This was a problem in "normal circumstances" but it would have become a disproportionate risk in times of geopolitical hybrid threats*" (Annex 106).

[redacted] did not make any specific comment on the issue in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203).

OLAF notes that:

- **the Serious Incident Catalogue, included in the SOP on SIR applicable at the time of the events, did not limit the categorization of an incident as Category 4 involving possible violation of fundamental rights only when FRONTEX assets were involved;**
- **categorizing an incident as Category 4, with [redacted] acting as SIR Coordinator, did not prevent the possibility for [redacted] to conclude on the need to send to the Greek Authorities a request for information, or a request for opening an internal inquiry, signed by [redacted];**
- **it happened in 2020 (SIR 12604/2020) that the Agency nominated two different SIR Coordinators: the ORD to coordinate from the operational perspective, and [redacted] to coordinate from the fundamental rights perspective.**

c. Open sources life-rafts incidents in April 2020

During the [redacted] Meeting on 15 April 2020, chaired by [redacted], [redacted] presented the Weekly Briefing Report of [redacted] Division (Annex 147). One of the point touched upon was the information, gathered from open sources, of migrants rescued by the [redacted] Coast Guard ([redacted]) on board of life-rafts. According to the [redacted] website, the rescues were the consequences of push-backs by the Greek Authorities who, on their side, claimed that migrants had never landed in Greece. The Weekly Briefing Report (mentioning the incidents above) was shared on 15 April 2020 at 10:17 am with several email recipients, including [redacted], [redacted] and [redacted] (Annex 148).

That same day, at 17:48, [redacted] sent via email (Annex 32) to [redacted] an *ad-hoc* analytical report headed "*Analysis on life rafts incidents reported by [redacted] Coast Guard*" (Annex 205). The report consolidated open sources information and pictures published by [redacted] and concerning alleged pushbacks, by the Greek Authorities, of at least 148 migrants who landed on Greek shores around Lesbos, Samos, Kos and Leros. The incidents allegedly occurred between 23 March and 4 April 2020. [redacted] suggested to share the report with [redacted] and [redacted]. The conclusions of the report pointed out the concern that the HCG might have been involved in illegal pushbacks and the cases of so called "*ghost landings*" were not reported in JORA (the FRONTEX Joint Operations Reporting Application where the MS Authorities register the incidents) for this very reason. The report also stressed that: "(…) *In case the allegations have ground, involving the Greek authorities in the incident, Frontex reputation might be heavily hampered, also considering the potential violation of fundamental rights of the alleged push-backs performed towards the [redacted] territorial waters since the end of March*" (Annex 205).

On 15 April 2020 at 22:12, [redacted] shared the report issued by [redacted] with [redacted] highlighting that "*(…) since this kind of information seems to return (I asked [redacted] to provide with other similar recent information, if any) there might be a possibility it is correct. Therefore or in such case, Frontex might face questions and reputational risk. I do not share this report with anyone else yet but obviously we need to consider and in such case with whom to share ([redacted] suggests [redacted] and [redacted] while I rather would remain in the phase of gathering more information about such potential similar incidents and the reliability of the*

sources, for now) (…) I do not share with [redacted] *at this moment in order not to overload* [redacted] *and anyway such info has been shared during the todays'* [redacted] *Briefing*" (Annex 33).

At 22:16, [redacted] informed [redacted] that [redacted] had escalated the issue and asked to verify the sources and add evaluation codes for each of them (Annex 32). [redacted] was provided with the report, updated as per [redacted] request, on 17 April 2020 at 12:13 (Annex 32).

On 16 April 2020 at 10:31, [redacted] sent a WhatsApp message to [redacted] flagging the email [redacted] had sent [redacted] the evening before (with which [redacted] forwarded the report by the RAU) with a view to have it forwarded to [redacted] as the latter had a high level meeting in Brussel and the information regarding alleged pushbacks by the Greek Authorities could be relevant (Annex 7).

At 10:36, [redacted] replied to [redacted] showing skepticism on the credibility of the alleged pushbacks reported by open sources due to a possible interconnection between [redacted] and the NGOs: "*I have my doubts on those so called push back and really consider that* [redacted] *and NGO's have common interests...*" (Annex 7).

Few minutes later, at 10:39, [redacted] replied to [redacted] showing [redacted] agreement as "*(…) We could probably see it as part of the hybrid attack we are under...*" (Annex 7). This message is in line with the narrative by [redacted] and [redacted], and, at least initially, endorsed by [redacted] too, for which Greece and [redacted] were under a hybrid warfare and it was FRONTEX duty to support Greece, an EU Member State, unquestionably.

This position was also confirmed, later in time, by another WhatsApp message, with the same tone, that [redacted] sent to [redacted] on 25 November 2020 at 13:10 stating that "*So called pushback" does not exist and cannot be judged on objective criteria*" (Annex 7). OLAF recalls that, on 25 and 26 November 2020, the 82nd meeting of the MB of FRONTEX took place.

During [redacted] interview with OLAF (Annex 5), [redacted] confirmed that "… *I have to admit that, at that time, I had more and more sympathy for* [redacted] *position about the relationship between Greece and* [redacted] *and the need by FRONTEX to support Greece as the country was in a kind of "war" with* [redacted]*. Also, Greece was the ultimate border with* [redacted] *and, without FRONTEX support, we could have witnessed thousands of migrants entering EU borders. I did understand the geopolitical context touched upon by* [redacted] *and the possible hybrid threat posed to* [redacted] *by* [redacted]*. At the same time, I also felt a lot of human sympathy for the migrants -especially when being put adrift without possibility to maneuver the vessel/float themselves- and the social dimension of the role of Agency in saving lives".*

On 18 April 2020, [redacted] tasked confidentially [redacted] to assess the content of the report issued on 15 April 2020 by [redacted]. This assessment was concretely performed by [redacted] within [redacted] ([redacted]), who concluded the allegations were credible: "*Considering the credibility of sources and involved authorities, but also the variety in reporting by various reputable media outlets under 3. , I consider the fact that GR authorities have and continue to either practice and/or tolerate push-backs to be very probable and not a mere current sign of* [redacted] *hybrid "warfare" ".* [redacted] finally suggested "*(…) that* [redacted] *report is forwarded to* [redacted] *with the recommendation to consider opening an investigation into the matter*" (Annex 34).

On 21 April 2020 at 13:34, [redacted] shared via email the report with [redacted], with [redacted] in copy (Annex 35). Immediately after, at 13:35, [redacted] informed [redacted] that the report had been shared with [redacted] and [redacted] and instructed that "*no further dissemination is to take place at this moment*" (Annex 97).

On 23 April 2020, [redacted] and [redacted] (together with [redacted]) were informed via email that another EU Agency, the Fundamental Rights Agency (FRA), had addressed a worried message to the Hellenic Coast Guard regarding "*(…) allegations of migrants and refugees arriving by sea to Greek waters and being forced back to* [redacted] *territorial waters*" (Annex 98). **OLAF notes that the allegations reported by FRA to the HCG did match for both content and timeframe with those presented in** [redacted] **report on life-rafts incidents.**

An additional confirmation that so called "*ghost-landings*" indeed occurred is to be found in an email exchange between [redacted] and [redacted] on 27 and 28 April 2020 (Annex 36). In particular, [redacted] was informed that [redacted] received information about incidents (landings) not reported in JORA but reported unofficially by FRONTEX deployed officers. When asked about those incidents, the Greek Authorities had denied any landing. To support the information, [redacted] also shared with [redacted] an email from [redacted] whereby, already on 2 April 2020, one of [redacted] sources had reported a recent landing, illustrated with a photo, which had no official recognition by the Greek authorities (Annex 37).

On 28 April 2020, [redacted] reiterated again to [redacted] [redacted] conclusion on the credibility of the allegations on possible pushbacks by Hellenic Authorities presented by [redacted] (Annex 155). In the attachment to the email [redacted] sent to [redacted], the [redacted] stressed that "(…) *Further [redacted]-received/forwarded allegations concerning EL push-back activities/concealing of landings appear sufficiently corroborated. It is strongly suggested to centralise all allegations of this sort within the Agency and ensure a proper evaluation, tasking only one entity (…)"* (Annex 156).

Similar allegations also appeared online on 20 May 2020 on the website [redacted]). The website published a report on a case of migrants, allegedly landing on the Greek island of Samos on 28 April 2020, who, the day after, were put on board life rafts by the Greek Authorities and towed to [redacted] Territorial Waters.

OLAF notes that, despite the assessment by two different FRONTEX entities ([redacted]) confirming the credibility of the allegations reported on open sources, referring to incidents occurring in the [redacted], no SIR was launched. OLAF recalls that it happened, even recently, that FRONTEX launched Serious Incidents Reports based on open sources (for example SIR 10026/2019, 10036/2019, SIR 13038/2020 and 10904/2021).

With regard to the matter in question, during [redacted] interview with OLAF (Annex 4), [redacted] reported to OLAF not to "*remember having thoroughly discussed with [redacted] on the topic. However, it is the period of time last year when [redacted]. The [redacted] took place on [redacted]. I do not even remember having discussed with, or received this report from anybody. (…) However, my assessment now is that indeed the information should have been shared with [redacted] and that a SIR was to be launched. This is surely not the same situation we witnessed under the SIR 11095, where the activity by the HCG could have had different interpretations (national security, hybrid threats, etc.). In this specific case, depicted by the [redacted] report, people were allegedly already present on the Greek shores. Despite the difficulty in properly assessing the reliability of the information sources, I would have considered this case suitable for a Cat 4 SIR"* (Annex 4).

With regard to this matter, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] recalled how [redacted] had informed both [redacted] and [redacted]: "*(…) I took all the necessary action within the remit of my roles and responsibilities. (…)* ***I shared the mentioned report immediately via email with*** [redacted] *(15 Apr. 2020). I wrote that "since this kind of information seems to return, …. there might be a possibility it is correct." And, "Therefore or in such case, Frontex might face questions and reputational risk. (…) I took the matter seriously. However,* ***given the reluctance expressed by*** [redacted]*, I took the maximum out of the reported information as possible, within the scope of my roles and responsibilities: (…)* ***I escalated the matter to*** [redacted]***, via*** [redacted]*, informally via WHATSAPP and formally via email dd. 15 Apr. 2020, herewith explicitly laying the responsibility with* [redacted]*.* ***I brought a summary of the report to*** [redacted] ***during the*** [redacted] ***Briefing*** *and shared the written Weekly Briefing Report, which includes the summary, also with* [redacted]*"* (Annex 138).

[redacted] also added that "*I do not entirely agree that the media information should automatically have led to a SIR process. The basis for which the 2014 SIR SOP was made is mainly about Frontex operational activities. Frontex activities are defined as "any activity coordinated or led by Frontex." (…) I have never interpreted that an assessment of media information is mandatory supposed to be followed-up via a SIR"* (Annex 138).

With regard to the last comment by [redacted], OLAF notes that the facts reported in this chapter do not refer generically to any media information, nor conclude that all open sources information should lead to the launch of a SIR. OLAF did refer to, and take into consideration, exclusively the open sources information that [redacted] described and assessed in [redacted] analytical report (Annex 205).

Neither [redacted] nor [redacted] provided any specific comments on the facts in question in their replies to the invitation for comments on the findings of the OLAF investigation.

d. Incident on 27 April 2020

During a mission started on 27 April 2020, the FSA [redacted] recorded, at 23:50 GMT (corresponding to 28 April 2020, 02:50 am local time in Greece) "*(…) a small fibre glass migrant boat with approx. 8 or 9 migrants on-board, being towed by a HCG vessel at* [redacted] *and accompanied by a smaller HCG vessel.* [redacted] *was instructed by* [redacted] *to continue on patrolling as requested by HCG being now in control of the situation*". The Mission Report 221/2020, dated 28 April 2020, of the FSA [redacted] (Annex 31) shows a picture of a small fibre glass boat being towed by an HCG asset, with another HCG vessel nearby.

The detected situation is identical (and close in time) to the one recorded by FSA [redacted] on 18-19 April 2020 and, later, on 4-5 August 2020 (see chapter e. below), leading the Agency to launch the SIRs 11095/2020 and 11934/2020.

The incident recorded by the FSA [redacted] was flagged to [redacted] on 4 November 2020. It was included among the incidents listed in the attachment to an email [redacted] received from [redacted] on 4 November 2020 at 13:26, concerning "Preparations and deadlines for the Extraordinary MB meeting of 10 November 2020". In particular, the incident of 27 April 2020 was flagged as "*relevant*" and "*not reported in JORA*" (Annex 86).

With regard to this incident, during [redacted] interview with OLAF (Annex 4), [redacted] stated not to be aware of this event as [redacted] was not informed. [redacted] also confirmed that "*To me, it is very similar to the event of 18-19 April 2020. Had I been informed I would have requested to launch a SIR so to address the Greek Authorities with a request for internal inquiry and clarifications*".

OLAF notes that this incident was not recorded in JORA by the Hellenic Authorities, nor FRONTEX launched any SIR.

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] admitted that "(…) *the incident has remained out of my attention and I even do not remember it. It was not flagged by* [redacted] *as a case identical to the one that we discussed and that was handled very thoroughly shortly before. It was not a case that we discussed as a potential alleged pushback. (…) There was no conscious intention to ignore the case; I simply made a mistake and have overlooked the case; it was amongst the many other information I was usually dealing with and in preparation of the MB. (…) FSA was not present during the entire duration of the incident and based on the information available during the FSA mission when spotting this incident there was no factual evidence concerning any irregular activity and FSA did not follow the sequence of events".*

OLAF does not have any written evidence suggesting an intentional disregarding of the incident above by [redacted].

e. SIR 11934/2020 (incident occurred on 4-5 August 2020)

On 5 August 2020 at 01:41 Greek local time, the FSA [redacted] sighted a migrant boat with approximately 30 people on board. The rubber boat was inside GTW and was being towed towards the [redacted] by a HCG asset. At the time of the sighting the convoy was located approximately 1,2 nautical miles inside the GTW (Annex 14).

At 10:40 a.m., [redacted] informed [redacted] about the incident. In [redacted] email, [redacted] stressed that "*(…) From a SAR perspective, the move makes no sense as towing an overcrowded fragile boat in the night towards the open sea is a situation that can seriously endanger the lives of the passengers. Our aircraft was immediately instructed to fly away*

from the scene by the Hellenic Coastguards [redacted]. It was sent to patrol over Greek land and then back and forth 9 times between 2 way points where no activity was ever observed (…)" (Annex 15).

At 14:20, [redacted] forwarded to [redacted] and to [redacted] the email [redacted] had received from [redacted] including two images, extracted from the video recorded by FSA [redacted], showing the HCG asset towing the overcrowded migrants rubber boat. In [redacted] email, [redacted] asked for guidance from [redacted] or [redacted] on the matter before instructing [redacted] staff, also making it clear that "*(…) the repetition of such kind of events becomes more and more difficult to deal with and to 'take up' with the involved staff. I can also not guarantee staff (also SNE's and sTM's) are not talking with their colleagues and national authorities. All in all a huge reputational risk for the Agency. Therefore we need, from my perspective, act upon by e.g. communicating our position to GR authorities and/or withdraw aerial surveillance (which is not a perfect option as it opens the question what we do with our other assets under the JO and similar events)"* (Annex 15).

At 23:42, [redacted] forwarded to [redacted] and to [redacted] the email from [redacted] stressing that "(…) *I thought it's* ***important and sensitive enough*** *to ask your guidance on how to proceed so that we can prevent the reputational risk from materialising..."* (Annex 24). The email also included two extracts of the FSA video.

At 23:44, [redacted] confirmed to [redacted] to have flagged the issue to [redacted]. However, OLAF did not retrieve any written trace of instructions or guidance given to [redacted] neither by [redacted], [redacted] or [redacted]

With regard to the email exchange above, during [redacted] interview [redacted] informed OLAF that "(…) *My email has to be seen in the context I expressed above: there was a clear reputational risk for the Agency. Cases of possible pushbacks had increased and I* ***felt the*** [redacted] ***did not want to investigate the cases thoroughly and, therefore, also to exclude*** [redacted] ***from accessing information related to the SIRs****. As I said, I did not feel comfortable with the situation, also internally to* [redacted]*. I could not ensure that staff members did not talk outside the Agency about these incidents. Therefore, I asked for guidance from* [redacted]" (Annex 5).

On 7 August 2020 at 06:11 a.m., [redacted] sent a reminder to [redacted], also informing that the Hellenic Authorities had recorded the incident in JORA as prevention of departure performed by the [redacted] Coast Guard ([redacted]). This was not in line with the FSA sighting as the incident occurred well within GTW and the towing was performed by a HCG vessel. Subsequently, [redacted] asked to [redacted] for [redacted] green light to launch a SIR (Annex 16).

At 07:58, [redacted] forwarded the email to the Cabinet ([redacted] and [redacted]) asking again for guidance in relation to initiating the SIR, while also recalling an earlier discussion about possible classification of the information "*(…) that doesn't take away the facts and sensitivity of course*" (Annex 16).

At around 13:50, despite the video recorded by the FSA suggested clear indications that the incident could entail violation of FR (as also highlighted by [redacted]), [redacted] instructed verbally [redacted] (Annex 140) that:

- a SIR was not yet to be launched pending [redacted] decision on returning from [redacted] leave;
- the FSA [redacted] was to be relocated out of [redacted];
- no information about the incident was to be shared, at that stage, with [redacted].

Few hours later, at 16:00, [redacted] gave via email the green light to [redacted] to initiate a SIR: "(…) *Given this situation, please initiate a SIR accordingly and in line with the existing SOP's, and in consultation with the relevant ORD colleagues*" (Annex 141).

On 7 August 2020 at 21:59 a Category 4 SIR 11934/2020 was released with an entity of the ORD Division ([redacted]) proposed as SIR Coordinator. The SIR was disseminated to several recipients, including [redacted], [redacted], [redacted], [redacted] and [redacted] (Annex 18). OLAF did not find written traces that any of the recipients raised any issue about the appointment of [redacted] as SIR Coordinator despite the categorization of the event as Category 4.

During [redacted] interview [redacted] confirmed to OLAF that "*(…) according to the SOP on SIR it should have been [redacted], however [redacted] requested to have it dealt by [redacted], of which I was very surprised*" (Annex 5).

In contrast with [redacted]'s statement, during [redacted] interview with OLAF on 13 July 2021, [redacted] denied having had any dealing with the incident and the following SIR as "*I was on [redacted] on that period. So I did not react. I guess the matter was dealt by [redacted] as also [redacted] was on [redacted]*" (Annex 21).

With regard to this matter, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] corrected the statement [redacted] made during the interview by recognising that "*I do not remember the exact circumstances under which I was instructed on how to go ahead. In my memory it was [redacted] (but I am not sure whether the person was [redacted] or [redacted]). I have no written evidence of this*".

Regarding the appointment of [redacted] as SIR Coordinator, during [redacted] interview with OLAF on 31 May 2021 (Annex 19), [redacted] (the [redacted]) confirmed that "*(…) [redacted] confirmed me [redacted] had agreed with [redacted] about the need to appoint [redacted] as SIR Coordinator. [redacted] also proposed me to reply to [redacted] that [redacted] considered [redacted] as best placed to act as coordinator for this SIR. I agreed with this proposal. [redacted] (…) stressed again [redacted] position for the SIR to be coordinated by [redacted] and not by [redacted] also due to a possible conflict of interest. (…) Therefore, according to (…) (on which I agree) it was clear that this SIR was to be coordinated by [redacted]. (…) I cannot explain why, after [redacted] had agreed with [redacted] for the SIR to be coordinated by [redacted], it eventually occurred that [redacted] was proposed as SIR Coordinator*". In support of [redacted] statement during the interview, [redacted] provided OLAF with a copy of an email exchange with [redacted] dated 13 August 2020 (Annex 20). This document is particularly relevant: [redacted] asked to [redacted] if the topic of the appointment of the SIR Coordinator for the SIR 11934/2020 had been discussed during the weekly [redacted] Briefing (chaired by [redacted]). [redacted] stressed that "*During our initial talks with [redacted] on the case, [redacted] proposed to put [redacted] in that position. From our side in [redacted] this is a sensible idea, however, knowing the possible sensitivities, this would call for your verification. But, it should not be [redacted] (as mentioned in the below mail), given a possible conflict of interest*" (Annex 20). [redacted] replied to [redacted] stating that *"This topic was not mentioned during [redacted], and I guess it was because of the sensitivity, as in a previous case [redacted] **was not happy to have such discussion during [redacted]***".

OLAF notes that the applicable SOP on SIR stipulated that Category 4 SIRs were to be assigned to [redacted] as SIR Coordinator, with no exceptions.

As stressed by [redacted] during [redacted] interview on 25 March 2021 (Annex 49), **OLAF also notes the consequences for an incident with potential violations of fundamental rights or international protection not being dealt by [redacted], but by other FRONTEX entities: the SIR Coordinator might not address the FR component of the case in a proper and complete way.**

With regard to the exclusion of [redacted] from the handling of the SIR 11934/2020, during [redacted] interview with OLAF, [redacted] confirmed that "(…) *at that time, based on the picture and information we had and the images we saw, it was a common belief within the Agency, especially SAM Division, that we were been confronted with "illegal pushbacks". This also increased my stress level in dealing with situations that **I could consider illegal but which [redacted], in consideration of the geopolitical dimension, wanted to cover and do not allow [redacted] to investigate***" (Annex 5).

With regard to the incident under the SIR 11934/2020, during [redacted] interview with OLAF (Annex 4), [redacted] explained that "*I did not follow this specific incident, therefore I do not know why it was decided to assign it to [redacted] as SIR Coordinator nor why it was not assigned jointly to [redacted] and to an ORD entity.(...) I do not remember to have been even informed as I was on [redacted] (as I explained before). I think the issue was dealt by [redacted]. I do not even remember having been flagged the sensitivity of this incident either*".

In this respect OLAF recalls the email that [redacted] sent to [redacted] at 23:42 on 5 August 2020, informing [redacted] about the incident and asking for [redacted] guidance (Annex 24). In

addition, on 8 August 2020 at 08:14 a.m., [redacted], wrote an email to [redacted] forwarding the updated report on SIR 11934/2020 (Annex 17). In email ([redacted]), [redacted] referred to the incident "(…) *which I told you about few days ago* (…)". [redacted] committed to keep [redacted] posted about any developments. [redacted] replied to [redacted] on 10 August 2020 at 09:30 a.m. thanking [redacted] for the information. Few minutes later, at 09:33 a.m., [redacted] replied to inform [redacted] that [redacted] had talked with [redacted] and that they were preparing a detailed report (Annex 17).

On 24 November 2020, the BMD Office sent an email to [redacted], with [redacted] in copy, attaching a word document that provided detailed information about some SIRs of 2020, including the SIR 11934/2020 (Annex 87). The email was intended to provide a reply to a request by the LIBE Committee. The word document clearly showed that [redacted] had not been appointed as SIR Coordinator for SIR 11934/2020 and that, differently from SIR 11095/2020, no letter had been sent to the Greek Authorities (Annex 88). The content of the email clarifies that it was prepared based on [redacted] instructions and that it was intended to be shared with [redacted] for [redacted] information.

The different documents referred to above confirm that [redacted] had been informed, in writing and orally, from two different sources about the incident which occurred on 4-5 August 2020. [redacted] was included in the list of recipients of the Formal SIR 11934/2020 disseminated via email by [redacted] on 7 August 2020 showing that [redacted] had been assigned to [redacted] despite being a Category 4 SIR. Finally, the email from the BMD Office referred above also confirms that, at least in November 2020, [redacted] was aware that no official request for information/clarifications had been sent, until that date, to the Hellenic Authorities.

On 19 February 2021, the SIR Coordinator sent to [redacted] the SIR closing message (Annex 22). In [redacted] email, [redacted] stressed that "*(…) it cannot be excluded that the incident has characteristics of a case of an unprocessed return and violation of the principle of non-refoulement".* As a way forward, [redacted] proposed "*To consider addressing HCG with an official letter requesting to inform Frontex on any inquiry that were conducted internally following the incident (and its findings.)*" (Annex 22).

On 22 February 2021, [redacted] endorsed the way forward proposed by [redacted] (Annex 139). **However, OLAF is not aware of any formal letter addressed to the Greek Authorities.**

With regard to the follow-up with the Greek authorities, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] stated that "*The lack of addressing to HCG in other words was either a misunderstanding between the two divisions (ORD and SAMD) or an omission by ORD*" as, in previous occasions of letters sent to the Greek Authorities in relation to SIRs, the letters had been prepared by the ORD Division (Annex 138).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] stated that *"As soon as the FRALO working group (created by the Management Board) started its investigating work in November 2020 about allegation of pushback in [redacted], I have not interfered anymore in the ongoing SIR cases that were not closed in February 2021. In addition, OLAF had also started its own investigations. My understanding was that I had not to handle retroactively in February 2021 SIR cases that had been under investigation by OLAF and/or FRALO working group for several weeks or months such as SIR 11934/2020".*

OLAF does not agree with the justification expressed by [redacted]. Had [redacted] had doubts about the correct way to move forward following the conclusion of the SIR 11934/2020, [redacted] could have addressed specifically the WG FRaLO or OLAF (just as [redacted] did in relation to the digital data received by the [redacted] Authorities, discussed later in this report). OLAF did not receive any such request from [redacted] nor is OLAF aware of any request for guidance to the WG FRaLO.

f. Relocation of the FSA [redacted] following the incident on 4-5 August 2020 (SIR 11934/2020)

In [redacted] email to [redacted] on 5 August 2020 at 14:20 reporting the incident occurred that night (Annex 15), [redacted] added a personal reflection which implied the possibility to withdraw the aerial assets deployed in [redacted]: "*Therefore we need, from my perspective, act upon by e.g. communicating our position to GR authorities and/or **withdraw aerial surveillance** (which is not a perfect option as it opens the question what we do with our other assets under the JO and similar events)".* However, [redacted] left it to [redacted] and to the Cabinet to decide.

On 7 August at 07:58 a.m., [redacted] solicited [redacted] for instructions from [redacted] on the release of the SIR (Annex 16).

At 11:53 a.m., [redacted] wrote an email to [redacted] within [redacted], asking for a short update report regarding the needs and priorities for aerial surveillance in the Central Mediterranean. The report was intended to be used by [redacted] for planning the short and mid-term deployments, in consultation with the ORD. The report was considered particularly urgent as [redacted] asked for a feedback by the 16:00 of the same day (Annex 25).

OLAF recalls that already on 5 August 2020, even before having escalated the incident to the Cabinet, and two days before requesting the report to [redacted], [redacted] had anticipated verbally [redacted] that FSA [redacted] was to be relocated out of [redacted] (Annex 140).

The report "*Analytical Assessment on the Reinforcement of aerial assets in the Central Mediterranean*" (Annex 26) was provided to [redacted] on 7 August 2020 at 15:58. At 17:28, [redacted] forwarded the report to [redacted] asking [redacted] to forward it to [redacted] (Annex 25). In [redacted] email, building upon the assessment by [redacted], [redacted] proposed to withdraw the aerial asset working under the Joint Operation (JO) [redacted] to be redeployed in other regions in [redacted]. The relocation appeared to be so urgent that [redacted] proposed it to occur, had [redacted] wished so, during the following weekend. In the email [redacted] recognized that "*(…) Given the ongoing [redacted] in Greece my proposal is somewhat unusual as I propose to [redacted] that we withdraw the current aerial asset in Greece for the time being*" (Annex 25).

At 17:51, [redacted] forwarded [redacted]'s email to [redacted], including the attached assessment, asking for [redacted] decision on the matter (Annex 25).

On 17 August 2020, during the [redacted] Briefing, [redacted] gave [redacted] green light for the relocation of the FSA: "*On additional note, and due to the increased migration incidents in [redacted] and Central Med, if there is a need to beef up air surveillance there, [redacted] is in favour of redeploying [redacted] or planes we have to the Central Med region (Italy or Malta) to support activities in the region"* (Annex 146).

OLAF notes that, eventually, the FSA [redacted] was relocated to the Central Mediterranean (Italy) one month later, on 7 September 2020.

The relocation of the FSA [redacted] happened the day after the termination of the [redacted], on 6 September 2020 (see more below). Elements let to consider that this circumstance was not related to the decision to terminate the [redacted]:

- the relocation could not have occurred immediately after [redacted] took the decision (17 August 2020) since, as clarified by [redacted] (at the time of facts, [redacted]), the relocation of an aircraft requires at least 2 weeks notice pursuant to the contract with the service provider due to "*some flight clearance and crew relocation also involved*" (Annex 144);
- the Covid-19 pandemic further slowed down the procedure of relocating the aircraft to Italy.

OLAF notes that, during the inspection of the office of [redacted], the OLAF investigators retrieved a copy of a Briefing Note on "Use of FRONTEX aerial surveillance assets", dated 16 November 2020, showing a handwritten note on the back of the last page reading: "***<u>We have withdrawn our FSA some time ago, so not to witness…</u>***" (Annex 27).

During [redacted] interview (Annex 5), [redacted] confirmed to be the author of the note which [redacted] wrote, most likely, while attending the meeting of the [redacted] of FRONTEX on 25 November 2020, during the discussion concerning the establishment of the sub-group of the [redacted] that would investigate the interpretation of EU regulations' provisions related to operational activities at sea and the "hybrid threats" to Member States national security at external borders. [redacted] also reported to OLAF to have shown the note to [redacted] of the ORD or the CBD Divisions (normally sitting close to [redacted] during [redacted] meetings) as a cynical remark referring "(…) ***to the Frontex approach to avoid witnessing alleged push-back, in this case by actively withdrawing our aerial surveillance from the region***" (Annex 29).

During [redacted] interview with OLAF (Annex 5), with regard to the content of the note, [redacted] further explained that "*(…) I touched upon the possibility of withdrawing the aerial surveillance, as a possible option, also as a way to give a signal to the Greek Authorities with a view to the content of Article 46 of Frontex Regulation. (…)* ***the withdrawing of aerial surveillance served the purpose for FRONTEX to avoid witnessing incidents and alleged pushbacks by Greece, so avoiding to have to deal internally at the Agency with sensitive cases****. Personally, the solution was good for me as I was in the middle of two different and opposite demands:* [redacted] *wanted to cover possible irregularities by Greece and my staff wanted to deal with those cases in full compliance with the SOP*".

[redacted] also clarified to OLAF (Annex 28) that "*(…) the decision to reallocate the FSA has been taken by* [redacted]*. (…) this was not the first occasion that the Agency witnessed a potential pushback by the Greek authorities. We had e.g. such case in April 2020 and at that time and afterwards, the event was discussed between* [redacted] *and me.* [redacted] *had already indicated that the Agency would prefer not to witness such cases of alleged pushbacks and* [redacted] *had already inquired whether we needed an aerial asset in this region. (…) Apart from that the* [redacted] *and* [redacted] *had already indicated that the Greek authorities were not using the aerial asset to its maximum contractual capacity (flight hours foreseen) which would create budgetary problems. In this sense, the report by* [redacted] *was more meant as a confirmation of a situation that was known amongst* [redacted]*,* [redacted]*, managers in* [redacted]*,* [redacted] *and me. I did not have to wait for the written report by* [redacted] *to know what the situation was".*

[redacted] also added that "*From my perspective, the potential withdrawal of the aerial asset could serve multiple goals: (…) As indicated by* [redacted] *during our bilateral talks: the prevention to witness incidents of potential pushbacks by the Greek authorities. Such idea was discussed also in the context of what we (*[redacted]*,* [redacted]*,* [redacted] *and me) considered the geo-political situation that Greece was in with* [redacted] *being considered as a state that misused the migrants to put pressure on Greece and Europe. The* [redacted] *indeed initiated the idea to withdraw aerial assets from Greece from that perspective. This idea circulated earlier than the case here under question (SIR 11934/2020 dd. 7 August 2020) and therefore my instructions to* [redacted] *and consultation with* [redacted] *were aligned with this*" (Annex 28).

The same considerations were also expressed by [redacted] in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138): "*The assessment was needed to formally document the decision. (…) The fact that we found additional justification (the underuse) was also welcomed, therefore.* (…) ***I found that the discussed idea to withdraw the aircraft, was used in a cynical way:*** [redacted] ***and*** [redacted] ***wanted to prevent us observing any further potential alleged pushbacks****. (…) My suggestions were not used to discuss what was in my opinion really at stake: the credibility of the Agency and the pushbacks being effectively witnessed. Consequently, my writing needs to be interpreted in this way: I was frustrated and became cynical from being ignored. The feeling I had was that I -again- suggested to* [redacted] *what I thought would be the right thing to do for the Agency but -again- it was being ignored. I wrote this therefore down and shared my frustration with a colleague (…)"* (Annex 138).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] limited [redacted] clarification to stressing that "*Reallocation of Frontex Fixed Wings Aircraft from one operational (for example Greece) to another one (for example*

[redacted]*) is common in order to face competing operational needs in a context of shortage of aerial surveillance means".* [redacted] did not comment on the content of the handwritten note referred above.

[redacted] did not make any specific comment on the relocation of the FSA in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203).

g. SIR 11860/2020 (incident occurred on 27 July 2020)

On 28 July 2020, the Captain of the Danish Helicopter "[redacted]" deployed under the JO [redacted] submitted a SIR to the [redacted]. The SIR reported the detection, on 27 July 2020, by the Danish asset, of a rubber boat with approximately 25 migrants on board within Greek Territorial Waters (GTW). Allegedly, the Coordinator at the International Coordination Center (ICC) had requested to the Danish asset crew to change the reported coordinates of the detection in order to indicate that it occurred outside the GTW.

On 29 July 2020 at 09:33 am, [redacted] informed the [redacted] of [redacted] Sector that [redacted] had talked with the Media and Public Relation Office and with [redacted] and that a Category 4 SIR was to be launched swiftly. [redacted] would inform [redacted] (Annex 145).

The same day, 29 July 2020, at 16:10, [redacted] released via email the Category 4 Formal SIR (11860/2020). An entity within the ORD Division ([redacted]) was designated as SIR Coordinator (Annex 30). [redacted], [redacted] and [redacted] were included among the email recipients, likewise [redacted]. No one of the recipients raised, at that moment or later on, any issue in relation of the designation of the SIR Coordinator.

With regard to the appointment of [redacted] as SIR Coordinator, during [redacted] interview with OLAF on 27 January 2021 (Annex 209), [redacted] clarified that "*With respect to SIR 11860/2020, [redacted] proposed [redacted] as coordinator, despite the instructions provided for by the draft 2019 SOP which state that Cat 4 SIR are assigned to [redacted] as coordinator, because it aligned with previous strategic instructions provided by [redacted] and [redacted] via emails in relation with SIRs 11022/2020 and 11095/2020. (…) I tried to strike a balance between my professional responsibility to share information relevant to fundamental rights with [redacted], and execute instructions under high pressure as implied by previous decisions by [redacted] which led me to understand they were not in favour with [redacted] being involved in collecting information of an operational nature in relation to SIRs covering the alleged violation of fundamental rights"* (Annex 209).

During [redacted] interview with OLAF (Annex 4), [redacted] confirmed [redacted] had been informed about the incident by [redacted] "*I was on leave when the incident occurred.* [redacted] *was in charge at that moment. I remember [redacted] talked to me about another incident, involving a Danish Helicopter (SIR 11860/2020) (…)*"**.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106) [redacted] reiterated [redacted] awareness of the incident stating: "*About SIR 11860/2020 I have to add that I requested the Agency's services to prepare a letter to be signed by [redacted] to ask the Greek authorities to launch an investigation because during my annual leave I could read that there was a disagreement between the Danish crew, the Hellenic Coast Guard and some other members of the International Coordination Centre about the proper classification of that incident".*

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] informed that [redacted] "*was in holiday from [redacted] July 2020. I was not involved in the decision-making process regarding the categorization and the assignment of the Coordinator*"**.**

[redacted] did not make any specific comment on the categorization of the SIR 11860/2020 in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203).

OLAF notes that the applicable SOP on SIR stipulated that Category 4 SIRs were to be assigned to [redacted] as SIR Coordinator, with no exceptions.

As stressed by [redacted] during [redacted] interview on 25 March 2021 (Annex 49), **OLAF also notes the consequences for an incident with potential violations of fundamental rights or international protection not being dealt by [redacted], but by other FRONTEX entities: the SIR Coordinator might not address the FR component of the case in a proper and complete way.**

Findings on 2.2.1. paragraphs a. to g.: within their respective competences, managerial roles and responsibilities, [redacted], as [redacted], [redacted] as [redacted], and [redacted], as [redacted], did not ensure compliance with the applicable Standard Operating Procedures on Serious Incident Reporting while dealing with some serious incidents involving (to a different extent) FRONTEX. In particular, the decisions, advice and actions taken resulted in:

- **[redacted] not being informed at all or being excluded from the assessment and handling of some incidents despite a clear FR component;**
- **the lack of initiation of Serious Incident Reports for some incidents, even when two different Units had assessed the allegations as credible and seriously entailing a possible violation of FR with a concrete reputational risk for FRONTEX.**

They also decided to relocate the FSA [redacted] to another operational area of activities; one reason for doing so appears to have been to avoid witnessing incidents in [redacted] with a potential FR component.

h. SIR 11095/2020 and 11934/2020: lack of follow up actions

1) As reported sub point b. above, the SIR 11095/2020 was launched following the sighting by the FSA [redacted], on 19 April 2020, of some HCG assets dealing with a rubber boat of migrants intercepted in the GTW. After having been taken on board of one of the HCG vessels, the migrants were, later, transferred back on the rubber boat and towed by an HCG asset to the [redacted] where it was left adrift at around 06:20 am (Annex 6). [redacted] ([redacted] – [redacted]) described to [redacted] the sighting as following: "*This sequenced video stream has demonstrated that **HCG had deliberately towed and abandoned** into [redacted] Territorial waters a large number of migrants **without life jackets**, adrift on an **overcrowded rubber boat** and apparently **without any means of propulsion***" (Annex 9).

   OLAF notes that the Final SIR Report 11095/2020 released by the SIR Coordinator ([redacted]) on 1 May 2020 (Annex 40) concluded that "*(…) taking into consideration the complexity of the situation where migrants were safe when they were on board the patrol vessel and then placed back in the rubber boat, put again in a distress situation and left adrift without means of propulsion (the engine was missing on the rubber boat when it was left drifting in the [redacted]) **there is a strong believe that presented facts support an allegation of possible violation of Fundamental Rights or international protection obligations such as the principle of non-refoulment**".*

   Concerning the incident underlying the SIR 11095/2020, under the FRONTEX Joint Operations Reporting Application (JORA), the SIR is linked to the incident nr. 406188 (Annex 38). The JORA incident nr. 406188 mentions the following HCG assets as involved in the incident: [redacted], [redacted], [redacted] and [redacted] (Annex 45).

   OLAF notes that the HCG asset [redacted] is among the assets of the host MS co-financed by FRONTEX under JO [redacted] pursuant to the Grant Agreement 2020/49/FDU signed on 29 January 2020 and covering the period 01 February – 22 April 2020 (Annex 39). More precisely, the Greek Authorities reported to FRONTEX, for co-financing settlement purposes, the deployment of the HCG [redacted] exactly on 18 April 2020. The same conclusion can be inferred from the page "Interception" under the JORA

incident no. 406188 (Annex 150) where the box "*Frontex co-financed/deployed assets involved in OTHER ACTIVITIES*" is ticked.

OLAF acknowledges that another incident is recorded in JORA as having occurred on 19 April 2020, the incident no. 406189. However, the summary field of the JORA incident 406189 mentions a Bulgarian OPV and a HCG CPV as being involved in the incident (Annex 151). This circumstance does not match with the above referred mission report of the FSA [redacted] related to the incident under SIR 11095/2020 (Annex 6).

The [redacted] reported to OLAF that "*It cannot be conclusively stated that JORA incident report nr. 406188 can be linked without any doubt with SIR 11095. It cannot be conclusively ruled out that based on the available information (…) the incident reported as JORA 406188 and 406189 concern the same migrant boat or two different migrant boats*".

However, OLAF notes that there is no other incident recorded in JORA, but the incident n. 406188, which, due to the timeframe, the assets involved and the description of the events, can be linked to the incident under SIR 11095/2020.

It follows that, pursuant to the information recorded in JORA, it appears that an asset co-financed by FRONTEX ([redacted]) was involved in the incident underlying the SIR 11095/2020.

However, the chapters 6, letter a), and 9, letter a), of the Final SIR Report 11095/2020 mentions that the "(…) *HCG patrol boat involved in the incident is not co-financed by Frontex*" (Annex 40). A similar conclusion was reached during the works of the WG FRaLO (Annex 47, paragraph 3.1). Even recently, the explanatory note no. 4472 of 23 April 2021 ("*State of play of five incidents reviewed in the final report of Management Board working group on fundamental rights and legal and operational aspects of operations*") which FRONTEX presented to the Management Board during its extraordinary meeting of 7 May 2021, stated that "(…) *no Frontex asset or Frontex co-financed asset was involved in the Serious Incident*" (Annex 43).

