

FRONTEx CONSULTATIVE FORUM ON FUNDAMENTAL RIGHTS

REQUEST FOR INFORMATION

Article 70 (5) of the European Border and Coast Guard Regulation ‘...the Consultative Forum shall have effective access to all information concerning respect for fundamental rights.’¹

CONSULTATIVE FORUM REQUEST	
Requestor:	Consultative Forum
Date of the request:	09/08/2017
Subject of the request:	<ol style="list-style-type: none"> Details of Frontex operational activities in Hungary, including the following operational plans: <ul style="list-style-type: none"> JO Focal Points Land 2017; JO Flexible Operational Activities 2017 Land on Border Surveillance; JO Flexible Operational Activities 2017 Land on Border Checks. As well as: <ul style="list-style-type: none"> The number and profile of deployed officers; The number and type of involved technical assets. FRO report(s) after her visit to Frontex activities in Hungary; The number of serious incident reports (SiRs) related to alleged violations of fundamental rights reported to Frontex and investigated in Hungary, including facts, follow-up actions by Frontex and findings; The number of individual complaints, i.e. admissible, inadmissible and expressions of concern, related to alleged violations of fundamental rights in Hungary and reported via the individual complaints mechanism, including facts, follow-up actions by Frontex and findings.
Justification of the request:	<p>According to Article 70(1) of the European Border and Coast Guard Regulation, the Consultative Forum is mandated to assist the Frontex Executive Director and the Management Board with independent advice on fundamental rights matters.</p> <p>On 14 November 2016, the Consultative Forum sent a letter to the Frontex Executive Director and the Chair of the Management Board, recommending to “immediately take action pursuant to Article 25 (4) of the Regulation (EU) 2016/1624 and suspend operational activities at the Hungarian-Serbian border”. In this letter, the Consultative Forum argued that “the restrictive provisions of the new law and the manner in which they are implemented by Hungarian officials create an environment leading to violations of fundamental rights or international protection obligations that are of a serious nature and are likely to persist”.</p>

¹ Regulation (EU) No 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, available at http://frontex.europa.eu/assets/Legal_basis/European_Border_and_Coast_Guard.pdf

In a letter dated 1 February 2017, the Frontex Executive Director informed the Consultative Forum of his decision “not to take action pursuant to Article 25 (4) of the Regulation (EU) 2016/1624 and, consequently, not to suspend the operational activities at the Hungarian-Serbian border”. Further details relevant to this decision were shared with the Consultative Forum on 7 March 2017.

Since then, the situation has further deteriorated, as a result of new legislation, which requires all asylum-seekers to be detained for the duration of the asylum procedure, in addition to other restrictions; it entered into effect on 28 March 2017. The Act and the implementing decrees also introduce other changes to the reception and asylum procedures, including ‘state of emergency’ measures to prevent entry and expel people arriving irregularly, to limit access to asylum procedures through the transit zones, and to limit assistance and documentation for asylum applicants. The Act also expands the grounds on which a ‘state of emergency’ can be declared. The Government first declared a ‘state of emergency’ in September 2015, and has kept extending it since then. It is currently effective until 7 September 2017.

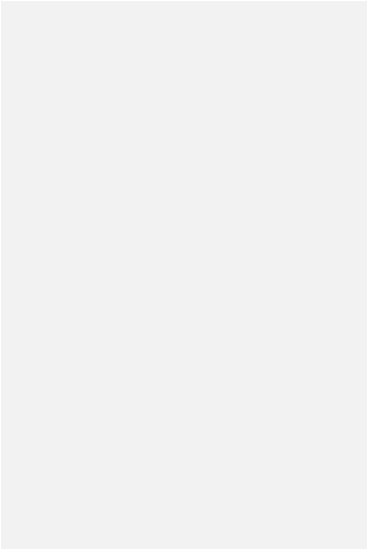
The amended legislation and implementing measures are in breach of Hungary’s obligations under international² and EU law³, restrict access to territory and asylum procedures, limit freedom of movement, and fail to identify and assist people with specific needs. Consequently, on 17 May 2017, the Commission decided to follow up on its initial letter of formal notice sent in December 2015 opening an infringement procedure against Hungary concerning its asylum law.

