



Warsaw, 17 May 2012

Mr. Nikiforos Diamandouros  
European Ombudsman

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Your Ref: 52012-151772  
Our Ref: 8323/16.05.2012  
(please quote when replying)



**Subject: Ombudsman own-initiative inquiry OI/5/2012/BEH-MHZ**

Dear Mr. Diamandouros,

Thank you for your letter of 6 March. Frontex is happy to update you on the integration of respect of fundamental rights into the performance of its tasks.

At the outset, I would like to note that Frontex, from the very beginning of its work, took the respect of fundamental rights as a *sine qua non* in the performance of all its tasks, and particularly its joint operations. As those operations have become more complex and challenging in recent years and as our staff and budget have grown to current levels, Frontex recognised the need for clear Fundamental Rights and other guidelines for all those taking part in the activities we organize.

For this reason, since 2010 Frontex developed a Fundamental Rights Strategy and related Action Plan, commissioned an external study on the Ethics of Border Security, and developed a binding Code of Conduct for staff and guest officers participating in our activities - well before the amendment of the Frontex regulation. All of these initiatives were consulted with key partners such as FRA, UNHCR and IOM on the basis of Working Arrangements that were signed early on in the development of our agency. Moreover, Frontex has in recent years stated publicly a number of times that it not only respects fundamental rights in all its activities but aims to actively promote them.

As you note, the amended Frontex Regulation, which entered into force at the end of last year, mandates the creation of a number of further mechanisms to ensure the full respect of fundamental rights by the Agency. The most important among them are the creation of the position of independent Fundamental Rights Officer (FRO) reporting directly to the Frontex Management Board, the Consultative Forum (composed of fundamental rights organizations and institutional partners) that will provide strategic Fundamental Rights advice to the Agency, and the development of a mechanism for suspending or terminating joint operations in the event of violations of Fundamental Rights.

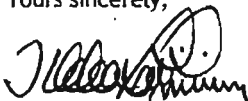
Frontex has been working hard on all these issues since late last year. The position of the Fundamental Rights Officer is currently advertised on our website and will close soon; we expect to issue invitations for

prospective members of the Consultative Forum in the near future; and a “Frontex Standard Operating Procedure to ensure respect of Fundamental Rights in joint operations and pilot projects” has already been drafted and will be approved shortly.

A detailed update of progress on the creation of these positions and mechanisms is contained in our attached reply, together with copies of the relevant documents that are already approved and endorsed.

I remain at your disposal should you have any further questions.

Yours sincerely,



Ilkka Laitinen

Executive Director

**List of annexes**

**Annex 1: Response to specific questions**

**Annex 2: Frontex Fundamental Rights Strategy**

**Annex 3: Frontex Fundamental Rights Action Plan**

**Annex 4: Frontex Code of Conduct**

**Annex 5: Frontex official press release for Fundamental Rights Officer and Consultative Forum**

**Annex 6: Vacancy Notice for Frontex Fundamental Rights Officer**

# **ANNEX 1**

**ANNEX 1****FRONTEX RESPONSE TO THE OMBUDSMAN' SPECIFIC QUESTIONS****1. The Fundamental Rights Strategy****❖ *Current state of affairs as regards the adoption of Frontex' Fundamental Rights Strategy***

Frontex' **Fundamental Rights Strategy** (hereinafter FRS) was endorsed by its Management Board on 31 March 2011 [see Annex 2]. It was developed with the support of a drafting committee composed of Member States representatives, the European Commission, as well as the Fundamental Rights Agency (FRA), the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM) and Frontex representatives.

This comprehensive document was based on the fact that Frontex considered that respect and promotion of fundamental rights are unconditional and integral components of effective integrated border management. Hence, it was meant to serve to mainstream fundamental rights into all activities of Frontex and thus promote the respect of fundamental rights in the European border-guarding culture.

To ensure a comprehensive and structured implementation of the FRS, the drafting committee met further in order to develop a **Fundamental Rights Action Plan**, which was adopted by Frontex Management Board on 29 September 2011 as a tool for the implementation of the Strategy [see Annex 3].

The Action Plan outlines the operational activities (and other field related activities) that were adjusted in order to integrate the objectives of the FRS. It is also foreseen to assess the progress made via the drafting of a Fundamental Rights Annual Progress report.

The Action Plan presents in roughly twenty actions how Frontex will implement the FRS. Actions are structured comprehensively along the following main fields of Frontex activities: operational activities (risk analysis, joint operations, and joint return operations), capacity building (training, research and development) and horizontal activities (such as external relations, communication and dissemination).

The annual progress report on the implementation of these actions will form the basis of future reviews of the FRS and foresees input in the future from the Consultative Forum on Fundamental Rights and the Fundamental Rights Officer.

**❖ *Measures taken by Frontex to put in place an effective mechanism for monitoring respect for fundamental rights in Frontex' activities***

In light of Article 26a(1) of the Frontex Regulation, Frontex considers that an effective mechanism for monitoring respect for fundamental rights in Frontex' activities will be constituted by the interaction of the following:

- The Consultative Forum mechanism;
- The Fundamental Rights Officer mechanism;
- The mechanism for suspension or termination of joint operations and pilot projects in cases of serious or persisting violations of fundamental rights or international protection obligations occurred in the course of joint operations or pilot projects concerned (exposed below);

- The Executive Director's powers (as the Appointing Authority making the final decision).

This mechanism will progressively be finalised mainly with the launching of the Consultative Forum's activities, the designation of the Fundamental Rights Officer and the adoption by the Executive Director of the mechanism for suspension or termination of joint operations and pilot projects in cases of serious violations of fundamental rights or international protection obligations occurred in the course of joint operations or pilot projects concerned.

- ❖ *Frontex' understanding of the reference to "all activities of the Agency" referred to in Article 26a(1) of the amended Frontex Regulation, in particular taking into account that Frontex is involved in coordination and support activities on the territory of the Member States.*

The concept of "all activities of the Agency" is not new in Frontex since it was already used in Frontex Code of Conduct for all participants in Frontex activities (see below), adopted by Decision of the Executive Director of 21 March 2011.

In the Frontex Code of Conduct, the expression "Frontex activity" is defined in Article 2 (b) as:

*[...] any activity coordinated or led by Frontex within the framework of its tasks as described in the Frontex Regulation, including Joint Operations, Pilot Projects, Joint Return Operations, and Trainings.*

Although not explicitly mentioned, it also applies to rapid interventions.

- ❖ *Frontex opinion on the inclusion of a complaints mechanism for persons affected by Frontex' activities within the development of an effective mechanism for monitoring fundamental rights.*

Since Frontex' task is only to coordinate the cooperation of the EU Member States and Schengen Associated Countries, activities that can affect on a person's rights can only be performed by the competent authorities from the Member States hosting or participating in the operation. Frontex' staff members do not have executive powers in the fields of border control; all such powers are only in the hands of the Member States authorities. Hence, any person claiming that his/her fundamental rights were violated by an action from that authority may use both national and EU mechanisms to file a complaint.

Nevertheless, Frontex has developed the following internal mechanisms for individuals to inform about possible infringements:

- 1) A requirement in the Frontex Code of Conduct that obliges participants (staff, guest officers etc.) to report any incidents that may possibly be violations of fundamental rights to Frontex;
- 2) Our incident reporting system via the Frontex Situation Centre, which monitors all incidents occurring in our joint operations on the territory of host MS and alerts the relevant persons in Frontex; and
- 3) The provisions of the new standard operating procedure (SOP) on respect of fundamental rights in joint operations and pilot projects which mandates the full consideration of reports of possible fundamental rights violations in Frontex coordinated activities received from any external source via any route.

## 2. Codes of Conduct

Before the provisions of the amended Frontex Regulation entered into force, Frontex already endorsed a Code of Conduct for all participants in its activities. This Code was adopted by Decision of the Executive Director of 21 March 2011 [see Annex 4]. The Code consists of provisions on respect and promotion of fundamental rights and international protection issues in the course of Frontex activities.

The Code of Conduct is in use during Frontex coordinated joint operations and pilot projects. It is annexed to the Operational Plan and is binding for all persons participating in all Frontex activities (including training, research, etc.). Already in its first articles (see in particular Articles 3; 4; 5) it outlines that the main principles for Frontex are lawfulness, the respect of fundamental rights and international protection obligations. It also includes sanctions, which, in case of a violation of the Code of Conduct, stipulates that the person might be immediately removed from the Frontex activity or face disciplinary measures.

Frontex is currently working on amending its Code of Conduct in view of the implementation of the new Article 2a of the amended Frontex Regulation<sup>1</sup>. This revision will be conducted through cooperation with the Consultative Forum as envisaged in the above mentioned Article.

In addition to this, joint return activities will also be specifically reflected in a separate Code of Conduct for that purpose, pursuant to the requirements laid down in Article 9, (1a)<sup>2</sup> and (1b)<sup>3</sup>.

❖ *Frontex' understanding of the relation between its Fundamental Rights Strategy and these codes of conduct.*

The Codes of Conduct are one of the many instruments of the overall Fundamental Rights Strategy. The existing Code of Conduct for all participants in Frontex activities was adopted by Decision of the Executive Director of 21 March 2011 thus, before the approval of the amendments to the Frontex Regulation.

However, in light of the new framework, the existing Code will be revised in order to accommodate the views of the Consultative Forum as foreseen in Article 2a, and the Code of Conduct for return activities will also be drafted bearing these new requirements in mind.

❖ *Frontex' understanding of the relation among the different codes themselves.*

As regards returns, although the existing Code of Conduct is also applicable to joint return operations coordinated by Frontex, a specific Code of Conduct applicable to joint return operations will be drafted, in consultation with the Consultative Forum (once effective and operational), pursuant to Article 26a of the Frontex Regulation.

This Code of Conduct for return will have a general set of rules similar to the Code of Conduct for the participants in all activities and specific rules addressing the particularity of the joint return activity with the special focus on the monitoring system, as required in Article 9 (1b) of the Frontex Regulation.

However, already today Frontex applies harmonised specific rules in the form of "best practices" for Frontex supported joint return operations. These best practices, applicable since 2008 and currently under revision, are agreed among the Member States and are further developed on the basis of the Council Decision on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders<sup>4</sup>.

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<sup>1</sup> Article 2a reads as follows: "the Agency shall draw up and further develop a Code of Conduct applicable to all operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as on persons seeking international protection, applicable to all persons participating in the activities of the Agency. The Agency shall develop the Code of Conduct in cooperation with the Consultative Forum"

<sup>2</sup> Article 9(1a) reads as follows: "The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals which shall apply during all joint return operations coordinated by the Agency, describing common standardised procedures which should simplify the organisation of joint return operations and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the rights to the protection of personal data and non-discrimination"

<sup>3</sup> Article 9(1b) reads as follows: "The Code of Conduct shall in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system and to the Fundamental Rights Strategy referred to in Article 26a(1) of this Regulation. The monitoring of joint return operations should be carried out on the basis of objective and transparent criteria and cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return"

<sup>4</sup> Council Decision No 2004/573/EC of 29 April 2004, on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders<sup>4</sup> [OJ L 261, 6.8.2004, p. 28-35].

❖ ***State of affairs as regards the adoption of these Codes of Conduct.***

The revision of the existing Code of Conduct adopted in 2011 and the presentation of the draft of the Code of Conduct for the return joint operations are pending on the establishment of the Consultative Forum. In any case, Frontex foresees that this process should be concluded within a reasonable period of time due to the already very advanced work done and the will to improve the Code of Conduct.

