

9th Meeting
Frontex Consultative Forum on Fundamental Rights

MAIN POINTS OF DISCUSSION

Date:	3 February 2016- Formal Meeting
Venue:	<i>Frontex Headquarters in Warsaw</i> Plac Europejski 6, 00-844 Warsaw Room no. 601
CF Chairs	[REDACTED] United Nations High [REDACTED] Jesuit Refugee Service (JRS)
CF members	[REDACTED] Red Cross EU Office [REDACTED] Amnesty International European Institutions Office (AI EIO) [REDACTED] OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR) [REDACTED] United Nations High Commissioner for Refugees (UNHCR) [REDACTED] Churches' Commission for Migrants in Europe (CCME) [REDACTED] European Council on Refugees and Exiles (ECRE) [REDACTED] Platform for International Cooperation on Undocumented Migrants (PICUM) [REDACTED] Jesuit Refugee Service (JRS) [REDACTED] Caritas Europa (CE) [REDACTED] the Advice on Individual Rights in Europe (AIRE Centre) [REDACTED] Council of Europe (CoE) [REDACTED] International Commission of Jurists (ICJ) [REDACTED] International Organization for Migration (IOM) [REDACTED] [REDACTED] (IOM) [REDACTED] OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR) <u>Absent:</u> [REDACTED] [REDACTED] European Union Agency for Fundamental Rights (FRA) [REDACTED] European Asylum Support Office (EASO), replaced by [REDACTED] [REDACTED] European Asylum Support Office (EASO)

1. Welcome and introduction

- ## 2. European Commission's Borders package

On 15 Dec 2015, the European Commission (EC) has tabled what has later been dubbed “the Borders package”. It mainly consists of three documents:

- ### b) Drafting process

- According to DED Körner, Frontex was *not involved* in the drafting process of any of the legislative texts proposed by the EC. The Agency was only integrated in some discussions, such as return matters.
- Frontex has internally established a *task force* led by Legal Affairs Unit (LAU) to go through the EC proposal which establishes a European Border and Coast Guard Agency (the Proposal). Meetings are held on a regular basis and count on the participation of different Frontex units/sectors. FRO has been sporadically invited to participate. These meetings aim at compiling Frontex' views, in particular Frontex' operational perspective assessing the actual feasibility of the implementation of the Proposal.

- The legislative package actually reflects what the current calls - for officers, technical resources - have not achieved. Frontex has however found inconsistencies in the relations between the different elements of the 'package' and also in the Proposal itself. For instance, on one hand, the

Proposal foresees a strong coast guard component but, on the other hand, there is currently little training for coast guards and no budget to develop new training materials.

- The Proposal poses challenges for the Agency, in particular from a structural/organisational point of view. It does not create a new Agency but it is meant to trigger an evolution from the current Agency. In order to assess the feasibility and impact of the Proposal's implementation, it will be necessary to do a vulnerability assessment. The final conclusions from the task force meetings will bring more clarity.
- The pilot project Processing of Personal Data for Risk Analysis (PeDRA) started on 1st February in JO Triton. This project is closely monitored and will be evaluated afterwards by Frontex. FRO was consulted in the process of drafting implementing rules. The second PeDRA pilot project will be in JO Indalo. In order to implement the project, Frontex concluded a new Working Arrangement with Europol. Therefore the enhanced role of Frontex in *internal security matters* reflects the already strengthened cooperation with Europol.
- Frontex has found itself in a situation in which if Member States (MSs) do not request support, Frontex could not intervene. It is still early however to assess the effect of the Proposal with regards to Frontex possibility to launch operations on its own initiative but a vulnerability assessment may not be enough.
- There is a need for a holistic approach which will also tackle countries of origin. A solely increase in the number of returns will not work but it needs to be accompanied by other elements/approaches.
- Issue of shared responsibility remains to be clarified, main challenge of the regulation with discussions on-going between EU-MS.