With regard to the video of the incident recorded by the FSA [redacted] on 19 April 2020, OLAF sought the assessment of an expert on the international law of the sea and the legal provisions applicable to Search and Rescue operations at sea (Annex 41). According to the expert **the manoeuvres and the conduct by HCG assets and personnel, as shown in the video footages, were unlawful as violating the obligation to render assistance and, in addition, exposing the life of the migrants to concrete danger.** In particular, the expert noted that "*(…) It is evident from the beginning of the video that the small inflatable boat (henceforth 'the rescued boat') **was in a condition of distress**. The rescued boat was carrying approximately 30-40 people in a small-craft homologated for not more than 10 people, sailing in the middle of the night without lights. (…) the rescue units left the rescue boat, deprived of its engine (arguably to prevent it from going back), stranded at sea, overloaded with people who reasonably were not in possess of any food or water, in the freezing open sea of a night of April, without any other vessel at sight for miles and miles (as the video-footages clearly show). (…) In conclusion, **the rescue boat was in a condition of clear distress** when it was first spotted by the rescue units. Therefore, the rescue units had the obligation to render assistance to that vessel (…). **The rescue units manifestly violated such an obligation, and instead exposed the rescued boat to even further danger***" (Annex 41).

2) As reported sub 2.3.1.e. above, the SIR 11934/2020 was launched following the sighting by the FSA [redacted], on 5 August 2020, of a migrant boat with approximately 30 people on board, around 1,2 nautical miles inside the GTW. The rubber boat was being towed towards [redacted] by a HCG asset (Annex 14).

[redacted] informed [redacted] about the sighting stressing that "*(…) From a SAR perspective, the move makes no sense as **towing an overcrowded fragile boat in the night towards the open sea is a situation that can seriously endanger the lives of the passengers**. Our aircraft was immediately instructed to fly away from the scene by the Hellenic Coastguards [redacted]. It was sent to patrol over Greek land and*

then back and forth 9 times between 2 way points where no activity was ever observed (…)" (Annex 15).

OLAF notes that the handling of the SIR 11934/2020 was closed on 19 February 2021 with a Final SIR Report (Annex 22) by the SIR Coordinator, [redacted], indicating that the HCG asset [redacted], involved in the incident, was co-financed by FRONTEX.

In [redacted] SIR closure message, the SIR Coordinator concluded that "*Based on the video footage, the reconstructed sequence of events based on the actual times and locations, and the incoherent statements provided in the JORA verification process by the Hellenic Coast Guard,* ***it cannot be excluded that the incident has characteristics of a case of an unprocessed return and violation of the principle of non-refoulement***" (Annex 22).

In addition the SIR Coordinator also suggested, as a way forward, "*(…) To consider* ***addressing HCG with an official letter*** *requesting to inform Frontex on any inquiry that were conducted internally following the incident (and its findings)*" (Annex 22).

The Final SIR report, with the assessment of the incident and proposed way forward by [redacted], was sent via email to (among others) [redacted], [redacted], [redacted] and [redacted] on 19 February 2021 at 16:43 (Annex 23). [redacted] endorsed the proposed way forward on 22 February 2021 (Annex 139)

As reported at paragraph e. above**, no formal request for information or clarification was sent to the Hellenic Authorities in relation to this incident.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] stated that "*As soon as the FRALO working group (…) started its investigating work in November 2020 about allegation of pushback in [redacted], I have not interfered anymore in the ongoing SIR cases that were not closed in February 2021. In addition, OLAF had also started its own investigations. My understanding was that I had not to handle retroactively in February 2021 SIR cases that had been under investigation by OLAF and/or FRALO working group for several weeks or months such as SIR 11934/2020".*

OLAF observes that had [redacted] had doubts about the correct way to move forward following the conclusion of the SIR 11934/2020, [redacted] could have addressed specifically the WG FRaLO or OLAF (just as [redacted] did in relation to the digital data received by the [redacted] Authorities, discussed later in this report). OLAF did not receive any such request from [redacted] nor is OLAF aware of any request for guidance to the WG FRaLO.

OLAF gathered the assessment of the expert mentioned at point 1. above also in relation to the video of the incident recorded by the FSA [redacted] on 5 May 2020 (Annex 41). According to the expert: "*The video shows how the rescue units (…) did not properly discharge their duty to render assistance to people in distress at sea (…). The fact that the small inflatable boat (…) carrying about 40 people in a small-craft homologated for not more 10, was towed in evident bad sea conditions, by a Coast Guard tender, despite the presence of an empty big Coast Guard ship a few meters away, did* ***endanger the safety of life of the people on board the rescued boat***".

During [redacted] interview (Annex 4), [redacted] informed OLAF that [redacted] had "*(…) not watched the video related to SIR 11095 totally. I have seen only part of the footage. It was difficult for me to recognize all the actions. With regards to the video concerning the SIR 11934, I do not remember to have seen the video. (…) I found the footage I have seen disturbing and this is the reason why I addressed the letter to the Greek Minister [redacted] as I thought I had the duty to escalate the matter to the highest level".*

3) In the framework of the works of the WG FRaLO, a meeting was held on 12 February 2021 (Annex 44). The meeting was attended, among others, by a representative of the HCG and by representatives of FRONTEX (notably [redacted], [redacted], [redacted] and [redacted]).

- In relation to the SIR 11095/2020, according to the minutes of the meeting (Annex 44), the HCG representative stated that: "(…) *the migrants were taken aboard HCG coast patrol boat ("CPB")* [redacted] *for individual assessments. (…) HCG informs that, during the entire incident, seas were calm and the RIB was seaworthy with a functioning engine. (…) HCG reiterates that the RIB was at all times seaworthy and never under the control of the HCG and that a HCG ship would never tow a crowded rubber craft. HCG insists that the RIB returned to* [redacted] *territorial waters on its own volition, where it was intercepted by* [redacted] *and escorted to shore.* [redacted] *asks whether HCG observed* [redacted] *assuming coordination of the RIB – HCG responds that there were two* [redacted] *monitoring the events, these then approached the RIB when it entered* [redacted] *territorial waters and accompanied it to the* [redacted] *coast*"**.**

  OLAF notes that:

  - the HCG CPB [redacted] is not listed in JORA among the HCG assets which were involved in the incident 406188 (Annex 45) but under the assets involved in the incident 406189 (Annex 151) which, as mentioned at point 1) above, **does not match** with the content of the SIR 11095/2020;
  - the video recorded by the FSA at 23:38:04 of 18 April 2020 shows the rubber boat with an engine placed at its back, while around one hour later, at 00:52:22 of 19 April, the images show the migrants rubber boat from above, revealing that **the engine is no longer present** neither at the back nor inside the boat, where only few life rafts are visible;
  - the statement by the HCG representative **does not match** with the content of the relevant mission report n. 192/2020 of the FSA [redacted], as well as the video footage of the incident, showing that: at least three HCG assets were detected by the FSA [redacted] as involved in the incident; an HCG asset towed the rubber boat with migrants on board; after the contact with the HCG asset, the migrants' rubber boat appears deprived of its engine; there was no [redacted] asset in the immediate vicinity of the rubber boat when it was left adrift in [redacted].

- In relation to the SIR 11934/2020, according to the minutes of the meeting (Annex 44) the HCG representative described that HCG "(…) *received an early detection of a RIB incoming from* [redacted] *territorial waters. The RIB was about 10m in length with more then 50 people on board. (…) HCG underlines that it never towed the RIB as this would not be in accordance with its SOPs and towing an overcrowded boat would put at risk the CPB. HCG continues that the RIB "on its own" re-entered* [redacted] *territorial waters*" (Annex 44)**.**

  OLAF notes that the statement by the HCG representative **does not match** with the content of the relevant mission report n. 568/2020 of the FSA [redacted], as well as the video footage of the incident, clearly showing the HCG asset towing the rubber boat with migrants on board despite the very bad sea conditions (both the HCG asset and the migrants' rubber boat oscillated blatantly)**.**

OLAF considers that the inconsistencies highlighted above between the video of the incidents and the statements by the HCG representatives corroborate the assessment that the manoeuvres by the HCG [see paragraphs 1) and 2) above] appear to have endangered the lives of the persons on board the rubber boats towed by the HCG assets.

4) During the same meeting of the WG FRaLO referred to at previous point 3), with regard to the categorization of the SIR 11095/2020 as Category 2, [redacted] informed that "(…) [redacted] *consults with* [redacted]*,* [redacted] *and* [redacted] *in making this determination. The incident was eventually accorded two coordinators, one of whom was* [redacted] *to examine the situations' fundamental rights aspects (…)*" (Annex 44)**.**
OLAF notes that this statement does not correspond to reality as [redacted] **was not consulted** with regard to the categorization of the SIR 11095/2020 and/or the assessment of the underlying facts, **nor was** [redacted] **appointed as SIR Coordinator** (the unique SIR Coordinator being [redacted]). **OLAF is not aware that the Agency corrected with the WG FRaLO the statement by** [redacted].

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] confirmed what [redacted] had already reported to OLAF during [redacted] interview (Annex 5): that " *(…) what I said during the FRaLO WG meeting (…) was a mistake and I confused with the approach that was taken later for certain SIR's".*
OLAF does not have any evidence suggesting that [redacted] intentionally provided incorrect information to the members of the WG FRaLO.

5) In relation to the incident under SIR 11095/2020, the above referred FRONTEX explanatory note to the Management Board no. 4472 dated 23 April 2021 (Annex 43) concluded that "*(…)* ***there is a strong believe that the presented facts support an allegation of possible violation of Fundamental Rights or international protection obligations such as the principle of non-refoulment***". The same note, referring to the incident under the SIR 11934/2020, concluded that "***(…) it cannot be excluded that the incident has characteristics of a case of an unprocessed return and violation of the principle of non-refoulement***".

6) OLAF notes that during [redacted] interview (Annex 19), [redacted] ([redacted]) suggested to [redacted] the possibility to adopt appropriate measures in relation to the Article 46 of the 20019 FRONTEX Regulation, notably by reducing the co-financing of Greek assets as a general preventive measure to also reduce the reputational risk for FRONTEX linked to the incidents and related allegations of violation of fundamental rights.

   OLAF recalls that [redacted] had already adopted a similar initiative in November 2015 when [redacted] decided to temporarily withdrawn the financing of an HCG asset (the OPV [redacted]) which had been allegedly involved in an incident dated 12 November 2015 entailing possible violation of fundamental rights, as reported by several media outlets (Annex 46).

   During [redacted] interview, [redacted] informed OLAF that [redacted] did "*(…) not remember any specific request, at that time, by [redacted] to make use of the art. 46. To be considered that we were during Covid restrictions and, therefore, the Agency was working on shift partially in the headquarters and partially in home office. You also have to consider that the Article 46 is a "black or white" provision, meaning that it does not provide for intermediary measures. It only gave the possibility to suspend/terminate a JO in case of violations of FR. Having suspended the JO as per Article 46 in April or August 2020 was a very delicate decision due to all the geopolitical background I explained earlier and the devastating consequences it could have had. In 2015, 1,2 million migrants crossed illegally the EU external border in Greece. (…) With regards to [redacted] initiative to suspend the financing of the HCG asset in 2015, I have to say that the geopolitical situation was different. There were not yet hybrid threats posed by [redacted]. [redacted] was even considered as a close and reliable partner. In 2020 the situation was very different. Honestly, I did not even remember about this initiative [redacted] took in 2015. It was without hesitation and no worry about the consequence*" (Annex 4).

   OLAF is not aware of any concrete and similar actions by [redacted] with a view to the application of the mentioned Article 46, following the conclusions by the SIR Coordinators of the SIRs 11095 and 11934 and the suggestions by [redacted].

   In this respect, OLAF also notes that the "*Conclusions of the Management Board's meeting on 5 March 2021 on the report of its Working Group on Fundamental Rights and Legal Operational Aspects of Operations in* [redacted]" (Annex 192) read: "*(…) The Management Board also takes note that, despite the additional evidence gathered and reviewed by the Group, it has not been possible to establish the facts related to all five plus one incidents that still remained to be examined following the Group's preliminary report.*
   In this respect, the Management Board:
   - *(…)*
   - *Welcomes that one Serious Incident Report was followed-up by a letter from the Executive Director to the authorities of the host Member State, but* ***regrets that no***

further follow-up was undertaken *following the receipt of the letter from the host Member States authorities;*

- *(…);*
- *Regrets that in the case of three other incidents some aspects in the presentation of facts by the different parties involved could not be clarified, but that* ***the Agency, in these cases, also has not taken any decisive action to this end***"**.**

Based on the objective circumstances of the incidents, all the available images, the Final Reports of the SIRs and the assessment of an expert, all summarized at previous points 1 to 5, taken into consideration the notion of "*illegal pushback*", as presented under paragraph 1.4.4, OLAF considers that the actions undertaken by the Authorities of the host Member State on 19 April and 5 May 2020 exposed to concrete danger the life of the persons on board of the rubber boats, which could qualify as violation of the fundamental right to life and the duty to render assistance provided for by the international law of the sea (see paragraph 1.4.4.2.). The rubber boats overcrowded with migrants were towed by a HCG asset, even with adverse sea conditions. In one case, the migrants were also left adrift in [redacted] at early morning time, without any means of propulsion and with no [redacted] asset in the immediate vicinity to provide prompt assistance in case of need (as it appears clear from the video recorded by the FSA [redacted]).

OLAF notes that, already since at least 2 March 2020, [redacted] was aware about the accidental possibility that the Greek Authorities engaged in pushbacks of migrants in violation of fundamental rights. On 28 April 2020, [redacted] sent a letter to [redacted] (Member of the European Parliament - MEP). The letter explained to the MEP the outcome of the inquiry FRONTEX carried out following an incident involving a Danish vessel (CPB), a Frontex-deployed asset, participating in the JO [redacted] (Annex 48). As a result of the interception, 33 migrants were rescued and taken on board of the CPB. The crew of the CPB was informed by the Hellenic Liaison Officer on-board about an order issued by the Greek authorities to transfer the migrants back to the rigid inflatable boat and escort it back into the [redacted]. Since the instructed measures were risky and not in line with the operating procedures of the Joint Operation, the Danish Commander of the CPB had serious concerns about complying with the order and informed the ICC of the JO about the decision to abstain from execute the order.

In [redacted] letter to MEP [redacted], [redacted] confirmed that the instructions given to the crew of the Danish operational asset were not in accordance with the operating procedures of the Joint Operation nor with the fundamental rights of the migrants.

[redacted] did not make any specific comment on the matter in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), transmitted to OLAF on 1 November 2021.

Findings on 2.2.1. paragraph h.: in the framework of its activities, FRONTEX witnessed actions by the Authorities of the host Member State which appear to have seriously endangered the lives of migrants. According to the information available in the JORA database or summarized in the relevant SIR Final Report, assets co-financed by FRONTEX appear to have been involved. FRONTEX requested clarifications from the Greek Authorities for only one of the incidents. Despite the initial indications by [redacted] and the conclusions by the SIR Coordinators, pointing to "*strong believe*" of violations of fundamental rights, [redacted], as [redacted], did not take any follow-up actions with a view to the content of the Article 46 of FRONTEX Regulation. A similar situation already occurred in November 2015 when [redacted] decided to temporarily suspend the financing for a HCG asset involved in an incident with alleged FR component.

In February 2021, during a meeting with the members of the FRaLO Subworking Group, [redacted], as [redacted], provided incorrect information about the involvement of [redacted] in the handling of the SIR

11095/2020. OLAF did not gather elements suggesting the intentionality of this conduct by [redacted].

2.2.2 Cooperation with [redacted] staff: access to, and availability of, information

a. Access to information concerning incidents

OLAF carried out interviews (Annex 49, 50 and 51) and gathered information revealing that [redacted] and [redacted] Office suffered of scarce cooperation from the executive management and poor access to information, in particular in 2020. It occurred that [redacted] Office did not receive any feedback to the requests for information sent to other FRONTEX entities (despite few reminders) or that the information provided to [redacted] Office was not satisfactory or sufficient, particularly in relation to the management of some SIRs (as an example, see page 8 of Annex 49). During the last years, on several occasions [redacted] Office raised its concerns about the access to information with the Agency's management at numerous meetings and *fora* (like the Consultative Forum). [redacted] acknowledged the difficult access to information affected the effectiveness of the performance of [redacted] Office in its monitoring the compliance with, and respect of, the fundamental rights in FRONTEX activities. [redacted] also acknowledged the difficult working relation with [redacted] of the Agency, in particular following the reorganization of 2018. In this respect, OLAF observes the content of a relevant email that [redacted] sent to [redacted] on 5 June 2018 at 20:06: *"La future présidence autrichienne nous a passé un papier pour le Conseil informel d'Innsbruck en cours de préparation. C'est en allemand et nous pouvons commenter avant demain midi et carte blanche pour rajouter. On va mettre la suppression du 656/2014. La boucle sera bouclée avec une tirade sur le législateur qui fait de Frontex un passeur/taxi légal :-)* ***Je pense à mettre un truc pour réduire la voilure de [redacted] et tutti quanti Consultative forum :-)*** *[redacted]"* (Annex 176) [Translation by OLAF: *The incoming Austrian Presidency gave us a paper for the Informal Council of Innsbruck in preparation. It's in German and we can comment before tomorrow noon and carte blanche to add to it. We will add the deletion of 656/2014. The loop will be looped with a tirade on the legislator who makes Frontex a legal smuggler/taxi :-) I think about adding something to downsize [redacted] sails and tutti quanti Consultative forum :-) [redacted]"*]**.**

In the light of those considerations, **OLAF describes below the way [redacted], [redacted] and [redacted], handled the requests for information and access to incident-related material presented by [redacted], [redacted] and [redacted] in the past and more recently during 2020, notably in relation to the incidents underlying the SIRs 10240/2016, 11095/2020, 11934/2020 and 11860/2020, most of which remained long unanswered or did not receive a reply at all.**

- With regard to an incident occurred on 11 June 2016 (61 rescued migrants handed over, at sea, to the [redacted] Coast Guard) the Category 1 SIR 11240/2016 was launched. On 16 June 2016, [redacted] instructed [redacted] to assign the SIR to the Legal Unit within the Corporate and Governance (CGO) Division as SIR Coordinator. On 21 June 2016, [redacted], [redacted], wrote an email to [redacted] presenting an initial assessment on fundamental rights implications of the case (Annex 52). On 29 June 2016, [redacted] wrote again to [redacted], referring to a previous conversation and asking to receive any further information that the Agency might have become aware of in relation to the case, in order to ensure compliance with the applicable FRONTEX Regulation. [redacted] reminded [redacted] request for information to [redacted] on 22 July 2016 (Annex 52).

  [redacted] **confirmed to OLAF [redacted] never received a feedback to [redacted] requests** (Annex 53)**.**

  [redacted] did not make any specific comment on the matter in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106).

- With regard to the incident which triggered the SIR 11095/2020, on 28 April 2020 [redacted] sent an email to [redacted] informing that the SIR 11095/2020 entailed risks of violation of fundamental rights and, as such, [redacted] asked for: reclassification of the SIR from Category 2 to Category 4, the appointment of [redacted] as SIR Coordinator and access to the video footage of the event (Annex 55).
  The same day, [redacted] forwarded the request to [redacted], as the SIR Coordinator, and informed [redacted] accordingly (Annex 55).
  In the absence of any reaction from the SIR Coordinator, two reminders were sent by [redacted] on 4 and 11 May 2020 (Annex 55).
  On 15 May 2020, the issue was escalated to [redacted] by [redacted] ([redacted]) of the ORD Division, asking for instructions and proposing to share with [redacted]: the SIR, the letter to Greek Authorities and the video of the incident available at [redacted] (Annex 55). [redacted] also proposed to inform [redacted] that the SIR had been closed on 5 May 2020.
  The same day, [redacted] forwarded the request by [redacted] to [redacted] for [redacted] consideration (Annex 56). Few minutes after the receipt of the email, [redacted] replied to [redacted] that "*It could be a good opportunity to test the system [redacted] want to put in place in the MB decision on supervisory mechanism: to say that precisely because [redacted] took action and [redacted] is waiting for feedback from Greek Government [redacted] should avoid any overlapping. And in particular in order to let Greek authorities to conduct their investigations and give feedback to Frontex.*" (Annex 56).
  Following the email exchange between [redacted] and [redacted], no instructions or guidance were given to [redacted] who, subsequently, sent another reminder on 25 May 2020 (Annex 55).
  Given the persisting silence, on 1 June 2020 [redacted] escalated the matter to [redacted] for [redacted] to reach out to [redacted]. During [redacted] interview with OLAF (Annex 19), [redacted] confirmed to have solicited [redacted] for a feedback.
  However, around two weeks later, on 14 June 2020, [redacted] forwarded the request by [redacted] to [redacted] suggesting to classify and not to share with [redacted] what [redacted] requested (Annex 57): "(…) *Autant je pense que le rapport SIR et la lettre que tu as adressée au [redacted] des garde-côtes grecs (restée sans réponse à ce jour) ne peuvent difficilement pas être partagé, autant les extraits de la vidéo du MAS sont des informations qu'il faudrait classifier et ne pas partager. Je me demande si l'ensemble de ce SIR ne pourrait pas être classifié ce qui exposerait toute fuite à des poursuites"* [Translation by OLAF: "*(…) As much as I think the SIR report and the letter you sent to the Greek Coast Guard [redacted] (remained unanswered to date) can hardly be shared, as the excerpts from the MAS video are information that should be classified and not shared. I wonder if the whole SIR could not be classified which would expose any leak to prosecution*"].
  On 15 June 2020, [redacted] replied to [redacted] instructing to classify all the material: (the SIR, the letter to the Greek Authorities and the video footage) in consideration of the geopolitical situation in [redacted] and the need to keep sensitive documents available for the judicial authorities:"*(…) l'ensemble des documents devraient être classifiés : la lettre, le SIR et la vidéo. Si quelqu'un demande pourquoi, on pourra expliquer que vu la tournure des évènements parfois étranges et volatiles, c'est une mesure de sauvegarde pour: Tenir compte de la situation géopolitiques des zones où les faits se produisent; Tenir à la disposition de la justice éventuellement, s'il y a lieu, des documents sensibles en évitant que le tribunal de l'opinion et des medias sociaux n'empêchent des magistrats d'avoir sereinement accès à des pieces"* (Annex 57) [Translation by OLAF: *(…) all documents should be classified: the letter, the SIR and the video. If someone asks why, we can explain that given the twist of sometimes strange and volatile events, it is a safeguard measure for: Taking into account the geopolitical situation of the areas where the events occur; To possibly keep sensitive documents at the disposal of the judicial authorities, where appropriate, by preventing the court of public opinion and of social media from preventing magistrates from having guilty access to documents"].*
  [redacted] also considered the possibility that [redacted] Office staff could have access to the SIR and the letter to Greek Authorities, but not to the video footage: "(…) *Bien entendu, le personnel de [redacted] sous réserve d'avoir l'habilitation requise, pourrait avoir*

connaissance de la lettre et du SIR. On peut en parler à [redacted] *et* [redacted] *en marge du MB «physiquement»"* (Annex 57) [Translation by OLAF: *(…) Of course,* [redacted] *staff, subject to the required clearance, may be aware of the letter and the SIR. We can talk to* [redacted] *and* [redacted] *on the sidelines of the MB «physically»"].*

During [redacted] interview with OLAF (Annex 19), [redacted] informed that "*I don't recall any discussion of this nature, or being involved in such topic, which from my point of view doesn't even make any sense.* [redacted] *can have access to all documents of the Agency, classified or not. (…) I was not involved in any classification of the SIRs and related material. I did not participate in any such discussion (…)".*

Similarly, during [redacted] interview with OLAF (Annex 5), [redacted] reported not to "*(…) remember a specific meeting on the topic. I do remember discussing with* [redacted] *about this idea of classifying SIRs, however I do not recall this happening in a formal meeting, rather at the margins of other events*".

Despite both [redacted] **and** [redacted] **being aware of the request for information from** [redacted]**, and the solicitation by** [redacted]**, no instructions were provided by them to** [redacted].

On 17 July 2020, around three months after the initial email by [redacted], [redacted] ([redacted]) within [redacted] of the ORD Division informed [redacted] that the Greek Authorities had replied to the request for clarification sent by FRONTEX (Annex 55). However [redacted] also stressed that "*As the reply to* [redacted] *inquiry from 11th od May is still pending we would like to once again ask* [redacted] *how to proceed with this particular* [redacted] *request and what information to release (SIR report;* [redacted] *video related to the SIR, letters). This issue is also directly linked with the written questions following the LIBE Committee meeting 6 July (question raised by* [redacted]*"* (Annex 55).

On its turn, on the same day, [redacted] sent an additional reminder to [redacted] asking [redacted] "*(…) to let us know* [redacted] *final decision on how to proceed with this particular request, and what information to release (SIR report;* [redacted] *video related to the SIR, letters). Please also kindly note that this issue is also linked to the some of the MEPs questions which followed the LIBE Committee meeting on 6 July (…)*" (Annex 206).

OLAF could not find any trace of a reply by [redacted] providing guidance to FRONTEX services on how to proceed.

OLAF notes that, on 22 July 2020, [redacted] sent an email to [redacted] [redacted] ([redacted]) where [redacted] asked [redacted] to "*(…) support ORD to draft the relevant communication to* [redacted] *by which* ***the Agency releases this classified SIR but not the operational footages****. Please make sure that the draft transmission is submitted to @*[redacted] *for* [redacted]*'s approval (…)*" (Annex 69). This email indicates that the FRONTEX [redacted] ([redacted] and [redacted]) had **no intention to allow** [redacted] **to have access to the video footage of the SIR 11095/2020**.

During [redacted] interview with OLAF (Annex 4), [redacted] clarified that the reasoning behind [redacted] instruction to classify the SIR and related material as EUCI was to secure the handling of sensitive information as the SIR procedure applicable at that time provided for the SIRs to be disseminated to a large number of recipients, with the risk of information leaks. Therefore, the classification served the purpose to make sure that the Agency would not share sensitive information to external recipients, before the incident had been clarified. Having in mind the geopolitical context, [redacted] feared the leak of information which could have been used for political purposes on both Greek and [redacted] side. In particular, [redacted] had "*(…) concern that sharing the information with* [redacted] [redacted] *office could have generated some information leaks since, as I said before,* [redacted] *office might be under pressure by the Consultative Forum to share information*" (Annex 4).

OLAF notes that:

- **it appears from** [redacted] **email dated 15 June 2020 that** [redacted] **did not take into consideration the possibility to allow** [redacted] **to have access to the video footage as** [redacted] **only mentioned that** [redacted] **Office staff, duly authorized, could have knowledge of the SIR and the letter addressed to the Greek Authorities,**

thus excluding the relevant video footage that [redacted] had requested;

- **[redacted] was well aware of the sensitivity of the matter (classification of the material and access to it by [redacted]) as [redacted] suggested to [redacted] to have a chat with [redacted] and [redacted] "physically", face to face, to avoid leaving traces by using communication channels;**
- **it appears from the email by [redacted] to [redacted] that there was no intention by [redacted] ([redacted] and [redacted]) to grant access to the video footage to [redacted];**
- **[redacted], [redacted] and [redacted] were not granted the access to the video footage concerning the SIR 11095/2020, despite repeated requests, until at least March 2021;**
- **the reply letter (Annex 54) that FRONTEX received from the Minister [redacted] of Greece on 10 July 2020 (one week before the last reminder to [redacted] by [redacted]) did not mention any national security issue, nor make a clear connection between the incident and hybrid nature threats, suggesting the need to classify the SIR and related material as EUCI.**

With regard to the last point (reply letter from the Greek Minister), In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203), [redacted] recalled the geopolitical context in which the incident under SIR 11095/2020 took place: "*The context should be recalled: As of January 2020, Frontex surveillance aircraft was systematically hooked by [redacted] air defense radar; on 28 February 2020, [redacted] declared that the border with Greece was opened which was followed by violent and organized attempts to illegally cross the green Greek/[redacted] land border; on 11 March 2020, at the eve of the launch of [redacted], a Danish plane deployed in Frontex operation was harassed by two [redacted] Airforce fighters F-16; incidents continued all along 2020, with shootings against Frontex patrols, or Member States' maritime assets deployed in [redacted] harassed by [redacted] coast guard boats"* (Annex 203). However, [redacted] did not reject the fact that the letter itself did not make any reference to national security issues.

- As reported under paragraph 2.3.1.e. above, with regard to the incident which triggered the launch of the SIR 11934/2020, on 7 August 2020, [redacted] asked for guidance to [redacted] and [redacted] in relation to the need to initiate a SIR and to possibly relocate the FSA.

  At around 13:50 of the same day, despite the video recorded by the FSA suggested that the incident could entail violation of FR (as also stressed by [redacted]), [redacted] instructed verbally [redacted] that the SIR was not yet to be launched, pending [redacted] decision, and that **no information about the incident was to be shared, at that stage, with [redacted]** (Annex 140)**.**

  In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] reported that " *(…) any decision taken and communicated by me to [redacted] is a decision that **was consulted upon with [redacted], via [redacted]**, and was **decided by [redacted]**. This was also described in my feedback to [redacted]: a SIR was not yet to be launched pending [redacted] decision on returning from [redacted] leave. (…) I do not remember the exact circumstances under which I was instructed on how to go ahead. In my memory it was [redacted] (but I am not sure whether the person was [redacted] or [redacted]). I have no written evidence of this. (…) The instructions by [redacted] must have been given by phone or in person (…)".*

  Neither [redacted] nor [redacted] provided any specific comments on the facts in question in their replies to the invitation for comments on the finding of the OLAF investigation.

- On 24 August 2020, [redacted] Office sent an email to [redacted] and to [redacted] in order to address some significant fundamental rights related issues which were

generated in the framework of [redacted] monitoring activities on FR compliance in FRONTEX operations (Annex 59). In particular, [redacted] Office **listed several occasions in which [redacted] Office had asked for reclassification of the SIRs, asked for information or updates, had not been consulted on the classification of incidents or when [redacted] had asked for access to information (including video footages) which was not granted**. [redacted] Office stressed how, on several fundamental rights related SIRs, [redacted] was neither included in respective meetings/discussions concerning the incidents or regarding the categorization and SIR coordination, including respective follow-up, or received scarce information. In particular, [redacted] mentioned the SIRs 11095, 11860 and 11934 of 2020. [redacted] also asked for a meeting with the relevant entities from the SAM and ORD Divisions (Annex 59).

On 26 August 2020, [redacted] forwarded to [redacted] the email by [redacted] Office (Annex 60). [redacted] immediately replied tasking [redacted] (with [redacted] in copy) to organize an internal preparatory meeting with at least [redacted], [redacted], and [redacted], before the meeting with [redacted]. [redacted] reacted to the email by [redacted] flagging to [redacted] the request by [redacted] as "***An issue***" (Annex 60)**.** [redacted] replied to [redacted] in a confirmative way, adding that the issue had been **stopped for a moment by** [redacted] and suggested to have a meeting with [redacted] the following week (Annex 60).

On the same day, few hours later, [redacted] forwarded the email from [redacted] to [redacted] with [redacted] personal comment: "*FYI.* [redacted] */*[redacted] *prépare le rapport sur les SIRs pour le MB de septembre...*" (Annex 61) [Translation by OLAF: "*FYI.* [redacted]*/*[redacted] *is preparing the report on the SIRs for the MB in September*"]. Few minutes later, [redacted] replied to [redacted] with [redacted] personal comment, revealing [redacted]'[redacted] consideration of [redacted] in place at that time, [redacted] role within FRONTEX and the allegedly bad environment [redacted] had created within the Agency: "***Et oui la dictature du [redacted] fait la loi dans cette agence. C'est très dangereux dans la perspective du supervision mechanism. Il y a toute une génération qui a été décérébrée par les méthodes de [redacted]'*** (Annex 61) [Translation by OLAF: *"And yes, the [redacted] dictatorship makes the law in this agency. This is very dangerous from the perspective of supervision mechanism. There's a whole generation that's been decerebrated by [redacted] methods"].*

[redacted] to [redacted] expressed similar considerations in some WhatsApp messages they exchanged (Annex 89):

- on 20 November 2019 at 12:23, [redacted] wrote to [redacted] presenting [redacted] dictatorial behavior within the Agency: "*Et tous ces bureaucrates n'ont qu'à sortir du bois et de la peur que végète* ***cette dictature intellectuelle de [redacted]***" [Translation by OLAF: "*And all these bureaucrats have to get out of the woods and the fear that this intellectual dictatorship of [redacted] is spreading*"].
- on 3 December 2019 at 21:06 [redacted], talking about [redacted], clarified to [redacted] low consideration for [redacted] professionalism: "*Il faut que [redacted] assume qu[redacted] protège [redacted] et que la Commission assume qu'elle ne m'aide en rien au niveau [redacted]*" [Translation by OLAF: "[redacted] *must assume that [redacted] protects [redacted] [redacted] and that the Commission assumes that it does not help me at [redacted] level*"].
- on 30 November 2020 at 12:08, [redacted] expressed to [redacted] [redacted] conconsideration on the "terror" regime imposed by [redacted] within FRONTEX: "*Et il ne reste plus qu'à entériner que [redacted] [redacted]* ***est le premier [redacted] de Frontex*** *qui rapporte tout aux ONG et faire* ***régner une terreur Khmer Rouge dans l'agence***" [Translation by OLAF: "*And all we have to do is confirm that [redacted] is the first Frontex [redacted] that reports everything to NGOs and causes Khmer Rouge terror to reign in the agency*"] (OLAF notes that, between September 2020 and May 2021, [redacted] was responsible for [redacted] Office as [redacted] was [redacted]).

The email and WhatsApp messages above provide indication about the personal opinions and reasoning behind the reluctance by [redacted] to allow the sharing of information with [redacted].

The mindset of [redacted] towards [redacted] and [redacted] role in the Agency was also confirmed by [redacted] during [redacted] interview with OLAF (Annex 5)**.** [redacted] confirmed "(…)

[redacted] ***had made it clear that it was an*** [redacted] ***instruction to classify the operational video footages so to avoid*** [redacted] ***office having access to them****. In this sense, as soon as I saw the request from* [redacted] *(*[redacted]*), I tasked* [redacted] *to call for a meeting with* [redacted] *and* [redacted]**.** (…) ***I am not aware of the reason why*** [redacted] ***/*** [redacted] ***were so contrary to*** [redacted] ***having access to all available information. I can only report a sentence I heard by*** [redacted] ***warning about the risk of the "FR people" eventually managing the Agency****"* (Annex 5)*.*

A meeting between [redacted] and [redacted] was scheduled on 16 September 2020. With a view to the meeting, on 8 September 2020 at 20:46, [redacted] instructed to [redacted] via Whatsapp to prepare a package of documents to "*be shared with* [redacted] *after the meeting (for July: SIR +* [redacted]*'s letter to* [redacted] *HCG; for April, SIR +* [redacted]*'s letter to* [redacted] *HCG + answer for the Greek Minister* [redacted]*)* (Annex 7)*.* As per the message, the requested package included: in relation to the SIR 12860, the SIR report and the letter by the Agency to [redacted] HCG; in relation to the SIR 11095, the SIR report, the letter by the Agency to the Greek Minister [redacted] and [redacted] reply. No mention of documents related to the SIR 11934 was made, nor any reference to the video footage related to the SIR 11095 that [redacted] Office had repeatedly requested since April 2020.

[redacted] instructed to [redacted] to prepare the material that [redacted] had requested (Annex 61)**.** To make the instructions more clear, [redacted] added that "**(…) *No further action is needed from your side in respect to the email with questions by*** [redacted]*"*.

The meeting between [redacted] and [redacted] took place on 16 September 2020. The day after the meeting, [redacted] was provided with: Serious Incident Report n. 11860/2020 and related letter to the Hellenic Coast Guard [redacted] dated 6 August 2020; Serious Incident Report n. 11095/2020 and related letter to the Greek Minister [redacted] dated 8 May 2020 (including [redacted] reply to FRONTEX dated 10 July 2020).

OLAF notes that, until at least March 2021, no member of [redacted] **Office was granted access to the video of the incident under SIR 11095/2020, as it was repeatedly requested.**

During [redacted] interview with OLAF (Annex 5), [redacted] stated that "*(…) I was tasking the FSC in a very formal way (out of my normal approach) as I had received the exact same oral request by the Cabinet.* [redacted] *had decided to take over the issue with* [redacted]*. Therefore, I limited myself to ask* [redacted] *to provide exactly what* [redacted] *wanted, nothing more. I did not mention the video as this was not part of the provision of documents* [redacted] *requested me. (…) I cannot say why* [redacted] *did not ask me to also provide the video which had been requested by* [redacted]*. I simply did not pay attention to this detail or, given the mindset at that time, I simply executed what I was asked to".*

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] slightly corrected [redacted] earlier statement: "***The fact that*** [redacted] ***was not granted access (…) was based on a decision by*** [redacted] ***and communicated to me by*** [redacted]*: (…)* [redacted] *did not react via email on my email dd. 26 Aug. 2020. My email contained a proposal to meet and with a view to discuss the matter about possible instructions by* [redacted]*, in a transparent way amongst* [redacted]*,* [redacted] *and myself. (…) During my interview with OLAF (…) I said that I thought that I had received the exact same, probably oral, request by* [redacted] *(…). However, now I found out that, while* [redacted] *did not react on my email indeed, but* [redacted] *did react via a text message*" (Annex 138)**.**

OLAF also recalls the content of an email that [redacted] sent to [redacted] on 24 August 2020 concerning some possible options for the appointment of [redacted]. The email indicates the opinion that [redacted] had about the competence and managerial skills of [redacted]**:** " (…) *I could envisage option 1 in order to clarify indeed the situation* ***and to avoid that*** [redacted] ***comes back and messes up everything in*** [redacted] ***Office"*** (Annex 124).

- With regard to the SIR 11860/2020, another request for information by [redacted] remained unanswered.

  Following the incident on 27 July 2020 involving the Danish Helicopter [redacted], deployed under the JO [redacted], on 28 July 2020 a Category 4 SIR was launched. [redacted] within [redacted] was designated as SIR Coordinator.

  On 31 July 2020, [redacted] sent an email to [redacted] providing [redacted] with a draft of a letter to be addressed to the Greek Authorities in relation to the incident in question (Annex 63). [redacted] also clarified to [redacted] that "*In addition, it is worth to mention that on 30 July, [redacted] has asked for all possible additional facts, follow-up and any further information gathered by [redacted] and SIR Coordinator of this case, in particular related to the nomination of this incident as a prevention of departure (e-mail attached).* ***For the time being we did not reply to [redacted] request. For your consideration and feedback, please***" (Annex 63).

  On 31 July 2020, [redacted] forwarded the email from [redacted] to [redacted] for [redacted] consideration and decision on way forward.

  On 3 August 2020, [redacted] replied to [redacted] providing [redacted] with a revised version of the letter to be addressed to the [redacted] HCG. However, no instruction was given in relation to the feedback to the request for information submitted by the [redacted] (Annex 63).

  OLAF notes that the email exchange above suggests that in addition to [redacted] and [redacted] (as explained in the paragraphs above), also [redacted] and [redacted] were aware of the general indication not to share information with [redacted] without prior approval of [redacted].

b. Public Access to Documents (PAD) justifications

Following [redacted] instructions to [redacted] on 15 June 2020 to classify as EUCI the SIR 11095/2020, the letter to Greek Authorities and any related material (see paragraph 2.3.2.a), a meeting between [redacted] and [redacted] took place. As a result, [redacted] tasked [redacted] with finding justifications for partial or full non-disclosure of documents, including surveillance footages, as per practice adopted in relation to Public Access to Documents (PAD) requests (Annex 58).

A table compiling PAD justifications prepared by [redacted] (in consultation with the ORD) was submitted to [redacted] on 6 July 2020.

On 14 July 2020, [redacted] replied to [redacted] asking, in addition to PAD justifications, also to check for possible classification of the videos recorded by the FSA: "*(…) Intention is that we consistently protect data (and thus classify?), received from surveillance (streamed data) from sharing with externals. Your focus is on PAD requests but the agency often gets other similar requests for information. Please elaborate, possibly in cooperation with SEC, also taking into account that a classification level is not necessarily preventing to share data (and possibly needs to go together with other protection measures ? similar as used for PAD?)*" (Annex 58).

On 16 July 2020 [redacted] replied to [redacted] arifying that [redacted]: "*(…)together and in agreement with [redacted] or [redacted] – have not disclosed surveillance footage to externals, regardless if the request was under PAD regulation or a request for information, as disclosing the footage would have hampered the operational interests of Frontex and the Agency's operational activities. In short: we apply the principles of PAD described below to any type of request (PAD or not) and we have never disclosed any footage to externals*" (Annex 58).

The content and the email exchange and the table compiling PAD justifications were forwarded by [redacted] to [redacted] on 6 September 2020 (Annex 58). In [redacted] email [redacted] stressed that the content was about "*considerations made earlier re. disclosure of info and footage*". [redacted] [redacted] self stressed that "*(…) However,* ***bear in mind the below is related to requests by externals while our current consultation is related to [redacted].*** *Please let me know [redacted] opinion in light of our recent consultation esp.* ***knowing that*** [redacted]

is waiting for steering on how to proceed following [redacted] ***formal request*** *as well as* [redacted] *equally consulted me on what could be a harmonised approach*" (Annex 58).

OLAF notes that it appears from the email above that the initiative, launched by [redacted]**, aimed at finding possible legal barriers (notably PAD justifications) so as to prevent** [redacted] **from having access to the video of the incident (SIR 11095) as** [redacted] **had requested**.

