

XIII FRONTEX FUNDAMENTAL RIGHTS OFFICER REPORT

To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights

1 November 2015 - 29 January 2016

Overview:

- 3 SIRs reported (Greece, Bulgaria, JRO to Albania)
- Visit to hotspots in Greece and Italy with FRA Director, [REDACTED]
- Visit of the CoE Commissioner for Human Rights to Frontex.
- Internal consultation on the initial draft of the new Frontex Fundamental Rights Strategy completed.

1. JOINT OPERATIONS**a) Incidents reported**

1. On 17 November 2015 during an interview conducted by an SGO debriefing expert to a Syrian national in Bulgaria, the Syrian declared having been subject to a collective expulsion to Turkey allegedly performed by Bulgarian officers. The Bulgarian Border Police in cooperation with Migration Directorate confirmed to Frontex the opening of an internal investigation on the case. On 9 December 2015 the Bulgarian authorities informed Frontex that the facts brought to the attention of the relevant Bulgarian authorities did not provide any sort of information in regard to the date and location of the incident which in turn did not allow any further investigation by Bulgarian authorities.

2. On 19 November 2015, CNN reported a video captured by the Turkish Coast Guard showing the apparent sinking of a migrant dinghy caused by a pricking tool used by a Greek Coast Guard boat (OPV) during a rescue operation. Further to this news, the Turkish News Agency DGA published on 20 November 2015 the entire footage of the operation that triggered the official complaint from the Turkish Coast Guard. The news text clarified that the incident took place on 12 November 2015. On 24 November 2015 Frontex ED sent the letter to Hellenic Coast Guard (HCG) Headquarters describing the

occurred situation with a request for further clarification from the responsible national authorities, while suspending the abovementioned OPV until the details of the case were clarified. On 28 November 2015 the HCG Headquarters sent the reply letter denying the facts indicated in the above-mentioned Frontex letter. Similar crossing of allegations and denials have been noted in January between Turkish and Greek MFA.

3. On 10 December 2015, during a JRO to Albania an escort observed how an escort from another contingent slapped a returnee on the face/head. The incident is currently investigated by the responsible national authorities, both Return Support Unit and FRO are following up on further details.

As a follow up to the shooting incident on board a smugglers boat that resulted in the death of an Iraqi minor on 28 August 2015, FRO has been in regular contact with the HCG for possible updates on the investigations of the case. The Focal Point for FR in the HCG notified of no further developments in relation to the judicial nor to the internal HCG investigation in the reporting period.

2. Other Operational projects

FRO took part on the RAU workshop on scenario development participation, 2 sessions (9-10 and 24-25 November) that took place with Frontex staff, MSs experts and external partners and resulted in the rolling of possible long term scenarios for the borders in Europe. The results of the workshops will be summarized in the Frontex Annual Risk Analysis 2016 in order to support policy decision at all relevant levels.

On 22 November, FRO participated in a Collecting JRO to Serbia organised by Germany. This was a pilot test where Serbian escorts participated in an operation coordinated by Frontex for the first time. The Ombudsman of Serbia was also participating in the flight and a debriefing was hold in Belgrade with monitors, Frontex and national authorities upon arrival. There were no incidents observed.

Between 15 and 21 January FRO accompanied the newly elected FRA Director [REDACTED] during his first field visit after taking office in mid-December. A small delegation of FRA colleagues visited jointly with FRO the main hotspots in both Greece and Italy and also the capitals. The group visited the hotspots in Lesbos, Lampedusa, Trapani and the relocation centre in Siculiana. The visits were very informative and coincided with a time where procedures and conditions at these sites are under development. The group met and exchanged views with a large number of interlocutors in the respective capitals as well as locally, including staff deployed by Frontex, the European Commission, EASO, national competent authorities and even the Mayors of Lesbos and Lampedusa. Several matters were identified for further discussion and follow up from the different mandates of FRO and FRA, including activities to enhance current procedures and practices in child protection, access to international protection procedures, implementation of return operations in compliance with fundamental rights, referral in trafficking in human beings, or use of force in fingerprinting. The visits also served to update on ongoing and upcoming initiatives with a fundamental rights focus where both Frontex and FRA are involved that require further discussions among the Agencies EDs and with external stakeholders.