**3. The Fundamental Rights Officer**

According to Article 26a(3) of the amended Frontex Regulation, Frontex Management Board shall designate a Fundamental Rights Officer (hereinafter FRO). In this regard, Frontex is well advanced in the process of the designation of FRO and has already published the relevant vacancy notice for this post [see Frontex Press Release of 27 April 2012 - **Annex 5** - and FRO' vacancy notice - **Annex 6** -].

In February 2012, the Frontex Management Board (MB) established a Drafting Advisory Committee (hereinafter DAC) composed of representatives of Austria, France, Germany, Italy, the Netherlands, Spain and the European Commission, which were joined at a later stage - for the discussion on the Consultative Forum - by representatives of the partner organisations mentioned in Article 26a of the Regulation (the Fundamental Rights Agency, the European Asylum Support Office and the United Nations High Commissioner for Refugees). DAC's role is to advise and guide Frontex in the preparations of the relevant Frontex Management Board Decisions in view of implementing the abovementioned Article. The DAC works on both the Fundamental Rights Officer and the Consultative Forum [see below point 3bis]

The DAC has already met several times since the entry into force of the amended Frontex Regulation. The Committee will present the results of its work to the Management Board of Frontex in May this year. Hence, Frontex can provide you with the following elements of response.

❖ ***FROs's precise responsibilities and duties according to Frontex and the Member States.***

According to the amended Frontex Regulation, FRO is an independent staff member reporting directly to the Management Board to perform a monitoring role regarding the respect of fundamental rights. FRO is also tasked with reporting to the Consultative Forum (hereinafter CF) on a regular basis as well as to the Frontex Executive Director as his or her appointing authority. Both FRO and CF shall have access to all information concerning respect for fundamental rights in relation to all Frontex' activities.

The activities of FRO and CF are understood to be complementary. While FRO has a monitoring function, CF will offer strategic recommendations and a pool of information on how Frontex can structurally improve respect for fundamental rights in its various activities.

Therefore and according to the vacancy notice, the tasks and duties of the Fundamental Rights Officer will include inter alia:

- Making observations on joint operations and pilot projects coordinated by Frontex;
- Contributing to an effective mechanism of monitoring the respect for fundamental rights by regular reporting and monitoring activities, including field visits;
- Identifying possible preventive and corrective measures addressing possible fundamental rights incidents that may occur in joint operations and pilot projects coordinated by Frontex;
- Setting up and maintaining a record of possible fundamental rights incidents related to the activities of Frontex;
- Monitoring and analysing the implementation of the Frontex Fundamental Rights Strategy;
- Contributing to other fundamental rights issues in Frontex.

A vacancy notice was published on 27 April 2012 [closing date for applications on 28 May 2012] and it envisaged that the FRO will thus take up his/her position before the end of 2012 [see *Annex 6*].

❖ *Eventual competence of FRO to receive complaints from individuals concerning respect for fundamental rights by Member States and/or Frontex.*

The question of the competence of FRO to receive complaints from individuals concerning respect for fundamental rights by Member States and/or Frontex has already been raised but the outcome is expected only after the fundamental rights monitoring mechanism is fully defined. The FRO will be involved in defining the monitoring mechanism once appointed.

In any case, every individual is entitled to appeal to the national authority of the Member State where the reported incident occurred.

❖ *Appointment of the FRO by the Management Board: procedure and timeframe for appointment.*

According to Article 26a of the amended Frontex Regulation, the Management Board will designate the FRO.

The selection process started at the end of April with the publication of a vacancy notice prepared by DAC. The vacancy notice gives further details on the status of FRO and more details about the selection procedure itself.

An indicative timeline suggested to the Management Board in the beginning of 2012 mentioned that FRO could be designated by the Board this autumn 2012.

### **3bis. Consultative Forum**

Even though the European Ombudsman has not required information as regards the state of affairs of the setting up of the Consultative Forum (hereinafter CF), Frontex nevertheless wishes to record progress on this important topic.

The amended Frontex Regulation states in its Article 26a(2) that a CF shall be established by Frontex to assist the Executive Director and the Management Board in fundamental rights matters.

Hence, according to the amended Frontex Regulation, the Management Board shall decide on the composition and the working methods of the CF and the modalities of transmission of information related to Frontex activities to CF, on a proposal by the Executive Director. For this reason, the Drafting Advisory Committee referred to above in regard to the FRO is tasked with defining the role and tasks of the CF as well. The same composition as for FRO was kept and the work is already well advanced.

The Committee's work focuses on defining the composition, the tasks and the working methods as prescribed by Article 26a(2) [see also *Annex 4*]. The Management Board plans to adopt a decision on the composition of the Forum this May.

According to the timeline suggested to the Management Board in the beginning of 2012, the inaugural Consultative Forum meeting could take place on the 27<sup>th</sup> of June 2012.

Therefore, CF is being created as a knowledge and expertise resource to enable Frontex, including its Management Board, to gain information and advice relevant to the aim of developing and promoting the full respect of Fundamental Rights in all the Agency's activities. It is envisaged that Frontex will host CF meetings. The Consultative Forum will be publishing yearly reports of its activities.

It is anticipated that there will be two main types of organisations to be invited to participate:

- Civil society organisations, which will represent the majority of participants; and



- International Organisations and EU Agencies specialised in fundamental rights issues including those explicitly mentioned in the Regulation.

A Management Board decision on the composition of the CF is planned to be adopted on the 23<sup>rd</sup> of May. The inaugural meeting of CF is planned to be held in September 2012.

#### **4. European Border Guard Teams / The Coordinating Officer**

The amended Frontex Regulation refers to the European Border Guard Teams (hereinafter EBGTs) and requires that they shall, in the performance of their tasks and the exercise of their powers, fully respect fundamental rights.

In this regard, Frontex can already provide the following elements of response.

##### ***❖ Responsibility for possible failures of EBGT to fully to respect fundamental rights.***

Frontex disposes of four main tools to prevent the possible failures of EBGT members to respect fundamental rights and to define the responsibilities over these violations.

##### **(i) Operational Plan**

EBGTs deployed by the Member States in the framework of joint operation, pilot project or rapid intervention coordinated by Frontex (and its representatives in particular) act in accordance with an Operational Plan (Article 3a of the amended Frontex Regulation). The latter stipulates in its introduction part that:

- All persons involved in Frontex coordinated activities are obliged to report all observations regarding violations of fundamental rights via the appropriate chain of command;
- Prior to their deployment Frontex shall ensure that all participants in its operations (border guards and other personnel of the Member States and Frontex staff) have received training in relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.
- Frontex Code of Conduct is an integral part of each Operational Plan. Hence, objectives scope and subject matter of the Code of Conduct are as follows:
  - Frontex Code of Conduct aims to promote professional values based on the principles of the rule of law and the respect of fundamental rights and to establish the ethical behaviour standards that guide all persons participating in Frontex activities.
  - In this regard it sets out principles and rules which guide the conduct of all persons participating in Frontex activities, namely, Frontex staff, officers of border guard services of a Member State and other staff performing any actions in Frontex activity.

Moreover, operational plans for joint operations, pilot projects and rapid interventions also stipulate standard operating procedures for Serious Incident Reporting. But for cases of suspected violations of fundamental rights (including comprehensive list of principles and rights to be observed), these are considered to be a separate category in the Serious Incident Categories (catalogue) and as such shall be immediately reported by all participants in an operational activity following the standard operating procedures. Frontex representatives in the coordination structure might be tasked by Frontex Headquarters in the framework of the standard operating procedures for Serious Incident Reporting to collect additional information and follow up on serious incidents.\

## **(ii) Shared responsibility over the members of the EBGT**

As regards the responsibility of the members of EBGTs, it is to be noted that the EBGT pool is constituted only by border guards made available for deployment, at the request of Frontex, by Member States and that other staff employed by Frontex on a temporary basis, who are not qualified to perform border control functions, shall only be deployed during joint operations and pilot projects for coordination tasks [Article 3b paragraph (2) of Frontex Regulation] in order to foster cooperation and coordination amongst host and participating Member States.

In this regard, EBGT' members 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. If an EBGT member (or Host Member State officer) personally fails to respect fundamental rights, the matter will become subject for examination by the respective authorities of the Host Member State (e.g. investigation), and/or Frontex via its coordination structure as well as sending authorities of the Home Member State.

Thus, and taking into account Articles 3(1a), 3c(1) and 3c(4) of the amended Frontex Regulation, the members of EBGTs are:

- on the one hand subject to instructions issued by the Host Member State;
- on the other hand remain subject to the disciplinary measures of their home Member State while performing their tasks and exercising their powers, in particular in cases of violations of fundamental rights or international protection obligations in the course of a joint operation or pilot project.

## **(iii) Profiles of the members of the EBGT pool**

According to the amended Frontex Regulation tasking Frontex to set up the EBGT to be deployed during joint operations and rapid border interventions, Frontex has developed the profiles for the future members of the EBGT pool following a thorough internal assessment. These profiles shall be submitted to the Management Board for approval.

The EBGT pool will be composed of border guards from the EU Member States, experts in different areas of border management including land and sea border surveillance, dog handling, identification of false documents and second line activities such as establishing nationalities of irregular migrants detected at the border.

Member States will contribute to this pool based on specific expert profiles developed by Frontex. Following the nomination to the pool, Frontex will provide training to its members, in particular in relevant Union and international law, including fundamental rights and access to international protection.

All proposed profiles reflect fundamental rights and international protection obligations that all participants in Frontex operations are required to adhere to in the discharge of their duties, in particular following the requirements enshrined in the amended Frontex Regulation. The aim is to ensure a consistent approach throughout all profiles and to provide the Member States with a view of the officers who Frontex is aiming at gathering in the EBGT pool.

Additional requirements include knowledge and/or experience in the requested field, prior to participation in operational activities and also previous training including on relevant EU law and international law, in particular on how to apply fundamental rights in practice as well as on access to international protection.

Still, the responsibility for selecting and nominating experts to EBGTs will remain with the Member States as the autonomy of the Home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected, according to Article 3b(2) of Frontex Regulation. However, the defined eligibility criteria shall be respected during the selection and nomination process as they are considered crucial for ensuring a necessary minimum level of standardisation and quality of experts to be deployed.

(iv) Training prior to deployment for all participants

Finally, with a view to the mandatory training requirements for guest officers taking part in a joint operation, and in consideration of the national trainings already provided, Frontex offers specific training courses in order to meet these requirements.

Hence and as mentioned above, Article 5 of the amended Frontex Regulation states that Frontex shall provide training for all participants in Frontex operations (border guards and other personnel of the Member States and Frontex staff) prior to their participation in operational activities.

The topics of these trainings shall be related to relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities. Frontex has developed a concept for providing the required training to the pool members distinguishing between those having already participated in RABIT induction training, Mid Level Course or one of the INTELLOPS training courses and those being considered as newcomers in the pool.

Thus, the most significant part of the training for EBGTS members is focused on the fundamental rights and applicable international human rights law. Border control and border management entail sensitivity for the principle of non-discrimination, non-refoulement and the right to asylum, as well as core fundamental rights observed. The members of the EBGTS pool are expected to display full commitment for the fundamental rights and liberties. The training provided will ensure that they receive a relevant training in fundamental rights, access to the international protection, as well as standard guidelines for identifying persons seeking protection. In the development phase Frontex was supported by UNHCR with expert advice on asylum and refugee matters.

