MISSION REPORT

following the LIBE Mission to the European Border and Coast Guard Agency (Frontex) in Warsaw, Poland (20-21 February 2017)

Committee on Civil Liberties, Justice and Home Affairs

Members of the mission:
Artis Pabriks (PPE) (Leader of the mission)
Brice Hortefeux (PPE)
Péter Niedermüller (S&D)
I. Background and objective of the mission

A Committee on Civil Liberties, Justice and Home Affairs (LIBE) mission visited the European Border and Coast Guard Agency (Frontex) in Warsaw, Poland, on 20-21 February. This three-Member mission was included in the LIBE planning of missions for the first semester of 2017 in accordance to the rules regarding missions to European Union agencies which allow to visit an agency falling under the responsibility of a committee every two years outside the normal quota of missions. A preparatory meeting with the Commission’s services preceded the mission.

Since the last LIBE mission to Frontex in February 2015, the role of the Agency has developed in a very substantial manner. The mission's objective was to better understand in particular the challenges Frontex is facing in implementing Regulation (EU) 2016/1624 on the European Border and Coast Guard, as regards its operational activities as well as its resources. Artis Pabriks who was the European Parliament’s rapporteur for the new Frontex Regulation headed the LIBE mission.

The members of the mission met with Frontex’s Executive Director, Deputy and Director of Operations Division, Heads of Units and senior experts of different units (Risk Analysis, Pooled Resources, International and European Cooperation, Joint Operations, and Return Support). The Members also had the opportunity to visit the Frontex Situation Centre. They finally met with the Fundamental Rights Officer and the Chair of the Frontex Consultative Forum on Fundamental rights.

II. Summary record by subject area of the meetings held

General observations on the implementation of the new Regulation on the European Border and Coast Guard

The Executive Director of Frontex stressed the relevance of the new Regulation, which entered into force on 6 October last year. According to him, the very rapid adoption of this Regulation, the extended mandate and the substantially increased resources (in concrete terms, Frontex’s financial and human resources were tripled) demonstrate the political backing given by the EU institutions for the work of the Agency and at the same time their expectations towards the Agency.

The increased accountability of the Agency towards the European Parliament was also welcomed by the Executive Director. He expressed his commitment to explain results and challenges as well as to be transparent about how resources are spend thereby aiming to gain trust.

Regarding human resources, the Agency is growing very quickly. For three consecutive years, 200 staff members have to be recruited additionally per year. This unprecedented, massive recruitment constitutes not only a quantitative but also a qualitative challenge as the Agency competes with national administrations for experts in very specific fields. In addition, the low correction coefficient for Poland (66.7%; which means that staff in Warsaw receive 66.7% of the salary of Brussels based staff) makes it difficult to ensure geographical balance. The Agency therefore to be pro-active to achieve its recruitment objectives. More efforts are put into
disseminating vacancies widely and to actively look for suitable candidates.

As regards the headquarters agreement, the Executive Director informed that the technical negotiations with the Polish authorities were finalised in January. The ratification in the Polish parliament is expected for April, time set in the new Regulation. The entry into force could then be in July. This agreement provides for a piece of land given to Frontex for the planned construction of a new building for the Agency. The building itself with an estimated cost of 150 Mio. € would, however, have to be financed through the EU budget. The construction project would take five years of which the first two years will be dedicated to the planning and designing of the site, the following two for the construction of the building and the last one for the moving. The lease of the current Frontex premises is possible until 2024 and Frontex has the option to rent more floors in this building to accommodate the increasing number of staff until the new building is suitable for occupancy.

The matter of the transmission of classified information to the Parliament was also discussed during the mission. Technical work regarding this question is on-going.

**Joint Operations**

Concerning the operational activities in 2017, Frontex is engaged in the following operations: POSEIDON and TRITON which are permanent operations throughout the year to help the Member States mostly concerned, namely Greece and Italy, to address the migration crisis; with Spain: INDALO in the Western Mediterranean; MINERVA for border checks in seaports and HERA to cover the sea area between the Canary Islands and the African continent; PULSAR Concept with ALEXIS and PEGASUS concentrate on specific risk driven threats on the basis of which, for example, officers are sent to certain airports to do additional controls; and VEGA CHILDREN on air, land and sea borders. At the land borders, border surveillance in the most affected border sections e.g. in Bulgaria, Greece, Western Balkans is supported by Joint Operation Flexible Operational Activities Land. The afore-mentioned operations are complemented by Focal Points Concept with focal points (in Member States) and coordination points, and the European Coast Guard Cooperation Network.

