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Frontex report to the Office of the High Commissioner for Human Rights on its activities aimed at protecting migrants at international borders, including migrant children

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I. INTRODUCTION

1. On 13 December 2013, the General Assembly of the United Nations adopted the Resolution A/RES/68/179 on the Protection of migrants. In paragraph 16, it requests the Secretary-General to submit a report on the implementation of the Resolution and to an analysis on the ways, challenges and means to promote and protect the rights of migrants at international borders, specially of migrant children.

2. On 6 May 2014, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as "Frontex") received a letter from the Office of the High Commissioner for Human Rights requesting it to provide relevant information for the preparation of such a report. It expressly asked for information on challenges and best practices in promoting and protecting the human rights of all migrants at international borders and some ways and means to promote and protect the human rights of migrant children, including unaccompanied children and children separated from their families, with particular reference to the risks faced by adolescents in this regard.

3. For this purpose, the present document is aimed at presenting those Frontex activities relevant for the aforementioned report and that may have an impact in the subject matter of the Resolution A/RES/68/179 on the Protection of migrants, identifying challenges and best practices and activities to promote and protect the human rights of migrants at the borders. It starts with a brief presentation on Frontex, including its mandate, structure and a broad overview of its activities. Subsequently it sets forth the particular activities and projects that Frontex is carrying out, divided into five main parts: actions related to joint operations; actions in risk analysis; actions in capacity building field; actions related to cooperation with international organisations and third countries; and other actions.

II. FRONTEX: MANDATE AND STRUCTURE

4. Frontex promotes, coordinates and develops European border management practices in line with the Charter of Fundamental Rights of the European Union and international law. It supports the Member States of the European Union (EU) to achieve an efficient, high and uniform level of border control. Frontex also coordinates operational and EU measures to jointly respond to exceptional situations at the external borders and develops capacities at the Member State and European level as combined instruments to tackle the challenges of migration flows and serious organised crime and terrorism at the external borders.

5. Frontex strengthens the European area of Freedom, Security and Justice by supporting the Member States to meet their responsibilities. It applies the concept of Integrated Border Management and promotes European border guard culture based on the full respect of fundamental rights¹. In order to fulfil the Agency's mandate, in compliance with fundamental rights, in 2011 Frontex developed a Fundamental Rights Strategy together with an Action Plan

¹ For the purpose of this report, the concept of fundamental rights and human rights are used interchangeably.

of concrete activities in all its fields of work. Furthermore, the Frontex Regulation mandated to establish a Consultative Forum on Fundamental Rights and to appoint a Fundamental Rights Officer, both operational since the end of 2012.

6. The Fundamental Rights Strategy² formalises an emphasis on fundamental rights at every level of Frontex activities, reinforcing the commitment of Frontex to respect and promote fundamental rights in its activities. It outlines the general principles to achieve the highest operational standards also in terms of the safeguards of fundamental rights and professional ethics and to prevent possible violations of fundamental rights during its operations. For that purpose, it sets out the need for developing knowledge and skills of officers participating in the Joint Operations Coordinated by Frontex and implementing proper monitoring mechanisms based on reporting to the competent authorities and disciplining malpractices adequately.

7. The overall objective of the work of the Fundamental Rights Officer (FRO) is to support Frontex in the implementation of the Fundamental Rights Strategy and ensure respect and promotion of fundamental rights in all Frontex activities, with focus on operational activities. This is both a pro-active and reactive task, which means that it comprises both prevention of fundamental rights breaches and adequate reaction to allegations of such violations. The tasks of the FRO include, *inter alia*, making observations on joint operations and pilot projects coordinated by Frontex; contributing to an effective mechanism for monitoring respect for fundamental rights by regular reporting and monitoring activities of Frontex, including field visits; identifying possible preventive and corrective measures addressing possible fundamental rights incidents that may occur in joint operations and pilot projects; setting up and maintaining a record of possible fundamental rights incidents in the course of Frontex operations and pilot projects; monitoring and analysing the implementation of the Frontex Fundamental Rights Strategy; and contributing to other fundamental rights issues in Frontex. The FRO reports regularly to the Management Board, the Consultative Forum and also supports the Frontex Executive Director in fundamental rights matters.