On 14 January, FRO took part in the focus group of MB and CF members to exchange views after the CF visit to Triton operation last October, including matters related to screening, fingerprinting, interpreters/cultural mediators/interagency cooperation, and SAR among the others. A summary of the meeting was produced by CF Secretariat and

they are currently under revision by participants and will be uploaded to FOSS as soon as finalised.

3. Support Frontex Monitoring System on Fundamental Rights

FRO team continues to revise and update Serious Incident Reports (SIRs) and draft assessments and/or corresponding final reports when possible. Work in progress.

4. Operational Plans and Evaluation Reports received during reporting period

FRO has received the following JO evaluation reports and Operational Plans in the reporting period:

FER JROs

JRO to Russia on 23.06.2015 organized by Switzerland
CJRO to Albania on 22.09.2015 organized by France
JRO to Kosovo on 22.09.2015 organized by Austria
JRO to Armenia on 24.09.2015 organized by Germany
JRO to Albania on 29.09.2015 organized by Sweden
JRO to Nigeria on 14.10.2015 organized by The Netherlands
JRO to Kosovo on 15.10.2015 organized by Austria
CJRO to Georgia on 20.10.2015 organized by Germany
JRO to Democratic Republic of Congo on 21.10.2015 organized by Belgium
~~CJRO to Albania and Georgia on 23.10.2015 organized by Spain~~
JRO to Kosovo on 27.10.2015 organized by Germany
JRO to Nigeria on 05.11.2015 organized by Austria
CJRO to Georgia and Armenia on 11.11.2015 organized by Austria
JRO to Kosovo on 18.11.2015 organized by Austria
JRO to Albania on 19.11.2015 organized by the UK
JRO to Albania on 26.11.2015 organized by Sweden
JRO to Pakistan on 02.12.2015 organized by Greece

OPLANS

JO Flexible Operational Activities 2016 Land
JO EPN Poseidon Sea 2015
Poseidon Rapid Intervention Operation
JO Pegasus 2016
JO EPN Triton 2016
JO Focal Points Air 2016- Regular Officers 2016
JOA Return
General annexes of OPLAN 2016 SBS

FERs JOs.

JO EPN Minerva 2015
JO VEGA Children 2015 (final)
JO Indalo 2015
JO Hera 2015
JO Alexis 2015

5. CAPACITY BUILDING

On 17-18 November FRO team attended the development meeting of the e-learning tool on Fundamental Rights for Border Guards and contributed to the development of the training materials. The Fundamental Rights eLearning is intended to be the first phase

of Frontex Fundamental Rights Training for National Trainers Course. After having finished the eLearning phase successfully the national trainers will be invited for a three day interactive seminar organised in one of the Frontex Partnership Academies in the Member States to enhance their knowledge on training methodologies.

FRO team assisted TRU in the finalization of the material to be used in the EUROSUR NCC Operators training. The tasks included support to the development of the fundamental rights and data protection modules and also practical cases for training of the officers who will be inserting information on the EUROSUR system. The course will be piloted in February 2016.

6. FUNDAMENTAL RIGHTS STRATEGY

In November, FRO team worked intensively in revising the compilation of recommendations and validating the progress on the implementation of the current Frontex Fundamental Rights Strategy and its Action Plan with all Divisions. In early December FRO submitted a revised draft to Frontex Senior Management for internal consultation, and after taken into consideration their feedback, the draft has been sent to the CF members for their consideration. The draft will be discussed with the CF on a specific consultation session scheduled for 4 February, in accordance with Art. 26a (2) of the Frontex Regulation. A consultation with volunteer MB Members on a revised draft after incorporating CF comments will follow on 19 February.

In light of the EC proposal of a Regulation for the new Agency on Border and Coast Guard from 15 December, FRO and ED have discussed the possible need to revise the Frontex Fundamental Rights Strategy once the new Regulation is adopted and the adequacy of postponing the adoption of the Action Plan for its implementation until that legal act is adopted. Further consideration to the effective linkages between the Fundamental Rights Strategy and the Frontex Programme of Work and Multi-Annual Plan is also required.

