

13th Meeting Frontex Consultative Forum on Fundamental Rights

MAIN POINTS OF DISCUSSION

Date:	17 May (13:30- 17:30) - Meeting with Management Board Chair and Deputy Executive Director		
Venue:	Red Cross EU Office, Rue de Trèves 59-61, Brussels		
Contact person:	Secretariat Tel: +48 22 205 9550	@frontex.europa.eu	
CF Chairs	<div>United Nations High Commissioner for Refugees (UNHCR)</div> <div>Jesuit Refugee Service (JRS)</div>		
CF members	<div>Red Cross EU Office,</div> <div>Amnesty International</div> <div>European Institutions Office (AI EIO)</div> <div>European Union Agency for Fundamental Rights (FRA)</div> <div>Churches' Commission for Migrants in Europe (CCME)</div> <div>Platform for International Cooperation on Undocumented Migrants (PICUM)</div> <div>Platform for International Cooperation on Undocumented Migrants (PICUM)</div> <div>European Council on Refugees and Exiles (ECRE)</div> <div>IOM)</div> <div>the Advice on Individual Rights in Europe (AIRE Centre)</div> <div>Council of Europe (CoE)</div> <div>European Asylum Support Office (EASO)</div> <div>UNHCR Bureau for Europe (UNHCR)</div> <div>International Commission of Jurists</div> <div>OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR)</div> <div>Absent:</div> <div>United Nations High Commissioner for Refugees (UNHCR)</div> <div>International Commission of Jurists (ICJ)</div>		
Management Board	Marko GASPERLIN, Chair Frontex Management Board		
Frontex	<div>Berndt KOERNER, Deputy Executive Director</div> <div>Executive Advisor</div> <div>Operational Officer, Joint Operations Unit</div> <div>Operational Officer, Return Support Unit</div>		

Fundamental
Rights Officer

██████████ Fundamental Rights Officer
██████████ Assistant to the Consultative Forum

External experts

██████████ Médecins Sans Frontières (MSF)
██████████ Chairman International Maritime Rescue Federation (IMRF)
██████████ Swedish Sea Rescue Society

MEETING WITH MB CHAIR AND DED 17/07

Welcome notes and confirmation of the agenda

- MB Chair stressed on the progress made in the implementation of the European Border and Coast Guard Regulation. He welcomed the publication of the CF Annual Report which will be distributed to the MB members on 13-14 June. He also welcomed the recommendation of child protection and will encourage MSs to implement this recommendation as far as possible.
- DED stressed the challenging time the Agency is going through but confident the Agency is moving ahead.

DED operational update *(see presentation)*

- By beginning of April 2017, Frontex has reached 404 staff members.
- **Migratory situation:**
Central Mediterranean:
 - The Central Mediterranean route is the one most affected by migratory flows.
 - While the primary focus of Operation Triton, which was launched by Frontex in November 2014, is border control and surveillance, search and rescue remains a priority for the agency. Since the beginning of the operation, Frontex vessels and aircrafts have on regularly been redirected by the Italian Coast Guard to assist migrants in distress.
 - The operational focus of Triton has been expanded to include also other forms of cross border crime. Apart from numerous arrests of people smugglers, the assets deployed by the agency increasingly contribute to the detection of drug smuggling, illegal fishing and maritime pollution.
 - Officers deployed by the agency also support the Italian authorities in the registration of the arriving migrants. Debriefing officers collect intelligence about people smuggling networks operating in Libya and other African countries along the smuggling routes. The agency shares this information with the Italian authorities and Europol.
 - All assets deployed within the framework of Operation Triton operate under the command of the Italian Ministry of Interior.
- Eastern Mediterranean:
 - Less of concern than it was last year
 - Situation in Greece is frozen at certain level.
 - Good relations between the Agency and Turkish counterparts
 - Relation between Greek and Turkish counterparts have been improved.
 - Slight raise in the number of arrivals in the past but still at a low level.
- **Western Balkan Route:**

 - There were fewer than 100 detections of illegal border-crossings in the Western Balkans in April. The reason for the significantly lower number than in recent months is the fact that fewer migrants have been leaving Turkey through its land borders towards the Western Balkan route. Consequently, the migrants detected at EU's border in the region are mainly those who have been residing in Serbia and have now been crossing into Hungary, Croatia and Romania.

