

MEMORANDUM OF UNDERSTANDING ESTABLISHED BETWEEN FRONTEX FUNDAMENTAL RIGHTS OFFICER AND FRONTEX DATA PROTECTION OFFICER

Warsaw, 18 October 2016

PREAMBLE

In the context of the establishment of an effective Frontex complaints mechanism and pursuant to Article 72(6) of the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (hereinafter “the Regulation”), the Frontex Fundamental Rights Officer and the Frontex Data Protection Officer (hereinafter known individually as a “Party” or collectively as the “Parties”) shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards received complaints.

Whereas the Fundamental Rights Officer’s (hereinafter “FRO”) mission is to contribute to the Frontex’ fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights. The FRO is responsible for handling complaints received by the Agency in accordance with the right to good administration.

Whereas the Data Protection Officer’s (hereinafter “DPO”) mission is to advise the Frontex Executive Director and Data Controllers on matters concerning the application of data protection provisions in Frontex. The DPO is responsible for investigating matters and occurrences directly related to the DPO tasks and duties and reporting back to the person who commissioned the investigation.

Whereas both Parties wish and are obliged to specify their division of tasks and establish a mutually beneficial cooperation as regards complaints received if related to data protection issues.

Whereas the Parties wish to undertake joint activities of mutual interest in accordance with their respective mandates, their specific needs and objectives and are obliged to determine the areas and subject of such joint activities on the basis of the understanding set out in this Memorandum of Understanding (hereinafter “MoU”).

In consideration of the above, the Parties hereby agree to the following:

1. SUBJECT AND SCOPE OF THE MOU

- 1.1 The subject of this MoU is to specify the division of tasks between the Parties and to establish the basis for future cooperation in the field of handling complaints as defined by Article 72 (6) of the Regulation related to data protection issues by setting out the overall framework for such division of tasks and general rules for collaboration.
- 1.2 This MoU becomes activated once the Executive Director involves the DPO in handling of a particular case in accordance with Article 72 (6) of the Regulation.
- 1.3 The envisaged cooperation between the Parties is applicable only to cases involving Frontex staff members and related to data protection issues.

2. MODALITIES OF COOPERATION

- 2.1 In case of a complaint submitted to Frontex involving an alleged violation of a right to protection of personal data and related to the actions of Frontex staff member, the Executive Director involves the DPO who is responsible of handling the case, in cooperation with the FRO.
- 2.2 The FRO informs the complainant that the complaint, in the parts related to data protection issues will be investigated by the DPO. The DPO investigates the case in line with Article 9 of the Management Board Decision No 34/2015 of 10 September 2015 adopting Implementing Measures for the application of Regulation (EC) No 45/2001 by Frontex.
- 2.3 The DPO informs the FRO on a regular basis on the follow-up and findings of each case.
- 2.4 The Parties undertake an effective cooperation and discussion on the measures to be taken, without prejudice of respecting reporting obligations and already established implementing measures.
- 2.5 The FRO informs the complainant about the findings and follow up of the case.

3. CONFIDENTIALITY

Each Party undertakes to keep confidential any information, document or other material communicated to it as confidential by the other Party, not to disclose it to third parties without a prior written consent of the disclosing Party, and not to use any such information for any purpose other than the implementation of this MoU. This Section is without prejudice to the relevant provisions applicable to FRO and DPO.

4. ENTRY INTO FORCE, DURATION AND RENEWAL

The MoU will enter into force on the date of its signature by the last Party and will remain in effect until amended. The MoU can be amended only by written agreement signed by both Parties. Termination by any Party is only allowed in duly justified cases and requires a 3 months prior notice.

[signed]
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Fundamental Rights Officer

[signed]
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Data Protection Officer