

-----Original Message-----

From: [REDACTED]
Sent: 13 December 2010 14:45
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: draft minutes

The non-disclosed text contains personal data, in particular the name of the individual. The disclosure of such information would undermine the protection of privacy and the integrity of the persons concerned and constitute the violation of EU laws regarding the protection of personal data. In this regards the text is not disclosed pursuant to the exception laid down in the Article 4(1)(b) of the Regulation 1049/2001.

Dear All,

Thank you for your email [REDACTED] I also appreciated the constructive nature of the meeting.

Please find attached a reworking of Articles 5&6 on the basis of what I think was agreed.

I also wanted in this email to clarify University of Birmingham's position on the scope of the Code. Given that it has been decided that the Code will be addressed to all Frontex employees and participants, and is therefore not particular to any profession or role, may I suggest that the principles are structured in the following way: the first section(s) states general principles of relevance to every and any role fulfilled by Frontex participants, then a separate section(s) follows specifying additional principles relevant to particular roles within Frontex (border guards, law-enforcement officers). I believe this will avoid confusion as to what obligations fall on which individuals. For example, it is not clear why individuals covering administrative or training roles, for instance, should be required to consume alcohol only in moderation when off duty, or why they should be forbidden from having a beer with their working lunch (Article 14), why they should be obliged to guarantee assistance to those in need of international protection (Article 4), or why they should be given any discretion to use force as part of their duties, even only when strictly necessary (Article 9).

Best wishes

[REDACTED]

From: [REDACTED]
Sent: 10 December 2010 16:24
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: draft minutes

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Dear [REDACTED] et all,

First of all, I wish to thank all of you for the very fruitful discussions around the development of the Frontex's CoC and the involvement of external stakeholders, such as UNHCR, in this process. I find the working climate within this group extremely cordial and cooperative - to no surprise - and I wanted to let you know.

A) Yesterday I had a chance to once again review the European Commission's proposal for a recast Frontex Regulation as well as the preliminary draft of Mr. [REDACTED] - the EP rapporteur for this exercise - suggesting some amendments to that proposal, which I believe come in support of UNHCR's inputs to/comments on the Frontex draft CoC in many respects particularly as regards some contentious points in Artt. 1-6 that we reviewed together in the course of the last meeting. Following are some observations:

Art. 3

UNHCR had suggested that a specific reference be made to the need for participants in Frontex's activities to comply with the "International law", in addition to the EU law, national law of both home and host MS and the CoC. This suggestion/request was challenged by some colleagues of the Frontex Legal Unit and left pending further discussion. In support of UNHCR's position, however, the following can be cited:

- when further defining Frontex's legal framework in Art. 1 point 1 replacing paragraph 2 of Art. 1 of the Frontex Regulation, the EC's proposal states that Frontex "(...) shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. (...)";

- Mr. [REDACTED] text is even more specific by suggesting a direct reference to the 1951 Geneva Refugee Convention in his proposed amendment No.1 which states that Frontex "shall fulfill its tasks in full respect of (...) International law, including the Geneva Convention Relating to the status of Refugees of 1951, obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights."

So UNHCR's suggestion/request is absolutely in line with the orientation prevailing at the level of the EU institutions involved in the review of the Frontex mandate.

Article 4

The contentious points under this Art. refer to:

- UNHCR's proposed title, "Fundamental rights and international protection"
- UNHCR's proposed inclusion of a clear reference to the right to asylum amongst the fundamental rights to be promoted, respected and protected by Frontex (Art. 4 para.1)
- UNHCR's proposed reference to the "full" compliance with the principle of non-refoulement (Art.4 para.1)

As with Art.3 of the CoC, UNHCR's observations on Art. 4 find full support in the text proposed by the EC and in the amendments to it by Mr. [REDACTED] (EP) as explained above. To note that none of the provisions through which the EC aims at strengthening the fundamental rights component of the Frontex's legal framework are being challenged by the Member States in negotiations within the Council, which are about to reach the final stages. Therefore there is no point for not retaining UNHCR's observations and recommendations on Artt. 3 and 4 in full, all the more if considering that the Frontex CoC will only be "soft law" unlike the recast Frontex Regulation that is primary EU law.

Hope this helps. However please do not hesitate to let me know should you need further guidance and/or clarifications.

B) Concerning "harassment", following are definitions of "harassment", "sexual harassment" and "abuse of authority" taken from a UNHCR's internal guide on how to deal with harassment at the workplace. Hope you find this useful.

"Definition of harassment, sexual harassment, and abuse of authority"

Harassment

Any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another. Harassment includes - but is not limited to - words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle or cause personal humiliation or embarrassment to another; or that cause an intimidating, hostile or offensive work environment. It includes harassment based on any grounds such as race, religion, colour, creed, ethnic origin, physical attributes, gender or sexual orientation. It can include a one-off incident or a series of incidents. Harassment may be deliberate, unsolicited and coercive. Harassment may also occur outside the workplace and/or outside working hours.

Example: Public or private tirades by a supervisor, subordinate or peer; severe or repeated insults related to personal or professional competence

Sexual Harassment[1]

Any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. Sexual harassment may occur when it

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interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment. It can include a one-off incident or a series of incidents. Sexual harassment may be deliberate, unsolicited and coercive. Both male and female colleagues can be either the victim or offender. Sexual harassment may also occur outside the workplace and/or outside working hours.

Example: Deliberate and unsolicited physical contact, or unwelcome close physical proximity; sexist language that is humiliating to both women and men

Abuse of Authority

The improper use of a position of influence, power or authority by an individual against another colleague or group of colleagues. This is particularly serious when an individual misuses his/her influence, power or authority to negatively influence the career or employment conditions (including - but not limited to - appointment, assignment, contract renewal, performance evaluation or promotion) of another. It can include a one-off incident or a series of incidents. Abuse of authority may also include misuse of power that creates a hostile or offensive work environment, which includes - but is not limited to - the use of intimidation, threats, blackmail or coercion.

Example: Using position of authority to use UNHCR equipment or vehicles for personal use; asking subordinates to cover up for unauthorized absences"

[1] This definition is an illustration and explanation of the existing ST/AI/379, which provides, for all UN Staff, the legally binding definition of sexual harassment.

[REDACTED]

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>>> [REDACTED]@frontex.europa.eu> 09/12/2010 11:57 >>>

Dear All,

Pls find attached draft minutes of our meeting. [REDACTED], RDU will wait for your input for wording before making its own suggestions.

Let me know if we have forgotten anything/got anything wrong

Best regards,

[REDACTED]

Research and Development Unit

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