❖ *Role of the Frontex Coordinating Officer (FCO) in this respect.*

In all Operational Plans there is a specific paragraph related to Frontex Coordinated Officer (hereinafter FCO), which reads as follows:

*“Frontex Coordinating Officer*

*According to the new Frontex Regulation, Frontex shall nominate a Coordinating Officer for the joint operation where members of the European Border Guard Teams will be deployed. The role of the coordinating officer shall be to foster cooperation and coordination amongst host and participating MS/SAC in close cooperation with PM. FCO shall ensure constructive presence during the joint operation when the operational need occurs to fulfil the obligations of new Frontex Regulation (Article 8g).”*

FCO has a mandate to act in joint operations, pilot projects and rapid intervention, in particular in the following way:

- The FCO acts as an interface between Frontex and the Host Member State;
- The FCO represents Frontex in the coordinating body for each operational activity (e.g. International Coordination Centre);
- The FCO monitors and reports on the correct implementation of the Operational Plan including Frontex Code of Conduct and thus respect of fundamental rights;
- The FCO plays a key role in the follow-up of serious incident reporting if a task is given for collection additional information and follow up the serious incident by Frontex Headquarters.

## 5. Termination of joint operations and pilot projects

The amended Frontex Regulation promotes a close and regular examination of joint operations and pilot projects for their respect of fundamental rights. It also stipulates in Article 3(1a) that Frontex may terminate, after informing the Member State concerned, joint operations and pilot projects if the conditions to conduct those joint operations or pilot projects are no longer fulfilled. The Executive Director shall suspend or terminate, in whole or in part, joint operations and pilot projects if he or she considers that violations of fundamental rights or of international protection obligations occurred in the course of these activities are of a serious nature or are likely to persist.

An internal task force was constituted in Frontex to draft a standard operating procedure (SOP) to ensure the respect of fundamental rights in joint operations and pilot projects. The final SOP will be publicly available once it is formally adopted. Frontex will send the final SOP to the European Ombudsman once finalised.

Though the document is not yet final, Frontex can provide the following elements of response.

❖ *Procedures and criteria which Frontex will use to identify possible violations of fundamental rights or of international protection obligations which are of a serious nature, or are likely to persist.*

Since violations of fundamental rights cannot be predicted before they actually happen and cannot be systematised, Frontex has not developed a strict criteria as such to identify those possible violations of fundamental rights or of international protection obligations. These can only be assessed on a case by case basis and the expertise of the FRO will be crucial in this regard.

The SOP that Frontex has developed so far therefore concentrates on ensuring that any incidents or reports that might possibly have a fundamental rights aspect are reported and evaluated by the competent persons at all stages of operational activity - from planning to termination -.

The SOP foresees five steps in order to respond to the requirements of the amended Frontex Regulation. These are:

- 1) Internal preparations;
- 2) Provisions in the Operational Plan;
- 3) Incident reporting (internal reporting mechanisms to ensure all possible Fundamental Rights violations are reported and flagged);
- 4) Dealing with the information in-house (assessing whether an incident is a possible violation of Fundamental Rights, follow up actions, Informing relevant Frontex managers);
- 5) Frontex response and action (assessment of proportionate follow up and decision on possible measures).

In order to develop these steps more into detail, it is to note that the identification of possible violations of fundamental rights starts even before any operation is launched by Frontex, with some mandatory preventive measures meant to make the stakeholders of the operation aware of the possible risks linked to the referred operation.

These internal preparations involve various actors of Frontex, such as the risk analysis unit, the Fundamental Rights Officer (as soon as he/she will be appointed) and the operations unit with an aim to address possible fundamental rights related risks and peripheral risks in this regard. These risks should be assessed taking into account e.g. the situation in the countries of origin, of transit and neighbouring countries, but also any report produced by third parties involved in the specific topics if available (such as UNHCR, IOM, but also the relevant country itself).

The second step of these preventive measures for the identification of possible violations of fundamental rights involves the Operational Plan of every operation. This binding Plan for both Frontex and the host

Member State shall include concrete measures for the prevention of the possible violations, e.g. reporting obligations for all participants as already referred to as regards the Code of Conduct and the European Border Guard Teams. In general, this Operational Plan raises fundamental rights awareness and fundamental rights special standards to be respected in every operation.

Besides these preventive measures, the other part of the mechanism provides the internal procedure for the identification as such of the alleged violations of fundamental rights or of international protection obligations once they are reported to Frontex. This detailed procedure aims to present the steps to be followed once Frontex is aware of a possible violation of fundamental rights. This includes:

- The mechanism for incident reporting during the operations, meaning reporting obligations for all participants in the operations and reporting possibilities for third parties;
- The way to deal with the reported information in-house, including the identification of the recipient of the information, the preliminary assessment of the alleged violation and the transmission of the information to the concerned stakeholders in-house (including the Fundamental Rights Officer);
- The assessment of the information by the referred stakeholders in order for them to produce detailed reports identifying and assessing the truthfulness and the seriousness of the alleged violation and to recommend possible solutions. Also, if necessary, these reports can assess for the need of additional information or further steps to be taken. These reports will be presented to the Executive Director.

Therefore, this broad approach of the prevention and identification of possible violations of fundamental rights or of international protection obligations will allow an appropriate response of Frontex in case such situation may occur.

Frontex will enhance the effectiveness of the above mechanism via the preparation of its staff members to help them identify possible violations via specialised training courses on fundamental rights-related issues, as already mentioned above.

❖ ***Establishment of a mechanism by which persons claiming to be affected and/or other persons may complain to Frontex about violations of fundamental rights or international protection provisions.***

The mechanism establishing the procedure to ensure respect of fundamental rights in the operations and to make appropriate response in case of violations of fundamental rights or of international protection obligations includes the possibility for third parties to report possible violations to Frontex.

Indeed, Frontex will consider any complaint, allegation or relevant information regarding suspected fundamental rights violations provided by any other source than the participants to the operations - which have a legal obligation to report the incidents - and will give them appropriate consideration. However, Frontex has no authority to decide on individual cases, since this is the competence of the Member States only.

❖ ***Steps taken by Frontex, in line with its mandate, to help remedy the detected violations of fundamental rights and international protection obligations in case the Executive Director decides to suspend or terminate a joint operation or pilot project.***

Frontex cannot tell in advance what kinds of situations might justify the suspension or termination of an operation.

The mechanism described above aims to provide however the Executive Director with accurate and timely information and the best qualified assessment of any incidents or series of incidents in which there is a possible violation of fundamental rights during any Frontex coordinated activity.

The Executive Director, when faced with a detected violation of fundamental rights and of international protection obligations and depending on the powers of Frontex in relation to each case, can decide on a

number of measures which aim to help remedy detected violations. These may include, but are not limited to:

- Letter of concern to relevant Member States;
- Letter of warning;
- Discussion at the Management Board level;
- Report to the European Commission;
- Withdraw or reduction of financial support to Member States;
- Appropriate disciplinary measures both in the Member State and in Frontex;
- Temporary suspension of the joint operation or pilot project;
- Termination of the joint operation or pilot project.

Due to the complexity of the operations which largely involve the Member States and are linked to significant political and operational issues, it shall not be always appropriate to suspend or terminate the operation. In any case this decision is up to the Executive Director who takes into account and analyses the various reports produced and presented to him by designated Frontex staff.

# **ANNEX 2**

*Endorsed by the Frontex Management Board on 31 March 2011*

## ***Frontex Fundamental Rights Strategy***

### **PREAMBLE**

***Frontex considers that respect and promotion of fundamental rights are unconditional and integral components of effective integrated border management.***

*Frontex is fully committed to develop and promote a shared understanding of fundamental rights among the entire European Union (EU) border-guard community and integrate this also into the cooperation with Third Countries.*

*This shared understanding, based on the EU Acquis, in particular the Charter of Fundamental Rights of the EU and on international law encompassing international protection obligations, shall further reinforce an EU border-guard culture characterised by the spirit of mutual respect and cooperation.*

*In order to achieve efficient and effective border management, Frontex aims at the highest operational standards also in terms of the safeguards of fundamental rights and professional ethics.*

*Frontex aims to prevent possible violations of fundamental rights during its operations by, on one hand, developing the requisite knowledge and skills of participating officers and, on the other, implementing proper monitoring mechanisms based on reporting to the competent authorities and sanctioning, applying a zero tolerance policy.*

*Frontex aspires to the horizontal integration of fundamental rights throughout all its activities and at all stages.*

*This strategy will be implemented by an Action Plan, integrated into the Frontex Programme of Work, in order to support the achievement of Frontex' mission and operational goals.*

*An annual progress report will inform the stakeholders and in particular the Frontex Management Board about the implementation of this strategy and Action Plan, while a consultative forum open also to representatives of the civil society shall further enrich the overall evaluation and review processes.*

*Frontex and its partners shall actively communicate and promote the objectives and content of this strategy among the relevant national, European and/or international bodies and to the public, enhancing hereby also transparency in Frontex activities.*



### *The Objectives*

1. **Respect for fundamental rights** is an essential part of **integrated border management** and, more broadly, of EU Migration and Security Policies. The implementation of this Fundamental Rights Strategy shall strengthen the commitment of Frontex and the entire EU border-guard community to respect and promote the fundamental rights in their activities.
2. Frontex is **to adopt and to display an exemplary attitude** based on concrete practical initiatives, and the adoption and promotion of the highest standards in border management practices, allowing for transparency and public scrutiny of its activities.
3. Increasing understanding and sensitivity of Frontex and national officers towards the fundamental rights and values at stake will further establish a **fundamental rights culture within the EU border-guard community**, acting as an enabling factor to exploit the full potential for cooperation between the National Border Management Services, Third Countries and other third parties.

### *The Legal and Political Context*

4. The Lisbon Treaty confirms that **respect for human rights** is one of the **founding values of the European Union** (Art 2 of the Treaty on European Union - TEU) and underlines that the **Area of Freedom Security and Justice** shall be constituted with respect for fundamental rights (Art 67 of the Treaty on the Functioning of the European Union - TFEU). The Treaty equally recalls that the EU in its relations with the world shall promote the respect of human rights as a guiding principle in its external action (Art 3(5) of the TEU)<sup>1</sup>. The EU Fundamental Rights Policy is therefore fully applicable to Frontex as an EU Agency, active in the Area of Freedom Security and Justice and mandated to **cooperate with relevant Third Countries and International Organisations**.
5. The Lisbon Treaty recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the EU**<sup>2</sup> and gives the Charter the same binding legal force as the Treaties (Art 6(1) TEU). The Charter applies to the Institutions and bodies of the EU including EU Agencies. They shall respect the rights, observe the principles and promote their application in accordance with their respective powers. For law enforcement bodies in general and for Frontex in particular, the human rights potentially at stake through the sensitive nature of its activities, include, but are not limited to, the right to life, liberty and security, physical integrity and dignity, prohibition of torture and inhumane or degrading treatment, asylum and international protection, *non-refoulement*, non-discrimination, prohibition of slavery and forced labour, rights of the child, right to family life, right to health care, effective legal remedy and personal data protection.

<sup>1</sup> The concepts of "human rights" and "fundamental rights", although not the same, are intrinsically linked and used interchangeably throughout this strategy.

<sup>2</sup> As adopted on 12 December 2007 (OJ C 303/1 of 14.12.2007).

