

MAIN POINTS OF DISCUSSION

11th Meeting Frontex Consultative Forum on Fundamental Rights

Date:	20 October (13:30- 17:30)- Formal meeting
Venue:	Rooms 602+603 Frontex Headquarters Plac Europejski 6, 00-844 Warsaw, Poland
Contact person:	Secretariat frontex.europa.eu Tel: +48 22 205 9550
CF Chair	[REDACTED] United Nations High Commissioner for
CF members	<p>Michael O'FLAHERTY, Director of the European Union Agency for Fundamental Rights (FRA)</p> <p>[REDACTED] Amnesty International</p> <p>European Institutions Office (AI EIO)</p> <p>[REDACTED]</p> <p>European Union Agency for Fundamental Rights (FRA)</p> <p>[REDACTED] United Nations High Commissioner for Refugees (UNHCR)</p> <p>[REDACTED] Churches' Commission for Migrants in Europe (CCME)</p> <p>[REDACTED] European Asylum Support Office (EASO)</p> <p>[REDACTED] International Organization for Migration (IOM)</p> <p>[REDACTED] Platform for International Cooperation on Undocumented</p> <p>[REDACTED] European Council on Refugees and Exiles (ECRE)</p> <p>[REDACTED] (IOM)</p> <p>[REDACTED]</p> <p>International Organization for Migration (IOM)</p> <p>[REDACTED] the Advice on Individual Rights in Europe (AIRE Centre)</p> <p>[REDACTED] Council of Europe (CoE)</p> <p>[REDACTED] International Commission of Jurists (ICJ),</p> <p>[REDACTED] OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR)</p> <p><u>Absent:</u></p> <p>[REDACTED] Red Cross EU Office, replaced by [REDACTED]</p> <p>[REDACTED] Red Cross EU Office</p> <p>[REDACTED] Caritas Europa (CE)</p> <p>[REDACTED] Jesuit Refugee Service (JRS)</p>
Management Board	Marko GASPERLIN, Chair of the Management of Board
Frontex	Berndt Körner, Deputy Executive Director
Fundamental Rights Office	<p>[REDACTED] Fundamental Rights Officer</p> <p>[REDACTED] Associated Fundamental Rights Officer</p>

Assistant to the Consultative Forum

FRO trainee

20/10 FORMAL MEETING

Frontex and MB proposed CF priorities for 2017

- Fundamental Rights strategy
- Complaint mechanism. It is a political priority and brings transparency and accountability for the Agency. Its establishment is ED's responsibility. MB was only informed about the steps taken. ED to present a supplementing document to be endorsed by MB. This is an important step to help get MS on board for the complaints mechanism. MB is concerned that, if the complaints mechanism is not well set-up, then we will be inundated with complaints but the ones of *real* importance will not be handled properly
- Returns. It is political priority. Need to find a balance between 1) increased number of returns; 2) increasing efficiency of flights; and 3) supporting fundamental rights (here, monitoring is key)
- EBCGT pools
- Cooperation with third countries: develop new forms of cooperation.
- Child protection component throughout all the activities of the Agency

Q&A

- Complaints mechanism:
CF reiterated concerns over current rules, flaws in consultation process and limited adoption of recommendations provided by CF. Is there any room for revision of the existing CM rules?
 - *DED*:
 - CM rules and form will be endorsed by MB on 23 November.
 - Concerns about having constant changes in the running of the mechanism.
 - Revision of the rules is foreseen but not immediately.
 - *MB*
 - A complaints mechanism that is able to process "real" cases, not just an administrative "burden".
 - *FRO*
 - A thorough admissibility check will scrutinize complaints to be further processed.
 - To do so, FRO needs staff dedicated to assessing and referring cases.
- How national systems will receive and handle complaints?
 - *FRO*
 - FRA and FRO are organizing a meeting with national authorities who are dealing with complaints and national human rights institutions (NHRIs) in Brussels in December. CF will be invited. The conclusions from the meeting will be used to enhance the mechanism.
 - *CF* suggests to include an Annex with a list of all national complaints authorities and NHRIs. Even if most of the complaints are inadmissible, there is still an obligation to inform complainants about the decision of inadmissibility.

