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DRAFT REPORT

on the Special Report of the European Ombudsman in own-initiative inquiry
OI/5/2012/BEH-MHZ concerning Frontex
(2014/2215(INI))

Committee on Civil Liberties, Justice and Home Affairs
Committee on Petitions

Rapporteur: Roberta Metsola, Ska Keller

(Joint committee meetings – Rule 55 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex (2014/2215(INI))

The European Parliament,

- having regard to Article 2 of the Treaty on the European Union,
 - having regard to Articles 67(1), 72 and 228 of the Treaty on the Functioning of the European Union,
 - having regard to the Charter of Fundamental Rights of the European Union, in particular Article 41 thereof,
 - having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994, on the regulations and general conditions governing the performance of the Ombudsman's duties, and in particular Article 3(7) thereof,
 - having regard to Resolution 1932(2013) of the Parliamentary Assembly of the Council of Europe on 'Frontex: human rights responsibilities',
 - having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the Frontex regulation),
 - having regard to the Special Report of the European Ombudsman of 7 November 2013 on the own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex,
 - having regard to Rule 220(2) of its Rules of Procedure,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Petitions under Rule 55 of the Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Petitions (A8-0000/2015),
- A. whereas Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter the Frontex regulation) requires that the Agency ensures full respect for fundamental rights and for the rights of refugees and asylum seekers;
- B. whereas Article 26a of the Frontex regulation lays down a Fundamental Rights Strategy, requiring the Agency to draw up and further develop and implement such a strategy, establish a Consultative Forum and designate a Fundamental Rights Officer;

- C. whereas in 2012 the European Ombudsman opened an own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations;
- D. whereas the draft recommendations of the European Ombudsman include implementing an individual complaints mechanism;
- E. whereas the European Ombudsman further issued a Special Report, in which the implementation of an individual complaints mechanism was insisted upon;
- F. whereas under Rule 220(2) of the Parliament's Rules of Procedure, the European Ombudsman is obliged to inform Parliament of cases of maladministration, and whereas the committee responsible may draw up a report on such cases;
- G. whereas Frontex is tasked to ensure the efficient implementation of the common rules on standards and procedures for the control and surveillance of the external borders, by means of closer coordination of operational cooperation between Member States;
- H. whereas Frontex and the Member States have shared but distinct responsibilities regarding the actions of the officers deployed during Frontex operations and pilot projects;
- I. whereas most participants in Frontex operations are guest officers sent by Member States other than the Member State hosting the Frontex operation, in support of that operation;
- J. whereas under Article 10(3) of the Frontex regulation, guest officers participating in Frontex missions may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State;
- K. whereas the use of different uniforms alongside the Frontex emblem during the Frontex operations makes it difficult for individuals to identify under whose authority an officer falls and, ultimately, where to file a complaint - whether with Frontex or directly with the Member State concerned;
- L. whereas under Article 3(1a) of the Frontex regulation the Agency does not possess executive powers in the Member States and has no authority to sanction Member States or their officials;
- M. whereas Frontex has already established an incident reporting system which involves the Frontex operations team, the Frontex legal team and the Frontex Fundamental Rights Officer, with the ultimate decision being taken by the Frontex Executive Director; whereas this system only involves internal complaints received from Frontex staff and guest officers, and consequently does not cater for direct complaints by individuals who claim a breach of their fundamental rights;
- N. whereas individual complaints mechanisms already exist at European level within the structures of the European Investment Bank, the European Agency for Fundamental Rights and the European Network of Ombudsmen;