- Frontex deployed officers at the Serbian-Hungarian, Serbian-Croatian, FYROM-Greek and Greek-Albanian border as well as focal points in airports. Figures are lower. More pressure in the field of smuggling. Negotiations with Serbia on Status Agreement are still on-going (second round). Frontex is present in the negotiations, but does not take directly take part.
- **Return related activities:** integrated border management includes return assistance. Frontex support also in enhancing communication between Greece and Turkey. Regarding monitors, the numbers in the Frontex pool are increasing but there is need for additional monitors to be available.
- **International cooperation:**
 - IPA project ongoing and preparing 2nd phase, EaP project will most likely be extended for one year incorporating additional activities; new avenues for progressing in working arrangement with Morocco; exploratory talks with Egypt; the negotiations of working arrangement with Senegal is at the final stage. Working arrangements are being updated in line with the European Border and Coast Guard Regulation.
 - **The Liaison Officer to Niger** has joined Frontex on 16 May 2017 and is now undergoing a pre-deployment phase. It is envisaged that he will be able to be deployed to Niger in July 2017.
 - **The Liaison Officer to the Western Balkans** will join Frontex on 1 July 2017. Following a pre-deployment training in Frontex HQ, it is envisaged that she will be able to be deployed in Belgrade in the summer 2017.
 - Both new Liaison Officers will be presented to the Frontex Management Board on 13 June. Their pre-deployment phase includes induction training in the Headquarters.
 - The Agency is further strengthening its cooperation with CSDP actors. Since May 2017 a **Frontex expert is supporting EUBAM Libya** on the ground.
 - Frontex also proposed to implement two **new technical assistance projects** in non-EU countries: 1) in the Southern Neighbourhood, financed under the European Neighbourhood Instrument (DG NEAR); 2) Strengthening of the Africa-Frontex Intelligence Community (AFIC), as an instrument to fight serious cross-border crimes affecting Africa and the EU (DG DEVCO).

Q&A

- **Identification of returnees**

Acquisition of travel documents is a necessary step to be able to enforce a return decision. This depends on each country, e.g interviews for identification. Frontex can provide pre return assistance.

- **Frontex role in return related activities**

DED clarifies that there is no pressure from management side to return as many people as possible. Returns depends on the MS demands and Frontex follows clear standards, i.e. implementation plans, CoCs, training, etc.

MB Chair emphasized that the final return decision is under the responsibility of the MSs. Frontex assists in pre-return phase and during the operations.

CF members mentioned that the role of MS vis a vis Frontex in the context of a forced return process is unclear to them. DED clarified that Frontex is responsible for the coordination of return operations at a technical and operational level, including voluntary departures. In practice, this means that Frontex offers support in the organisation and implementation, including financing or co-financing, of return operations organised from individual Member States. It is in this context crucial to understand that the decision about who should be returned is always taken by the judicial or administrative authorities of the Member States. According to the relevant legislation, the individual has to be always given the possibility to appeal against this return decision. Frontex does not enter into the merits of return decisions issued by the Member States. This is the exclusive responsibility of Member States. CF members welcomed this clarification; however, for the CF members, it was still unclear if Frontex or any other body checks whether the individual returnee has been issued with a final return decision that meets the standards of the Return Directive.

- **Executive powers of officers deployed in TCs**

The extent of executive powers of officers deployed in TCs will depend on the concrete Status Agreement and the operational plan. The Status Agreement will provide for a clear legal framework for operational cooperation between the border guard authorities of the Member States and the respective third country, facilitated and coordinated by Frontex.

- **Libya**

Frontex currently deploys an officer to support EUBAM Libya located in Tunis. At the moment, it seems that there is no reliable counterpart for cooperation. In addition, in order to cooperate with Libya, a working arrangement is needed. During the last MB meeting, MB gave mandate to Frontex to negotiate cooperation modalities with Libya.

- **Cooperation with West African countries**

Frontex is gathering information from neighboring MS to assess which countries are of relevance for providing Frontex support.

- **Fundamental Rights Strategy**

DED stresses the change of legal basis in the Regulation and the efforts undertaken to fully taking on board what has been done, i.e. the existing draft, in cooperation with FRO and CF. FRO highlights the lack of capacity within the team to support in re-drafting the strategy. A trainee has been requested to support.

CF calls for operationalization of some elements of the strategy and questions the limited capacity of the FRO to implement the obligations derived from the Regulation and the strategy due to the reduced number of staff in the FRO team.