DED operational update (Annex I)

- Main route 1: Central Mediterranean:
 - Migrants have been increasingly turning to Egypt and Algeria instead of Libya
 - Egypt is very dangerous because of the *modus operandi*:
 - Big, old boats that are prone to tipping when overloaded
 - Or small boats all converge at a larger boat waiting in international waters, and then tragedies happen in the transfer phase
- Main route 2: Eastern Mediterranean:
 - Frontex delegation to Turkey met all relevant authorities at all levels to see Turkish operational response.
 - Now Frontex only assists in voluntary returns, in very small numbers
 - 90% of asylum applications on the islands have been placed
 - *Shift from sea route to land route: Turkish->Bulgaria->Serbia->Hungary*
 - The numbers do not match up, because the number of irregular crossing between Bulgaria and Serbia is much higher than those crossing Turkey to Bulgaria - this may indicate clandestine crossings.

- Bulgaria has risen in its political importance for EU border control
 - After Hungary, we see an increased number of EURODAC hits in France
- Western Mediterranean:
 - The number of crossing in Ceuta and Melilla is decreasing whereas the number of crossings at the sea border is increasing, in particular from Algeria.
- Operational responses to the trends listed above:
 - Upcoming increase deployment in the Western Balkans
 - Italy
 - Increase in deployments
 - Cooperation with EUNAV for Med is increasing.
 - For the time being, there is no stable communication with the Libyan authorities.
 - Most of the vessels in distress can be found right by the Libyan coast, fast responses are hard because Frontex must always reach the Libyan coastline to carry out SAR
 - Frontex has intercepted boats heading *from Turkey to Italy*
 - Poseidon
 - A part of Poseidon's budget/resources have been reallocated to Triton, though not all to enable Poseidon to be ready (i.e., if EU-Turkey deal starts working again or in case of new arrivals)
 - Some double-profiled: fingerprinting and identification, as well as escorting
 - Indalo, Hera, and Minerva
 - Indalo and Hera: had multiple seizure of drugs. Multipurpose operations, i.e. customs, border guarding, fisheries, prove to be very effective
 - Return support activities
 - Frontex returns have been upscale due to political pressure. There are several EU programs, mostly focused on contacts with countries of origin, running which should be gradually implemented.
 - Implementation: joint chairs in coordination meetings; enhancement of direct contacts points meetings; Increase reaction capability; flexibilize financial approach in return operations by only one Member State.
 - 53 NROs in 2016 (36 of which from Germany)

Q&A

- EU-Afghanistan Joint Forward and Frontex's involvement. Leaked documents from the Commission speak about 80 000 people to be returned.
 - DED
 - There is no involvement of any kind of Frontex senior management
 - Frontex has only been approached informally
 - Utmost careful level will look at how Frontex can assist in returns
 - It is possible that a large part of those Afghanis arriving are actually those who had been residents in Iran or Pakistan but did not get their permits renewed.
- Frontex's plan to "consolidate" missions in Hungary.
 - 22 July Frontex sent of letter of concern with regard to the new legislation to Commission and they replied on 5 August
 - Commission did monitoring mission on 19 October.
 - Frontex received three SiRs related to alleged violations of fundamental rights in Hungary. If there is the slightest proof that there are serious violations, Frontex could go up to terminating the activity.
 - CF concurs with FRO report and expressed serious concern and is considering to issue a recommendation for Frontex to suspend operations in Hungary
- Return Operations from Italy to Tunisia. CF warns Frontex about a case before the ECtHR (*Khlaifia and others vs. Italy*) concerning summary return procedures in Italy. The case is currently before the ECtHR Grand Chamber.
 - DED to closely observe CF concern
- Are monitors involved in voluntary returns?
 - For the moment, there was just one voluntary return by Finland where a monitor was on board.
- Status agreements with TC
 - The Commission is leading the drafting.
 - Commission is collecting inputs from the different Agencies and the European Data Protection Supervisor.
 - Frontex sent comments on 19 Oct.
 - This Status Agreement will serve as the outline for all TC agreements

- Status agreement is different from Frontex working arrangements as the first only covers the safety and security of staff whereas the latest is broader.

