Frontex: Accountability Declined
Systematic Cover-Ups of Illegal Migrant Pushbacks at Sea

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EXECUTIVE SUMMARY

It is not enough for the European Union to declare that human rights must be respected, it is also necessary to provide the legal means to achieve such compliance, especially by its own agencies. Recent and increasing evidence indicates that the European Border and Coast Guard Agency (Frontex) has been complicit in Greece’s illegal pushbacks of migrants towards Turkish waters. Since October, several investigations proved that Frontex played an active role in concealing and supporting at least ten pushbacks between March and October 2020. Different organizations and media accused the Agency of having helped
the Greek coast guard cover up the violations, discouraged its own crews from filing reports on pushbacks, and, in some cases, stopped initial alerts of violations from being filed.

Pushbacks are not a new practice for Greece. Locals even have a name for this cynical game: «Greek water polo”. Yet the complicity of the European Border and Coast Guard Agency in such illegal operations has never been recorded before.

Due to the mounting allegations, various European parliamentarians have called for the Executive Director of Frontex to resign, while the EU Commission requested an inquiry and called for two extraordinary board meetings. On the second one, on December 9, a Working Group on fundamental rights was established to verify the allegations and formulate recommendations. It will deliver its first report at the next meeting on January 2021.21.

Bound by relevant international and European law, particularly the European Convention on Human Rights and the EU Charter of Fundamental Rights, as well as by its Code of Conduct, Frontex is not allowed to conduct a pushback itself, support one, or witness one without intervening.

This is not the first time that Frontex’s human rights compliance has been brought into question. Still, the pushbacks described stand out not just for the severity of the human rights violations entailed and the overwhelming evidence recorded, but also for how flagrantly they expose the lack of transparency in Frontex’s activities and the difficulty to hold it to account.
As the role and the powers of Frontex grow alarmingly, with an increasing budget of over 460 million Euro and new and controversial military drones to surveil the Mediterranean, its involvement in Greek pushbacks increases, and so should its accountability.
1. BACKGROUND

“Saving lives at sea is not optional” recently stated the President of the EU Commission, Ursula Von der Layen, in her closing speech at the European Parliament. Every year thousands of men, women and children, fleeing hunger, civil wars, persecution and intolerable living conditions, attempt to reach the European Union by sea. The Mediterranean is still the most attempted route for their long and threatening journeys. Data provided by the United Nations High Commissioner for Refugees (UNCHR) indicate that in 2020, the arrivals officially reported were 7,416 by land and 86,629 by sea. In the absence of regular and safer migration opportunities to seek asylum in the EU, asylum seekers are very likely to turn to irregular and tremendously unsafe routes, such as crossing the Mediterranean in small and unseaworthy dinghies. Migrants find themselves constantly at risk of losing their life or facing serious injury during their crossing, especially “as a result of the actions of private individuals in the course of trafficking and smuggling by land or at sea; and excessive use of force by law enforcement officials charged with border control”, as affirmed by the Commissioner for Human Rights of the Council of Europe already in 2007. More than a decade has passed and still, people who are trying to access the EU in search of safety and dignity are forced to enter illegally and are being routinely abused by law enforcement
officials, especially in the Western Balkans, where state agents responsible for upholding their fundamental rights are instead subjecting migrants to violence and intimidation and denying access to asylum procedures.

EU actions aimed at addressing the loss of lives at sea go hand in hand with policies aimed at limiting access to EU territory, with the result that many migrants continue to be vulnerable to significant human rights' violations during their journey and even after arriving at their destination. EU member states have become increasingly hostile to the new arrivals, in a growing belief that aggression at the borders and poor conditions in migrant camps will make their countries less appealing to asylum seekers. The reluctance to host migrants and refugees has particularly involved a continued lack of clarification of responsibilities at sea, leading to delayed reactions when migrants' boats were in distress. According to the International Organization for Migration (IOM) in 2020, over 1,151 men, women and children have died while attempting to cross the Mediterranean.

