Special report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex

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The European Parliament adopted by 488 votes to 114, with 33 abstentions, a resolution on the Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex.

Parliament recalled that Frontex, like any other EU institution, body, office or agency, has to comply in its activities with the Charter of Fundamental Rights.

Against this background, in 2012 the European Ombudsman opened an own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations. It further issued a Special Report, in which the implementation of an **individual complaints mechanism was insisted upon**.

Frontex's operational cooperation with the competent authorities of partner countries is conducted through working arrangements which are not legally binding and fall outside the scope of international law, and whose practical implementation is not to be regarded as fulfilment of international obligations by Frontex and the EU. This situation constitutes an element of legal uncertainty which may be seen as in contradiction with Frontex's human rights obligations.

Frontex and the Member States have shared but distinct responsibilities regarding the actions of the officers deployed in Frontex operations and pilot project. Most participants in Frontex operations are guest officers sent by Member States other than that hosting the Frontex operation, in support of that operation.

Parliament noted that Frontex has already established an incident reporting system which involves internal complaints received from Frontex staff and guest officers, and consequently does not cater for direct complaints by individuals claiming a breach of their fundamental rights.

Therefore, Parliament considered that **Frontex should set up an individual complaints mechanism.**

Ombudsman report: Parliament welcomed the Special Report of the European Ombudsman in the framework of the own-initiative inquiry concerning Frontex and supported the recommendation by the European Ombudsman that Frontex should deal with individual complaints regarding infringements of fundamental rights in the course of its operations and should provide adequate administrative support for that purpose.

It expressed deep concern at the legal vacuum that surrounds the deployment of third-country officers during joint return operations. It believed that in view of the ever-growing humanitarian and legal challenges at the EU’s external borders and the strengthening of Frontex operations there is a need for a **mechanism that is capable of processing individual complaints about alleged breaches of fundamental rights** occurring in the course of Frontex operations or cooperation with third countries, thus becoming a first-instance body for complaints. Members noted that such a mechanism would be compliant with EU law and the principle of good administration and would reinforce the effective implementation of the Agency’s fundamental rights strategy. They stressed that this lack of transparency applies in particular in the case of Frontex's working arrangements, over which Parliament cannot exercise democratic scrutiny.

Structure of the individual complaints mechanism: in general, Parliament considered that it is a legitimate expectation to believe that the actions of those involved in Frontex operations are attributable to Frontex and more generally to the EU. It stressed the need for an official central structure within Frontex for the processing of individual complaints and recommended that the office of the **Frontex Fundamental Rights Officer** should play a crucial role in handling complaints (notably in terms of checking the admissibility of complaints).

Lodging and admissibility of complaints: Members took the view that persons who consider they have been harmed by border guards wearing the Frontex emblem should have the right to submit a complaint. Frontex is urged to guarantee full confidentiality. They acknowledged that safeguards are needed to prevent misuse of the complaints mechanism and that **anonymous complaints should not be accepted**.

However, this does not exclude complaints submitted by third parties acting in good faith in the interest of a complainant.

Parliament suggested that **only complaints based on violations of fundamental rights as protected by EU law should be admitted**. It also emphasised the need for clear criteria for the admissibility of complaints and recommended the creation of a standardised complaint form which should be accessible in languages that migrants and asylum seekers understand or may be reasonably supposed to understand and should available both in smartphone-compatible electronic format on its website. Frontex should set a reasonable time limit for the submission of a complaint.

Complaints against guest officers: Parliament acknowledged that potential complaints may refer to the conduct of guest officers who fall under the particular authority of a Member State but wear the Frontex emblem. It considered it crucial to involve national ombudsmen or any other relevant bodies competent for fundamental rights that are empowered to investigate national authorities and officials, given that the Fundamental Rights Officer does not have the right to do so.

Members recalled that the Frontex Disciplinary Procedure may also apply to seconded guest officers and seconded national experts if the relevant Member State agrees. They also considered that the possibility of withdrawing financial support from Member States or the suspension of a Member State from joint operations in case of serious fundamental rights violations should be explored.

Parliament also recommends that:

- gender-based training should be mandatory for both Frontex staff and guest officers before joining a Frontex operation, notably in order to raise awareness concerning gender-based violence;
- Frontex cooperate closely not only with the national border authorities but also with the national human rights bodies.

General considerations: lastly, the resolution noted the general conditions as regards the complaints mechanism. Members insisted therefore on creating effective information campaigns and a well-structured admissibility check on complaints.

Furthermore, Parliament insisted on the need for Frontex to:

- be adequately equipped and staffed to handle the complaints received including the necessary additional resources for this purpose;
- inform the European Parliament about the use of funds by Frontex;
- establish close cooperation with the European Ombudsmas in order to improve the protection of individuals from possible acts of maladministration regarding the activities of Frontex;
- ensure special protection of unaccompanied minors, women who are victims of gender-based persecution, LGBTI persons and other vulnerable groups;

- provide publicly accessible information on the complaints mechanism;
- include provisions on the individual complaints mechanism in the forthcoming review of the Frontex Regulation;
- ensure that the use of funds by Frontex is regularly reported on to Parliament and made public on the Frontex website.

It should be noted that a motion for a replacement resolution, tabled by the ENF group, was rejected in plenary.