During [redacted] interview with OLAF (Annex 21), [redacted] justified [redacted] request to [redacted] as intended to inform [redacted] "(…) *about the practice concerning the classification and/or dissemination of the video footage associated to a SIR. The purpose I had in mind was to avoid that the SIR and related video footage could suffer a leak, and possible subsequent manipulation. (…) I wanted to understand if the video was to be considered as part of the SIR or not and, therefore, it the video could have been shared or not following a PAD request. My ideas was not to restrict the access by* [redacted] *to the information, rather to be sure about the rules of the following handling to avoid any information leak: had the Agency shared the SIR file with* [redacted]*, including the video, could it be subject to further sharing in case of a following PAD request submitted to the Agency or to* [redacted]*"*

As already mentioned at paragraph a. above, during [redacted] interview with OLAF (Annex 5), [redacted] presented a different interpretation of the events: "*I have to admit that the trigger of this request was the* ***attempt by*** [redacted] ***(according to*** [redacted] ***on*** [redacted] ***demand) to find a feasible way to prevent*** [redacted] ***to access information****. This is why I forwarded the email on 6 September 2020, clearly stating that the* ***PAD justifications had been always applied to externals, while the request by*** [redacted] ***referred to*** [redacted]*. (…) It also clearly shows that the* ***triggering point/issue for*** [redacted] ***was*** [redacted]*, not any external actors. I am not aware of the* ***reason why the*** [redacted]***/***[redacted] ***were so contrary to*** [redacted] ***having access to all available information****. I can only report a* ***sentence I heard by*** [redacted] ***warning about the risk of the "FR people" eventually managing the Agency"***.

The last statement above by [redacted] is in line with the content of a message that [redacted] sent [redacted] on SIGNAL application on 31 October 2020. The overall discussion was about the consideration to lunch a SIR regarding an incident which had involved a Swedish asset deployed in the JO [redacted]. At 09:22, [redacted] expressed [redacted] opinion to [redacted] "*(…) So far the historic culture at Frontex has not reflected this and the management of the « troops » had been handed over to* [redacted]*, because we had no troops to command. But things will be different very soon*" (Annex 152).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] confirmed the statements [redacted] made during the interview with OLAF: "*I repeat and confirm that* ***the whole exercise was a*** [redacted] ***and*** [redacted] ***initiative****. As further explanation: I remember also that during this process I have had a lively discussion with* [redacted] *where I tried to explain* [redacted] *the lack of rationale in what* [redacted] *tried to accomplish:* ***the purpose was to prevent*** [redacted] ***from having access to certain information.*** *(…) The atmosphere between* [redacted] *and myself around this topic was consequently very tense especially as* [redacted] *did not want to listen to my reasoning and kept on pushing to find a solution to prevent* [redacted] *having access to certain information*" (Annex 138).

Neither [redacted] nor [redacted] provided any specific comments on the facts in question in their replies to the invitation for comments on the finding of the OLAF investigation.

c. Classification of the SIRs as EU Classified Information (EUCI)

Following [redacted] instructions to [redacted] on 15 June 2020 to classify as EUCI the SIR 11095/2020 (see paragraph 2.3.2.a), on 18 June 2020 [redacted] tabled a discussion involving different FRONTEX entities of [redacted] about the necessity to classify the SIRs and associated operational data collected by FRONTEX censors under FRONTEX Aerial Surveillance Service (FASS). [redacted] clarified that the issue was triggered by the request by [redacted] Office to have access to the SIR 11095/2020 and related the video footage (Annex 64).

The internal discussion went on for a long time, until, at least, 24 August 2020, with long exchange of emails involving [redacted] and [redacted].

In this context, the [redacted] entities questioned the legality and the appropriateness of the whole exercise as they had perceived it as aimed at preventing [redacted] from accessing information, which would have been illegal, as per Article 109 (7) of FRONTEX Regulation of 2019, and not to be pursued. On this note and in the framework of the discussion in question, on 10 July 2020, [redacted] sent an email to [redacted] providing the legal opinion on the classification of SIRs and access by [redacted] (Annex 65). In particular, [redacted] clarified: *"Dear [redacted], you made two sets of enquiries. The first was about classification in general. The second was* ***a point on [redacted] access to the SIRs****. Please see below our responses. (…)* [redacted] *asks whether information may be limited to* [redacted]*. (…)* ***Advice****.* ***Restricting access to these documents to [redacted] based on their security classification could possibly be interpreted as an interference in the mandate and independence of [redacted]. It may be best to avoid.*** *Preferable we think to focus on the precise wording of Art. 109(7) and go for a very restrictive interpretation of what is meant by "information concerning respect for fundamental rights". Therefore, only if information strictly falls into 109(7) should it be disclosed to FRO"* (Annex 65).

It appears from the email above that [redacted] had perceived the request from [redacted] to classify the SIR as intended to limit [redacted] access to that information.

On 11 July 2020, [redacted] replied to [redacted] (Annex 65). [redacted] clarified better [redacted] request: *"(…) Our aim is indeed* ***to classify EU RESTRICTED all Operational data collected by FRONTEX censors (MAS)****. (…) In case a SIR is generated based on operational data collected by FRONTEX censors (MAS), this SIR must be restricted. (…) The access of* [redacted] *is ruled by art 109.7, but* [redacted] *has a security clearance which allows him/her to have access to a classified SIR and classified operational data"*.

It appears from the email above that [redacted] was aware that [redacted] could access the SIRs classified as EUCI. It also shows that the intention of [redacted] was to classify ALL the SIRs related to video recorded by the FSA, irrespective of the content which might justify or not the classification.

On 16 July 2020, [redacted] sent another email to [redacted] asking to be informed *"(…) if something prevent the Agency to classify any document according to its assessment (I don't think so). It's better if there is a general rule, but we don't necessarily need to wait for it. (…) as regards the operational data itself, can you confirm that nothing oblige the Agency to share it"*. [redacted] was ostensibly annoyed by the length of the discussion, not leading to the immediate outcome [redacted] expected. In this regard, immediately after sending the email to the [redacted], [redacted] forwarded the email to [redacted] with [redacted] comment *"killing"* (Annex 65).

Following the email exchange with [redacted], on the same day [redacted] sent an email to [redacted] and to [redacted] reporting the requests of [redacted], in particular about the possibility to classify as EUCI all operational data collected by FRONTEX censors (MAS) and with regard to the operational data itself, the confirmation that nothing obliges the Agency to share it (Annex 66).

On 22 July 2020, [redacted] sent an email to [redacted] (Annex 69) where [redacted] asked [redacted] to *"(…) support ORD to draft the relevant communication to* [redacted] *by which* ***the Agency releases this classified SIR but not the operational footages****. Please make sure that the draft transmission is submitted to @*[redacted] *for* [redacted]*'s approval (…)"*. This email confirms that the FRONTEX [redacted] had **no intention to allow** [redacted] **to have access to the video footage of the SIR 11095/2020**.

The mail exchange above concerning the classification of the SIRs continued between 29 July and 24 August 2020, involving [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] (Annex 67).

It is clear from the content of the email exchange that the initiative was about the classification of the SIRs, in particular SIR 11095/2020, and the associated operational data.

In this context some emails are of particular interest as they show the intent of the whole exercise, as perceived by the involved parties, and the sensitivity of the issue, in particular (Annex 67):

- [redacted] informed [redacted] manager, [redacted], about the level of security clearance held by [redacted], [redacted] and [redacted];
- [redacted] informed [redacted] about the fact that [redacted] intentionally had not saved the draft of [redacted] decision on classification in the FRONTEX Data Management System (DMS) "***as every action in DMS leaves traces, visible for users, which might be advisable for this specific case***";
- [redacted] stressed to [redacted] that the request by [redacted] was for an [redacted] decision on classification of the SIRs which would ensure the classification of the SIRs as well as the related operational video footage. However, as per FRONTEX Regulation, [redacted] has access to all information related to the respect of fundamental rights under FRONTEX activities, including classified information. Therefore, limitation of access to the FR could only occur narrowing down the access based on the need-to-know principle;
- [redacted] clearly communicated to [redacted] what [redacted] perceived was the final aim of the exercise on classification initiated by [redacted]: "(…) *Classification of the individual SIR is one issue, limiting access to the SIR by [redacted] is however another (…). In my view,* ***this would be illegal*** *as per Article 109 (7) of EBCG 2.0 and should not be pursued: The fundamental rights officer shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.*
  Hope this clarifies the remaining issues at stake and why the draft was not forwarded by me to [redacted] before my [redacted] (…)";
- [redacted] commented that classification of documents and possible limiting [redacted] access are two issues to be dealt separately: "*(…) I would not merge the issue of information and document classification with the issue of [redacted] unlimited or not rights to access it as they are 2 different issues. One problem at a time*".

The perceived unlawful nature of the initiative on classification of the SIRs, observed as aiming at limiting the access by [redacted] to relevant information, even if classified as EUCI, was also clarified by [redacted] to [redacted] in an email on 30 July 2020 (Annex 68). This email comes as a result of a talk [redacted] had with [redacted]. [redacted] clarified to [redacted] that "*(…) I checked the EBCG 2.0 and it provides in Article 109 (7): The fundamental rights officer shall have access to all information concerning respect for fundamental rights in all the activities of the Agency. I therefore do not see on what basis access could be denied, even to classified information*". Subsequently [redacted] instructed [redacted] to "***Please refrain from any illegal action***" (Annex 68).

On 24 August 2020, [redacted], reacting to the lengthy internal discussion on the matter which had not yet led to any formal document, wrote to [redacted] suggesting a way out: "*A simple [redacted] decision stating that a Serious Incident Report is classified RESTRICTED when it is based on operational data own either by a MS or the Agency might be sufficient, isn't it ?*" also adding that "*At a certain extent, we should task them to draft it as such*" (Annex 67)

The purpose of the initiative, perceived as intended to limit access to relevant information to [redacted], was also confirmed by [redacted] during [redacted] interview with OLAF (Annex 5): "(…) [redacted] *came out with the idea (which later evolved in a clear request/instruction) to classify the SIRs and all the material related to the incidents in an attempt to limit the access to them by [redacted]. (…) I made it clear to [redacted] my opinion that the classification of a SIR did not entail that [redacted] could have been denied access to it. (…) I was in disagreement with this request to classify as the reasoning behind made no sense and I expressed [redacted] my opinion that the classification would have not prevented [redacted] to have access to SIRs.* ***The purpose was even not lawful according to the FRONTEX Regulation****. However,* ***[redacted] replied that this was the request by [redacted] and we should comply*** *(…) [redacted] asked (and insisted) to have the SIR classified as EUCI. My position was that classification or protection of data as such was not wrong, as there might be operational needs suggesting not to disclose information externally. However, as I said,* ***I did not agree with the idea (possibly unlawful in line with the FRONTEX***

Regulation provisions) to limit/impede access to information to [redacted]*"* (Annex 5).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] confirmed the statements [redacted] made during the interview with OLAF: "(…) ***the purpose was to prevent*** [redacted] ***from having access to certain information.*** [redacted] ***idea to accomplish this was to classify certain information.*** *I explained this did not make sense since* [redacted] *has access to classified information, given by the Frontex Regulation*"**.**

During [redacted] interview with OLAF (Annex 21), [redacted] explained that "*(…) the idea was to classify the SIR and related material so to have it shared only with the limited number of the managers with a real need-to-know and need-to-act. Also, classification would have entailed specific rules on the handling of the SIR as EU Restricted information, thus also contributing to preventing possible information leaks. (…) the idea was to classify so to prevent unwanted dissemination by obliging the recipients to comply with the strict rules regulating the handling of EUCI (EU Classified Information). Again, the purpose was to protect the information, not to discriminate any access to it, in particular by* [redacted] *office*"**.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203), [redacted] stressed the intended purpose behind the initiative on the classification of the SIRs: "*(…) As regard especially the dissemination of SIRs, the intention was never to prevent* [redacted] *to have access to SIRs but to limit the number of recipients and to ensure the protection of the information, either through classification (bearing in mind that any Frontex staff is requested to have a relevant security clearance) or through the use of encrypted message which was finally the solution implemented. (…) This is a pity that some colleagues have perceived this need to protect the information differently (…)".*

During [redacted] interview with OLAF (Annex 4), [redacted] clarified that "(…) *The procedure at that time provided for the SIR to be disseminated to a large number of recipients, with risk of information leaks and the possibility for media outlets to get to know and coming back to the Agency with PAD requests. The reasoning for classification was to make sure that the Agency would not share sensitive information outside before we had clarified the incident as this information could have been used for political purposes on both Greek and* [redacted] *side. We have to keep in consideration the geopolitical context. I had concern that sharing the information with* [redacted] *office could have generated some information leaks since, as I said before,* [redacted] *office might be under pressure by the Consultative Forum to share information".*

[redacted] expressed similar considerations also in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106).

OLAF notes that:

- **the discussion tabled by** [redacted]**, following** [redacted] **instructions and involving several FRONTEX entities, was primarily concerned with the necessity of classifying as EUCI the SIR 11095/2020 and the related material. Nonetheless, it also extended to the classification of all the SIRs based on operational data (in particular video footage), irrespective of their specific content and potential FR component. In this respect the WG FRaLO addressed this exact issue, leading to its recommendation not to adopt a "blanket" classification of all the SIRs as EUCI but to carefully consider this classification on a case by case basis;**
- **with regard to the SIR 11095/2020, the reply letter FRONTEX received from the Greek Minister** [redacted] **on 10 July 2020 (in the middle of the internal discussion about possible classification of the SIRs) did not mention any national security or defense issue, nor make a clear connection between the incident and hybrid nature threats, suggesting the need to classify as EUCI the SIR and related material;**
- **the instruction** [redacted] **gave to** [redacted] **via email on 22 July 2020 (12 days after FRONTEX received the reply from Greece mentioned above) to "*(…)***

support ORD to draft the relevant communication to [redacted] ***by which the Agency releases this classified SIR but not the operational footages"*** **reveals that there was no intention to allow** [redacted] **to have access to the video footage of the SIR 11095/2020 (classified or nor).**

d. [redacted] **Access to EUROSUR**

On 24 November 2017, [redacted] ([redacted]) wrote to [redacted] stressing the needs to have renewed [redacted] existing authorisation to access the European Border Surveillance system (EUROSUR), relevant to the performance of [redacted] tasks, which [redacted] had been granted since [redacted]. For a better assessment, [redacted] enclosed excerpts of the fundamental rights related provisions of the EUROSUR Regulation (Annex 70).

Following an email exchange with the (at that time) [redacted], [redacted], on 12 January 2018 [redacted] (at that time [redacted]) informed [redacted] that ***"(…)*** [redacted] ***has decided that there is no need to extend*** [redacted] ***access to EUROSUR (…)"*** (Annex 71).

With regard to the message above, during [redacted] interview with OLAF (Annex 4), [redacted] commented that "*With regards to the message from* [redacted]*, I can only say that it was not the message I wanted to pass on.* [redacted] *did not intend* [redacted] *access to EUROSUR not to be renewed, but I, as* [redacted]*, clearly wanted to be sure that* [redacted] *could access only the information for which* [redacted] *had a need-to-know".*

Few days later in January 2018, [redacted] tabled a discussion with some FRONTEX entities, including the SAM Division and [redacted], concerning the limitation of access by [redacted] to EUROSUR following its upgrade to also store EUCI (Annex 72).

On 16 January 2018, [redacted] wrote an email to [redacted], with several recipients in copy, including [redacted], providing [redacted] opinion and assessment about the access to EUROSUR by [redacted] (Annex 72). In [redacted] email, [redacted] highlighted that the spirit of the legislator with the EUROSUR Regulation was to allow [redacted] to have unrestricted access to the information relevant for the performance of [redacted] tasks: "*(…) Recital 12 is important. It provides that FRO should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency within the framework of EUROSUR (…) Recital 12 does not strictly speaking provide that FRO should have access itself to Eurosur - although that may be the spirit of the legislator here(…)*". [redacted] concluded that: "*In short – strictly speaking FRO could be denied access to Eurosur. That said, it could lead to certain issues. Instead it may be possible to limit FRO's access. This is technically possible. Different roles can be assigned in the Eurosur system that allow this*" (Annex 72).

On 29 January 2018, [redacted] provided to [redacted] an explanatory briefing note prepared by [redacted] in cooperation with [redacted] (Annex 73). A flow chart (*visio* document) was also prepared by [redacted] based on a key point: granting, or not, any access to [redacted] depends on the relevance of the information stored in EUROSUR for the performance of [redacted] duties (Annex 74).

On 29 January 2018, [redacted] requested to [redacted] the possibility to adapt the IT architecture of the EUROSUR information-exchange framework "(…) *in order to limit the access rights to EU RESTREINT classified information*" (Annex 72). As the requested IT adaptation required time and resources, the same day, [redacted] ([redacted]) asked [redacted] to be confirmed "(…) *that the requirement is that* [redacted] *(or in a more general way, a certain profile of users) would access in READ ONLY all information, except the one classified RESTREINT UE/EU RESTRICTED* ***for which they would have no access at all***" (Annex 73).

On 12 February 2018, [redacted] informed [redacted] that the requested limitation of access to non-classified information entailed modifications to the system architecture requiring 30 man-days and costing 15 000 euro.

On 21 February 2018, [redacted] sent an email to [redacted] asking: "*(…) would it fly if* [redacted] *would* ***get access back*** *to all information in EUROSUR, except the one classified*

RESTREINT UE/EU RESTRICTED (stored in a restricted environment) ***for which [redacted] would have no access at all?***" (Annex 76).

On 26 February 2018, [redacted] instructed [redacted] to proceed confirming the "*(…)* [redacted] *green-light to go ahead with the modifications of the application in order to create a separate window for classified EU RESTRICTED documents*" (Annex 72). As additional confirmation, on 28 February 2018, [redacted] forwarded to [redacted] the *visio* document mentioned above (Annex 74) with a handwritten comment made by [redacted], dated 27 February, reading: "*I agree with this distribution mechanism. Green light for* [redacted] *to prepare, I know the cost (€15.000).* ***At stake is the possibility to use EUROSUR as a reliable security tool for MS in full compliance with security standards***" (Annex 75).

On 1 March 2018, [redacted] wrote an email to [redacted] raising some concerns in relation to the request [redacted] had formulated and the need to clearly identify the "*(…) relevance of information for* [redacted] *in the meaning of Article 71 (3)*" and "*(…) relevant criteria to determine the so called relevance for* [redacted]" (Annex 72). [redacted] also recognized that "(…) *the supplied schema does not specifically refer to the Eurosur Communication Network. The question is also whether the same handling would be applied to Restricted Information stored and processed in the Restricted Environment, but outside Eurosur (…)*". Finally [redacted] committed to contact [redacted] and [redacted] to solve the matter. In this respect, [redacted] also added [redacted] among the recipients of [redacted] email (Annex 72)

Following the email by [redacted], on 6 March 2018, [redacted] called for a meeting with [redacted], [redacted] and [redacted] to "*clarify what is requested and what is possible from IT perspective*" (Annex 77). **OLAF notes that [redacted] was not invited to the meeting despite the whole initiative evolving around [redacted] access to the EUROSUR.**

Concerns around the restriction of access to EUROSUR information by [redacted] were also raised by [redacted]. In an email addressed to [redacted] on 15 March 2018 (Annex 80) [redacted] commented on the "Draft instruction for FRONTEX's Security Authority concerning the access of [redacted]UR and the European Situational Picture", circulated by [redacted] on 9 March 2018. While not questioning the validity of restricting the access to EUROSUR by [redacted], [redacted] commented on the necessity to better motivate the need for such restriction as, from [redacted] perspective, the applicable FRONTEX Regulation clearly provided for a "need-to-know" allowing [redacted] to access EUCI stored in EUROSUR (Annex 80)

Following internal consultations (Annex 79, 80 and 81), on 28 March 2018, [redacted] requested a final contribution from [redacted] entities on a revised draft of the "Instruction from Frontex Security Authority concerning the access of the Fundamental Rights Officer to EUROSUR and the European Situational Picture". In that same email [redacted] stated the intention to organize a meeting with [redacted] ([redacted]) around mid-April to explain [redacted] the new procedure (Annex 81).

OLAF notes that [redacted] confirmed [redacted] never had any meeting with [redacted] to explain [redacted] the new procedure to access EUROSUR restricted information (Annex 85).

Following the contributions from relevant FRONTEX entities, finally the "Procedure regulating access of the Fundamental Rights Officer to EUROSUR and the European Situational Picture" was adopted by means of [redacted] Decision R-ED-2018-42 dated 1 May 2018 (Annex 82). The procedure stipulates that [redacted] right to access data contained in EUROSUR depends on two separate categories of data:

- Non-restricted data: [redacted] has full user access (read only);
- Any other data: by default [redacted] does not have user-access. However, ad-hoc access exemptions should be allowed for [redacted] in accordance with the procedure manual for validation of exemptions.

According to the information OLAF received from FRONTEX, the access role in EUROSUR that [redacted] was (and is) granted (so called *LimitedViewer*) in application of the Decision R-ED-2018-42 would prevent her/him not only from accessing any EUCI information, but also from being aware that classified data corresponding to desired search criteria is available in the EUROSUR system, irrespective of the content. In particular, OLAF was clarified that "*(…) Users in the "****LimitedViewer****" role* ***do not have the option to search***

***for RESTRICTED information**. (…) Users in the "LimitedViewer" role do not see attachments marked as RESTRICTED, even in LIMITED artefacts. (…) In all cases, the classified information is not visible to the Limited Viewer role. **In other words, there is no visible indication provided by the EUROSUR system to a "LimitedViewer" user that a classified artefact, for example a classified document is recorded in the system. It is therefore impossible for [redacted] to be aware of the existence of that specific document in the system**" (Annex 83).*

Therefore, **OLAF notes that the procedure introduced with [redacted] Decision R-ED-2018-42 entails that, while conducting searches in EUROSUR with monitoring purposes, in line with the tasks assigned by the FRONTEX Regulation, [redacted] cannot be aware of the existence of relevant document stored in EUROSUR if classified as EU Restricted. Subsequently, [redacted] would not be able to launch the procedure to request the access to that EUCI document, as per the [redacted] Decision R-ED-2018-42.**

OLAF also notes that, on 26 February 2018, [redacted] reported to the MB: "*(…) during the EUROSUR transfer of ICT environment to a restricted access network, [redacted] has suffered a discontinuation of [redacted] access to the EUROSUR application since November 2017. [redacted] used the system for monitoring purposes and requires access to the system in order to perform [redacted] functions in accordance to Article 71 EBCG and Art 22 of the EUROSUR Regulation, which requires monitoring of fundamental rights as the evaluation pointed out*" (Annex 84).

[redacted] confirmed to OLAF [redacted] used to access EUROSUR "*(…) purely for monitoring purposes in accordance to the [redacted] mandate. (…) I would often do searches with key words and then analyse the documentation in order to compare them to allegations, sometimes at a later stage. An example could be incidents classified in the system as "prevention of departure", were often later reported in the press or by NGOS as push backs*" (Annex 85). [redacted] also confirmed to OLAF that, following the suspension of [redacted] access right in November 2017, [redacted] was never able to access the database again (Annex 85).

OLAF notes that the impossibility to access EUROSUR, as reported by [redacted] (Annex 84 and 85), is also indirectly confirmed by the email that [redacted] sent to [redacted] on 21 February 2018, asking "*(…) would it fly if [redacted] **would get access back** to all information in EUROSUR, except the one classified as RESTREINT UE/EU RESTRICTED (stored in a restricted environment) for which [redacted] would have no access at all? (…)*" (Annex 76). The way the question was posed reveals that [redacted] access to EUROSUR had indeed been discontinued.

During [redacted] interview with OLAF (Annex 21), [redacted] commented that: "*Back in 2017/2018, we did not take into consideration the fact that [redacted] could have had interest in accessing the EU Restricted information stored in EUROSUR in relation to the handling of some SIRs. The incidents/facts that occurred in 2020, had not yet occurred in 2017. The FRONTEX Regulation in place in 2017 was different from the 2019 Regulation which enlarged the remit of the Agency and also the mandate of [redacted]. The only aim we had in creating a restricted window in EUROSUR was to stimulate the MS to share information on their assets in a secure platform so to contribute to a detailed situational picture. At that time (it was before the SIRs of 2020), we did not see the need for [redacted] to have access to the information about the MS assets not coordinated by FRONTEX*".

During [redacted] interview with OLAF (Annex 4), [redacted] commented that "*I was not sure that the creation of the restricted window for EUROSUR was the effective solution for the proper information management in EUROSUR. But this was the only technical option proposed to me and I am not an ICT expert. Indeed **the restricted window in EUROSUR was created to host, not only EU Restricted information, but also other information considered sensitive** (for example marked as SENSITIVE or LIMITED). However, as far as I am aware, indeed there was no clear procedure about how and on which basis to consider a certain information/document as sensitive and, therefore, to have it accessible in the restricted window of EUROSUR"* (Annex 4).

This statement by [redacted] confirms OLAF findings that the creation of a restricted environment in EUROSUR, without adequate procedure for its access, caused [redacted] difficulty (or even impossibility, as explained above) in accessing not only information classified as EUCI, but also considered, more broadly, sensitive.

e. Revision of the distribution list for SIRs

With regard to the incident which triggered the SIR 11095/2020 (incident occurred on 18-19 April 2020), on 19 April 2020 at 19:10, [redacted] sent to [redacted] a WhatsApp message to inform about something [redacted] perceived as an issue : "*(…)En ce qui concerne le SIR, le pb, c'est le nombre de destinataires au sein de l'Agence ([redacted] compris pour la catégorie 2) rend l'incident public de facto (et soumis à toute demande de PAD)*" (Annex 89) [Translation by OLAF: "*Concerning the SIR, the problem is the number of recipients within the Agency ([redacted] included for category 2) which makes the incident public de facto (and subject to any PAD requests)*"].

[redacted] replied stating that: "*Oui mais je pense qu'il ne faut pas tout de suite nommer [redacted] ou pas exclusivement car sinon cela enlève toute possibilité au commandement de l'agence de faire passer ses propres messages au commandement grec et cela donne l'impression que seul [redacted] suit les incidents(…)"* (Annex 89) [Translation by OLAF: "*I think that we should not immediately appoint [redacted] or not exclusively because otherwise it removes any possibility for the agency's command to pass on its own messages to the Greek command and it gives the impression that only [redacted] is following the incidents"]*

OLAF notes that, in line with the issue [redacted] had raised with [redacted] concerning the number of recipients of the SIR, following the initial release on 22 April 2020 of the Category 2 SIR 11095/2020, [redacted] questioned [redacted] about the fact that the SIR had been distributed too widely within the Agency. Therefore, [redacted] requested [redacted] to immediately recall the SIR so as to have it distributed to a more limited number of recipients, **excluding, among others,** [redacted] from the communication flow. The following day, 23 April 2020, a "new" SIR message was disseminated to a more limited number of recipients than the recipients of the initial SIR**.** However, [redacted] shared the "new" SIR message with [redacted] because removing [redacted] from the recipients after the initial release could have triggered some questions from [redacted] Office.

In relation with this episode, [redacted] requested [redacted] for a review of the SIRs distribution list. On 22 April 2020 [redacted] suggested [redacted] to initiate a general revision of the distribution lists of all the products (including the SIRs) released by [redacted] based on a "*need to know*" principle**.** The request was reiterated by [redacted] on 29 April 2020 (Annex 90). [redacted] provided [redacted] with the revised distribution lists on 4 May 2020 (Annex 90).

Eventually, **the initiative, requested by [redacted], resulted in the Agency excluding [redacted] from the distribution list for the dissemination of SIRs Category 1, 2 and 3 (Annex 91), irrespective of any possible fundamental rights component of the incidents.**

During [redacted] interview with OLAF (Annex 5), [redacted] confirmed that "(…) *the need for revision of the distribution lists of SIR* ***came from*** [redacted] *as* [redacted] ***wanted to limit the access to information by*** [redacted] ***in attempt to hide information to*** [redacted]*. This is to be seen in the framework of the general approach by the executive management towards involving, better excluding,* [redacted] *in the Agency's work".*

During their interview with OLAF (Annex 49 and 50), both [redacted] and [redacted] confirmed that neither they nor [redacted] Office was aware of the revision of the SIRs distribution list and that they had not been consulted. [redacted] did not recall receiving, after April 2020, any SIR Category 1, 2 or 3, with the exception of 2 SIRs received in May 2020 out of 122 SIRs Category 1, 2 or 3 initiated in 2020.

With regard to this issue, [redacted] stressed how "*Some SIRs of different categories can potentially have a FR component and* [redacted] *should have a possibility to be aware about such potential cases in order to properly react, irrespective of the initial categorization*." (Annex 49).

With regard to the review of the dissemination list of the SIRs, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203), [redacted] commented that "*(…) the intention was never to prevent t*[redacted] *to have access to SIRs but to limit the number of recipients and to ensure the protection of the information, either through classification (bearing in mind that any Frontex staff is requested to have a relevant security clearance) or through the use of encrypted message which was*

finally the solution implemented. [redacted] *instructions were always clear on that (…). This is a pity that some colleagues have perceived this need to protect the information differently and stresses the need for the Agency to renew its information management strategy*" (Annex 203).

f. Request for information by [redacted] regarding a complaint against FRONTEX deployed officers

On 14 November 2019, [redacted] within [redacted] Office sent to [redacted] via email a request for information regarding a complaint they had received (registration number CMP-2019-0013) concerning alleged violation of fundamental rights (Annex 92). After having been contacted by email by [redacted], who was asking for some additional details, on 18 November 2019 [redacted] explained to [redacted] that the information that [redacted] had requested was necessary to determine whether the grievances were admissible or not (as per Article 7 of the FRONTEX Rules on Complaint Mechanism) before the complaint was brought to the attention of [redacted] (Annex 92). In particular, [redacted] Office had requested to [redacted] the name, nationality and photos of the male border guards deployed by FRONTEX at the [redacted] airport on 4 October 2019.

On 27 November 2019, [redacted] replied to [redacted] by letter (Annex 93) stating that, as the request concerned personal data, in accordance with the advice of [redacted], the Agency invited [redacted] to request the information directly to the relevant MS.

[redacted] confirmed to OLAF during [redacted] interview (Annex 51) that, as a result of the decision of [redacted] not to provide the requested information, [redacted] had to address five different MS, with subsequent waste of time in dealing timely with the complaint.

OLAF notes that the content of the reply letter [redacted] sent to [redacted] on 27 November 20219 is, partially, incorrect. [redacted] confirmed to OLAF (Annex 94) that "(…) *the advice provided to [redacted] was clear: [redacted] had the need to access data with the exception of pictures*". Therefore [redacted] advised [redacted] to avoid providing only the pictures of the officers, as this would have exceeded the Data Protection legal constraints. However, [redacted] did not mention any legal barrier preventing the Agency to share with [redacted] the other requested information, namely the names and nationality of the deployed officers. [redacted] used the advice by [redacted] instrumentally, in a way to refrain from cooperating with [redacted] in [redacted] assessment of the complaint against the Agency.

g. Internal divisional meeting in the SAM Division

Following the request by [redacted] to the SAM Division to identify some applicable PAD justifications to prevent [redacted] to access information (see paragraph b. above), on 17 June 2020 [redacted] called for an internal divisional meeting with some staff members of [redacted]. During the meeting [redacted] instructed [redacted] not to share the FSA video of the incident under SIR 11985/2020 with [redacted]. OLAF has interviewed some participants to this meeting ([redacted]). The interviewees stated that [redacted] referred to [redacted] and [redacted] Office as "*externals*" as "[redacted] ***is not one of us. You might meet them, talk to them on the corridor and be friendly but [redacted] is not one of us***".

[redacted] invited [redacted] colleagues to "*see the big picture and there are geopolitical considerations that need to be taken into account*" and to keep in mind that "[redacted] ***are leftists and they anyways talk to other, like NGOs or the Consultative Forum***".

A similar reasoning was also expressed by [redacted] during another internal meeting held on 3 September 2020. The meeting was attended by staff members of [redacted] and [redacted] within [redacted]. OLAF was confirmed by attendees to the meeting that [redacted] called on the need to "*see the bigger political picture*" with regard to the fact that [redacted] might be using FRONTEX to put pressure on Greece and that "*Operational information which can have reputational damage gets misused".* [redacted] stated that

"[redacted] ***has a right of access to all information. But it does not mean that we give all information. We could consider that a violation of fundamental rights should not be given to everyone outside [redacted]. Fundamental Rights asks and we try to be friendly. That's the trap****".*

Again [redacted] referred to [redacted] Office colleagues as "*an independent group and* ***not real FRONTEX colleagues***" acting against the interests of the Agency supported by leftist parties at the EU Parliament**.** Similarly "*NGO are not volunteers but people who are well-paid" and they could be "[redacted]-backed".*

The statements above are in line with the narrative by [redacted] and [redacted] to which [redacted] referred during [redacted] interview (Annex 5): "*… I have to admit that, at that time, I had more and more sympathy for [redacted] position about the relationship between Greece and [redacted] and the need by FRONTEX to support Greece as the country was in a kind of "war" with [redacted]. Also, Greece was the ultimate border with [redacted] and, without FRONTEX support, we could have witnessed thousands of migrants entering EU borders. I did understand the geopolitical context touched upon by [redacted] and the possible hybrid threat posed to EU by [redacted]".*

In this context, OLAF recall the WhatsApp message that [redacted] sent to [redacted] on 16 April 2020 at 10:36 showing [redacted] skepticism on the credibility of the alleged pushbacks reported by open sources due to a possible interconnection between [redacted] and the NGOs: "*I have my doubts on those so called push back and really consider that [redacted] and NGO's have common interests..."* (Annex 7).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), with regards to the internal meetings above, [redacted] explained that some misunderstandings or some misinterpretation might have occurred, "*especially about the background as well as about the wording I used*"**.**

Concerning the background context in which the meetings have to be framed, [redacted] stressed the very tense situation [redacted] had to face as [redacted] was "*(…) under big pressure by [redacted] and [redacted]. There was the request of [redacted] to provide video footage (SIR 11095/2020). I did an attempt and discussed it with [redacted] (…) it is connected with the moment that [redacted] instructed me to find a way to classify certain information (incl. and esp. video footage) so to prevent access to [redacted]. (…) [redacted] disagreed to provide the video footage, as requested by [redacted]. [redacted] however went a step further and made it clear that the instruction to find a way to classify certain information (with the aim to prevent access to [redacted]) came directly from [redacted]. I have then indeed called for a meeting with [redacted] colleagues. (…)* ***I have then used wordings very similar as being used by [redacted] indeed****"* (Annex 138)*.*

Concerning the wording, [redacted] commented that [redacted] might have been misunderstood or [redacted] might have expressed [redacted]self in the wrong way as the full message [redacted] was trying to communicate was somehow different from what the attendees to the meeting reported, extrapolated from the full speech. This leads to a wrong impression as the words are taken outside their correct perspective (like for example with regard to the independence of [redacted]). [redacted] also admitted not to be proud of the words [redacted] said, mainly triggered by the tense situation [redacted] was facing and the pressure [redacted] received from [redacted] and [redacted]. [redacted] loyalty towards [redacted] the Agency led [redacted] to "*be inspired about their ideas*"**.**

h. TV documentary about alleged pushback

On 02 July 2020, [redacted] sent an email to [redacted] "*(…) to raise your awareness about a documentary, which has been recently published in the German TV and which refers to allegations of FR violations (push-backs) from Greece to [redacted] referring to Frontex presence in the area concerned*"**.** [redacted] asked for any available information on the addressed incidents, potential FRONTEX involvement and any SIRs launched in that regard. [redacted] also provided a working translation of the video from German to English (Annex 95).

On 15 July 2020, [redacted] prepared a draft reply to [redacted]. In this draft, [redacted] provided information about two incidents occurred on 13 June 2020 at sea [redacted], of which [redacted] was aware, that could have been linked to the incident mentioned in the TV documentary (to be noted that the video shown in the documentary was shot on Tuesday 16th June 2020 and the commentator refers to an event occurred that Saturday, therefore Saturday 13th June 2020). [redacted] also clarified that no SIR had been launched on 13 June in relation to distress situations at sea (Annex 96).

The draft reply was shared on 16 July 2020 with [redacted] their [redacted] advice "*given the sensitivity of the subject*" (Annex 94). On 17 July 2020, [redacted] replied that the "(…) *draft answer seems rather factual. It does not raise points of law per se. Unless you have a specific legal question, we believe you are best placed to provide* [redacted] *with the relevant information"* (Annex 95).

Immediately after, [redacted] at [redacted] informed [redacted] about the feedback from [redacted] which had not flagged any issue, and requested [redacted] green light to submit the reply to [redacted] (Annex 95).

On 21 July 2020, [redacted] requested to [redacted] who had drafted the reply to call [redacted] concerning the matter above. During the phone call, [redacted] instructed to shorten the reply and not to give too much information to [redacted] as it was not sure if the video footage had been tampered with or not, and if indeed the incident occurred 13 June 2020.

Based on the instructions by [redacted], on 23 July 2020 [redacted] prepared a shorter reply to [redacted] reading "*(…) After having watched the video and read the attached transcription, it is not clear on which date and exactly at which geographical location the events from the documentary took place. Based on the information of the events mentioned in the documentary* [redacted] *is not in the position to link them with any incidents* [redacted] *is aware of*" (Annex 95).

On 23 July 2020 [redacted] gave the green light for this reply to be sent to [redacted] (Annex 95).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] explained [redacted] instructions as "*(…) we couldn't conclusively confirm that the two incidents that we had documented, could relate to the documentary. Therefore, a cautious response was given. I refer also to the wording that I used: potentially tampered video footage. This is exactly the wording that* [redacted] *and* [redacted] *were often using when referring to footage from media or* [redacted] *authorities*".

OLAF agrees that the information available, at that time, to [redacted] did not allow to make a link between the incidents and the documentary with unquestionable certainty. At the same time, **OLAF notes that, with the email communication above, as per instructions by [redacted], [redacted] omitted to provide [redacted] with information available nonetheless. This information, with the caveat that it could not be conclusively linked to the TV documentary in question, could have assisted [redacted] in a better assessment of the facts.**

i. Analytical report on open sources information about "*ghost landings*"

As reported above under paragraph 2.3.1.c., during [redacted] Meeting 15 April 2020, [redacted] presented the Weekly Briefing Report of [redacted] Division (Annex 147). One of the point touched upon was the information, gathered from open sources, of migrants rescued by [redacted] on board of life-rafts. According to [redacted] website, the rescues were the consequences of push-backs by the Greek Authorities who, on their side, claimed that migrants had never landed in Greece. The Weekly Briefing Report was shared on 15 April 2020 at 10:17 am with several email recipients, including [redacted] (Annex 148).

That same day, 15 April 2020, at 17:48 [redacted] was presented by [redacted] an *ad-hoc* analytical report headed "*Analysis on life rafts incidents reported by* [redacted] *Coast Guard*" (Annex 32). The report consolidated open sources information and pictures published by [redacted] and concerning alleged pushbacks, by the Greek Authorities, of at

least 148 migrants who had landed on Greek shores around Lesbos, Samos, Kos and Leros. The incidents allegedly occurred between 23 March and 4 April 2020. [redacted] suggested to share the report with [redacted] and [redacted]. The conclusions of the report pointed out the concern that the HCG might have been involved in illegal pushbacks and the cases of so called "*ghost landings*" were not reported in JORA for this very reason. The report also stressed that: "(…) *In case the allegations have ground, involving the Greek authorities in the incident, Frontex reputation might be heavily hampered, also considering the potential violation of fundamental rights of the alleged push-backs performed towards the [redacted] territorial waters since the end of March*" (Annex 205).

On 15 April 2020 at 22:12, [redacted] shared the report issued by [redacted] with [redacted] highlighting that "*(…) since this kind of information seems to return (I asked [redacted] to provide with other similar recent information, if any) there might be a possibility it is correct. Therefore or in such case, Frontex might face questions and reputational risk. I do not share this report with anyone else yet but obviously we need to consider and in such case with whom to share ([redacted] suggests [redacted] and [redacted] while I rather would remain in the phase of gathering more information about such potential similar incidents and the reliability of the sources, for now) (…) I do not share with [redacted] at this moment in order not to overload [redacted] and anyway such info has been shared during the todays' [redacted] Briefing*" (Annex 33).

Upon confidential request by [redacted], the content of the report issued by [redacted] was assessed by [redacted]. [redacted] within [redacted] concluded the allegations were credible: "*Considering the credibility of sources and involved authorities, but also the variety in reporting by various reputable media outlets under 3., I consider the fact that GR authorities have and continue to either practice and/or tolerate push-backs to be very probable and not a mere current sign of [redacted] hybrid "warfare" ".* [redacted] finally suggested "*(…) that the [redacted] report is forwarded to [redacted] with the recommendation to consider opening an investigation into the matter*" (Annex 34).

OLAF notes that, despite the suggestion from two different sources ([redacted] and [redacted]) to share the report with [redacted] given the credibility of the allegations, the report on life-rafts incidents was shared only with [redacted] and [redacted] (Annex 35). [redacted] gave via email to [redacted] the instruction that "***no further dissemination is to take place at this moment***" (Annex 97), **so to confirm the intention not to share the report with [redacted], pending [redacted] instructions.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] commented that [redacted] was made aware of the issue in question as [redacted] was among the recipient of the Weekly Briefing Report disseminated on 15 April 2020 (annex 148). [redacted] never asked for additional information nor did [redacted] follow-up on that reporting nor did [redacted] solicit the launching of any SIR.

OLAF agrees that the weekly briefing was indeed shared with [redacted], but this was not the case for the analytical report, much more detailed and focusing only on this issue. The sharing of the report with [redacted] would have attracted [redacted]'s attention on the matter and, possibly, triggered an in-depth follow up.

j. Promotional video on complaint mechanism

In January 2020, [redacted] Office produced an informative video, explaining the complaints mechanism, to be published on the FRONTEX website so to raise awareness among a wide audience about the possibility and the way to lodge a complaint against the Agency (in case of perceived irregularity). On 22 January 2020, the video was submitted to [redacted] Unit of FRONTEX for the approval of [redacted] (Annex 99).