8. The Consultative Forum is composed of representatives of 15 organisations, including EU Agencies, international organisations and NGOs³, and serves as a knowledge and expertise resource which advises Frontex Management Board as well as the Executive Director on all Fundamental Rights matters, offering strategic advice on how Frontex can structurally improve respect for fundamental rights in its various activities. The Forum is to be consulted on the further development and implementation of the Fundamental Rights Strategy, Codes of Conduct and Common Core Curricula, and will have access to all information related to the respect of fundamental rights in all activities of the Agency.

² *Frontex Fundamental Rights Strategy*, endorsed by the Frontex Management Board on 31 March 2011, available at: <frontex.europa.eu/assets/Publications/General/Frontex_Fundamental_Rights_Strategy.pdf>.

³ The organisations currently represented in the Consultative Forum are: Amnesty International European Institutions Office, Caritas Europa, Churches' Commission for Migrants in Europe, Council of Europe, European Asylum Support Office (EASO), European Council for Refugees and Exiles, European Union Agency for Fundamental Rights (FRA), International Catholic Migration Commission, International Commission of Jurists, International Organisation for Migration (IOM), Jesuit Refugee Service, OSCE Office for Democratic Institutions and Human Rights, Platform for International Cooperation on Undocumented Migrants, Red Cross EU Office, and the UNHCR.

III. FRONTEX ACTIVITIES PROMOTING AND PROTECTING FUNDAMENTAL RIGHTS

9. Frontex has committed to streamline fundamental rights in all its activities. This chapter provides an overview of activities and measure within all the areas of work of the Agency in this respect.

A. Joint Operations

10. EU Member States remain primarily responsible for the implementation of the relevant international, EU or national legislation and law enforcement actions undertaken in the context of Frontex coordinated joint operations and therefore also for the respect of fundamental rights during these activities. This does not relieve Frontex of its responsibilities as the coordinator and it remains fully accountable for all actions and decisions under its mandate. Frontex particularly focuses on creating the conditions for ensuring the compliance with fundamental rights obligations in all its activities.

11. Frontex is continuously taking further steps to enhance compliance with the obligation to mainstream fundamental rights during operational activities. This commitment helps Frontex to effectively promote and protect the fundamental rights of all migrants, especially of those persons in a particularly vulnerable situation, including unaccompanied and separated children.

a) Strengthen fundamental rights aspects in operational plans (OPlan)

12. Operational Plans are elaborated by Frontex in strict conformity with the relevant international standards and applicable European and national laws. The Operational Plan, the binding document that provides a framework of cooperation between Frontex and the EU Member States, includes information on how to address identified fundamental rights challenges with a view to preventing breaches or other negative effects. Corrective measures are foreseen in case of a breach of fundamental rights in the form of disciplinary procedures for Frontex staff involved. As a last resort, Frontex might terminate a Joint Operation if the conditions guaranteeing the respect for fundamental rights are no longer met. Furthermore, in cases of fundamental rights breach in an operation, the possibility is given to all partners involved in the operation to request the host Member State, Frontex or other Member State concerned to take immediate and appropriate measures.

13. The insertion of a specific obligation in all operational plans to refer persons in need of international protection or seeking asylum to the competent national authorities is of special importance. Border guards are key for effective access to the asylum procedure, as they have the duty to provide basic information or to ensure the access to it, support the identification of

persons in need of international protection, inform them on the available procedures and refer them to the competent authorities or organisations dealing with the asylum procedure.

14. Frontex has adopted a Code of Conduct for all persons participating in Frontex activities⁴, with specific clauses on the respect of fundamental rights and access to international protection. It constitutes an integral part of the standard Operational Plan. It also includes the obligation to report allegations of violations of fundamental rights or international protection obligations. A pocket format “do’s and don’ts” leaflet that summarizes the content of the Code of Conduct is distributed to all deployed border guards, interpreters and other participants during the pre-deployment briefing before launching the operations.