The strategy will be adopted by the MB. CF will be consulted. MB Chair considers a good practice to request interested MB members to participate in the revision process.

- **CF recommendation on a child protection strategy**

Frontex is in the process of revising operational plans and planning of JOs. In this context, Frontex will consider the recommendations from the CF of May 2017, and will enhance child protection aspects with a special focus also given in the ongoing revision of the Fundamental Rights Strategy.

- **Evaluation of JOs**

Frontex is working, in the context of a reorganization of the operational planning) on effective evaluation tools. Currently, Frontex has established agreed actions to take and a dedicated timeline for evaluations of JOs. Conclusions will feed future JOs, operational plans.

- **Appointment of a new CF member**

DED and MB Chair consider of outmost importance CF opinion on the matter. CF to identify needs and convey them to Frontex. If CF would like to launch a public call to fill in the vacancy left by Caritas, it is then up to ED to propose to MB. MB takes a decision. MB Chair and DED suggest to add the matter in the agenda of the upcoming MB meeting for information and to take the decision by written procedure.

- **Hungary**

Frontex has reduced the number of deployed officers in Hungary, i.e. 29 at the Hungarian-Serbian border; 2 at Budapest airport and 2 at the Hungarian-Ukrainian border. FRO has visited Frontex activities in Hungary and reported to senior management and MB.

CF asks Frontex to re-consider CF recommendation to suspend activities in Hungary, considering the infringement procedure against Hungary concerning its asylum law.

ACTION POINTS

- Frontex to send written response on the situation on Chios
- FRS: DED and FRO to agree on a timeline to be communicated to CF. Focus group meeting CF-FRO-HQ-MB
- CF to submit a proposal on Caritas replacement with specific criteria and needs.
- Frontex to re-consider CF recommendation on Hungary
- MB to share agenda of MB meetings
- MB Chair to consult with MB a more pro-active involvement of CF
- Frontex to reply on Hungary in writing
- Frontex to provide pre-departure checklist of documentation required with regard to return operations

FRO staffing *(see presentation)*

DED points out that the situation with lack of staffing is not only limited to FRO team but to the Agency's business entities as a whole.

CF emphasizes the risk of putting FRO's credibility at stake.

A temporary agent assigned for the Complaints Mechanism has been recruited (AST III) and joined the Agency on May 16th.

Recruitment procedures for two assistants (contract staff), one dedicated to the complaints mechanism (FG IV) and one generic Administrative Assistant (FG III), will start in May/June 2017. Moreover, the Agency is planning to dedicate further staff for the Fundamental Rights Officer, i. a. depending on the reorganization of the organizational structure of the agency, to other tasks allocated to the FRO in the Regulation 1624/2016, i.e., return support, fundamental rights operational guidance, evaluation of operations, training and CCC, monitoring and reporting, protection of vulnerable groups and referral mechanisms, promotion of fundamental rights, etc. Decisions in this context are depending on the decision on the reorganization and the subsequent implementation of the decision.

Individual complaints mechanism: state of play

- Admissibility criteria according to the Agency rules¹
- Figures since 6/10/2016:
 - 2 admissible complaints: submitted to MSs;
 - 4 inadmissible complaints: 3 asylum related-complaints and 1 with no relevance for fundamental rights;
 - 1 expression of concern: shared with the ED.
- 1 complaint of every 3 is admissible
- Absence of a dissemination strategy/awareness campaign due to the unavailability of staff to follow up.
- FRO calls for revision of the Agency rules.
- Case management system well advanced.
- JOU is working on ensuring availability of complaint forms in operational areas/operational activities, including return.

Q&A

- **Frontex statutory staff v Frontex deployed officers**

Complaints against Frontex statutory staff are responsibility of ED whereas complaints against Frontex deployed officers are MSs responsibility, i.e. often internal control units in the MoI and only a few independent boards.

In the upcoming MB meeting, MSs will be asked to look at their internal control units and make sure they are tasked to work on complaints forwarded by FRO.

FRO report *(see FRO report XVIII)*

- Incident after the reporting period: Kos incident
- 2 visits: LIBE Committee, president of the CPT

Q&A

- Follow up of FRO recommendations

FRO recommendations are addressed to: 1) FRO team to implement; 2) Frontex and are discussed with the heads of unit and/or 3) MSs discussed during MB meetings, FRO visits.