During [redacted] interview (Annex 49), with regard to the educational video above, [redacted] informed OLAF that, in May 2020, [redacted] had also informed [redacted] about the video when presenting the Annual Report on Complaints. In that occasion [redacted] informed that "*the complaints team finalized the video on the complaints mechanism prepared for the general public to be informed about the possibility to submit a complaint to the Agency. Currently, the video is pending approval from [redacted] of the Agency to be uploaded to the webpage and widely available, as foreseen in the Regulation*".

On 1 November 2020, [redacted] reminded to [redacted] that, up to that day, [redacted] Office had not received any feedback concerning the video. [redacted] also stressed the importance for the video to be "*(…) uploaded finally and immediately on Fx webpage ([redacted] was involved in consultations in 2019) and shown in the operational areas, easy to understand for migrants, and serving as an efficient, audio-visual tool to promote the complaints mechanism*" (Annex 101).

It is relevant to note that the email above from [redacted] is a reply to an initial request by [redacted] about the number of complaints received by the Agency concerning alleged pushbacks occurred during the RBI [redacted] (Annex 101). The reply by [redacted] stressed that "*(…) receiving any complaints does not imply no fundamental rights violations but rather no awareness or no access to complaints mechanism, migrants fearing repercussions thus do not complain; further dissemination of the complaints information is extremely important".* For this reason, a promotional video had been produced in January 2020 and submitted to [redacted] for [redacted] approval. As no action was taken in this respect until that date, [redacted] invited again [redacted] to watch the video and give [redacted] approval with view to "*(…) possible showing during MB meeting on 10 Nov as a sign of our efforts in the FR domain!"* (Annex 101).

On 19 November 2020, [redacted] reminded again [redacted] about the informative video, still pending [redacted] consideration and approval. [redacted] also suggested that "*Most probably publishing it would allow to alleviate some of the pressure around the topic*", referring to the Complaint Mechanism and the number of complaints the Agency received (Annex 100).

Finally, on 19 November 2020, **after around 10 months since the initial proposal and some reminders**, [redacted] confirmed via email to [redacted] [redacted] approval (Annex 100).

[redacted] did not make any specific comment on the matter in question in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106).

k. Collection of statements from witnesses

During the investigation, OLAF interviewed or gathered information through questionnaires from several FRONTEX staff members from the executive management, [redacted] Office, the SAM, ORD and CGO Divisions. [redacted].

In general terms, the majority of the interviewees reported to OLAF a critical situation, with very difficult and tense relationship between the FRONTEX [redacted] and [redacted] Office, in particular [redacted], [redacted]. This, inevitably, affected the involvement of [redacted] and [redacted] access to the relevant information concerning the activities of the Agency with possible FR implications.

In detail and as an example, different witnesses informed OLAF that:

- *the relation between [redacted] and [redacted] was always not an easy one. (…) I could observe some tensions, which could be also based on the personal grounds;*
- *I can say that during the talks I had with [redacted] it was clear that the Agency could have dealt with the FR issues better than it was doing. (…) [redacted] complained a few times that [redacted] initiatives were not taken properly into account by [redacted];*
- *The perception that I built by talking with [redacted] was that for [redacted], [redacted], did not have the competence for the job.*
- *On the FR matter in general, I can say that my personal perception is that the fundamental rights issue is perceived by [redacted] and [redacted] as a gimmick, a kind of gadget with no real use and need, less essential to the mission of the Agency than deployment of EU border guards. I have seen [redacted] annoyed by some of [redacted] documents or communication, to the extent [redacted] got visibly unpleased, commenting that [redacted] office contributions were not constructive to progress towards the objective of the Agency and not reflecting an accurate understanding of operational border controls*

operations. In this sense, you should consider that [redacted] was not considered as of a sufficient seniority status in the organisation to be invited to attend the weekly management meetings between [redacted], [redacted], [redacted] and [redacted] (…);

- *I had the impression that interpersonal relationship between [redacted] and [redacted] did not work. I think there was lack of professional respect for the competences of [redacted] by [redacted] (this was clear by the negative comments [redacted] made on documents originating from [redacted] in my presence);*
- *It is in this context that the subsequent actions by [redacted] ([redacted], [redacted] and [redacted]) to disrupt previously established channels of communication with [redacted] caused me considerable anxiety and distress;*
- *(…) regretfully, the outcomes/decisions of [redacted] Briefing or [redacted] meetings, to which [redacted] was not invited, were rarely and not consistently shared with [redacted] (and possible also other FRONTEX entities which might have had interest to know);*
- *(…) as regards the operational plans related to the establishment of Joint Operations, in general [redacted] is informed and has a possibility to insert its observations. However, it does not mean that all of the comments/considerations by [redacted] office are accepted and incorporated in the final documents. The same situation is applicable to other drafting exercises. Sometimes it also happens that [redacted] is not consulted on operational documents/policies/etc. and only receives the final products. (…) In some situations, the documents are requested to be commented by [redacted] office with very tight deadlines. Additionally, in some cases [redacted] office did not receive any feedback for a request for information or the information provided to [redacted] office was not satisfactory or sufficient, in particular related to recent examples of SIRs, coordinated or not by [redacted];*
- *(…) From the SIR 11022/2020 onwards there were obstacles created by Senior and Executive Management for FSC to share information including video footage with [redacted];*
- *In previous years, up to November and December 2020, [redacted] Office has not been usually involved in any of such decision-making processes. It happened sometimes that [redacted] was discussing with [redacted] office about the categorization of a SIR, but it was an exception. It has changed at the end of last year (2020). I think that this could be due to investigative procedures conducted by the external actors (in particular OLAF and the Working Group FRALO);*
- *The general rule was to keep [redacted] as much as possible out of the loop of the communications/SIR related to the alleged pushbacks. (…) I had difficulties to accept that the categorization had to be done differently than the SOP provided for and in this way prevented [redacted] from being involved or at least informed;*
- *I am not aware of the reason why [redacted]/[redacted] were so contrary to [redacted] having access to all available information. I can only report a sentence I heard by [redacted] warning about the risk of the "FR people" eventually managing the Agency.*

Findings on 2.2.2.: within their respective competences, roles and level of responsibility, [redacted], as [redacted], [redacted], as [redacted], and, [redacted], as [redacted] conveying the instructions [redacted] received, repeatedly acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access, by [redacted], [redacted] and [redacted], to relevant information available within the Agency, including in the EUROSUR system.

This behavior was triggered by the concern (expressed by [redacted] and [redacted]) about the increasingly relevant role of [redacted], labelled as "le *premier [redacted] de Frontex",* within the Agency, to the point that they allege the presence of a "*dictature [redacted]*" which made "*régner une terreur Khmer Rouge dans l'agence".*

2.2.3 Publication of vacancies for [redacted] and [redacted] posts

On 5 September 2019 at 12:29, [redacted] sent to [redacted] a WhatsApp message reading: "*Il va falloir publier un poste de [redacted] plus gradé que [redacted] très vite*" [Translation by OLAF: "*We'll have to publish a higher-ranked [redacted] post than [redacted] very quickly*"] Later, at 12:31, [redacted] also added: "*Et si le 12 au parlement j'annonce ou laisse entrevoir l'excellente nouvelle d'un upgrade de [redacted] alors si [redacted] refuse pour protéger [redacted] et [redacted] copines, alors c'est [redacted] qui portera le chapeau*" [Translation by OLAF: "*And if on 12 at the Parliament I announce or suggest the excellent news of a [redacted] upgrade then if [redacted] refuses to protect [redacted] and [redacted] friends, then [redacted] will wear the hat"]* (Annex 89).

On 17 November 2019 at 21:38 [redacted] sent a Whatsapp messagge to [redacted] asking information about the meeting planned with [redacted] DG HOME, [redacted]: "*Bonsoir [redacted], est-ce que tu sais s'il était prévu que [redacted] vienne voir [redacted] avec moi demain matin? Ce qui voudrait dire qu[redacted] sera dans la boucle à propos de la republication du poste de [redacted]...*" [Translation by OLAF: "*Good evening [redacted], do you know if it was planned for [redacted] to come and see [redacted] with me in the morning? Which would mean that [redacted] will be in the loop about the republication of the post of [redacted]..."]* (Annex 89). Few minutes later, at 21:50, [redacted] replied to [redacted]: "*Non, pas prévu. Ni avec [redacted]*". At 21:55 [redacted] replied: "*Ok [redacted]. **C'est mieux de ne pas trop avoir de témoin à propos de [redacted]** et si il y a des gens de DG Home à part [redacted], **je demande à ce que ce soit en cercle restreint pour parler de la republication du poste**. Bonne soirée, [redacted]*" [Translation by OLAF: "*Okay, [redacted]. It's better not to have too many witnesses about [redacted] and if there are people from DG Home apart from [redacted], I ask that it be in a small circle to talk about the republication of the post. Good evening, [redacted]"].* [redacted] agreed with [redacted] and, at 21:57, wrote [redacted]: "*Oui, **il va falloir avancer dans la discrétion la plus absolue dans les prochaines 48h***" [Translation by OLAF: "*Yes, we will have to move forward in the most absolute discretion in the next 48 hours"].*

The following day, 18 November 2019, at 09:26 [redacted] informed via WhatsApp [redacted] about the meeting [redacted] had with [redacted]: "*Très bonne réunion avec [redacted] qui est sur un mode "confidence" **contre les excès de l'idéologie**.*

[redacted] *:-)*

[redacted] ***est OK pour que j'annonce au MB la publication du poste au niveau AD 11**. Je [redacted] ai dit qu'il n'y avait pour le moment que 3 personnes plus [redacted] dans la boucle à part moi (…)* " (Annex 89) [Translation by OLAF: "*Very good meeting with [redacted] who is in a "confidence" mode against the excesses of ideology.*

[redacted]*:-)*

[redacted] *is OK for me to announce to the MB the posting of the post at the AD 11 level. I told [redacted] that for the moment there was only 3 people plus [redacted] in the loop apart from me (...)*"].

The same day, 18 November 2019, [redacted] instructed the CGO Division to review and publish immediately some vacancies of managerial posts, including the posts of the Head of Cabinet, the Deputy Head of Cabinet, the Head of Media and Public Relations, the Data Protection Officer, the Fundamental Rights Officer and the Deputy Fundamental Rights Officer.

Relevant witnesses confirmed to OLAF that, **contrary to the normal practice at FRONTEX, [redacted] was provided with the draft vacancy notices to be published, already drafted by [redacted] and [redacted], on which [redacted] was simply asked for a review and completion with missing administrative details.**

Internal meetings between [redacted], [redacted], and the CGO Division were held on 18 and 19 November 2019. The CGO Division raised some concerns about the publication, notably the independent nature of the [redacted] post requiring the involvement of the Management Board, and of the need to involve [redacted] with regard to [redacted] post. However, as [redacted] confirmed to OLAF, [redacted] **stated that an agreement with [redacted] DG HOME had been reached on the publication and asked for the strictest confidentiality about the forthcoming publication** (Annex 127).

On 19 November 2019 at 17:28, [redacted] informed via WhatsApp [redacted] DG Home, [redacted], about the imminent publication of several vacancies at managerial level, including that of [redacted] post, as they had discussed the day before. [redacted] also reported to [redacted] to have informed the concerned job holders, including [redacted], explaining

the reasoning behind the publication, and to have informed [redacted] the MB (Annex 103). No reaction by [redacted] is recorded in the WhatsApp chat.

Eventually the vacancy notices for the managerial posts (including the posts of the Head of Cabinet, the Deputy Head of Cabinet, the Head of Media and Public Relations, the Data Protection Officer, the Fundamental Rights Officer and the Deputy Fundamental Rights Officer) were published on 19 November 2019.

Following the discussion during the 77th MB meeting on 20 and 21 November 2019, [redacted] the MB, in agreement with [redacted] and the representative of the European Commission (EC), requested to the Agency to suspend the vacancy notices for the FRO and Deputy FRO posts pending a legal opinion by the EC "*on whether [redacted] is entitled to launch the vacancy notices concerning FRO and Deputy FRO without prior approval of the MB*" (Annex 107).

On 3 December 2019, the EC, upon request of [redacted], advised that **the publication was irregular** as missing the prior involvement and approval of the MB for the FRO post, and of the FRO for the Deputy FRO post. The European Commission also stressed that the publication of the vacancy notice, made more than a year prior to the end of the term of office of [redacted], could be considered as an attempt to discredit or weaken [redacted], and give rise to an action for damages (Annex 102).

OLAF notes that the Article 2(3) of the MB Decision 26/2016 of 6 October 2016 [delegating the powers of the authority empowered to conclude contracts of employment and of the appointing authority to the FRONTEX Executive Director] stipulates that: "*Decisions on selection, engagement, extension of contract, termination of contract, appraisal and reclassification of the Accounting Officer and the Fundamental Rights Officer shall be subject to approval by the Management Board"* (Annex 207)

In the framework of the investigation, OLAF retrieved the following WhatsApp messages exchanged on 20, 21 and 29 November 2019 between [redacted] and [redacted], showing their mindset, considerations and tactics concerning the recent publication of the FRO post as well as the alleged existence of a protective link between [redacted] and [redacted] which, according to [redacted], put [redacted] in a position of conflict of interest (Annex 89):

- 20 November 2019:
  - at 09:41 [redacted] wrote to [redacted]: "*Sur les recrutements, et les nouvelles procédures, tu n'es pas obligé d'aller dans le détail, mais d'indiquer que conformément à la Roadmap (1ère disposition), il y a une série de recrutements To reinforce critical functions necessary for the implementation of the new regulation, including of course* [redacted]" [Translation by OLAF: "*On recruitments, and new procedures, you are not obliged to go into detail, but to indicate that according to the Roadmap (1st provision), there is a series of recruitments To reinforce critical functions necessary for the implementation of the new regulation, including of course* [redacted]"];
  - at 09:58, [redacted] replied: "*Bravo la COM bien sûr*";
  - immediately after, at 09:59, [redacted] wrote again: "*Il ne faut pas qu'*[redacted] *s'attende à la tendresse pour* [redacted] *si* [redacted] *Ms plante avec* [redacted]" [Translation by OLAF: "[redacted] *shouldn't expect tenderness for* [redacted] *if* [redacted] *stands with* [redacted]"];
  - at 10:16, [redacted] wrote to [redacted]: "***S'ils me demandent de retirer le poste je demande une instruction écrite et on voit si on peut attaquer devant la CJUE. Juste les menacer pour voir s'ils ont la frousse et s'ils sont sûrs de leur bon droit***" and "*Ils n'ont qu'à consulter le service juridique de la Commission et DG HR pour voir s'ils peuvent me donner un tel ordre par écrit*" [Translation by OLAF: "*If they ask me to withdraw the post, I ask for a written instruction and we can see if we can attack the CJEU. Just threaten them to see if they have the coldness and are sure of their right*" and *"They only have to consult the Commission's Legal Service and DG HR to see if they can give me such an order in writing"];*
  - at 10:18, [redacted] informed [redacted] that: "[redacted] *me confirme que le règlement ne prévoit pas la consultation préalable du MB pour lancer le recrutement*" [Translation by OLAF: "[redacted] *confirms to me that the regulation does not provide for prior consultation of the MB to launch recruitment*"];

- at 10:22, [redacted] commented to [redacted] that: "***En faisant un peu le cow boy sur ce coup là mais dans le respect du droit, j'ai aussi envoyé un avertissement à COM qu'elle devra compter sur moi pour la sélection des DED et ne pas me mettre devant un fait accompli***" [Translation by OLAF: "*By doing a little the cow boy on this one but with in compliance with the law, I also sent a warning to COM that she will have to rely on me for the selection of DEDs and not put me in front of a fact occurred*"];
- at 12:23, [redacted] wrote to [redacted]: "*Et tous ces bureaucrates n'ont qu'à sortir du bois et de la peur que végète* ***cette dictature intellectuelle de*** [redacted]" [Translation by OLAF: "*And all these bureaucrats have to get out of the woods and the fear that this intellectual dictatorship of* [redacted] *is spreading*"];
- at 12:30, [redacted] suggested to [redacted]: "*Maintenant, je te suggère de* ***laisser*** [redacted] ***et*** [redacted] ***montrer leur mauvaise manière, subjectivité, partialité****. Et de t'en tenir avec calme aux arguments juridiques*" [Translation by OLAF: "*Now, I suggest you let* [redacted] *and* [redacted] *show their bad way, subjectivity, bias. And stick calmly to the legal arguments*"];
- at 12:56, [redacted] wrote to [redacted]: "[redacted] *me confirme qu'on a eu raison de publier la vacancy notice. Si on insiste sur la dimension "selection" on se tire dans le pied car* ***les "decision on selection, engagement (...)" du FRO et du comptable sont du ressort du MB et pas du ED***" [Translation by OLAF: "[redacted] *confirms to me that we were right to publish the vacancy notice. If we insist on the "selection" dimension, we shoot ourselves in the foot because the "decision on selection, engagement (...)" of the FRO and the accountant are the responsibility of the MB and not of the ED*"];
- at 22:15, [redacted] wrote: "[redacted] *me dit que* [redacted] ***veut demander demain la suspension de la publication des VNs de FRO et D.FRO*** *le temps que la COM donne un avis juridique sur la nécessité d'obtenir l'accord du MB pour publier le poste*" [Translation by OLAF: "[redacted] *tells me that* [redacted] *wants tomorrow to request the suspension of the publication of the VNs of FRO and D.FRO until the COM gives a legal opinion on the need to obtain the MB's agreement to publish the post*"];
- at 22:29, [redacted] replied: "***Je n'ai pas envie de céder***" and "***Qu'*** [redacted] ***ne s'avise pas à faire cela car je vais révéler au MB qu'*** [redacted] ***a caché depuis un an l'existence d'une plainte*** [redacted]" [Translation by OLAF: "*I don't want to give up*" and "*doesn't* [redacted] *dare to do this because I'm going to reveal to the MB that* [redacted] *has hidden for a year the existence of* [redacted] *complaint*"];
- at 23:08, [redacted] wrote to [redacted]; "*Il faut vérouiller avec* [redacted] *mais mon argumentaire est très clair et tu peux le partager avec* [redacted]***:***
  1. Tout est juridiquement bordé et c'est exactement ce qui a été fait pour le recrutement du accounting officer;
  2. Les travaux préparatoires de l'évaluation annuelle sont effectués par le directeur exécutif et l'entretien « appraisal » n'est pas fait par [redacted] *ni par aucun membre* [redacted]*. Donc par analogie les travaux préparatoires pour la sélections connaissent le même régime;*
  3. ***Il y a toute l'apparence d'une connivence entre*** [redacted] ***et*** [redacted]***, puisque*** [redacted] ***à ma connaissance n'a pas informé les membres du MB d'une information importants que je*** [redacted] ***ai transmise à propos de la plainte*** [redacted]***. Je suis donc fondé à considérer que je ne pouvais pas totalement faire confiance à*** [redacted] ***compte tenu de sa connivence personnelle qui a en toute bonne foi l'apparence d'un conflit d'intérêt. Cette situation justifie que je ne fasse pas une interprétation du règlement qui*** [redacted] ***donne un pouvoir de blocage. C'est un cas qui justifierait même que j'invoque pour*** [redacted] ***la protection accordée aux « lanceurs d'alerte » (whistleblowing)****".*
  [Translation by OLAF: "*We have to check with* [redacted] *but my argument is very clear and you can share it with* [redacted]*:*
  1. Everything is legally bordered and this is exactly what has been done for the recruitment of the accounting officer;
  2. The preparatory work for the annual evaluation is carried out by the Executive Director and the "appraisal" interview is not carried out by [redacted] *or any member of* [redacted]*. Thus, by analogy, the preparatory work for the selection process is subject to the same rules;*

3. There is all the appearance of a connivance between [redacted] and [redacted], as [redacted] to my knowledge has not informed the MB members of an important information I had provided to [redacted] about [redacted] complaint. I am therefore justified in considering that I could not fully trust [redacted] given [redacted] personal connivance, which in good faith has the appearance of a conflict of interest. This situation justifies not making an interpretation of the regulation which gives [redacted] a blocking power. This is a case that would even justify [redacted] invocation on the protection granted to "whistleblowers" (whistleblowing)"].

- 21 November 2019:
  - at 09:25, [redacted] wrote to [redacted]: "*Ce que je peux te conseiller ce matin:*
    1. Nous avons publié compte-tenu de l'importance du sujet, et de ce qui est requis par le règlement (…).
    2. L'urgence est liée à la roadmap (nomination d'un DFRO au Q4 2019)
    3. Nous avons appliqué la même procédure que pour l'ACCOUNT (publication par l'Agence, sélection et nomination par le MB). (…)
    5. Espérant que cela ne retardera par la procédure pour tenir le Calendrier.
    ***Maintenant, je serais toi, je n'utiliserai pas l'argument de la plainte pour [redacted]**. Pour l'instant, en petit comité, c'est [redacted] qui fait preuve de considérations personnelles.*
    Le premier qui évoque en public le cas personnel d'[redacted] verra son argumentation affaiblie.
    Je sais que c'est frustrant (et je partage cette frustration) mais c'est ce qui me semble tactiquement le plus approprié pour parvenir à la fin du processus au recrutement de quelqu'un [redacted] avec qui nous pourrons travailler" [Translation by OLAF: "*What I can advise you this morning:*
    1. We have published in view of the importance of the subject, and of what is required by the regulation (...).
    2. The urgency is linked to the roadmap (appointment of a DFRO in Q4 2019)
    3. We applied the same procedure as for the ACCOUNT (publication by the Agency, selection and appointment by the MB). (...)
    5. Hoping that this will not delay by the procedure to keep the Calendar.
    Now, If I were you, I would't use the complaint argument for [redacted]. For now, in a small committee, [redacted] has demonstrated personal considerations.
    The first one that publicly evokes [redacted]'s personal case will see [redacted] arguments weakened.
    I know it's frustrating (and I share this frustration) but it seems to me the most tactically appropriate to reach the end of the process to recruit someone [redacted] with whom we can work"].

- 29 November 2019
  - at 20:53, [redacted] informed [redacted] via WhatsApp that: "*Je crois avoir **détecter un endroit où on peut faire valider que le poste de FRO doit être republié à un grade plus élevé et comme poste managerial***" [Translation by OLAF: "*I think I've detected a way where we can confirm that the FRO position needs to be republished at a higher grade and as a managerial position"].*
    One minute later, at 20:54 [redacted] also added: "***Si [redacted] ne lit pas en détail on peut faire adopter ce petit « cavalier » discrètement**. Et [redacted] ne peut pas se permette de bloquer notre budget*" [Translation by OLAF: "*If [redacted] doesn't read in detail, we can have this little rider adopted discreetly. And [redacted] can't afford to block our budget*"].

OLAF also retrieved some WhatsApp messages regarding the publication of the vacancy notice for the post of FRO, that [redacted] sent, on 20 November 2019, to [redacted], [redacted]. The messages clarifies the mindset of [redacted] and [redacted] reasoning behind the urgency of the publication of the post, leading [redacted] to put the MB aside of the process (Annex 104). At 18:07, [redacted] wrote to [redacted]: "*Il y a eu de la tension ce matin car [redacted] republié le poste d'[redacted] et que [redacted] du Board est tout copain avec [redacted] mais ensuite c'est allé*" and "*Je suis tests droit dans mes bottes"* [Translation by OLAF: "*There was tension this morning because [redacted] republished [redacted]'s post and [redacted] of the Board is all friends with [redacted] but then it went"* and "*I'm firm right in my boots*"].

At 18:13, [redacted] wrote to [redacted]: "*J'au fait légalement en exploitant quelques lacunes du droit non interprétées à propos de l'indépendance et du fait que le conseil d'administration est l'autorité qui nomme"* [Translation by OLAF: "*I do so legally by exploiting some uninterpreted gaps in law regarding independence and the fact that the board of directors is the appointing authority*"].

At 18:13, [redacted] finally clarified to [redacted]: "***J'ai fait aussi un coup de cow boy parce que je voulais le faire avant la prise de fonction de la nouvelle Commissaire [redacted] qui doit culturellement entendre le chant des sirènes des droits fondamentaux et des ONGs comme la précédente [redacted] avant [redacted] de [redacted] aussi et qui a inventé le rôle de [redacted]***" [Translation by OLAF: "*I also made a cowboy blow because I wanted to do so before the new [redacted] Commissioner took office, who must culturally hear the singing of the mermaids of fundamental rights and NGOs like the previous [redacted] before [redacted], from [redacted] too and who invented the role of [redacted]*"].

On 3 December 2019, immediately after having received the above mentioned legal advice of the EC concerning the publication of the vacancy for the FRO post, as a direct reaction, [redacted] decided to withdraw the financial delegation to [redacted] ([redacted]).

In this respect the following WhatsApp messages were exchanged between [redacted] and [redacted] on 3 December 2019 (Annex 89):

- at 20:46, [redacted] wrote to [redacted]: "*Et je viens de trouver l'avis juridique de la Commission qui me donne tort sur la publication du poste de FRO et deputy FRO. C'est consternant. Et maintenant [redacted] va pavaner"* [Translation by OLAF: "*And I have just found the Commission's legal opinion proving me wrong with the publication of the post of FRO and deputy FRO. That's dismaying. And now [redacted] gonna walk around"*];
- at 20:47 [redacted] instructed: "***On [redacted] coupe la délégation budgétaire demain***" [Translation by OLAF: "*Let's cut [redacted] off the budgetary delegation tomorrow*"];
- few seconds later [redacted] clarified: "*Tant que je n'ai pas de réponse de la Commission sur les autres questions"* [Translation by OLAF: "*As long as I have no answer from the Commission on the other questions*"];
- at 21:04 [redacted] wrote: "*Je pense qu'il faut donner la délégation budgétaire à [redacted] comme [redacted] "droits fondamentaux"* [Translation by OLAF: "*I think it is necessary to give the budgetary delegation to [redacted] as [redacted] on fundamental rights*"];
- at 21:06 [redacted] called for the responsibilities of [redacted] and the EC: "***Il faut que [redacted] assume qu'[redacted] protège [redacted] et que la Commission assume qu'elle ne m'aide en rien au niveau [redacted]***" [Translation by OLAF: "*[redacted] must take responsibility that [redacted] protects [redacted] [redacted] and that the Commission takes responsibility that it does not help me in any way at [redacted] level*"];
- at 23:20 [redacted] suggested to [redacted]: "*Sur FRO, je pense qu'il faut jouer la bonne foi et être conciliant à ce stade, essayer de savoir qui a vraiment tenu la plume de cette lettre (un contact avec [redacted] serait utile) et rechercher un moyen d'alerter le niveau politique pour les prochaines étapes (vu que cette lettre te menace en termes à peine voilés d'aider le MB à travailler sur [redacted] délégation)"* [Translation by OLAF: "*On FRO, I think it is necessary to play good faith and be conciliatory at this stage, try to know who really held the pen of this letter (contact with [redacted] would be useful) and look for a way to alert the political level for the next steps (given that this letter threatens you in barely veiled terms to help the MB work on [redacted] delegation)*"].

Indeed, on 4 December 2020 at 17:55, [redacted] informed via WhatsApp [redacted] that the Decision withdrawing the delegation of budgetary authority to [redacted] was ready for [redacted] signature in the data management system. At 18:52 [redacted] confirmed to have signed it, also adding the emoticon of a smiley face (Annex 89). The document in question is [redacted] Decision No R-ED-2019-2020 of 4 December 2019 (Annex 196) which limited to withdraw the financial delegation from [redacted] without entrusting of it anyone else (Annex 196).

With regard to the withdrawal of the financial delegation to [redacted], in [redacted] reply to the invitation for comments on the findings of the OLAF investigation, [redacted] commented that "*In withdrawing the budget delegation that [redacted] had given to [redacted] wanted to make it clear to everyone that budget delegations were the personal liability of the Executive Director as Authorising Officer of the Agency. It became clear that a struggle for power was*

starting in the Agency with an increasing politization instigated by some actors who wanted to undermine the function of the Executive Director. [redacted] acted in the interest of proper institutional functioning of the Agency and in the interest of a neutral and non-politized functioning of basic administrative matters in the Agency which went under threat that Fundamental Rights policy could override every other rules" (Annex 106).

OLAF notes that this statement, while clarifying the tense/adverse political atmosphere [redacted] perceived [redacted] had to face, seems contradicted by the WhatsApp message that [redacted] sent to [redacted] on 3 December 2019 at 21:04, suggesting [redacted] intention to assign the delegation of budgetary authority to [redacted] Office, thus leading to consider that there was, primarily, a personal issue between [redacted] and [redacted].

With regard to the need to involve the MB in the publication of the vacancy for the FRO post, [redacted], [redacted], reported to OLAF that "*(…) even if there was no legal issue for [redacted] to take the decision (from the perspective of AIPN powers), it is good practice to communicate and align. In spite of the conclusion of [redacted] analysis (concluding it is a power of the ED)* ***I did advise orally (to [redacted] and hierarchy) that at least MB [redacted] be informed before the publication****. I understood that it was done before the Management Board(…)" (*Annex 109).

During their interviews with OLAF, [redacted] (Annex 4) and [redacted] (Annex 21) explained that the urgency of the publication was dictated by the need to stick to the roadmap on the implementation of the mandate of the Agency under the new FRONTEX Regulation (Annex 108), in particular in relation to the recruitment of the 40 Fundamental Rights Monitors (FRMs), for which the Agency considered necessary the involvement of a FRO recruited at managerial level. They also stressed that the Agency had followed the same procedure adopted, one year earlier, for the recruitment of the Accounting Officer, which is also an independent function within the Agency, without any issue had been raised by [redacted] the MB or the EC.

With regard to the lack of involvement of the MB, [redacted] clarified to OLAF that it was a necessary measure [redacted] had to take to avoid delays in the process as [redacted] feared that some members of the MB, including [redacted], wanted to protect [redacted]: "*The MB was not involved in the drafting of the vacancy notice for the FRO post. There was a need to act swiftly. I could feel that some Members of the MB, also the EC, were also questioning the need to upgrade the FRO post at managerial level. (…) I saw the reluctance from the EC and some MB members as linked to their will to protect [redacted]. However, [redacted] had to be objective and act in the best interest of the Agency and the best possible implementation of the fundamental rights monitoring. Which for [redacted] was to publish the post [redacted] and spreading out a narrative based on incorrect facts. (…) [redacted] instructed to publish the vacancies one day before the MB meeting of November 2019, without involving the MB (as we had done the year before for the Accounting Officer) because [redacted] wanted to have an open discussion at the MB meeting, but the problem was that [redacted] had experienced the reluctance at the level of [redacted] the MB and the EC as [redacted] mentioned before. [redacted] feared that [redacted] the MB could have simply refused to include the point of the publication of the vacancy notices in the meeting agenda. This was also the reason why [redacted] asked, to the FRONTEX entities involved in the preparation of the vacancies, for strict confidentiality about the publication as [redacted] feared the adverse reaction from external actors (the EC, [redacted] the MB) and the attempt to stop the procedure"* (Annex 4).

OLAF recalls the message that [redacted] sent on 18 November 2019 at 09:26 to [redacted] informing about the meeting [redacted] had with [redacted]: "(…) [redacted] *est OK pour que j'annonce au MB la publication du poste au niveau AD 11"* (Annex 89). In relation to this, **OLAF notes that, during [redacted] interview with OLAF on 13 September 2021 (Annex 105), [redacted] DG HOME, [redacted], denied to have ever given the EC agreement on the publication of the vacancies for the FRO post before the MB**

had explicitly agreed or given its consent with a view to speed up the implementation of the roadmap for the 2019 FRONTEX Regulation.

This circumstance was also confirmed to OLAF by a witness who reported about a closed meeting that occurred aside the MB meeting of 20-21 November 2019 and was attended by [redacted], [redacted] the MB and [redacted] DG HOME. The witness stated that, during this meeting, [redacted] DG HOME clarified [redacted] had never given [redacted] agreement to the publication of the vacancy for the FRO and other published posts, while [redacted] the MB expressed [redacted] disappointment as the lack of involvement of the MB by [redacted] was considered as a lack of respect towards the MB authority.

With regard to the alleged agreement of DG HOME, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] clarified that "*The agreement to speed up and anticipate the implementation of the EBCG regulation including the publication of vacancy notices was not specifically with* [redacted] *about the posts of FRO and deputy FRO but this was a general common understanding with managers in DG Home to implement as soon as possible whatever could be done swiftly",* thus confirming that there was no specific agreement by DG HOME nor by [redacted] to publish the vacancies without the prior involvement of the MB.

In the same reply to the invitation for comments (Annex 106), as a general comment on the publication of the FRO and Deputy FRO posts, [redacted] stressed that "(…) *in very difficult circumstances* [redacted] *acted ethically in the best interest of the Agency, in the best interest of the implementation of the EBCG regulation including in the best interest of the proper and swift implementation of the new provisions on Fundamental Rights. (…) The budget of the Fundamental Rights Office was expected to reach 2 million euro in 2021 (to be compared with approximately 50.000 euro in 2015).* [redacted] *also noticed in the end of 2019 the politization of the post of FRO. During one of* [redacted] *hearings in the European parliament some MEPs in the LIBE committee questioned the reasons why a function implying the management of 50 staff required in my views a recruitment in line with the criteria of "managerial post".* [redacted] *did not get support from* [redacted] *the Commission attending the hearing. But eventually in March 2020 DG Home recognised that* [redacted] *reasoning was correct and that Frontex needed a Fundamental Rights Officer recruited as "managerial post" in order to properly implement the reinforced provisions on Fundamental Rights enshrined in the new EBCG regulation that entered into force in December 2019"* (Annex 106).

With regard to the publication of the FRO and Deputy FRO posts, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203), [redacted] observed that "*These procedures were launched in November 2019, a few days before the publication of Regulation 2019/1896, in order to be on time for the recruitment of the 40 fundamental rights monitors to be recruited in the year following the publication (before 4 December 2020), bearing in mind that the FRO will be in charge of their recruitment. (…) which means that both recruitments (FRO, DFRO and then the 40 FR monitors) should be handled in one-year time to comply with the regulation. These procedures were handled in good faith based on the previously agreed procedure for the recruitment of the Accountant officer in September 2018, which is another independent function reporting to the Management board. At that time, this approach did not raise concern from the European Commission and was endorsed by the Management Board".*

With regard to the lack of involvement of [redacted] in the drafting of the vacancy for the Deputy FRO post, during [redacted] interview [redacted] reported to OLAF that "[redacted] *was not involved in the drafting of the vacancy notice for the Deputy FRO as I was sure that this would have delayed the whole process and* [redacted] *would have lobbied in the direction I mentioned before. (…) Also, there might have been* ***a potential conflict of interest situation*** *in case* [redacted] *participated in the drafting of the vacancy for Deputy FRO post and, later, applied for this post*" (Annex 4). A similar consideration was also expressed by [redacted] during [redacted] interview with OLAF (Annex 21).

However, during the same interview (Annex 21), [redacted] confirmed to OLAF to remember that [redacted] self was "*(…) involved in the drafting of the vacancy notices for the whole*

package of posts which were published on 19 November 2019, including HoCAB and Deputy HoCAB, Fro and Deputy FRO under the 2019 Regulation"**.**

OLAF consequently notes that the considerations expressed by [redacted] and [redacted] about of the non-involvement of [redacted] in the drafting of the vacancy notice for the Deputy FRO post - to avoid a potential conflict of interest - were applied to [redacted] but were disregarded for [redacted] as stated by [redacted] self.

Finally, concerning the reference by [redacted] to a possible conflict of interest involving [redacted] the MB due to possible failure by the latter to inform the MB about the administrative inquiry against [redacted], as reported in the WhatsApp message of 20 November 2020 at 22:29 (Annex 89), during [redacted] interview [redacted] stated that "*The mention of the conflict of interest is in the sense of "emotional" conflict of interest as, for me, it was more than clear that they were tied by a close friendship which could have affected the assessment of the facts and situations by* [redacted]" (Annex 4)**.**

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] also observed that "*When looking back to the events, I think I could have acted differently in trying to activate a whistleblowing mechanism, although this is probably not common as* [redacted] *of an EU Agency. Or perhaps I should have referred the situation to OLAF, based on my suspicion that there were conflicts of interests including political conflicts of interest prompting some members of the Management Board to refuse to recognise that the Fundamental Rights Officer had to be part of the managerial structure of the Agency which implied a recruitment according to the procedure applicable to managerial posts*"**.**

The topic of the potential conflict of interest situation by [redacted] the MB will be developed further in the following chapter 2.3.4, dedicated to the administrative inquiry against [redacted] for [redacted].

Findings on 2.2.3: within their respective competences, roles and responsibilities, [redacted], as [redacted], and [redacted], as [redacted], instructed the relevant FRONTEX entities to publish, under strict confidentiality, the vacancies for the FRO and Deputy FRO Posts without prior involvement of the MB, for the FRO post, and of the FRO, for the Deputy FRO post. This [redacted] decision was based, according to [redacted] and [redacted], on the need, from one side, to proceed quickly with the roadmap for the timely implementation of 2019 FRONTEX Regulation. On the other side, [redacted] decided tactically to publish the vacancies one day before the 77th MB meeting as [redacted] was afraid that some members of the MB would have tried to delay the recruitment procedure for the new FRO in order to protect [redacted]. Similarly, [redacted] admitted in a WhatsApp message that [redacted] wanted the vacancy for the FRO post published before the new (at that time) [redacted] Commissioner [redacted] started [redacted] job as [redacted] feared [redacted] might be too supportive of fundamental rights issues.

[redacted] was convinced of possible conflicts of interest situation, including "*political*" conflicts of interest, involving [redacted] and some members of the MB. However, [redacted] decided not to report it according to the applicable FRONTEX policy on whistleblowing but to take charge of the drafting of the vacancy notices in question and to push their publication instead.

2.2.4 Administrative inquiry against [redacted]

a. Opening and conclusion of the procedure

On 12 February 2018, a [redacted] submitted via email (Annex 110) a complaint for alleged [redacted] against [redacted] (Annex 111).

On 9 April 2018, by means of Decision R-ED-2018-32, [redacted] entrusted [redacted] with a fact-finding mission in respect to the concerns raised by the complainant (Anne 118).

On 30 April 2018, [redacted] decided on a temporary reassignment of the complainant to another office so to limit future exposure to the working environment [redacted] had exposed in [redacted] complaint.

On 9 August 2018, [redacted] presented to [redacted] the report of the fact-finding mission (R-ED-2018-32). The report by [redacted] (Annex 113) included: the gathering of information and supporting material from the complainant and the outcome of informal, online interview with [redacted], the person concerned by the allegations, which took place on 25 July 2018. At the end of the interview, [redacted] was informed about the way forward intended by [redacted]. In conclusion, the report suggested the opening of an administrative inquiry.

On 30 August 2018, pursuant to the Article 3(2) of the Annex to the MB Decision 23/2012, [redacted] signed, in the absence of [redacted], the Decision R-ED-2018-89 officially opening an administrative inquiry with a view to investigate the allegations reported by the complainant against [redacted]. [redacted] was appointed as investigator (Annex 112).

The MB Decision 23/2012 of 27 September 2012 adopting the rules on FRONTEX Disciplinary Procedure, stipulated that **the decision to open an administrative inquiry** (pursuant to Article 86(2) of the Staff Regulations and Article 2 of Annex IX to the Staff Regulations) **lay with the Deputy Executive Director** (Annex 114). Nonetheless, the Decision R-ED-2018-89 (Annex 112), officially opening an administrative inquiry against [redacted], was signed by [redacted] on 30 August 2018, around 3 weeks after the fact finding mission report by [redacted].

OLAF notes that [redacted] left on leave exactly on 30 August 2018, the day of the signature of the opening decision but [redacted] was on duty the days before (Annex 208). **In relation to this, [redacted] confirmed to OLAF (Annex 115) that [redacted] had not been involved in the decision making process concerning the opening of the inquiry nor in the following steps nor was [redacted] formally informed about the status of the investigation:** *"I cannot rule out that we talked about the inquiry, but I definitely rule out that – if it happened –it was a formal and/or in-depth discussion with any disclosure about details. To sum it up, I was aware that it was pending – without knowledge about stages and/or substance. And I repeat that I was never formally informed/included/involved in the inquiry as such"* (Annex 115).

During [redacted] interview (Annex 4), [redacted] reported to OLAF that [redacted] signed the Decision launching the inquiry against [redacted] *"(…) as [redacted] was absent. I do not remember if there was any issue for which [redacted] could not sign the Decision to launch the inquiry before [redacted] left [redacted] on 30 August 2018. I do not remember if [redacted] was on mission, for example"*. [redacted] also added to consider "*(…) unreasonable that the power to launch an inquiry laid on [redacted] and not on [redacted], despite [redacted] being the appointing authority for the Agency's staff. This was a legacy of the past before I was appointed and before [redacted] was appointed*" (Annex 4).

OLAF notes that the MB Decision 23/2012 dated back to 2012, while the opening of the inquiry occurred in August 2018, a sufficient time for [redacted] to propose an amendment of the provisions, had [redacted] considered it necessary to update them.

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] recognised that [redacted] purposely decided to open the inquiry [redacted]self, the day after [redacted] left on leave as "[redacted] *was indeed not in the loop of this administrative inquiry because [redacted] had failed to inform [redacted] that [redacted] had got the complaint from (…) against [redacted] [redacted] already in Autumn 2017 but [redacted] did not handle it nor act. This sensitive situation should have been reported to*

[redacted] *but* [redacted] *preferred to remain silent. As a consequence,* [redacted] *could not trust* [redacted] *in this matter anymore"* (Annex 106).

