



EUROPEAN BORDER AND COAST GUARD AGENCY

Revision of the Management Board Decision on Implementing Measures for Processing Operational Personal Data

LES and CGS contribution

Coast Guard and Law Enforcement Unit
Operational Response Division
Law Enforcement Sector

PRELIMINARY REMARKS

- ❑ **MSs have a significant role** in the revision process of the Management Board Decision n. 58/2015 of 18 December 2015 on “*adopting Implementing Measures for processing personal data collected during joint operations, pilot project and rapid intervention*”. The Law Enforcement Sector is proposing a platform to facilitate the decision-making process
- ❑ There is a need to foster open dialogue, facilitate reflection, pave the way to an exchange of views
- ❑ the **OPDP rules will be drawn up after the WS** in compliance with MSs position
- ❑ The **PPT reflects LES/CGS perspective**. Support from LPU and DPO might be sought

LES proposed contributions (1)

Processing of OPD could pertain to all Frontex operations based on Art. 90 and therefore a broader spectrum of Frontex staff should be able to process OPD

Personal data collection should not be limited to JOs, PPs and RBIs but shall be expanded to all relevant “operations of FRONTEX” (e.g. EMPACT Operational Activities).

- Based on the meaning of Art. 90 (1) and (2): *“Where the Agency, in the performance of its tasks under point (q) of Article 10(1) of this Regulation, processes personal data which it has collected while monitoring migratory flows, carrying out risk analyses or in the course of operations for the purpose of identifying suspects of cross-border crime, it shall process such personal data...”*.
- The course of operations must be adhered in line with Art. 38 of the Regulation.
- In line with Art. 10 (1) q: *“... provide support to Member States in circumstances requiring increased technical and operational assistance at the external borders in the fight against cross-border crime and terrorism”*.

LES proposed contributions (2)

The collection of OPD could be accessible to FRONTEX staff who are participants of operational activities according to Art. 38(5) of the Regulation and are engaged in supporting MSs in the “detection, prevention and fight of cross-border crime” in the course of the various operational activities (*see slide above*). Therefore it could be extended to:

- Standing Corps, e.g.
 - ❖ CBCDO;
 - ❖ MVCDO;
 - ❖ ALDO;
 - ❖ Etc.

LES proposed contributions (3)

It is recommended not to limit the scope of OPD collection to the traditional criminal markets (Migrants Smuggling/THB), but broaden its scope and include all forms of CBCs and terrorism.

According to the definition of cross-border-crime in Art. 2, the scope of Frontex mandate includes crimes, in which the EU External Border dimension is clearly featuring e.g.:

Cross border crimes such as: illegal drug trafficking; illegal firearms trafficking; smuggling of excise goods etc.

As the result of a broader scope, Frontex would be able to:

- Design new operational activities based on intelligence collection leading to tailored operational response.
- Enrich the operational, tactical, strategic risk analysis in relation to other types of cross-border crime (e.g. THB, motor vehicle crime, excise fraud, arms trafficking).
- Personal data should be referred to suspect of a crime and victims/witnesses if linked to the suspect.

LES proposed contributions (4)

The aim should be to enhance the cooperation with key partners in LE aspects related to the OPD processing and exchange.

- ❑ Facilitate the possible safe and legal exchange of operational personal data with key partners on the basis of Art. 90 in reference to Art. 10 (q) of the Regulation by revising existing legal instruments or concluding new WAs with crucial partners that include:
 - Europol and Eurojust
 - MSs' Law Enforcement Authorities

LES proposed contributions (5)

The use of secure communication channels (SIENA) as a dedicated LE information exchange tool should be considered

- ❑ The collection and exchange of OPD should not be carried out only via JORA2 but also via other dedicated communication channels (SIENA) as their primary information exchange tool for LE data exchange in the EU
- ❑ The use of SIENA might be considered as a privileged tool for law enforcement data exchange in the EU and be put in relation with JORA2

LES proposed contributions (6)

The procedure of exchange of OPD via coordination tools could be recognised and implemented

- ❑ The use of dedicated secure information exchange tools / applications that are used during operational actions / activities (such as an example of **Globekeeper** at Europol) might be considered.
 - All data exchanged via such tools / applications in the course of operational actions / activities should then be also formalized via **SIENA** to render them to fit for processing and analyzing purposes.

LES proposed contributions (7)

Implementing new rules could enhance Frontex' role in participating in LE joint activities at the EU level.

- ❑ Thanks to the development of WAs with key LE partners and enforcing new IR on OPD processing, Frontex might be possibly engaged in JITs, if requested by the EU MS interested in such a support.
- Frontex participated in the Project Group meeting on the update of JITs Practical Guide in April 2021 to discussed possibilities of taking advantage of FRONTEX's products and services in future.

LES proposed contributions (8)

As the result of the enhanced cooperation with key partners:

- ❑ Frontex should be able to take advantage of the operational data available / to be collected due to its engagement in operational activities coordinated or participated by other law enforcement agencies/organizations (e.g. Europol and Eurojust).
- ❑ Frontex would make better use of the existing Frontex's products and services by combining them with OPD (catalytic effect) relate e.g. to the EMPACT dedicated OAs or counteraction of drug trafficking in maritime domain.
- ❑ The Agency could contribute to the actions of competent LE authorities of the EU MS as deemed relevant by them for the purposes of preventing, detecting, investigating or prosecuting serious cross-border crimes;

CGS proposed contribution

- ❑ Under EU cooperation on CGF, sightings forms related to fishing vessel and potential marine pollution have been created in cooperation with EFCA and EMSA. Such sightings may contain some PD, their exchange is being covered by Art 88.
- ❑ Will you support the use of sightings forms related to fishing vessel and marine pollution (created by FRONTEX in cooperation with EFCA and EMSA) also in case of investigation and prosecution **in Member States by competent MSs authorities** in cross-border crime cases?

FRONTEX



EUROPEAN BORDER AND COAST GUARD AGENCY

Thank you for your attention!

Operational Response Division
Coast Guard and Law Enforcement Unit
Law Enforcement Sector