7. RELATIONS WITH EU INSTITUTIONS, OTHER FUNDAMENTAL RIGHTS ORGANIZATIONS AND BODIES

FRO participated in the 8th CF meeting that took place on 4-5 November. As per mandate, FRO reported to the Members during the formal session of the meeting where also ED and MB Deputy Chair were present. Main points of discussion and agreement for further work were distributed to all stakeholders.

On 9 November, FRO participated via teleconference in an informal working meeting organised by the EC on children in migration, together with FRA and EASO and several IOs (notably UNHCR and UNICEF) as well as several NGOs working specifically on children matters. The meeting aimed to take stock on the current activities and ongoing projects. Further to this meeting, FRO was also contacted by the European Network on Ombudsman on Children in December to contribute to the research by the

FRO reported to MB members on her last two Reports of 2015 during the 56th MB meeting that took place on 25-26 November, where she also presented her PoW for 2016. The documents are available on FOSS both for MB and CF members.

On 1 December, Frontex ED and FRO took part via video conference on an exchange of views on Frontex compliance with fundamental rights with the DROI Committee of the European Parliament. ED focused on the situation at the EU Member States borders

whereas FRO was requested to focus on the protection of fundamental rights within the work of Frontex. FRO provided an overview of the Strategy and the monitoring mechanisms for those MEPs present.

On 2 December, the Council of Europe (CoE) High Commissioner for Human Rights, [REDACTED] visited Frontex in order to familiarize with the activities of the Agency and the Fundamental Rights challenges associated to its activities. [REDACTED] provided an overview of his activities and mandate, as well as that of other bodies of the CoE, and received a briefing from ED and Operations Division on the Agency's activities. A fluent and open exchange of views with ED and other staff followed on various aspects, such as complaints mechanism, effective monitoring system, the ongoing revision of the FRS, return related risks on fundamental rights, identification of vulnerabilities of persons crossing the border, situation and work with Turkey, etc. The meeting concluded with the recognition that strengthening of the cooperation between CoE and Frontex would be highly beneficial to further enhance implementation of European standards in Frontex activities. Following the visit of the Commissioner, FRO has already been invited to visit the CoE HQ and meet relevant bodies related to migration and human rights matters-likely to be organised in April.

8. MISCELLANEOUS

On 11-12 November, FRO was invited as panellist to the TAIEX Multi-Beneficiary Workshop on Defending the Rights of Applicants for International Protection Workshop, organised in co-operation with the Office of the People's Advocate of Albania. Within the session devoted to the rights of migrants in mixed migration flows, FRO focus her intervention on the fundamental rights aspects of the situation in the Mediterranean, with a focus on the profiles of persons in need of international protection and the obligation to ensure access to international protection. In the course of the 2nd day FRO had the opportunity to present, in coordination with the Relex TC team, a more locally focused initiative, the IPA II project on protection sensitive border procedures covering the Western Balkans area.

On 27 November, FRO participated in the context of Luxembourg's presidency of the EU in a Conference on "Frontex: Legal Questions and Current Controversies", organised by the Research Unit in Law, University of Luxembourg. Under the heading of accountability, FRO provided her perspective on the effective monitoring system for fundamental rights and the tools and activities to ensure compliance with FR in Frontex activities. A very active debate with presence and contributions of distinguished law professors and practitioners followed the above-mentioned presentation.

9. PLANNED ACTIVITIES AND UPCOMING EVENTS

3 February, CF meeting, Warsaw

4 February, CF consultation on the FRS draft, Warsaw

15-16 February, pilot Training NCC Coordinators, Lithuania

19 February, MB Consultation draft FRS, Warsaw

21-25 February, Training forced return monitors, FRA Vienna

8-10 March, Workshop on "Rescue of refugees and migrants in the Mediterranean Sea: practitioners' perspectives", International Institute of Humanitarian Law, San Remo, Italy.

14 March, Expert meeting on non-refoulement, FRA Vienna.

10. FRO RECOMMENDATIONS

- Completion of ongoing revision of SIRs by end of February. FRO may approach MSs respective authorities for updates when needed, in close coordination with OPD colleagues.