



**Doc. 13161 – Compendium of written amendments**

**(Final version)**

**Frontex: human rights responsibilities**

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## A. Draft Resolution

1. The European Agency for the Management of Operational Co-operation at the External Borders of the member States of the European Union, known as Frontex, was created in October 2004 to assist European Union member States in managing and controlling their external borders. With a budget of about 85 million euros in 2012, Frontex has been crucial in implementing border security.
2. When Frontex was established, its role was seen primarily in terms of border control and migration management. Once it began to operate, it became clear that there were many human rights implications attached to its work and that it was ill-equipped to tackle these. This was particularly the case when intercepting irregular migrants, asylum seekers and refugees at borders or at sea, and also during return operations involving irregular migrants and rejected asylum seekers.
3. These human rights issues have brought to the forefront a number of structural issues in the way in which the Agency operates and is managed. Notable in this respect is the lack of clarity over Frontex's responsibility in co-ordinating and implementing joint land, air, sea and return operations with member States and also regarding liabilities for human rights violations or other breaches of international law resulting from the Agency's actions. In addition, there are problems of transparency regarding operations and activities and their human rights implications. There is also a lack of democratic scrutiny, for example where Frontex negotiates agreements with third countries concerning border controls, interceptions and returns.
4. The Parliamentary Assembly welcomes the fact that the European Union and Frontex have recently taken a range of measures to deal with a number of these problems. In this respect, the Agency endorsed a Fundamental Rights Strategy and a Code of Conduct. Furthermore, the EU institutions agreed to amend the Frontex Regulation so as to include the requirement to protect fundamental rights. Changes were also introduced to nominate a Fundamental Rights Officer and create a Consultative Forum on Fundamental Rights. The amended rules added obligations to provide training on fundamental rights, to respect the principle of non-refoulement, and to terminate or suspend joint operations or pilot projects in the event of serious or persistent breaches of fundamental rights or international protection obligations.
5. However, the Assembly remains concerned about whether these changes alone address all the human rights issues at stake and whether some of the changes are operable and effective, even if member States and Frontex do everything they can to implement them.
6. A dangerous mindset still exists which views Frontex's activities as being no more than those of member States, with responsibilities lying with individual member States and not with the Agency. While progress has been made in accepting that this is not always the case, the recourse

to this argument is still too frequently made when looking at issues involving human rights responsibilities.

7. The Assembly therefore calls on Frontex and EU member States to address a range of issues at both the operational and structural level of Frontex and its activities and calls on them to:

**Amendment 1**  
**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, paragraph 7, after the words "calls on Frontex", insert the following words: ", the European Union".*

- 7.1. ensure that persons with international protection needs, including potential victims of trafficking, unaccompanied minors and other vulnerable persons, are identified during border and interception operations, and that these persons are provided with appropriate assistance, including access to asylum and other international protection. Furthermore, information about requests for asylum and international protection, as well as information on boats in distress, need to be given, without delay, to the competent national authorities. In order to ensure that this is done, automatic debriefing of intercepted migrants, in accessible languages, has to be standardised and relevant instructions or clear guidelines must be provided to staff and deployed officers, besides training to equip them with skills to carry out this task. This has to be integrated into each operational plan.

**Amendment 2**  
**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, paragraph 7.1, first sentence, after the words "including access to asylum and", delete the following word: "other".*

- 7.2. guarantee the rights of all returnees during joint return flights or other return operations. This should include guarantees of humane and equal treatment and non-discrimination, as well as the protection of personal data. An effective and independent monitoring system at all stages of joint return operations needs to be put into place and joint return operations should only be carried out and funded for EU member States that have an effective system of forced return monitoring in place at national level. The reporting to Frontex of the monitors' findings should be obligatory.