Why Frontex should set up an individual complaints mechanism

1. Welcomes the Special Report of the European Ombudsman in the framework of the own-initiative inquiry concerning Frontex; supports Frontex's efforts in taking on board the Ombudsman's recommendations; acknowledges Frontex's current fundamental rights safeguards in the form of, but not limited to, the setting-up of an incident reporting system as well as devising codes of conduct, creating a Consultative Forum on fundamental rights and establishing a Fundamental Rights Office;
2. Supports the recommendation by the European Ombudsman that Frontex should deal with complaints regarding infringements of fundamental rights in the course of its operations and should provide adequate administrative support for that purpose; calls on Frontex to set up the complaints mechanism;
3. Believes that in view of the ever-growing humanitarian and legal challenges at the EU's external borders, Frontex is in need of a mechanism that is capable of processing individual complaints about alleged breaches of fundamental rights occurring in the course of its operations, thus becoming a first-instance body for complaints;
4. Considers that the setting-up of a mechanism for individual complaints would provide individuals with an opportunity to exercise their right to an effective remedy; suggests that the introduction of such a complaints mechanism would increase transparency, since Frontex and the EU institutions would be more aware of possible violations of fundamental rights that would otherwise remain undetected, unreported and unresolved;
5. Stresses that under the Frontex regulation there are no legal obstacles to the introduction of an individual complaints mechanism; notes that the lack of such a mechanism is non-compliant with the principle of good administration and undermines the effective implementation of the Agency's fundamental rights strategy; believes that the capacity of Frontex to deal with possible violations of fundamental rights should be strengthened in the context of expanding the Agency's role under EU law, in particular its participation in Migration Management Support Teams working in 'hotspot' areas;
6. Believes that the coordinating role of Frontex should not limit its responsibility under international and EU law; recalls that all Union agencies are bound by the provisions of the Charter of Fundamental Rights;

Structure of the individual complaints mechanism

7. Takes the view there is a legitimate expectation on the part of all to believe that the actions of those involved in Frontex operations are attributable to Frontex and more generally to the EU; stresses that the complex legal relations and the distinct yet shared responsibilities between Frontex and the Member States should not undermine the safeguarding of fundamental rights; notes that being a central point for individual complaints does not make Frontex responsible for every complaint received; believes that due consideration should therefore be given to the competences of Frontex and those of the EU Member States;
8. Stresses the need for an official central structure within Frontex for the processing of individual complaints; recommends that the office of the Frontex Fundamental Rights Officer should play a crucial role in handling complaints; considers that, in particular, the office should check the admissibility of complaints, filter them, pass them on to the

authorities responsible, and follow up on them thoroughly;

9. Welcomes the fact that Frontex has already set up a thorough procedure for handling internal reports by Frontex staff and guest officers on serious fundamental rights violations; points out that this procedure is already used for handling complaints by third parties not directly involved in a Frontex operation, and recommends building further on this procedure aiming at establishing a full and accessible individual complaints mechanism; emphasises that Frontex should ensure that the mechanism respects the criteria of accessibility, independence, effectiveness and transparency;

Lodging and admissibility of complaints

10. Takes the view that both persons who feel harmed by border guards wearing the Frontex emblem and third parties acting in the interest of such persons should have the right to submit a complaint; urges Frontex to guarantee full confidentiality and not to disclose the identity of the complainant to third parties without his or her agreement;
11. Acknowledges that safeguards are needed to prevent misuse of the complaints mechanism; recommends, therefore, that anonymous complaints should not be accepted; suggests further that only complaints of concrete fundamental rights violations should be admitted; considers that this should not prevent Frontex from taking account of other information sources on alleged fundamental rights violations, including general reports, beyond the complaints procedure; emphasises the need for clear criteria for the admissibility of complaints; recommends the provision of a standardised form for complaints requiring detailed information such as date and place of the incident, since this would facilitate decisions on admissibility;
12. Emphasises that the above form should be accessible in the most common languages spoken by migrants and asylum seekers and that it should include all necessary information on how to submit a complaint; is of the opinion that the possibility to submit a complaint orally to a person wearing the Frontex emblem should be ensured, which complaint would be duly transcribed by the officer involved; urges Frontex to make the complaints form available both in electronic format on its website and in hard-copy format, in the Member States' screening centres as well as from Frontex staff and guest officers participating in any Frontex operation;
13. Recommends that Frontex should set a reasonable deadline for the submission of a complaint, thus allowing the possibility of filing a complaint after the termination of a Frontex operation; considers this to be of particular relevance for return operations;