OLAF notes that in the complaint lodged on 12 February 2018 (Annex 111), the complainant reported that "[redacted] *had brought this matter to notice of* [redacted] *on 16 November 2017, sought an advice from HR, and noted lack of opportunities to express my professional opinion in the Probation Report as well as feeling of professional uncertainty in the Appraisal Report for 2016. (…) This is why on 16 November 2017,* [redacted] *decided to share my concerns with* [redacted]*, and asked* [redacted] *to silently resolve the matter, as* [redacted] *did not want to find myself in even worse situation*".

During [redacted] interview in the framework of the administrative inquiry, on 18 September 2020, the complainant confirmed that [redacted] had talked to [redacted] on 17 November 2017 and asked [redacted] to try to solve the difficult situation between [redacted] and [redacted], but without exposing [redacted]. [redacted] also clarified that "*I wanted to express my concerns to the next level, trying to seek protection.* [redacted] *asked me specifically what I was expecting. I know that it would be very difficult to convey a strong message to* [redacted] *without exposing me.* [redacted] *showed willingness to do something and* [redacted] *told me that* [redacted] *would talk to* [redacted]*. (…) I was not informed whether the meeting between* [redacted] *and* [redacted] *took place related to the way how* [redacted] *treated me. I believe* [redacted] *talked to* [redacted] *in January 2018 (…)"* (Annex 130, word file of the interview as the only format provided to OLAF by FRONTEX).

Therefore, the complainant [redacted]self confirmed to have informed [redacted] about the situation back in November 2017. [redacted] also clarified that [redacted] explicitly asked [redacted] to act discreetly, in a way which would not expose [redacted] and put [redacted] in a worse situation. [redacted] believed that a meeting between [redacted] and [redacted] took place in January 2018.

[redacted] reported to OLAF that [redacted] talked to the complainant and after [redacted] "*(…) reported the case to* [redacted] *for* [redacted] *knowledge and potential decision-making*" (Annex 116). [redacted] made the same statement during [redacted] interview in the framework of the administrative inquiry, on 17 September 2020, when [redacted] confirmed the meeting with the complainant in November 2017: "*Yes, I remember such meeting and I afterwards informed* [redacted]*. I believe I had a meeting after the meeting with* [redacted] *with* [redacted]*. I did not expose* [redacted] *towards* [redacted] *directly"* (Annex 131, word file of the interview as the only format provided to OLAF by FRONTEX).

OLAF notes that it could not find any written trace of [redacted] reproaching [redacted] for not having informed [redacted].

In addition OLAF notes that the Annual Appraisal Reports for 2017 (annex 133) and 2018 (Annex 134) for [redacted] do not mention any breach of loyalty or trust-related issues raised by [redacted]. On the contrary, the Annual Appraisal Report for 2018 states that "[redacted] *has demonstrated a high level of loyalty to the Management Board and to* [redacted] *hierarchical superior and* [redacted] *has assisting* [redacted] *commendably*". It is to be noted that the reporting officers for the appraisal exercise for [redacted] were [redacted] and [redacted]. However, as per good and longstanding practice, [redacted] was consulted and requested for a written contribution to be taken into consideration by the reporting officers.

The MB Decision 23/2012 was repealed by the MB Decision 26/2018 on 25 October 2018 adopting general implementing provisions on the conduct of administrative inquiries and disciplinary procedures (Annex 117).

Given the changes that the MB Decision 26/2018 had introduced on the subject in October 2018, on 10 December 2019 [redacted] requested to [redacted] the MB [redacted] endorsement for the opening of an administrative inquiry against [redacted] under the new applicable provisions (Annex 212).

Following the endorsement by [redacted] the MB dated 11 December 2019 (Annex 210), on 20 January 2020 [redacted] adopted the Decision ER-2020-4, repealing the Decision R-ED-2018-89 and launching a new administrative inquiry against [redacted]

on the same allegations of 2018 (Annex 119). Two external investigators were tasked with the inquiry so as to ensure its independence.

OLAF notes that [redacted] requested the endorsement of [redacted] the MB more than 13 months after the adoption of the MB Decision 26/2018 (25 October 2018), and [redacted] adopted [redacted] Decision R-ED-2020-4 (repealing [redacted] previous Decision R-ED-2018-89) on 20 January 2020, almost 15 months after the adoption of the MB Decision 26/2018.

Both the letter to [redacted] the MB dated 10 December 2019, seeking for [redacted] endorsement (Annex 212), and [redacted] Decision R-ED-2020-4 (Annex 119) make reference to the fact that the completion of the administrative inquiry would have required information and attendance of the person concerned at a number of hearings. As [redacted] "*was indisposed from 9 October 2018" and "returned to full time duties as* [redacted] *on 1 October 2019*", "*it was not practically possible to conduct that inquiry"* while [redacted] was indisposed.

The same letter also refers the relevant provisions of the FRONTEX Regulation 2019/1896, notably on the independent function of [redacted], and the MB Decision 26/2016 delegating the powers of the Appointing Authority to the FRONTEX Executive Director. With regard to these two legal frameworks, OLAF notes that the Regulation was adopted on 13 November 2019, more than 1 year after the adoption of the MB Decision 26/2018, while the MB Decision remained untouched in 2018, 2019 and 2020.

Therefore, while **the above circumstances** provide clarifications about the reasons why it had not be possible to conduct any activities of the inquiry due to the absence of [redacted], they **do not clarify why it took almost 15 months for [redacted] to repeal [redacted] Decision on the opening of the inquiry to make it compliant with the new legal framework introduced with the MB Decision 26/2018. [redacted] sought the endorsement of [redacted] the MB only in December 2019, more than 13 months after the MB Decision 26/2018 was adopted.**

With regard to the duration of the inquiry, [redacted] informed OLAF that "*At a certain moment I suggested to* [redacted] *to interrupt the procedure and wait with further actions until* [redacted] *returns back to office.* [redacted] *agreed to this step*" (Annex 120). However, OLAF notes that **the administrative inquiry launched on 30 August 2018 was never officially suspended**, as also confirmed by [redacted] (Annex 4).

On 4 February 2020, [redacted] was notified of [redacted] Decision ER-2020-4 dated 20 January 2020, while [redacted] was not notified of [redacted] Decision R-ED-2018-89, opening the inquiry on 30 August 2018. [redacted] explained that "*Immediately after the opening of the administrative inquiry – before being notified about the opening of the inquiry –* [redacted]" (Annex 120). Subsequently, "*There was no official notification sent to the person concerned due to* [redacted] *– (…) in relation to* [redacted] *Decision 2018-89 (…). Frontex position is, that a staff member* [redacted]*, considering the* [redacted] *the person concerned was* [redacted]*, the notification was postponed until* [redacted] *return. In the particular case the complainant outlined 'being sent with office related requests* [redacted]*' as* [redacted]*"* (Annex 121).

On 11 November 2020, the external investigators finalized their final report, eventually concluding "(…) *that there is insufficient evidence for an improper conduct of the dimension that would qualify as* [redacted] *from* [redacted] *against* [redacted]" (Annex 122).

The findings of the above final report were presented to [redacted] on 19 November 2020.

[redacted] **was notified of the closure – without findings – of the inquiry only on 31 May 2021, after nearly 3 years from the opening of the procedure and more than 6 months after the conclusions, drawn by the two external investigators, were presented to** [redacted] (Annex 123).

The unusual length of the administrative inquiry was also stressed in their final report by the two investigators tasked with the inquiry (Annex 122). In particular, they stressed that that "*Following the formal complaint in February 2018 (…) it took another*

two years until a fully-fledged administrative inquiry was carried out by external investigators. The reasons for this delay were a fact-finding exercise which preceded the administrative inquiry, a forthcoming revision of the implementing rules for administrative inquiries which was waited for, [redacted] of the concerned persons who were deemed necessary [redacted], and ultimately the Corona pandemic which brought activities like the administrative inquiry practically to a halt. Each of these reasons are ***justified to a certain extent****. However, it was an unfortunate chain of events, of which* ***not all elements needed to have to delay an administrative inquiry"****.*

They also clarified which were the effects on the unjustified delays on the two persons interested by the inquiry: the complainant and the person concerned. In details they observed that the overall excessive length of the inquiry contributed to *"(…)* ***put additional stress on the concerned parties*** *and rendered the administrative inquiry more difficult. During all this time both concerned persons were* ***left in a state of limbo*** *not knowing which consequences the outcome of the inquiry might have on their own professional environment, or worse, on their career perspectives (…).* ***A first administrative inquiry left abandoned for about two years without measurable progress*** *does put both protagonists into an* ***undesired state of uncertainty*** *and will inevitably* ***fail scrutiny in terms of good administration and sound proceedings*** *(…)"* (Annex 123).

Some remarks concerning possible accountability issues related to the inquiry, including its long procedure, had been raised to [redacted] also by [redacted] ([redacted]) already on 9 August 2019 (Annex 125). [redacted] acknowledged the risks but, as [redacted] recognized, *"(…) the decision to open an inquiry was already made by [redacted] in September 2018, so I cannot step back now"* (Annex 125).

OLAF notes that, following the email by [redacted] on 9 August 2019, raising the awareness the accountability aspects related to the inquiry, **it took [redacted] additional 4 months to seek the endorsement of [redacted] the Management Board to repeal the initial opening Decision R-ED-2018-89 and more than 5 months before [redacted] adopted, on 20 January 2020, [redacted] Decision R-ED-2020-4 (repealing [redacted] previous Decision R-ED-2018-89) opening the administrative inquiry under the new legal framework introduced with the MB Decision 26/2018 of 25 October 2018.**

OLAF also notes that [redacted] returned to work [redacted] on 12 August 2019 (working part time until 30 September 2019, when [redacted] resumed [redacted] functions as [redacted]). [redacted] had to leave again [redacted] on 24 February 2020. This timespan could have made it possible for the external investigators to carry out the activities necessary for the administrative inquiry (interviews of the person concerned and witnesses, analysis of case related material), had [redacted] repealed [redacted] Decision R-ED-2018-89 earlier than [redacted] eventually did on 20 January 2020. Despite the severe restrictions imposed by the Covid-19 pandemic, the activities could have been carried out remotely, as also remarked by the external investigators in their final report "(…) *it is manifest that any administrative inquiry according to existing rules and regulations can be conducted at any moment either through direct contacts, via audio-/video connections or by written procedure"* (Annex 122).

With regard to the inquiry in question, [redacted] commented to OLAF that "*(…) the Agency had* ***failed by mid 2019 to timely investigate the facts*** *and, eventually, take a decision on the complaint, within a reasonable time. To me this was a* ***lack of due diligence, as per Code of Good Administration standards****. (…) The inquiry was taking so long that we even received a solicitation from the complainant's lawyer asking for information and explanation about the length of procedure. I personally asked [redacted] about this issue. (…) When I was informed of the existence of [redacted] complaint dating 2018 against [redacted] which, in 2019, had not been closed yet,* ***I expressed to [redacted] my concerns about the failure to comply with public administration and good diligence standards****. The first time I talked with [redacted] about the topic, [redacted]* ***was dismissal****. [redacted] did not see the existence of some standards and the*

risk to be criticised for not taking timely and adequate actions. I do not think [redacted] *realised there were obligations in this sense* [redacted] *could have been called accountable for"* (Annex 127).

[redacted] also shared with OLAF the impression [redacted] had about a tactical exploitation by [redacted] of the pending administrative inquiry against [redacted]. In this respect, [redacted] reported that "*The inquiry was taking so long (…). I personally asked* [redacted] *about this issue and I got the feeling* [redacted] ***might have been delaying the procedure on purpose, as the effective launch of such an administrative enquiry could be used tactically against*** [redacted]*. I personally observed* [redacted] ***being reluctant to deal diligently and according to EU public administration standards*** *with the inquiry. In particular,* [redacted] ***might have wanted to use this (protracted) open complaint as a bargaining chip in negotiations with*** [redacted] ***or MB*** [redacted] ***in the directions of*** [redacted] ***procedure against*** [redacted] *(…)*" (Annex 127).

Similar considerations were also expressed to OLAF by [redacted] the MB during [redacted] interview on 20 April 2021 (Annex 128). [redacted] confirmed to OLAF that "*(…)* [redacted] ***stated to me in a couple of meetings that the administrative inquiry against*** [redacted] ***for*** [redacted] ***was an additional reason suggesting, or rather requiring, to terminate*** [redacted] ***appointment***".

During [redacted] interview (Annex 4) and in providing [redacted] comments on the findings of the OLAF inquiry (Annex 106), [redacted] presented [redacted] point of view on the length of the procedure. [redacted] explained that, even if [redacted] realized the inquiry was very long and slow, [redacted] preferred not to intervene to avoid giving the impression [redacted] was putting any pressure on [redacted] or that [redacted] wanted to interfere, suggesting [redacted] might have had personal interests in the inquiry.

b. Information to [redacted] the MB

On 9 August 2019, [redacted] informed via email [redacted] that, together with [redacted], they had a meeting with [redacted] the MB to inform [redacted] about the inquiry against [redacted] (Annex 125). The text of the email specifies that [redacted] the MB had to be informed by [redacted] because the complainant had sent [redacted] a letter to inform about [redacted] complaint, which was being handled by [redacted] and [redacted]. [redacted] also stressed that the complaint was a [redacted], leaving the sentence uncompleted and open to personal considerations (Annex 125).

Indeed, [redacted] the MB confirmed to OLAF to have been informally informed about the administrative inquiry on 17 September 2018, the day before the 71st MB meeting. However, no official communication was sent to [redacted] or the MB by [redacted] (Annex 129).

Around nine months before the above email to [redacted], on 2 November 2018, [redacted] sent an email to [redacted], the [redacted] member of the MB to reply to some questions [redacted] had raised concerning the appointment of [redacted] (Annex 142). In [redacted] email [redacted] informed [redacted] about the ongoing administrative inquiry into [redacted], specifying the inquiry stemmed from a complaint for "*alleged* [redacted]". [redacted] clarified that [redacted] the MB had been informed in September 2018. In that occasion, [redacted] and [redacted] agreed that "*(…) there was no need to inform further the other members of the MB since the administrative inquiry is still ongoing and* [redacted] *has the right to defend* [redacted]*self before spreading widely this kind of information (…)*" (Annex 142).

As reported at chapter 2.3.3 above, on 20 November 2019, in the framework of the 77th MB Meeting, [redacted] informed [redacted] via WhatsApp at 22:15 about the intention of [redacted] the MB to ask FRONTEX to suspend the publication of the vacancy notice for the FRO post (Annex 89). At 22:29 on 20 November 2019 [redacted] replied to [redacted] that [redacted] did not want to give up [redacted] position and [redacted] wanted to challenge [redacted] by revealing to the MB that [redacted] ([redacted]) had concealed to the MB, for one year, the inquiry against [redacted]: "*Je n'ai pas envie de céder*" and "*Qu*[redacted] *ne s'avise pas à faire*

cela car je vais révéler au MB qu[redacted] a caché depuis un an l'existence d'une plainte [redacted]" (Annex 89).

During the interview with OLAF (Annex 4), [redacted] confirmed [redacted] considered the existence of a conflict of interest involving [redacted] the MB "*(…) in the sense of "emotional" conflict of interest as, for me, it was more than clear that they were tied by a close friendship which could have affected the assessment of the facts and situations by* [redacted]" (Annex 4).

OLAF could not find any trace of any formal communication by the Agency to [redacted] the MB officially informing [redacted] about the administrative inquiry and requiring [redacted] to inform the MB members accordingly. On the contrary, the email above to [redacted] clarifies that [redacted] and [redacted] had agreed about not informing the MB as the inquiry was still on-going.

[redacted] did not provide specific observations on the matter above in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106).

c. Disclosure of information

As reported above, on 2 November 2018, [redacted] informed via email [redacted] about the ongoing administrative inquiry against [redacted], specifying it was based on "*alleged* [redacted]" (Annex 142).

OLAF notes that, at the date of the email to [redacted], [redacted] had not yet been formally notified of the opening of the inquiry against [redacted] pursuant to Article 4(5) of the Annex to the Management Board Decision 26/2018 of 25 October 2018 ([redacted] was notified only in February 2020).

In the same email addressed to [redacted], [redacted] also informed the [redacted] member that "*(…) another staff of* [redacted] *(let's name* [redacted]*) reported orally to me in my capacity of* [redacted] *that* [redacted] *also suffered* [redacted] *by* [redacted] *(…)*" (Annex 142).

OLAF also observes that no administrative inquiry against [redacted] was opened based on the information [redacted] reported to have received from "[redacted]". Subsequently, the allegations, of which [redacted] informed [redacted], could not be confirmed or denied.

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] stated that "*The second case of a staff reporting to me that [redacted] was facing* [redacted] *from* [redacted] *did not want [redacted] name to be disclosed because [redacted] was terrified. I offered [redacted] my support and my duty of care but I said that the procedure could not go further without a complaint".*

OLAF notes that the clarification by [redacted] does not justify the disclosure of additional allegations against [redacted], not corroborated by any formal inquiry, to a person not involved in the facts and with no need to know, even if a member of the MB, as the information disclosed by [redacted] could affect the reputation of [redacted] with [redacted].

On 7 August 2019 at 10:34, [redacted] sent a WhatsApp message to [redacted], reading: "*Mais il faut aussi que je vois* [redacted] *et vérifier s'[redacted] est présent le 12 août. [redacted]* ***doit toujours notifier formellement à [redacted] l'enquête ouverte dans le cadre de la plainte*** [redacted] ***visant depuis 2018*** *(…)"* [Translation by OLAF: "*But I also need to see* [redacted] *and check if [redacted] is present on August 12. [redacted] must always formally notify [redacted] of the investigation initiated in connection with [redacted] complaint against [redacted] since 2018* (...)"] (Annex 132).

OLAF notes that the recipient of the message had no need-to-know about the subject matter of the internal inquiry against [redacted] as [redacted] was not formally involved in the procedure.

Similarly, on 19 November 2020, [redacted] sent an email to [redacted] and [redacted] commenting on a report published by the Council of Europe's Committee on Prevention of Torture following its visit to Greece. In the email, when referring to the delays on the recruitment and deployment of 40 Fundamental Rights Monitors, [redacted] mentioned that " *(…) I also have the conclusions of an independent administrative inquiry concluding that the setting of* [redacted] *was not adequate (case in 2017/2018) in terms of management and there was no action by the agency to redress* [redacted]*. In the oral presentation of their findings, this is what the investigators told me, and I replied that they are right, because of the independence of* [redacted] *has not the power of reprimand, and I said that jointly Commission and MB* [redacted] *rejected harshly my proposal to upgrade the post to a managerial post"* (Annex 153).

OLAF notes that the final report of the administrative inquiry against [redacted] conducted by the two external investigators concludes "(…) *that there is insufficient evidence for an* [redacted] *of the dimension that would qualify as* [redacted] *from* [redacted] *against* [redacted]" (Annex 122).

The external investigators did not conclude on any "[redacted]" by [redacted], as reported by [redacted] to [redacted] and [redacted]. They only referred to "[redacted]", "[redacted]", "[redacted]" and "[redacted]" (Annex 122).

Subsequently, **the information provided by [redacted] to the recipients of [redacted] email ([redacted] and [redacted]) was misleading and could affect the reputation of [redacted]. In addition, the two recipients of the email had no need-to-know about the conclusions of the internal inquiry as they were not formally involved in the procedure.**

<u>Findings on 2.2.4.</u>: in August 2018, [redacted] launched an administrative inquiry into [redacted] overruling the applicable FRONTEX decision which attributed this responsibility to [redacted].

Following the adoption of the MB Decision 26/2018 of 25 October 2018, introducing new general implementing provisions on the conduct of administrative inquiries and disciplinary procedures, it took [redacted] almost 15 months to adopt a new Decision opening the administrative inquiry (and repealing [redacted] previous Decision of 30 August 2018). This caused a significant delay in the finalization of the inquiry which lasted, overall, more than three years.

In August 2019, [redacted] was warned by [redacted] about the need to respect the EU administration standards in relation to a reasonable duration of the inquiry.

[redacted] also alleged against [redacted] the MB of holding possible conflict of interest, linked to a close friendship with [redacted], as [redacted] had not informed the MB about the administrative inquiry against [redacted]. OLAF investigation revealed that [redacted] and [redacted] had agreed it was not necessary to inform the MB as the FRONTEX inquiry had not reached any conclusions yet.

[redacted] provided information concerning the administrative investigation against [redacted] (notably the allegations against the person in question) to a member of the MB and to [redacted], who had no need-to-know as not involved in the inquiry, even before [redacted] had been formally notified of the inquiry.

[redacted] informed the same member of the MB, who had no need-to-know, about non-officially formalized allegations against [redacted] which did not result in the opening of any inquiry.

[redacted] provided misleading information to staff of [redacted] ([redacted] and [redacted]) about the conclusions of the administrative inquiry against [redacted].

2.2.5 Possible lack of reporting by FRONTEX deployed officers

On 5 July 2019, [redacted] sent an email to [redacted] (Annex 154). [redacted] informed [redacted] about the concrete possibility that some incidents were not reported to the headquarters by FRONTEX deployed officers due to possible repercussions against them by the Authorities of the hosting MS: "*(…) we fear/have indications that potential violations are not always reported to Frontex because of possible repercussions of deployed officers in the Host MS*" (Annex 154).

In relation to this matter, [redacted] explained to OLAF that "(…) a *number of SIR cases are reported by debriefing officers of Fx since they are in direct contact with migrants for interviewing; Authorities doubted that the debriefing officers should report to [redacted] on any indicent which they hear from migrants but insist that they are firstly reported via the usual chain of command. Some debriefing officers sent a SIR directly to [redacted]. Since there are not many debriefers, they can easily be identified by the Authorities. When talking informally with [redacted] colleagues about their views on such reporting (which actually falls under the exceptional case under the old SIR SOPs), they stated that it happened that a debriefing officer who reported was later placed to another operational location in the same country and our assumption is that it could be linked to the fact of reporting"* (Annex 162).

The statement above is in line with what was also reported, around one year later, to [redacted] by [redacted] (Annex 36). On 27 April 2020, [redacted] informed [redacted] about some issues concerning the reporting in JORA in the context of the COVID-19, also including incidents not reported in JORA but mentioned in the landing reports or other sources. In particular [redacted] reported that "*(…) in unofficial reports, Frontex-deployed experts informed that they saw new boats at the shore; when trying to report them to the local authorities they were notified "no boat!" and no landing was officially communicated*" (Annex 36).

On 28 April 2020, upon request by [redacted], [redacted] provided additional details and more concrete information about the issues above. In particular [redacted] informed that "*(…) the Frontex-deployed expert wanted to inform [redacted] about the awkward behavior of the local authorities, but at the same time explicitly asked not to uncover [redacted] name and treat this information as unofficial, because the expert wanted to avoid any immediate confrontation with the local authorities and due to the sensitive nature of the issue. It happened in the past that because of the initiation of a SIR the debriefing expert had serious conflict with the Greek Authorities and could that made [redacted] stay unbearable. The expert providing this information had to stay as a guest officer for months in the area and keep a good working relation with the hosting authorities. For this reason, the expert communicated the information via alternative channels (…)*" (Annex 36).

The same day (28 April 2020), at 13:15, [redacted] tasked confidentially [redacted] within [redacted] "*(…) to find out is whether the formal reporting [redacted] makes to me (green marked) and which I supposedly would use further in informing [redacted] (etc.) can be fully substantiated. The reason is that I need to be 100% sure when making such allegations as being based on facts*" (Annex 155).

[redacted] replied to [redacted] less than 3 hours later (Annex 155) providing [redacted] assessment on the issues raised by [redacted] (Annex 156). In particular, OLAF notes that the document by [redacted] suggests that possible threatening or retaliation towards FRONTEX deployed officers by the Greek Authorities were already known to the Agency as [redacted] commented that: "(…) *On a side note, the request for anonymity of a FX expert on Samos raises concerns: apparently, threats of EL authorities to sanction 'critical' deployed staff bears fruit*" (Annex 156).

On the same 28 April 2020, at 18:16, [redacted] informed [redacted] that "*(…) the matter has been **thoroughly discussed with** [redacted] and with [redacted] and the info was also provided*

to [redacted] *for awareness and potential use. I have indicated that in case of further questions you or myself can be consulted while always copying me in (…)*" (Annex 157).

On the same note, OLAF recalls the email (Annex 101) that [redacted] sent to [redacted] on 1 November 2020 (already mentioned at previous paragraph 2.3.2. letter j.) [redacted] replied to a question by [redacted] about [redacted] assessment (as [redacted]) of the risks of push backs in [redacted] following the launch of the RBI [redacted] at the beginning of March 2020. [redacted] stressed that the low number of SIRs concerning alleged violations of fundamental rights recorded by the Agency in the timeframe under consideration did not imply that there was no breach of fundamental rights rather a possible lack of reporting: "*It is evident, that not receiving SIR does not imply that there is no breach of fundamental rights; the current SIR system is not effective and needs to be revamped urgently; it is often our impression that participants in Fx activities are not well aware/trained on SIRs including respective obligation to report and/or they apparently lack willingness to report. The issue and allegations of modifying Fx reports thus hiding certain facts are to be inquired internally as well"* (Annex 101).

All the emails mentioned above brought to the attention of [redacted] of the Agency, notably [redacted], the concrete possibility that incidents were not reported through official channels as the FRONTEX deployed staff feared retaliation by local Authorities, in this case Greek.

[redacted] confirmed to OLAF (Annex 157) to remember to have discussed the matter with [redacted] and [redacted], even if [redacted] did not remember the occasion of the discussion.

During [redacted] interview with OLAF (Annex 19), [redacted] confirmed that a virtual meeting on the matter was held on 28 April 2020, organized by [redacted] and attended by [redacted], [redacted] and [redacted]self.

During [redacted] interview with OLAF (Annex 4), [redacted] informed OLAF to be aware that, in some instances and for reasons not completely clarified, some FRONTEX deployed officers had very difficult working relations with the national Authorities (notably in Spain). However and in contrast with the statements by [redacted] and [redacted], [redacted] stated [redacted] had not been reported any specific case with regard to the situation in Greece. Concerning to the email above by [redacted] dated 5 July 2019, [redacted] stated that "*(…) I was much more worried by the delays in the recast of the SIR mechanism we were facing than paying attention to the specific comment* [redacted] *made on the instances of possible retaliation against the FRONTEX deployed officers*" (Annex 4). In any case, [redacted] confirmed [redacted] did "*(…) not ask for any specific action to be taken or checks to be done*" (Annex 4).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 138), [redacted] confirmed that "*I asked for and a meeting was organized with* [redacted]*,* [redacted] *and me. No minutes were made.* [redacted] *took the position that we must be cautious and cannot be sure what is true of the informal Whatsapp communication amongst staff. If I recall well,* [redacted] *referred to the need to keep a good relationship with the Greek authorities.* [redacted] ***decided we should not take any further specific action***" (Annex 138).

OLAF did not find evidences that [redacted] asked [redacted] Office or other FRONTEX entities or national Authorities for clarifications concerning the issue of possible lack of reporting by FRONTEX deployed officers due to fear of repercussions, nor that [redacted] gave instructions for any specific action to be taken or checks to be done.

Findings: in July 2019, April 2020 and November 2020, [redacted] was informed by two FRONTEX staff members about the concrete possibility that FRONTEX deployed officers decided not to report officially some incidents due to fear of repercussions from the Authorities of the host MS. This appeared to have already occurred under the JO [redacted] in Greece. While recognizing that, in some instances and for reasons not completely clarified, some FRONTEX deployed officers had very difficult working relations with the national Authorities, [redacted] did not request for any action or checks based on the information that was reported to [redacted]. The lack of incident reporting though official communication

channels might have affected the Agency in the effective and timely performance of its tasks, notably in relation to the monitoring the compliance with fundamental rights in any of its activities and ensuring respect for, and protection and promotion of fundamental rights.

2.2.6 Revision of the Standard Operating Procedure (SOP) on Serious Incident report (SIR)

At the end of 2018, the [redacted] within [redacted] was tasked to update the SOP on SIR, as [redacted] considered that the version applicable at that time (approved in 2014) was outdated and needed to be revamped (see for example content of SIGNAL message [redacted] sent to [redacted] on 31 October 2020 – Annex 152, or WhatsApp message sent by [redacted] to [redacted] on 19 April 2020 at 19:21 – Annex 89).

Following the instructions and guidance that [redacted] and [redacted] gave during some meetings, [redacted] prepared a draft of the new SOP on SIR, also involving in the process [redacted] and taking into consideration the internal organizational changes occurred since 2014. The draft was discussed during a meeting with [redacted] and [redacted] on 22 January 2019 (Annex 159).

The draft SOP on SIR was formally presented to [redacted] for [redacted] consideration and approval via the FRONTEX Data Management System on 24 January 2019. The same day [redacted] acknowledged the receipt (Annex 160).

OLAF could not retrieve any other correspondence on the matter until 5 July 2019. On that date, [redacted] wrote an email to [redacted] presenting a slightly updated draft of the SOP on SIR including reference to the Fundamental Rights Monitors and the possibility for the person reporting an incident to contact directly [redacted] (instead of [redacted]) for incidents under Category 4 in case the person reporting the incident feared retaliation (Annex 154). [redacted] promised to take a look at the proposal.

On 11 July 2019, [redacted] was informed by [redacted] that "*(…) at this moment [redacted] would prefer not to anticipate the future EBCG 2.0 in [redacted] matters, because the SOP will need an overhaul review with the Standing Corp*" (Annex 161).

After the email exchange above, OLAF could not retrieve any instructions, guidance or feedback by [redacted] or [redacted] on the revised draft of the SOP on SIR until 18 August 2020. On that date, following an initial talk with [redacted], [redacted] had a meeting with [redacted] and [redacted]. [redacted] gave indications to [redacted] concerning the way [redacted] wanted to have the new SOP on SIR developed: modernise the SIR policy so as to address only incidents considered serious by nature; serious events generating a SIR to be considered confidential and, as such, to be classified so to be protected from disclosure due to their sensitiveness; removal of any existing categorization of the incidents (Annex 163).

OLAF has gathered information that [redacted] held some meetings on 18 August, 7 October and 24 November 2020. The meetings were chaired by [redacted] and involved staff of [redacted], of the [redacted] (as formerly tasked with the preparation of the draft of the new SOP on SIR), of [redacted] and of [redacted]. **The meetings focused, almost exclusively, on the issue of the automatic classification, as EUCI, of the SIRs and the possible IT solutions to support this requirement, without any specific guidance given with regard to the content and the other features of the SOP: "**(…) [redacted] *asked to introduce, in the 2018 draft SOP, the automatic security classification (EU RESTRICTED) of all SIRs. The security classification (to EU RESTRICTED) of SIRs (and related info such as surveillance videos and mission reports) was the subject of several meetings in 2020 (…). The security classification (to EU RESTRICTED) of SIRs was the only feedback that was provided by [redacted] to the draft 2018 SOP and this feedback was only provided orally during a meeting and not in writing".*

OLAF notes that the information above is in line with the findings at chapter 2.2.2.c above. Indeed, as of June 2020 [redacted] tabled with the entities of [redacted] the discussion on the classification as EUCI of the SIRs.

On 5 January 2021, a new draft SOP on SIR was submitted by [redacted] to [redacted] for [redacted] review (Annex 164). The draft incorporated the instruction by [redacted] for automatic

classification as EUCI of the SIRs and related material and subsequent dissemination to intended recipients via restricted network. However, with regard to the all the other aspects of the draft SOP, OLAF was confirmed that "*(…) the new categorization and the simplification of the procedure contained in the 2021 procedure, were all proactive initiatives of* [redacted]. *None of these initiatives or the update of the SIR SOP in line with WG FRaLO recommendations were prompted by* [redacted]*"*.

With regard to the process which led to the review of the SOP on SIR, during [redacted] interview with OLAF (Annex 4), [redacted] reported that [redacted] had tasked, in September 2019, [redacted] with drafting a renewed SOP on SIR, which [redacted] considered an immediate and urgent need, in the framework of a broader project towards an information management strategy (IMS) for the Agency.

[redacted] also explained to OLAF that, due to [redacted], [redacted] could not accomplish the task [redacted] had assigned [redacted] for [redacted]. Consequently, and despite the fact that [redacted] deemed the existing SOP on SIR seriously outdated and not fit for the purpose any longer, the renewal of the SOP on SIR remained a pending issue until some concrete and relevant inputs and recommendations by the WG FRaLO at the beginning of 2021.

The new SOP on SIR was finally adopted by means of an [redacted] Decision on 19 April 2021. The adopted version of the SOP no longer provides for the automatic classification as EUCI of all SIRs (as requested by [redacted]), in line with the recommendations issued by the WG FRaLO in January 2021.

In order to corroborate the statements [redacted] made during the interview, on 20 August 2021, [redacted] provided OLAF with a copy of the letter "*Assignment to a mission for the adaptation of a corporate Information management Strategy*" addressed to [redacted] and dated 26 June 2020. The letter touched marginally the SOP on SIR, as the broader task assigned to [redacted] was "*to perform a specific review of the biggest challenges related to the management of operational and administrative information including security aspects (e.g. Serious Incident Reports, Operational plans): retention dates, need to know and need to share principles, standard procedures for the processing of information and follow-up actions, metadata, risk assessment, breaches of codes of conducts and follow-up investigations, etc*"**. OLAF notes that the assignment letter did not provide any specific instructions or guidance concerning the revision of the content and features of the SOP on SIR.**

Therefore, OLAF requested to [redacted] to confirm and clarify the task [redacted] was assigned. [redacted] **firmly denied to have been tasked with the review of the SOP on SIR** (Annex 165). [redacted] stressed that [redacted] was in charge of this task instead, under the lead of [redacted]: *"No* ***this task was not assigned to me****. As part of my mission I suggested to* [redacted] *that I could have a closer look and assessment on the old SIR as part of a wider on the exchange of information in general.* [redacted] ***was responsible to draft it"****.* Not only did [redacted] stress that [redacted] was not involved in the revision, but [redacted] also reported that [redacted] was even denied access to the revised draft of the SOP: "*Before I had the chance even to read the recasted draft of the new SIR* ***I discovered that I could not have a copy because*** [redacted] ***had taken the lead****, convened several meetings with* [redacted] *for which* [redacted] ***never informed me. (…)*** *Not only this but* [redacted] ***never replied to my request to share the draft*** *under preparation leaving my mail unanswered. (…)* [redacted] *took over the supervision, guidance and direct hand on the drafting"* (Annex 165).

On 19 May 2021, [redacted] replied to some questions the Agency received from the LIBE Committee. In [redacted] reply to [redacted] the LIBE, with regard to the revision of the SOP on SIR, [redacted] stated that: "*The revision of the SIR SOP was initiated in 2018. A first draft was submitted to* [redacted] *in the course of Summer 2019 but was rejected because it was too complicated and was not fit for operational purposes in the light of the future European standing corps.* [redacted] *instructed the services of the Agency to improve the draft. In particular* [redacted] *instructed to depart from old categories dating back to 2010 that were not in line anymore with the new realities of the Agency and its increasing operational footprint on the ground. The current SOP procedure was approved on 19 April 2021 based*

on the findings of WG FRaLO and the suggestions of [redacted] *and Frontex Consultative Forum*" (Annex 181).

Contrary to the statement above, OLAF notes that it could not retrieve any trace of instructions or guidance by [redacted] **or** [redacted] **regarding the revision of the SOP on SIR to <u>any</u> FRONTEX entities between January 2019 and August 2020.** Only in August 2020 the works on the revision were resumed to be finalised in April 2021. However, apart from some initial instructions by [redacted] to [redacted] in August 2020, <u>the requests from</u> [redacted] <u>focused almost exclusively on the classification of the SIRs as EUCI and the subsequent necessary technical solutions.</u>

During [redacted] interview with OLAF (Annex 5), [redacted] reported [redacted] frustration concerning the exercise due to the lack of any formal feedback after the initial draft was submitted to [redacted] for [redacted] approval: "*The whole review of SOP on SIR is a completely frustrating experience for me and my colleagues in relation to* [redacted] *and* [redacted]*. (…) in October 2018* [redacted] *asked for a meeting on this topic.* [redacted] *was tasked with the drafting of a revised SOP on SIR. The draft was eventually presented to* [redacted] *in January 2019, but no feedback followed.*

[redacted] *complained with me, after, about the poor quality of the draft, with no further details. However,* [redacted] *never received any positive or negative feedback, nor we were asked to revise the draft. Simply there was no follow-up. I cannot answer to your question why the draft was not approved nor followed-up with instructions. I can only share with you the frustration in not having any feedback after the efforts we put in the initiative"* (Annex 5).

The absence of any feedback or request for amendments/updates by [redacted] or [redacted] to [redacted] was also confirmed by [redacted] during [redacted] interview with OLAF (Annex 209):"*On 29 Oct 2018, I presented a draft SOP 2019 to* [redacted]*.* [redacted] *requested slight changes to the SOP, namely the inclusion of ICO and a description relating to how serious incident reports would be shared with other agencies, namely UNHCR. On 22 Nov 2018, I held a meeting with* [redacted] *(…) to make the necessary amendment, and on 18 Dec 2018, I sent a message to* [redacted] *to advise* [redacted] *that the changes had been made to the draft SOP 2019. On 22 Jan 2019, a meeting was held with* [redacted] *to inform about the changes. (…) on 24 Jan 2019,* [redacted] *emailed me to confirm receipt of the draft SOP 2019. No further correspondence was received. I had no feedback. My understanding was that* [redacted] *was pleased with the draft SOP. Nonetheless I received no feedback".*

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 203), with regard to the matter above, [redacted] only observed that: "*The SOP on SIR from 2014 was clearly outdated considering the extensions of Frontex's mandate brought by Regulation 2016/1624 and 2019/1896 and its increased operational footprint. (…) If a revision was initiated by* [redacted] *in early 2019, the operational situations the Agency faced in 2020 have proven the need to speed this revision in order:*

- to clarify and simplify the classification of incidents,

- to limit the list of recipients to managers having a need-to-know and need-to-act,

- and to establish clearly the workflows and the responsibilities of the relevant internal stakeholders,

which was finally ensured thanks to the recommendations of the FRALO WG leading to the adoption of revised SOP".

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] provided OLAF with the general reasoning behind [redacted] request for the revision of the SOP on SIR, in particular referring, repeatedly, to the "*porosity between* [redacted]*, the Consultative forum and its NGOs members*" which "*was problematic and undermined the possibility for the Agency to properly implement its mandate as a trustful law enforcement partner of national authorities within the EBCG community*"**.** The initiative was triggered by "*Considerations on how to protect sensitive and security related information against leaks"* and the related question "*Why should details about an operation against drugs traffickers at sea or weapons traffickers be automatically disclosed to* [redacted] *and potentially reach NGOs members of the Consultative forum?"* (Annex 106).

While OLAF does recognise the relevance of the points raised by [redacted] in [redacted] comments, they do not actually explain the lack of any guidance and instructions to the relevant FRONTEX entities for more than one year, despite the fact that [redacted] considered the revision an immediate and urgent need as the SOP was "*not fit for operational purposes*" .

Additionally, [redacted] also confirmed to OLAF that [redacted] had tasked [redacted] with the review of the SOP on SIR: "(…) *Having experienced the weakness of SAM division that could not depart from the old "historic" scheme of SIR, my attempt was to task* [redacted] *but eventually* [redacted] *also failed to properly tackle the issue due to* [redacted] *after* [redacted]" (Annex 106).

OLAF notes that evidence presented by [redacted] corroborates [redacted] statement that the revision of the SOP on SIR was never part of [redacted] assignment. On the contrary, [redacted] was even impeded in getting access to the draft of the new SOP, prepared by [redacted], as [redacted] had taken the lead in the project (Annex 165).

<u>Findings</u>: following initial instructions [redacted] gave at the end of 2018, in January 2019 [redacted] presented to [redacted] a draft of a revised version of the SOP on SIR for [redacted] approval. [redacted] acknowledged the receipt of the draft on 24 January 2019. However, neither [redacted] nor [redacted] received any feedback from [redacted] (directly or through [redacted]) on the quality of the draft or any guidance for required amendments.

In July 2019, [redacted] submitted to [redacted] a slightly amended version of the draft.

[redacted] did not consider the drafts [redacted] was presented (by [redacted] and [redacted] *ad interim*) fit for purpose and in line with [redacted] expectations, thus requiring amendments.

[redacted] reported to OLAF to have tasked, in September 2019, [redacted] with the review of the SOP on SIR. This information is incorrect: on one hand, [redacted] denied the revision of the SOP was amongst the tasks [redacted] had been assigned (the creation of an information management policy for the Agency). On the other hand, OLAF did not retrieve written evidence of any instructions/guidance to [redacted] concerning the revision of the SOP. On the contrary, when [redacted] requested to [redacted] to have access to the draft of the new SOP on SIR (which [redacted] had prepared at the beginning of 2019), [redacted] requests remained unanswered.

In May 2021, [redacted] officially replied to some questions raised by the LIBE Committee. The information provided to the LIBE concerning the revision of the SOP on SIR appear to be partially incorrect: [redacted] was initially presented a draft of the revised SOP in January 2019 (not "*in the course of Summer 2019*" as [redacted] stated in the reply); the witnesses interviewed by OLAF confirmed not to have received any feedback or guidance on possible amendments from [redacted] nor did OLAF retrieve any written evidence of any such instructions from [redacted] to the relevant staff members of [redacted] between July 2019 and August 2020, when a meeting between [redacted] and [redacted] occurred. However, following this meeting, the additional instructions which [redacted] gave to [redacted] focused almost exclusively on the automatic classification of the SIRs as EUCI, with no guidance on the relevant content of the SIRs, the actors involved in the procedure or the handling of the SIRs.