- 7.3. guarantee the implementation of the Frontex Code of Conduct and the future code of conduct for joint return operations and spell out consequences for non-compliance. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as other relevant bodies of the Council of Europe should be consulted at the appropriate moment on the draft code of conduct for joint return operations, which should take the Council of Europe's Twenty guidelines on forced return fully into account;

- 7.4. make use of the power to suspend or terminate joint operations and pilot projects in cases of serious or persistent breaches of fundamental rights or international protection obligations. Clear risk indicators and objective early warning criteria for the suspension of operations should be developed in co-operation with the Council of Europe, the United Nations High Commissioner for Refugees (UNHCR), the European Union's Fundamental Rights Agency, human rights organisations and the Frontex Consultative Forum. The potential termination of an operation should not be left simply to the discretion of the deployed staff without their being given guidance;

- 7.5. apply basic standards for return monitoring to ensure it is effective. This needs to include the independence of monitors, the monitoring of all phases of the return and the reporting of the findings.
8. The Assembly also calls on Frontex to tackle a number of structural issues which have human rights implications, by:
  - 8.1. improving transparency and public communication regarding the nature of the operations carried out on the ground and their impact on human rights;
  - 8.2. recognising its responsibility as owner, or co-owner of the projects it co-ordinates and implements;
  - 8.3. carrying out human rights training activities for all Frontex staff and deployed border guards in co-operation with external partners, such as the EU Fundamental Rights Agency and the UNHCR, and investing more in mainstreaming and integrating human rights standards, international protection obligations, and victim protection and identification into operational training activities at national level;
  - 8.4. building up an effective human rights monitoring system on Frontex's operational activities, by effectively using as a starting point the two new fundamental rights safeguarding mechanisms, which are the newly appointed Fundamental Rights Officer and the Consultative Forum on Fundamental Rights. Further steps will need to be taken, however, to ensure that monitoring is systematic, transparent and independent, and that an effective reporting system is put into place. This reporting system will need to be based on human rights indicators and has to ensure that in each and every joint Frontex operation, human rights incidents are reported and that the consequences for not reporting these are defined and enforced. Furthermore, a mechanism needs to be put into place to independently assess the impact and follow-up given to the recommendations of the Consultative Forum and the activities, including training activities, carried out by external partners;
  - 8.5. integrating into the risk analysis the likelihood of search and rescue at sea as a factor to conduct joint sea operations; integrating human rights criteria in data collection and analysis and considering the human rights situation in third countries when reporting on risk;
  - 8.6. pre-checking that vessels provided have the equipment allowing for search and rescue at sea; introducing search and rescue in training for patrolling and making it obligatory for deployed officers to undergo such training.
9. The Assembly also calls on the European Union to ensure that Frontex and EU member States comply with their human rights obligations, by:
  - 9.1. revising the Schengen Borders Code to take into account the fact that EU member States and Frontex have responsibilities that go beyond border surveillance, in particular in relation to non-refoulement, search and rescue activities and other interceptions at sea;

- 9.2. enhancing the European Parliament's democratic scrutiny of Frontex by:
  - 9.2.1. ensuring that the Fundamental Rights Officer and the Consultative Forum on Fundamental Rights report directly to the European Parliament on human rights concerns in the context of all Frontex activities and on steps taken to address these concerns;
  - 9.2.2. requiring the European Parliament to be consulted prior to the conclusion of any agreements between Frontex and third countries, in order to ensure that human rights and refugee rights are fully respected in the third countries when activities including return, joint patrolling, search and rescue or interception operations are implemented with them.
- 9.3. ensuring that Frontex assumes its responsibilities with respect to human rights in joint operations;
- 9.4. strengthening the role of the Fundamental Rights Officer by:
  - 9.4.1. guaranteeing his/her independence;
  - 9.4.2. giving him/her the necessary means and resources to effectively monitor all of Frontex's activities;
  - 9.4.3. establishing a complaints mechanism for individuals who consider that their rights have been violated by Frontex.
- 9.5. strengthening the status of the Consultative Forum by guaranteeing it access to information on all Frontex activities, by integrating it into the planning, implementation and evaluation of projects/operations and by giving it the possibility to regularly observe joint operations;
- 9.6. strengthening the co-operation of Frontex with human rights expert organisations such as the Council of Europe, the UNHCR, the Office of the High Commissioner for Human Rights (OHCHR) and the Fundamental Rights Agency. This can be done by opening up joint operations to participation by these organisations and through these organisations reporting back their findings to the Agency and the hosting/participating member States in order to continuously enhance fundamental rights protection;
- 9.7. ensuring that the above matters listed in points [9.2] to [9.6] are made compulsory through a change of the Frontex regulation.
10. The Assembly furthermore calls upon the EU member States to support Frontex and to ensure that in their own