6. The accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) will further complement the existing legal tools in the EU for protection of fundamental rights, making also the European Court of Human Rights (ECtHR) competent to review in accordance with the ECHR and its relevant case-law the actions of the EU (Art 6(2) TEU). Frontex should therefore also take into account the relevant ECtHR case-law in its activities.
7. Jurisdiction by the **Court of Justice of the European Union (CJEU)** has also been extended by the Lisbon Treaty. The CJEU is fully competent to revise the legality or provide interpretation to guide the acts of the EU Agencies (Articles 263, 265 and 267 TFEU) which in turn are obliged to respect fundamental rights in all their activities. Frontex should therefore also take into account the relevant CJEU case-law in its activities.
8. The relevant **EU sectoral legislation**, starting with the Frontex Regulation<sup>3</sup>, also underlines respect of fundamental rights. Moreover, the **Schengen Borders Code**<sup>4</sup> in its Articles 3 and 6 as well as in recital 20 calls for the due respect of fundamental rights and the appropriate training of all staff applying this code. This EU legal framework on border control and the respect of fundamental rights has been further reinforced by the **Council Decision for the surveillance of the sea external borders**<sup>5</sup>. Guarantees and respect for fundamental rights are also laid down in the Return Directive<sup>6</sup>.
9. The 1951 **Geneva Convention Relating to the Status of Refugees**, which includes the *prohibition of refoulement*, and its Protocol of 1967, is the cornerstone of the European Asylum System (Article 78 TFEU). The relevant EU Asylum *Acquis*, *inter alia* the "Qualification"<sup>7</sup> and "Procedures"<sup>8</sup> Directives and Dublin II Regulation<sup>9</sup>, are also to be observed.
10. The further development of the EU *Acquis* and policies in the Area of Freedom Security and Justice in areas such as border management and the fight against organised crime including trafficking of human beings or processing of personal data will take place in full compliance and promotion of the Charter of Fundamental Rights, as also stressed in the **Stockholm Programme**.
11. All human rights instruments adopted by the **United Nations and the Council of Europe Conventions** as ratified by all the Member States are applicable.
12. There are also sectoral international legal instruments relevant to border control, in particular those of the international law of the sea that Frontex has to respect. The UN Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Maritime Search and Rescue (SAR) must be applied in conformity with human rights

<sup>3</sup> See Recital n. 22 of the Frontex Regulation (EC 2007/2004 adopted on 26 October 2004).

<sup>4</sup> 562/2006 of 15 March 2006.

<sup>5</sup> 2010/252/EU of 26 April 2010.

<sup>6</sup> 2008/115/EC of 16 December 2008.

<sup>7</sup> 2004/83/EC of 29 April 2004.

<sup>8</sup> 2005/85/EC of 1 December 2005.

<sup>9</sup> 2003/343/EC of 18 February 2003.

obligations deriving from international, EU or national law. The same applies when Member States implement the "Palermo Protocols"<sup>10</sup>, supplementing the United Nations Convention against Transnational Organized Crime.

13. **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 (JOs)<sup>11</sup> 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 must particularly focus on creating the conditions for ensuring compliance with fundamental rights obligations in all its activities.

### *The Operationalisation*

#### *Joint Operations*

14. Any Frontex JO is based on risk analysis of the situation at the EU external borders. This analysis shall specifically **take 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, women, victims of trafficking, and persons with medical needs). Frontex shall also assess 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**. 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.
15. **Operational Plans** and other similar agreed rules implemented by national border management organisations are elaborated by Frontex in strict conformity with the relevant international standards and applicable European and national laws. The Operational Plan and other similar agreed rules shall provide guidance on how to address identified fundamental rights challenges with a view to preventing breaches or other negative effects. Corrective measures should be taken in case of breach or serious risk of breach of fundamental rights. As last resort, Frontex might terminate a JO if the conditions guaranteeing the respect for fundamental rights are no longer met. Furthermore, in cases of fundamental rights breach in an operation, 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.
16. The participating officers shall be properly trained and the equipment shall be suitable to address the perceived risks of fundamental rights breaches.

<sup>10</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted by General Assembly Resolution 55/25, Palermo, 12-15 December 2000).

<sup>11</sup> Including Rapid Border Intervention Teams (RABIT), Joint Return Operations and Pilot Projects.

17. Frontex will put in place an effective **reporting** system to ensure that any incidents or serious risks regarding fundamental rights are immediately reported by any participating officer or Frontex staff member and can be acted upon. This reporting should be the basis for **effective monitoring of all its operations**. The monitoring effectiveness and credibility will rely heavily on the commitment of national border-guard services to report but also on the involvement of external stakeholders. The Operational Plan shall set out the modalities for reporting, including how and to who report.
18. **Monitoring of forced return operations** is an essential requirement in the return policy of the EU. Member States shall therefore guarantee that they can provide for an effective forced return monitoring system in national and Frontex Joint Return Operations. Failing to meet this condition could ultimately lead to postponement or cancellation of the operation or of the participation of the respective Member State. Furthermore, Frontex supports Member State efforts in making arrangements for an effective forced return monitoring system. Frontex also develops a monitoring system in its best practices for returns.
19. **Alleged violations of human rights** reported either by national or Frontex officers or third parties, when substantiated, will be followed up by Frontex by communicating and clarifying the situation in cooperation with the competent national authorities without prejudice to any resulting administrative or penal procedures. Member States should also inform Frontex on the follow-up measures.
20. In addition to the concrete incidents, the monitoring of JOs should also focus on more general consequences or impacts of the JO on fundamental rights, which shall feed into the evaluation and revision process in view of future JOs. In operations which are particularly challenging from a fundamental rights point of view, Frontex will endeavour to include **persons with a qualified fundamental rights expertise** among participating staff.
21. In addition to pursuing a regular **exchange of information with external partners** engaged in fundamental rights protection activities, in particular the Fundamental Rights Agency (FRA), the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the EU Anti-Trafficking Coordinator, Frontex will endeavour to ensure their regular involvement in the relevant operational activities in accordance with the Working Arrangements with these partners. The involvement of these external partners or others should be foreseen in the Operational Plan, which should also define the scope of the cooperation.
22. Frontex will also seek advice from **its external partners on the relevant instructions or guidelines** for officers taking part in Frontex activities. These instructions or guidelines, which should form an integral part of each Operational Plan, could relate to methods for better identifying people seeking international protection, proper treatment of vulnerable groups including potential victims of trafficking or fundamental rights monitoring of operational activities. The final aim is to promote the highest standards in compliance with fundamental rights by the development and promotion of best practices.

### *Capacity Building*

23. Frontex **Common Core Curriculum (CCC)**, which is the cornerstone of the education of (EU) national border-guards, shall contain a chapter on the respect of fundamental rights and international protection obligations as laid down in international law and European legislation and provide practical guidance. CCC shall be regularly updated according to institutional and legal developments. These revisions will be done in full association with Member States experts and external partners. These and other common training tools are to be used for the promotion of the respect of fundamental rights among the entire EU border-guard community.
24. Frontex is committed to **effective training methodologies favouring practical approaches** to enhance knowledge and develop required skills and attitudes, and shares this priority with the Member States. The overall aim is to raise awareness and ensure the proper training of all EU border-guards to establish a common playing field, aspiring to ever higher standards of professionalism as part of an EU border-guard culture.
25. Specific training tools on fundamental rights and other related areas such as trafficking in human beings, migrants and border-guards' health or SAR must be complemented with efforts to integrate the fundamental rights aspect in all other specialised training activities, such as in the RABIT training, due to its horizontal nature.
26. Frontex is leading by example in preparing and delivering training on fundamental rights in cooperation with FRA and with the support of UNHCR, to its own staff. Fundamental rights shall be streamlined into Frontex **staff policy development** where knowledge and experience in this field are also taken into account as selection criteria in recruitment.
27. Frontex Research and Development Unit supports the fundamental rights-based approach through its activities, aiming to contribute to the further development and promotion of best practices through evidence based research.

### *External Relations*

28. Frontex **cooperation with Third Countries' border-guard services** is conducted under the EU External Relations Policy and shall therefore be guided by the principle of the respect of human rights. Frontex is committed to adjusting its cooperation arrangements and activities to the EU foreign policy measures adopted as a consequence of the human rights situation in the partner Third Country.
29. The promotion of fundamental rights is of particular importance in the cooperation with EU Candidate or Potential Candidate Countries, as this value underpins the whole EU *Acquis* that they have to assimilate.

30. Frontex' external cooperation capacity enables it to act in this field in coordination and cooperation with Member States, the European Commission (EC) and EU Bodies and International Organisations engaging with the particular Third Country. This creates opportunities for Frontex to promote and streamline the respect of fundamental rights into cooperation activities with the Third Country.

#### *Professional Conduct*

31. Frontex' **Code of Conduct**, complementing a set of "**Dos and Don'ts**" which are distributed to all persons acting in Frontex coordinated operational activities, promotes professional values based on the principles of the rule of law and respect of fundamental rights. This will be used to fortify the ethical behavioural standards for persons participating in Frontex activities, namely, Frontex staff, officers of national border-guard services and others performing in Frontex activities.
32. The Code of Conduct sets generally accepted standards (i.e. soft law), whereby Frontex expects all relevant national authorities to ensure that adequate measures are taken to redress potential infringements of the Code of Conduct by national officials upon information provided by Frontex and other concerned parties. On the basis of a "zero tolerance" policy, Frontex will follow up on infringements of the Code of Conduct with appropriate sanctions and/or disciplinary measures as far as its own staff are concerned.

#### *The Implementation*

33. The **proper implementation of the strategy is essential for the credibility and reputation of Frontex and the entire EU border-guard community**. This strategy is inextricably linked to the commitment of national border-guard services to share their objectives and support Frontex in their implementation. Their commitment is formalised with the endorsement of the strategy by the Frontex Management Board.
34. EU policymakers, in particular the EC, have a crucial role in supporting and promoting this strategy which reflects the EU's overall strategy in this field.
35. Another *conditio sine qua non* for an effective implementation is the support by Frontex' external partners in particular FRA, EASO, UNHCR, IOM and other EU bodies and International Organisations to be provided in the context of mutually beneficial cooperation. This starts by fully acknowledging and respecting the mandate of all parties involved: external partners, national border-guard services and Frontex.
36. The **main tool for the implementation of this strategy will be an Action Plan**. It must be properly reflected in the **Frontex Programme of Work**, thus proving the formal commitment of the organisation's governing structures and allocation of appropriate responsibilities and resources. Early consultations between Frontex and its partners, with whom this Action Plan shall be drawn up jointly, will be the basis for the programming of all the relevant activities.

37. The **annual progress report** on the implementation of this strategy shall be presented to the Frontex Management Board and thereafter made public. Frontex shall prepare the groundwork for these reports in cooperation with its external partners.
38. In order to increase the transparency and credibility of this process, external third parties, in particular those representing civil society, shall be involved. Their concerns and perspectives must be taken into account for the evaluation and revision of the strategy. Frontex, national border-guard services, external partners and representatives of civil society shall therefore have the possibility to exchange views and suggest means of improvement for the strategy and the Action Plan in a **consultative forum**, to be convened periodically at Frontex Headquarters.
39. The **active communication and promotion of the objectives and content of this strategy** among National Border Management Services, EU and international partners as well as civil society is vital for an effective implementation. The Heads of the National Border Management Services must take the leading role when communicating and promoting them nationally while Frontex will concentrate efforts at EU and international level.
40. Frontex, National Border Management Services and EU Policy Makers shall also refer to the objectives and content of this strategy when engaging with the general public, media, academics, members of the European or National Parliaments or other civil society representatives in an effort also to provide **higher transparency** of EU and national border management activities.

