

DRAFT

**DECISION ON THE CODE OF CONDUCT FOR ALL PERSONS
PARTICIPATING IN FRONTEX COORDINATED OPERATIONAL
ACTIVITIES**

THE EXECUTIVE DIRECTOR,

Having regard to the Frontex Regulation¹, in particular Article 25(3) thereof,

Whereas:

- (1) Frontex is responsible for the coordination of operational cooperation between Member States in the field of management of external borders;
- (2) The operational activities coordinated by Frontex involve the deployment of its staff as well as border guards and other personnel from Member States or Schengen Associated Countries to a host Member State;

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p.1), as last amended.

- (3) The establishment of behavioral and professional standards of conduct, common to all participants in Frontex coordinated operational activities, even when off duty, is a prerequisite for a credible and effective exercise of the public service;
- (4) The failure to meet the behavioral and professional conduct standards poses a significant risk for the persons individually as well as for Frontex;
- (5) Law enforcement officers are granted extraordinary powers; citizens and non-citizens of the Union therefore have the right to expect the highest standards of conduct from them;
- (6) The provisions of the Charter of Fundamental Rights of the European Union shall be respected.

Commented [U1]: (UNHCR): this could be understood to suggest that it applies to EU 'citizens' but not others. Preferable wording could be: 'citizens and non-citizens of the Union' or simply 'people encountered in the course of operations'

HAS DECIDED AS FOLLOWS:

Article 1

The Code of Conduct for all persons participating in Frontex coordinated operational activities is adopted as the Annex to this Decision.

Article 2

1. A copy of the Code of Conduct shall be annexed to all plans and projects referring to Frontex coordinated operational activities, particularly those

involving the performance of border control activities according to the Schengen Border Code.

2. A copy of the present Code of Conduct shall be delivered to all persons taking part in the above mentioned activities prior to their engagement.

Article 3

This Decision and its Annex enter into force on the day following its signature.

ANNEX

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 including interpreters, deployed to 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 developed in the frame of Frontex tasks as described in Frontex Regulation, such as Joint Operations, Pilot Projects, Joint Return Operations and Trainings.
- 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 Servants² 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.

CHAPTER II

PRINCIPLES

Article 3

Lawfulness

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

² 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.

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

Article 4

Fundamental rights and International Protection

1. Participants in Frontex coordinated operational activities promote, respect and protect human dignity and the fundamental rights, including the right to asylum, of every individual, regardless of their nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation, social status, and political convictions.
2. In the course of Frontex coordinated operational activities they guarantee the full compliance with the relevant international instruments regarding fundamental rights protection.
3. In full compliance with the principle of *non-refoulement*, they ensure that persons seeking international protection are identified, receive adequate assistance, are informed about their rights and relevant procedures, and are referred to the competent national authorities where their asylum claims can be thoroughly and effectively examined.
~~They ensure that persons in need of international protection receive an adequate assistance and are informed about their rights and relevant procedures.~~
4. ~~They shall provide assistance to any person in a need of international protection.~~

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5.4. When providing assistance, In particular, they have a special duty to ensure the full protection of the health of the persons in their custody and, in particular, take immediate action to secure medical attention whenever required.

6.5. They are obliged to report 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.

Article 5

Performance of duties

1. Participants in Frontex coordinated operational activities are conscientious and diligent in the performance of their duties.
2. In particular, they ensure that instructions, directives and required duties are carried out promptly and completely.
3. They shall give a special consideration to ~~the~~ particularly vulnerable persons, including but not limited to ~~groups of people such as~~ unaccompanied children ~~minors~~ and persons susceptible of being victims of the trafficking in human beings.

Article 6

Behavioral Standards

1. Participants in Frontex coordinated operational activities whether on or off duty shall abstain from all behavior 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~~people encountered in the course of their duties, as well as other participants, 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 actions contrary to the public order;
 - c) respect the regulations and instructions of the authorities of the host Member State.
3. The use of 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.

Commented [U6]: (UNHCR): see previous comment re the term 'citizens'. 'Colleagues' is also not very accurate; 'participants' is better as this is defined in the definitions. Wording could rather be 'people encountered in the course of their duties, as well as other participants'

Article 7

Responsibility

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

Article 8

Conflict of interests

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

Article 9

Use of force

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

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.

Article 10

Confidentiality

1. Any information which comes into the possession of a participant in Frontex coordinated operational activities shall be kept confidential³ unless the performance of duty or the needs of justice strictly require otherwise, or whenever appropriate authorization to disclose the information has been given.

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

Chapter III

PROHIBITED CONDUCTS

Article 11

Discrimination

³ In compliance with the European standards of data protection and Regulation 45/2001 of 18th of December 2000.

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

Article 12

Abuse of authority

All behaviors 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 shall be moderate.
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.

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 or soliciting any sexual services from any premises, whether public or private, is strictly forbidden.

Article 17

Corruption

1. Participants in Frontex coordinated operational activities combat corruption in absolute terms and do not manifest willingness for material benefits from the performance of their official duties.
2. They do not place themselves under any obligation to outside individuals that might seek to influence them in the performance of their official duties.

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.

Article 19

Use of force

Subject to Article 9 herein, and 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.

Article 20

Use of weapons

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.

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

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 and border guards 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.

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 superior authorities and to Frontex Coordinator assigned for this particular task.
2. Frontex Coordinator in the Frontex coordinated operational activity forwards the incident report immediately to Executive Director, who promptly informs the Management Board.

Article 24

Sanctions

1. Based on the incident report, the Executive Director adopts the adequate remedies which may include the immediate removal of the participants from the operational activity, and if applicable from the respective pool.
2. In the case of violation of the present Code of Conduct, the Executive Director will remove the Frontex 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 and expects that the Member State will use its powers regarding the necessary disciplinary measure.