

## Address to the Workshop on Frontex Complaints Mechanism

Speech - **City** Brussels - **Country** Belgium - **Date** 06/12/2016

**Address to the Workshop on Frontex Complaints Mechanism** Brussels, 06 December 2016

Thank you for inviting me here to speak to you today.

In 2013, when I made a special report to the European Parliament that Frontex should set up a complaints mechanism to deal directly with complaints alleging breaches of fundamental rights, the peak of the refugee and migration crisis had not yet been reached. The debate and disputes over hotspots and relocations were yet to begin.

But one thing was already clear to me, and that was that any EU institution in direct contact with human beings, as is the case of Frontex, should have a first line complaints mechanism in order to have problems addressed and resolved as quickly as possible without, if at all possible, having to turn to other redress mechanisms, such as Ombudsmen and courts.

It was clear for me that such a mechanism would be compliant with EU law and the principles of good administration.

My special report to the European Parliament was needed because Frontex rejected my complaint mechanism recommendation in the report I had made on Frontex's compliance with its fundamental rights obligations. I had found that this compliance must be monitored through administrative mechanisms such as a complaints mechanism.

I recommended that Frontex should set up a suitable complaints mechanism for dealing with complaints on infringements of fundamental rights in **all** Frontex activities, submitted by people individually affected by the infringements or by others acting in the public interest.

I suggested that the independent Fundamental Rights Officer would be the appropriate person to deal with individual complaints, and that Frontex should provide her with adequate administrative support for that purpose.

Frontex did not agree and argued that its task is "*only to coordinate the cooperation of the EU*



*Member States and Schengen Associated Countries ".*

As a consequence, it said, only Member State authorities perform activities which may affect individuals' rights. Frontex also said that it does not have executive powers and that these are vested in the Member State authorities alone.

Frontex also argued that other procedures were already in place (such as an incident reporting system), that played the same essential role as a complaints mechanism.

**I did not accept these arguments .** We all know the difficult and challenging role of Frontex at the EU borders, work that is carried out jointly with the Member States.

We also know that all participants in these operations, either Frontex staff or guest officers made available by the Member States, wear armbands with the word "Frontex" on them as well as with the insignia of the EU.

My view is that anyone who wears the EU flag in an official capacity must play a part in the upholding of EU fundamental rights.

I did agree with Frontex that while Frontex is responsible for potential violations of fundamental rights by its own staff at the EU borders during the joint operations and the pilot projects coordinated by it, the Member States are responsible for actions of their staff.

However, the division of responsibility between the Member States and Frontex, does not take from the fact that in practice, Frontex and the Member States, in the framework of joint operations, work hand in hand and this can make it difficult, particularly for people in highly stressful situations, to distinguish separate roles and responsibilities.

A person affected by a Frontex operation could easily think that a guest officer wearing that Frontex and EU armband is in fact acting under the responsibility of Frontex.

And it is unreasonable to think that those people under stress and vulnerable should be expected further to investigate what is undoubtedly a complex setup of responsibility.

It would seem therefore logical for them to see Frontex as the obvious institution to submit complaints to.

**The European Parliament agreed with this view . It supported my special report and also, in September this year, it adopted a new law on Frontex which obliges it to establish a complaints mechanism with its Fundamental Rights Officer in charge.** And this is why we are here today.

I welcome in particular the investigators dealing with complaints each day in the national ombudsmen offices. We are all part of the European Network of Ombudsmen which I have the privilege to chair. In my special report I offered Frontex the assistance of the Network in



establishing the complaints mechanism.

In my special report, I said that the Fundamental Rights Officer will need to deal with complaints about the conduct of Frontex staff, but also with complaints about the conduct of officers who are not staff members of Frontex, including guest officers who act under the responsibility of the relevant Member States .

I pointed out that even if Frontex could deal only with the first category of cases, it could also assist in dealing with the second category. It could, for example, assist complainants by forwarding complaints to the competent service of the Member States, such as the competent Member State authority or to a **national ombudsman** controlling it.

I am glad to see that Parliament in its new law on Frontex also followed this suggestion.

I am happy to see that many of my Colleague national ombudsmen delegated their investigators for today's workshop to assist the Fundamental Rights Officer in putting into action what the European legislator has recently decided.

I am confident that you will be ready to take on board any complaints transferred by Frontex to national competent authorities, and therefore greatly assist those people whose fundamental rights may have been breached. This is our common goal and obligation and I commend you on your work. I also thank Frontex for its role in taking the first steps towards ensuring the success of this new mechanism, and wish the very best of luck to the fundamental rights officer in her very important role.

Thank you for your attention.