The budget for Joint Operations was approximately 125 Mio € in 2016 which allowed three times more deployments regarding human resources. Regularly per month, some 1500 persons were deployed in Frontex operations in the peak seasons.

Persisting gaps regarding equipment and human resources for Joint Operations remain an issue which might affect the implementation of operational activities. While the new Regulation has set up the rapid reaction pool of 1500 border guards or other relevant staff intended for rapid border interventions, “normal” operation continue to rely on Frontex’s traditional means. So far, Frontex can mitigate the identified gaps also through the use of its own resources.

The operational concept at sea borders covers border surveillance (aerial and naval) in order to ensure an early detection and interception of migrants, to assist in search and rescue operations and to detect other cross border crime activities. These activities serve to prevent tragedies at sea through the support of search and rescue operations. Last year, thanks to Frontex’s co-financed assets, approximately 90.000 migrants were rescued.
During the Joint Operations, the following first-line activities are carried out after the disembarkation of migrants: medical examination, screening, referral of the requests for international protection, document checks, registration and fingerprinting, debriefing to collect information for investigation support and gaining intelligence.

As part of the Joint Operations Frontex works with Europol and EASO to implement the “hotspot approach” in Italy and Greece. The registration rate in Greece through the fingerprinting of newly arrived migrants entering irregularly by the Mediterranean is up to 90-95% thanks to the hotspots. Most of them apply for international protection in Greece. In Italy, the rate is lower because only one third of the disembarkations take place in hotspots. The Executive Director advocated that more hotspots are needed in Italy. Currently, there are five hotspots on different islands in Greece and four hotspots in Italy.

The operational concept at land borders covers border checks, border surveillance, the gathering of information containing personal data through debriefing activities, the supporting of screening, fingerprinting and registration of migrants and the detection of other cross border crime activities (such as cigarette and car smuggling). Flexible operational activities in border surveillance are currently undertaken in Bulgaria, Greece, Hungary, and Croatia. Focal points are set-up all along the land border. In coordination points officers of Member States work at border-crossing points in third countries where there is an impact on EU borders as experts without any executive powers.

The operational concept at air borders covers pre-arrival checks, gate checks on arrival and departure, first line checks, second line checks, checks in transit areas, and cooperation with check-in counter staff. At focal points officers of other Member States, and occasionally from third countries assist, to reinforce the border checks.

The VEGA CHILDREN Concept focuses on children at risk. Vega handbooks on air, land and sea borders have been produced. The VEGA Handbook for children at airports for instance addresses questions such as “How can border guards and other people working at airports spot children who may be victims of trafficking? How does one talk to them?”

Frontex in association with Europol is also looking at the return of foreign fighters. The “Common Risk Indicator” handbook has been designed to help detect foreign fighters.

The new Regulation represents an added value to Frontex’s work: it gives a legal basis for support and cooperation in the area of Coast Guard functions through multipurpose operations; it has strengthened Frontex’s support to law enforcement authorities of Member States and at EU level via extended possibilities of processing personal data; the mandate on fight against serious cross-border crime (such as sea pollution and drug trafficking) and terrorism stimulates to even intensify participation in EMPACT (European Multi-Disciplinary Platform against Criminal Threats), to promote cooperation with customs authorities and to contribute more effectively to EU internal security.

In 2017, Frontex intends as part of the EU policy cycle 2014 - 2017 to implement four priorities regarding EMPACT: facilitation of illegal immigration (co-driver with Italy), excise goods smuggling, trafficking in human beings, and illicit firearms trafficking.

Frontex’s Head of the Risk Analysis Unit explained the supporting role of his unit to the
strategic decision-making for Frontex’s operations. Risk analysis is one of the elements of border management in the Schengen Border Code, together with border checks and border surveillance. The risk analysis provides information whether an event is likely to happen: Learning from the past, it suggests a likely future in order to be prepare for it. This exercise is particularly relevant in the framework of the vulnerability assessments. The unit provides a variety of products to its clients (Frontex, the European Commission, Member States and the European Parliament). These range from very strategic more long-term analysis such as the Annual Risk Analysis (which looks back 18 months to foresee the upcoming 12 months) to daily products for each on-going operation. Approximately 1.250 different products are produced each year.