While in the past, migration flows were managed unilaterally by the most affected EU Member States along the north shore of the Mediterranean, since 2005, an important role has been played by the European Border and Coast Guard Agency, commonly known as Frontex. The Agency’s key role should be, inter alia, to provide technical and operational assistance to states and persons in distress at sea, through rapid border interventions and joint return operations. In the last years, Frontex has been highly criticised for its
lack of transparency, unclear responsibility, and accountability, but especially for not carrying out their operations in full compliance with human rights' standards.

Throughout all 2020, sea arrivals in Greece were accompanied by consistent allegations of pushbacks to Turkey. For years, Greek coast guards have been accused of intercepting and expelling migrants, but during the pandemic, this practice has been far more systematic and coordinated. Between March and August, at least 1,072 asylum seekers have been dropped at sea by Greek officials in at least 31 separate expulsions. In parallel, several human rights' organizations and media outlets have increasingly documented the involvement of Frontex units in Greece’s illegal pushbacks of migrants to Turkey, endangering their lives at sea. This is not the first time that Frontex human rights' compliance has been questioned. Still, the episodes reported involving the Agency stand out for the severity of the human rights' violations committed and the overwhelming and detailed evidence presented.
2. PUSHBACKS

Over the years, non-governmental organizations, human rights groups, and media outlets have consistently accused Greece of summarily returning migrants across Turkish land and sea borders. Greek authorities have reportedly abandoned migrants in distress adrift near Turkish waters, intercepted and disabled boats carrying migrants by damaging or removing the engines or their fuel, and physically dragged migrants’ boats into high seas or towards Turkish waters.

Between June and July 2020, UNHCR, IOM, the UN Working Group on Arbitrary Detention (WGAD) and the European Commissioner for Home Affairs Ylva Johansson, stated their deep concern about the increasing number of credible reports of pushbacks and collective expulsions of migrants and urged Greece to investigate the charges. At the beginning of October 29, 2020, nongovernmental organizations published an open letter to the Hellenic Parliament calling on Greece “to urgently establish an inquiry into all allegations of unlawful returns of migrants to Turkey at Greece’s land and sea borders with Turkey”. Despite the numerous allegations brought forward by international and non-governmental organizations and numerous calls for investigation of the alleged incidents, the Greek government continues to deny such illegal practices.
Recently, mounting evidence indicates that the European Border and Coast Guard Agency has been complicit in Greece’s illegal pushbacks to Turkey. Pushbacks are not a new practice by Greece. Locals even have a name for this cynical game: «Greek water polo". Yet the role of Frontex in such operations has never been recorded before. On October 23, a group of media outlets (Bellingcat, Lighthouse Reports, Der Spiegel, ARD and TV Asahi) published a detailed investigative report proving the complicity of Frontex. They documented six instances, occurred between March and August in the Aegean Sea, where the Agency was either in close proximity to a pushback or directly involved in one.

- **April 28-29:** 22 migrants in a rubber dinghy near the Greek island of Samos were detained by Greek security forces, placed in a raft without any means of propulsion and dragged into open sea. For the whole night and the morning after, Greek border guards kept pushing them away as their raft floated around in circles. A Frontex surveillance plane overflew the area twice while this pushback took place but did not intervene. The migrants had to endure more than 17 hours before the Turkish coast guard rescued them.

- **June 4:** In Northern Lesbos, two dinghies with about 70 migrants onboard were pushed by the Greek coast guard toward Turkey and later picked up by the Turkish coast guard. Portuguese Frontex vessel Nortada was present around 15 kilometres from the first dinghy and just over one
kilometre away from the second.

• **June 5:** A rubber dinghy carrying 19 migrants, mainly from Afghanistan, was pushed back from Northern Lesbos while the Portuguese Frontex vessel Nortada was approximately two kilometres away. One man onboard had a head injury.

• **June 8:** The Turkish coast guard rescued 47 migrants after a pushback by the Greek coast guard off the north-east coast of Lesbos. A Frontex boat flying the Romanian flag physically blocked the dinghy from reaching Greek territory and passed it at high speed in a circular pattern. This manoeuvre is not only dangerous because of the risk of collision, but also because the waves it generates represent a threat to the overcrowded and fragile dinghies. It can also lead all the frightened people onboard to change position and make the boat capsize. Migrants had to endure “10 hours of suffering” before their boat was eventually pushed back and rescued by the Turkish coast guard. There were also children onboard.

