

III FRONTEX FUNDAMENTAL RIGHTS OFFICER REPORT*To: Frontex Consultative Forum on Fundamental Rights and Frontex Management Board***31 October 2013²****Overview**

During the reporting period (September-October 2013), several incidents took place in the operational area of Poseidon Land and Sea, in both Bulgaria and in Greece.

The tragedy of unseaworthy boats capsizing in the Mediterranean sea, notably the two events that caused 390 migrants to die close to Lampedusa in early October, has drawn attention over the SAR capacities of the MSs and the increasing support Frontex could provide them.

FRO has also supported the development of the Basic Training on Fundamental Rights for Frontex Staff, and continues to gradually support and develop a comprehensive concept for a monitoring system for respect of fundamental rights within the Agency.

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

Since the last FRO report to the MB and the CF on 30 August, there have been an increasing number of incidents reported via the internal Serious Incident Report (SIR) mechanism.

Justification no. 3
(see the legend)

1. As a follow-up to the SIR submitted on 29 August from JO Poseidon Land, when a police officer outside of the [REDACTED] kicked a migrant once who avoided entering the Reception Centre for further police processes, Frontex followed up on the case closely with the Bulgarian authorities. On 17 September, Frontex and FRO received a full update from the Bulgarian authorities. After the incident, the authorities formed an official committee tasked with verifying the facts regarding the incident and taking decisions on further measures. As a result of the disciplinary procedure, the officer was reprimanded and removed from performing surveillance duties at the border.

2. The increasing number of arrivals at the Turkish-Bulgarian border has already exceeded the capacity of the reception centres and police stations in that area of Bulgaria. Guest Officers

(GOs) in the area of Elhovo reported that 20 migrants, apprehended on 9 September, had spent the night without shelter outside the BCU. Only females and children slept inside the building during the night. Frontex GO confirmed that the following day there were no more people without shelter in the area, after some asylum seekers had been transferred to Sofia.

As a response to the increasing number of mixed migrations flows – the majority of them Syrians asylum seekers – the Bulgarian authorities formed a ministerial group that decided to implement an emergency action plan. Furthermore, construction and renovation of additional reception capacity started in the area. Bulgaria has called for further assistance from the EU, and Frontex has also provided additional screening and debriefing teams in Bulgaria during the last weeks.

Justification no. 3
(see the legend)

3. On 13 September, a debriefing team [REDACTED] reported that a Syrian asylum seeker claimed to have been subject to an informal “push back” by the Hellenic authorities. In the early hours of 6 September he crossed the Evros River from Turkey to Greece as part of a group of eight migrants with the assistance of a facilitator. Another facilitator lead them to a coffee shop, where the police arrested them, took them to a village police station and kept them waiting for some hours, then transferred them to another sort of detention facility. Later the same day, the migrants claimed that all their money was stolen by the officials, that they were handcuffed and forced to the boats and pushed back to the Turkish side of the river.

Bulgarian authorities collected all the details of the case and submitted it to the Greek authorities for information and follow-up. Operations Division sent a letter requesting further information about the case and FRO discussed the severity of the case with the Hellenic Police and both suggested activating the joint follow-up mechanism (Frontex/host MS) to carefully assess the information and clarify the allegations of fundamental rights violation and to support the national authorities’ investigation. On 17 October, the Hellenic Police answered Frontex by letter denying the allegations based on inaccuracies of the asylum seeker’s testimony. FRO welcomes the availability of the Hellenic authorities to start a dialogue and set up an effectively joint follow-up mechanism for allegations of violations of fundamental rights, as agreed with Frontex ED in December 2012.

4. After finalising the participation of his deployment in Lesbos, Greece, a Frontex-deployed interpreter reported the following information to his authorities and Frontex. On 20 September, FRO received information that GOs on the island had received information from a migrant (P1) that allegedly approached him with the information that the Hellenic Coast Guard (HCG) had destroyed a boat of another group of migrants when approaching them on their way to Lesbos by boat. The number of persons in the boat differs between sources from 24 to 40, and the GO also declared that the migrant had never told him about the destruction of a boat but rather about a mistreatment episode. P1 said that the migrant who told him the story (P2) was the only one who reached the Island of Lesbos. HCG informed Frontex staff on Lesbos that the migrant (P2) had been rescued on 2 September from the sea close to the border line after jumping from the boat. The boat had been detected by the HCG at 04:30 am and intercepted by the Turkish CG. The case was not reported as an SIR due to insufficient evidence and conflicting statements between the various participants involved, demonstrating the importance of early reporting by GOs.

