

DRAFT

CODE OF CONDUCT FOR ALL PERSONS PARTICIPATING IN FRONTEX COORDINATED OPERATIONAL ACTIVITIES

CHAPTER I GENERAL PROVISIONS

Article 1

Objectives, scope and subject matter

1. The present Code of Conduct aims to promote professional values based on the principles of the rule of law and the respect of fundamental rights and to establish the ethical behaviour standards that guide all persons participating in Frontex coordinated operational activities.
2. In this regard it sets out principles and rules which guide the conduct of all persons participating in Frontex coordinated operational activities, namely, Frontex staff, officers of border guard services of a Member State and other staff performing any activity in a Frontex coordinated operational activity.

Article 2

Definitions

For the purpose of the present Code, the following definitions apply:

- a) The term “law enforcement officers” includes border guards and/or other public officials deployed from a Member State, who enjoy the prerogatives of public authority.
- b) The term “Frontex coordinated operational activities” means any activity coordinated or led by Frontex ~~in the frame of its tasks as described in~~ under the terms of the Frontex Regulation, such as Joint Operations, Pilot Projects, Joint Return Operations, Trainings. It also covers also Meetings, Seminars and Conferences.

Commented [A1]: Is a code of conduct really needed for these activities?



- c) The term “discrimination” means any unfair treatment or arbitrary distinction based on a person’s race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or any other status.
- d) The term “abuse of authority” means the improper use of a position of influence, power or authority against another person.
- e) The term “harassment” means any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment.
- f) The term “Frontex staff” refers to the staff to whom Staff Regulations and the Conditions of Employment of Other Servants¹ apply and it includes also ~~the~~ seconded national experts.
- g) The term “Member State” refers to a State participating in the relevant development of the Schengen acquis in the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union.
- h) The term “participant” refers to any person participating in a Frontex coordinated operational activity.

Commented [A2]: Authority can be abused to provide favours or just to benefit the individual officer, not necessarily against anyone.

Commented [A3]: I think this is the wrong term. “Harassment” usually means repeated unpleasantness over time with the same person or persons as targets. Maybe the relevant term should be “improper and unwelcome conduct” defined as “any gestures or actions which tend to annoy....”

Commented [A4]: Participating on behalf of Frontex in a co-ordinated operational activity? Might some meeting participants (see comment 1) not be operating in this capacity?

CHAPTER II PRINCIPLES

Article 3 Lawfulness

1. Participants in Frontex coordinated operational activities serve the public interest and shall comply with ~~the~~ European Union law, the national law of both home and host Member States and the

Commented [A5]: Might these not sometimes be inconsistent?

¹ Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (CEOS), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, OJ L 56 of 4.3.1968, p. 1, as last amended.



present Code of Conduct. As regards Joint Return Operations, the terms “home and host Member States” are understood as referring to “participating and organising Member States” respectively.

2. They shall also meet the obligations imposed upon them by the provisions stated in the Operational/Implementation Plan, in particular the rules of engagement.

Article 4 Fundamental rights

1. Participants in Frontex coordinated operational activities shall
2. promote, respect and protect human dignity and the fundamental rights of every individual, regardless of their nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation, social status, and political convictions.
3. In the course of Frontex coordinated operational activities they
4. guarantee the full compliance with the relevant international instruments regarding fundamental rights protection.
5. They ensure that persons in need of international protection receive an adequate assistance and are informed about their rights and relevant procedures.
6. They shall provide assistance to any person in a need of international protection.
 - i. In particular, they have a special duty to ensure by ensuring the full protection of the health of the persons in their custody and, in particular, take immediate action to secure medical attention whenever required.
6. They are obliged to report (pursuant to the incident report defined in Article 23 of the present Code) any violations of the laws, codes and sets of principles which protect and promote fundamental rights pursuant to the incident report defined in Article 23 of the present Code.

7. Article 5 Performance of duties

Commented [A6]: If this is the focus, than why bother about seminars and meetings?

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Commented [A7]: This should be defined in relation to the Charter of Fundamental Rights of the EU, I think.

Commented [A8]: This list does not match that in article 2c) above. Is there a reason for this? Also, neither list includes colour or membership in a national minority, both of which are listed in the ECHR and Charter of Fundamental Rights.