**Amendment 3  
Tabled by the Committee on Legal Affairs  
and Human Rights**

*In the draft resolution, at the beginning of paragraph 9.3, insert the following words: "clearly defining the scope of Frontex's accountability and".*

**Amendment 4  
Tabled by the Committee on Legal Affairs  
and Human Rights**

*In the draft resolution, move paragraph 9.4.3 to become a new paragraph before paragraph 9.5.*

participation in the Agency's activities they comply fully with all their human rights responsibilities. This they can do, inter alia, by:

- 10.1. ensuring that deployed officers have the required knowledge of their human rights obligations and that they have undergone human rights training to develop the respective skills that are necessary in joint operations, and that they report protection relevant issues and potential human rights violations to Frontex and the competent national authorities;
- 10.2. complying with the Hirsi judgment of the European Court of Human Rights when intercepting migrant boats, both in and outside EU territorial waters. In doing this, they need to ensure, inter alia, that those intercepted do not face collective expulsion or ill-treatment, that they have the right to an effective remedy and the possibility of claiming asylum, and that they are disembarked to a safe harbour;
- 10.3. ensuring that vessels and other equipment provided is human rights compliant (namely is equipped to carry out search and rescue at sea or other human rights or humanitarian tasks).
11. Finally, the Assembly invites the European Parliament to use its democratic control and supervisory function to oversee Frontex and its activities where these have human rights implications.

**Amendment 5**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In the draft resolution, paragraph 10.2, replace the words "complying with the Hirsi judgment" with the following words: "complying with the requirements stemming from the Hirsi Jamaa and Others v. Italy judgment".*

## B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2013) on Frontex: human rights responsibilities.
  
2. It welcomes the fact that the European Union and the European Agency for the Management of Operational Co-operation at the External Borders of the member States of the European Union, known as Frontex, have recently taken a range of measures to deal with human rights concerns arising from the work of the Agency. In this respect, it notes that Frontex has endorsed a Fundamental Rights Strategy and a Code of Conduct and that the Frontex regulations have been changed to include the requirement to protect fundamental rights, especially by creating a post of Fundamental Rights Officer and by setting up a Consultative Forum on Fundamental Rights, on which the Council of Europe is represented. Both are now operational.
3. While these changes are welcome, there remain concerns about whether these changes are sufficient and whether they are operable and effective.
4. It is in this context that the Assembly calls on the Committee of Ministers to support and encourage Frontex in human rights matters, and more specifically to:
  - 4.1. ensure, via its representative on the Consultative Forum on Fundamental Rights, that the Council of Europe takes an active part in Frontex's human rights related activities, and that there is feedback and a regular exchange of views within the Council of Europe on participation in this Forum and the Council of Europe's input;
  - 4.2. ensure that the relevant Council of Europe standards, in particular those developed in the case law of the European Court of Human Rights, the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and those of the Group of Experts on Action against trafficking in Human Beings (GRETA), are duly taken into account in Frontex training curricula and operational procedures;

### **Amendment 6** **Tabled by the Committee on Legal Affairs** **and Human Rights**

*In the draft recommendation, delete paragraphs 1 to 3.*

### **Amendment 7** **Tabled by the Committee on Legal Affairs** **and Human Rights**

*In the draft recommendation, at the beginning of paragraph 4, replace the words "It is in this context that" with the following words: "Referring to its Resolution .....(2013) on Frontex: human rights responsibilities,".*

### **Amendment 8** **Tabled by the Committee on Legal Affairs** **and Human Rights**

*In the draft recommendation, paragraph 4.2, replace the words "ensure that" with the following word: "promote" and replace the words "are duly taken into account" with the following words: "and recommend that they are duly taken into account".*

- 4.3. assist Frontex in strengthening its monitoring mechanisms, including the one devised for monitoring joint return operations, through enhanced co-operation with the CPT, GRETA, the European Court of Human Rights and other relevant sectors of the Council of Europe;
- 4.4. assist Frontex in its efforts to protect and promote human rights, ensuring that the Council of Europe uses its privileged ties with the respective national preventive mechanisms established under the OPCAT ("European National Prevention Mechanisms (NPM) Network") and with the Ombudsmen and national human rights institutions of its member States ("Peer-to-Peer Network").

**Amendment 9**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In the draft recommendation, paragraph 4.3, after the words "through enhanced co-operation with the CPT, GRETA", delete the following words: ", the European Court of Human Rights".*