5. On 14 October, FRO received an initial SIR on the case of a migrant in Samos Island in Greece, who declared to a GO that while he was with other migrants in the sea on a rubber boat two weeks earlier, they were stopped by a small boat which called a larger boat for help. The second boat arrived after one hour with four persons on board, wearing dark blue uniforms and masks and speaking German. Allegedly, the migrants were taken on board this boat, and the persons in uniforms started to shout at them, searched them and took all their money and

belongings, put the migrants back in the rubber boat and threw the engine into the water. The migrant stated that two hours later they were rescued by the Turkish authorities and taken back to Turkey. The following day, 15 October, when HCG attempted to clarify the statement, the migrant declared that nothing had happened, and that he was unwilling to sign a written statement on the incident as requested by HCG. He declared he just wanted to be released and join his relatives, who were living in the Netherlands. Follow-up to the allegations is ongoing.

6. On 26 October, a similar incident was reported from a migrant reporting an attack in a rubber boat by a group of men during a previous attempt to reach Samos Island with other migrants he was stopped at sea by a boat with persons wearing camouflage uniforms and balaclavas. The following day, the migrant admitted that he had never tried to reach Samos Island but only Lesbos and that he had heard the story about “bad people with balaclavas and camouflage uniforms” in Istanbul from a Syrian male.

7. As a follow-up to the report on the reception situation on the island of Lesbos, the authorities increased reception capacity with the opening on 25 September of a first reception centre with a current capacity of up to 100 people. The Hellenic Police confirmed the opening during the MB meeting on 26 September. The presence of asylum officers in the centre has not been confirmed. In early September, the tents that served as temporary accommodation in the harbour were removed and migrants were accommodated in the Pikpa children’s summer camp close to Mytilini airport. During the relocation from the camp to the Centre, some NGOs reported migrants being shouted at by Frontex staff, which was clarified by the persons involved as a misunderstanding.

On a more general note, the FRO team has consolidated an assessment of the impact of informal “push backs” on fundamental rights that highlights the impact of this practice on the following fundamental rights: The right to asylum (Art 18 of the Charter of Fundamental Rights of the European Union); the prohibition of collective expulsions (Art 19.1) and the possible infringement of the principle of *non-refoulement* (Art 19.2); the right to effective remedy (Art 47), and sometimes even endangering the right to life (Art 2), among other rights. In addition to the internal reporting system, FRO can confirm a **consistent pattern** of allegations of informal “push backs” reported by NGOs interviewing migrants, in Greece, in Bulgaria and in Turkey. European media are increasingly making documentaries about this practice³. Thorough investigation of these allegations should serve to clarify any responsibilities and ensure that effective measures are put in place to prevent this irregular practice. FRO recommends, as minimum and urgent measures, ensuring a more independent national investigation of these types of allegation (i.e. other than the local law enforcement units), better collection of detailed information at source and enhanced follow-up of allegations in close coordination with Frontex. FRO is ready to advise and support this process at all times.

b) Joint Operations

On 17-18 September, FRO participated in the launch of Joint Action Lusitania, an initiative within the framework of JO Meteor, a two-week activity aimed at increasing capacity to detect fraudulent travel documents at Lisbon airport. During the two-day stay, FRO attended the entire pre-deployment briefing of an air operation (day 1), where she provided a brief overview of Frontex’s obligations in terms of fundamental rights and the importance for the Agency to promptly and properly deal with allegations of violations of fundamental rights. FRO also explained the Frontex reporting mechanisms on fundamental rights, as well as the obligations

³ See for instance in October, Arte (<http://www.arte.tv/de/festung-europa-einsatz-gegen-fluechtlinge/7670670.html>) and Das Erste (http://www.wdr.de/tv/monitor/presse/2013/meldung_131016.php5)

enclosed in the CoC for all participants, including the duty to report. As the objective of the operation was to detect fraudulent documentation, FRO insisted on the obligation of referral of cases in need of international protection and other situations of vulnerability to the competent authorities, including those cases where fraud was detected. On day 2, FRO monitored the morning shift of first and second-line GOs' work at the airport. They behaved very professionally and were tactful and discreet with passengers when questioning. Two persons were refused entry and FRO also attended the second-line interview aimed at collecting further information on the circumstances of the passengers. FRO observed the importance of having a clear and simple referral mechanism in place since the inception of the operation.

