

European Ombudsman invites observations from interested parties concerning his own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations

Correspondence - 19/07/2012

Case OI/5/2012/BEH-MHZ - **Opened on** 06/03/2012 - **Recommendation on** 14/11/2013 - **Special report on** 14/11/2013 - **Decision on** 12/11/2013 - **Institution concerned** European Border and Coast Guard Agency (Closed after Special Report) |

Background

According to Article 228 of the Treaty on the Functioning of the European Union, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of the Union institutions, bodies, offices, or agencies.

On 6 March 2012, the Ombudsman launched an own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations.

In his opening letter asking Frontex for an opinion, the Ombudsman noted that the legal framework under which Frontex operates has changed. Thus, with the entry into force of the Treaty of Lisbon on 1 December 2009, the Charter of Fundamental Rights of the EU became legally binding on Frontex. Moreover, Regulation 1168/2011/EU ('the Regulation') [1] , adopted in October 2011, provides for additional fundamental rights obligations incumbent on Frontex.

In view of the new legal framework and the great interest taken by civil society in the EU's management of external borders, including its fundamental rights dimension, the Ombudsman considered it useful to seek to clarify, by means of an own-initiative inquiry, the implementation by Frontex of the above-mentioned obligations. To this end, he put a number of specific questions to Frontex. These questions concern, for instance, Frontex's adoption of a Fundamental Rights Strategy and the appointment of a Fundamental Rights Officer.

On 17 May 2012, Frontex submitted its opinion to the Ombudsman.



Summary of the opinion

Frontex's opinion includes a short letter from Frontex's Executive Director and six annexes. In his letter, the Director states, in summary, that since 2010 and well before the adoption of the Regulation, Frontex developed a Fundamental Rights Strategy and related Action Plan, commissioned an external study on Ethics and Border Security and developed a binding Code of Conduct for staff and guest officers participating in Frontex activities. Since the Regulation mandates the establishment of a number of further mechanisms to ensure full respect of fundamental rights by Frontex, it has been working on these issues since late last year. As a result, the position of the Fundamental Rights Officer is currently advertised on Frontex's website and the deadline for applications will close soon. Moreover, in the near future Frontex will issue invitations for prospective members of the Consultative Forum, which is intended to assist Frontex's Executive Director and the Management Board in fundamental rights matters. In addition, a Frontex "Standard Operations Procedure to ensure respect of fundamental rights in joint operations and pilot projects" has already been drafted and will be approved shortly. Frontex provided further details on the establishment of the aforesaid mechanisms in the annexes to the Executive Director's letter as follows: annex 1 "Response to specific Ombudsman's questions as put forward in his letter opening the own initiative inquiry (this letter may be consulted at the Ombudsman's website ...); 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".

Publication of Frontex's opinion and invitation to submit observations

Taking into account the interest taken in his inquiry by civil society, the Ombudsman considers it appropriate and useful to make Frontex's opinion available on his website. [2]

The Ombudsman realises that his inquiry raises a number of technical issues which Frontex's opinion addresses in some detail. He is moreover crucially aware of the specific interest taken in his inquiry by organisations active in the area of the protection of fundamental rights. In these circumstances, the Ombudsman invites interested parties, and in particular NGOs and other organisations specialised in the area covered by his inquiry, to make observations on Frontex's opinion. This document is currently only available in its original version, that is to say, English. If an interested party so requests, the Ombudsman will prepare and provide a translation into other EU languages. Contributions by interested parties can of course be submitted in any of the languages mentioned in Article 55(1) of the Treaty on European Union.

The contributions received will be accessible to Frontex and, on request, to interested third parties.

Like all EU institutions, the Ombudsman must work as openly as possible and his mission statement encourages transparency. If contributing interested parties consider that their names



should not be published and/or their comments should not be made publicly accessible, they are requested to state so and explain the reason when they send their comments.

What the Ombudsman is looking for

The present inquiry concerns the implementation by Frontex of its fundamental rights obligations. The Ombudsman would, therefore, be highly interested in receiving feedback from interested parties, such as NGOs and other organisations specialised in the areas covered by his inquiry, on Frontex's answers to the questions he put to it.

The present inquiry is **not** intended to examine and solve individual cases involving Frontex's fundamental rights obligations. Such cases can of course be submitted to the Ombudsman through individual complaints. A complaint form that can be used for this purpose is available on this website.

How to contribute

Comments should be sent to the Ombudsman by **30 September 2012** .

- By letter: European Ombudsman, 1 avenue du Président Robert Schuman, CS 30403, F - 67001 Strasbourg Cedex, France;
- By fax: +33 (0)3 88 17 90 62;
- By e-mail: <http://www.ombudsman.europa.eu/shortcuts/contacts.faces> [Link]

[1] Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2011 L 304, p. 1.

[2] Annex 4 of the opinion contains personal data, such as the names of certain Frontex officials. In line with Article 4(1)(b) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, as interpreted in the case-law of the Court of Justice, and Article 5 of Regulation 45/2001 concerning the protection of individuals with regard to processing of personal data, the personal data mentioned above were blanked, with the exception of the name of Frontex's Executive Director.