Complaints against guest officers

14. Acknowledges that potential complaints may in many cases refer to the conduct of guest officers who fall under the particular authority of a Member State but wear the Frontex emblem;
15. Recalls that Frontex has no competence for initiating disciplinary measures against persons other than its own staff members, and that under Article 3(1a) of the Frontex Regulation taking disciplinary measures falls under the exclusive competence of the home Member State;

16. Takes note that Member States handle complaints against guest officers in very different ways; is concerned that alleged fundamental rights violations might not be followed up effectively by some Member States; calls on Frontex and the Member States to cooperate closely in order to ensure the proper follow-up of complaints against guest officers;
17. Recommends that the office of the Fundamental Rights Officer transfers a complaint against a guest officer via a well-defined referral system to the competent national authority; considers it crucial to involve national ombudsmen or any other relevant bodies competent for fundamental rights that have the responsibility to investigate national authorities and officials, whereas the Fundamental Rights Officer does not have the right to do so;
18. Takes the view that the Fundamental Rights Officer should, in close cooperation with the relevant Frontex operational team, contribute to investigations by national authorities by providing further information on the incident if necessary;
19. Stresses that Frontex should closely follow up on complaints by formally requesting feedback from the respective Member State and, if necessary, by sending a letter of warning recalling the possible action which Frontex can take if no follow up to the letter concerned is received; recalls that Frontex has the right to receive information on fundamental rights violations by guest officers in the context of its obligation to monitor respect for fundamental rights in all of its activities;
20. Recommends that a justification should be provided to the complainant should no follow-up procedure be initiated by Frontex;
21. Recalls that the Frontex Disciplinary Procedure may also apply to seconded guest officers and seconded national experts if the relevant Member State agrees; recalls that Frontex may request the Member State to immediately remove the guest officer or seconded national expert concerned from the Frontex activity if the Member State does not allow the disciplinary procedure to take place, and, if necessary, to remove the person from the pool of guest officers;
22. Calls on the Frontex Executive Director to consider the exclusion of any officer who has been found to be in breach of fundamental rights from participating in any Frontex operation or pilot project;
23. Considers that the possibility of withdrawing financial support from Member States for joint operations as well as the suspension and ultimately the termination of an operation in case of serious and persistent fundamental rights violations should be explored, without prejudice to the overall aim of the Frontex mission whereby the saving of lives is envisaged;
24. Stresses that an individual complaints mechanism should not be deemed to confer any additional rights of access to criminal justice to the persons lodging a complaint; recalls that criminal investigations must be conducted by the Member State where operations take place;

General considerations

25. Takes the view that an individual complaints mechanism can only be effective if potential complainants, as well as the officers taking part in Frontex operations, are made aware of the individuals' right to complain through an effective information campaign; believes it should be possible for the number of potential inadmissible complaints to be limited substantially through such an information campaign and a well-structured admissibility check;
26. Takes note that an individual complaints mechanism should be both efficient and cost-effective; calls on Frontex to provide the necessary resources to the Fundamental Rights Office for handling the complaints received;
27. Welcomes the readiness of the European Ombudsman, the members of the European Network of Ombudsmen with competence on fundamental rights and the Frontex Consultative Forum to support Frontex in setting up and implementing an individual complaints mechanism; calls on Frontex to follow the good practice of other European bodies, such as the European Investment Bank, in close cooperation with the European Ombudsman;
28. Recommends that Frontex and the European Ombudsman establish close cooperation in order to improve the protection of individuals from possible acts of maladministration regarding the activities of Frontex;
29. Calls on the Member States to cooperate efficiently with Frontex in order to ensure the smooth running of the complaints mechanism; encourages Frontex to provide technical assistance to the Member States in order to ensure the mechanism's effectiveness;
30. Recommends the inclusion of provisions on the individual complaints mechanism in the forthcoming review of the Frontex Regulation;
31. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.