

IV FRONTEX FUNDAMENTAL RIGHTS OFFICER REPORT***To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*****31 January 2014****Overview**

During the reporting period (1 November 2013-31 January 2014) one SIR on Search and Rescue (SAR) was reported from the JO Poseidon Sea on Farmakonisi Island. The tragic incident resulted in the death of 11 migrants, all women and children. After the event, survivors alleged that the towing of the boat was directing towards Greece in a push back attempt, contradicting HCG statements.

FRO has also worked closely with the TRU on the implementation of the Trainers' Manual on Fundamental Rights for Border guards and has taken several chances to explain in public the aim, content and scope of the Frontex Code of Conduct for Joint Return Operations.

1. JOINT OPERATIONS**a) Incidents reported**

On 20 January, a SIR on a SAR arrived to Frontex from the ICC in Pireus. The reported concerned a Search and Rescue Operation that had occurred that night (aprox 2 am) in which a fishermen boat with 27 migrant onboard sank 1,5 MN off the coast of Farmakonisi island while being towed by the Hellenic Coast Guard. 11 of the migrants, all children and women, could not be rescued and died, and only 2 of the bodies have been found off the Turkish coast. No Frontex assets were involved in the SAR operation.

After the incident, UNHCR, the Council of Europe Human Rights Commissioner and several other civil society organizations national and international, released public statements requesting an independent investigation on the event, as survivors had claimed that the boat was being towed towards Turkey and not towards Greece. FRO has been following up the information from open sources on the allegation of a push back/collective expulsion in this case. The incident was subject of a heated debate in Greek Parliament on 29 January, in a session attended by both the Head of the Coast Guard, Vice Admiral [REDACTED] who explained in details the circumstances of the tragic incident and apologized to the families of the migrants who drowned, as well as by the Minister of Maritime Affairs, [REDACTED]. The case is

currently under investigation by the Hellenic authorities and Frontex will follow up the outcome of those procedures.

b) Joint Operations

FRO and Return Sector have discussed options to enhance the full implementation of the newly adopted Code of Conduct on Joint Return Operations during Frontex coordinated flights. To the extent possible and taking into account other duties, FRO has offered to participate in flights where no presence of monitors is ensured by MSs.

c) Other Operational projects

On 10-12 December, FRO team supported Air Border Sector work during a meeting on the draft VEGA Handbook on Children at risk in airports. The meeting was attended by several national experts and a selected group of NGOs and international organizations with child protection focus and experience in providing legal and psychological support to children in this context, including also CF members such as FRA and UNHCR. It provided for an excellent and well received opportunity to contribute to the draft Handbook in a constructive environment. Air Border Sector is currently incorporating the conclusions of the meeting into the text.

d) Support Frontex Monitoring System on Fundamental Rights

During the Management Board on 27 November, FRO presented the draft concept for an effective Monitoring System on Fundamental Rights for all Frontex activities. Due to time constraints in the agenda, the discussion and feedback on the proposal was postponed until the Management Board scheduled for 19 February 2014.

e) Evaluation Reports

FRO has been gradually receiving all Frontex Evaluation Reports from closed 2013 operations. FRO is progressing in establishing some patterns on the fundamental rights impact and lessons learnt in this matter. The exercise is proven lengthy as it requires taking stock of the 2012 initial assessments, training initiatives and guidelines, and both external and internal recommendations. The initial FRO assessments will be attached to the FERs regularly upon completion during the month of February.

In this period, FRO has also received FERs from JRO organized to Pakistan, Ukraine and Georgia, Serbia, Ecuador and Colombia, DCR and Nigeria.

2. CAPACITY BUILDING

On 4-7 November, FRO attended training for trainers session on Fundamental Rights for Border Guards organized by Frontex in Valetta, Malta. FRO had the opportunity to introduce to the participants the scope and importance of the Frontex obligations and legal framework in the field of fundamental rights, including the Schengen Borders Code and the Charter of Fundamental Rights. She also briefed the officers about the Frontex Strategy on FR and the tools that the Agency has to ensure FR compliance during operations (CF, FRO, trainings, briefings, monitoring system, incidents, etc).

The training was well structured and focused on practical exercises of the future trainers, with the assistance of the drafter of the Handbook as well as two national experts. The challenge was to level the various training experiences of the participants and accommodate all the needs. After conclusion of the three days training, FRO also supported TRU and the trainer to identify ways to improve the upcoming sessions of the training in the future.

On the same matter, FRO also attended a meeting of the TRU in Warsaw on 20-21 January to consolidate the training curriculum with several national trainers. The curriculum will to be used in the 3 sessions for trainers that Frontex has planned this year. A special session was devoted to the possibilities around future online training of this tool.

FRO has also provided initial comments to the draft on current practices on prevention of unauthorized border crossings from a fundamental rights perspective. The project, coordinated by Capacity Building Division, aims to collect the *status quo* on current practices around Article 12 of the Schengen Border's Code that reads: "[T]he main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC".