In light of the serious concerns outlined above, with this request, the Consultative Forum seeks to obtain detailed and up-to-date information about Frontex activities at the Hungarian borders, including relevant operational plans, as well as the report of the Fundamental Rights Officer and information on the number and content of relevant Serious Incident Reports and individual complaints submitted to Frontex and the findings and follow-up on them. This information is integral to allowing the Consultative Forum to fulfil its role in assisting the Frontex Executive Director and Management Board in fundamental rights matters as per Article 70 (5) of the EBCG Regulation.

² An interim ECtHR judgment (*Ilias and Ahmed v. Hungary* 47287/15, 14 March 2017) established that stay in the transit zones amounts to detention. In two other cases ECtHR granted ‘Rule 39’ measures, requesting the authorities “to place the applicants, as soon as possible, in an environment which complies with the requirements of Article 3 of ECHR...” (*R.R. and Others v. Hungary*, 36037/17, 19 May 2017).

³ On 17 May, the European Commission announced it would initiate the infringement procedure against Hungary, identifying incompatibilities with EU law in three areas: asylum procedures, rules on return and reception conditions. (http://europa.eu/rapid/press-release_MEX-17-1116_en.htm)

FRONTEX RESPONSE													
Date of registration:	09.08.2017												
Date of Frontex response:	30.08.2017												
Response submitted/approved/handled by:	CAB												
Frontex response:	Information provided: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Partially (please specify) <input type="checkbox"/>												
If information is not provided or is provided partially, please outline the reasons/justification:	<p>The information is only partially provided. Information requested (operational plans of ongoing operations related to technical equipment and human resources deployed, operational area, communication channels and to risk analysis of ongoing operational activities) is considered sensitive information. It is, thus, pursuant to Article 2(b) of the MB decision 3/2017 of 9 February 2017, subject to the principles laid down in Commission rules on security, in particular the principle of the need-to-know.</p> <p>Following this principle and bearing in mind the mandate of the Consultative Forum members, it is provided information related to matters concerning respect for fundamental rights.</p>												
Information/List of attached documents (if any)	<p>1) Details of Frontex operational activities in Hungary:</p> <p>Current level of HR* and TE* (Week 34) deployment is as follows:</p> <table border="1"> <thead> <tr> <th>Frontex JO</th> <th>Human Resources</th> <th>Technical Equipment</th> </tr> </thead> <tbody> <tr> <td>Flexible Operational Activities on Border Surveillance 2017 Land</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>JO Focal Points 2017 Land</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Total</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <p>*Please note that the Human Resources include the following profiles: - Border Surveillance Officer, Dog Handlers, Frontex Support Officer, Observer, Advanced-Level Document Officer, Stolen-Vehicle Detection Officer.</p> <p>*Please note that the type of Technical Equipment deployed is the following: - Patrol car</p> <p>❖ Operational plans are provided in the CFrequest for OPLANs dated 21.7.2017</p> <p>2) FRO reporting Hungary, 2017</p>	Frontex JO	Human Resources	Technical Equipment	Flexible Operational Activities on Border Surveillance 2017 Land	<input type="checkbox"/>	<input type="checkbox"/>	JO Focal Points 2017 Land	<input type="checkbox"/>	<input type="checkbox"/>	Total	<input type="checkbox"/>	<input type="checkbox"/>
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JO Focal Points 2017 Land	<input type="checkbox"/>	<input type="checkbox"/>											
Total	<input type="checkbox"/>	<input type="checkbox"/>											

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- 3) Information on serious incident reports (SiRs) related to alleged violations of fundamental rights: 1 initial SIR with no formal procedure initiated: FR - JO FOA 2017 Land WB - MSF reports violence at HUN-SRB border June 2017 - photos and testimonies of migrants who allegedly had been violently pushed back off the Hungarian-Serbian border by Hungarian border officials.
 - 4) No complaint received related to Hungary to date.
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