2.2.7 Transparency and completeness of communication from [redacted] towards EU Institutions and other relevant recipients

a. SIR 11095/2020

With regard to the incident under the SIR 11095/2020, during [redacted] interview (Annex 4), [redacted] mentioned that [redacted] main priority had been to promptly address the issue by letter to the Greek Authorities at the level of the Minister [redacted].

Before the closure of the SIR procedure, on 1 May 2020, the SIR Coordinator ([redacted]) sent via email to some recipients, including [redacted], a draft of the letter to be addressed to the Greek Minister.

On 4 May 2020, [redacted] reviewed the letter and sent it back to [redacted] and to the FRONTEX Liaison Officer (FLO) in Greece stating that [redacted] had *"(…) inserted in track changes mode some amendments into the initial version. (…) As a courtesy, I think the letter should be announced to [redacted] the Hellenic Coast Guard before it is sent out the Minister*" (Annex 166). [redacted] also clarified that the version of the letter [redacted] had revised was "*(…) politically softer than the initially draft we got from our services"* (Annex 166).

OLAF observes that, in particular, [redacted] deleted from the initial draft any reference to the fundamental rights and the principle of non-refoulement as well as any reference to any possible FR breach by the involved Greek Authorities (Annex 167).

b. SIR 11860/2020

Also with regard to the incident under the SIR 11860/2020, [redacted] made some changes to the draft letter (to be addressed to [redacted] the HCG) that [redacted] had prepared. [redacted] submitted via email to [redacted] the draft letter for [redacted] comments on 31 July 2020 at 12:20. [redacted] returned the letter with [redacted] changes (Annex 169) to [redacted] and [redacted] on 3 August 2020 (Annex 168).

OLAF notes that, in particular, [redacted] eliminated from the draft some firm statements so as to make the tone of the letter softer and more accommodating. In detail, [redacted] eliminated the reference to the circumstance that the incident occurred within Greek Territorial Waters, which was a fact established. [redacted] also made it appear uncertain if the incident occurred within the operational area of the JO [redacted] (which was also not correct).

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] commented to OLAF that [redacted] "*(…) letter to [redacted] [redacted] the Hellenic Coast Guard about SIR 11860/2020 was indeed less precise then what had been initially drafted by Frontex services because I did not want to disclose to Greek authorities too early our own preliminary findings in order to see what would be their findings*".

OLAF considers that the explanations by [redacted] are not satisfactory based on the available information. The initial SIR (Annex 170) was submitted via email on 28 July 2020 at 11:16 a.m. by the Commander of the Danish asset involved in the incident (Annex 171). The email was addressed to [redacted] but also to the Greek Authorities at the Piraeus International Coordination Centre.

The SIR indicated that the incident occurred within Greek Territorial Waters and in the framework of the JO [redacted]. The Greek Authorities replied to the email from the Danish officer on 28 July 2020 at 14:46 (Annex 171). While providing their interpretation of the incident, they did not challenge that the incident occurred in the Greek Territorial Waters and under the JO [redacted]. It follows that, **at the time [redacted] reviewed the letter prepared by [redacted] (3 August 2020) and made it milder in tone, the Greek Authorities were fully aware of all the details in possession of FRONTEX, as initially provided by the Danish commander**. It follows that the justification expressed by [redacted], related to concerns of disclosing "*to Greek authorities too early our own preliminary findings in order to see what would be their findings*", is consequently not valid.

The mindset of [redacted] while dealing with the issue above transpires from an email exchange [redacted] had with the FLO in Greece regarding the mentioned letter addressed to the Greek Minister.

On 3 August 2020 [redacted] asked via email to the FLO in Greece to "*(…) call on the phone today or tomorrow [redacted] the Hellenic Coast Guard to inform them as a courtesy that the attached letter will reach them*" (Annex 172).

On 4 August 2020, [redacted] confirmed to have contacted the HCG [redacted] who was "(…) *not very happy with the behavior of the Danish crew (…)".* On the same day, at 20:27, [redacted] replied to [redacted] commenting: "*(…)* ***I consider that my role is to trust Greece as it is victim of some kind of blackmail and is Member of the EU****. But believe me, there are many* ***actors who prefer to believe unfounded rumors*** *coming from unverified sources and spread mistrust against Greece (…)*" (Annex 172).

c. EUROPEAN COMMISSION

With regard to the allegations on possible pushbacks in the framework of FRONTEX operations in [redacted], which appeared on media outlets during the second half of 2020, on 1 December 2020 [redacted] was heard in front of the EP's LIBE Committee. Few days later, on 4 December 2020, [redacted] wrote a letter to the EC Vice President, [redacted], and to the EC Commissioner, [redacted], to update them on the state of play of the development of an enhanced system of fundamental rights protection and monitoring at FRONTEX (Annex 173).

During the hearing before the LIBE and in the letter to the EC, [redacted] reported that the delays in the implementation of the fundamental rights protection and monitoring legal framework, introduced with the 2019 FRONTEX Regulation, were due to the lengthy discussions with the services of the EC, which appeared to have downplayed some of the concerns [redacted] had raised, and to the change of the Agency's Establishment Plan by the EC without consulting FRONTEX.

Upon request by the Commissioner [redacted], on 18 December 2020, [redacted] DG HOME, [redacted], replied in writing to [redacted] (Annex 174), providing a detailed timeline of the events that contradicted [redacted]. The same detailed timeline and summary of events were also presented to the LIBE Committee by [redacted] in writing on 25 May 2021 (Annex 194).

In [redacted] letter to [redacted] (Annex 174), [redacted] reported to be "*(…) compelled* ***to correct*** *a number of important points which were* ***presented in misleading manner in?*** *your note, especially considering the fact that you also made some of them during your public hearing in the LIBE committee of the European Parliament on 1 December 2020*".

Concerning the publication, in November 2019, of the two vacancy notices for the recruitment of the FRO and the Deputy FRO, [redacted] stressed that the request to withdraw the notices "*(…) was not due to the managerial nature of the post, but due to the fact that, in the absence of the Management Board's approval acting as Appointing Authority in line with the EBCG Regulation,* ***the publication of these two vacancies was plain and simply unlawful****. Furthermore, the EBCG Regulation requires the involvement of the Fundamental Rights Officer for the publication of the vacancy notice of the Deputy Fundamental Rights Officer, yet that involvement was absent (…)* ***irregularities which could jeopardise the well-functioning and the reputation of the Agency****".*

With regard to the independence and upgraded managerial level of the post of the FRO, [redacted] reminded that the EC "*(…) proposed a clear action plan to be rolled out to ensure the implementation of all the new features of its function. (…) Against this background, I cannot agree with your assessment that the delays in setting up the new framework (…) were unavoidable. It clearly appears from the timeline attached to this letter that if the Agency had followed the Commission's timely guidance and suggestions, the main milestones of this process could have been completed on time (…)".*

With regard to the recruitment of the 40 FRMs, [redacted] was " (…) ***dismayed to hear*** *your observations and comments during the European Parliament's LIBE Committee public hearing on 1 December 2020 on the lack of posts for 40 Fundamental Rights Monitors in the Agency's establishment plan (…) The 40 posts to recruit Fundamental Rights Monitors are clearly provided for in the Legal Financial Statement (…) Your* ***affirmations*** *on the lack of posts for the 40 FRMs are* ***even more disconcerting*** *in light of the information on the recruitment of Category 1 staff that the Agency provided in the Management Board meeting held on 9 December 2020 (…)".*

Finally [redacted] DG HOME stressed the "*(…) Agency's* ***surprising reluctance to implement the guidance*** *provided by the Commission has further obstructed and delayed this important process. As a result, the* ***Agency has not complied with several of the obligations*** *which are set out in clear and precise terms in the EBCG Regulation (…)".*

With reference to the letter from [redacted] DG HOME, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] stated that [redacted] considered the letter to be incorrect. [redacted] reported that the delays in the implementation of the new legal framework concerning the fundamental rights, notably the recruitment of the FRMs, were due to lengthy arguments in 2020 between desk officers of the Commission and Frontex staff. In this context, "(…) *the line of the Commission services was usually to undermine the function of* [redacted] *and to antagonise the relationship between the function of* [redacted] *and the function of* [redacted]". [redacted] added that [redacted] "(…) *main concerns were that the Commission services wanted to force* [redacted] *to grant a budget delegation to* [redacted] *without any check and balance in the form of* [redacted] *accountability towards* [redacted] *in budget matters. I eventually managed to get this accepted by the Commission but the price for that were months of stalemate from Spring to Autumn 2020. (…) It also seemed to me that giving the possibility to* [redacted] *to express an opinion about the candidates short listed by the Management Board for Fundamental Rights would have been "sound administration by design" due to the fact that* [redacted] *remains the Authorising Officer of the Agency in all matters including Fundamental Rights"* (Annex 106).

Without entering into the substance of the issues raised, **OLAF considers that the above comments and clarifications presented by** [redacted] **offer a partial view of the dynamics of the events**. This consideration by OLAF is supported by the content of several messages (Whatsapp, sms and email) exchanged by [redacted] between 2018 and 2020 with different recipients. These messages shed some light on the biased representation of the reasons behind the delays in the implementation of the new 2019 legal framework. The same messages do also appear significant in giving a better understanding of the background context, the personal opinions and the reasoning of [redacted], who considered the European legislator, particularly the EC, unable to understand the unstable geopolitical context FRONTEX had to face, with the risk of serving the interests of NGOs, Third Countries and even criminal groups. [redacted] did not consider the political governance at EU level fit to deal with the new mandate FRONTEX was assigned in 2019. This personal mindset appear to have heavily influenced the decisions of [redacted] and the **lack of cooperation and the reluctance** in implementing the guidelines proposed by the EC.

The following messages are deemed relevant in this regard:

- On 5 June 2018 at 20:06, [redacted] sent an email to [redacted]: "*La future présidence autrichienne nous a passé un papier pour le Conseil informel d'Innsbruck en cours de préparation. C'est en allemand et nous pouvons commenter avant demain midi et carte blanche pour rajouter. On va mettre la suppression du 656/2014.* ***La boucle sera bouclée avec une tirade sur le législateur qui fait de Frontex un passeur/taxi légal :-)*** *Je pense à mettre un truc pour réduire la voilure de* [redacted] *et tutti quanti Consultative forum :-)* [redacted]" (Annex 176) [Translation by OLAF: *The incoming Austrian Presidency gave us a paper for the Informal Council of Innsbruck in preparation. It's in German and we can comment before tomorrow noon and carte blanche to add to it. We will add the deletion of 656/2014. The loop will be looped with a tirade on the legislator who makes Frontex a legal smuggler/taxi :-) I think about adding something to downsize* [redacted] *sails and tutti quanti Consultative forum :-)* [redacted]"].

- On 23 February 2019 at 10:29, [redacted] sent a WhatsApp message to [redacted], [redacted], presenting [redacted] personal opinion about [redacted] DG HOME: "*La bêtise de* [redacted] *est une honte affligeante pour la Commission"* [Translation by OLAF: "*The stupidity of this* [redacted] *is a sad shame for the Commission*"];

  Few minutes later, at 10:35, [redacted] added: "*Petit*[redacted] [redacted] *est petit*[redacted] *dans les grandes choses, et grand*[redacted] *dans les petites choses, comme m'a dit un interlocuteur cette semaine*"

[Translation by OLAF: "*Small* [redacted] *is small in big things, and big in small things, as an interlocutor told me this week"].*

- On 15 July 2019 at 10:35 [redacted] wrote to [redacted]: "*Ce que* [redacted] *me raconte des orientations politiques à Bruxelles n'est pas encourageant....la ligne de* ***ceux qui veulent nous transformer en SAR et service de taxi*** *est déjà en train de faire ses petits plans sur la comète*" (Annex 89) [Translation by OLAF: "*What* [redacted] *tells me about political orientations in Brussels is not encouraging... the line of those who want to transform us into SAR and taxi service is already making their plans"*].

- On 30 July 2020, [redacted] sent an email to [redacted] (with [redacted] in copy) providing [redacted] instructions following the comments from the EC on the proposed MB decision on middle management. The EC had proposed to delete the involvement of [redacted] in the selection process for the FRO, to be appointed by the MB after consultation with the Consultative Forum. [redacted] instructed [redacted] to confirm, in the draft of the decision, the consultation of [redacted] similarly to the Consultative Forum. [redacted] explained [redacted] position as following: "*This request from the Commission has nothing to do with a legal assessment. It is merely a political assessment and* ***I cannot step back****. Deleting the mention of* [redacted] *is from a symbolic perspective a* ***far reaching message conveyed by the Commission. I cannot remain silent about that****. We keep that mention in the revised version of the draft MB decision*" (Annex 180).

- On 23 September 2020 at 09:18, [redacted] (at the time of the messages, [redacted] French [redacted]) wrote a message to [redacted]: "*Bonjour* [redacted]*, J'ai eu* [redacted] *au téléphone tout à l'heure et* [redacted] *m'a expliqué les dernières évolutions de la Commission sur l'organisation de la structure de l'organigramme. Je* [redacted] *ai assuré que je ne voyais pas* [redacted] *être dépossédé de* [redacted] *responsabilités* [redacted] *des* [redacted]*. Et je serai amené à le dire. Amitiés.* [redacted]*"* (Annex 177) [Translation by OLAF: "*Hello* [redacted]*, I had* [redacted] *on the phone earlier and* [redacted] *explained to me the latest developments in the Commission on the organisation of the structure of the organisation chart. I assured* [redacted] *that I did not see* [redacted] *being removed from* [redacted] [redacted] *responsibilities of* [redacted]*. And I will have to say so. Friendships.* [redacted]*"*].

  Few minutes later, at 09:39, [redacted] replied to [redacted]: "*Merci beaucoup* [redacted]*. Aujourd'hui* ***le plus gros risque pour le corps européen et Frontex vient de la Commission***" (Annex 177) [Translation by OLAF: "*Thank you very much* [redacted]*. Today the biggest risk for the European corps and Frontex come from the Commission*"].

- On 31 October 2020 at 11:31, [redacted] sent a message to [redacted] (as of 26 July 2020, [redacted] French Government): "*Pour compléter le paysage géopolitique évoqué hier: (…) La Commission européenne ne comprend pas le rôle de Frontex depuis 2019, et est à des années lumières de toutes ces problématiques. De plus en plus au niveau politique à la Commission,* ***on me dit que le rôle de Frontex est de faire des droits fondamentaux à la frontière extérieure et le « retour » des déboutés du droit d'asile, mais le plus possible du retour volontaire****.*

  Les problématiques sécuritaires et tout le contexte géopolitique que je vous décris me paraissent tellement incompréhensibles à mes interlocuteurs de la Commission *qui ne voient pas dans quelle « cour » Frontex commence à « jouer » avec son Corps européen, son uniforme européen, le port d'armes à feux, des moyens de surveillance qui nous font détecter par exemple des transports suspects d'armes en* [redacted] *que nous rapportons à qui de droit mais qui n'est pas la Commission"* (Annex 175).

  [Translation by OLAF : "*Hello* [redacted]*, to complement the geopolitical landscape mentioned yesterday: (…) The European Commission has not understood the role of Frontex since 2019, and is light years far away of all these issues. Increasingly at the political level in the Commission, I*

am told that Frontex's role is to make fundamental rights at the external border and the "return" of those rejected asylum rights, but as much as possible voluntary return.

The security issues and the entire geopolitical context that I describe to you seem so incomprehensible to my Commission interlocutors who do not see in which 'league' Frontex begins to 'play' with its European Corps, its European uniform, the wearing of firearms, means of surveillance thanks to which we detect, for example, suspicious transport of weapons in the [redacted] *that we report to whom we are entitled to, but that is not the Commission*"].

With regard to the message above, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] clarified that [redacted] was in contact, in [redacted] capacity of [redacted], with [redacted] on a regular basis. [redacted] "*was worried by the attacks against Frontex in October/November 2020 in the context of geopolitical confrontation with* [redacted] *that has almost triggered a military naval incident between France and* [redacted] *close to* [redacted]. [redacted] *could not understand what was the line of the Commission towards Frontex and how the events were handled politically in Brussels".*

[redacted] also clarified that the excerpt of [redacted] message above "*(…) can only be fully understood with the other remaining paragraphs where I refer to the fact that* [redacted] *shared with Frontex sensitive information and names of jihadists to whom* [redacted] *authorities were, according to* [redacted]*, granting* [redacted] *nationality, new* [redacted] *names and* [redacted] *passports. (…) my message to* [redacted] *also indicated that according to me the political governance of the Agency was not fit to purpose anymore with the new mandate of the Agency. And I gave examples of the growing gap between on the one hand the political understanding of these realities by the Commission and on the other hand the need for proper (geo)political guidance to the Agency in these new circumstances*" (Annex 106).

- On 10 November 2020 at 10:57, [redacted] wrote to [redacted]: "*En gros, et c'est le danger,* ***la COM se fait le relais des ONG*** *(et du Consultative Forum) pour qu'il y ait une sorte de mécanisme automatique qui t'impose de suspendre ou terminer toute opération sur la base d'allégation sans autre évaluation (par ex du contexte géopolitique). Dans un contexte de menace hybride, c'est donner les clés de nos opérations à toute puissance étrangère capable de diffuser des fake news*" (Annex 89) [Translation by OLAF: "*Basically, and this is the danger, COM is taking over from NGOs (and the Consultative Forum) so that there is a kind of automatic mechanism that requires you to suspend or terminate any operation on the basis of an allegation without further assessment (e.g. from the geopolitical context). In a context of hybrid threat, this comes down to handing over the keys to understand our operations to any foreign power capable of spreading fake news*"].

  Immediately after, at 10:58, [redacted] replied to [redacted]: "*C'est pour cela que je dois* ***sortir de la nasse où ils veulent nous mettre pour servir les visées de certaines ONGs, de certains groupes criminels et de certaines puissances non européennes"*** (Annex 89) [Translation by OLAF: "*That is why I must get out of the net where they want to put us to serve the aims of certain NGOs, some criminal groups and some non-European power*"].

- On 19 November 2020, [redacted] sent an email to [redacted] and [redacted] to inform them about the publication of the Council of Europe's report of the visit of March 2020 to Greece by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). [redacted] gave [redacted] instructions on how to reply to possible requests to FRONTEX on the recruitment and deployment of the FRMs. In this respect, [redacted] shifted all the responsibility of the delays on the EC and [redacted] the MB: "*In case of questions to Frontex about the* ***deployment of FR monitors****, the actions are indeed the pilot project, 2 SLAs with FRA in 2020, without forgetting the proposal of* [redacted] *to publish swiftly the post of Fundamental Rights officer at managerial level and deputy FRO in order to be ready as soon as possible the recruitment as of the entry into force of EBCG 2.0 regulation in December 2019. But* ***the proposal was jeopardised jointly by the Commission and the MB*** [redacted] ***in November 2019. And then the Commission took almost one year to effectively***

take on board the concerns expressed by [redacted] about compliance with financial framework and proper governance of EU agencies. I said that jointly Commission and MB [redacted] rejected harshly [redacted] proposal to upgrade the post to a managerial post. So we can have some documentation about the flaws in the construction of the system here" (Annex 153).

- On 20 November 2020 at 18:50, [redacted] wrote a WhatsApp message to [redacted] "*The cooperation with this Commission cannot be more painful and unconstructive*" (Annex 178).

  At 18:53, [redacted] replied: "*I will talk later again with [redacted] for the other topics. [redacted] had another urgent call in between. But [redacted] seems convinced that the Agency is late on everything...I said by the way I have many topics where the Commission is late and does not answer*".

  At 18:54, [redacted] wrote to [redacted]: "*Our politic now should be to send them a reminder in writing fir for? everything as we started to do today*".

  At 19:20 [redacted] added: "*Obviously [redacted] has no clue about the establishment plan and what we are doing in general. Big difference with [redacted] who used to know everything"*

  At 19:33 [redacted] added: "[redacted] *has a typical Commission official profile...the* ***mindset is all about either legal compliance or disbursing funds but not doing the things with EU administration or simply "coordinating" MS***".

- On 24 November 2020 at 19:27, [redacted] wrote to [redacted], referring to [redacted] at the MB: "*J'espère. Ce cocktail* ***d'amateurisme sur les sujets opérationnels, d'obsession sur les sujets FR, et de cretinisme bureaucratique*** *conduisant à un micro-management de chaque instant et chaque instance est quand même le symptôme de l'épuisement d'un système*" (Annex 89) [Translation by OLAF: "*I hope so. This cocktail of amateurism on operational subjects, obsession on FR subjects, and bureaucratic cretinism leading to a micro-management of each moment and each level is nevertheless the sign of a dying system"].*

- On 25 November 2020, right before the 82nd meeting of the MB, [redacted] exchanged the following sWhatsApp messages with [redacted], the [redacted] member of the MB.

  At 10:00, [redacted] wrote to [redacted]: "*Dear [redacted], I wanted to counter the stupid assessment made by the Commission. And show them that they have to see the consequences of what they are saying*" (Annex 179)

  At 10:04, [redacted] wrote to [redacted]: "[redacted] *has no clue and is afraid by the Commission in everything. [redacted] always here to give lessons"* (Annex 179).

  At 10:05, [redacted] expressed [redacted] opinion on [redacted] the MB: "[redacted] ***representatives are a shame***" (Annex 179).

  At 10:07 and 10:08, [redacted] sent two messages to raise [redacted] concerns on some topics to be discussed during the MB meeting: "*They are concerns: independence of FRO because investigations are FRO powers not Commission power guiding the subgroup". "And compliance with EU staff regulation? If staff is accused? Is it a disciplinary investigation? What are the rights of staff to defend themselves? And what is the objective? To investigate what member states are doing?".*

  Finally at 10:09, [redacted] suggested to [redacted] which points [redacted] should raise during the discussion: "***If you raise concerns about the independence of [redacted], you will hit the right target*** 🎯" (Annex 179).

  Immediately after, at 10:13, [redacted] informed [redacted] of the contacts [redacted] had with [redacted]: "*J'ai briefé [redacted]. On est aligné. [redacted] a honte pour la Commission*" (Annex 89) [Translation by OLAF: "*I have briefed [redacted]. We are aligned. [redacted] feels shame for the Commission*"].

  At 10:14 [redacted] informed [redacted] of the indications [redacted] gave to [redacted]: "*Je [redacted] ai indiqué que sous le point "groupe de travail 5.5"* ***il faudrait qu' [redacted] soulève la***

question de l'indépendance de [redacted] et les droits des employés de se défendre si ce groupe les accuse" (Annex 89) [Translation by OLAF: "*I told [redacted] that under the heading "Working Group 5.5" [redacted] should raise the issue of [redacted] independence and the rights of employees to defend themselves if this group accuses them"].*

- On 26 November 2020 at 00:26, the same day of the closure of the 82nd meeting of the MB, [redacted] sent to [redacted] the screenshot of Twitter messages by [redacted] and [redacted] (Annex 89):

At 00:27, [redacted] commented the Twitter to [redacted]: "*Tout est dit*". [Translation by OLAF: "*Everything is said*"].

At 00:28, [redacted] commented to [redacted]: "***C'est sûr, nous ne sommes pas de leur bande…et [redacted] ne sont pas de la nôtre***". [Translation by OLAF: "*it's sure, we are not part of their gang…neither are [redacted] of ours"].*

As a final remark on the matter, OLAF notices that even the FSWG of the LIBE Committee, in its Working Document "Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations" (Annex 195), stated to be "*concerned about **the lack of cooperation of** [redacted] to ensure compliance with some of the provisions of the EBCG Regulation, notably on fundamental rights, which led to significant delays in the implementation of the Regulation. In this context, the FSWG **regrets** [redacted] **recurrent refusal to implement the recommendations of the Commission** to ensure compliance with the newly adopted Regulation".*

[redacted] did not provide any specific observations on the communications above in [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 203), while [redacted] only commented with regard to [redacted] with [redacted] and to [redacted] (as reported at sixth bullet point above).

d. EUROPEAN PARLIAMENT'S LIBE COMMITTEE

With regard to the communication flow with the European Parliament's LIBE Committee, on 19 May 2021, [redacted] wrote a letter to [redacted] the Committee to reply to a number of questions addressed to the Agency by the MEPs (Annex 181).

OLAF identified the following answers given by [redacted] marked by the incorrect information provided:

- in relation to the question concerning the several cases of suspected pushbacks in [redacted] observed by the UN Refugee Agency (UNHCR) and not being investigated, [redacted] informed that "*Frontex is not aware of the exact information observed by UNHCR and referred by it for investigation of the Greek authorities (…) Frontex has never received any information from UNHCR, therefore no investigation has been launched related to this material".*

  However, **the UNHCR provided OLAF with a list of several emails the UN Agency sent, between December 2018 and February 2021, to [redacted] Office concerning alleged fundamental rights violations in Greece, including reference to media articles, reports from NGO's, UN Agencies and International Organizations (Annex 182). [redacted] Office confirmed to OLAF that a number of these emails were shared with relevant Units of the SAM and ORD Division (Annex 183). Subsequently the UNHCR information was available within the Agency.**

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- Concerning the questions by the LIBE Members about the delay in the implementation of the legal framework of the Regulation (EU) 2019/1896, and subsequently the Agency's accountability towards the European Parliament, [redacted] replied that "*On 1 December 2020, [redacted] delivered a <u>full explanation</u> to the LIBE Committee for the delays in the recruitment of the FRO and the FROMs. [redacted] informed that [redacted] had proposed to FRA and [redacted] ([redacted], note by OLAF) to deploy the Fundamental Rights Monitors as soon as possible. [redacted] also presented the strengthening of the FRO function in the Agency over past years – from 2 persons to 10 staff with a EUR 500,000 budget*"**.** However, **OLAF notes that the reply is partially biased as [redacted] did not mention nor take into any account the observations, clarifications and criticisms raised by the [redacted] DG HOME with [redacted] letter dated 18 December 2020** (Annex 174, see letter c**.** above)**.** In this letter, written after around two weeks <u>after</u> the "[redacted] *delivered a <u>full explanation</u> to the LIBE Committee"* (1 December 2020), [redacted] stressed how the "*Agency's surprising reluctance to implement the guidance provided by the Commission*" caused a delay in the implementation and development of the fundamental rights monitoring framework.

  The decision by [redacted] not to take into consideration the letter from DG HOME appears in line with the observations that [redacted] expressed in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106). In particular, with regard to the letter by [redacted], [redacted] considered that "(…) *the line of the Commission services was usually to undermine the function of [redacted] and to antagonise the relationship between the function of [redacted] and the function of [redacted]*" (Annex 106)*.*

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- With regard to the increase in the staffing of the FRO Office, in the reply to the LIBE, [redacted] stressed how it was "*multiplied by five between 2015 and 2020*", as it "*grew from one (1) post allocated in 2012 to ten (10) positions available and filled in the Fundamental Rights Office in 2019 - out of which two (2) are handling complaints*"**.**

  OLAF notes that the number of <u>AD posts within the FRO Office remained untouched until 2019. The increase only occurred in 2019 and 2020</u> while, earlier, the biggest increase concerned Contractual Agents posts (FGIII and FGIV), which do not allow the jobholder to exercise the same functions and level of responsibilities of an AD staff member. OLAF notes that, in its Annual Report 2018 (published 2019), the FRONTEX Consultative Forum stressed that " (…) *In 2018, Frontex's ability to uphold its responsibilities in the area of fundamental rights continued to be compromised due to the **inadequate staffing of the Agency's Fundamental Rights Office. This has been a constant concern since 2014;** adequate staffing is paramount to ensuring the implementation of fundamental rights obligations under the European Border and Coast Guard Regulation (…)*"**.**

In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- In reply to the question "*Is the situation in Greece not enough to invoke suspension or termination? Are there no human right violations of serious nature or human rights violations that are likely to persist?"* [redacted] replied that "*A working group (…) concerning Art 46 of the EBCG Regulation will discuss the establishment of procedures within an SOP (…); as also documented by the FRaLO reports and open sources allegation of fundamental rights violations were illustrated but could not be substantiated or confirmed (…)".*

  OLAF notes that this statement is not in line with the content of the final report issued by the SIR Coordinator of the SIR 11095/2020 (Annex 40) and SIR 11934/2020 (Annex 22) as also summarized in the explanatory note no. 4472 dated 23 April 2021 which FRONTEX presented to the Management Board. With regard to the mentioned SIRs, the note concluded that, respectively: "*(…) there is a strong believe that the presented facts support an allegation of* ***possible violation of Fundamental Rights or international protection*** *obligations such as the principle of non-refoulment*" and "*(…) it cannot be excluded that the incident has characteristics of a case of an unprocessed return and* ***violation of the principle of non-refoulement***"**.**

  The conclusions by the SIR Coordinators are also confirmed by the analysis of the video footage concerning incidents performed by OLAF and by an expert of the international law of the sea. As mentioned at paragraph 2.3.1.h. above, **OLAF considers that, in the framework of its activities, FRONTEX witnessed actions by the HCG that appear to have seriously endangered the life of the migrants concerned.**

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- Concerning the RBIs [redacted] and [redacted], [redacted] informed the LIBE Committee that *"(…) No violations of fundamental rights were reported within the framework of the RBI. It is reasonable to believe that the launch of RBI did not lead to any FR violations".*

  [redacted] also clarified to the LIBE that "(…) *RBI* [redacted] *provided additional operational support to the ongoing Joint Operation* [redacted]. *The operational objectives remained those already enshrined under* [redacted] *and were not specific to RBI* [redacted]"**.** It follows that the RBI can be considered as an operational extension and reinforce of an existing JO.

  From a Serious Incidents Reporting point of view, OLAF was clarified by the competent FRONTEX service that "*it is technically not possible to insert SIRs or even incidents in JORA under RBI because it was agreed that all reporting (incident reporting and SIRs) are reported under JOs (JOA* [redacted] *or* [redacted]*) and hence* [redacted] *did not create a separate operation in JORA (and consequently it cannot be selected when inserting a SIR or an incident*"**.**

  Subsequently, **it is not possible to differentiate in the JORA system between incidents occurred under a Joint Operation or a Rapid Border Intervention**, unless this is clearly stated by the person reporting the incident in the comments field.

  OLAF notes that the incidents under the SIR 11095/2020 and the SIR 11934/2020 – which may qualify as unlawful as in violation of FR - occurred in concurrence of the RBI [redacted]**. Even if the SIR are recorded in JORA under the JO** [redacted]**, it is not possible to exclude that they are linked to the RBI** [redacted] **instead**. Therefore, **the statement by** [redacted] **that "***No violations of fundamental rights were reported within the framework of the RBI"* **is incorrect.**

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- With regard to the RBI [redacted], the LIBE Members requested why the Article 46 of EBCG Regulation was not taken into consideration in relation to the possible violations of fundamental rights. [redacted] replied that "*The Agency had not received any indications of violations of fundamental rights or international protection obligations related to the activity requested from the Agency, namely to support the border control of Greece at land and sea borders thus complementing the already existing support by the JOs. (…) there were no serious reasons at the beginning of the activity identified, which could have led to violations of fundamental rights or international protection obligations of a serious nature*".

  OLAF notes that the statement above by [redacted] is incorrect. Already since 2017, and even more in 2020 and 2021, [redacted] was aware of the fact that **a large number of media outlets, European and International organizations** (including the Council of Europe, the UNHCR, the IOM, the FRA, the UN Special Rapporteur on the Human Rights of Migrants, the Office of the High Commissioner for Human Rights of the United Nations, the Commissioner of Human Rights of the Council of Europe), **as well as [redacted], [redacted] and [redacted], had repeatedly reported about the risks linked to credible allegations of violations of fundamental rights by Greek authorities at the Greek-[redacted] border and in the framework of FRONTEX activities.**

  For example, on 7 June 2017, the Council of Europe Commissioner for Human Rights, [redacted], referring to the reported pushbacks from Greece of [redacted] nationals, urged the Greek authorities "*to cease immediately the pushback operations and uphold their human rights obligation to ensure that all people reaching Greece can effectively seek and enjoy asylum*" ([redacted]).

  On 19 February 2019, the Council of Europe (CoE) published the report of the visit to Greece in April 2018 by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CoE stressed that "*Finally, in the course of the April 2018 visit, several foreign nationals interviewed in private at three places of detention made credible allegations about the occurrence of push-back operations from Greece to [redacted] by boat across [redacted] border, after they had been apprehended by Greek police and border guards. (…)* ***From the information gathered, the CPT considers that, at least until early March 2018, these persons were not effectively protected against the risk of refoulement. The Committee recommends that the Greek authorities act to prevent any form of push-backs taking place, and effectively protect foreign nationals against the risk of refoulement"*** (Annex 185).

  On 22 March 2020, [redacted] sent via email to [redacted] (Annex 189) the *Supplementary opinion to [redacted] Observations to the Operational Plan to the draft Operational Plans for Rapid Border Interventions* [redacted] (Annex 188). In [redacted] email, as well as in the Supplementary Observations, [redacted] listed a number of assessments and concerns of risks of violation of FR expressed by European and International institutions. Additionally, [redacted] expressed [redacted] "(…) *opinion that there might be a risk that in the current circumstances the engagement of the Rapid Border Intervention [redacted] could* ***lead to alleged violations of fundamental rights or international protection obligations of a serious nature****, including the right of non-refoulement and would thus recommend to reconsider the terms of the deployments as per Article 46(4) and (5) of the EBCG Regulation"* (Annex 189).

  On 23 March 2020, few days after the launch by FRONTEX of the RBIs [redacted] and [redacted]), the Office of the High Commissioner for Human Rights of the United Nations published a message by the UN Special Rapporteur on the human rights of migrants (Annex 187). In this statement, the Rapporteur stressed to be "(…) *very concerned about the reported pushbacks of asylum seekers and migrants, which constitutes a violation of the prohibition of collective expulsions and the principle of non-refoulement (…) 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".*

On 19 November 2020, the CoE published the report of the visit to Greece in March 2020 by the CPT (OLAF's note: the RBI [redacted] and [redacted] were launched on 11 March 2020). The CoE - stressed that: "*The CPT's delegation also received* ***a number of consistent and credible allegations*** *concerning acts by the Greek Coast Guard to prevent boats carrying migrants from reaching any Greek island. For example, in early March 2020, the Greek Coast Guard allegedly stopped a boat with almost 50 persons on board and removed the fuel leaving the migrants and the boat to float about aimlessly.(…) Moreover, since the delegation's visit,* ***credible allegations have emerged*** *of migrants having reached the island of Samos from [redacted] by boat before* ***being re-embarked on a dinghy by Greek officers and towed by a Greek Coast Guard vessel back to [redacted] waters****, where they were allegedly left adrift overnight until recovered by the [redacted] Coast Guard on the afternoon of the following day (…)"* (Annex 186). The CPT also "*(…) reiterates its recommendation that the Greek authorities act to prevent any form of pushbacks taking place across the [redacted] (…)"* (Annex 186).

[redacted] was aware of the CoE's report above. On the same day of the publication (19 November 2020), [redacted] sent an email to [redacted] and [redacted] to inform them about the publication, pointing their attention to the exact pages where FRONTEX RBIs were mentioned (Annex 153).

In January 2021, [redacted] presented an update on the "*Situation at Greece-[redacted] land and sea borders*" released with a view to the following MB meeting (Annex 184). [redacted] listed a large number of external sources which, throughout the year 2020, referred to alleged violations of FR at the Greece[redacted] sea and land borders. [redacted] reported to have "(…) *received a number of reports on alleged so-called alleged pushbacks by international organizations and civil society actors,* ***including letters addressed to*** [redacted] *and statements by IOM, UNHCR and FRA, and footages showing* ***potential serious fundamental rights violations at land and sea borders****. According to information compiled by* [redacted] *from open source data and reported news from the* [redacted] *Coast Guard Command,* ***more than 200 incidents involving potential fundamental rights violations occurred on the Greek and [redacted], between March and August 2020****. These included alleged so-called alleged pushbacks and collective expulsions, as well as other practices (e.g. shooting, illegal, deportation, SAR refusal, confiscation and destruction of assets)"* (Annex 184).

On 12 May 2021, the UN Special Rapporteur on the human rights of migrants published his "*Report on means to address the human rights impact of pushbacks of migrants on land and at sea*" (Annex 211). In this report, the UN Rapporteur stressed that "*On top of an increased militarization of [redacted] since March 2020, which has effectively resulted in preventing entry and in the summary and collective expulsion of tens of thousands of migrants and asylum seekers, the Special Rapporteur has received allegations that pushbacks over the land border are also reportedly carried out from urban areas, including reception and detention centres.* ***An increase in pushbacks in [redacted], from Greek territorial waters, as well as from the islands of Rhodes, Samos and Symi, has also been documented****, with one stakeholder recording 321 incidents involving 9,798 migrants between March and December 2020"* (Annex 211).

In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- With regard to the question by LIBE Members on the follow up to the observations of [redacted] on the operational plan for the RBI [redacted], [redacted] made reference to a reply [redacted] had sent to the Consultative Forum (CF) on 4 March 2020 (Annex 193). One of the question by the CF referred to [redacted] assessment of the potential risks of violation of FR in the decision to launch the RBIs in Greece. In [redacted] reply, [redacted] stated that "*During the conduct of the JO [redacted] and JO [redacted], the Agency had not received any evidence or indications of fundamental rights violations or any complaints indicating serious reasons to consider not to launch the activity*".

OLAF notes that the statement above by [redacted] is not correct or, at least, it provides only a very partial view of the facts.

As reported at the point above, OLAF recalls that in 2019 the CoE had extensively reported about incidents in Greece when migrants had not been effectively protected against risk of *refoulement.* Also, the same [redacted] in March 2020 reminded to [redacted] the **serious concerns, related to the launching of the rapid border intervention operational activities,** which had been raised by the Council of Europe, UNHCR, IOM and the Greek National Commission for Human Rights on 2, 3 and 5 March 2020 "*early preceding or following the announcement of the operation"* (Annex 189) but, anyway, **before the start of the RBIs.**

In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above.

- With reference to the extension of the RBI [redacted] (eventually terminated on [redacted]), [redacted] reported to the LIBE that "(…) *Frontex Risk Analysis Unit prepared an analytical contribution to the mid-term evaluation of the RBI and recommended to continue with the RBI based on its assessment".*

OLAF notes that the statement above by [redacted] is not correct. On 16 June 2020, [redacted] released the report number 5504/2020 "*Analytical contribution concerning the Rapid Border Intervention Operations in Greece at the land and sea border with* [redacted]" (Annex 190). On 31 August 2020, [redacted] released the report number 7345/2020 on the same topic (Annex 191). Both the reports recommended, in June and August 2020, that "***The RBI*** [redacted] ***operation should be concluded****; however, the reinforcement of the JO* [redacted] *should be considered, providing for a more permanent structure to support the Hellenic authorities"*.

With reference to this issue, in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] stated that [redacted] had assessed that the conclusion by [redacted] actually suggested to extend the RBI as "*The recommendation made by the Frontex Risk Analysis Unit (report 5504/2020) to "conclude the Rapid Border Intervention* [redacted]*" but to "reinforce* [redacted]*" equals the same result: beefing up a Frontex operational footprint, which means that this recommendation is not intended to address any question related to fundamental rights in the operational area".*

In relation to the comment above by [redacted], OLAF observes that both the Joint Operation and the Rapid Border Intervention provide for operational and technical assistance to the MS with the external borders management. However, **the Rapid Border Intervention has a clear extraordinary nature and a more precise scope**. According to Article 37 of FRONTEX Regulation 2019/1896, the Agency may deploy a RBI for a limited period of time "*at the request of a Member State faced with a situation of specific and disproportionate challenges, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State without authorization*"**.** A Rapid Border Intervention is intended to provide reinforcement for a limited period of time, in situations where an immediate response is required and where such an intervention would provide an effective response. With the reports mentioned above, [redacted] clearly recommended that the RBI [redacted] was to be concluded as they had assessed that the extraordinary situation which had triggered the launch of the RBI was over.

In this context, OLAF also notes a WhatsApp message that [redacted] sent, on 15 April 2020 at 11:25, to [redacted] revealing [redacted] intention, from the very beginning, to extend the RBI in Greece irrespective of any request in that direction by the Greek Authorities: *"Oui. Par ailleurs j'ai parlé à* [redacted] (Note by OLAF : [redacted]) *à propos de Rapid Intervention en Grèce. Nous sommes tous deux d'avis qu'il faut idéalement que la Grèce demande une extension de 2 mois pour les frontières maritimes et terrestres.* [redacted] *va reparler à* [redacted]*.* ***Sinon nous planifions de toute façon 2 mois*** *et nous appuyons sur un consensus en ce sens qui semble partagé par les États membres et a été exprimé dans la déclaration du MB du 3 mars*" (Annex 89)

[Translation by OLAF: "*Indeed. I also spoke to* [redacted] *about Rapid Intervention in Greece. We both believe that Greece should ideally request an extension of 2 months for sea and land borders.* [redacted] *will talk back to* [redacted]*. Otherwise we plan 2 months anyway and build on a consensus in this sense, which seems to be shared by the Member States and expressed in the MB statement of 3 March*"].

- In relation to the incident occurred on 18-19 April 2020 (which triggered the SIR 11095/2020) [redacted] informed the LIBE that "*the incident in question has been reported and administered according to the applicable Serious Incident Reporting procedures in place by the time of the incident"*.