# **ANNEX 3**



## Frontex Fundamental Rights Action Plan

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November 2011

### Background

This Fundamental Rights Action Plan is the main tool for the implementation of the Frontex Fundamental Rights Strategy, adopted by the Management Board on 31 March 2011. The proposed actions will also be integrated in the successive Frontex Programs of Work where appropriate.

The members of the Fundamental Rights Strategy Drafting Committee composed by experts of the Member States, European Commission and Partner Organizations (FRA, IOM, and UNHCR) were the main drafters of this Action Plan.

This Action Plan lays down a number of already ongoing actions which have been adjusted or revised in order to integrate the objectives of the Fundamental Rights Strategy as well as the relevant new provisions contained in the amended Frontex Regulation<sup>1</sup>. The Action Plan will allow for higher visibility of Frontex action in the important field of fundamental rights as well as for keeping track of progress made via the Fundamental Rights annual progress report.

The Action Plan will be reviewed when the need arises, for instance in order to take into account the consultations to be held in the Consultative Forum based also on the reports of the yet to be designated Fundamental Rights Officer.

On 29 September 2011, the Frontex Management Board has unanimously endorsed this Fundamental Rights Action Plan.

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<sup>1</sup> Regulation (EU) No. 1168/2011 of 25 October 2011 (OJ L 304, 22.11.2011, p. 1)

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline	
<b>OPERATIONAL ACTIVITIES</b>						
<i>Risk Analysis</i>						
1	Analytical support to JOs	Inclusion of FR dimension in TFA and other relevant products, data collection templates and analytical evaluations of JOs, as appropriate transfer of analytical results to officers deployed in JO (see No 4)	3 (1), 3 (1a), 3 (4), 4, in conjunction with Recital 18	14. Any Frontex JO is based on risk analysis of the situation at the EU external borders. This analysis shall specifically take 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 (...). Frontex shall also assess 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.	Frontex  MS/SAC, especially JO hosting MS	Mid-long
2	Strategic reports such as FRAN Quarterly, ARA and SARA, TRAs	Gradual inclusion of FR dimension in the analysis on the composition of flows including observations /considerations on fundamental rights challenges which can have an impact on border management activities	Recital 4, 4a, in conjunction with 26a (1)	20. (...) the monitoring of JOs should also focus on more general consequences or impacts of the JO on fundamental rights, which shall feed into the evaluation and revision process in view of future JOs  21. In addition to pursuing a regular exchange of information with external partners engaged in fundamental rights protection activities (...)	Frontex  MS/SAC (through data collection), relevant EU Bodies and Services, IOM, UNHCR	Permanent
<i>Joint Operations</i>						
3	Amendments to OPLAN for regular JOs	1. To enhance the compliance of the OPLAN provisions with FR obligations  2. Put in place an effective monitoring/reporting system	3a (1) h1, 8e h, In conjunction with Recital 17 and 26a (1)	14. Any Frontex JO is based on risk analysis of the situation at the EU external borders. (...). Frontex shall also assess the potential impact on fundamental rights when proposing or preparing operational responses, which may differ according to the nature of the operation	Frontex  MS/SAC and external partners including FR	Short-Mid

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline
	<p>including adjustments to the current incident reporting, in consultation with the FRO.</p> <p>3. The FRO to act as clearing point for alleged violations on FR including evidence submitted by Third Parties in the context of the operational activity and according to the OPLAN.</p> <p>4. Definition of possible corrective measures in case of breach of FR by consultations between Frontex, its FRO and the host MS.</p>		<p>(...).</p> <p>15. Operational Plans and other similar agreed rules implemented by national border management organisations are elaborated by Frontex in strict conformity with the relevant international standards and applicable European and national laws. The Operational Plan and other similar agreed rules shall provide guidance on how to address identified fundamental rights challenges with a view to preventing breaches or other negative effects. Corrective measures should be taken in case of breach or serious risk of breach of fundamental rights...</p> <p>17. Frontex will put in place an effective reporting system to ensure that any incidents or serious risks regarding fundamental rights are immediately reported by any participating officer or Frontex staff member and can be acted upon. This reporting should be the basis for effective monitoring of all its operations. The monitoring effectiveness and credibility will rely heavily on the commitment of national border-guard services to report but also on the involvement of external stakeholders. The Operational Plan shall set out the modalities for reporting, including how and to whom report.</p> <p>19. Alleged violations of human rights reported either by national or Frontex officers or third parties, when substantiated, will be followed up by Frontex by communicating and clarifying the situation in cooperation with the</p>	<p>experts (2<sup>nd</sup> stage)</p>	

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline	
			competent national authorities without prejudice to any resulting administrative or penal procedures. (...)			
4	Briefing for officers participating in the JOs prior to their deployment	<p>1. Development of a model “briefing package” on FR issues/Strategy, Frontex Code of Conduct, Rules of Engagement, to be delivered in all operational briefings</p> <p>2. Awareness sessions including guidance material as part of the Operational briefing for selected JOs based on fundamental rights challenges identified in the risk analysis (e.g. dealing with vulnerable groups)</p>	<p>2 (1)b, 5, in conjunction with recital 19</p> <p>2 (1)b, 5, in conjunction with recital 19</p>	<p>16. The participating officers shall be properly trained and the equipment shall be suitable to address the perceived risks of fundamental rights breaches.</p> <p>22. Frontex will also seek advice from its external partners on the relevant instructions or guidelines for officers taking part in Frontex activities. These instructions or guidelines, which should form an integral part of each Operational Plan, could relate to methods for better identifying people seeking international protection, proper treatment of vulnerable groups including potential victims of trafficking (...)</p>	<p>Frontex</p> <p>FRA, EASO, IOM, UNHCR, UNODC</p>	Short-Mid
5	Development of FR expertise for use in the JOs	<p>Gradual development of FR expertise in EBGTs, including a specific FR profile.</p> <p>See also actions No 10, 12 and 13 under Capacity Building; consideration for recruitment in later step</p>	3b, 5	<p>20. (...) In operations which are particularly challenging from a fundamental rights point of view, Frontex will endeavour to include persons with a qualified fundamental rights expertise among participating staff.</p>	<p>Frontex</p> <p>MS/SAC and External Partners</p>	Mid-Long
6	JOs with special emphasis on targeted FR	<p>1. Specific FR related objectives added to JO depending on challenges identified by risk analysis covering</p>	Recitals 4 and 4a	<p>14. Frontex shall also assess the potential impact on fundamental rights when proposing or preparing operational responses, which may</p>	<p>Frontex</p> <p>MS/SAC</p>	Permanent

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline	
aspects.	<p>areas such as THB, international protection or unaccompanied minors or non-discriminatory ethnic profiling</p> <p>2. Efficient exchange of information between all stakeholders including external partners involved in Frontex JO</p>		<p>differ according to the nature of the operation at the sea, air or land borders or by way of a return operation. 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.</p> <p>21. In addition to pursuing a regular exchange of information with external partners engaged in fundamental rights protection activities, (...), Frontex will endeavour to ensure their regular involvement in the relevant operational activities in accordance with the Working Arrangements with these partners. The involvement of these external partners or others should be foreseen in the Operational Plan, which should also define the scope of the cooperation.</p>	FRA,EASO, IOM, UNHCR		
<b>Joint Return Operations</b>						
7	Develop a Code of Conduct for Frontex JROs	<p>1. Procedures ensuring return in humane manner;</p> <p>2. Special attention to obligation of an effective forced returned monitoring</p>	9 (1a) and (1b)	<p>18. (...) Member States shall (...) guarantee that they can provide for an effective forced return monitoring system in national and Frontex Joint Return Operations. Failing to meet this condition could ultimately lead to postponement or cancellation of the operation or of the participation of the respective Member State. (...) Frontex also develops a monitoring system in its best practices for returns.</p>	<p>Frontex</p> <p>MS/SAC, relevant EU bodies, IOM, UNHCR</p>	Short
8	Drawing up a rolling operational	1. Procedure to verify existence of effective forced return monitoring	9 (1b)	Frontex	Short	

Action		Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline
	plan	mechanism by participating MS in Frontex JROs  2. Definition of measures to be adopted in case of non-compliance with abovementioned obligation			MS/SAC, relevant EU bodies	
<b>CAPACITY BUILDING</b>						
9	Updating of existing general or specialised training tools and programmes	1. Systematically streamline FR relevant contents into the CCC update and other common Border Guard educational tools. ...  2. ERASMUS-like teachers' exchange (to be developed) to include FR-training development for field-instructors	5 in conjunction with 26a and Recital 19	23. Frontex Common Core Curricula (...) contain chapter on the respect of fundamental rights and international protection obligations as laid down in international law and European legislation and provide practical guidance. CCC shall be regularly updated according to institutional and legal developments. These revisions will be done in full association with Member States experts and external partners. (...)  24. The overall aim is to raise awareness and ensure the proper training of all EU border-guards to establish a common playing field, aspiring to ever higher standards of professionalism as part of an EU border-guard culture.  25. (see below)	Frontex  FRA, IOM, UNHCR and MS/SAC  FR Consultative Forum	Permanent
10	New specialised FR training for BG	1. Development and delivery of a training curriculum specific on FR promoting practical approaches and effective training methodologies	5, in conjunction with Recital 19	25. Specific training tools on fundamental rights and other related areas such as trafficking in human beings, migrants and border-guards' health or SAR must be complemented with efforts to integrate the fundamental rights aspect in all other	Frontex  MS/SAC, FRA, IOM, UNHCR  Frontex	Permanent

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline
	2. Development and delivery of a specific training curriculum on THB and Unaccompanied Minors		specialised training activities, such as in the RABIT training, due to its horizontal nature.  20. Specific training tools on fundamental rights and other related areas such as trafficking in human beings, migrants and border-guards' health or SAR must be complemented with efforts to integrate the fundamental rights aspect in all other specialised training activities, such as in the RABIT training, due to its horizontal nature.	MS, FRA, IOM, UNHCR, UNICEF, CEPOL, EUROPOL, EUROJUST	Mid-Long
11	FR Training for Frontex Staff	5	26. Frontex is leading by example in preparing and delivering training on fundamental rights in cooperation with FRA and with the support of UNHCR, to its own staff. Fundamental rights shall be streamlined into Frontex staff policy development where knowledge and experience in this field are also taken into account as selection criteria in recruitment.	Frontex  FRA, UNHCR, external trainers proposed by FRA, co-trainer from Frontex	Permanent
12	EBGTs	3b, 5, , in conjunction	20. (...) In operations which are particularly challenging from a fundamental rights point of view, Frontex will endeavour to include	Frontex	Short

Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline
	existing profiles.	with Recital 19	persons with a qualified fundamental rights expertise among participating staff.	MS/SAC, FRA, ICMPD, IOM, OSCE/ODIHR and UN/UNHCR	
13	Study on ethics of border security		27. Frontex Research and Development Unit supports the fundamental rights-based approach through its activities, aiming to contribute to the further development and promotion of best practices through evidence based research.	Frontex	Short
14	Study on anti-corruption measures in EU border control			Frontex	Mid
<b>HORIZONTAL</b>					
15	Cooperation with Third Countries	14 (1), 14 (2), in conjunction with Recital 23  14 (1), in conjunction with Recital 23	28. Frontex cooperation with Third Countries' border-guard services (...) shall (...) be guided by the principle of the respect of human rights. Frontex is committed to adjusting its cooperation arrangements and activities to the EU foreign policy measures adopted as a consequence of the human rights situation in the partner Third Country.  30. (...) This creates opportunities for Frontex to promote and streamline the respect of	Frontex  TC, MS/SAC, EC, EU Bodies, IOs	Permanent



Action	Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline	
	observance and respect of FR involve also Third Countries	14 (1) In conjunction with 14 (5) and Recital 23	fundamental rights into cooperation activities with the Third Country.			
16	Frontex Code of Conduct	1. Code of Conduct annexed to the standard OPLAN and preparation of a Commentary to the Code of Conduct including parts devoted to FR  2. Specific training on the Code of Conduct for persons participating in Frontex activities (see also action no 4)	2a, 26a  5, in conjunction with Recital 19	31. Frontex' Code of Conduct, complementing a set of "Dos and Don'ts" (...), promotes professional values based on the principles of the rule of law and respect of fundamental rights. This will be used to fortify the ethical behavioural standards for persons participating in Frontex activities, namely, Frontex staff, officers of national border-guard services and others performing in Frontex activities.	Frontex  MS/SAC	Short
<b>OTHERS (Implementation, review)</b>						
17	Ensuring the adequate protection of personal data	Establishment of appropriate measures and procedures regarding processing of personal data ensuring the protection of personal data	11, 11a, 11b, 11c	Frontex	Short	
18	Annual progress review	1. Annual Progress Report  2. Separate Chapter to be included in the Annual General Report	26a (1) (2)	37. The annual progress report on the implementation of this strategy shall be presented to the Frontex Management Board and thereafter made public. Frontex shall prepare the groundwork for these reports in cooperation with its external partners.	Frontex, FR Consultative Forum	Permanent

Action		Outcome	Amended Frontex Regulation Article	Objective in FRS	Frontex Actor Possible Partners	Timeline
19	Consultative Forum	<p>1. Establishment of the Consultative Forum (appointment of members, chairing, working methods)</p> <p>2. Regular exchange of views on Frontex and Border Management activities related to the respect and promotion of FR</p> <p>3. Input for the review of Frontex FR Strategy and/or Action Plan</p>	26a	<p>38. In order to increase the transparency and credibility of this process, external third parties, in particular those representing civil society, shall be involved. Their concerns and perspectives must be taken into account for the evaluation and revision of the strategy. Frontex, national border-guard services, external partners and representatives of civil society shall therefore have the possibility to exchange views and suggest means of improvement for the strategy and the Action Plan in a consultative forum, to be convened periodically at Frontex Headquarters.</p>	<p>Frontex</p> <p>Frontex MB</p> <p>FRA, EASO, IOM, UNHCR, other third parties</p>	Mid
20	Fundamental Rights Officer	<p>1. Description of the tasks by the FRO</p> <p>2. Designation of a FRO by the Frontex Management Board</p>	26a (3) and 26a (4)		<p>Frontex followed by consultation with FRA, EASO, UNHCR and IOM</p> <p>Frontex MB</p>	Mid
21	Dissemination of the FR Strategy	<p>1. Communication and promotion of the FR Strategy by Frontex, the MS and EU Institutions</p> <p>2. Higher transparency about Frontex activities</p>		<p>39. The active communication and promotion of the objectives and content of this strategy (...) is vital for an effective implementation. The Heads of the National Border Management Services must take the leading role when communicating and promoting them nationally while Frontex will concentrate efforts at EU and international level.</p>	<p>Frontex</p> <p>EC, MS/SAC</p>	Permanent





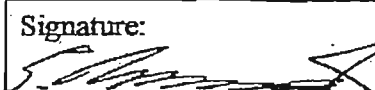


Abbreviations

<b>ARA</b>	Frontex Annual Risk Assessment	<b>FRAN</b>	Frontex Risk Analysis Network	<b>OSCE/ ODIHR</b>	Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights
<b>BG</b>	Border Guards	<b>FRO</b>	Fundamental Rights Officer	<b>RABIT</b>	Frontex Rapid Border Intervention Team
<b>CCC</b>	Common Core Curricula	<b>FRS</b>	Fundamental Rights Strategy	<b>SAC</b>	Schengen Associated Countries
<b>CEPOL</b>	European Police College	<b>ICMPD</b>	International Centre for Migration Policy Development	<b>SAR</b>	Search and Rescue
<b>EASO</b>	European Asylum Support Office	<b>IO</b>	International Organisations	<b>SARA</b>	Frontex Semi-Annual Risk Assessment
<b>EBGT</b>	European Border Guard Teams	<b>IOM</b>	International Organization for Migration	<b>TC</b>	Third Country
<b>EC</b>	European Commission	<b>JO</b>	Joint Operation	<b>TFA</b>	Tactical Focused Assessment
<b>EU</b>	European Union			<b>THB</b>	Trafficking in Human Beings
<b>EUROPOL</b>	European Police Office	<b>JRO</b>	Joint Return Operation	<b>TRA</b>	Tailored Risk Assessment
<b>EUROJUST</b>	EU body with a view to reinforcing the fight against serious organized crime	<b>MB</b>	Management Board	<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>FR</b>	Fundamental Rights	<b>MS</b>	Member States	<b>UNICEF</b>	United Nations Children's Fund
<b>FRA</b>	Fundamental Rights Agency	<b>OPLAN</b>	Operational Plan	<b>UNODC</b>	United Nations Office on Drugs and Crime

# **ANNEX 4**



Frontex registration number for archiving purposes

Title: <b>Decision of the Executive Director on the adoption of Frontex Code of Conduct for all participants in Frontex activities</b>		Doc. no: <b>4436/21.03.2011</b> <i>ED decision 2011/24</i>
Applies to: <b>All participants in Frontex activities</b>		Enters into force on: the day following the signature
Warsaw, <b>4</b> March 2011		Review Date:
 Ilkka Laitinen		Supersedes: n/a
<b>Proposed by (HoU) Head of Legal Affairs Unit</b>	<b>Checked in view of potential financial impact and compatibility with the FR (Head of Finance)</b>	<b>Checked for operational correctness (Director Operations)</b>
Name: 	Name: 	Name: 
Signature: 	Signature: 	Signature: 
Date: <i>15.3.11</i>	Date: <i>17/3/2011</i>	Date: <i>2011-03-16</i>

THE EXECUTIVE DIRECTOR,

Having regard to the Frontex Regulation<sup>1</sup> in particular Article 25(3) thereof;

Whereas:

- (1) The provisions of the Charter of Fundamental Rights of the European Union<sup>2</sup> are fully applicable in Frontex activities;
- (2) The Treaty on the European Union, in particular Article 6 thereof, requires the full respect for the rules and principles enshrined in the Charter of Fundamental Rights of the European Union;

<sup>1</sup> Council Regulation (EC) No 2007/2004 of 26 October establishing a European Agency for the management of the operational cooperation at the external borders of the Member States of the European Union.

<sup>2</sup> Charter of Fundamental Rights was adopted in the European Council meeting on 7 December 2000.

- (3) Citizens have the right to expect the exercise of public authority at the borders in an ethically sound manner;
- (4) Frontex Code of Conduct is envisaged to ensure high professional and personal conduct standards;
- (5) There is a need to make clear the values and standards that are required from all participants in Frontex activities;
- (6) The failure to meet the professional and personal conduct standards poses a significant risk for the persons individually as well as for Frontex;
- (7) Law enforcement officers are granted extraordinary powers and citizens, therefore, have the right to expect from them the highest standards of conduct.

HAS DECIDED AS FOLLOWS:

#### Article 1

Frontex Code of Conduct setting up professional and personal standards applicable to all participants in Frontex activities, annexed to this Decision, is hereby adopted.

#### Article 2

Each Division of Frontex guarantees a proper dissemination and application of the Frontex Code of Conduct in the activities for which they are responsible.

#### Article 3

This Decision and its Annex enter into force on the day following their signature.





**Annex:**

**FRONTEX CODE OF CONDUCT FOR ALL PERSONS PARTICIPATING IN FRONTEX  
ACTIVITIES**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1**

**Objectives, scope and subject matter**

1. The present Code of Conduct aims to promote professional values based on the principles of the rule of law and the respect of fundamental rights and to establish the ethical behaviour standards that guide all persons participating in Frontex activities.
2. In this regard it sets out principles and rules which guide the conduct of all persons participating in Frontex activities, namely, Frontex staff, officers of border guard services of a Member State and other staff performing any actions in a Frontex activity.

**Article 2**

**Definitions**

For the purpose of the present Code, the following definitions apply:

- a) The term "participant" refers to any person participating in a Frontex activity.

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- b) The term “Frontex activity” means any activity coordinated or led by Frontex within the framework of its tasks as described in the Frontex Regulation, including Joint Operations, Pilot Projects, Joint Return Operations, and Trainings.
- c) The term “Frontex staff” refers to the staff to whom Staff Regulations and the Conditions of Employment of Other Servants<sup>1</sup> apply and includes also seconded national experts.
- d) The term “law enforcement officers” includes border guards and/or other public officials deployed from a Member State, who enjoy the prerogatives of public authority.
- e) The term “Member State” also includes the Schengen Associated Countries. As regards Joint Return Operations, the terms “home and host Member States” are understood as referring to “participating and organising Member States” respectively.
- f) The term “discrimination” means any unfair treatment or arbitrary action or distinction based on a person’s sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
- g) The term “harassment” means any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment.

## CHAPTER II PRINCIPLES

### Article 3 Lawfulness

<sup>1</sup> Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (CEOS), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, OJ L 56 of 4.3.1968, p. 1, as last amended.

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1. Participants in Frontex activities serve the public interest and shall comply with international law, European Union law, the national law of both home and host Member States and the present Code of Conduct.
2. They shall also meet the obligations imposed upon them by the provisions stated in the Operational/Implementation Plan, or other similar agreed rules.

#### Article 4 Fundamental rights

Participants in Frontex activities shall:

- a) promote and respect human dignity and the fundamental rights of every individual, regardless of their sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- b) promote compliance with the relevant international and European instruments regarding fundamental rights protection.

#### Article 5 International protection

Participants in Frontex activities shall:

- a) promote, in full compliance with the principle of *non refoulement*, that persons seeking international protection are recognised, receive adequate assistance, are informed, in an appropriate way, about their rights and relevant procedures and are referred to national authorities responsible for receiving their asylum requests;
- b) provide persons in their custody with proper access to health care;



- c) give special consideration to particularly vulnerable groups of people, including women, unaccompanied minors, disabled people, persons susceptible to exploitation and victims of exploitation or trafficking in human beings.

#### Article 6

##### Performance of duties

Participants in Frontex activities shall ensure that instructions, directives and required duties are carried out promptly and diligently.

#### Article 7

##### Responsibility

Participants in Frontex activities are primarily and individually responsible for their actions in their work.

#### Article 8

##### Conflict of interests

To perform their duties properly, participants in Frontex activities shall refrain from any activities which would undermine or compromise their independence and the appropriate performance of their duties.

