

To:
Frontex Consultative Forum on Fundamental Rights
Ms ,
Chairperson

Our ref: CAB/DED/ANKO/5164/2017
Please quote when replying.

Warsaw, 07 March 2017

Dear

Dear Members of the Frontex Consultative Forum on Fundamental Rights,

I would like to thank you once again for the fruitful Consultative Forum meeting held on 2 February 2017. In response to your email addressed to DED on 03.02.2017 by the CF Secretariat, I hereby provide you with the required additional further information related to the topics which were discussed during the sessions.

1) Further information related to the Frontex reply to CF recommendation on Frontex activities on HU-SE border

As outlined during the CF meeting and following the letter by the Frontex Executive Director dated 1 February 2017, there are in principle the two following options of addressing the challenges as described in the CF recommendation of 14 November 2016: Either suspending Frontex operational action in case of which the situation would become very difficult to assess and appropriate actions or follow up could not take place properly, or - with all relevant safeguards - to continue our presence and to be able to guide, support and observe in accordance with Frontex standards. This is why I decided to continue Frontex operational tasks in this area.

Frontex reiterates its statement that the presence of members of the EBCG Teams and Frontex staff in the Hungarian-Serbian border can actively contribute to minimize any possible risk as those highlighted by the CF, as well as to provide an objective and reliable source of information on all the circumstances on the ground. Their absence could in fact negatively impact the works and conditions in the area.

The continuation of Frontex operational activities in this area - even a step up of the support - is important and was consulted with the Commission for ensuring the execution of EU law in terms of proper border management at EU external borders. It is also advised in this context, that the Frontex Fundamental Rights Officer is paying special attention to the implementation of the joint operations and that any serious incidents reported to the Agency and/or complaints submitted are followed up properly.

For incidents occurring outside of Frontex operational area, Frontex cannot take responsibility; in any case the situation and fundamental rights aspects are discussed in different occasions through the existing platforms and environments as well as ad hoc meetings also raising awareness of MS and main stakeholders to identify possible mitigation measures.

For information on safe third countries, the assessment of the respective EU MS is to be considered. Hungary currently considers Serbia as safe third country, thus any requests in this context should be directed to the responsible authorities in the respective MS. Frontex is not part of the process of the declaration and thus cannot elaborate on the position of a certain MS regarding a safe 3rd country.

Frontex keeps its presence and continues to pay special attention to monitoring the situation and ensuring the respect for fundamental rights in all activities carried out with the Agency's support. Furthermore, the fundamental rights aspects are discussed and tabled with the MS, including in the Frontex Management Board, COM, other EU Agencies and partner organizations meetings. Frontex own as well as external sources serve to support Frontex assessment in case of serious concerns of violation of fundamental rights.

2) Clarifications on Return Issues:

In relation to Frontex return activities, I would like to provide you with following additional information on the pre-return network as well as the role of Frontex in voluntary returns.

- **Information related to the pre-return network**

Legal Framework: EBCG Regulation 2016/1624/EP & EC

Art 27 (1a): "The Agency shall, with regard to return, and in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights, in particular: (a) coordinate at a technical and operational level return-related activities of the Member States, including voluntary departures, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders".

Art 27 (3): "The Agency shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the Commission and with the support of relevant stakeholders, including the European Migration Network".

Concept:

In line with the enhanced activities of Frontex in the field of pre-return assistance and taking into account the ongoing phase-in (FX) /phase-out (EURINT) process, there was a detected need of RSU for having a respective network for dealing with pre-return matters. A new "Pre-Return Activities Network (PRAN)" was established with MS actually by sharing the existing Eurint contact points in MS together with 3 MS non-Eurint partners, HRV, CYP and SVK. PRAN is a single network of communication for all pre-return related activities, such as invitations for meetings, TC identification missions, activities of EU-programmes, inquiries, etc.

The main objective is to keep the form of the meeting interactive and promote the involvement of all members in its activities while ensuring a more comprehensive exchange of information with Member States in the field of pre-return as well as a more efficient and effective organization of the meetings.

- **Information related to the role of Frontex in voluntary returns, including the number of operations conducted and number of returnees**

Legal Framework: EBCG Regulation 2016/1624/EP & EC

Art. 27 (1a): "The Agency shall, with regard to return, and in accordance with the respect for fundamental rights and general principles of Union law as well as for international law, including refugee protection and children's rights, in particular: (a) coordinate at a technical and operational level return-related activities of the Member States, including voluntary departures, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders".

Concept:

The term **voluntary departures** implies that MS have already initiated a return procedure to a migrant who has been given a period to voluntarily leave the EU territory (Return Directive 2008/115/EC, Art 7) from that moment Frontex can support MS in their needs to return irregular migrants.

In contrast to the term voluntary return, when there is no intervention from Migration Authorities and migrants return, with or without assistance of NGOs or other organizations.

Voluntary Departure Statistics:

During 2016 Frontex supported seven National Return Operations (NROs), organised by Finland to Iraq, returning a total of 342 migrants. This has been, until now, the only request from MS to support this type of operations and it was possible before new regulation entered into force October 6th 2016, due to an ED decision 2016.36, March 2016, on the financing scheme for joint return operations and return related activities.

We are closely coordinating with the European Commission on the relevant aspects and we stand ready to have further consultations with our partners, in particular the Consultative Forum, should need arise.

Yours sincerely,

Fabrice Leggeri
Executive Director

