

To Frontex Consultative Forum on Fundamental Rights,
Ms _____, Chairperson

Subject: Recommendation on Frontex activities at the Hungarian-Serbian border

Your ref: CF Recommendation, 10 November 2016
Our ref: OPD/KLRO/2307/2017
Please quote when replying.

Warsaw, 1 February 2017

Dear Ms _____

Dear Members of the Frontex Consultative Forum on Fundamental Rights,

In response to your recommendation addressed to me on 14 November 2016 I am informing you that I have decided not to take action pursuant to Article 25 (4) of the European Border and Coast Guard Regulation and, consequently, not to suspend the operational activities (JO FOA 2016 Land/WB) at the Hungarian - Serbian border.

Considering the good cooperation with the Consultative Forum, I want to explain to you in brief the main reasons leading to this decision.

Upon reception of your recommendation, I instructed the Operations Division and I asked the Fundamental Rights Officer (FRO) to, respectively, provide information on the Frontex activities at the concerned border as well as the number of incidents reported, and to provide an assessment of the situation.

The FRO stated her concerns that given the situations pointed out by different International Organizations, Frontex might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border and seeking international protection.

The collection of facts carried out within the Operations Division resulted that only three incidents were reported in 2016, none involving members of the European Border and Coast Guard teams.

With regard to the new Hungarian law on border control, that entered into force in July 2016 and its implementation, the European Commission informed Frontex on the main findings of a field visit to Hungary on 18-19 October 2016. Regarding the alleged abuses in border management when applying the new law on escorting migrants back to the border if found within 8 kilometres' zone, the Commission's mission did not find evidence of any such systematic practices.

Additionally, and despite the reported cases of illegitimate or disproportionate use of force by some international organizations, under the framework of the operational activities coordinated by Frontex at the Hungarian-Serbian border, only one situation concerning an allegation of a migrant claiming mistreatment by the Hungarian police was reported. In this single case, the investigation by the Hungarian authorities was closed upon conclusion that there were no signs of an offense against the law.

It is, thus, correct to conclude that the alleged cases of illegitimate use of force by Hungarian police, if confirmed, did not occur within the operational activities coordinated by Frontex.

Finally and concerning the assessment (dated of 2012) of Serbia as an unsafe country by UNHCR and other organizations, I took into consideration that Serbia was recently considered as a safe country by both the European Commission and by the European Parliament in the proposal for a Regulation establishing an EU common list of safe third countries [COM (2015) 452 final of 09.09.2015] and in the report adopted on the aforementioned proposal.

The non-confirmed allegations regarding the illegitimate use of force and the absence of reports in the framework of Frontex operational activities cannot sustain a decision to suspend the joint operation, adopted in accordance with Article 25(4) of the European Border and Coast Guard Regulation.

Furthermore, the alleged infringements of the international legal framework regarding the protection of migrant's fundamental rights are not confirmed and, therefore, they cannot be considered establishing a sufficient reason to suspend the operational activities.

Conversely, along with the position of the Commission, I am of the opinion that the presence of members of the European Border and Coast Guard Teams and Frontex staff in the Hungarian-Serbian border can actively contribute to minimize any possible risk of a misuse of force, as well as to provide an objective and reliable source of information on all the circumstances on the ground.

In this regard Frontex will keep its presence while paying special attention to monitoring the situation and ensuring the respect for fundamental rights in all activities carried out with the Agency's support.

Yours sincerely,

Fabrice Leggeri
Executive Director

CC:

1. Mr Marko Gašperlin, Chair of Frontex Management Board
2. Mr Matthias Ruete, Director General of the Directorate General for Migration and Home Affairs (DG HOME), European Commission
3. Mr Zsolt Halmosi, Member of Frontex Management Board (Hungary)
4. Ms [redacted], Frontex Fundamental Rights Officer