• **August 15:** Greek border guards steered repeatedly toward a rubber dinghy with dozens of migrants on near the north-east coast of Lesbos and pushed it back toward Turkey several times. As this day was a Greek national holiday, many bathers in Lesbos witnessed the incident. Greek officials took the gasoline from the dinghy, destroyed the engine, and then forced the migrants to tie the dinghy to a speedboat at gunpoint and dragged it toward Turkey. A Romanian Frontex boat was only a few hundred meters away from the migrants' boat. Among the migrants on the dinghy was present
also a pregnant woman who was later hospitalized with severe bleeding.

- **August 19:** 34 migrants were pushed back from Northern Lesbos while the Portuguese Frontex vessel Molivos was five kilometres away. It seems that Frontex vessel has changed course and headed towards the pushback before its transponder either lost signal or was turned off. Migrants onboard reported that a Greek guard took gasoline from them while the water was filling the boat.

The investigation has opened a pattern on sea pushbacks in which Frontex officials were involved or, at least, aware of such operations and did not report them. On **October 30** a Swedish Frontex crew off the Greek island of Chios witnessed a pushback to Turkey of a boat full of migrants by the Greek authorities. The Swedish crew was advised by a Frontex officer to not report it, but they declared both the incident and the suppression of the attempt to report it at an extraordinary board meeting held on November 10 at the European Commission’s request. This marked the first case of an EU Member State officially reporting active interference by Frontex officials. Frontex Executive Director, Fabrice Leggeri, stated that he would look into the Swedish case but that he had so far found no evidence that it happened.

In the following weeks major leaks of Frontex internal documents directly implicated Frontex in taking part in Greek pushbacks in the Aegean Sea. The **EUobserver** released an internal email chain proving how the Greek authorities had directly ordered a Danish Frontex boat patrolling the Aegean...
Sea to push a rubber dinghy with 33 migrants back into Turkish waters in **March**. The Danish coast guard refused and eventually the migrants were rescued and brought to the Greek island of Kos.

Less than a week later, Der Spiegel released [an article](#) with a minute by minute account of a pushback of about 30 migrants by Greek Coast Guard recorded by Frontex itself, accusing Frontex Director Leggeri to be aware of at least that one illegal operation occurred on **April 18**. In the “Serious Incident Report” (SIR) Number 11095, Frontex officials on a reconnaissance aircraft near the island of Lesbos described the incident, sending also several pictures to the Frontex headquarters in Warsaw, and reported that Greek authorities asked them to leave the scene. “At 03:21 Frontex Surveillance Aircraft communicates that the rubber boat has no engine and it is adrift. Greek assets are departing the area leaving the rubber boat adrift” said the internal Frontex report detailing this incident and categorizing it as a violation, yet the document was “dismissed”.

Different organizations and media accused Frontex of having helped cover up the violations, discouraged crews from filing reports on pushback incidents, and, in some cases, stopped initial alerts of violations from being filed as SIR after consulting with the Greek authorities. Another [article](#) released in November proved the complicity of the German federal police officers in at least one push back. In an internal note from Frontex Head Leggeri to the EU Commission, it is reported that on **August 10**, German
police officers stopped a dinghy with 40 migrants onboard but, instead of rescuing them, waited for the Greek coast guard to arrive and violently push them back into Turkish waters. Once again, the event was not recorded as a “Serious Incident Report”.

3. REACTIONS

The investigations fuelled suspicions that the Agency was not just sporadically aware of such abuses, but that it played an active role in concealing and supporting them. In July, in a letter to the LIBE Committee, Frontex Director asserted that one SIR was recorded, based on a sighting of the incident occurred on April 28, and described before. In that case, too, Frontex did not send any nearby ship to rescue the migrants. Only in October, after the media reports and the request of the EU Commission, Frontex Director announced it has launched an internal inquiry. But he also quickly dismissed allegations, reporting that “so far, no documents or other materials have been found to substantiate the accusations of violations of the law or the Frontex Code of Conduct by deployed officers”.