→ **Initial concerns that have been raised by Consultative Forum (CF) members in the debate:**

- Art. 60 of the Proposal provides for FRO and CF being included in the Frontex administrative structure. This may hamper the independence of both bodies.
- FRO should continue to report to CF.
- Capacities issue: The enlarged mandate of Frontex is not matched by the allocation of adequate capacities to FRO and CF.
- The inclusion of provisions on the individual complaints mechanism was welcomed, but stronger rules regarding the follow-up on cases and regarding the involvement of national ombudsmen as recommended by the EP and EU Ombudsman should be added.
- In the context of return operations
 - the monitors should be independent (in line with the Return Directive);
 - there should be clear rules on the suspension or termination of a return operation;
 - Article 27 (4) of the Proposal provides for return flights of third countries - in such a case the compliance of return decisions with EU standards is not ensured.
- A set of clear criteria and a mechanism for a gradual response to fundamental rights violations in the context of an operation (with the suspension or termination of an operation as a last resort) is still missing.
- Regarding the border guards pool, there should be clear rules on the chain of command and the division of responsibility/accountability.
- The Proposal should also provide for a proper training of coast guards on fundamental rights.
- Regarding cooperation with EUROPOL and other agencies, the problem of ensuring data protection remains a concern.
- A closer cooperation with third countries urgently calls for a clear division of accountability.

DED extended an invitation to CF to nominate representatives who will be invited to present its views and discuss with the Frontex task force. CF expressed its support to this approach.

Action Points

- × CF to nominate representatives for task force discussions.
- × Frontex to confirm date and timing of discussions.

3. Frontex new structure

The Frontex organisational structure was amended by Management Board (MB) decision of November 2015. This decision resulted in the following changes:

- Establishment of a cabinet to support Executive Director and Deputy Executive Director. The cabinet is currently comprised of 3 senior staff members;
- two new units have been created within Capacity Building Division (1) Third Country Cooperation; (2) International and European Cooperation;
- Return Sector is now Return Support Unit;
- a new full time data protection officer will be recruited;
- upgrade of functions and status of data protection officer (now full time reporting to the ED directly).

There is an ongoing process of recruiting the head of Return Support Unit and the head of Third Country Cooperation as well as the data protection officer.

4. Frontex Operational Response, state of play

a) Rapid Intervention Poseidon 2015

In January, DED visited Lesvos. He will revisit the area in 4 weeks. In February, there was an increase in staff and technical equipment (see infographic) in order to properly tackle the number of arrivals and decrease the number of casualties. Greek capabilities in forced and voluntary return matters have also been increased.

Rapid Interventions have a temporal limitation. Afterwards, if the figures remain high, Frontex will continue its support but the format will have to be decided.

RAU is constantly evaluating migration flows but there is no concrete targeted assessment on the reasons for the change in departures from Turkey. If the number of departures decreases from Turkish coast it is likely that the number of border crossings will raise in Bulgaria and further in the north, e.g. even at the Finnish-Russian border.

b) Hotspots

Frontex is concerned about the misleading information that hotspots were currently not operational. Even if the hotspots are not fully operational, several parts are already working, e.g. screening, accommodation. The only part which is not working is related to return. Relocation procedures could also be sped up. DED visited Moria and observed the need to enhance structures, strengthen procedures, including provision of information to migrants and refugees, and especially improve workflows. By mid-February all hotspots should be fully operational with the exception of one that should become operational by March. Contacts with NGOs are solely conducted by Greek authorities. DED points out that there are fields where he was able to observe good cooperation, e.g. support in SAR.

With regards to relocation, ideally it should be reached after screening and registration. In practice, the current workflow and the lack of reception facilities make the process slower and relocation from the Greek islands continue to be low. EASO is focusing on a communication package for Greece and Italy, based on leaflets and social media. Containers are ready to be transported to the islands once the hotspots are fully operational.

EASO and Frontex will cooperate on a Country of Origin verification tool, in particular the drafting of terms of reference for a set of information that can be updated usually and easy to use. This information could be shared with Frontex and potentially be part of screeners' tools.

Currently, 459 persons have been relocated, out of which 202 from Greece. Additionally, 197 persons from Italy and 321 from Greece are in the process to be relocated.

Return operations from hotspots are technically difficult. Frontex is not involved in returns from the Greek islands. DED does not exclude the possibility of using other means than air for return and/or readmission operations. This question has, however, not been on the table for the time being and many other considerations/safeguards would need to be taken into account.