3. FUNDAMENTAL RIGHTS STRATEGY

NTR

4. RELATIONS WITH OTHER FUNDAMENTAL RIGHTS ORGANIZATIONS AND BODIES

On 8 November, FRO had various introductory meeting with key stakeholders in EASO to discuss possibilities of strengthening cooperation in fundamental rights-related areas of common concern. Hosted by the EASO representative to the Frontex Consultative Forum, FRO met with Head of Risk Analysis and learned about their products and future plans and projects. FRO also met with the Head of the Training Unit and was especially interested to learn about the possibilities to use the on line tools on international protection for Frontex staff/ GOs interested. Finally, FRO met with the Director of Operations, who explained the areas of work of the Unit, and provided very useful material for general awareness on their activities. The idea to strengthen cooperation in Bulgaria was much welcomed and will be further elaborated, especially in the operational areas.

On 18 November, FRO was invited to participate in the Office of the High Commissioner for Human Rights (OHCHR) Expert Meeting on human rights at international borders held in Geneva, Switzerland. OHCHR is in the process of drafting "*principles and guidelines on human rights at international borders*". FRO, with the support of Operations Division, commented the draft document and provided suggestions in advance to the meeting. During the meeting, experts from academia, human rights, NGOs, IOs, States and other organizations met to discuss the draft and provide additional feedback to the proposed text. Participants included some members of the CF, FRA and the UN Special Rapporteur on the Rights of Migrants. Issues such as its usefulness for practitioners -very much of Frontex's concern-, structure and length of the document, definitions, language, etc., were discussed as well. Substantive topical aspects such as best interest of the child, effective remedy, empowerment, legal advice, SAR, new technologies, discrimination at the borders, cooperation with third countries, among other issues were also discussed. FRO focused her contribution on aspects related to access to proper procedures upon apprehension and reception conditions at the border, which are directly linked to fundamental rights during joint operations.

On 20 November, Frontex was invited by ICMPD to attend the Opening Conference of the Forced return monitoring (FReM) Project in Vienna. The Conference had the objective to gather all parties involved in the project as well as other relevant stakeholders to present the project and discuss its aims and activities. The meeting also allowed for sharing of valuable experiences in

the area of forced return monitoring by those MS with consolidated monitoring mechanisms. FRO made a presentation about the Frontex monitoring system of compliance with fundamental rights and the principles and standards included in the newly adopted CoC for Joint Return Operations. Frontex has accepted to become an observer in the development of the project and provide its consolidated expertise in the field of return fights.

On 22 November, FRO and Frontex Legal Unit were invited by DG HOME (Unit B.1 - Immigration and Integration) to attend the 14th meeting of the Return Contact Committee and present the Code of Conduct on JROs. The joint presentation highlighted the fact that Frontex would like to see the highest possible standard of fundamental rights implementation during the Frontex coordinated flights and constantly encourages MS to provide for a monitoring system in-flight for all JROs. HOME also informed that there could be funds available to support the establishment of monitoring systems for MS if required. ICMPD made a presentation about their project on Force Return Monitoring (FReM) that aims supports all these efforts in MSs.

On 29- 30 January, FRO attended the stakeholders conference organized by DG HOME on 'An open and safe Europe: what next?' and also participated in the panel on 'a credible return policy'. FRO highlighted the need to implement the high standards on fundamental rights during return operations and explain how those were implemented in practice during Frontex coordinated JRO. FRO also noted that monitoring of these operations, increasing transparency and accountability, are key elements to enhance public credibility of the highly sensitive issue of EU return policy. JRS was also member of the panel.

5. PLANNED ACTIVITIES AND UPCOMING EVENTS

- Consultative Forum, Warsaw, 6 Feb
- Management Board Meeting, Warsaw, 19 Feb

6. OTHER ISSUES

FRO participated in the Management Board Meeting on 27-28 November in Warsaw and, aside her regular reporting, shared her concerns on the situation of fundamental rights in the Mediterranean following the tragic events in Lampedusa on 3 October. She focused on the obligation to consider fundamental rights obligations during maritime operations and also in the framework of cooperation with third countries. The presentation made wide reference to the FR Report on the Fundamental rights at Europe's southern sea borders from March 2013.

FRO has also participated in training sessions on internal administrative and financial matters in this period, in order to prepare for the upcoming 2014 task of managing FRO's own budgetary resources. This is a very welcomed development that will contribute to having less dependency on other internal operational or administrative budgets or external invitations from partners to participate to mandate-related events and perform the tasks required by the position.

FRO was invited to briefly present the issue of Fundamental Rights strategy and tools within Frontex during the meeting with Third Countries on 3 December. She also attended the conclusion of the Frontex hosted International Border Police Conference on 25-26 November, which aims to share experiences on the latest developments within the border police community.

FRO is pleased to continue counting on the support from [REDACTED], FRO intern, whose contract was extended until mid-September 2014. His tasks within FRO team work, specially focused on research and preparation of support material, are highly appreciated.

7. RECOMMENDATIONS

- Support the development and implementation of the Trainers' Manual on Fundamental Rights for Border Guard in the national education systems for border guards. The course is a very important tool to ensure fundamental rights awareness and understanding on the border guard daily practices, both nationally and within Frontex Joint Operations.
- Continue the positive trend of increasing establishment of effective force return monitoring systems in MS and also support the Frontex efforts to ensure presence of monitors in all JRO. The regular sharing of the MSs monitoring reports with Frontex will likely result in better standards effectively applied in JRO in the future.