The allegations of pushbacks and other forms of noncompliance with international and European law led the EU Ombudsman to open an inquiry and EU Home Affairs Commissioner, Ylva Johansson, to call for an extraordinary Frontex Management Board meeting on November 10. Adalbert Jahnz, a spokesperson for the European Commission, stated: “We expect both Greek authorities and Frontex to investigate any such reports thoroughly and ensure full compliance with EU law”.

The EU Commission requested a second extraordinary meeting on December
9, to monitor the progress of the internal enquiry into the increasingly allegations of pushbacks of migrants in the Aegean Sea. It established also a Working Group on fundamental rights to verify the allegations and formulate recommendations for the Agency. The Working Group will deliver a first report at the next meeting on 21 January 2021. Leggeri stated at the meeting that it was European countries which held the power to determine what happens in their waters and not Frontex. «When it comes to operations, only the host member state authorities can decide what has to be done» he claimed. After the meeting, MEP Tineke Strik in a press conference told that «we must be able to rely on an EU agency which prevents human rights violations from happening and not inflict them». Frontex, she concluded, «seems to be a partner in crime of those who deliberately violate those human rights.»

Nevertheless, Frontex is the European Union's best-funded agency. Its budget has seen a constant growth, from 142 million Euro in 2015 to 460 million Euro in 2020, showing that external border security is one of the top priorities for EU member States, at all costs. Recently, Frontex has awarded 100€m contracts to Airbus and Israeli weapons' company Elbit Systems for military-grade drones to monitor the Mediterranean Sea. Already in May, Euro-Med Human Rights Monitor condemned the EU-Israeli deal of war drones for the surveillance of asylum seekers at sea as immoral and of questionable legality. As one of the drones contracted is Elbit’s Hermes
900, experimented on the caged population of the besieged Gaza Strip in the 2014 Operation Protective Edge, this EU investment indirectly supports and incentivizes the experimental use of military technology by Israel to oppress the Palestinians and breach their human rights.

This deal is an additional implication of the excessive and alarming autonomy of Frontex, as its budget is expanded generously by the EU without clear boundaries. «It is outrageous for the EU to buy drones from Israeli drone manufacturers considering the repressive and unlawful ways that drones have been used to oppress Palestinians living under occupation for more than fifty years” stated Prof. Richard Falk, Euro-Med Monitor’s Chairman of the Board of Trustees, “It is also unacceptable and inhumane for the EU to use drones, however obtained, to violate the basic rights of migrants risking their lives at sea to seek asylum in Europe.»

Deploying drones exhibits the EU determination to withdraw their presence in the sea, to deter asylum seekers from seeking safe shelter in Europe, to not abide by their duties. German MEP Özlem Demirel said it was “scandalous” to equip Europe’s border authorities with military technology. For months, MEPs have accused the EU’s border agency Frontex of investing in technology to monitor migrants from afar and evade its responsibilities towards people in distress. Dutch MEP Tineke Strik stated: “The evidence against Frontex and the Greek government is piling up. These practices are not just incidents, they are politics”. Hungarian MEP Kati Piri thought that
there were still «far too many unanswered questions on the involvement of Frontex in illegal practices” and said that Leggeri had «completely lost our trust» over the handling of the allegations. In December, various European parliamentarians have called for the director of Frontex to resign. In particular, on December 1, Spanish MEP Sira Rego published a statement highlighting the existence of evidence showing Frontex’s complicity in pushback of migrants in the Aegean Sea and calling for Leggeri’s immediate resignation.
4. LEGAL BACKGROUND

The practice of pushbacks in the Aegean Sea involving Frontex have entailed different serious human rights’ violations. All Frontex activities, particularly return operations, must be carried out in accordance with relevant European and international law, and with the provisions of the Frontex Code of Conduct. This includes also positive obligations, requiring the Agency to take all reasonable measures to prevent human rights’ violations from occurring. Frontex is not allowed to conduct a pushback itself, but also it cannot actively help in one or watch one happen without doing anything. First and foremost, pushbacks entail the summary return of asylum seekers, without carrying out an individualized assessment of their need for international protection. Therefore, they constitute a violation of the prohibition of collective expulsions, enshrined under European law in Article 4 of Protocol No. 4 of the European Convention on Human Rights (ECHR) and Article 19 of the Charter of Fundamental Rights of the EU, and under international law, inter alia, in Article 13 of the International Covenant on Civil and Political Rights (ICCPR).

