

7 May 2013

**I FRONTEX FUNDAMENTAL RIGHTS OFFICER REPORT****TO Frontex Management Board and Frontex Consultative Forum on Fundamental Rights****22 May 2013****Overview**

The initial period of work of the Fundamental Rights Officer (FRO) has focused on internal and planning work, and the revision of existing documentation, procedures and systems in order to become acquainted with the organization, to start assessing its needs in the area of fundamental rights and to support future preventive and corrective measures. Activities have included the revision of several operational plans to be implemented during 2013, the -still ongoing- review of the Serious Incident Report (SIR) system as the basis that support the Frontex monitoring system for fundamental rights, together with introductory visits to land, sea and return operations. Hence, structural and internal issues within Frontex have taken most of the FRO's work capacity. The monitoring capacity will increase as the operational needs rise during the summer period.

**1. JOINT OPERATIONS AND INCIDENTS REPORTED**

Since the beginning of 2013, and based on the focused mandate to support operational activities from a fundamental rights perspective, FRO supported the planning, revision and provided overall comments to the following Joint Operations (JO):

- Poseidon land,
- Poseidon sea,
- Attica.

Furthermore, FRO provided comments and suggestions to operational plans of the following joint operations (see list as Annex 1): Hermes, Indalo, Aeneas, Neptune, Project Coordination Points, Focal Points Air and Flexi Force.

**FRO's main observations to Operational Plans include:**

- Increased insertion of fundamental rights considerations already from the first page on, including the mention to the FRO's monitoring capacity and the advisory role of the Consultative Forum, whose reports shall be considered in the implementation of the operations. See a sample in Annex 2;

- Strengthening guarantees of the right to asylum and protection in the operational plans, directly mentioning the obligation to refer those claims to the national authorities for all participants in Frontex activities;
- Introduction of a specific paragraph on cooperation with EASO, after both organizations signed a working arrangement in September 2012. The plan to develop guidelines to support the identification of persons in need of international protection was also included;
- Highlighting the importance of the reporting system as crucial means to ensure Frontex monitoring of fundamental rights in all its activities, as mandated by Article 26a of the Frontex amended regulation;
- Strengthening the Serious Incident Report (SIR) reporting mechanism and its importance for the proper monitoring and follow up to fundamental rights related incidents. SIR is included in the text of the operational plan as well as a specific annex with a mention to rights potentially affected by border control and surveillance activities;
- Ensuring the provision of basic needs to migrants before any other immigration procedures is undertaken by Frontex (screening, debriefing, etc).

Aiming to support awareness and understanding on fundamental rights of staff deployed to Frontex coordinated operations, FRO has revised and suggested some improvements to the fundamental rights framework in the briefing material and presentations on parts of the Poseidon programme. As other activities are due to start, FRO has offered Joint Operations Unit (JOU) to revise briefing packages for the upcoming joint operations.

#### **Incidents reported**

On her first day at Frontex, 17 December 2012, FRO received a SIR via Frontex Situation Centre (FSC) from Orestiada team, where a debriefer reported information received from an alleged Syrian national, who claimed that he had tried to cross the border at the Evros region already in September and October together with larger groups of migrants. He was arrested by the Hellenic Police and the entire group, he claimed, was transported back to Turkish territory in a motor boat.

On January 24, a similar case was reported by a Dominican national held in custody at the Mytilene Police Directorate in Lesvos. He claimed that, together with 5 other Dominican nationals, he had tried to cross the border to Greece at the Evros region in November 2012, were arrested by the police while waiting for a facilitator in a hotel and taken back to the river bank. He claimed to have been transported by boat back to Turkish territory by two Greek police officers dressed in black clothes without identification and also that police had stolen his money.

A third SIR report was submitted from Bulgaria on 25 March, when a Tunisian national explained to a debriefer he had been pushed back from Bulgaria to Turkey. The description of the uniforms corresponded to Greek Police and not to Bulgarian Border Guards but he was unable to provide further details on the alleged incident.

In accordance to the “Standard Operating Procedure for possible violations of fundamental rights during Frontex coordinated Operations”, adopted in July 2012, both Legal Unit and FRO make independent assessments based on the situational information received from the Operations Division and deliver them to senior management for further handling and decision.

