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OI-5-2012-BEH-MHZ-
E2012-161914**MORAIS BISMARQUE GASPAR Ana Gloria**

From: Karolina Babicka [KBabicka@caritas-europa.org]
Sent: 17 September 2012 11:14
To: GADESMANN Gundi
Subject: Caritas Europa's comments on the inquiry on FRONTEX
Attachments: 120914 CE ON FRONTEX TO THE EUROPEAN OMBUDSMAN.pdf

Dear Professor Diamandouros,

Caritas Europa welcomes the opportunity to comment on the response of FRONTEX to your own-initiative inquiry OI/5/2012/BEH-MHZ of the European Ombudsman concerning implementation by FRONTEX of its fundamental rights obligations. Please find our comments in the letter attached.

We remain at your disposal for any further discussion on this topic,

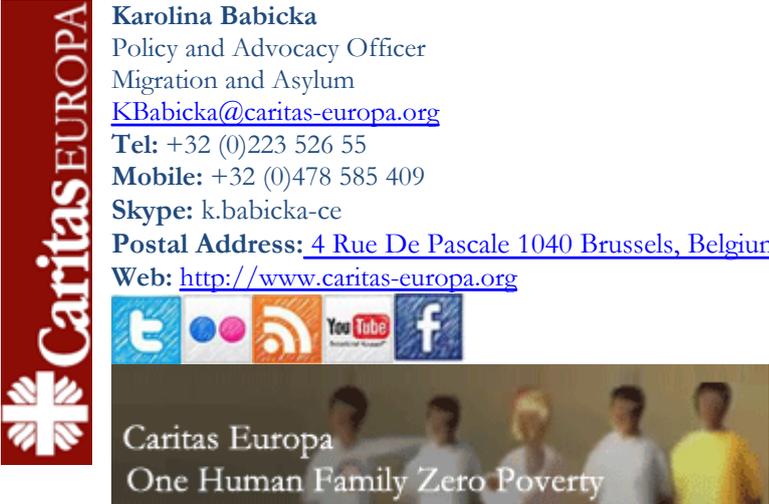
Yours faithfully,

Jorge Nuño Mayer
 Secretary General
jnunomayer@caritas-europa.org
Tel: +32 (0)2 2350392
Mobile: +32 (0)474 629792
Skype: jorge.nuno.mayer
Postal Address: [4 Rue De Pascale 1040 Brussels, Belgium](#)
Web: <http://www.caritas-europa.org>




Contact person :

Karolina Babicka
 Policy and Advocacy Officer
 Migration and Asylum
KBabicka@caritas-europa.org
Tel: +32 (0)223 526 55
Mobile: +32 (0)478 585 409
Skype: k.babicka-ce
Postal Address: [4 Rue De Pascale 1040 Brussels, Belgium](#)
Web: <http://www.caritas-europa.org>

17/09/2012

Brussels, 13 September 2012

Dear Professor Diamandouros,

Caritas Europa welcomes the opportunity to comment on the response of FRONTEX to your own-initiative inquiry OI/5/2012/BEH-MHZ of the European Ombudsman concerning implementation by FRONTEX of its fundamental rights obligations

Caritas Europa is one of the major migration and asylum actors in Europe, strong of the experience of its 49 member organisations, which are working on daily basis with the very people affected by Europe's migration policies. For example, during the emergency in Lampedusa Caritas Italiana was very heavily involved in supporting migrants and refugees on the ground.¹

In relation to the response received by the European Ombudsman from FRONTEX, we appreciate the dedication of FRONTEX in providing its staff the necessary training to cope with the pressures of meeting FRONTEX's fundamental rights obligations. This shows its commitment to uphold a high standard in safeguarding the dignity and safety of human beings that is in line with Article 5 of the amended FRONTEX Regulation.

Also the implementation of the Fundamental Rights Strategy of the European Union and the Codes of Conduct will be an asset in the field of the protection of human rights.

However, Caritas Europa is concerned with several points in the answers of FRONTEX., Especially with a rather general issue about:

- 1) the transparency of FRONTEX's operations,
- 2) the compliance with the principle of non-refoulement and
- 3) unclarities around the independent monitoring and complaint mechanism.