The Frontex Code of Conduct entails the obligation to respect vulnerable groups. According to it, “returnees are to be removed only as long as they are fit to travel”. In a reasonable time prior to the operation, the authorities
of the Member States are required to provide for the medical examination of each returnee. This is absolutely not implemented during a pushback, as the immediate deportation of a group of people fail to consider the individual circumstances. For instance, in the incident that occurred on June 5, and described before, there was a man with a head injury onboard, on June 8 there were children present on the dinghy, and on August 15 a pregnant woman. All these three cases – minor, pregnant woman and person with serious illness - fall into the category of “vulnerable persons” and need to be referred without delay to the competent authorities of the relevant Member State responsible for considering their requests, as provided by Article 10 of the Frontex Code of Conduct. Under international human rights law, their presence triggers multiple obligations and, consequently, violations. For instance, Art. 3 of the UN Convention on the Rights of the Child requires that “in all actions concerning children […] the best interests of the child shall be a primary consideration”. During a pushback, children on the move are considered just like the adults onboard and similarly dragged back out to open sea.

EU Member States are obliged to ensure that migrants have an effective opportunity to seek asylum and lodge an application as soon as possible, as required by the 1951 Refugee Convention, that, according to Art. 78 of the Treaty of the Functioning of the EU. Deported migrants are not guaranteed their right to access to asylum procedures, in violation inter alia of Article 18

Pushbacks breach also the **principle of non-refoulement**, enshrined in Article 33.1 of the 1951 Refugee Convention and Art. 3 of the Convention against Torture (CAT), and in European law, mainly under Article 19.2 of the Charter, Article 3 of the ECHR, EU Regulation No. 2013/604 (Dublin III Regulation) and EU Regulation 399/2016 (Schengen Border Code). According to it, states must not remove, expel or extradite people to a state where they would be at real risk of serious human rights’ violations. The non-refoulement principle requires that all procedures related to returns and transfers of individuals must include human rights’ guarantees and involves the right to challenge a return or transfer on these grounds.

Pushbacks are carried out informally and immediately without giving people a chance to appeal against their removal. An asylum seeker must have access to both a fair and efficient asylum procedure and a national remedy in case of refusal and expulsion. Such immediate return breaches **the right to effective remedy**, under Article 13 of the ECHR and Article 47 of the Charter. Also, according to Art. 6 of Frontex Code of Conduct, the competent authorities should give sufficient and clear information to the migrants about the return operation and the possibilities to lodge a complaint for a human rights’ violation occurred during the operation.
Furthermore, such operations often involve the threat or use of unnecessary, excessive or otherwise arbitrary force. As stated by the UN Special Rapporteur on Torture at the 37th Session of the Human Rights Council, “the use of force for no purpose other than to deter or to prevent persons from entering a State’s territory cannot be considered lawful, necessary or proportionate and, therefore, may well amount to ill-treatment or even torture”. An element of violence and physical coercion is inherent in pushbacks. For this reason, pushbacks violate also the freedom from torture, inhuman and degrading treatment, enshrined in Art. 3 of the ECHR, Art. 4 of the Charter, Art. 7 of the ICCPR and Art. 2 of the CAT. In extreme circumstances, they may also breach the right to life, most clearly enunciated in Art. 2 of the ECHR, Art. 2 of the Charter and Art. 6 of the ICCPR. Such human rights – freedom from torture and right to life – are absolute and non-derogable, meaning that under any circumstance they must not be violated, even in a state of emergency. Art. 6 of the Frontex Code of Conduct states that “the competent authorities shall seek cooperation with each returnee at all stages of the return operation in order to avoid or limit the use of force to the minimum extent necessary”. Expelled persons regularly report violence in the form of humiliation, insults, aggression and even beatings during attempts to remove them. In one of the incidents reported before, occurred on April 28, migrants were placed by Greek security forces in a raft without any means of propulsion and dragged to the open sea, where they stayed for about 17 hours floating in circles.
while Greek border guards kept pushing them away. Again, on August 15, migrants were forced at gunpoint to tie their dinghy to a speedboat so that it could be dragged toward Turkish waters. This case in particular breaches also Article 7 of the Frontex Code of Conduct, that states that “returnees must not be threatened in order for them to board a means of transport”. Pushbacks, dragging dinghies full of migrants into high waters or leaving them to float in circles for hours, violate also international maritime law. Particularly according to the 1974 International Convention for the Safety of Life at Sea, the 1979 International Convention on Maritime Search and Rescue and the 1982 UN Convention on the Law of the Sea, people in distress at sea must be rescued “with all possible speed” and taken to a place of safety, where their life is no longer threatened, their basic human needs are met and a genuine opportunity to seek asylum is offered. Yet in none of the pushbacks described before, Frontex officials in immediate proximity sent help or intervened, neither by air nor sea.