¹ http://frontex.europa.eu/assets/Complaint/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf

Search and Rescue

International Maritime Rescue Federation (IMRF) (see presentation)

The situation in the Central Mediterranean is highly political. IMRF serves as a lobbying tool to voice concerns of its members. It is also a platform for closer cooperation between the different organisations doing Search and Rescue. IMRF provides training and contributes to the setting up of sustainable environments, e.g. to the Hellenic Coast Guard and Hellenic Rescue teams.

IMRF calls for clarifying roles and responsibilities of the different actors as well as establishing clear channels for communication.

Médecins Sans Frontières (see presentation)

MSF started doing SAR in 2015 responding to an existing gap. At the moment, they have two vessels in the Central Med and operate under the Italian Maritime Rescue Coordination Center (MRCC). MSF representative stresses that they are independent from anti-smuggling, military operations and any border control mission. The medical needs of those rescued are mostly directly related to the crossing and to the detention conditions in Libya. They also provide initial mental health support which ideally should continue after disembarkation. The number of pregnant women is very high, which is directly related to sexual violence. MSF stresses the need for a humanitarian approach at disembarkation, i.e. people should be seen as survivors first.

MSF agrees that mortality is increasing. The quality of boats has decreased dramatically and more people are put on each boat. In 2016, most of the deaths at sea are due to asphyxia in rubber boats. There are also more SAR events close to the Libyan coast. MSF cannot go as close as they would like to go for security reasons. Often, NGOs have been pushed to go closer.

MSF calls for pro-activity in order to have an impact, to save lives. 32% of all rescues are done by NGOs. MSF is concerned about the accusations against NGOs. A graphic (see presentation) shows that the life-saving role of NGOs performing SAR in the Central Med. MSF acknowledges that SAR, done by any actor, has become part of the smuggling service. MSF advocates for legal passage as SAR cannot be the solution to people dying at sea. However, in the meantime, a pro-active SAR mechanism is the only available way to prevent more deaths at sea.

Frontex and Management Board

SAR is not Frontex primary mandate but it is a crucial task and a legal obligation under the law of the sea, to be closely coordinated with the concerned MS. MB emphasises that Frontex did not accuse NGOs but consider that smugglers take advantage of their presence. DED appreciated the role NGOs are playing and confirmed that the situation in the Central Med is of great concern. DED also points out to Frontex role in contributing to disrupt smugglers business models and agrees on a broader package to tackle forced-migration, including safe passage. DED calls to jointly develop ideas to strengthen efforts to efficiently save lives at sea.

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The CF questions, why would NGOs be more a pull factor than Frontex when both have the same legal obligation to conduct SAR and thus, both are doing the same in this regard, both are coordinated by the MRCC.

With regards to the business models, CF recalls on their adaptability to any operation in place, including Frontex operations.

Q&A

- **Priority in identifying areas of disembarkation**

MSF reminds that the longer the waiting time for disembarkation, the less resources you have to come back to the sea. There are also difficulties to follow up at the shore due to the large amount of people. Delays because of identification. MSF approached French, Irish and Swedish authorities to discuss what to do if MSF is refused disembarkation in Italy. There is a lack of advocacy on 'safe harbour'.

The coordination of the SAR event lies on the MRCC. They will inform on the place of disembarkation. In the case of Libya, Italian MRCC does not have legal responsibility for Libyan waters. Thus, in theory, they should formally ask

Libyan MRCC about disembarkation. In Greece, SARs in Turkish waters are coordinated by the Turkish MRCC as per rules of engagement.

MSF advocates for a pro-active mechanism to save lives and questions the coexistence of anti-smuggling and SAR missions.

Participants agree that there is a lack of coordination of the different actors/assets in the Central Med and on the need of commonly agreed solutions to ease the work of Frontex and NGOs.

- **SAR capacity: how does Frontex assess current capacity in terms of SAR? What would be the optimal capacity?**

DED reminds that Frontex relies on deployments from MSs. in the future, Frontex will have its own assets and thus, be more independent from MSs. IMRF stresses that most of the NGOs boats have a gap-filling function.

CF calls for a recognition of the importance of SAR and the identification of future needs.

ACTION POINTS

- CF calls for a Public declaration from Frontex ED, either in written or at LIBE Committee
- Enhance cooperation and interaction between different actors
- NGOs to share updates with the members