A visit to the Frontex Situation Centre was organised for the Members. The Situation Centre provides a constantly updated picture of the situation at the EU’s external borders and of the migration situation. It operates 12 hours per day / 7 days per week while having a 24/7 availability in case of need. Duty officers and support officers, sent from Member States for short-term assignments of one to two months, staff the centre.

Information from different sources is used such as satellite and ship information services, information from other agencies (for example from EMSA) and Eurosur. Regarding Eurosur, it was pointed out that there is so far no obligatory reporting by Member States on air borders, which makes the situational picture incomplete. The evaluation of Eurosur which was due by 1 December 2015 is ongoing.

One team is in charge of media monitoring, as media and social media are an important source of information, in particular to know perceptions of the situation on the ground. Social media is also monitored as it contains a lot of intelligence such as trips to Europe advertised online by smugglers.

Vulnerability Assessment

A key element of the new Regulation’s emphasis on prevention to avoid future crisis situations at the external border constitutes the vulnerability assessment. Its aim “is for the Agency to assess the capacity and readiness of Member States to face upcoming challenges.” (Article 13(4)) The Regulation requires the Agency to establish a methodology for doing so and lists the aspects to be assessed. In the vulnerability assessment “the Agency shall take into account Member States' capacity to carry out all border management tasks, including their capacity to deal with the potential arrival of large numbers of persons on their territory.” (Article 13(4)) As a rule, an assessment of each Member State is to be undertaken at least once a year. When necessary, the Frontex Executive Director shall make a recommendation to the Member State concerned setting out necessary measures. In case a recommendation is not followed the Regulation foresees a referral of the matter to the Management Board and ultimately the Council.

Frontex considered the text of the new Regulation as adopted as a positive development in relation to the text initially proposed by the Commission as it incorporated more strategic aspects to be addressed and a combined focus together with risk analysis. Now the forward-looking and preventive nature of the assessment are well developed as is the cooperation with Member States and the emphasis on common efforts needed to ensure the functioning of the
Schengen area. According to the Executive Director, the vulnerability assessment aims to answer the question whether Member States are properly equipped and organised and to reach its objective it must be a very professional exercise.

Following the entry into force of the new Regulation on 6 October, the Management Board adopted the Common Vulnerability Assessment Methodology in November last year. An implementation plan and the setting up of the Vulnerability Assessment Network in December complemented it. At the time of the mission, the Agency was working on the first baseline assessments for all Member States through the collection of data from the Member States.

To arrive at the baseline assessments, data from Member States divided into two pillars are collected. The first pillar is constituted of data related to capacity (covering equipment, staff, systems contingency plans, budget etc.). The second pillar of data is on threats. Threat indicators refer to anything that affects the Member State from outside. This includes, for example, number of refusals of entry at the border, number of false documents detected etc.

With the data, three different kinds of assessments will be prepared (availability assessment, capacity assessment and permeability assessment) to determine the annual baseline assessments for each Member State, which should be finalised by the end of April this year. On this basis, a recommendation from the Executive Director to the Member State may then be made.

In addition to the annual baseline assessment, Frontex plans as of May simulation exercises in which a scenario will be given to certain Member States and their readiness to manage it be assessed. Three Member States, which had volunteered for the exercise (as did Romania and Greece), were chosen: Slovenia, Germany and Finland. Those three countries were chosen for varying reasons: Slovenia is a small country with land, sea and air borders; Germany has big airports with international connections and Finland has a long external land border.

Once the annual baseline assessment is finalised, the situation will be continuously scanned on the basis of monthly updates of the threat indicators provided by Member States as well as the outcome of the analytical monitoring of the security environment and of joint operations. Once a threat emerges, an assessment is carried out rapidly to prevent the unfolding of a crisis situation. An upcoming threat has a very large definition. It could be, for example, that the quality of the controls in airports is lower during summer time due to the high number of tourists in a particular Member State or city. A further sub-process of the methodology provides for the assessment of the capacity of Member States to contribute to the rapid reaction pool set up by the new Regulation.