This is not the first time that Frontex human rights' compliance has been questioned. Still, the episodes that occurred stand out not just for the severity of the human rights' violations analysed and the overwhelming evidence presented before, but also for how flagrantly they expose the gaps in Frontex's accountability. It is notoriously difficult to hold Frontex to account for five main reasons:

1. **Excessive autonomy.** Frontex is a European Agency with legal,
administrative and financial autonomy. It is governed by a Management Board consisting of representatives of the 25 EU member States and two members of the European Commission. Yet the EU Commission stated it had no way of making sure Frontex is doing its job properly, as it is not the hierarchical superior of the agency. Frontex’s initial refusal to investigate the allegations against itself, despite the Commission’s request, proves this predicament. The Agency has a fundamental rights monitor and a complaints procedure, but these instruments are internal, do not qualify as “an effective remedy” and do not appear to be working as intended. In 2018 Frontex coordinated and helped fund 345 return operations by charter flights, during which only one «Serious Incident Report» was filed. This raised questions on the reliability and independence of the fundamental rights’ monitors and return escorts, as well as the sincerity of internal Frontex efforts to stem any abuse. Frontex excessive and alarming autonomy is highlighted by the drone deal with Israel mentioned before, as its budget is expanded generously by the EU without clear legal and financial boundaries.

2. The **fragmentation of the applicable legal framework.** Even if it has been operational for more than 15 years in one of the most contested fields of European law, Frontex’s human rights compliance has **never been assessed by a court.** Also due to the fact that both national courts and international courts, the European Court of Human Rights in particular, lack the competence to rule on the legality of Frontex’s conduct. Even though
Frontex and the national authorities closely cooperate on border control, each of the participants has to be brought to a separate court. As Frontex will soon have its own border guards on the ground, it is essential to create possibilities for individuals to invoke Frontex’s responsibility in a court of law.

3. The ever-increasing number of actors. Individuals that participate in Frontex’s operations range from Frontex staff to national and local authorities, third states, private parties, and other EU bodies and agencies. The Agency has 600 employees deployed in Greece only. The participants span different jurisdictions and have different obligations depending on their legal nature and the legal order, or orders, they are subjected to. Situations involving many actors like these are challenging when it comes to allocating responsibility for violations, because bringing legal action requires knowledge of the role each actor played and the extent of his/her involvement. The roles, powers, and authority of all actors involved are often obscure and have to be obtained with difficulty from a broad range of documents. It is extremely difficult to know who played what role in determining a particular outcome that led to a human rights’ violation, and who was in a position to prevent it.

4. The lack of transparency. The concrete activities of Frontex are generally surrounded by secrecy. Information on daily activities is scarce, essential documents are not publicly accessible, and, even upon request,
they are shared partially or “edited” to the point they become useless. For instance, as occurred on the pushback of August 19, the vast majority of Frontex vessels that patrol the Aegean Sea keep their transponders switched off or untraceable in order to prevent giving away their position.

