



P. Nikiforos Diamandouros
European Ombudsman

Mr Ilkka Laitinen
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European Agency for the Management of
Operational Cooperation at the
External Borders
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Strasbourg, 09-04-2013

Draft recommendation of the European Ombudsman in his inquiry into complaint OI/5/2012/BEH-MHZ against the European Agency for the Management of Operational Cooperation at the External Borders (Frontex)

Dear Mr Laitinen,

Please find enclosed my draft recommendation in the above case in which I make certain recommendations to Frontex, with a view to further strengthening its implementation of fundamental rights.

My draft recommendation is as follows:

Frontex could consider taking the following further action:

As regards the Strategy

A. clarifying (i) whether it considers itself responsible for fundamental rights breaches within its activities and, if so, under which terms; and (ii) in the Code of Conduct, the legal framework applicable to the conduct of all participants in Frontex operations (point 61 of the Ombudsman's assessment);

B. defining specific data protection safeguards for intercepted migrants, as well as redress mechanisms for data subjects whose rights are infringed. Alternatively, the Action Plan could be supplemented in this respect (point 66 of the Ombudsman's assessment);

As regards the Action Plan

C. identifying measures giving a concrete dimension to the objective foreseen in point 17 of the Strategy, which is that, after having been reported by Frontex staff or participating officers, any incidents or serious risks regarding fundamental rights "can be acted upon" (point 62 of the Ombudsman's assessment);



D. specifying (i) the date of publication of the annual progress report on the implementation of the Strategy, and (ii) the means by which it "shall" be made public (point 63 of the Ombudsman's assessment);

E. clarifying the sanctions to be applied to participants in Frontex operations who are not members of its own staff (point 64 of the Ombudsman's assessment);

F. laying down specific guidelines for participants in joint return operations on how to deal with distress situations in which intercepted migrants may find themselves (point 65 of the Ombudsman's assessment);

As regards the Codes of Conduct

G. further clarifying the legal nature of the Code of Conduct (point 68 of the Ombudsman's assessment);

H. clarifying Articles 19(2) and 20(2) of the Code of Conduct (point 70 of the Ombudsman's assessment);

I. including in the forthcoming Joint Returns Code a provision on the relationship between this Code and the (general) Code of Conduct (point 71 of the Ombudsman's assessment);

As regards termination/suspension of operations

J. providing concrete guidance as regards the actual meaning of formulations such as "if the conditions to conduct those joint operations or pilot projects are no longer fulfilled" and violations of fundamental rights or international protection obligations which "are of a serious nature or are likely to persist" (point 76 of the Ombudsman's assessment);

K. considering whether there would be room for laying down rules, for instance in the Joint Returns Code, on the termination and suspension of joint return operations (point 77 of the Ombudsman's assessment);

As regards the Consultative Forum

L. taking any possible action to encourage the Forum's close cooperation with, and support for, the FRO in fulfilling her tasks effectively (point 78 of the Ombudsman's assessment);

As regards the FRO

M. (i) taking any possible action to enable the FRO to consider dealing with complaints on infringements of fundamental rights in all Frontex activities submitted by persons individually affected by the infringements and also in the public interest, and (ii) providing adequate administrative support for that purpose (point 83 of the Ombudsman's assessment).

In accordance with my Statute, Frontex shall send a detailed opinion before 31 July 2013. The detailed opinion could consist of the acceptance of my



draft recommendation and a description of how it has been implemented.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure:

- Draft recommendation to Frontex