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1. Participants in Frontex ~~coordinated operational activities are conscientious and diligent in the performance of their duties shall~~

~~2. a. In particular, they~~ ensure that instructions, directives and required duties are carried out promptly and completely.

~~3. i. They shall~~ give a special consideration to ~~the~~ particularly vulnerable groups of people, such as unaccompanied minors, ~~and~~ persons susceptible to exploitation, the of being victims of ~~the~~ trafficking in human beings and people whose psycho-physical conditions indicate that they might have undergone traumatic experiences.

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Commented [A11]: This reflects Updated Schengen Catalogue

Article 6

Behavioral Standards

~~1.~~ Participants in Frontex coordinated operational activities whether on or off duty shall

~~1.2.~~ abstain from all behaviour likely to compromise the prestige and the nature of the public mission in which they are invested or to bring discredit upon their organization or Frontex.

~~2. In particular they shall:~~

- a) act with fairness and impartiality in their dealings with citizens and colleagues, treating all with courtesy and respect, avoiding favouritism of an individual or group, and all forms of victimisation or discrimination, bearing in mind the multicultural nature of all personnel, including the diversity of backgrounds, origin and/or rank;
- b) abstain ~~to adopt from~~ actions contrary to the public order;
- c) respect the regulations and instructions of the authorities of the host Member State.
3. ~~The use of~~ refrain from using vulgar, obscene or otherwise offensive speech or gestures that could be considered abusive towards other participants of ~~the~~ Frontex coordinated operational activities or the public ~~is strictly forbidden.~~

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Commented [A12]: Already covered by Article 3.1

Article 7

Responsibility



Participants in Frontex coordinated operational activities are primarily responsible for their actions in their work.

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Article 8 Conflict of interests

To perform their duties ~~in a proper way~~ properly, participants in Frontex coordinated operational activities shall refrain from any business activities which would ~~be in contradiction to their conflict with their-~~ independence and the ~~ir~~ appropriate performance of duties, avoid conflicts between public and personal interest and refuse material or personal ~~benefits~~ rewards for any of their actions.

Article 9 Use of force

1. ~~The use of force is applied only~~ Force should be used only when strictly necessary and to the extent required for the performance of duty, or in order to repel ~~a direct~~ ~~and~~ ~~and~~ unlawful attempt against ~~one's~~ own or another person's life, health or freedom, ~~or and~~ in order to counteract activities leading directly to such attempt.

Commented [A14]: The use of force in this preventive capacity might be hard to justify

2. The use of force is applied in accordance with the relevant dispositions in the national law of home and host Member States, and in compliance with the legislation of the European Union.

Commented [A15]: Already covered by Article 3.

Article 10 Confidentiality

1. Any information which comes into the possession of a participant in Frontex coordinated operational activities shall be kept confidential² unless the performance of duty or the needs of justice ~~strictly require otherwise, or whenever appropriate authorization to disclose the information has been given~~ require disclosure, or disclosure has been appropriately authorized.

Commented [A16]: This will require a great deal of interpretation. Probably better to say that information will normally be kept confidential

² In compliance with the European standards of data protection and Regulation 45/2001 of 18th of December 2000.



2. Participants shall not express themselves in media, unless the special authorisation from their superiors is given.

Chapter III

PROHIBITED CONDUCTS

Article 11

Discrimination

All discriminatory behaviours ~~and arbitrary actions~~ towards the public or other participants in Frontex coordinated operational activities are strictly forbidden.

Article 12

Abuse of authority

All behaviours liable to be oppressive or abusive towards the public or other participants in Frontex coordinated operational activities are strictly forbidden.

Article 13

Harassment

All behaviors liable to cause offence or humiliation towards the public or other participants in Frontex coordinated operational activities are strictly forbidden.

Article 14

Consumption of alcohol

1. The consumption of alcohol while on duty is strictly forbidden.
2. ~~While off duty,~~ The consumption of alcohol off duty shall be moderate.

Commented [A17]: See comment 2



3. A participant unexpectedly called out for duty is obliged, at no risk of discredit, to say that he/she has consumed alcohol and may not be ready for duty.
4. A participant shall not report for duty or appear in public in a state of intoxication.