5. **Blame-shifting.** Frontex’s design allows all involved actors to shift the blame to others. Frontex typically avoids the question of its responsibility, locating human rights’ responsibilities exclusively with the Member States. While return decisions and asylum applications are ultimately the responsibility of national authorities, the positive duty to ensure respect for fundamental rights requires Frontex to act upon knowledge of a violation and take action to prevent future violations. Art. 19 and 20 of the Frontex Code of Conduct require every participant who has reasons to believe that a violation of this code or of fundamental rights has occurred to report it immediately to Frontex in form of a Serious Incident Report (SIR). If a violation is committed by a Frontex staff member, Frontex Director will suspend or remove them from operational activity and refer them to their national authorities who may take further disciplinary actions. Moreover, pursuant Article 46 of Regulation (EU) 1896/2019 on the European Border and Coast Guard, if a violation is committed by the authorities of the Member State hosting the operation, as the Greek coast guards, Frontex Director “will suspend or terminate any activity, in whole or in part, if he considers that there are violations of fundamental rights or international protection
obligations that are of a serious nature or are likely to persist”. The Executive Director is also asked to inform immediately the Management Board and the Fundamental Rights Officer of the Agency in case of allegations that come to his knowledge.

To conclude, Frontex may not have the power to enter into the merits of asylum applications or return decisions, but it has the competence to ensure human rights’ compliance at the European external borders, to prevent violations from occurring and to report it when it witnesses one.
5. RECOMMENDATIONS

It is not enough to declare that human rights must be respected, it is also necessary to provide the legal means to achieve such compliance. The reported pushbacks violate several human rights, including the right to seek asylum, the absolute prohibition against refoulement, the prohibitions against inhuman or degrading treatment and collective expulsion, as set out in the European Convention on Human Rights and in the EU Charter of Fundamental Rights, to which Greece is a party and Frontex is bound. As Frontex expands, with more standing guards and more efficient surveillance equipment, its direct involvement with the returns increases and so does its accountability in case of pushbacks. The frequency and the impunity of these illegal operations have led to a normalisation of pushbacks, harming the rights and the lives of migrants in distress in the Aegean Sea, therefore the Euro-Mediterranean Human Rights Monitor calls on:

- **Greece** to respect and fulfil international and European law concerning asylum seekers and persons in distress at sea; to immediately halt the illegal pushbacks of migrants to Turkey; to conduct a transparent investigation into all allegations of pushbacks and ill-treatment at their borders and prosecute all police and coast guard officials involved; to immediately provide protection and assistance to people in distress at sea, particularly
members of vulnerable groups and to ensure that all those who intend to seek asylum have access to fair asylum procedures.

• **Frontex** to ensure that its operations are consistent with human rights’ obligations; to subject any officer found to have engaged in illegal acts to disciplinary and criminal sanctions; to ensure that its partners respect and fulfil European and international standards, otherwise suspend the deployment of European border guards in their support; to significantly enhance the information available about its operational activities at sea, including the date and time of the intervention, and the number, origin, age and possible additional vulnerability of the migrants onboard; to include independent reporting mechanisms for human rights’ violations.

• **Participating EU Member States** to fully abide by the standards of relevant international law and European law concerning persons in distress; to suspend any participation in Frontex operations that fail to comply with international human rights’ standards; to set up a mechanism to facilitate self-reporting of violations by Member States’ guards participating in Frontex operations; to not participate in Frontex activities without independently assessing the human rights’ record of the partners in the operation; and to offer safer and legal routes to people seeking asylum in their countries.

• The **European Commission**, the **European Parliament**, and the **European Council** to ensure that Frontex activities fully respect international human rights and refugee law, as well as the law of the sea;
to impose more stringent transparency and accountability measures over Frontex's practices; to implement a sustainable and fair relocation mechanism of migrants among Member States; to hold Member States like Greece accountable for their pushbacks and other violations committed at the EU's external borders; to quickly put in place an independent monitoring mechanism, as proposed in the new Pact on Migration and Asylum and as stated by Article 8.6 of the Returns Directive (Directive 115/2008/EC), to investigate any committed violations and prevent future transgressions; and finally to ensure that its funding does not encourage or contribute to human rights' violations in Europe or abroad.
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