15. Furthermore, Frontex is in the process of establishing a monitoring system for fundamental rights. For this purpose, it has established a Standard Operating Procedure (SOP) to report serious incidents, with a specific category for allegations of violations of fundamental rights, which is also annexed to operational plans. The SOP is the reporting mechanism that obliges all participants in Frontex activities to report any serious incident that they witnessed or became aware of. The system includes monitoring and follow up mechanisms in cooperation with the member States hosting or participating in the joint operation and it is the hosting Member State which is competent to investigate the allegations. When they involved an officer deployed by Frontex, the Agency may immediately withdraw the deployment and refer them to the responsible authorities for further handling. Allegations involving national officer are dealt with by the national hosting authorities and Frontex receives regular information on the outcome of the inquiries.

16. Frontex is currently in the process of adapting operational plans to the new “Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex” in order to be fully prepared and able to implement it when it enters into force. This Regulation aims to ensure the respect of fundamental rights in the context of maritime surveillance and reinforce legal clarity on the disembarkation of persons intercepted or rescued at sea, including full respect of the principle of non-*refoulement*.

b) Joint Return Operations

17. Frontex has also adopted a Code of Conduct for Joint Return Operations coordinated by Frontex⁵. It compiles rules and best practices for return flights to ensure that joint return operations coordinated by the Agency are conducted humanely and that the fundamental rights of returnees are respected at all times, including crucial matters such as the use of force or

⁴ *Frontex Code of Conduct for all Persons Participating in Frontex Activities*, adopted by Decision of the Executive Director No 24/2011, 21 March 2011, available at: <frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf>.

⁵ *Code of Conduct for Joint Return Operations coordinated by Frontex*, adopted by Decision of the Executive Director No 2013/67, 7 October 2013, available at: <frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf>.

medical assistance during flights. The Code includes a section on human-rights monitoring and stresses the obligation of participants in the joint return operations to report any breaches. Also, a strong focus is placed on promoting the physical presence of a human rights monitor provided by the EU Member States during all Frontex-coordinated forced return flights.

18. In this respect, Frontex also increased activities in sharing its technical expertise in the organisation of this type of operations and has become an observer in an International Centre for Migration Policy Development (ICMPD)'s EU-funded project aimed at providing monitoring capacity to Member States in the process of establishing their effective monitoring system.

c) Specific activities related to child protection

19. During 2010 and 2011, Frontex launched two joint operations aimed at promoting and protecting the fundamental rights of migrant children. The objective of Joint Operation *Agelaus* 2010 was to tackle all irregular activities involving children at external air borders of the EU, focusing on identification of victims and to increase awareness on the subject in order to better address trafficking in human beings and cross border crime. Frontex also aimed at further developing cooperation with International Organisations whose primary role in the framework of the joint operation was to observe, advise and assist, in cooperation with border guards of the Member States hosting the operations, in the established procedures on identification at selected European Airports. Joint Operation *Hammer* 2011, for its part, was primarily to improve the practices and procedures on irregular migration involving children (including potential victims of trafficking) and secondarily to face the increased abuse and misuse of Schengen visas and transit concession without visa. Also, linked to Joint Operation *Agelaus* 2010, operation *Hammer* aimed at further developing the already well functioning cooperation with International Organisations and establishing operational cooperation with other partner organisations such as the Fundamental Rights Agency (FRA) and the European Asylum Support Office (EASO). The operations highlighted the lack of practical tools available to the border guards to tackle this dramatic phenomenon.

20. As a follow up to the conclusion of those operations, during 2013, Frontex pursued the development of the VEGA Children Handbook, an operational handbook for border guards to support the procedural gaps and challenges concerning children at risk at external air borders identified. The handbook collects and depicts best practices on child protection and establishes the groundwork for awareness raising and enhancing tailored inter-agency cooperation at national and international level at the borders. The development of this handbook was supported by FRO and also by international organisations and NGOs with a child-protection focus and experience in providing legal and psychological support to children. Several Consultative Forum members, such as FRA, the International Organisation for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross contributed to this work. The handbook will be published in early 2015 after testing it with different border guard services in various EU Member States.

d) Participation of partner organisations in operational activities

21. EU Agencies and international organisations such as FRA, IOM and UNHCR have participated in briefings prior to deployment in Joint Operations organised by Frontex. Priority was given in 2013 to strengthening operational cooperation with the Frontex Consultative Forum in order for its members to observe the reality of operational activities in the field and to provide Frontex and its Management Board with more realistic and tailored recommendations to ensure further compliance with fundamental rights in all its activities. UNHCR was part of this first visit.

