

Main points of discussion

15th Meeting Frontex Consultative Forum on Fundamental Rights

Date:	21 February (13:30- 17:30)- Meeting with Frontex Deputy Executive Director and Chair of the Management Board	
Venue:	Social Area at the groundfloor Frontex Headquarters Plac Europejski 6, 00-844 Warsaw, Poland	
Contact person:	Secretariat Tel: +48 22 205 9550	@frontex.europa.eu
CF Chair	<p>[REDACTED] United Nations High Commissioner for [REDACTED] Jesuit Refugee Service (JRS)</p>	
CF members	<p>[REDACTED] Red Cross EU Office, [REDACTED] Amnesty International European Institutions Office (AI EIO) [REDACTED] Churches' Commission for Migrants in Europe (CCME) [REDACTED] Save the Children EU Office [REDACTED] European Council on Refugees and Exiles (ECRE) [REDACTED] [REDACTED] (IOM) [REDACTED] Council of Europe (CoE) [REDACTED] International Commission of Jurists (ICJ) [REDACTED] (EASO) [REDACTED] (EASO) [REDACTED] OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR) <u>Absent:</u> [REDACTED] European Union Agency for Fundamental Rights (FRA) [REDACTED] Platform for International Cooperation on Undocumented Migrants (PICUM) [REDACTED] the Advice on Individual Rights in Europe (AIRE Centre) replaced by [REDACTED] IRE Centre</p>	
Management Board	Marko GASPERLIN, Chair Frontex Management Board	
Frontex	<p>Berndt KOERNER, Deputy Executive Director [REDACTED] Executive Advisor [REDACTED] Field Deployment Unit [REDACTED] Return Support Unit [REDACTED] Return Support Unit [REDACTED] Media and Public Relations [REDACTED] International and European Cooperation [REDACTED] International and European Cooperation</p>	

Fundamental Rights Officer [REDACTED] Fundamental Rights Officer
Officer [REDACTED] Legal Assistant
[REDACTED] FRO trainee
[REDACTED] Technical Officer, Consultative Forum

Wednesday 21 February 2018 - Meeting with Frontex Deputy Executive Director and Chair of the Management Board

Welcome notes

- **CF Chair** refers to Frontex opportunity to enhance fundamental rights in light of the on-going implementation of structural changes. The adopted CF Annual Report 2017 will be presented on 22 March to the MB and Frontex. As per usual practice, the report only contains issues which have already been discussed/put forward to Frontex and/or MB during 2017.
With regard to on-spot visits during 2018, the CF will request to continue observing return operations and, in particular, readmissions. Furthermore, the CF would possibly like to observe the rolling out of VEGA Children Handbook sea and land and the work of Frontex LOs in TCs.
- **MB Chair** informs about the election of Carlos Moreira from Portugal as new Deputy MB Chair during the MB meeting in January.
- **DED** informs about the main changes in Frontex structure, which can be summarized as follows: former Operations Division is now separated into 1) Situational Awareness and Monitoring Division, including Risk Analysis Unit, Frontex Situation Centre, Vulnerability Assessment Unit and 2) Operational Response Division, including Field Deployments Unit, Return Support Unit, Coast Guard and Law Enforcement Unit. International and European cooperation is no longer part of Capacity Building Division. Corporate Governance Division has an enhanced component on budget controlling and procurement is now part of the Legal Unit. All mentioned changes are to be implemented as from 1 February 2018 onwards.

Operational update (see ppt presentation)

- Decreasing pressure at the Eastern Mediterranean (intense patrolling from Turkish side) and Western Balkans. Decrease of 22% in the Central Mediterranean route. Departures from Libya are moving to shores to Tunisia and Algeria. By contrast, Frontex has witnessed an increase in the Western Mediterranean route.
- DED informs that JO Indalo has been enlarged to an annual operation. The whole Spanish coastline is highly affected and the reception capacity in Spanish reception centres is a point of concern.
- Status agreements are still under negotiation. The Status Agreement with Albania has been initialled. Negotiations with Serbia and FYROM are ongoing and negotiation with Montenegro and Bosnia and Hercegovina did not start yet.
- With regard to the high level roundtable meeting on return, DED explains that it is a new platform/fora for discussion gathering high level representatives from national return units.