#### Article 9

##### Confidentiality

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1. Confidential or sensitive information in the possession of a participant in Frontex activities shall not be publicly disclosed, including in social media or environment, unless the performance of duty or the needs of justice strictly require disclosure or disclosure has been appropriately authorised.
2. Participants shall not express themselves regarding Frontex activities in the media unless explicit authorisation is given, in accordance with the Operational Plan or other similar agreed rules.
3. Participants are bound by the obligation to behave with discretion regarding current, past, and planned or potential Frontex activities.

#### Article 10

#### Behavioural Standards

Participants in Frontex activities whether on or off duty shall:

- a) abstain from all behaviour likely to compromise the prestige and the nature of the public mission in which they are invested or to bring discredit upon their organisation or Frontex;
- b) act with fairness and impartiality in their dealings with the public and other participants in Frontex activities, treating all with courtesy and respect, avoiding all forms of victimisation or discrimination, bearing in mind the diverse nature of all people, including backgrounds, origin and/or rank;
- c) abstain from actions contrary to the public order;
- d) refrain from using vulgar, obscene or otherwise offensive speech or gestures that could be considered abusive towards other participants in Frontex activities or the public.

#### Chapter III

#### PROHIBITED CONDUCTS

#### Article 11

#### Abuse of authority

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All improper use of a position of influence, power or authority is forbidden.

Article 12  
Discrimination

All discriminatory behaviours as defined in Article 2 towards the public or other participants in Frontex activities are forbidden.

Article 13  
Harassment

All forms of harassment as defined in Article 2 are forbidden.

Article 14  
Corruption

1. The use of public position for illegitimate private gains as well as the acceptance of unjustified rewards for actions taken in Frontex activities is forbidden.
2. Consent to any form of corrupt activity is forbidden.

Article 15  
Use of narcotics and drugs

The use or possession of narcotics and drugs, unless prescribed for medical reasons, is forbidden.

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**Article 16**  
**Consumption of alcohol**

1. The consumption of alcohol while on duty is forbidden.
2. The consumption of alcohol off duty shall be moderate, unless the Operational Plan or other similar agreed rules prohibit it.
3. A participant unexpectedly called out for duty is obliged, at no risk of discredit, to say that he/she has consumed alcohol and may not be fit for duty.
4. A participant shall not report for duty or appear in public in a state of intoxication.

**Article 17**  
**Sexual services**

Using or soliciting any sexual services from any premises, whether public or private, is forbidden.

**CHAPTER IV**  
**SPECIAL RULES AND PRINCIPLES APPLICABLE TO LAW ENFORCEMENT OFFICERS**

**Article 18**  
**Personal and professional behaviour**

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Given the prerogatives of authority, law enforcement officers have a particular responsibility to act with fairness and impartiality in their dealings with the public or other participants in Frontex activities, treating all with courtesy and respect.

#### Article 19 Use of force

1. Pursuant to Article 10 of the Frontex Regulation, while performing their tasks law enforcement officers may only use force with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.
2. The use of force shall not exceed the minimum degree necessitated by the circumstances, for the performance of duties or in legitimate self-defence or in legitimate defence of other persons.

#### Article 20 Use of weapons

1. Pursuant to Article 10 of the Frontex Regulation, while performing their tasks law enforcement officers enjoying guest officer status may only use weapons with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.
2. The use of weapons is an exceptional measure and it shall not exceed the minimum degree necessitated by the circumstances, for the performance of duties or in legitimate self-defence or in legitimate defence of other persons.



## CHAPTER V FINAL PROVISIONS

### Article 21

#### Training

Participants in Frontex activities shall, previous to their engagement in Frontex activities, get acquainted with the content of the present Code through appropriate training provided by national authorities responsible for the deployment of the participants or by Frontex.

### Article 22

#### Reporting

Participants in Frontex activities who have reason to believe that a violation of the present Code has occurred or is about to occur, are obliged to report the matter to Frontex via the appropriate channels.

### Article 23

#### Sanctions

1. In the case of violation of the present Code by a Frontex staff member, the Executive Director will take adequate measures which may include the immediate removal of the Frontex staff member from the activity.
2. If the violation was committed by a person deployed by a Member State, the Executive Director may request the Member State to immediately remove the person concerned from the Frontex activity and expects that the relevant authority of the Member State will use its powers regarding the necessary

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disciplinary measures and, if applicable, to remove the person concerned from the respective pool for a defined period.

3. Without prejudice to paragraphs 1 and 2, in a case of serious violation of the present Code, the competent authority will adopt immediate measures that may result in the removal of a participant from Frontex activity.

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# **ANNEX 5**

## FRONTEX CONSULTATIVE FORUM AND FUNDAMENTAL RIGHTS OFFICER

### Introduction

The amended Frontex Regulation in Article 26a mandates that Frontex shall establish a Consultative Forum (CF) and designate a Fundamental Rights Officer (FRO).

In February 2012, Frontex Management Board (MB) established a Drafting Advisory Committee (DAC) composed of representatives of the Management Board (Austria, France, Germany, Italy, the Netherlands, Spain and the European Commission), joined at a later stage - for the discussion on the Consultative Forum only - by representatives of the partner organisations mentioned in Article 26a of the Regulation (FRA, EASO and UNHCR). The DAC shall advise and guide the Agency in the preparations of the relevant Frontex Management Board Decisions in view of implementing the abovementioned Article.

### Establishment of the Consultative Forum

Article 26a (2) of the Regulation states that Frontex shall establish a Consultative Forum to:

- assist the Executive Director (ED) and the MB in fundamental rights matters, and
- be consulted on the further development and implementation of the Fundamental Rights Strategy, Code of Conduct and Common Core Curricula.

The CF will publish a yearly report of its activities.

It is anticipated that there will be two main types of organizations to be invited to participate: (1) civil society organisations, which will represent the majority of participants and (2) International Organizations and EU Agencies specialised in Fundamental Rights issues including those explicitly mentioned in the Regulation.

The MB Decision on the composition of the CF is planned to be adopted on 23 May.

### Designation of the Fundamental Rights Officer

According to Articles 26a (3) of the Regulation, the Fundamental Rights Officer (FRO) shall have the necessary qualifications and experience in the field of fundamental rights, shall be independent in the performance of his/her duties and shall report directly to the Management Board and the Consultative Forum. The FRO will be designated by the Frontex Management Board. The vacancy notice will be published shortly, allowing the FRO to take up his/her position before the end of 2012.

### Tentative Timeline

- **April:** Publication of the FRO vacancy notice
- **May:** MB Decision on the composition of the CF
- **July/August:** FRO Selection Procedure
- **September:** inaugural meeting of the Consultative Forum
- **September:** MB Decision on the designation of the FRO and on the CF working methods and modalities for the transmission of information

# **ANNEX 6**



## VACANCY NOTICE - AGENCY'S TEMPORARY STAFF

### Fundamental Rights Officer

Post:	Fundamental Rights Officer
Sector/Unit/Division:	n/a
Function Group/Grade:	AD 10
Location:	Warsaw, Poland
Starting date:	as soon as possible
Level of Security Clearance:	SECRET
Closing date for applications	28 <sup>th</sup> May 2012 <sup>1</sup>

## 1. BACKGROUND

Applicants are invited for this position at the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), established under Council Regulation (EC) No 2007/2004, as last amended<sup>2</sup>, hereinafter, the Regulation.

Frontex is located in Warsaw, Poland and its main tasks are the following:

- coordinate operational cooperation between Member States in the field of management of external borders;
- assist Member States in the training of national border guards, including the establishment of common training standards;
- carry out risk analyses;
- follow up the development of research relevant for the control and surveillance of external borders;
- assist Member States in circumstances requiring increased technical and operational assistance at external borders;
- provide Member States with the necessary support in organizing joint return operations.

According to Article 26a of the Regulation a Fundamental Rights Officer shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights. He/she shall be independent in the performance of his/her duties as a Fundamental Rights Officer and shall report directly to the Management Board and the Consultative Forum. He/she shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights

The Fundamental Rights Officer shall have access to all information concerning respect for Fundamental Rights, in relation to all activities of the Agency.

For more information on Frontex, please refer to our webpage: <http://www.frontex.europa.eu>.

<sup>1</sup> Date of publication: 27<sup>th</sup> April 2012

<sup>2</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 as amended by Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011.

## 2. DUTIES

The tasks of the Fundamental Rights Officer include inter alia:

- Making observations on joint operations and pilot projects coordinated by Frontex;
- Contributing to an effective mechanism of monitoring the 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 coordinated by Frontex;
- Setting up and maintaining a record of possible fundamental rights incidents related to the activities of Frontex;
- Monitoring and analyzing the implementation of the Frontex Fundamental Rights Strategy.
- Contributing to other fundamental rights issues in Frontex

The Fundamental Rights Officer reports regularly to Frontex Executive Director and in accordance with Articles 26a (3) and 3(3) of the Frontex Regulation the Fundamental Rights Officer also reports directly to the Management Board and the Consultative Forum.

## 3. QUALIFICATIONS AND EXPERIENCE REQUIRED

### 3.1. Eligibility criteria:

To be eligible, an applicant must:

- have a level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more,  
or
- have a level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years;

***Only qualifications that have been awarded in EU Member States or that are subject to the equivalence certificates issued by the authorities in the said Member States shall be taken into consideration.***

- have in addition to above at the closing date for applications, at least 12 years of proven full-time professional experience;

***Professional experience will be taken into account after the award of the minimum qualification certifying the completion of the level of studies required above in the first two bullet points. Only duly documented professional activity is taken into account.***

Only the required education will be taken into account.

**ANY GIVEN PERIOD MAY BE COUNTED ONLY ONCE (in order to be calculated as eligible, years of studies or professional experience to be taken into account shall not overlap with other periods of studies or professional experience.)!**

In case of part-time work the professional experience will be calculated pro-rata in line with the workload stated by the applicant.

- produce evidence of a thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of Communities to the extent necessary for the performance of his duties;
- be a national of one of the Member States of the Communities or the Schengen Associated Countries;
- enjoy full rights as a citizen;
- produce the appropriate character references as to his suitability for the performance of his duties;
- fulfil any obligations imposed on him by the laws of his home country concerning military service;
- be physically fit to perform their duties<sup>3</sup>.

For reasons related to the Frontex working requirements, be available at short notice for the job.

### 3.2. Selection criteria

#### 3.2.1. Professional competencies

The applicant will be required to demonstrate that he/she has:

- Minimum 12 years of progressively responsible and relevant professional experience in the field of fundamental rights of which 6 years of experience in the context of migration management;
- University degree in law, political sciences, international relations, or social sciences;
- Excellent knowledge of EU and International Human Rights Law;
- Excellent knowledge of fundamental rights monitoring and reporting methodology and practice;
- Good knowledge of the functioning of the EU institutions and bodies;
- Knowledge of Frontex and other EU border/migration management activities as well as of the relevant EU Acquis and policies;
- Excellent command of English, at least on C1 level;

#### 3.2.2. Besides the following attributes would be advantageous:

- Experience in interacting with EU Member States law enforcement or border/migration management agencies;
- Master's degree in International Human Rights Law;
- Experience in high-profile advisory function at the European/international level;
- Experience in advising in Fundamental Rights issues.