B. Risk Analysis

22. Every Frontex Joint Operation is based on risk analysis of the situation at the EU external borders. One particular objective in this context is ensuring that the right to international protection must not be hampered by the law enforcement action and that persons seeking protection are referred to the competent national authorities to assess their case. This analysis takes into consideration the particular situation of persons seeking international protection and the particular circumstances of vulnerable individuals or groups in need of protection or special care (e.g. separated and unaccompanied children, pregnant women, victims of trafficking, and persons with medical needs). Frontex also assesses the potential impact on fundamental rights when proposing or preparing operational responses, which may differ according to the nature of the operation at the sea, air or land borders or by way of a return operation.

23. Frontex has developed guidelines for officers participating in Frontex-coordinated operations who interview migrants to gather information about migration routes and networks. The guidelines contain a clear obligation to refer cases of persons in possible need of international protection and vulnerable persons or groups, in the host Member State, where the operation is taking place. The guidelines explicitly forbid interviews to minors. The document is also annexed to the operational plans, and therefore, of binding nature.

24. The debriefing experts deployed to Joint Operations also receive instructions on how to proceed with regard to asylum seekers in operational areas.

25. Data collection and analysis methodologies are under internal discussion taking into account fundamental rights aspects such as asylum applications, trafficking in human beings and the human rights situation in countries of origin.

26. Frontex has also carried out tailored risk analysis into unaccompanied minors in European migration. In December 2010 Frontex released the results of its first research on *Unaccompanied Minors in the Migration Process*⁶. The analysis, conducted in response to a request by the European Commission, was intended to identify the extent and nature of the

⁶ FRONTEX, *Unaccompanied Minors in the Migration Process*, Frontex, December 2010, available at: <frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf>.

phenomenon, the profile of groups most at risk, the 'pull' and 'push' factors involved and the Member States most concerned, as well as providing a medium-term forecast of trends and offering recommendations for action.

C. Capacity Building

27. Frontex has adopted concrete measures to train border guards on fundamental rights and refugee law. These training initiatives are of utmost importance to mainstream fundamental rights perspective into the daily Frontex activities, both at headquarters and in the operational areas and ensure understanding of the obligation to render assistance and refer protection cases to the competent authorities. Fundamental rights training is, in any event, an integral part of the Common Core Curriculum (CCC) developed by Frontex with the support of external partners such as the OHCHR, for the use of national education schemes for border guards.

a) Fundamental Rights for border guards: training for trainers

28. In 2013, a trainers manual on fundamental rights for border guards was published with the active participation of a multi-disciplinary team comprising Member States experts and experts from other EU agencies and international organisations, including FRA, EASO, IOM, ODIHR, OHCHR and UNHCR. The manual is intended to support trainers in their efforts to instruct border guards at the national level on how to meet their fundamental rights obligations in the course of their daily activities. The manual takes into consideration the complexity of the duties performed by border guards and demonstrates how fundamental rights can easily be integrated into their practices and procedures. It is designed for first- and second-line border guard officers in air, land and sea border operations. In drafting the manual, particular attention was paid to groups in need of protection, such as people fleeing persecution, torture survivors, victims of trafficking, the elderly, pregnant women and children. The manual is designed to fully equip the trainer with the necessary materials to train border guards in their country, and they have to adapt them to national legislation and conditions, the specific needs of the training programme and the Member States' needs, as well as the trainees' experience⁷. Several EU Member States have already translated the manual into their national language to facilitate replication.

29. Based on this Manual, Frontex has organised regularly courses aimed at providing training and raising awareness on fundamental rights for Member State officials who train border guards in their respective countries (train the trainers). This training will continue in the future and will be supplemented by an on-line tool that Frontex will develop to enhance border guards' knowledge on fundamental rights.