All information collected in the various processes including the simulation as well as the annual update of Member States on their list of capacity will then be fed into the baseline assessment of each Member States in the following year.

The collection of the data from the Member States, an exercise that was on-going at the time of the mission, was described as a considerable practical challenge. While in the future liaison officers of the Agency in the Member States will contribute to this data collection, as they are not yet deployed, the Agency has to rely on its current staff, some of whom are sent to Member States to help with the collection of data. The capacity of Member States is to be assessed regarding a series of items relating to “the availability of the technical equipment, systems, capabilities, resources, infrastructure, adequately skilled and trained staff of Member States
necessary for border control” (Article 13(2)). The work on the methodology has led to some 900 data fields to be filled-in by Member States, which then have to be broken down, by border sections. In the case of Germany, for example, this requires input for some 14 000 data boxes. The provision of this data requires a huge effort by Member States. The challenge is, however, not only related to the number of data to be collected but as well to the definition of the data to be collected. According to the Executive Director certain data, such as for example the number of staff working on border management broken down by border section and for all Member States, is collected for the first time. For this reason, a certain harmonisation of definitions will be necessary. It has also been underlined that the data collected is sensitive data, which Member States requested to classify.

**Liaison officers in Member States**

The Frontex Executive Director explained that the Agency currently has an office in Greece and a presence in the EU Regional Task Force in Catania (Sicily, Italy) but that it has not yet deployed liaison officers to Member States as provided for in the new Regulation. Pursuant to its Article 12, the Agency “shall ensure regular monitoring of all Member States’ management of the external borders through liaison officers of the Agency”. It may, however, decide “that a liaison officer covers up to four Member States which are geographically close to each other”.

During a meeting in January with the Member States on liaison officers, it was decided that deployment should start by the end of the current year. The pending steps are: consolidation of opinions and proposals to be adopted by a Management Board decision in March; development of the liaison officers’ profile and the logistical arrangement with Member States (second trimester of 2017); and recruitment and appointment of the liaison officers (second and third trimester of 2017). Italy, Greece and Spain are likely to welcome the first liaison officers. The possibility of grouping several Member States was well received. The Benelux countries and the three Baltic States have already agreed to be grouped together.

The Agency sees the role of the liaison officers as one of representing the Agency with all its activities in the Member States. The profile looked for are therefore not pure experts with knowledge of border management but persons with a comprehensive understanding of the work of the Agency. The Agency will therefore try to recruit some of the liaison officers internally.

As the liaison officers are not yet deployed to the Member States the Agency has sent some of its staff members to Member States to assist with the collection of the data necessary for the vulnerability assessment.

In the future, the deployment of liaison officers in Member States will bring an added value to border security. It will allow Frontex to get closer to Member States and to better connect to the various authorities, which are involved in border management. The liaison officers will monitor the management of external borders by the Member States on different aspects, such as border control, coast guard functions, fight against cross-border crime, return assistance, and inter-agency cooperation.

**Return support to Member States**
The return related activities of the Agency have been significantly increased. In 2016, 232 return operations took place with 10,698 returnees returned. This compares with 66 return operations in 2015 (with 3,565 returnees) and 45 return operations in 2014 (with 2,279 returnees). In 2017, up to the date of the mission, 34 return operations had already taken place with 1663 returnees. Over the years, the principal destinations of return operations coordinated by Frontex were Nigeria (122), Kosovo (112) and Albania (114). Frontex is working on new destination countries, in particular Pakistan, Afghanistan and Sudan. The Member States which organise the most of return operations are Germany, Austria, Italy and Spain. The budget of the Agency with regard to returns has also been significantly increased (to approximately 66 Mio. € in the 2016 budget) which led Frontex to give back 20 Mio. € to the Commission last year which could not be spent.

The new Regulation provides for enhanced provisions on return. The Regulation sets up three pools of forced return monitors, forced return escorts and return specialists. These pools were set up in time as foreseen (for more details see the next part of this report on pooled resources). Furthermore, Frontex may now propose to Member States (instead of depending on their requests) to coordinate or to organise return operations and the concept of “collecting return operations” (through which the means of transports and the escorts are provided by the third country of return for its citizens) was included in the Regulation. Such operations were undertaken so far mainly with Albania, Georgia and Serbia. In such cases, the training of escorts is according to EU standards. According to the Executive Director, collecting return operations increase awareness in third countries, reinforce the cooperation with them and are also more cost effective. Moreover, according to the new Regulation, Frontex is to achieve an integrated system of return management among competent authorities of the Member States, to provide technical and operational assistance to Member States, and to serve as an information hub including the exchange of best practices in return matters.