FRO’s assessments in all aforementioned cases highlighted that the allegations correspond to informal- “push backs” at the EU external borders of Greece (or Bulgaria). The practice, in

brief, may constitute a violation of, among others, two provisions of the Charter of Fundamental Rights of the European Union:

- Art. 18 on the right to asylum, since migrants are already under the jurisdiction of a EU MS but prevented from accessing its territory and therefore denied the right to seek asylum or international protection;

- Art. 19 on the prohibition of collective expulsions and the protection against *non-refoulement*, as the lack of adequate processing of their arrival -and eventually their removal- without adequate consideration to their individual circumstances, puts them at risk of harm and leaves them without guarantees of access to any protection system in case of need. Turkey does not recognize refugee status to non-European citizens.

In order to ensure more systematic and centralized follow up to the SIRs on fundamental rights matters reported from operational areas, Frontex Executive Director (ED) and the Hellenic Police agreed to establish "joint investigation/follow up teams". The Hellenic Police appointed a contact person for these matters on 31 March and the system is expected to be used once a new SIR is notified and the need arises.

In January 17-21 2013, FRO visited the operational area of the Lesvos region (Poseidon Land 2012) to learn about activities and procedures on the ground in Orestiada and Alexandroupolis. The visit allowed for a preliminary needs assessment on fundamental rights for operations and also to adjust recommendations to the reality of the operation.

During the January visit, FRO visited the fence constructed by Greece at the border with Turkey. On 9 April 2013, a SIR was submitted via FSC based on a situation that had occurred the previous night at the fence, when two Afghan migrants had attempted to persistently climb over it. The Hellenic Police convinced them to step down due to the real mortal danger because of the barbwire. After several hours, a Turkish patrol took them away but the two migrants returned after merely one hour and tried to climb again. The SIR reported that the authorities had specifically requested the two migrants why they wanted to cross and they answered that they wanted to get to Italy. FRO expressed concern in her assessment, as it is likely that a similar situation might result in a request for protection or asylum in future cases and the fence is clearly located in Greek territory.

The dramatic issue of deaths at sea -and also inland- were reported regularly via FSC from media and national authorities' sources in active operational areas in Greece. The case of seven Syrian nationals found in the sea off shore the island of Lesvos on 17 and 21 March raised a high level of attention from national and international media, and also included concerns about the detention conditions of migrants upon arrival to the Aegean Islands. The concerns were also publically voiced, among several other actors, from Amnesty International, ECRE, Statewatch, PICUM, UNHCR, and the FRA Report on the Fundamental Rights at Europe's Southern Sea Borders.

Following a SIR on 15 April, FRO visited Lesvos and Samos on 17-20 April in order to assess basic fundamental rights prior to commencement of JO Poseidon Sea. The lack of adequate reception facilities in Lesvos is resulting in migrants being kept at the port facilities without any shelter or sufficient sanitation for several days, and receiving only the food and basic supplies that volunteer organizations provide them with. It is unclear -other than lack of facilities- the reasons why the Police take several days/weeks to complete the registration procedure and the migrants are not swiftly, either released with an order to leave the country, or detained for the purpose of removal. Minors and women were kept in detention to avoid being left out sleeping in the open port. During the visit, humanitarian organizations alerted FRO on the presence of scabies, a disease that requires hygienic conditions, not available at the port, as obligatory treatment. The lack of facilities at the port had obliged to use the Frontex container as an

improvised medical clinic, with the subsequent risk for the health of deployed staff. The situation requires urgent attention to guarantee that fundamental rights are respected in the island of Lesbos.

### **Joint Return Operations**

On 16 April FRO jointed a JRO to Georgia organized by a Georgian carrier with two MSs (DE, PL) and eight returnees (initially foreseen twelve). FRO chose this small operation to allow a more careful observation of the conduct and procedures used during forced return flights, especially focused on use of force, availability of means of constraint, luggage and identification, hand over among various authorities, embarkation, flight and catering, availability of interpretation and medical personnel, and disembarkation. No handcuffs were used at any time of the process, no use of force was observed, and overall, it was a quiet operation. In accordance to Article 11c of the amended regulation, FRO did not receive information about the identity of the returnees or any other personal data in advance to the operation.

The only incident observed was related to the returnees' complaint about the lack of space for smoking at the airport terminal before embarkation. After some discussion, the situation was quickly resolved and they were allowed to smoke outside the terminal escorted by the police.