  OLAF notes that the statement above by [redacted] is not correct. The SIR 11095/2020 was categorized as Category 2 upon precise instructions by [redacted] (who also rejected a possible re-categorization into a Category 4 SIR despite request in this sense by [redacted] stressing the incident presented risks of violation of FR). The categorization was the effect of [redacted] intervention, while the involvement of [redacted] in the SIR process was not provided for in the SOP on SIR applicable at that time. In addition, [redacted] was not involved at all in the assessment of the incident nor informed of the SIR closure.

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above

- With regard to the question by the LIBE Members concerning the incident under the SIR 11095/2020 "*Why did you not act following the answer of the Greek authorities?"*, [redacted] replied that "*Frontex Management Board Working Group on Fundamental Rights and Legal Operational Aspects of Operations in* [redacted] *(FRaLO) has welcomed the measures taken by the Agency after the incident was examined, namely addressing an official letter to the Greek authorities, requesting to launch an internal investigation and to coordinate the possible follow-up measures stemming from the mentioned incident in cooperation with the respective Member State authorities".*

  OLAF notes that the statement above by [redacted] provides only a partial (and favorable to the Agency) perspective on the assessment of the actions taken by FRONTEX. While [redacted] reported to the LIBE an extract of the final report of the WG FRaLO, [redacted] did omit to also mention the content of the conclusions of the MB on that final report. The conclusions, published on FRONTEX website on 5 March 2021, provided **a much less favorable assessment** (Annex 192). In particular, the MB concluded on the lack of follow-up actions by the Agency on some incidents, including the one on 18-19 April 2020**.** In detail, the conclusions stressed that the MB "w*elcomes that one Serious Incident Report was followed-up by a letter from* [redacted] *to the authorities of the host Member State, but regrets that no further follow-up was undertaken following the receipt of the letter from the host Member States authorities*" and also that the MB "*regrets that in the case of three other incidents some aspects in the presentation of facts by the different parties involved could not be clarified, but that the Agency, in these cases, also has not taken any decisive action to this end*"**.**

  With regard to this matter, during [redacted] interview with OLAF (Annex 128), [redacted] MB confirmed that the MB was not satisfied with the lack of proactivity by the Agency: "*(…) the WG clarified that not all the necessary work had been done within the Agency or that the Agency provided all the necessary information to the WG. The final report by the WG states clearly which information is missing or lack of action for each of the 5 cases. (…) the MB would have expected the Agency to take a more active role in dealing with and clearing the incidents instead of simply collecting contradictory statements and information from the involved parties. With regards to the follow-up the Agency should have undertaken following the receipt of the letter from the host Member States authorities, this meant that the MB would have expected FRONTEX to gather any clarification and additional information not only from the host Member State, but also from the other parties involved (…)".*

With regard to the assessment of the letters sent by the Greek Authorities and the follow-up actions, in [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] observed that "*Indeed in [redacted] reply to my letter about SIR 11095/2020, the Greek minister on 10 July 2020 does not mention hybrid threat or sensitive information in relation with security. But when Frontex letter to the Greek Minister was signed in the first week of May 2020 the overall threatening geopolitical context described above under my point 1 prevailed and affected the perception of every ongoing operational situation. Meanwhile my letter to the Greek Minister about SIR 11095/2020 refers to a potential violation of migrants fundamental rights and invite Greek authorities to investigate the case. The reply received by Frontex in July 2020 answers my question about compliance with the principle of non refoulement".*

- With regard to the question by LIBE Members "*In the context of the agency's positive obligations to protect human rights and prevent violations, how has the agency taken into account credible publicly available information on such violations at the [redacted] Greek border, next to its own reporting and monitoring mechanisms?*" [redacted] replied that "*Meetings were held between [redacted], Frontex operational entities as well as Frontex Situation Centre to assess the incoming reports in depth and case by case; served also to corroborate with the information stemming from the JORA reporting system (…)".*

  OLAF notes that the statement above by [redacted] is not correct. As reported at chapter 2.3.2. above, [redacted] and [redacted] reported on several occasions that their concerns, their requests for reclassification of the SIRs, the requests for information or updates, had not been taken into consideration, or even that [redacted] had not been consulted at all.

  In this respect, OLAF also recalls the statement by one of the witnesses OLAF interviewed: "*It is in this context that the subsequent actions by [redacted] (…) to disrupt previously established channels of communication with FRO (…)".*

  In [redacted] reply to the invitation for comments on the finding of the OLAF investigation (Annex 106), [redacted] did not provide any specific observations on the issue above

<u>Findings</u>: in May and August 2029, [redacted] personally amended two letters to be addressed to the Authorities of a host Member State to make the text "*politically softer*". In particular, [redacted] removed the direct references to possible violations of fundamental rights which had characterized the incidents to which the letters referred as well as the occurrence of the incident in the Territorial Waters of the host Member State.

In December 2020, [redacted] reported to the LIBE Committee (during a hearing) and to the EC's Vice-President (in writing) [redacted] explanations about the delays in the implementation of the new legal framework of the Agency, in particular regarding the fundamental rights. [redacted] blamed the EC for the delays. The EC firmly denied the misleading description of the facts presented by [redacted] and provided, in writing to [redacted] and to the LIBE, a detailed timeline of the events showing the responsibility of [redacted] in the delays. The reported lack of cooperation by [redacted] appears inspired by [redacted] personal opinions about the low competence, narrow-minded approach and political goals of the EC (notably DG HOME) which [redacted] does not consider able to understand the new operational challenges FRONTEX have to face.

[redacted] and [redacted] expressed their personal low esteem and consideration of the EC and, in particular, of some officials of the Commission, considered to be too much focused on fundamental rights and too bureaucratic. [redacted] also shared this opinion with external counterparts. [redacted] antagonism with the EC got to the point that [redacted] even suggested to a member of the MB which issues to raise during the MB meeting to put [redacted] in a difficult position in front of the other MB members.

In May 2021, [redacted] replied to some questions raised by the LIBE Committee, the expression of the EP to which FRONTEX is accountable, concerning the handling of fundamental rights matters by the Agency. Some of the statements of [redacted] appear to be (at the very least) partially incorrect or biased with regard to the facts and circumstances reported.

2.2.8 Disclosure of information to externals

As reported at chapter 2.2.3. above, on 20 November 2019, [redacted] sent some Whatsapp messages to [redacted], [redacted], concerning [redacted] position, actions and objectives during the MB meeting which discussed about the publication of the vacancy notices for the posts of FRO and Deputy FRO.

On the same topic, the day before, 19 November 2019, at 19:26, [redacted] had written a WhatsApp message to [redacted] to present [redacted] the mood around the forthcoming MB meeting: "*Je commence le dîner de travail pour le conseil d'administration. Beaucoup de tension à prévoir avec* [redacted] *d'autant que je viens de republier le poste de* [redacted] ☐ (laughing emoticon, note added by OLAF)" (Annex 104) [Translation by OLAF: "*I'm starting the working dinner for the board of directors. A lot of tension to foresee with* [redacted] *especially since I have just republished the post of* [redacted]"].

In addition to the messages above, OLAF retrieved several messages that [redacted] sent in 2017-2019 to [redacted], concerning the (at that time) [redacted], the relationship between the Agency and the European Commission, the Agency activities and the works of the Management Board, even before they were made public. The following are presented as a non-exhaustive example (Annex 104):

- On 27 March 2018 at 07:55, [redacted] wrote : "*Je vais au parlement et l'inénarrable* [redacted] *y sera car on l'interroge pour savoir si l'opération.* [redacted] *est respectueuses des droits*" [Translation by OLAF: "*I am going to the parliament and the inenarrable* [redacted] *will be there because it is asked whether the operation is.* [redacted] *respects the rights"*].

- On 30 March 2017, at 15:16, [redacted] wrote: "*Enfin le conseil d'administration est terminé. Le point sur l'organigramme a surpris* [redacted] *qui voulait lanterner et surtout voulait que le conseil d'administration "joue pleinement son rôle" et crée des sous-groupes de travail avec des "experts des États membres" pour faire une proposition d'organigramme.*

  [redacted] *s'est pris une rafale de la part de* [redacted] *prédécesseur (*[redacted]*) qui a proclamé que c'était* [redacted] *qui était le mieux placé pour faire une proposition et que le conseil d'administration ne devait pas micro-manager, de surcroît avec des "experts" du simple niveau de sergents.* [redacted] *et la Commission ont ensuite suivi sur la même ligne massivement avec un soutien de forme et de fond.* [redacted] *toujours plus lente a indiqué que la proposition était bonne sur le fond, qu'il fallait trouver le bon rythme entre prendre un temps trop long que nous n'avons pas, et agir de façon précipitée.* [redacted] *(*[redacted]*) disent être favorables mais assortis de commentaires détaillés et microscopiques visiblement inspirées par quelques compatriotes qui voudraient voir leur poste actuel sauvegardé sans changement ou doté de plus d'importance...comme pour* [redacted] *élection en 2014, l'essentiel pour moi était d'avoir le ralliement ostensible de poids lourds du conseil dont les pays ont une réputation de "sérieux".*

  Je vais apporter des réponses écrites sans attendre le conseil d'administration de juin et j'espère que l'on pourra aller en adoption par procédure écrite".

  [Translation by OLAF: *"Finally, the Management Board is over. The update on the organisation chart surprised* [redacted] *who wanted to latch and, above all, wanted the Management Board to "fullly play its role" and set up sub-working groups with "experts from the Member States" to make a proposal for an organisation chart.*

  [redacted] *got a gust from* [redacted] *predecessor (*[redacted]*) who proclaimed that it was* [redacted] *who was best placed to make a proposal and that the board of directors should not micro-manage, moreover with "experts" of the simple level of sergeants.* [redacted] *and the*

Commission followed the same line massively with formal and substantive support. Always slower [redacted] *has indicated that the proposal is good in substance, that it is necessary to find the right pace between taking too long a time we do not have, and acting in a hasty way.* [redacted] *(*[redacted]*) say they are favorable but accompanied by detailed and microscopic comments visibly inspired by some compatriots who would like to see their current post safeguarded without change or endowed with more importance...as with* [redacted] *election in 2014, the main thing for* [redacted] *was to have the ostensible rallying of heavy weights of the council whose countries have a reputation as "serious"*].

- On 02 June 2017, at 06:03, [redacted] wrote: "*Comme le poste de* [redacted] *de* [redacted] *où* [redacted] *est* [redacted] *sera publié des qu'un nouvel organigramme est adopté par le conseil d'administration, je* [redacted] *ai dit que si cela* [redacted] *intéressait* [redacted] *pourrait candidater. La logistique des opérations, le développement de notre flotte d'avions et de bateaux et équipements est la, les développements technologiques sont dans cette division aussi,* [redacted] *est* [redacted]*, à couvert des postes à* [redacted]*, à* [redacted]*, il a le profil"* [Translation by OLAF: "*Since the position of* [redacted] *where* [redacted] *is* [redacted] *will be published as soon as a new organisation chart is adopted by the board of directors, I told* [redacted] *that if* [redacted] *was interested* [redacted] *could apply. The logistics of operations, the development of our fleet of aircraft and boats and equipment are there, the technological developments are in this division too,* [redacted] *is* [redacted]*, has covered posts at* [redacted]*, at* [redacted]*, has the profile*"].

- On 2 February 2019, at 17:07, [redacted] wrote: "[redacted] *me confirme que* [redacted] *(*[redacted]*) monte une cabale contre moi. Et qu'il faut des contre feux. Il paraît que* [redacted] *suit déjà l'affaire*" [Translation by OLAF: "[redacted] *confirms that* [redacted] *(*[redacted]*) is setting up a cabal against me. And that we need counterfires. It seems that* [redacted] *is already following the case"*].

- On 20 February 2019, at 17:41, [redacted] wrote: "(…)*. La journée s'est bien passée mais* [redacted] *me confirme que* [redacted] *a depuis le début eu une dent contre moi et aussi contre* [redacted]*.* [redacted] *pense d'après* [redacted] *en termes de conflit avec tous les gens qui étaient avant* [redacted] *aux affaires*" [Translation by OLAF: "*The day went well but* [redacted] *confirmed to me that* [redacted] *had a tooth against me and also against* [redacted] *since the beginning.* [redacted] *thinks according to* [redacted] *in terms of conflict with all the people who were before* [redacted] *at affairs"*].

- On 23 February 2019 at 10:33 [redacted] wrote: "*Alors que je* [redacted] (referring to [redacted] [redacted] DG HOME, [redacted], note added by OLAF) *parle de sujets de nature opérationnelle, de responsabilité juridique liée et d'impact politique pour les institutions de l'UE, en rapport au fait d'accepter ou de refuser de transmettre des infos en temps réel aux garde côtes* [redacted] *pour faire du secours en mer près de chez eux,* [redacted] *est préoccupée par le fait que je n'utilise jamais le jargon EBCGA...le nom sud tout le monde appelle « Frontex, the European Border and Coast Guard"...*" [Translation by OLAF: "*When I talk to* [redacted] *about issues of an operational nature, related legal responsibility and political impact for the EU institutions, in relation to accepting or refusing to transmit real-time information to the* [redacted] *coast guard for rescue at sea near their home,* [redacted] *is concerned that I never use EBCGA jargon...the southern name everyone calls "Frontex, the European Border and Coast Guard"..."*].

- On 21 March 2019, at 15:30, [redacted] wrote: "*Lors du déjeuner avec* [redacted] *qui est un copain de* [redacted] *j'ai pu placer le renouvellement de* [redacted] *contrat. Il disait que je suis "un ami de la Grèce, très bien etc..." je* [redacted]*ai encouragé à faire savoir partout à la Commission et* [redacted] *a dit que oui* [redacted] *va transmettre. Des recommandations grecques auprès de* [redacted]*, c'est toujours bon*" [Translation by OLAF: "*At lunch with* [redacted] *who is a friend of* [redacted] *I was able to place the renewal of* [redacted] *contract.* [redacted] *said that I am "a friend of Greece, very well etc..." I encouraged him to let the Commission know everywhere and* [redacted] *said that yes* [redacted] *will pass on. Greek recommendations to* [redacted]*, it's always good*"].

- On 28 March 2019, at 15:26, [redacted] wrote: "*La négociation entre Commission, Parlement et Conseil s'est conclue positivement aujourd'hui. Le texte étendant le mandat de l'agence et la creation du corps européen avec 10.000 agents dont des agents sous seul statut UE a fait l'objet d'un accord politique entre les négociateurs*" [Translation by OLAF:

"*The negotiations between Commission, Parliament and Council have been concluded positively today. The text extending the mandate of the Agency and the creation of the European Corps with 10,000 staff members of whom staff under EU status alone has been the subject of a political agreement between the negotiators"].*

During the interview (Annex 4) and in [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] explained that [redacted] was [redacted]. [redacted] has never been a FRONTEX staff member nor was [redacted] involved in FRONTEX activities. [redacted] had been working for one decade in fundamental rights matters for [redacted] until summer 2014 in [redacted]. However, [redacted] did not offer any clarification or comment on the content of the messages [redacted] exchanged with [redacted].

Findings: through WhatsApp messages, [redacted] disclosed to [redacted] some information, some of it delicate or sensitive, concerning the Agency under [redacted] management, even before it was made public, including information about [redacted], the MB meetings and personal judgments on EC officials. [redacted] had no entitlement at all to receive such information as [redacted] was not employed at FRONTEX nor at any other EU Institution, Body, Office or Agency which could have possibly provide a need-to-know justification.

2.2.9 Lack of follow-up actions following analysis of digital material provided by [redacted]

On 19 February 2021, FRONTEX received an envelope from the [redacted] Ambassador in [redacted]. The envelope included a letter and an USB stick containing a huge volume of material (photo, video, documents, etc) which, according to the [redacted] Ambassador, would prove illegal push-backs and human rights violations in the [redacted].

[redacted] tasked [redacted] SAM and ORD Divisions to make an assessment of the material by the following 23 February 2021 (Annex 197).

On 22 February 2021, [redacted] of [redacted], six hours after having had access to the digital material, provided to [redacted] by email – with [redacted] in cc - a first, rapid assessment of the 295 incidents included in the USB stick. [redacted] stated not to be in "*(…) a position to provide a clear indication of the nature and veracity of the alleged facts. However, after browsing some footage and pictures it appears that* ***there is sufficient ground to engage the SIR procedure and inform*** [redacted] ***without delay****. Both* [redacted] *and* [redacted] *gave green light to proceed in that direction immediately*" (Annex 197).

However, on 23 February 2020, [redacted] reported orally to [redacted] the instructions by [redacted] not to share the documents received with [redacted], due to the political dimension, and to prepare a preliminary assessment to be submitted to the European Commission. [redacted] cascaded down the instruction during a phone call with [redacted] (Annex 197).

Following internal coordination between the SAM and ORD Divisions, a joint FSC/FDU briefing note was prepared and submitted to the review of [redacted] on 23 February 2021 (Annex 197).

[redacted] reviewed the briefing note (annex 198) and, on 24 February 2021, [redacted] submitted it to [redacted] (Annex 197). The latter, on [redacted] turn, forwarded it to [redacted] on the same day.

In [redacted] email to [redacted] (later forwarded to [redacted]), in addition to submitting the requested briefing note, [redacted] also presented joint ORD/SAM operational proposals for a possible way forward, notably suggesting:

- the **establishment of a task force under the coordination of** [redacted] including experts from FSC, ORD and – as needed - IFC (geospatial imaging etc.) and RAU (for risk analysis purposes), with a view to considering launching Serious Incident Report on a specific incident having [redacted] as a SIR coordinator;
- **sharing the digital material with** [redacted] **and with the WG FRALO** without delay.

On 24 February 2021, [redacted] informed in writing the EC about the material received from the [redacted] Ambassador and asked for guidance (Annex 126).

On 4 March 2021, the EC replied to [redacted] reminding [redacted] that "*(…) in line with the European Border and Coast Guard Regulation, it is for the Agency to perform said assessment and* ***guarantee an adequate follow-up***" and also encouraging [redacted] to "(…) *seek the advice of the Management Board which, in accordance with the European Border and Coast Guard Regulation, is in charge of taking strategic decisions concerning the Agency"* (Annex 199).

On the same day, [redacted] informed OLAF about the material the Agency had received. On 20 March 2021, OLAF replied to [redacted] confirming it was for the Agency to assess the content of the digital data. OLAF also requested to be informed about the result of the analysis (Annex 200).

Disregarding the operational proposals suggested by [redacted] in [redacted] email on 23 February 2021 (to share the material received with [redacted] and the WG FRaLO, and to establish a taskforce under the coordination of [redacted]), on 29 March 2021, [redacted] tasked [redacted] with a fact finding mission aimed at analyzing the material ([redacted] Decision No. R-ED-2021-43 of 29 march 2021).

OLAF notes that while [redacted] (OLAF remark: during the timespan of the facts in question, [redacted] was in charge of [redacted] role) was informed about the letter that [redacted] had sent to the EC on 24 February 2021, [redacted] was **not involved in the analysis nor was [redacted] shared the digital data in question.** OLAF also notes that the joint SAM/ORD briefing note that [redacted] was presented on 23 February 2021 (Annex 197) clearly mentioned that the content of the digital data showed **potential violation of human and fundamental rights involving Greek Assets and, therefore, potentially having occurred under FRONTEX activities.**

During [redacted] interview (Annex 4), [redacted] explained to OLAF that [redacted] had intentionally decided not to involve [redacted] in the analysis of the material since "(…) *the involvement of [redacted] in the analysis would have not ensured an impartial assessment of the incidents as [redacted] is part of FRONTEX as well (therefore potentially not impartial), and [redacted] is sometimes challenged by NGOs because of that".*

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), [redacted] slightly corrected [redacted] initial statement. [redacted] stressed how "*(…) Frontex services (in particular SAM, ORD and FRO) were drowning under an accumulation of investigations in relation with allegations of pushbacks in [redacted]".* The technical complexity of the analysis of the digital material provided by the [redacted] Authorities led [redacted] to consider the "(…) *the risk that [redacted] would overload SAM and ORD with that burden while those services were already stretched to the limit of their capacity, all this situation prompted [redacted] to assign to [redacted] a basic analysis of the [redacted] USB stick"* (Annex 106).

However, with regard to alleged impartiality of an assessment involving [redacted], OLAF observes that the SOP on SIR, both the former 2014 version as well as the current 2021 version (which [redacted] approved) do not exclude the involvement of [redacted] in the handling of Category 4 (currently Category 1) incidents if involving FRONTEX staff or a FRONTEX deployed or co-financed asset. **The involvement of [redacted] in the assessment of the incidents is not deemed to pose any risk to impair the impartiality of the inquiry. Subsequently, the reference by [redacted] to this risk, had [redacted] involved [redacted] in the assessment of the material provided by the [redacted] Authorities, is not justified, paricularly considering that the independent status of [redacted] was stipulated exactly to ensure the impartiality in the performance of [redacted] tasks.**

With regard to the decision to task [redacted] with the analysis of the material (instead of an *ad-hoc* task force, as proposed by [redacted]), OLAF considers valid the considerations by [redacted] on the risk of possibly overburdening the SAM and ORD Divisions (already overwhelmed). However, [redacted] **could have decided to task jointly [redacted] and [redacted] with the analysis**: [redacted] with the assessment from an operational point of view and [redacted] with the assessment of potential fundamental rights implications. In this respect, OLAF recalls that, for the handling of the SIR 12604/2020, **the Agency nominated**

two different SIR Coordinators: the ORD to coordinate from the operational perspective, and [redacted] to coordinate from the fundamental rights perspective.

With regard to the facts above, [redacted] reported to OLAF via email [redacted] personal comments and description of the events (Annex 201): "*I was put in a very uncomfortable situation by [redacted] as well as by [redacted]. (…) I saw it coming that [redacted] and [redacted] would want to* ***hide the information from*** *[redacted] and I got upset about it from the beginning. (…) In this case, as often in the past, I was instructed in strong words by [redacted], in person, to act accordingly. From the very beginning [redacted] told me that [redacted] would not want the file (USB content) to be explored by us. This included also that [redacted] did not want to share with [redacted] and that [redacted] would write to the political level instead*. (…) *I was not surprised that [redacted] and [redacted] instructed us as they did: it was the pattern of trying to* ***hide information and avoiding responsibility****:*

- hiding information especially from [redacted] and

- avoiding assessing whether Greek authorities are involved in Fundamental Rights breaches and whether there is a direct or indirect involvement by Frontex

- avoiding that the result of such assessment would need to be discussed openly and internally and could lead to different opinions including the views that the Agency should act upon (incl. the consideration of Art. 46 or other options, if possible)".

On 20 May 2021 [redacted] delivered its "Note on the Fact-Finding Mission as regards allegations raised by the Ambassador of [redacted]" (Annex 202). The report stressed a possible involvement of the Agency in the incidents as "*Frontex can be seen as indirectly involved, as Frontex is providing human resources and technical equipment to [redacted] to support their operational activities, and is financing resources provided by [redacted]. The assets listed above must be cross checked internally (if deployed and reimbursed during Frontex coordinated operational activities – from end March to end June 2020) but also externally (e.g. financed via ISF funding)".*

The report was transmitted to OLAF on 9 June 2021 (Annex 202). In the transmission letter [redacted] stated that "*(…) Frontex has analysed if the assets of the Hellenic Coast Guard that can be recognised have been funded either by Frontex as "Host Member State assets" or by the Commission under the Internal Security Funds (ISF). According to our findings****, no asset that can be identified by its registration number, has been funded as "Host Member State asset (…)"***.

However, the analysis of the fact-finding mission report, combined with the viewing of the digital material by OLAF and the information OLAF gathered from FRONTEX, revealed that **some of the assets** depicted in the images/videos/material submitted by the [redacted] Authorities were **co-financed by FRONTEX**.

For example, the HCG CPB [redacted], which is linked to the incidents dated 22, 30 June and 15 August 2020, is listed among the assets co-financed by FRONTEX in May, June, July, August and September 2020 under the Grant Agreements no. 2020/147/FDU and 2020/204/FDU. The OPV [redacted], which appears in the images linked to the incidents dated 10 May, 1, 7, 8 and 13 June 2020, is listed among the assets co-financed by FRONTEX in April and July 2020 under the Grant Agreements no. 2020/49/FDU and 2020/204/FDU. The OPV [redacted], which appears in the images linked to the incident dated 24 December 2020, is listed among the assets co-financed by FRONTEX in October and November 2020 under the Grant Agreement no. 2020/266/FDU. The CPB [redacted], which appears in the images linked to the incident dated 4 November 2020, is listed among the assets co-financed by FRONTEX in May, June, July, August, September, October and November 2020 (also at the same time of the incident in which it appears to be involved) under the Grant Agreements no. 2020/147/FDU, 2020/204/FDU and 2020/266/FDU. The OPV [redacted] and the SAR [redacted], which appears in the images linked to the incidents dated 9 March and 29 April 2020, are listed among the assets co-financed by FRONTEX between May and November 2020 under the Grant Agreements no. 2020/147/FDU and 2020/204/FDU.

With regard to the possible involvement of FRONTEX co-financed assets in the incidents recorded in the digital material provided by the [redacted] Authorities, during [redacted] interview

(Annex 4), [redacted] acknowledged to "(…) *take note that according to your analysis some HCG assets identified in the video material and associated to some events appear to have been co-financed by FRONTEX at the time and date of the event in question. In particular, for example the AS* [redacted] *and AS* [redacted]*".*

In [redacted] reply to the invitation for comments on the findings of the OLAF investigation (Annex 106), transmitted to OLAF on 1 November 2021, [redacted] commented that "*During my interview with OLAF on 16 July 2021 I took note of your conclusions that Hellenic Coast Guard vessels appearing in the material of the USB stick were according to you funded by Frontex, which was not matching with Frontex conclusions. Since July 2021 I have instructed ORD to put on hold the co funding of Greek vessels deployed in* [redacted] *operation as long as the Hellenic Coast Guard does not accept a funding scheme identifying certain vessels to be deployed under* [redacted] *for fixed period (a week, a month…) as this is done in Italy or Spain. I want to stop the old historic scheme allowing to fund Hellenic Coast Guard vessels randomly for a couple of hours per day from time to time but even not every day. I had already instructed Frontex operational entities to stop this several years ago but ORD had resumed it and argued that it was impossible to proceed differently in Greece".*

OLAF notes that [redacted], in [redacted] comments, did not challenge the OLAF finding that some FRONTEX co-financed assets appear to have been involved in some of the incidents included in the digital data under analysis. However, [redacted] clarified that [redacted] had instructed the ORD division to interrupt the financing of the HCG assets until a different financing scheme would be implemented (in line with the procedure applied with other MS).

OLAF also notes that, in addition to the measure above, [redacted] did not inform OLAF about any other actions taken. In particular, **OLAF is not aware of any request for information/clarification or any follow-up action taken by** [redacted] **with the host Member State, aimed at assessing any possible violation of fundamental rights or international protection obligations in FRONTEX coordinated activities involving assets co-financed by the Agency.**

Findings: despite the content of the material transmitted to FRONTEX by the [redacted] **Authorities pointed at severe violations of fundamental rights, possibly under FRONTEX activities,** [redacted] **decided not to share the information with** [redacted] **nor to involve** [redacted] **in the assessment of the material.**

Despite [redacted] **having been informed by OLAF about the fact that some HCG assets co-financed by FRONTEX appeared to have been involved in the events depicted in the digital material, no request for information/clarification was sent to the Greek Authorities nor any follow-up action taken with a view to clarifying any possible violation of fundamental rights or international protection obligations in the context of FRONTEX coordinated activities. OLAF is not informed that any SIR has been launched.**

2.3 Facts established

Based on the aforementioned findings and evidences, the investigation established that:

1. within their respective competences, roles and responsibilities, [redacted], [redacted] and [redacted], did not ensure compliance with the applicable Standard Operating Procedures on Serious Incident Reporting while dealing with some incidents involving FRONTEX. In particular, the decisions, advice and actions taken by them resulted in:
   - [redacted] being excluded from the assessment and handling of some incidents, despite a potential FR component;
   - the failure to initiate Serious Incident Reports for some incidents with a potential FR component.

2. Within their respective competences, roles and responsibilities, [redacted], [redacted] and [redacted], decided to relocate a FRONTEX aerial asset to a different operational area of activity. One reason for doing so appears to have been to avoid witnessing incidents in [redacted] with a potential FR component.

3. In the framework of its activities, FRONTEX witnessed actions by the Authorities of the host Member State that appear to have seriously endangered the lives of the migrants concerned. According to information available at FRONTEX, assets co-financed by the Agency appear to have been involved in the incidents. [redacted], as [redacted], did not ensure appropriate follow-up, including taking any actions in relation to the scope of the Article 46 of the FRONTEX Regulation (EU) 2019/1896.

4. Within their respective competences, roles and responsibilities, [redacted], [redacted] and [redacted], the latter conveying the instructions [redacted] received, repeatedly acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access, by [redacted], [redacted] and [redacted], to relevant information available within the Agency, including in the EUROSUR system, thus affecting the possibility for [redacted] Office to effectively perform its tasks.

5. In February 2021, FRONTEX received from [redacted] Authorities a significant volume of digital data which included images, videos and reports pointing at potential violations of fundamental rights, possibly in the context of FRONTEX coordinated activities. [redacted] decided not to share the information with [redacted], nor to involve [redacted] in the assessment of the material.

   OLAF informed [redacted] that some HCG assets co-financed by FRONTEX appeared to have been involved in the incidents included in the digital data. However, [redacted] did not react appropriately requesting information or clarification from the Greek Authorities nor did [redacted] instruct FRONTEX services to take any follow-up action with a view to clarifying any possible violation of fundamental rights or international protection obligations in the context of FRONTEX coordinated activities. OLAF is not aware of any subsequent SIR having been launched.

The conducts under points 1 to 5 above, having regard to the different roles and level of responsibilities of the relevant persons concerned, affected the capacity of FRONTEX to fully comply with its task of contributing to the uniform application of the Union law on fundamental rights, including the Charter of Fundamental Rights of the EU, and to ensure the compliance with, the respect for, and the protection of, the fundamental rights in all of its activities at the external borders.

The conduct of the relevant persons concerned under point 4 above affected the possibility of [redacted] Office to effectively perform its tasks, notably in relation to the monitoring the compliance with the fundamental rights in any of the FRONTEX activities and the promotion of the Agency's respect of fundamental rights.

6. Within their respective competences, roles and responsibilities, [redacted] and [redacted], instructed the relevant FRONTEX entities to publish in November 2019, under strict confidentiality, the vacancies for the FRO and Deputy FRO Posts, without prior involvement of the MB (for the FRO post) and of the FRO (for the Deputy FRO post). This [redacted] decision by [redacted] was based on [redacted] concerns that [redacted] and some members of the MB wanted to protect [redacted] and delay the process of the new recruitment. [redacted] also appears to have acted in this way so that the matter could be settled in advance of the appointment of the new [redacted] Commissioner, whom [redacted] considered to be too supportive of fundamental rights issues.

   [redacted] alleged possible conflicts of interest, including "*political*" conflicts of interest situation, involving [redacted] and some members of the MB. However, [redacted] decided not to report it according to the applicable FRONTEX policy on whistleblowing but to take the lead in drafting of the vacancy notices in question and to push their publication instead.

The conduct above resulted in the vacancy notices being suspended, upon request of [redacted] the MB, and, later, withdrawn pursuant to the legal advice of the EC which considered the publication unlawful, thus causing undue delay to the whole recruitment process.

7. Following the submission of an official complaint, in August 2018 [redacted] launched an administrative inquiry into the then [redacted], overruling the applicable FRONTEX decision which attributed this responsibility to [redacted].

   Following the adoption of the MB Decision 26/2018 of 25 October 2018, introducing new general implementing provisions on the conduct of administrative inquiries and disciplinary procedures, it took [redacted] almost 15 months to adopt a new Decision opening the administrative inquiry (and repealing [redacted] previous Decision of 30 August 2018). This caused a significant delay in the finalization of the inquiry which lasted, overall, more than three years. In August 2019 [redacted] had been warned by [redacted] the CGO Division of the need to ensure the respect of the EU administration standards in relation to a reasonable duration of the inquiry.

   [redacted] alleged that [redacted] the MB was in a possible conflict of interest, linked to [redacted] close relationship with [redacted] reproaching [redacted] for not having informed the MB about the administrative inquiry against [redacted]. OLAF's investigation revealed that [redacted] and [redacted] had agreed it was not necessary to inform the MB as the FRONTEX inquiry had not reached any conclusions yet.

   [redacted] provided information concerning the administrative investigation against [redacted] (notably the allegations against the person in question) to a member of the MB and to [redacted], who had no need-to-know as not involved in the inquiry, even before [redacted] had been formally notified of the inquiry.

   [redacted] informed the same member of the MB, who had no need-to-know, about non-officially formalized allegations against [redacted] which did not result in the opening of any inquiry.

   [redacted] provided misleading information to staff of [redacted] Cabinet ([redacted] and [redacted]) about the conclusions of the administrative inquiry against [redacted].

The conduct outlined above resulted in [redacted] not ensuring the respect for the EU administration standards in relation to the duration of the administrative inquiry. [redacted] did not ensure the compliance with the relevant MB Decision providing for the duty to inform the person concerned without undue delay. [redacted] also did not ensure the confidentiality of information related to the inquiry as well as the accuracy of the information [redacted] shared with [redacted]. [redacted] also demonstrated lack of loyalty towards [redacted] the Management Board.

8. [redacted] was informed about the fact that FRONTEX deployed officers might have preferred not to report officially some incidents due to fear of repercussions by the Authorities of the host MS. However, [redacted] did not request any follow-up action or checks based on the information reported to [redacted].

With the conduct above [redacted] did not ensure that the Agency fully complied with its tasks to ensure the compliance with, the respect for, and the protection of, the fundamental rights in all of its activities at the external borders.

9. [redacted] provided to OLAF incorrect information about the process of the revision of the SOP on SIR. In particularly, [redacted] informed OLAF to have tasked, in September 2019, [redacted] with the review of the SOP on SIR. This information proved to be incorrect as the revision of the SOP was not part of the creation of an information management policy assigned to [redacted], nor did OLAF retrieve any written evidence of any instructions/guidance to [redacted] concerning the revision of the SOP.
   [redacted] also provided incorrect information concerning the revision of the SOP on SIR to [redacted] the LIBE Committee. In particular, [redacted] provided misleading,

information about the time [redacted] was initially presented, for [redacted] approval, the draft of the new SOP on SIR. [redacted] also stated to have given instructions concerning the revision to the competent FRONTEX services; OLAF was unable to identify, nor was the person concerned able to provide, any written evidence of any such instructions between July 2019 and August 2020.

10. In May and August 2029, [redacted] personally amended the text of two letters addressed to the Authorities of a host Member State. This resulted in the letters being "*politically softer*" but also less explicit on the gravity of the facts in question**.** In particular, [redacted] removed from the drafts with which [redacted] had been presented, the direct references to possible violations of fundamental rights which had characterized the incidents to which the letters referred, as well as the occurrence of the incident in the Territorial Waters of the host MS.

11. [redacted] reported to the LIBE Committee and to the EC's Vice-President [redacted] explanations about the delays in the implementation of the new legal framework of the Agency, in particular regarding the fundamental rights architecture. [redacted] claimed the EC was responsible for the delays. The EC denied the misleading description of the facts made by [redacted] and provided a detailed timeline of the events showing the responsibility of [redacted] in the delays. The reported lack of cooperation by [redacted] appears inspired by [redacted] personal opinions about the EC, notably DG HOME, which [redacted] considered incompetent and incapable of understanding the new operational challenges which FRONTEX has to face.

12. [redacted] and [redacted] demonstrated a lack of loyalty towards the Union. They partly based their decisions on their personal prejudices and the low esteem in which they held the European Commission (EC), particularly some officials of DG HOME. They considered the latter to be overly focused on fundamental rights matters and too bureaucratic, with no understanding of the operational challenges of external border management. [redacted] also shared these opinions with external counterparts, including [redacted] and representatives of EU Member States. [redacted] antagonism with the EC got to the point that [redacted] even suggested to a member of the MB which issues to raise during the MB meeting to put the EC's representative of the MB in a difficult position.

13. In May 2021, [redacted] provided the LIBE Committee, the expression of the EP to which FRONTEX is accountable, with partially incorrect or biased information concerning the handling of the fundamental rights matter by the Agency.

14. Between 2017 and 2019, [redacted] disclosed information to [redacted], some of it delicate or sensitive, concerning the Agency under [redacted] management, even prior to it being made public. There was no justification for this as [redacted] did not have a legitimate need-to-know.

15. In February 2021, during a meeting with the members of the FRaLO Subworking Group, [redacted] provided incorrect information about the involvement of [redacted] in the handling of the SIR 11095/2020.

3. Legal evaluation

On the basis of the information initially available and the facts established in the course of the OLAF investigation (see chapter 2.3), a preliminary evaluation in law has been carried out. The following provisions appear to be relevant to the case under inquiry.

3.1 Legal framework

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2012/C 326/02)

- Article 1, **Human Dignity**:

Human dignity is inviolable. It must be respected and protected.

- Article 2(1), **Right to life***:*

Everyone has the right to life.

- Article 3, **Right to integrity of the person***:*

Everyone has the right to respect for his or her physical and mental integrity.

- Article 6, **Right to liberty and security**:

Everyone has the right to liberty and security of person.

- Article 18, **Right to asylum**:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

- Article 19, **Protection in the event of removal, expulsion or extradition**:

Collective expulsions are prohibited.

No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

- Article 24(2), **The rights of the child**:

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

- Article 41(1), **Right to good administration**:

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

REGULATION (EU) 2016/1624 ON THE EUROPEAN BORDER AND COAST GUARD

- Recital 47:

The European Border and Coast Guard, which includes the Agency and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, ***should fulfil its tasks in full respect for fundamental rights,*** *in particular the Charter of Fundamental Rights of the European Union ('the Charter'), the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, (…) and obligations related to access to international protection, in particular the principle of non-refoulement, the* ***United Nations Convention on the Law of the Sea****, the* ***International Convention for the Safety of Life at Sea****, and the International Convention on Maritime Search and Rescue (...).*

- Recital 48:

Given the increased number of its tasks, the Agency should further develop and implement a strategy to monitor and ensure the protection of fundamental rights. To that end it should provide its fundamental rights officer with adequate resources and staff corresponding to its mandate and size. ***The fundamental rights officer should have access to all information necessary to fulfil her or his tasks****. The Agency should use its role to actively promote the application of the Union acquis relating to the management of the external borders, including with regard to respect for fundamental rights and international protection.*

- Article 6, **European Border and Coast Guard Agency:**

(…) The Agency shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, at all external borders. Its contribution shall include the exchange of good practices.

- Article 58, **Staff**:

The Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the Union ('Conditions of Employment'), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (1), and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment shall apply to the Agency's staff.

- Article 61, **Administrative and management structure of the Agency**:

The administrative and management structure of the Agency shall comprise:

(a) a management board;

(b) an executive director;

(c) a consultative forum; and

(d) a fundamental rights officer.

- Article 62, **Functions of the Management Board**:

The management board shall be responsible for taking the strategic decisions of the Agency in accordance with this Regulation.

The management board shall:

(…) (r) exercise, in accordance with paragraph 8, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');

(…) (y) appoint the fundamental rights officer in accordance with Article 71(1).

- Article 68, **Functions and powers of the executive director**:

The Agency shall be managed by its executive director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the Union institutions and the management board, the executive director shall neither seek nor take instructions from any government or from any other body.

The executive director shall be responsible for the preparation and implementation of the strategic decisions taken by the management board and for the taking of decisions related to the operational activities of the Agency in accordance with this Regulation. The executive director shall have the following functions and powers: (…)

(b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the day-to-day administration and functioning of the Agency in accordance with this Regulation;

(h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 15(3);

(m) to withdraw financing of activities in accordance with Article 25;

(…) The executive director shall be accountable for his or her activities to the management board.

The executive director shall be the legal representative of the Agency.

- Article 71, **Fundamental rights officer**:

A fundamental rights officer shall be appointed by the management board. He or she shall have the tasks of contributing to the Agency's fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights. The fundamental rights officer shall have the necessary qualifications and experience in the field of fundamental rights.

The fundamental rights officer shall be independent in the performance of his or her duties. He or she shall report directly to the management board and cooperate with the consultative

forum. The fundamental rights officer shall so report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.

The fundamental rights officer shall be consulted on the operational plans drawn up in accordance with Articles 16, 17 and 28 and Article 33(4). He or she shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

- Article 72, **Complaint mechanism:**

The Agency shall, in cooperation with the fundamental rights officer, take the necessary measures to set up a complaints mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.

(…) The fundamental rights officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the fundamental rights officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the executive director, forward complaints concerning members of the teams to the home Member State, inform the relevant authority or body competent for fundamental rights in a Member State, and register and ensure the follow-up by the Agency or that Member State.