Regarding the pre-return activities, Frontex has elaborated an integrated return management system involving Member States authorities, third country authorities and EU-funded programmes to build synergies and connect networks and programmes. Frontex also put in place Flexible Operational Activities in return (FOA-R) of which all Member States can be beneficiaries in 2017. Frontex participates in EU funded programmes on return such as EURINT (European Integrated Approach on Return towards Third Countries), PRAN (Pre-return Activities network) and EURLO (European Return Liaison Officers network).

For the management of the rolling operational plan as required by the Regulation Frontex set up in October an application called FAR (Frontex Application for Return) through which Member States inform the Agency of their planning (indicating the number of returnees, the destinations and needs for assistance).

In concrete terms, in case of a return operation Frontex relies on a national decision to return a person to a certain third country. Planes are generally provided by the lead country of the operation with many flexible arrangements being applied. Most Member States do not have a framework contract for chartering aircraft so certain Member States charter for other Member States. Frontex will as well aim to have a framework contract for the chartering of aircrafts. Frontex supports to returns via commercial flights has not yet been developed. Commercial flights are not used so far. Certain third countries refuse to admit their own nationals using chartered aircrafts as Maghreb countries or Vietnam, for example.
Frontex works on establishing relations with third countries and aims to develop common EU action while certain Member States still prefer to use their good bilateral relations with certain third countries instead of an EU approach which is overall more cost effective and efficient. Political leverage is necessary as is sensitivity towards the countries of origin and their needs and interests. Frontex prefers to work with incentives. As regards the cooperation with countries of origin, the main challenges remain the acquisition of travel documents and the acceptance of return operations by third countries.

In the framework of the EU-Turkey statement, 35 readmission operations by air and sea took place in 2016 involving 908 migrants. From the beginning of 2017 until the 17 February, 94 migrants (7 operations) were readmitted in Turkey.

**Pooling of resources**

To address the recurrent gaps in resources for Frontex operations was one of the main objectives of the new Regulation. Through it a number of pools were set up from which the necessary human resources and the technical equipment would be taken for operations. For possibly needed rapid responses a rapid reaction pool of 1500 border guards and other relevant staff as well as a rapid reaction equipment pool were set up with significantly enhanced obligations for Member States to make these resources available for Frontex rapid border interventions. In the field of return three pools were created: a pool of forced-return monitors, a pool of forced-return escorts and a pool of return specialists. Based on already existing pools are the European Border and Coast Guard Teams mainly for joint operations and the technical equipment pool.

According to the Executive Director, the Rapid Reaction Pool was set up on time and the result is positive. In total, 1,524 officers (border guards and other relevant staff) have been included into the pool (24 more than the number of 1500 required by the Regulation). As also required by the Regulation, the Management Board has taken a decision as to the necessary profiles. 14 profiles were defined including, for example, first line officers, border surveillance officers or registration/fingerprinting experts. While the total number of required officers were nominated by Member States, the remaining challenge rests in the task to match the number of officers per profile with the number of human resources offered by Member States. At the request of Frontex, the contribution from some Member States exceeeded their quota (24 officers more in total) in order to provide an opportunity to align the proposal with the Management Board decision. However, the contribution after the final selection is confirmed, will be in line with Annex I of the new Regulation. Gaps remain regarding two profiles: registration/fingerprinting experts (a deficit of 174) and screening experts (a shortfall of 38). With regard to registration/fingerprinting experts, it was indicated that persons fulfilling this profile do not necessarily have to be border guards and that the shortage might be easily addressed by making persons with other backgrounds available. The necessary expertise can be created through a short training. On the other hand, more border surveillance officers would be available for rapid border interventions than necessary (144).