Commented [A18]: Subject to complying with 14.2

Article 15

Use of narcotics and drugs

The use or possession of narcotics and drugs, unless prescribed for medical reasons, is strictly forbidden.

Article 16

Sexual services

~~Attending-Using~~ or soliciting any sexual services ~~from any premises, whether public or private, while on duty?~~ is strictly forbidden.

Article 17

Corruption

1. ~~4-~~Participants in Frontex coordinated operational activities
2. shall combat corruption ~~in absolute terms and do not manifest willingness~~ uncompromisingly
3. will never accept or show themselves willing to accept for material benefits ~~from for~~ the performance of their official duties.
2. ~~They do not place~~ will not place themselves under any obligation to outside individuals ~~that who~~ might seek to influence them in the performance of their official duties.

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CHAPTER IV

SPECIAL RULES AND PRINCIPLES APPLICABLE TO LAW ENFORCEMENT OFFICERS

Article 18

Personal and professional behaviour

Law enforcement officers have a particular responsibility to act with fairness and impartiality in their dealings with the public or other participants in Frontex coordinated operational activities, treating all with courtesy and respect.

Commented [A19]: This seems to be covered by 6a) above. The inclusion of a separate section for law enforcement officers might create confusion by implying that what went before in chapters I-III does not apply equally to them.

Article 19

Use of force

Pursuant to Article 10 of Frontex Regulation, while performing their tasks, law enforcement officers enjoying guest officers status may only use force with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

Commented [A20]: Covered by earlier lawfulness and use of force provisions

Article 20

Use of weapons

1. Pursuant to Article 10 of Frontex Regulation, while performing their tasks, law enforcement officers enjoying guest officers status may only use weapons with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

Commented [A21]: See comment 16

2. ~~In principle, use of weapons is considered as a~~ The use of weapons is an exceptional measure and is applied to be taken only when strictly necessary and to the extent required for the performance of duty or in legitimate self-defense and in the legitimate defense of other persons

Commented [A22]: Probably should be section 1 of Article 20

3. In accordance with Implementation Plan - The possession of weapons on Joint Return Flights is forbidden

~~On Joint Return Flights the possession of weapons is forbidden in accordance with Implementation Plan.~~

CHAPTER V FINAL PROVISIONS

Article 21

Training

Participants in Frontex coordinated operational activities shall complete a training course on the content of the present Code of Conduct.

Article 22

Evaluation report

Guest officers deployed in Frontex coordinated operational activities are obliged to contribute to the evaluation report, which includes a chapter on fundamental rights and is based on anonymous questionnaire.

Commented [A23]: I think „chapter” may be being misused here. Or I don't understand it.

Article 23

Incident report

1. Participants in Frontex coordinated operational activities who have reasons to believe that a violation of the present Code has occurred or is about to occur, are obliged to report the matter to their superiors ~~authorities~~ and to the Frontex Coordinator assigned for this particular task.



2. ~~The~~ Frontex Coordinator in the Frontex coordinated operational activity ~~forwards~~shall forward the incident report immediately to the Executive Director, who shall promptly inform the Management Board.

Article 24

Sanctions

1. Based on the incident report, the Executive Director ~~adopts the adequate~~shall apply appropriate remedies. ~~These which~~ may include the immediate removal of the participants from the operational activity, and, if applicable, from the ~~respective relevant~~ pool.
2. In ~~the~~ case of violation of the present Code of Conduct by a Frontex staff member, the Executive Director will remove ~~the Frontex that~~ staff member. If the violation was committed by the person deployed by a Member State, the Executive Director will ask the Member State to ~~immediately~~ remove the person concerned immediately and ~~and expects that~~ the Member State will be expected to use ~~its powers regarding the necessary~~appropriate disciplinary measures.
3. Without prejudice to the previous paragraphs, in a case of ~~such serious violation of the present Code that requires immediate measures~~ a violation of the present code requiring immediate action, the competent representative of the host/organising Member State shall take ~~these measures that~~ action in consultation with the ~~Frontex representative~~the Executive Director or his/her representative?