Q&A

- **Frontex staffing plan:** Given the expanded mandate of the agency, the staffing of the FRO office seems to be very limited.

MB-Chair explained that Human resources management is in the hands of the ED and thus, MB does not get involved directly. DED explained that the restructuring of the Agency was organised through Project Boards, where also staffing requests were developed. Senior Management collected requests which then overall amounted up to 600 over the

number of allocated posts to Frontex. With regard to FRO, there are three new positions allocated, i.e 1 for 2016 and 2 for 2018 (staffing allocated so far to the FRO is assistant level).

CF reiterated its concerns that the inadequate staffing of the FRO (in terms of number and seniority) seriously undermines Frontex commitment and capacity to fulfil its FR obligations. DED and MB noted that working on fundamental rights goes beyond the FRO team hence ideally should be mainstreamed through training activities, steering at different levels/units and also at the national/MS level. They reiterated that there is no immediate link between FRO's staffing with the quality of observation/compliance with fundamental rights in operations. CF, however, argues that fundamental rights mainstreaming requires both an initial provision of expertise and monitoring which are the functions of the FRO. With such increase of Frontex operations/activities, it is clear that more capacity of the FRO is necessary to be able to set up processes in line with Frontex FR obligations as well as to monitor their implementation. According to the CF, if FRO team is not sufficiently staffed, the likelihood of fundamental rights violations increases.

- **JO Themis**

DED explains that Frontex was requested to put forward new elements for a new JO to replace Triton upon very short notice. Difficult negotiations took place, which ended up in a last minute agreement in bilateral consultations with Italy and Malta and a tri-lateral meeting with both MSs. JO Themis aims at focusing on law enforcement and fighting cross border crime enhancing the element on border security, document fraud, identification of THB and foreign fighters. Contrary to the situation under JO Triton, Malta is now a potential disembarkation point. In this regard, Frontex calls for a clear communication between Italy and Malta in order to ensure that SAR elements remain untouched. Disembarkation in TCs is not foreseen in the operational plan. There will be an evaluation and potential re-adjustment within three months.

- **Role of TC observers, in particular potential participation during disembarkation and registration**

TC observers are not included in the operational plan for Themis but might be deployed in Italy in the context of pre-return support activities. Therefore, this practice is not changed/interrupted by Themis.

- **Hungarian-Serbian border: to which extent have Frontex deployed officers been able to observe and report potential breaches of fundamental rights?**

At the moment, there are 7 Frontex deployed officers at the Hungarian-Serbian border. DED will provide information on the extent of observation and reporting in writing. CF reminds DED that CF's recommendation is still valid given the on-going and deteriorating fundamental rights situation in Hungary as well as the COM infringement. In addition, CF shows concern about the apparent lack of criteria for suspension or termination of activities.

- **Return**

Frontex financing of return operations overlaps with funding under AMIF. The risk is that MSs would opt for AMIF instead of Frontex. During the high level meeting on return, the most common concern was about how to increase the availability of returnees. With regard to forced-return monitoring, the existing number of monitors is enough to support all requests for monitors. There is sometimes however a misperception of the subsidiary role of the pool by MSs. It should be clear that MSs should provide for monitors in the first place and only if this is not possible the pool can be activated. The priority is not on the national return operations. In this regard, participants remind that these operations are mostly conducted by countries which do not have a monitoring system in place.

- **Revision of the Fundamental Rights Strategy**

A draft has been circulated internally and developments are expected within a short time. CF to be consulted during 2018.

- **Calls for officers**

Frontex explains the gap between what Frontex needs/requests and what is provided by MSs. Discussion of needs with MSs take place in the context of Annual Bilateral Negotiations.

- **Voluntary returns**

Frontex is meeting with IOM in Brussels to clarify roles. Frontex has at this moment no intention to get involved in voluntary returns, and is only coordinating voluntary departures. CF highlighted the need for clarification on what constitutes an effective return policy. Relevant indicators should be worked out.

