

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard Agency¹

Recital (50) 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. This should be an administrative mechanism whereby the fundamental rights officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration. The fundamental rights officer should 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, and register the follow-up by the Agency or that Member State. The mechanism should be effective, ensuring that complaints are properly followed up. The complaints mechanism should be without prejudice to access to administrative and judicial remedies and not constitute a requirement for seeking such remedies. Criminal investigations should be conducted by the Member States. In order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report. It should cover in particular the number of complaints it has received, the types of fundamental rights violations involved, the operations concerned and, where possible, the follow-up measures taken by the Agency and Member States.

Article 72 Complaints mechanism

1. 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.
2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation or return intervention and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.
3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible.
4. 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.

¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard Agency, OJ 16.09.2016, L 251/1-76.

5. In accordance with the right to good administration, if a complaint is admissible, complainants shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. If a complaint is forwarded to national authorities or bodies, the complainant shall be provided with their contact details. If a complaint is not admissible, complainants shall be informed of the reasons and, if possible, provided with further options for addressing their concerns.

Any decision shall be in written form and reasoned.

6. In the case of a registered complaint concerning a staff member of the Agency, the executive director shall ensure appropriate follow-up, in consultation with the fundamental rights officer, including disciplinary measures as necessary. The executive director shall report back within a determined timeframe to the fundamental rights officer as to the findings and follow-up made by the Agency in response to a complaint, including disciplinary measures as necessary.

If a complaint is related to data protection issues, the executive director shall involve the data protection officer of the Agency. The fundamental rights officer and the data protection officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards complaints received.

7. If a complaint is registered that concerns a border guard of a host Member State or a member of the teams, including a seconded member of the teams or seconded national expert, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the fundamental rights officer as to the findings and follow-up made in response to the complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter if no report is received from the relevant Member State.

8. Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency may request that the Member State remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool.

9. The fundamental rights officer shall report to the executive director and to the management board as to the Agency's and Member States' findings and follow-up made in response to complaints. The Agency shall include information on the complaints mechanism in its annual report.

10. The fundamental rights officer shall, in accordance with the provisions set out in paragraphs 1 to 9 and after consulting the consultative forum, draw up a standardised complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The fundamental rights officer shall also draw up any further detailed rules as necessary. The fundamental rights officer shall submit that form and such further detailed rules to the executive director and to the management board.

The Agency shall ensure that information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons. The standardised complaint form shall be made available on the Agency's website and in hardcopy during all activities of the Agency, in languages that third-country nationals understand or are reasonably believed to understand. Complaints shall be considered by the fundamental rights officer even when they are not submitted in the standardised complaint form.

11. Any personal data contained in a complaint shall be handled and processed by the Agency including the fundamental rights officer in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Framework Decision 2008/977/JHA.

When a complainant submits a complaint, that complainant shall be understood to consent to the processing of his or her personal data by the Agency and the fundamental rights officer within the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001.

In order to safeguard the interests of the complainants, complaints shall be dealt with confidentially by the fundamental rights officer in accordance with national and Union law unless the complainant explicitly waives his or her right to confidentiality. When complainants waive their right to confidentiality, it shall be understood that they consent to the fundamental rights officer or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

Frontex Fundamental Rights Officer
Warsaw 3 October 2016