#### 3.2.3. Personal qualities

Attributes especially important to this post include:

- Ability to relate with people of different national, cultural and professional backgrounds whilst maintaining impartiality and objectivity;
- Gender awareness and sensitivity, and an ability to integrate a gender perspective into tasks and activities;
- Ability to respect the specific confidentiality requirements and the sensitivity connected to the specific tasks of this job;
- Ability to work independently and under pressure;

## 4. INDEPENDENCE AND DECLARATION OF INTEREST

The Fundamental Rights Officer will be required to make a declaration of commitment to act independently in Frontex' interest and to make a declaration in relation to interests that might be considered prejudicial to his/her independence. Applicants will therefore be required to include confirmation of their willingness to make such declarations with their applications.

## 5. EQUAL OPPORTUNITIES

Frontex applies an equal opportunities policy and accepts applications without distinction on grounds of age, race, political, philosophical or religious conviction, sex or sexual orientation and regardless of disabilities, marital status or family situation.

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<sup>3</sup> Before the appointment, the successful candidate shall be medically examined by a selected medical service in order that Frontex may be satisfied that he/she fulfils the requirement of Article 28(e) of the Staff Regulation of Officials of the European Communities

## 6. SELECTION COMMITTEE

The Executive Director appoints the members of the Selection Committee as well as their alternates, including possible observers.

## 7. SELECTION PROCEDURE

The selection procedure includes the following steps:

- after registration, each application is checked in order to verify whether it meets the eligibility criteria;
- all the eligible applications are evaluated by the Selection Committee based on the selection criteria defined in the vacancy notice;
- the best-qualified applicants, who obtained the highest number of points within the evaluation, are short-listed for an interview;
- the interview will be held in English;
- during the interviews session, the Selection Committee examines the profiles of applicants and assesses their relevancy for the post in question. In order to support the evaluation via interview, shortlisted applicants may be required to undergo written competency tests and complete part of the process in their second EU language;
- applicants invited to an interview will be requested to present, on the day of the interview, originals of their diploma(s) and evidence of their professional experience, clearly indicating the starting, finishing dates and workload;
- as a result of the interviews, the Selection Committee will recommend to the Management Board the most suitable applicants for the post in question to which a hearing with the Management Board may follow. Non-recruited and suitable applicants will be put on the reserve list, which may also be used for the recruitment for a similar post depending on the needs of Frontex and shall be valid until 31<sup>st</sup> December 2013 (the validity period may be extended). Each applicant will be informed by a letter whether or not he/she has been placed on the reserve list.

**Applicants should note that inclusion on a reserve list does not guarantee employment.**

Please note that the Selection Committees work and deliberations are strictly confidential and that any contact with its members is strictly forbidden.

## 8. APPOINTMENT AND CONDITIONS OF EMPLOYMENT

Without prejudice to the relevant provisions of the Frontex Regulation and Management Board Decisions, the Fundamental Rights Officer shall at all times be subject to the EU Staff Regulations and Frontex Implementing Rules.

The successful applicant will be recruited as a Temporary Staff pursuant to Article 2a of the Conditions of Employment of Other Servants of the European Communities (CEOS). The Temporary Staff post in question will be placed in Function Group AD, Grade10.

The start of employment can be established after releasing additional funds by the EU budgetary Authority.

The pay of staff members consists of a basic salary in EUR weighted by the correction coefficient (for Poland currently 77.1%) and paid in PLN according to a fixed exchange rate (currently 4.1603).

**The final net calculation is as follows:**

Function Group AD, Grade 10	Step 1	Step 2
Basic net salary (without any allowances)	18 474 PLN (4 441 EUR)	19 086 PLN (4 588 EUR)
Household allowances	1 064 PLN (256 EUR)	1 086 PLN (261 EUR)
Dependent child allowances for each child	1 195 PLN (287 EUR)	1 195 PLN (287 EUR)
Expatriation allowances (depending on family situation)	4 139 - 4 883 PLN (995 - 1 174 EUR)	4 313 - 5 060 PLN (1 037 - 1 216 EUR)
Preschool allowance	292 PLN (70 EUR)	292 PLN (70 EUR)

In addition to the basic salary, staff members may be entitled to various allowances, in particular an expatriation (16% of basic gross salary) or foreign residence allowance (4% of basic gross salary) - depending on particular situation, and family allowances (depending on personal situation) such as: household allowance, dependent child allowance, pre-school allowance, education allowance.

The headquarters agreement is not concluded as yet with the Polish National Authorities.

Staff pays an EU tax at sources and deductions are also made for medical insurance, pension and unemployment insurance. Salaries are exempt from national taxes.

Staff is entitled to annual leave of two working days per each complete calendar month of service. On top staff is entitled to a number days of leave to their basic entitlement depending on the grade, age and distance from the place of origin. In addition there are on average 19 Frontex Public Holidays per year. Special leave is granted for certain circumstances such as marriage, birth or adoption of a child etc.

Frontex being a knowledge based organization acknowledges the importance of the training provided for its staff. Frontex provides general and technical nature training as well as professional development opportunities throughout annual performance appraisal.

Throughout the period of service staff is a member of the EU pension scheme. The pension is granted after completing a minimum of 10 years' service and reaching the pensionable age of 63 years. Pension rights acquired in one or more national schemes before starting to work at Frontex may be transferred into the EU pension system.

Staff is covered 24/7 and worldwide by the Joint Sickness Insurance Scheme (JSIS). Staff is insured against sickness, the risk of occupational disease and accident as well as entitled for a monthly unemployment allowance, the right to receive payment of invalidity allowance and travel insurance.

For further information on working conditions of temporary staff please refer to CEOS: [http://ec.europa.eu/civil\\_service/docs/toc100\\_en.pdf](http://ec.europa.eu/civil_service/docs/toc100_en.pdf)

The employment contract will be offered for a period of five years, with a probationary period of six months. The contract may be renewed.

Frontex requires selected applicants to sensitive posts to undergo a security screening procedure and obtain a positive national opinion. The level of the latter depends on the specific post. For this one, the required level of clearance is SECRET.

Applicants who currently hold a valid and positive security clearance at the above-mentioned level do not need to obtain a new one. They shall then provide a copy of the security clearance to Frontex and specify



the issuing authority, level and date of expiry. In case the validity of the security clearance expires within six months, the renewal procedure shall be initiated expeditiously.

In case selected applicants do not currently hold a valid and positive security clearance at the above-mentioned level, Frontex will request such from the National Security Agency of the applicants' state of nationality.

Failure to obtain the required security clearance certificate before the expiration of the probationary period or in case such agency issues a negative opinion at the above-mentioned level after the signature of the contract of employment, Frontex has the right to terminate the latter.

## 9. PROTECTION OF PERSONAL DATA

Frontex ensures that applicants' personal data are processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (12.1.2001, OJ, L 8). Please note that Frontex will not return applications to applicants. This applies in particular to the confidentiality and security of such data.

The legal basis for the selection procedures of Temporary Staff are defined in the Conditions of Employment of Other Servants of the European Communities<sup>4</sup>.

The purpose of processing personal data is to enable selection procedures.

The selection procedure is conducted under the responsibility of the Human Resources Sector of the Administrative Services Unit, within the Administration Division of Frontex (HR Sector). The controller for personal data protection purposes is the Head of HR Sector.

The information provided by the applicants will be accessible to a strictly limited number of staff members of the HR Sector, to the Selection Committee, and, if necessary, to the members of the Management Board and Legal Affairs Unit.

Almost all fields in the application form are mandatory; the answers provided by the applicants in the fields marked as optional will not be taken into account to assess their merits.

Processing begins on the date of receipt of the application. Data storage policy is as follows:

- for applications received but not selected: the paper dossiers are filed and stored in archives for 2 years after which time they are destroyed;
- for applicants placed on a reserve list but not recruited: data are kept for the period of validity of the reserve list + 1 year after which time they are destroyed;
- for recruited applicants: data are kept for a period of 10 years as of the termination of employment or as of the last pension payment after which time they are destroyed.

All applicants may exercise their right of access to and right to rectify personal data. In the case of identification data, applicants can rectify those data at any time during the procedure. In the case of data related to the admissibility criteria, the right of rectification cannot be exercised after the closing date of applications' submission.

Should the applicant have any query concerning the processing of his/her personal data and has substantiated request, he/she shall address them to the HR Sector at [hr@frontex.europa.eu](mailto:hr@frontex.europa.eu).

Applicants may have recourse at any time to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)).

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<sup>4</sup> CEOS, in particular the provisions governing conditions of engagement in Title II, Chapter 3.

## 10. APPEAL PROCEDURE

If an applicant considers that he/she has been adversely affected by a particular decision, he/she can lodge a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities and Conditions of employment of other servants of the European Communities, at the following address:

Frontex  
Human Resources Sector  
Rondo ONZ 1  
00-124 Warsaw  
Poland

The complaint must be lodged within 3 months. The time limit for initiating this type of procedure starts to run from the time the selection procedure for this post is declared as closed on the Frontex webpage (<http://www.frontex.europa.eu>).

## 11. APPLICATION PROCEDURE

In order for an application to be considered **eligible**, applicants are requested to submit their applications signed by the applicant in **1 original and 3 copies**, using the uploaded version of Frontex Standard Application Form uploaded under the reference No of the post and **posting them** in a simple A4 format envelope.

Applications shall be accompanied by **1 original Eligibility Checklist** (see the last page of Vacancy Notice) duly completed and signed by the applicant. In the Eligibility Checklist the applicant verifies his/her compliance with the eligibility criteria for the specific post.

Applications delivered via e-mail will not be accepted and treated as non-eligible. Please send your applications, duly completed in English, to the following address:

Frontex  
Human Resources Sector  
REF: FRONTEX/12/TA/AD10/FRO  
Rondo ONZ 1  
00-124 Warsaw  
Poland

You will be requested to supply documentary evidence in support of the statements that you make for this application. Do not, however, send any supporting or supplementary documentation with your application, until you have been asked to do so by Frontex. Additionally, do not submit the references or testimonials, unless they have been requested for the sole use of Frontex.

**Please note that if at any stage of the selection procedure it is established that any of the requested information provided by an applicant is false, the applicant in question will be disqualified.**

Please do not spend money on expensive bindings for your papers as they are usually separated and the bindings thrown away.

Incomplete applications or sent to Frontex after the above deadline will be disqualified and treated as non-eligible.

Moreover, the applicants who use the same application form to apply for more than one post will be disqualified.

Due to the large volume of applications, Frontex regrets that only applicants selected for the interviews will be notified. The status of the recruitment procedure could be found on our webpage.

Please note that the time period between the closing date for applications submission and the end of the short listing applicants for the interview may take up to two months.

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**The closing date for the submission of applications is 28<sup>th</sup> May 2012 with the postmarked date serving as a proof.**

(FRONTEX/12/TA/AD10/FRO)

Temporary Staff/AD10

Full name of applicant (in capitals)	
Application number: (introduced by Frontex)	

**ELIGIBILITY CRITERIA**

1	be a national of one of the Member States of the Communities or the Schengen Associated Countries;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2	have a level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more, or have a level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3	<u>have in addition to above at the closing date for applications, at least 12 years of proven full-time professional experience;</u>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4	produce evidence of a thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of Communities to the extent necessary for the performance of his duties;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5	enjoy full rights as a citizen;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6	fulfil any obligations imposed on him by the laws of his home country concerning military service;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
7	be physically fit to perform their duties;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
8	produce the appropriate character references as to his suitability for the performance of his duties;	Yes <input type="checkbox"/>	No <input type="checkbox"/>

I, as an applicant, fulfil all the eligibility criteria for the post in question:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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.....  
Signature  
Applicant

**Introduced by Frontex:**

..... Certified correct: Yes  No