⁷ See FRONTEX, *Fundamental Rights training for Border Guards. Trainers' Manual*, Frontex, 2013, available at: <frontex.europa.eu/assets/Publications/Training/Fundamental_Rights_Training_for_Border_GuardsI.pdf>.

b) Anti-Trafficking in Human Beings Training

30. Frontex is also carrying out a 'train the trainers' programme in the area of trafficking in human beings and is organising sessions to train Member States' trainers on the use of the *Anti-trafficking training for border guards*, published by Frontex in 2012. This training manual was developed in line with the latest international and European standards, emphasising that the fundamental rights of the trafficked person are at the centre of all efforts addressing trafficking in human beings. Particular attention is paid to the situation of vulnerable groups, such as children and persons in need of international protection. The Manual aims to assist the national trainers to equip border guards with the special skills needed to effectively fight trafficking in human beings. The training should provide border guards with practical guidance, tailored to their scope of work, focusing on the raising of awareness of trafficking in human beings and the identification and interviewing of potential victims and perpetrators. The anti-trafficking trainers manual has been translated into 20 languages in order to facilitate local training and is also being used to train trainers and border guards of third countries. Frontex has also developed a *Handbook on Risk Profiles on Trafficking in Human Beings*, covering eight profiles of potential victims coming from priority third countries; this handbook is updated every year.

c) Fundamental Rights Training for Frontex Staff

31. As foreseen in the Frontex Fundamental rights strategy, basic fundamental rights training is now mandatory for all Frontex staff. In terms of learner outcomes, the training objectives were three-fold: knowledge, skills and attitude. Specifically, Frontex staff are trained to understand the basic principles of human rights, to be able to apply a human rights perspective in their field of work, to put them into practice using a 'human rights analysis tool' and to learn how they are actually an integral part of their work. The following phase of the staff policy development in this field will include specialised fundamental rights training for operational and other staff separately and tailored to their specific field of work.

D. External Relations with international organisations and third countries

32. Over the years, Frontex has established regular working relations with several UN agencies and organisations. This includes notably UNHCR and UNODC, with whom Frontex has signed Working arrangements and cooperated regularly, especially in the field of capacity building. Furthermore, the Agency receives regular contributions and support from the OHCHR, UNICEF and the UN Special Rapporteur for the Rights of the Migrants. IOM and Interpol are also partners in projects undertaken by the Agency.

33. While fulfilling its mandate, Frontex liaises closely with other EU partners involved in the development of the area of Freedom, Security and Justice, such as Europol, EASO, Eurojust, FRA, EIGE or CEPOL, as well as with customs authorities in order to promote overall cohesion. The Agency has constantly consulted the DG Home Affairs and the European Commission to ensure the full alignment of Frontex cooperation activities with third country authorities with EU external relations policy, including with regard to the respect of fundamental rights.

34. Frontex also works closely with the border-control authorities of non-EU/Schengen countries, mainly those countries identified as a source or transit route of irregular migration. A specific clause on the principle of the respect for fundamental rights is inserted in all Working Arrangements or Memoranda of Understandings that Frontex has formally concluded. In addition, the role of Frontex in respecting and promoting fundamental rights has been duly highlighted in the talks and meetings with representatives from third country partners.

IV. CHALLENGES

35. Frontex is also aware of the challenges remaining to fully implement the Fundamental Rights Strategy and ensure that all the activities of the Agency are in compliance with the fundamental rights and international law.

36. A challenge coming in the near future will be the full and effective implementation of a monitoring system for fundamental rights compliance in all Frontex activities that ensures prompt follow up by the authorities of the Member State hosting the operation.

37. In relation to the issue of children at the borders, Frontex is committed to expand the Vega concept to all its operations in land and sea borders after the publication of the handbook focused on airports. In order for the Strategy to be effective, it will require coordination and commitment to provide effective protection in the Member States hosting the operations.

38. One of the main challenges in protecting the fundamental rights of migrants at the borders is to be able to effectively identify those in need of protection when they might not come forward explicitly and refer them to the appropriate authorities. Frontex is looking into ways to develop a strategy to raise the awareness of the important role of borders guards in gaining the access to the asylum procedures during Joint Operations which is an essential element for the effective guarantee of the right to seek asylum.

39. Other vulnerabilities aside of asylum, especially related to female migrants, need to be revised and best practices identified to improve their situation. The issue of trafficking is one of them, but other abuses against women during the migrations process might also need further attention.

40. Future Frontex engagement in developing and implementing technical assistance projects in third countries will also take into account the promotion and respect for fundamental rights into the activities.