The dramatic events in the Strait of Sicily on 3 and 11 October of two unseaworthy boats capsizing in the vicinities of Lampedusa and Sicily have resulted in 390 migrants drowning in the Mediterranean (tentative final figures). As a consequence, the fate and conditions of migrants and asylum seekers travelling via the Mediterranean Sea have provoked numerous condemning statements nationally and at the European level and also generated considerable attention in the press. The mass inflow of arrivals has caused overcrowding of the reception facilities on the island, but transfers of migrants to the mainland seem to be occurring daily. EASO and Frontex also started to coordinate how best to jointly support Italy in efforts to tackle the mass flows of asylum seekers to Italy.

From a fundamental rights perspective, though, the principle of *non-refoulement* should be respected during both maritime border control and search-and-rescue operations. Clearer guidance on disembarkation would help to clarify practitioners' obligations towards intercepted and rescued persons.

FRO has not participated in any JROs in this reporting period.

c) Other Operational projects

On 7 October, Frontex ED approved the Code of Conduct for Joint Return Operations. The document is now ready for dissemination and aims to enhance the standards of fundamental rights compliance during Frontex-coordinated joint return operations. Frontex training unit will include a presentation of the Code of Conduct in all training pertaining to return operations.

FRO is currently revising a semi-final version of the Frontex Air Border Sector VEGA guidelines for border guards for the identification and protection of children at risk, trafficked children and other most vulnerable children, victims of other serious forms of abuse and violence, and the fight against this phenomenon. Frontex is planning to convene a meeting of experts from various organisations with expertise in this matter in early December to complete consultations on the draft before its publication.

On 23 October, FRO met FRO supported the drafting process of the EUROSUR Handbook for OPD with the provision of fundamental rights-related sections as well as comments for Fundamental Rights mainstreaming in more technical aspects of the Handbook. During the drafting process FRO has also sought support from FRA, whose contribution was highly appreciated.

d) Support Frontex Monitoring System on Fundamental Rights

The FRO team is fully engaged in supporting the revision process of the SIR reporting system for alleged violations of fundamental rights as the basis of an internal monitoring system. Furthermore, the FRO team has also drafted a list of possible violations of fundamental rights by activity (interception, screening, debriefing, etc) that include all possible fundamental rights that can be impacted when performing border control activities, as per the Charter of Fundamental Rights of the EU.

During the trips and visits to field operations, FRO has also gathered experiences and considered ideas for the topics that should be observed at all types of borders to support the Frontex monitoring system for fundamental rights. Work in progress.

On 10 September, FRO attended a monitoring session of the Project on Border Police monitoring in Metkovic, Croatia, performed by the NGO Croatian Law Center. It was an inspiring session on how to structure a monitoring project of border police activities that started with a framework project from the UNHCR Regional Office in Budapest. Furthermore, FRO had a chance to discuss the monitoring methodologies with the NGO representatives, and the impact of the activities of the project with the border guards.

FRO plans to have a brainstorming session on the initial ideas for a monitoring system on fundamental rights with the CF during its meeting on 24 October, mainly focused on information-gathering and reporting, but also including strengthened follow-up of a comprehensive monitoring system that is currently being revised. The internal Frontex and CF input will then be incorporated into a concept note for presentation to all stakeholders towards the end of 2013. Internal discussions with the units on the preliminary ideas are very positive towards a simple and clear system that should be implemented in all activities of the Agency, as mandated by Article 26 a) of the Frontex Regulation.

e) Evaluation Reports

FRO started to receive reports from operations that are closing in 2013 and is working on structuring a submission of an assessment of their impact on fundamental rights as mandated by the Frontex regulation.

Final evaluation reports were received for JROs to FYROM, Serbia, Colombia and Nigeria.

3. CAPACITY BUILDING/TRAINING

FRO attended a very interesting cross-border session in Metkovic, Croatia, on trafficking in human beings for border guards, on 11 September. Within the framework of the Ministry of Interior and the Immigration Directorate's cooperation with UNHCR, border guards were briefed on the concepts and referral mechanism for THB victims and also on Dublin II procedures.

Upon arrival in Croatia, FRO also took the opportunity to visit Dubrovnik airport and the harbour facilities and participated in a patrol with the Croatian Police. The visit presented the challenges of both land and sea borders in the area bordering Montenegro and Bosnia-Herzegovina and the available means and methods that Croatia has to tackle them.

On 10-11 October, FRO and the FRO trainee participated in the Basic Fundamental Rights Training for Frontex staff. The two-day session provided an interactive platform for learning and exchanging views about FR matters in general and those specifically affecting the work at the borders for Frontex. The FRO team gave support with the preparation of real cases and the provision of information to the trainers.