Regarding the rapid reaction equipment pool significant gaps were identified for all types of necessary equipment. Of the total number of asset months requested by the Management Board decision of 425 only 203 were offered by Member States. In the case of offshore patrol vessels, for instance, 28 asset months were requested but only 4 offered.
The return related pools (pools of forced-return monitors, forced-return escorts and return specialists) were set up on time. The state of play for each pool is the following: 50 forced-return monitors were requested of which 45 were offered so far by 16 Member States; 600 forced-return escorts were requested of which 386 were offered by 21 Member States; 40 return specialists were requested and 52 offered by 18 Member States. In total, 690 persons have been requested according to the relevant Management Board Decision for the three pools but only 470 were offered by the Member States. So far, for the Agency these figures do not jeopardise the running of return operations but the reserve of staff is not sufficient and therefore more Member States should participate.

For European Border and Coast Guard Teams overall some 5000 border guards and other relevant staff with 16 defined profiles are available. These teams may be deployed in joint operations, migration management support teams or rapid border interventions. As previously and already the case, Member States commit members for the teams in annual bilateral negotiations between the Agency and each Member State. Overall, the trend regarding the commitments of Member States is described as positive. However, a concern was expressed that Member States should not consider the numbers required for the Rapid Reaction Pool as sufficient thereby neglecting the “normal” ongoing joint operations.

Gaps remain as well regarding the technical equipment pool. As in the case of human resources, pledges are made on an annual basis by Member States. This happens, however, at a time when it is not yet decided what kind of operations are taking place in a given year. In this regard the Executive Director considered, however, that the new Regulation also provides solutions. He referred to the possibility given to the Agency to acquire own assets or to agree on long-term leases. The Agency aims to test different solutions.

Overall, although the situation has improved considerably compared to previous years the Agency continues to experience gaps which the Agency, however, so far manages to mitigate.

Cooperation with third countries

The new Regulation provides for a number of different activities of the Agency in relation to third countries (see in particular Articles 54 and 55). These include the facilitation of cooperation between Member States and third countries, cooperation between the Agency and third countries within the framework of working arrangements, the coordination of operational cooperation between Member States and third countries with the possibility of operations on the territory of third countries, the cooperation with third countries on return, the participation of the Agency in the implementation of international agreements concluded by the EU, the implementation of EU funding programmes supporting the external relations policy of the EU, the launching and financing of technical assistance projects in third countries and the deployment of liaison officers of the Agency to third countries. The cooperation of the Agency with third countries is based on the respect for fundamental rights and takes place within the framework of the external relations policy of the EU.

As such, the cooperation of the Agency with third countries is a component of European integrated border management as defined in Article 4 of the new Regulation.

Working arrangements are the tool, which structure the cooperation of the Agency with third
countries. These arrangements do not have the binding force of international agreements and are concluded with different interlocutors, depending on the third country concerned. In most cases, this interlocutor is the Ministry of Interior. The Management Board, on a proposal of the Executive Director, approves working arrangements. Working arrangements also require the prior approval of the Commission and before a working arrangement is concluded, the Parliament is to be informed. Once a working arrangement is in place, an action plan with a validity of one to two years further details the areas in which cooperation practically takes place. This might cover, for example, the sending of observers.

Frontex has so far concluded 18 working arrangements with third countries: the entire Western Balkans countries, some of the countries of the Eastern Partnership (Armenia, Azerbaijan, Georgia, Belarus, Moldova and Ukraine), Nigeria, Canada, USA, and Russia. The last working arrangement signed was the one with Kosovo (in May 2016). Canada, USA and Russia are strategic partners for research and development as well as risk analysis. A working arrangement with Morocco has been approved by the Management Board but not been signed yet; the signature depends on the recent developments in EU/Morocco relations. Negotiations are currently ongoing in good pace with Senegal and contacts were established with Egypt. In 2017, Frontex aims to conclude working arrangements with Egypt as well as Senegal and Morocco. Negotiations should take place with Niger. In addition, many of the existing working arrangements will be revised to update them to the provisions of the new Regulation, for instance regarding fundamental rights and data protection. Frontex also cooperates with 19 international organisations or EU agencies. Cooperation with Europol, for example, is intensive. In coordination with Frontex, Europol contributes in identifying and fingerprinting the newly arrived migrants, as well as debriefing with them to collect information on criminal matters for investigation. Europol also ensures the secondary security checks in view of the fight against terrorism. Cooperation with EASO has also been intensified in particular in the hotspots.

