

Consultation on FRONTEX Draft Code of Conduct

Audience, Scope and Content

Codes of conduct are usually addressed to professionals or officials whose work might pose a risk of harm or offence to the public, and only secondarily to fellow officials. For this reason it is probably right that the FRONTEX code of conduct is only or mainly addressed to participants in FRONTEX operations, as these directly involve the public. Activities such as the organisation of FRONTEX meetings and conferences and office-based secondments probably do not need to be covered by the code of conduct, unless they involve the public. It is true that bad behaviour, even between colleagues in offices or in hotels, can cause distress, but this should be covered by employment law, rather than rules directed at interactions with the public. Training for field operations is an intermediate case, and *should* come within the code, and training in the code should be part of operational training.

A code of conduct for border guards ought to prohibit (1) illegal behaviour and (2) bad but not necessarily illegal behaviour that brings the border guard profession into disrepute. The draft FRONTEX code addresses (1) by prohibiting corruption, indiscretion, unfair or humiliating treatment, intoxication on duty, discrimination, abuse or the unjustified use of force, amongst other things. It addresses (2) by e.g. prohibiting swearing. A model code of conduct should go *beyond* prohibitions and recommend behaviour that applies imagination to carry out professional obligations *well*. Behaviour of the second kind is called good practice. Practices that depart from good practice are not necessarily unacceptable or wrong or illegal, but they are not as good as they could be. The draft FRONTEX code of conduct stops short of suggesting good practice, but shouldn't. For example, it mentions that vulnerable categories of people should be treated with special care, but it does not describe what special care might be. If the FRONTEX code of conduct were revised to include good practice, indications could be drawn from the Schengen Handbook and Updated Schengen Catalogue, both of which propose a broad range of good practices for EU border guard agencies.

Structure and Language

There is no single correct way of structuring a code of conduct. The structure followed by FRONTEX begins with definitions and general principles and then focuses in on specific areas of activity. This seems reasonable. As noted in our comments on the code, the fact that there is a separate section for law enforcement officers may imply that the general rules do not apply to them, which may be misleading.

The language used in a code of conduct should be clear and precise, with very little scope for ambiguity or misinterpretation. A code of conduct should specify whom it is addressed to and it should use 'shall' or another imperative form to indicate the imposition of an obligation. The FRONTEX draft code of conduct fulfils both of these latter requirements although, as indicated in our comments on the draft, there are some instances where imprecision and ambiguity arise, and there is too much repetition.

International vs national law and norms

The draft code repeatedly requires personnel on joint operations to respect the laws of the jurisdiction where the operation is taking place, and also to respect pan-European norms. However, where there is a conflict and pan-European norms concern *fundamental* values or rights, the latter should take precedence.