### **Other Operational projects**

On 14 March, FRO participated in the initial workshop organized by the Air Border Sector (ABS) with representatives from EU Airports to develop initial ideas and support to the drafting of a Handbook for identification of children at risk at the air borders (VEGA Children), focused on criminal activities affecting this vulnerable group. The discussion took place within the framework of the annual Head of Airports Conference and included representatives of third countries. Further to the initial discussion, experts on anti-trafficking met with the ABS at the end of April in Dublin to discuss the objective, scope and content of the project.

### **Support Frontex Monitoring System on Fundamental Rights**

FRO has observed significant progress in the establishment of a monitoring system for fundamental rights in Frontex. Such a system should necessarily include, as a minimum, the following 5 phases:

#### **1. Information gathering**

The SIR is in the process of amendment, and the idea to include an annexed non-exhaustive list is in progress, subject to regular reviews. FRO is regularly using external sources of information, also due to visits to operational areas. The visits have started to produce a preliminary list of issues to monitor in each situation and standards to follow during various activities that require consolidation and structure as a monitoring tool.

#### **2. Verification of information**

This phase is, so far, the most challenging aspect of the monitoring system, as it is within the mandate of host MS to investigate the allegations included in SIR reports. FRO monitoring capacity to support the process has been limited by lack of sufficient administrative support in other areas of work. The practice of appointment of a focal point for fundamental rights issues within host MS institutions could be considered by other Frontex partners in operational areas.

#### **3. Analysis**

FRO has extensively conducted desk research and compiled legislation, case law, reports, recommendations, standard setting documentation, etc. to support the development of a

monitoring system. This aspect requires additional administrative and expert legal support in order to allow FRO increasing monitoring capacity.

#### 4. Reporting

FRO is currently reporting to Management Board, Consultative Forum and Executive Director (ED). The compilation of all activities in one single report requires a balance between facts, activities and assessments. Subsequent monthly reports will make the report less extensive. FRO encourages suggestions for further improvement of the current format.

A monthly meeting with ED has proven to be a helpful tool to follow up on internal needs or measures assessed by FRO (letters, meetings, actions, etc).

#### 5. Follow up on implementation of recommendations

To date, all comments provided by FRO were duly taken into account in the operational plans often after clarification and discussion with the project manager. The SIR are in general also timely delivered in accordance to instructions from Operational Plans.

The basic monitoring system proposed will be developed along with the monitoring activities and, once tested and agreed upon, it will be reflected in an adequate internal procedure before 2014 operations start.

### Evaluation Reports

FRO has received and read all evaluation reports from completed operations, and as explained in the PoW 2013, she has not assessed them since the impact of the exercise would be rather minimal and time consuming. In general, FRO has observed limited fundamental rights considerations in the reports, and will consider ways to increase this matter in upcoming reports, in the form of specific questions in debriefing questionnaire to Frontex joint operations 'participants, further dissemination of fundamental rights information material, or other alternatives. The issue will be internally discussed once all upcoming operational plans are revised.

FRO was invited to provide a presentation on her role and functions during the Operational Division Meeting on 22 March, as an introduction for the Frontex operational staff.

## 2. CAPACITY BUILDING INITIATIVES

Frontex Training Unit invited FRO to attend the Training Unit planning meeting on January 15, which provided a good opportunity to receive a full briefing on the activities of Frontex in this field. FRO also had a chance to present herself and her function to the team.

On 26 February, FRO participated in the expert meeting tasked to finalize the draft on the Manual for Trainers on Fundamental Rights for Border Guards, where she provided comments and took part in the discussion. The drafting process is very close to completion and the pilot training has taken place at the end of April to allow a revision of usefulness of the text and training material.

The training on fundamental rights for Frontex staff was piloted on 16-17 April and external partners, such as FRA and UNHCR, also attended the 2,5 day session. The scope of the training and the materials used are currently under revision based on the feedback received and they will be finalized in the upcoming weeks.

On 24 April, Frontex Information and Transparency team organized a town hall meeting on fundamental rights with FRO's and ED's participation, to launch the internal fundamental rights



training for Frontex staff and raise awareness on the matter. The meeting also served the purpose of a more general introduction of FRO and her functions to all Frontex staff.