REGULATION (EU) 2019/1896 ON THE EUROPEAN BORDER AND COAST GUARD

- Recital 1:

*The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level (…). At the same time, it is necessary to act **in full respect for fundamental rights** and in a manner that safeguards the free movement of persons within the Union.*

- Recital 20:

*The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the **United Nations Convention on the Law of the Sea**, the **International Convention for the Safety of Life at Sea**, the **International Convention on Maritime Search and Rescue**, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention relating to the Status of Stateless Persons and other relevant international instruments.*

- Recital 42:

In a spirit of shared responsibility, the role of the Agency should be to monitor regularly the management of the external borders, including the respect for fundamental rights in the border management and return activities of the Agency. The Agency should ensure proper and effective monitoring not only through situational awareness and risk analysis, but also through the presence of experts from its own staff in Member States. (…)

- Recital 103:

*This Regulation respects the **fundamental rights** and observes the principles recognised by Articles 2 and 6 TEU and by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular respect for **human dignity**, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, **the right to asylum and to protection against removal and expulsion, non-refoulement**, non-discrimination and the rights of the child.*

- Recital 104:

This Regulation should establish a complaints mechanism for the Agency in cooperation with the fundamental rights officer, to safeguard the respect for fundamental rights in all the activities of the Agency. (…) The fundamental rights officer should have access to all

information concerning respect for fundamental rights in relation to all the activities of the Agency. The fundamental rights officer should be provided with the resources and staff necessary to enable him or her to effectively perform all his or her tasks in accordance with this Regulation. The staff provided to the fundamental rights officer should have the skills and seniority that correspond to the expansion of activities and powers of the Agency.

- Article 5, **European Border and Coast Guard Agency:**

(…) The Agency shall contribute to the continuous and uniform application of Union law, including the Union acquis on fundamental rights, in particular the Charter of Fundamental Rights of the European Union ('the Charter'), at external borders. Its contribution shall include the exchange of good practices.

- Article 6, **Accountability**:

The Agency shall be accountable to the European Parliament and to the Council in accordance with this Regulation.

- Article 10, **Tasks of the European Border and Coast Guard Agency:**

The Agency shall perform the following tasks:

(…) (e) monitor compliance with fundamental rights in all of its activities at the external borders and in return operations;

(…) (s) cooperate with the FRA, within their respective mandates, in order to ensure the continuous and uniform application of the Union acquis on fundamental rights;

(…) (ad) follow high standards for border management allowing for transparency and public scrutiny in full respect of the applicable law and ensuring respect for, and protection and promotion of, fundamental rights (…).

- Article 36, **Actions by the Agency at the external borders:**

A Member State may request the Agency's assistance in implementing its obligations with regard to external border control. The Agency shall also carry out measures in accordance with Articles 41 and 42.

*The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may, acting in accordance with the relevant Union and international law, **including the principle of non-refoulement**, take one or more of the following measures:*

(a) coordinate joint operations for one or more Member States and deploy the standing corps and technical equipment;

(b) organise rapid border interventions and deploy the standing corps and technical equipment;

(…) The Agency shall finance or co-finance the activities referred to in paragraph 2 from its budget in accordance with the financial rules applicable to the Agency.

- Article 46, **Decisions to suspend, terminate or not launch activities:**

The executive director shall terminate any activity of the Agency if the conditions to conduct those activities are no longer fulfilled. The executive director shall inform the Member State concerned prior to such termination.

*(…) **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.***

The executive director shall, after consulting the fundamental rights officer, decide not to launch any activity by the Agency where he or she considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature. The executive director shall inform the Member State concerned of that decision.

*The decisions referred to in paragraphs 4 and 5 shall be based on duly justified grounds. When taking such decisions, the executive director shall take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, **relevant international organisations** and Union institutions, bodies, offices and agencies in the areas covered by this Regulation. The executive director shall inform the management board of such decisions and provide it with justifications therefor.*

- Article 80, **Protection of fundamental rights and a fundamental rights strategy:**

*The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, and **relevant international law**, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement.*

For that purpose, the Agency, with the contribution of and subject to the endorsement by the fundamental rights officer, shall draw up, implement and further develop a fundamental rights strategy and action plan, including an effective mechanism for monitoring respect for fundamental rights in all the activities of the Agency.

(…) In the performance of its tasks, in its relations with Member States and in its cooperation with third countries, the Agency shall take into account the reports of the consultative forum referred to in Article 108 and the reports of the fundamental rights officer.

- Article 95, **Staff:**

The Staff Regulations, the Conditions of Employment and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and those Conditions of Employment shall apply to statutory staff (…).

- Article 99, **Administrative and management structure of the Agency**:

The administrative and management structure of the Agency shall include:

(a) a management board;

(b) an executive director;

(c) deputy executive directors; and

(d) a fundamental rights officer;

A consultative forum shall assist the Agency as an advisory body.

- Article 100, **Functions of the management board:**

The management board shall be responsible for taking the strategic decisions of the Agency in accordance with this Regulation.

The management board shall:

(…) (n) exercise disciplinary authority over the executive director and, in consultation with the executive director, over the deputy executive directors;

(…) (s) exercise, in accordance with paragraph 8, with respect to statutory staff, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment on the Authority Empowered to Conclude a Contract of Employment (the 'appointing-authority powers');

*(…) (u) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, **as well as from investigations of the European Anti-Fraud Office (OLAF);***

(…) (z) appoint the fundamental rights officer and a deputy fundamental rights officer in accordance with Article 109;

(…) The management board may advise the executive director on any matter related to the development of operational management of the external borders and training, including activities related to research.

- Article 106, **Functions and powers of the executive director:**

The Agency shall be managed by its executive director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the Union institutions and the management board, the executive director shall neither seek nor take instructions from any government or from any other body.

The executive director shall be responsible for the preparation and implementation of the strategic decisions taken by the management board and for the taking of decisions related to the operational activities of the Agency in accordance with this Regulation. The executive director shall have the following functions and powers:

(…) (l) to withdraw financing of activities in accordance with Article 46;

(m) to assess, prior to any operational activity of the Agency, whether there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 46(4) and (5);

(n) to evaluate the results of activities in accordance with Article 47;

(…) The executive director shall be accountable for his or her activities to the management board.

- Article 109, **Fundamental rights officer:**

A fundamental rights officer shall be appointed by the management board (…).

The fundamental rights officer shall perform the following tasks:

(…) (b) monitoring the Agency's compliance with fundamental rights, including by conducting investigations into any of its activities;

(c) promoting the Agency's respect of fundamental rights;

(…) (i) informing the executive director about possible violations of fundamental rights during activities of the Agency;

(…) The executive director shall reply to the fundamental rights officer as to how concerns regarding possible violations of fundamental rights as referred to in point (e) of the first subparagraph have been addressed.

(…) The management board shall lay down special rules applicable to the fundamental rights officer in order to guarantee that the fundamental rights officer and his or her staff are independent in the performance of their duties. The fundamental rights officer shall report directly to the management board and shall cooperate with the consultative forum. The management board shall ensure that action is taken with regard to recommendations of the fundamental rights officer.

(…)The fundamental rights officer shall have access to all information concerning respect for fundamental rights in all the activities of the Agency.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

- Article 98(1b), **Duty to render assistance**:

Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(…) (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA (SOLAS) 1974

- Chapter V – Regulation 33, **Distress Situations: Obligations and procedures**

The master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found. If the ship receiving the distress alert is unable or, in the special circumstances of the case,

considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly.

INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE (SAR CONVENTION) - 1979

- Chapter 5.9.1

Any unit receiving information of a distress incident shall take whatever immediate action to assist as is within its capability or shall alert other units which might be able to assist and shall notify the rescue co-ordination centre or rescue sub-centre in whose area the incident has occurred.

REGULATION (EU) 656/2014 ESTABLISHING RULES FOR THE SURVEILLANCE OF THE EXTERNAL SEA BORDERS IN THE CONTEXT OF OPERATIONAL COORDINATION COORDINATED BY FRONTEX

- Article 3, **Safety at sea:**

*Measures taken for the purpose of a sea operation shall be conducted in a way that, in all instances, **ensures the safety of the persons intercepted or rescued,** the safety of the participating units or that of third parties.*

- Article 4, **Protection of fundamental rights and the principle of non-refoulement:**

*No person shall, in contravention of the **principle of non-refoulement**, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened (…).*

(…) Intercepted or rescued persons shall not be disembarked, forced to enter, conducted to or otherwise handed over to the authorities of a third country when the host Member State or the participating Member States are aware or ought to be aware that that third country engages in practices as described in paragraph 1.

*During a sea operation, before the intercepted or rescued persons are disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a third country (…), the participating units shall, without prejudice to Article 3, use all means to identify the intercepted or rescued persons, **assess their personal circumstances**, inform them of their destination in a way that those persons understand or may reasonably be presumed to understand and give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of non-refoulement.*

(…) Throughout a sea operation, the participating units shall address the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, persons in need of international protection and other persons in a particularly vulnerable situation.

(…) Participating units shall, in the performance of their duties, fully respect human dignity.

- Article 6, **Interception in the territorial sea**:

In the territorial sea of the host Member State or a neighbouring participating Member State, that State shall authorise the participating units to take one or more of the following measures (…)

If evidence confirming that suspicion is found, that host Member State or neighbouring participating Member State may authorise the participating units to take one or more of the following measures:

(…) b) ordering the vessel to alter its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until it is confirmed that the vessel is keeping to that given course;

c) conducting the vessel or persons on board to the coastal Member State in accordance with the operational plan.

(…) Where there are reasonable grounds to suspect that a stateless vessel is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the neighbouring participating Member State in whose territorial sea that stateless vessel is intercepted shall authorise one or more of the measures laid down in paragraph 1 and may authorise one or more of the measures laid down in paragraph 2. (…)

- Article 9, **Search and rescue situations:**

*Member States shall observe their obligation to **render assistance to any vessel or person in distress at sea** and, during a sea operation, they shall ensure that their participating units comply with that obligation, in accordance with international law and respect for fundamental rights. (…)*

For the purpose of dealing with search and rescue situations that may occur during a sea operation, the operational plan shall contain, in accordance with relevant international law, including that on search and rescue, at least the following provisions:

(…) (c) A vessel or the persons on board shall be considered to be in a phase of uncertainty in particular:

*(i) when a person has been reported as missing or a **vessel is overdue**; or*

(…) (d) A vessel or the persons on board shall be considered to be in a phase of alert in particular:

(…) (ii) when information has been received indicating that the operating efficiency of a vessel is impaired, but not to the extent that a distress situation is likely.

(e) A vessel or the persons on board shall be considered to be in a phase of distress in particular:

(i) when positive information is received that a person or a vessel is in danger and in need of immediate assistance; or

(…) (iii) when information is received which indicates that the operating efficiency of a vessel has been impaired to the extent that a distress situation is likely.

(f) Participating units shall, for the purpose of considering whether the vessel is in a phase of uncertainty, alert or distress, take into account and transmit all relevant information and observations to the responsible Rescue Coordination Centre including on:

(i) the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation;

(ii) the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;

(iii) the number of persons on board in relation to the type and condition of the vessel;

(iv) the availability of necessary supplies such as fuel, water and food to reach a shore;

(v) the presence of qualified crew and command of the vessel;

(…) (x) the weather and sea conditions, including weather and marine forecasts.

REGULATION (EU) 1052/2013 ESTABLISHING THE EUROPEAN BORDER SURVEILLANCE SYSTEM (EUROSUR)

- Recital 12:

*In accordance with Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum established by that Regulation **should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency** within the framework of EUROSUR.*

- Article 22, **Monitoring and evaluation:**

For the purposes of this Regulation, the Agency and the Member States shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders and respect for fundamental rights, including the principle of non-refoulement.

(…) The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council (…). That evaluation shall include an assessment of the results achieved against the objectives set, of the continuing validity of the underlying rationale, of the application of this Regulation in the Member States and by the Agency and of the compliance with and impact on fundamental rights (…).

MANAGEMENT BOARD DECISION NO 26/2016 OF 6 OCTOBER 2016 DELEGATING THE AIPN POWERS TO THE EXECUTIVE DIRECTOR OF THE EUROPEAN BORDER AND COAST GUARD AGENCY

- Article 2:

The powers conferred by the Staff Regulations on the appointing authority and by the CEOS on the authority empowered to conclude contracts of employment are delegated to the Executive Director of the Agency, except the adoption of implementing rules to give effect to the Staff Regulations and the CEOS.

(…) Decisions on selection, engagement, extension of contract, termination of contract, appraisal and reclassification of the Accounting Officer and the Fundamental Rights Officer shall be subject to approval by the Management Board.

ANNEX TO THE MANAGEMENT BOARD DECISION 23/2012 ON FRONTEX DISCIPLINARY PROCEDURE

- Article 3, **Opening the administrative inquiry:**

The decision to open an administrative inquiry pursuant to Article 86(2) of the Staff Regulations and Article 2 of Annex IX to the Staff Regulations lies with the Deputy Executive Director (…).

STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN UNION

- Article 11*: An official shall carry out his duties and conduct himself solely with the interests of the Union in mind.* […] *He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.*
- Article 12*: An official shall refrain from any action or behaviour which might reflect adversely upon his position.*
- Article 17(1): *An official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.*
- Article 21*: An official, whatever his rank, shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him.*

  An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities.

CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN UNION

- Article 11: *The provisions of Articles 11 to 26a of the Staff Regulations, concerning the rights and obligations of officials, shall apply by analogy. However, where a member of the temporary staff holds a contract for a fixed period, the duration of leave on personal grounds referred to in the second paragraph of Article 15 of the Staff Regulations shall be limited to the remainder of the term of the contract.*

FRONTEX STAFF CODE OF CONDUCT (15 November 2012)

- Article 4, **Quality service and public interest:**

Frontex staff members have a duty to serve the Union and the interests of its citizen's. They should make recommendations and decisions only to serve these interests.

Frontex staff members are mindful of their position of public trust and set a good example to others.

- Article 5, **Lawfulness:**

Frontex staff members act in accordance with the law and apply the rules and procedures laid down in the legislation of the European Union. The staff members shall, in particular, take care that decisions which affect the rights or interests of individuals or parties have a basis in law and that their content complies with the law.

- Article 8, **Absence of abuse of power:**

Frontex staff members exercise powers solely for the purposes for which they have been conferred by the relevant provisions. Frontex staff members avoid using those powers for purposes which have no basis in the law, or which are not motivated by any public interest.

- Article 10, **Fairness and integrity:**

Frontex staff members act impartially, fairly and reasonably.

Frontex staff members are also guided by a sense of propriety and conduct themselves at all times in a manner that would bear the closest public scrutiny.

- Article 13, **Impartiality and independence:**

Frontex staff members are impartial and independent. The staff members will abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

The conduct of the staff members is never to be guided by personal, family or national interest or by political pressure. The staff members do not take part in a decision in which he or she, or any close member of his or her family, has a financial interest. (…)

- Article 15, **Discretion:**

Frontex staff members have the right to freedom of expression, with due respect to the principles of loyalty and impartiality as well as the obligations of professional secrecy and confidentiality.

Frontex staff members respect the obligation of professional secrecy and refrain from any unauthorised disclosure of information. This obligation continues after leaving office (…).

- Article 24, **Reasonable time-limit for taking decisions or recommendations:**

The staff member ensures that a decision or recommendation on every request or complaint to Frontex is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the staff member has sent to his superiors requesting instructions regarding the decisions or recommendations to be taken.

If a request or a complaint to Frontex cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the staff member informs the author thereof as soon as possible. In that case, a definitive decision or recommendation should be notified to the author in the most appropriate manner and in due time.

- Article 27, **Notification of the decision or recommendation:**

The staff member ensures that decisions or recommendations which affect the rights or interests of individual persons or parties are notified in writing, as soon as the decision or recommendation has been taken, to the person or parties concerned.

The staff member abstains from communicating the decision or recommendation to other sources until the person or parties concerned have been informed.

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3.2 Legal assessment

As explained at paragraphs 2.3 and 2.4., the investigation established that:

3.2.1 [redacted]

In [redacted] capacity of [redacted] of FRONTEX, within [redacted] competences, [redacted] role and level of responsibilities:

- did not ensure the compliance with the applicable Standard Operating Procedures on Serious Incident Reporting while dealing with some incidents involving (at different extent) FRONTEX. This resulted in [redacted] being excluded from the assessment and handling of some incidents, despite a potential FR component, and the failure to initiate Serious Incident Report for some incidents with a potential FR component;
- decided to relocate a FRONTEX aerial asset to a different operational area of activities with the purpose, among others, that could be interpreted, based on the elements provided by one of the persons concerned, as an attempt to avoid witnessing incidents in [redacted] with a potential FR component;
- did not ensure appropriate follow-up actions, including with the regard to the application of the Article 46 of the 2019 FRONTEX Regulation, in relation to two incidents witnessed by FRONTEX which could qualify as unlawful since the actions undertaken by the officers of the host Member State seriously endangered the life of some migrants;
- between 2016 and 2020, repeatedly acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access by [redacted], [redacted] and [redacted] to information available within the Agency, including in the EUROSUR system, thus affecting the possibility for [redacted] Office to effectively perform its tasks;
- decided not to share the digital material received from the [redacted] Authorities in February 2021 with [redacted], nor to involve [redacted] in the assessment of the material, despite a potential FR component of the incidents which might have occurred in the context of FRONTEX coordinated activities;
- did not request information and clarifications, or take appropriate follow up actions, including the initiation of SIRs, after having been informed by OLAF that some FRONTEX co-financed assets appeared to have been involved in some of the incidents included in the digital material that FRONTEX received from the [redacted] Authorities.

The behaviors above affected the capacity of FRONTEX to fully comply with its tasks to contribute to the uniform application of the Union law on fundamental rights, including the Charter of Fundamental Rights of the EU, and to ensure the compliance with, the respect for, and the protection of, the fundamental rights in all of its activities at the external borders.

Subsequently, the misconduct appears to be in breach of Articles 11, 12 and 21 of Staff Regulation, Articles 4, 5, 8 and 10 of the Code of Conduct of FRONTEX Staff, Articles 6, 68 and 71 of Regulation (EU) 2016/1624, Articles 5, 10, 46, 80, 106 and 109 of Regulation (EU) 2019/1896, Articles 3 and 4 of Regulation (EU) 656/2014.

- in November 2019, instructed the relevant FRONTEX entities to publish, under strict confidentiality, the vacancy notices for the FRO and Deputy FRO posts (among others), without prior involvement of the MB (for the FRO post), and of the FRO (for the Deputy

FRO post). This [redacted] decision by [redacted] was based on [redacted] concerns that [redacted] and some members of the MB wanted to protect [redacted] in place and delay the process of the new recruitment. [redacted] also wanted to anticipate the appointment of the new [redacted] Commissioner whom [redacted] considered too much favorably oriented towards the fundamental rights matter.

The behavior above resulted in the vacancy notices being suspended, upon request by [redacted] the Management Board, and later withdrawn pursuant to the legal advice of the EC which considered the publishing unlawful, thus causing undue delay to the recruitment process.

The misconduct appears to be in breach of Articles 11, 12 and 21 of Staff Regulation, Articles 4, 5, 8 and 10 of the Code of Conduct of FRONTEX Staff, Articles 100, 106 and 109 of Regulation (EU) 2019/1896, Article 2 of Management Board Decision No 26/2016.

- overruled the applicable FRONTEX decision on the opening of administrative inquiries, which attributed the responsibility to [redacted], due to an alleged lack of trust towards [redacted] on the matter covered by the inquiry;
- it took [redacted] almost 15 months [redacted] a new Decision opening the administrative inquiry against [redacted] (and repealing [redacted] previous Decision of 30 August 2018) following the adoption of the MB Decision 26/2018 of 25 October 2018 which introduced new general implementing provisions on the conduct of administrative inquiries and disciplinary procedures;
- alleged against [redacted] the MB of holding possible conflict of interest linked to a close friendship with [redacted], reproaching [redacted] of not having informed the MB about the administrative inquiry against [redacted]. OLAF investigation revealed that [redacted] and [redacted] had agreed it was not necessary to inform the MB as the FRONTEX inquiry had not reached any conclusions yet;
- provided information concerning the administrative investigation against [redacted] (notably the allegations against the person in question) to a member of the MB and to [redacted], who had no need-to-know as not involved in the inquiry, even before [redacted] had been formally notified of the inquiry;
- informed the same member of the MB, who had no need-to-know, about non-officially formalized allegations against [redacted] which did not result in the opening of any inquiry;
- provided misleading information to staff of [redacted] ([redacted] and [redacted]) about the conclusions of the administrative inquiry against [redacted].

The behaviors above resulted in [redacted] not ensuring the respect of the EU administration standards in relation to a reasonable duration of the inquiry, despite having been warned by [redacted]. [redacted] also did not ensure the compliance with applicable provisions regarding the duty to inform the person concerned without undue delay. [redacted] did not respect the confidentiality of the information related to the inquiry and shared misleading information concerning the inquiry. [redacted] also demonstrated lack of loyalty towards [redacted] the Management Board, [redacted] Appointing Authority.

The misconduct appears to be in breach of Article 41(1) of the Charter of Fundamental Right of the EU, Articles 11, 12, 17(1) and 21(2) of Staff Regulation, Articles 4, 5, 8, 10, 13, 15, 24 and 27 of the Code of Conduct of FRONTEX Staff, Article 68 of Regulation (EU) 2016/1624, Article 106 of Regulation (EU) 2019/1896, Article 3 of the Annex to the Management Board Decision 23/2012 on FRONTEX Disciplinary Procedure.

- despite having been informed in July 2019, April and November 2020, about the fact that FRONTEX deployed officers might have preferred not to report officially some incidents due to fear of repercussion by the Authorities of the host MS, [redacted] did not request for any follow-up action or checks based on the information [redacted] was reported, so to ascertain the alleged lack of incidents reporting though official communication chains.

The behavior above affected the capacity of FRONTEX to fully comply with its tasks to monitor effectively the compliance with, the respect for, the protection and promotion of, fundamental rights in all of its activities at the external borders.

Subsequently, the misconduct appears to be in breach of Articles 11, 12 and 21(2) of Staff Regulation, Articles 4 and 5 of the Code of Conduct of FRONTEX Staff, Articles 6 and 68 of Regulation (EU) 2016/1624, Articles 5, 10, 80 and 106 of Regulation (EU) 2019/1896, Article 4 of Regulation (EU) 656/2014.

- provided to [redacted] the LIBE Committee and to OLAF incorrect information about the process of the revision of the SOP on SIR.

The misconduct appears to be in breach of Articles 11 and 12 of Staff Regulation, Articles 4 and 10 of the Code of Conduct of FRONTEX Staff.

- in May and August 2020, personally amended the text of two letters to be addressed to the Authorities of a host Member State. This resulted in the letters being "*politically softer*" but also less explicit on the gravity of the facts in question. In particular, [redacted] removed, from the draft [redacted] had been presented, the direct references to possible violations of fundamental rights which had characterized the incidents to which the letters referred, as well as the occurrence of the incident in the Territorial Waters of the host MS;
- showed lack of constructive cooperation with the EC in the implementation of the new legal framework of the Agency (in force as of 2019), in particular regarding the fundamental rights architecture, thus causing severe delays in its implementation. The behavior of [redacted] appeared to have been inspired by [redacted] personal opinions about the EC, notably DG HOME, and some of its officials, whom [redacted] considers lacking of competence and of understanding of the new operational challenges which FRONTEX faces;
- let [redacted]self being steered in [redacted] decisions by [redacted] personal opinion, low esteem and consideration of the EC, considered too much focused on the fundamental rights matter and too bureaucratic, with no understanding of the operational challenges of the external border management. [redacted] also shared these opinions with external counterparts, including representatives of Members States and [redacted];
- despite [redacted] role as [redacted] of FRONTEX, suggested to a member of the MB which issues to raise during a MB meeting so to put the EC's representative of the MB in a difficult position.

The misconduct above appears to be in breach of Article 11, 12 and 21(2) of Staff Regulation, Articles 4, 8, 10, 13 and 15 of the Code of Conduct of FRONTEX Staff.

- in May 2021, provided the LIBE Committee, expression of the EP to which FRONTEX is accountable, with partially untruthful or biased information concerning the handling of the fundamental rights matter within the Agency.

The misconduct above appears to be in breach of Article 11, and 12 of Staff Regulation, Articles 4 and 10 of the Code of Conduct of FRONTEX Staff.

- Between 2017 and 2019, disclosed to [redacted] some information, even delicate or sensitive, concerning the Agency under [redacted] management, even before it was made public. [redacted] had not entitlement to be shared such information as [redacted] was not employed at FRONTEX not at any other EU Institution, Body, Office or Agency which could have possibly justified a need-to-know from [redacted] side.

The misconduct above appears to be in breach of Article 12 and 17(1) of Staff Regulation, Article 15 of the Code of Conduct of FRONTEX Staff.

3.2.2 [redacted]

In [redacted] capacity of [redacted] of FRONTEX, within [redacted] competences, [redacted] role and level of responsibilities:

- did not ensure the compliance with the applicable Standard Operating Procedures on Serious Incident Reporting while dealing with some incidents involving (at different extent) FRONTEX. This resulted in [redacted] being excluded from the assessment and

handling of some incidents, despite a potential FR component, and the failure to initiate Serious Incident Report for some incidents with a potential FR component;
- contributed to relocate a FRONTEX aerial asset to a different operational area of activities with the purpose, among others, that could be interpreted, based on the elements provided by one of the persons concerned, as an attempt to avoid witnessing incidents in [redacted] with a potential FR component.
- between 2018 and 2020, repeatedly acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access by [redacted], [redacted] and [redacted] to information available within the Agency, including in the EUROSUR system, thus affecting the possibility for [redacted] Office to effectively perform its tasks.

The behaviors above affected the capacity of FRONTEX to fully comply with its tasks to contribute to the uniform application of the Union law on fundamental rights, including the Charter of Fundamental Rights of the EU, and to ensure the compliance with, the respect for, and the protection of, the fundamental rights in all of its activities at the external borders.

Subsequently, the misconduct appears to be in breach of Articles 11, 12 and 21 of Staff Regulation, Articles 4, 5, 8 and 10 of the Code of Conduct of FRONTEX Staff, Articles 6, 68 and 71 of Regulation (EU) 2016/1624, Articles 5, 10, 46, 80, 106 and 109 of Regulation (EU) 2019/1896, Articles 3 and 4 of Regulation (EU) 656/2014.

- in November 2019, contributed to the publication, under strict confidentiality, of the vacancy notices for the FRO and Deputy FRO posts (among others), without prior involvement of the MB (for the FRO post), and of the FRO (for the Deputy FRO post).

The behavior above resulted in the vacancy notices being suspended, upon request by [redacted] the Management Board, and later withdrawn pursuant to the legal advice of the EC which considered the publishing unlawful, thus causing undue delay to the recruitment process.

The misconduct appears to be in breach of Articles 11, 12 and 21 of Staff Regulation, Articles 4, 5, 8 and 10 of the Code of Conduct of FRONTEX Staff, Articles 100, 106 and 109 of Regulation (EU) 2019/1896, Article 2 of Management Board Decision No 26/2016.

- let [redacted]self being steered in [redacted] advisory role to the executive management and in the decision making process by [redacted] personal opinion, low esteem and consideration of the EC, considered too much focused on the fundamental rights matter and too bureaucratic, with no understanding of the operational challenges of the external border management.

The misconduct above appears to be in breach of Articles 11 and 12 of Staff Regulation, Articles 4, 8, 10, 13 and 15 of the Code of Conduct of FRONTEX Staff.

3.2.3 [redacted]

In [redacted] capacity of [redacted] of FRONTEX, within [redacted] competences, [redacted] role and level of responsibilities:

- did not ensure the compliance with the applicable Standard Operating Procedures on Serious Incident Reporting while dealing with some incidents involving (at different extent) FRONTEX. This resulted in [redacted] being excluded from the assessment and handling of some incidents, despite a potential FR component, and the failure to initiate Serious Incident Report for some incidents with a potential FR component;
- contributed to relocate a FRONTEX aerial asset to a different operational area of activities with the purpose, among others, that could be interpreted, based on the elements [redacted] provided to OLAF, as an attempt to avoid witnessing incidents in [redacted] with a potential FR component;
- in 2020, repeatedly acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access by [redacted], [redacted] and [redacted]

[redacted] to information available within the Agency, including in the EUROSUR system, thus affecting the possibility for [redacted] Office to effectively perform its tasks.

The behaviors above affected the capacity of FRONTEX to fully comply with its tasks to contribute to the uniform application of the Union law on fundamental rights, including the Charter of Fundamental Rights of the EU, and to ensure the compliance with, the respect for, and the protection of, the fundamental rights in all of its activities at the external borders.

Subsequently, the misconduct appears to be in breach of Articles 11, 12 and 21 of Staff Regulation, Articles 4, 5, 8 and 10 of the Code of Conduct of FRONTEX Staff, Articles 6, 68 and 71 of Regulation (EU) 2016/1624, Articles 5, 10, 46, 80, 106 and 109 of Regulation (EU) 2019/1896, Articles 3 and 4 of Regulation (EU) 656/2014.

- In February 2021, during a meeting with the members of the FRaLO Subworking Group, [redacted] provided incorrect information about the involvement of [redacted] in the handling of the SIR 11095/2020.

The misconduct above, for which OLAF did not gather elements indicating it was intentional, might be considered in breach of Articles 11 and 21 of Staff Regulation.

OLAF notes that [redacted] was extremely cooperative with OLAF throughout the inquiry. [redacted] provided valuable information to better understand the general context surrounding the facts under investigation, as well the dynamics internal to the Agency.

4. Estimated financial impact of the facts established

No financial impact was established.

5. Comments of the persons concerned

On 4 October 2021, all the [redacted] persons concerned were given the opportunity to provide their comments on the facts concerning them prior to OLAF drawing conclusions on the investigation.

[redacted] replied to OLAF on 1 November 2021 (Annex 106). The observations by [redacted] have been reported and commented extensively in the appropriate chapters above so to link them to the relevant topics and issues.

In addition to the comments to the specific facts [redacted] was presented, [redacted] did also provide a cross cutting comment concerning the geopolitical reality surrounding FRONTEX activities in [redacted] as of February 2020. The situation was characterized by a growing hostility by the [redacted] Authorities against the European Union, its Member States and, also, against FRONTEX.

[redacted] recalled the increasing geopolitical threats and military tensions between Greece and [redacted], which took the form of a "hybrid warfare" where [redacted] was considered to exploit irregular migrants as a hybrid weapon against Greece and the EU. The situation led the Greek Government to empower [redacted] with more coordinating responsibilities in border surveillance activities carried out in [redacted] including in relation to detecting and combatting illegal migration.

Finally, [redacted] reminded that, the same day of the launch of the Rapid Border Interventions in Greece, two [redacted] military planes violated the Greek airspace to harass a FRONTEX-deployed Danish aircraft. Also, repeatedly, as of end of April 2020, shootings occurred at the [redacted] land border, which involved joint Hellenic police/FRONTEX patrols. Similarly, maritime assets deployed by EU MS (notably Romania, Lithuania, Finland and Sweden) under FRONTEX RBI [redacted] or JO [redacted] were harassed and threatened in the Greek territorial waters by [redacted] assets.

The unexpected and unprecedented escalation of geopolitical tension and hostility in the operational area caused the Agency to resort to an increasing categorization of SIRs as

Category 2 due to the security, military and geopolitical concerns associated with developing events.

In general terms, [redacted] also commented that, in very difficult circumstances (as clarified above), [redacted] acted ethically in the best interest of the Agency, in the best interest of a proper and swift implementation of the FRONTEX legal framework, notably the legal provisions on Fundamental Rights.

As a general remark, OLAF does agree with the relevance and truthfulness of the comments by [redacted] concerning the tense geopolitical situation in [redacted]. However, OLAF does not consider the clarifications sufficient to legitimize the decisions and actions taken by the persons concerned, as described in this report.

[redacted] replied via email to OLAF on 30 October 2021 (Annex 203). [redacted] provided very short and generic comments without entering into details of the facts OLAF had presented [redacted]. [redacted] comments have been reported and commented in the appropriate chapters above so to link them to the relevant topics and issues.

In particular, the person concerned stressed the fact that, in 2020, the applicable SOP on SIR was outdated and needed a revision so to bring it in line with the new operational reality and tasks of the Agency.

[redacted] also highlighted that [redacted] never had the intention to prevent [redacted] to have access to information, notably the relevant SIRs, rather to limit the number of the recipients of the SIRs so to ensure the protection of the information, even through classification if necessary.

Likewise [redacted], also [redacted] recalled some incidents involving FRONTEX-deployed assets which were harassed by [redacted] assets. This caused a very tense geopolitical situation in [redacted], which also affected FRONTEX.

Finally, [redacted] stressed the fact that the recruitment procedures for the FRO and Deputy FRO were initiated and handled in absolute good faith, taking into consideration and mirroring the procedure applied in 2018 for the recruitment of [redacted]. At that time, neither the EC nor the Management Board had raised any concerns.

As a general comment, the person concerned recalled that the number of challenges faced by the Agency (operating in a tense geopolitical context at time of pandemics and implementing a very ambitious mandate under tight deadlines) generated tensions internally to FRONTEX.

Having carefully assessed the comments by [redacted], OLAF does not consider the clarifications sufficient to legitimize the decisions and actions taken by the persons concerned, as described in this report. In particular, OLAF recalls the substantial difference of the functions between [redacted]. As also avowed by the EC in its legal advice mentioned under chapter 2.3.3, the independency and peculiar role of the FRO should have suggested a different handling of the recruitment procedure.

[redacted] replied to OLAF on 7 November 2021 providing extensive and detailed comments for each of the facts concerning [redacted] (Annex 138). The observations by [redacted] have been reported and commented in the appropriate chapters above so to link them to the relevant topics and issues.

Demonstrating a cooperative approach, [redacted] did not conceal [redacted] responsibilities but tried to frame them in the proper background. For example, with regard to the meetings [redacted] had with staff of [redacted] Division on 17 June and 3 September 2020 (see chapter 2.3.2.g. above), [redacted] commented that "*I believe some wordings, being spoken out and now written down, were meant to be expressed or interpreted somewhat differently. I believe as it is presented here, it is not fully presenting the full message of what I tried to bring. I am under the assumption that I added few things which could put what I have said more in perspective. (…) However, overall, I am not proud of all the words I spoke and today I can clearly see those were directly connected with the tensed situation I was in and the pressure* [redacted] *and* [redacted] *put on me, while at the same time I disagreed with their ideas"* (Annex 138).

In addition to commenting on individual facts, [redacted] also provided a wide description of the general context, the difficult working atmosphere and the legal framework in which the facts have to be contextualised. In particular, [redacted] explained the huge difficulties [redacted] had to face, as [redacted], in an Agency where the decision making process was firmly and solely in the hands of [redacted] and [redacted], with limited or no possibility at all for other [redacted] to present their opinions and point of views, if diverging with those of the [redacted]. Also, [redacted] stressed how [redacted] has always been steered in [redacted] function as [redacted] by a sense of loyalty and respect towards [redacted] and [redacted] [redacted] role: "*This description of the whole context and situation is not an excuse. I simply try to describe that my loyalty was to a big extent with* [redacted] *and* [redacted]*, and at one hand I let myself be inspired about their ideas. My starting point is that* [redacted] *aims to do the right thing and that I should support* [redacted] *to the best of my possibilities*" (Annex 138).

This pushed [redacted] to limit questioning the instructions (written or oral) by [redacted], either directly or through [redacted], even when [redacted] did not agree, partially or fully. [redacted] was afraid that, questioning openly or formally raising issues against the decisions or instructions of [redacted] (for example openly challenging the categorization of a SIR), would have proved counterproductive and could have caused problems not only to [redacted]self, but also to the whole [redacted] in terms of allocation of resources and tasks (decisions pertaining to [redacted], with the advice of [redacted]).

As an example of the context, [redacted] stressed "*the informal and non-transparent way of communication used by* [redacted] *and* [redacted]". Indeed the investigation revealed how [redacted] and [redacted] are used to pass on instructions or guidance orally during meeting (of which no minutes are available or, if available, are not too detailed) or via unconventional means, like WhatsApp or text messages. [redacted] explained how, from [redacted] point of view, this behavior would barely leave official written traces about the person who took a certain decision or which instructions were given, leaving the door open to possible misrepresentation or description of facts.

[redacted] also made it very clear [redacted] considers to have acted at the best of [redacted] possibilities, within the framework of [redacted] role and related responsibilities, as provided for in the applicable FRONTEX Internal Structure and Rules of Procedure (FISRoP).

6. Conclusions

Based on the facts established in the course of the investigation, OLAF concludes that [redacted], [redacted] and [redacted], within their differing roles and responsibilities, committed serious misconduct and other irregularities. In doing so they hindered the capacity of FRONTEX to fully comply with its responsibilities, namely monitoring compliance with fundamental rights in its activities at the external borders, and ensuring respect for, protection and promotion of, fundamental rights, as enshrined in particular in the Charter of Fundamental Rights of the EU.

The failings of the persons concerned can be grouped into three main categories; failure to follow procedures and processes, failure in their duty of loyalty and failure in their managerial responsibilities.

[redacted], [redacted] and [redacted] failed to ensure compliance with the applicable Standard Operating Procedures on Serious Incident Reporting. This led to the exclusion of [redacted] from the assessment and handling of some incidents and to the failure to initiate Serious Incident Reports for some incidents with a potential fundamental rights component.

The [redacted] persons concerned decided to relocate a FRONTEX aerial asset to a different operational area of activity. One reason for doing so appears to have been to avoid witnessing incidents in [redacted] with a potential FR component.

[redacted], [redacted] and [redacted], the latter conveying the instructions [redacted] received, acted directly or instructed FRONTEX entities to act in a way which resulted in a severe limitation of the access by [redacted], [redacted] and [redacted] to information available within the Agency, including in the EUROSUR system. This had a negative impact on the ability of [redacted] Office to effectively perform its tasks,

notably monitoring the Agency's compliance with, and promoting the Agency's respect of, fundamental rights.

[redacted] did not ensure appropriate follow-up actions, including with regard to the application of the Article 46 of the 2019 FRONTEX Regulation, in relation to two incidents witnessed by FRONTEX in which the actions undertaken by the officers of the host Member State (MS) appear to have seriously endangered the lives of the migrants concerned. [redacted] failed to take appropriate action, including the initiation of a SIR, after having been informed that some FRONTEX co-financed assets appeared to have been involved in some incidents included in the digital material that FRONTEX received from the [redacted] Authorities. [redacted] failed to take appropriate action once informed (on three different occasions) that FRONTEX-deployed officers might have preferred not to report officially some incidents that occurred under FRONTEX operations due to fears of repercussions from the Authorities of the host MS.

[redacted] and [redacted], as a result of concerns that some members of the Management Board (MB), including [redacted], might have tried to protect [redacted] (to the point that [redacted] alleged the existence of a conflict of interest situation, including "*political*" conflict of interest, involving some of the members of the MB) instructed the relevant FRONTEX entities to publish, under strict confidentiality, the vacancy notices for the FRO and Deputy FRO posts (among others), without the prior involvement of the MB (for the FRO post) or the FRO (for the Deputy FRO post). [redacted] also appears to have acted in this way so that the matter could be settled in advance of the appointment of the new [redacted] Commissioner, whom [redacted] considered to be too supportive of fundamental rights issues.

[redacted], in the framework of an administrative inquiry against [redacted], overruled the applicable Decision of the Management Board of FRONTEX, attributing to [redacted] the responsibility to launch the administrative inquiry. [redacted] did not ensure compliance with the EU administration standards in relation to the reasonable duration of the inquiry, as set in the European Code of Good Administrative Behaviour (mirrored in the FRONTEX Code of Conduct). [redacted] also disclosed to persons with no direct need-to-know some details about the allegations against [redacted] ([redacted] being the subject of the inquiry) and about allegations against [redacted] which had not been formalised officially. [redacted] also provided misleading information to some members of [redacted] about the conclusions of the administrative inquiry against [redacted].

[redacted] and [redacted] demonstrated a lack of loyalty towards the Union. They based their decisions on their personal prejudices and the low esteem in which they held the European Commission (EC), particularly some officials of DG HOME. They considered the latter to be overly focused on fundamental rights matters and too bureaucratic, with no understanding of the operational challenges of external border management. [redacted] also failed to demonstrate a constructive approach with the EC regarding the implementation of the new legal framework of the Agency, in particular regarding the fundamental rights architecture, thus causing severe delays to the whole process. In this context, despite [redacted] role as [redacted] of FRONTEX, [redacted] also suggested to a member of the MB which issues to raise during a MB meeting, so as to put the EC representative at the MB in a difficult position.

[redacted] disclosed information to [redacted], some of it delicate or sensitive, concerning the Agency under [redacted], prior to it being made public. There was no justification for this as [redacted] did not have a legitimate need-to-know.

While requesting information about some incidents from the Authorities of a host Member State, as well as while providing to EU Institutions (the EC and the EP) information about the way the Agency had dealt with fundamental rights-related matters, [redacted] did not ensure the highest standards of impartiality and objectivity, presenting an incorrect or biased description of facts.

[redacted] also gave OLAF incorrect information about the process of the revision of the Standard Operating Procedure on Serious Incidents Reporting.

During a meeting with the members of the FRaLO Subworking Group, [redacted] provided incorrect information about the involvement of [redacted] in the handling of a Serious Incident Report. OLAF did not gather elements indicating the intentionality of such provision.

OLAF considers the repeated misconduct of the persons concerned to be in breach of the Staff Regulation of Officials of the EU, of the FRONTEX Code of Conduct and of the legal framework stipulated by the FRONTEX Regulations [Regulation (EU) 2016/1624 and Regulation (EU) 2019/1896] in particular in relation to the protection and respect of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union, in the performance of the Agency's tasks.

Signed Electronically

on 27/01/2022 at 09:53 by [redacted],
Lead Investigator

on 27/01/2022 at 18:51 by [redacted], Head of Unit

on 31/01/2022 at 10:34 by [redacted], Direct

Annexes

[redacted]