→ **CF concerns**

- Registration processes at the Greek islands: access to international protection must be ensured;
- Need for a more systematic/integrated role of NGOs in the procedures;
- Restriction and criminalization of NGOs' and volunteers' activities, in particular SAR operations;
- Lack of information to migrants and refugees: ensure provision of information regarding every step of the procedure and access to legal assistance. IOs, and civil society organisations could play a role.
→ e.g. EASO-UNHCR cooperation in providing information regarding relocation.
- Given the mixed nature of the flow, there is a need to increasingly reinforce the capacity to ensure access to international protection and procedural safeguards to all, including the provision of information.
- Safeguards when processing personal data.

c) FYROM - Greek border.

Frontex deploys officers on the Greek side of the border in the framework of JO Focal Points Land. Frontex is strongly encouraging the Greek authorities to engage in JO Focal Points Land and provides the necessary registration support package. At the same time, MSs are deploying border guards to FRYOM as part of their bilateral cooperation. This results in a situation where border guards from MSs are deployed on both sides of the border. The lack of Greek preparedness and infrastructure to host Frontex deployed officers affects the number of officers that Frontex can deploy and delays their operational engagement.

d) VEGA Children

There is no update on VEGA Children Land and Sea. CF supported the drafting of VEGA Children Air and participated in JO VEGA Children. CF continues offering its support to Land and Sea and considers a good practice to test the content of the Handbook in an actual operation, as it was done with VEGA Children Air.

a) Data sharing

Frontex reported on a pilot Project for data sharing (PeDRA) under JO Triton in February to assess procedures and security of communications with Europol following new working arrangement (which was approved by EU Data Supervisor).

A second pilot will be launched under JO Indalo in summer 2016.

Action Points

- × Frontex to provide update on the progress of VEGA Children Land and Sea in order to facilitate CF planning;
- × CF to explore ways to support Frontex on children related matters, e.g. support the development of Standard Operating Procedure for hotspots;
- × CF to visit Rapid Intervention Poseidon linked with a visit to JO Focal Points Land and possibly JO Hera;

- × CF to assess potential contribution to operational briefings in cooperation with their local partners, to the extent of its capacities;
- × CF to organise a meeting with Press/Communication team as agreed end 2015;
- × Frontex to provide an update on the operational status before CF meetings via CF Secretariat to facilitate discussions;
- × CF Secretariat to collect list of operational briefings and transmit to CF.

5. FRO report

FRO receives average of 15 complaints per year. The follow up of those complaints remains complex since the investigation lies on MSs. Nevertheless FRO and Frontex actively seeks information about the outcome of the procedures at the national level. In this regards, FRO observes that the upcoming setting of a complaint mechanism needs to include safeguards with regards to follow up mechanisms to ensure its effectiveness. Otherwise, the establishment of a system of individual complaints may reflect the inadequacy of the current internal monitoring system.

Serious incident reports (SiRs) allow FRO to identify common issues or consistent patterns that come up in Frontex JOs. For instance, FRO perceived that not every MS reports in the same way on the follow up of incidents, and some of them openly ask for more guidelines.

13th FRO report contains for the first time an incident reported during a return operation. FRO does not systematically receive reports from national monitors.

Areas where FRO observes a need for further strengthening:

- Child protection;
- Information on access to international procedures: possible piloting of tool access to procedures in hotspots;
- Return from hotspots: risk assessment needs to be factored;
- Effective referral of possible victims of THB;
- Need to provide FRO observations in evaluation reports;
- EBG pool: fundamental rights mainstreaming.

Action points

- × Frontex to closely follow up reported incident number 2 regarding CNN video footage from Turkey.

6. CF Annual Report

2015 CF annual report is based on the activities described in the activity report that has already been shared with Management Board members during MB meeting in November. The drafting and publication process is compiled in a Standard Operating Procedure (SoP) for CF AR.

The CF Annual Report will be provided to MB members as a meeting document for the MB meeting on 30-31 March. CF Chairs will present the report to MB members on 30-31 March. Publication of the report is expected by April.

The activities and recommendations contained in the report will be in line with the mandate of the CF.

Action Points

- × CF Secretariat to send 2015 CF Annual Report to MB Secretariat by 14 March to be included among meeting documents of March MB meeting with regards to CF AR;
- × CF Secretariat to share SoP with MB/DED;
- × MB to support the implementation of the issues highlighted in the report.