After receipt of comments from the Consultative Forum, from the Member States Expert Group on Returns and from the Frontex Management Board, FRO provided initial support to the Frontex staff (Legal and Returns Sector) in charge of drafting the Code of Conduct for Joint Return Operations (CoC on JRO) in an attempt to ensure fundamental rights obligations and best practices on forced returns in the text. The issue of monitoring of forced returns seems to be subject to debate and divergent opinions. ED requested input from the Consultative Forum on the new draft at the end of April and a new version of the CoC is ready for discussion in the MB on 22 May. Consultative Forum has also provided comments to the text.

At the end of February, European Commission (DG HOME) representatives provided FRO with an update on the status of the upcoming Eurosur regulation. The European Parliament has put forward an amendment to include the FRO (and potentially Consultative Forum) monitoring of fundamental rights aspects in the implementation of the Eurosur programme. Subsequently, FRO got engaged in the planning and drafting process of the "Handbook for Eurosur" currently in progress within Frontex that will propose a Table of Content and structure for the EC to consider.

Frontex appointed a Focal Point on Data Protection in 2012, where all issues related to this matter are centralized. Consequently, FRO is not dealing directly with data protection issues.

### **3. FUNDAMENTAL RIGHTS STRATEGY AND ACTION PLAN**

FRO used the Frontex Fundamental Rights Strategy and Action Plan as the basis for her Program of Work for 2013. The PoW was presented in January to the Consultative Forum and in February to the Management Board.

### **4. RELATIONSHIP WITH OTHER ORGANIZATIONS AND BODIES**

On 28 February, UN Special Rapporteur on Human Rights of Migrants met with FRO and Relex-IO in Brussels. FRO compiled informal initial comments to the draft report on "Management of EU External borders and its impact on the Human Rights of Migrants" that will be presented at the Human Rights Council at the end of May.

On 27 April, FRA launched a report on the "Fundamental Rights at Europe's Southern Sea Borders" that should definitely serve to set the highest standards in Frontex sea operations. The FRA was fully supported by Frontex during their research period and have consulted Frontex in different drafting stages.

FRO has also noted recommendations from the Council of Europe Parliamentary Assembly (PACE) on "Frontex: Human rights responsibilities" and the recent draft recommendations from the Ombudsman of the European Union following an ex-officio Frontex inquiry on respect of fundamental rights and is assessing how to incorporate them gradually into Frontex activities.

FRO has also provided presentations during the following events:

- ERA seminar on "Keeping the EU's external border secure: Latest development", 18 March, Warsaw;
- UNHCR mid-term review RVA Project on Vulnerability and Asylum in Prague, 25 April, Prague;
- FRA Fundamental Rights Platform, Workshop on the Frontex Consultative Forum, 26 April, Vienna (workshop held by the Consultative Forum Chair and Co-Chair and attended by the Assistant to the FRO).

## 5. FRO RECOMMENDATIONS

1. FRO requires a solid focus on the planning and assessment of fundamental rights aspects for joint operations between November 2013 and May 2014. The 2013 exercise is showing that timelines are very short and do not provide room for lengthy discussions once drafting has commenced. The implementation of operations of 2013 are expected to yield conclusions to allow a more needs-based and impact assessment on fundamental rights matters in future operations;
2. FRO to revise the Multi Annual Plan 2014-2017 to introduce fundamental rights aspects, as suggested by the Management Board meeting in March;
3. In order to increase monitoring capacity, FRO encourages MS to provide Monitoring Reports during Frontex coordinated return flights when feasible and available, especially in cases where MSs have observations on fundamental rights aspects;
4. FRO to start structuring and systematizing monitoring criteria for various types of operations. The documentary compilation on obligations and standards is already in progress and it is focused on compiling legislation, case law, recommendations, standard setting documents, reports, etc;
5. FRO suggests FRA to provide a presentation of the report on “Fundamental rights at Europe’s Southern Sea Borders” to the Joint Operations Unit/Operations Division, not only on the specific Frontex chapter but the overall recommendations and practices compiled.

## 6. MISCELLANEOUS

The selection process for the position of Assistant to the FRO and Secretariat to the Consultative Forum has been completed. The candidate selected is expected to start contract on 16 May 2013. Upcoming tasks include selection of a volunteer for research purposes and creation of a specific budget for fundamental rights matters within the Agency.