4. FUNDAMENTAL RIGHTS STRATEGY

FRO will propose to both the CF and the MB a revision and update of the Frontex Fundamental Rights Strategy and Action Plan in 2014. As preparatory work, in the upcoming weeks the FRO team will prepare a compilation of recommendations that various international and non-

governmental organisations have addressed to Frontex in view of updating its content and ensuring timely and proper implementation and follow-up.

5. RELATIONS WITH OTHER FUNDAMENTAL RIGHTS ORGANISATIONS AND BODIES

Justification no. 2
(see the legend)

On 23 September, FRO participated in the Annual Strategic Meeting with UNHCR's new Director for Europe, [REDACTED]. FRO proposed several activities to strengthen the bilateral cooperation and complement the activities of the CF, especially in relation to third country information and possible cooperation during pre-deployment briefings.

On 17 October, FRO participated in a meeting with EASO Chief of Operations on cooperation plans for both agencies. Strengthening operational cooperation in Bulgaria and Italy, Early Warning Mechanism, as well as increasing capacity to exchange resources and material on identification of persons in need of international protection was discussed.

Justification no. 2
(see the legend)

On 28 October, [REDACTED] Head of Sector Asylum, Migration and Borders, Freedoms and Justice at the European Union Agency for Fundamental Rights was invited to present the report on "Fundamental Rights at Europe's southern sea borders" for Frontex staff at an internal meeting. The 2 hours session, which was attended in high number by OPD personnel, allowed sufficient time to present the main findings and conclusion of the research and to ask questions on practical examples of the complex situations faced during maritime operations.

6. PLANNED ACTIVITIES AND UPCOMING EVENTS

November

- Session on FR training for BG, Malta, 4-7 November;
- OHCHR Expert meeting on Human Rights at international borders, Geneva, 18 November
- ICMPD Opening Conference of the project: "Forced Return Monitoring (FReM)", Vienna, 20 November
- Return Contact Committee Meeting, Brussels, 22 November
- MB meeting, 27-28 Nov

December

- VEGA CHILDREN Expert meeting, 4-5 December (TBC)

7. OTHER ISSUES

Justification no. 2
(see the legend)

The team to support the functions of the FRO is finally complete with the recruitment of the FRO intern, [REDACTED], who started working on 16 September. His duties include supporting the work of the team focused on research, support on the drafting of documents, papers and presentations.

On 27 September, FRO briefed a joint delegation of Tunisian representatives from the Mol and NGOs working in the field of migration that visited Frontex on the Fundamental Rights activities and strategy.

FRO participated in an internal Frontex Management Retreat on activity-based budgeting on 9 October.

FRO also attended ERA seminar on the Feasibility of a European System Border Guards, 28-29 October, in Warsaw, organized with the RELEX-EU team.

8. RECOMMENDATIONS

- Support the strengthening of the monitoring and follow-up mechanisms on cases of allegations of fundamental rights violations
- Revision and FR mainstreaming of the Multi-Annual Plan 2014-2017
- Start revision of Frontex PoW 2015

Legend:

1. The non-disclosed part contains analyses and subjective assessments of the internal situation in third countries with explicit references to existing strengths and vulnerabilities. Effective cooperation with third countries is crucial for Frontex, and therefore a unilateral disclosure of these documents must be refused as establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise. The release of the documents would end the mutual trust enjoyed between these countries and Frontex. Once the relationship between Frontex and these countries is impaired, there would be an ascertainable likelihood that these countries would no longer share sensitive data with Frontex. This would not only impede the improvement of pre-warning mechanisms necessary to analyse the migratory flows towards the European Union but would also hinder the development of adequate tools, at both European Union and national levels, that are necessary to conduct efficient border control and prevent cross-border crime, such as the facilitation of irregular immigration and trafficking in human beings. As this risk is reasonably foreseeable, disclosing this information would undermine the protection of the public interest as regards public security and international relations. Consequently, access to those documents has to be refused pursuant to Article 4(1)(a) first and third indent of Regulation (EC) No 1049/2001 .

2. The non-disclosed part contains personal data, in particular, the name of an individual. The disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data and therefore has to be precluded pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001.

3. The non-disclosed parts refer to details of the operational area and cannot be released. As ongoing operations tend to cover similar operational areas as the operations conducted in preceding years, disclosing details of previous operational areas would be tantamount to disclosing the current state of play. This would provide smuggling and other criminal networks with intelligence, enabling them to change their modus operandi, which would ultimately put the life of migrants in danger. Consequently, the course of ongoing and future operations of similar nature would be hampered by depriving the operations of any strategy and element of surprise, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of documents containing such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 .