- **Integrated border management (IBM)**

The EU IBM Strategy is divided into: 1) political communication (it will probably be published on 13 March as an annex to the COM progress report on the agenda for migration or as an independent communication); 2) operational technical strategy; 3) national IBM strategies by different MSs. Internally, Frontex has conducted a stakeholders analysis which serves as a backbone for the operational and technical strategy. FRO explains that the draft Fundamental Rights Strategy includes the same components than the IBM.

FRO regular report (see ppt presentation)

Q&A

- **CF expressed concern over two operational plans which have not been consulted with the FRO, against the Regulation as well as FRO's denial of access to Eurosur considering its relevance as a monitoring tool**

There was no deliberate attempt not to consult operational plans with the FRO. With regard to access to Eurosur, an answer will be provided in writing.

- **While there is remarkable improvement in the draft new rules, CF is concerned about the accessibility of the complaint mechanism and how to fully roll it out, including designing a dissemination/awareness raising strategy considering FRO's limited resources.**

DED fully supports any kind of awareness raising. A solution needs to be found that does not put any kind of burden /responsibility on the Frontex deployed officers. FRO is considering the possibility of developing an application.

- **Only 13 MSs responded to the questionnaire on referral mechanisms.**

MB will remind MSs to reply.

- **Overview of SiRs 2017**

FRO is unsure when an overview of SiRs 2017 will be ready due to lack of staffing. MB Chair requested MSs with pending cases to respond. The CF remained concerned about the small number of SiRs received in areas where is widely reported that there are serious violations of fundamental rights and inquired on any plans of Frontex to tackle this.

- **Monitoring reports from return operations: based only on report from monitors present on the flights.**

FRO analyses reports from all flights in which a monitor from the pool is present. During 2017, there were 160 flights from which FRO doesn't have any information.

- **Vulnerability assessment (VA) 2017 and 2018**

DED informs that the first round of VA has been successfully concluded following the VA methodology. The baseline assessment for the VA 2018 is to take off. Frontex is also enhancing the recruitment of LOs in Ms as they will contribute to liaise in VA related matters. FRO informs about the request from the VA team to provide information regarding fundamental rights related matters. It is however too early to know what will be the impact of that request/deliver. In 2018, the VA unit was established. The proposed new methodology for 2018 was not accepted by MB as the already existing methodology is quite demanding.

CF recommendation on a child protection strategy for Frontex

Frontex training unit is developing a training on "border related child protection" which will be finalised by mid-2018. At the same time, Frontex regularly cooperates with the Commission submitting updates to the Commission Recommendation on the protection of children in migration. In this regard, the main issue that needs to be addressed is the collection of sex-age disaggregated data. CF refers to the potentialities of Frontex to protect children on the

move, i.e. recruitment, child sensitive equipment or trainings on communication. Child protection and safeguarding should be made a priority and a more structured cooperation in the field of child safeguarding should be established between Frontex and CF.

CF recommendation on gender mainstreaming in Frontex activities

Following the letter sent in December 2017, a meeting was promptly organised to present the main findings and recommendations from the study conducted by the CF. In brief, it was agreed to strengthen/formalise the cooperation with EIGE; include a gender perspective in the revision of the Fundamental Rights Strategy and Action Plan; organise an awareness raising meeting with senior management mirroring the presentation delivered to ED/DED.

CF effective access to information

CF again expressed its serious concern about the restriction of access to information they have experienced during 2017. CF notes the exquisite respect for confidentiality maintained so far by its members and the positive effect that the CF has had in promoting a more constructive understanding and engagement with Frontex by IOs and civil society organisations over the past years. In addition, CF calls upon Frontex pro-activeness in the provision of information and integrate the CF in the different unit's business processes, when relevant.

For the MB Chair, the 'need to know principle' on a case by case basis should be followed. DED asked for a legal opinion and now, on this basis, a practical solution should be elaborated.

Action points

- Frontex to provide staffing plans for 2018-2019, number and grading and more info about the call/vacancy notes. FRO staffing breakdown to level/assistant/etc.
- DED to provide information on the extent of observations and reporting from Frontex deployed officers at the Hungarian-Serbian border.
- Frontex to consider inviting UNHCR to the next high level meeting on return.
- DED to provide information in the coming weeks on the state of play of the Fundamental Rights Strategy and CF consultation/timeframe.