FRO liaised with Frontex Quality Manager and Controller on the introduction of fundamental rights considerations into the draft Frontex Programme of Work 2014 to include both fundamental rights as a key priority in Frontex work and throughout the document. Furthermore, FRO also supported the design of a Business Process to deal with Fundamental Rights matters within the structure of the organization as an overall process of 1<sup>st</sup> level, and mainstreaming all other processes.

Transparency and Communications Unit and FRO have started an exchange of ideas and possibilities on how to approach fundamental rights matters in Frontex communication products (web page, videos, material, etc).

**ANNEX 1. List of Operational plans reviewed and commented as of 6/5/2013:**

**Sea Border Sector**

- Extension JO Poseidon Sea 2013
- Joint Operation European Patrol Network (JO EPN) Hermes 2013
- JO EPN Indalo 2013
- JO EPN Aeneas 2013

**Land Border Sector**

- Extension JO Poseidon Land 2013
- JO Neptune 2013
- Project Coordination Points 2013

**Air Border Sector**

- JO Focal Points Air 2013
- JO Flexi Force 2013

**Joint Returns Sector**

- Attica
- Standard Operational Plan



## **ANNEX 2. Sample on Fundamental Rights in Operational Plans**

### **1.2. Fundamental Rights in Frontex activities**

#### **1.1.1. Obligations of Frontex**

Frontex is obliged to fulfil its tasks in full compliance with the relevant EU law, including the Charter of Fundamental Rights, the relevant international law, including the Convention Relating to the Status of Refugees from 1951, obligations related to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights, and taking into account the reports of the Consultative Forum referred to in Article 26a of the Frontex amended Regulation.

The Frontex Regulation requires Frontex to put in place an effective mechanism to monitor the respect for fundamental rights in all its activities. One of the steps to fulfil this task was to develop a Frontex Code of Conduct applicable to all persons participating in Frontex activities. Frontex Code of Conduct (Annex 6) lays down procedures intended to guarantee the principles of the rule of law and the respect for and promotion of fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as on persons seeking international protection, including the obligation of referral to national authorities for receiving asylum requests. Pursuant to the provisions of the Frontex Regulation, a Fundamental Rights Officer is appointed to assist the mechanism of monitoring the fundamental rights issues in the Frontex activities. Fundamental Rights Officer has, in accordance with the Frontex Regulation, the right to access and monitor all Frontex activities in terms of respect for fundamental rights.

As regards briefing activities, Frontex is obliged to take the necessary initiatives to ensure that all border guards and other personnel of the MSs who participate in the European Border Guard Teams, as well as Frontex staff members, have received, prior to their participation in operational activities, a training in relevant EU and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.

Furthermore and pursuant to the provisions of the Frontex Regulation, Frontex has an obligation to suspend or terminate its operational activity in a case of serious or persistent violations of fundamental rights or international protection obligations.

#### **1.1.2. Obligations of all persons involved in Frontex activities**

All persons involved in Frontex activities are obliged to maintain the highest standards of integrity, ethical conduct, professionalism and respect for fundamental rights. They are expected to meet obligations imposed upon them by the provisions stated in the present Operational Plan and are obliged to comply with the rules of their mandates. While taking part in Frontex activities, they are obliged to comply with the European law, international law, fundamental rights and national law of the host MS. Furthermore, the home MS of each border guard shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of an operational activity.

All persons involved in Frontex activities are to act responsibly and proportionately to the current objectives. While performing their duties they shall not discriminate persons on grounds of sex, race or ethnic origin, religion, belief, age or sexual orientation. They are expected to treat every person with courtesy, respect and due consideration for the nature of any legitimate activity in which they are engaged. They are obliged to report all observations regarding violations of fundamental rights via the appropriate chain of command and reporting channel. Prior to their deployment they have an obligation to participate in the briefing activities, including on fundamental rights issues.

### **ANNEX 3. Evaluation Reports revised as of 6/5/2013**

#### **Sea Border Sector**

- EPN Mobile Operations Unit 2012
- EPN Hermes 2012
- EPN Hera 2012
- EPN Aeneas 2012
- EPN Indalo 2012
- EPN Pilot Project Reporting Tools

#### **Land Border Sector**

- Project Coordination Points Land 2012

#### **Air Border Sector**

- Pilot Project Reference Manual 2012

#### **Joint Return Operation Reports to**

- Georgia
- Armenia
- Nigeria
- Colombia
- Dominican Republic
- Serbia
- FYROM (Former Yugoslav Republic of Macedonia)
- Ukraine