FRA Director

- The migration and refugee crisis is a top, if not *the* top, priority for FRA. And this is partly because of the close cooperation between FRA and Frontex. Cooperation extends to multiple levels.
- There are strong references, in fact 102, to fundamental rights in the Frontex Regulation.
- Acknowledges the importance of the Consultative Forum and encourages the creation of a Fundamental Rights Strategy as is a strong prism that should be integrated fully into all framework for planning. A fundamental rights compliance audit could be done at any time.
- Complaints mechanism:
 - A good complaints procedure builds a culture of accountability in an organization
 - Getting it wrong constitutes a violation of the right to good administration. In this regard, the Ombudsman will be watching very closely and provide advice to Frontex.
- Returns:
 - Encourages the inclusion of civil society as forced return monitors
 - The pool of forced return monitors must be independent and perceived to be independent
 - Feed monitors reports into a good practice corpus to be disseminated.
- Hotspots:
 - FRA has been in the hotspots (esp. Greece) for the last 10-month
 - FR compliance procedures need to be in hotspots, and this is especially difficult when there is high, fast turnover of MS staff
 - Gender and culture sensitivity needs improvement
- FRO:
 - The Regulation proclaims that FR is at the core of the Agency and it should be reflected as such in the allocation of resources
- Migrant rights protection will remain a high priority for FRA.
 - FRA will continue being active in Italy and Greece, though the focus will shift from monitoring to capacity-building both to EU Agencies (EASO, FX) as well as national authorities
 - FRA change the monthly public reports: divided by themes rather than countries; also expand the database to include 14-15 EU MS (before 8-9);
 - Report on FR and hotspots to be provided to Parliament (ready soon)
 - FRA opinion on FR in hotspots and child protection dimension of the recast of Dublin Regulation
 - FRA opinion to EP on safe country of origin list focusing on the criteria for determination of such list.
 - Upcoming: Biometrics

Q&A

- To what extent FR aspects of border management are included in the Vulnerability assessment methodology?
 - *DED*
 - Methodology has been developed in workshop with RAU and MSs representatives
 - Fundamental rights and referral mechanism are part of the assessment
 - Implementation plan: base line assessment of all MSs from data collection; individual MSs reports. Objective criteria and indicators need to be more concrete
- FRA says also hotspot report will be normative and socio-legal; will be unique as this is probably the only time that FRA has spent 10 months on the ground researching; not focused on asylum law as UNHCR can do it
- FRA supporting COI:
 - *FRA*
 - The safe country of origin list is a list of criteria, not a list of which countries are safe
- Biometrics
 - *FRA*
 - FRA looking at the pros and cons of the increased technical focus of border management
 - Publishing the beginning of 2017. A short summary might be published earlier

FRO report (Annex II)

Q&A

- Chios incident:
 - FRO still waiting for an answer from the Hellenic Police
 - In operational plans, MSs have a duty to report back to Frontex
 - Incidents are raised during MB meetings and questions are asked to MSs involved.
 - Upcoming: meeting DED-FRO-Greek authorities
- Criteria to be appointed as SiR coordinator:
 - Coordinator is appointed by FSC.
 - FRO can request to be appointed as coordinator when she believes the case is related to fundamental rights

ACTION POINTS

- CF offers support in the evaluation of Chios incident.
- Frontex to explore the possibility of including a deadline to response CF request for information, mirroring deadlines for PAD requests.
- DED to inform CF about measures taken regarding Chios incident