¹ Caritas Member organisations from the North African and Southern European organisations gather at the annual Caritas Migrated Conference, where they have the opportunity to exchange information, express their views and concerns on the occurrences affecting migrants and refugees in the Mediterranean Sea and in their countries. You can find attached a statement of the Migrated conference from May this year.

Transparency

We are concerned with the transparency of FRONTEX's interventions in relation to migrants and refugees, especially in terms of 1) identification of potential people in need of international protection, 2) identification of victims of human trafficking or other particularly vulnerable groups and 3) lack of access to effective remedy.

We also hope that, in a dialogue with civil society, FRONTEX will provide information on how and how many migrants/refugees are intercepted (when, where and what happened to them), as well as on FRONTEX's involvement in operations under Member States agreements with third countries.

Non-refoulement

The obligation for FRONTEX to ensure the safeguard of the principle of *non-refoulement* is explicitly mentioned in Article 1(2) of the amended FRONTEX Regulation.

However, there is currently no mechanism to ensure FRONTEX's practical compliance with the *non-refoulement* principle. The goals of FRONTEX's operations to "prevent irregular migration" and to "return" are fundamentally in breach of the value of *non-refoulement*.² In Caritas Europa's opinion, FRONTEX does not make enough to respect the *non-refoulement* principle. Especially while returning migrants and refugees to countries like Algeria, where they are a priori criminalised and jailed for having left the country. In such cases, Caritas Europa considers FRONTEX to be also responsible for the violation of the human rights of these migrants (Article 1(2) of the amended FRONTEX Regulation).

For example, FRONTEX staff should be aware of the fact that leaving Algeria without documentation is punishable by imprisonment, so every return of a person to the country by FRONTEX might highly probably violate the *non-refoulement* principle. As reiterated by the Jesuit Refugee Service Europe in their response of 2 August 2012, based on the *Hirsi Jamaa And Others v. Italy* (27765/09) case of the European Court of Human Rights, FRONTEX itself bears responsibility for consequences of its actions³.

² Perkowski, N., A Normative Assessment of the Aims and Practices of the European Border Management Agency Frontex, Working paper series No. 81, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, April 2012: 29

³ CE fully supports the Letter sent to you by Stefan Kessler from the Jesuit Refugee Service Europe on 2 August.

FRONTEX should make sure that all intercepted individuals have the possibility to seek asylum (as a right under international and European law) and to file complaints. This shall be achieved first of all by making sure that the FRONTEX's staff is well informed about their obligation to inform all migrants and refugees intercepted by FRONTEX of their rights.

Monitoring

Article 26(a)1 of the amended FRONTEX Regulation obliges FRONTEX to have an effective independent tool to monitor FRONTEX's operations and to assess the respect/protection of Human Rights. Caritas Europa suggests the possibility of having an independent report commissioned on FRONTEX activities and its Human Rights obligations.

FRONTEX has often been called for coordinating its operations with NGOs in countries of origin, transit or destination. For example, regarding the situation in the Greek border national and international human rights bodies and NGOs have expressed concerns because of the significant deficiencies in 'spotting' and registering beneficiaries of international protection, members of vulnerable groups, the conditions of detention etc. NGOs have also reported that violations of human rights mainly concern the treatment of the arrested persons, the conditions of their detention, their access to the asylum procedure, the identification procedure or false registration of personal data (e.g. nationality, age, etc.) Thus, Caritas Europa's main concern also links with your first question on the effective monitoring mechanism on FRONTEX's activities respect for fundamental rights. A practical monitoring of FRONTEX's operations and an effective complaint mechanism are needed in order to clarify the above mentioned allegations.

EUROSUR

We would also like to draw your attention to the currently negotiated EUROSUR Regulation that needs to be put into the proper context of the amended FRONTEX Regulation. This would result in the latter's provisions on the Fundamental Rights Strategy and the Consultative Forum being applicable to the EUROSUR operations.

Caritas Europa thinks that it would be useful to have more precise information about the money spent on FRONTEX and its operations (as well as on the EUROSUR pilot

projects) to be able to evaluate the proportionality of results of the work of FRONTEX compared to its budget.

We remain at your disposal for any further discussion on this topic,

Yours faithfully,



Jorge Nuño Mayer
Secretary General
Caritas Europa