Frontex also maintains contacts with 28 African countries through the Africa-Frontex Intelligence Community (AFIC). AFIC was set up in 2010 to provide a framework for knowledge and intelligence sharing in the field of border security between Frontex and African countries.

A further tool through which Frontex cooperates with third countries is the deployment of liaison officers of the Agency to these countries. A Liaison Officer is Frontex’s point of contact in a particular country, shows Frontex’s presence, for example in return operations, participates in the risk analysis, intervenes in workshops and other events, and is generally the contact point for local authorities. In 2016, Frontex deployed its first liaison officer in a third country, namely Turkey. The Management Board in 2016 further approved the deployment of a liaison officer to Niger and to Serbia, with the latter one having regional mandate. Priority regions approved for possible deployments in 2017 are the Western Balkans, North Africa, West Africa, the Horn of Africa and the Silk Route region.

The new Regulation provides for the possibility of deploying European Border Guard Teams

---

1 The working arrangements are available on Frontex’ website at: http://frontex.europa.eu/partners/third-countries/
2 Agreement on Operational Cooperation between Frontex and Europol: http://frontex.europa.eu/assets/Partners/EU_Agencies/WA/WA_Frontex_Europol.pdf
to third countries with executive powers. Such an operation would, however, not only require an operational plan to be concluded but prior to that the conclusion of a status agreement between the EU and the third country, i.e. the conclusion of an international agreement based on Article 218 TFEU. So far, the Commission has adopted recommendations to the Council to authorise the opening of negotiations with Serbia and FYROM. No mandate for negotiations has so far been given. Technical advice on such possible agreements was given by the Agency to the Commission.

As part of its capacity building activities, Frontex implements EU funds. Frontex has currently two active EU-funded projects. The first one is the Eastern Partnership Integrated Border Management Capacity Building Project that is focused on the training of border guards from Moldova, Ukraine, Belarus and Armenia on border management, security, police and customs. This project is running until the summer, but an extension will be requested for an extra year. The IPA II funds the second project (2016-2018). It provides regional support to protection-sensitive migration management benefiting Western Balkans countries and Turkey. Frontex is associated with EASO, IOM and UNHCR to provide training on different matters, such as falsified documents, detection, trafficking of human beings, and human rights. Frontex stressed that implementing such projects has the additional benefit of improving relations with partner countries and promoting European values.

The Head of International and European Cooperation Unit also mentioned that Frontex, as a centre of excellence on border management issues, would like to develop its capacity-building activities (in particular in Africa) as it gives an added value for future cooperation.

Relations with Turkey and Libya were discussed in particular. With Turkey, the operational cooperation was described as good. There is a good cooperation between the coast guards and Frontex’s operations according to the Executive Director. All their assets are deployed and the EU-Turkey statement is being implemented smoothly. The cooperation plan between Frontex and Turkey ended last December but a new one is under negotiation. However, the relationship with Turkey’s authorities on the ground is sometimes sensitive due to the general political situation.

The situation in Libya is of particular concern. So far, there is cooperation with and training of the Libyan coastguard. Frontex works in close cooperation with the EUBAM Libya (European Union Integrated Border Management Assistance Mission in Libya) to share relevant information and contact the legitimate authorities. With regard to Libya, it would be necessary to better secure its borders and to disrupt the business model of criminal groups acting together with militias. The response on the ground to these challenges is lacking due to the absence of a strong Libyan state.

According to the Executive Director, more should be done to work with Libya and the other African countries given the high number of migrants that transit through this region. Before arriving in Libya, migrants go through one or several other countries where it is important to work as well. The IOM is currently working in Niger to raise awareness among migrants about the risks of migration.

Meeting with the Fundamental Rights Officer
The meeting with the Frontex Fundamental Rights Officer focussed on the implementation of the new Regulation, and in this regard, in particular on the complaints mechanism, her activity and work programme as well as problems encountered such as the lack of human resources.

The new Regulation has significantly reinforced the fundamental rights safeguards throughout the text of the Regulation, has defined in more detail and enlarged the tasks of the Fundamental Rights Officer and has established a complaints mechanism as called for by Parliament. At Parliament’s request, a provision was included in recital 48 that the Fundamental Rights Officer should be provided “with adequate resources and staff corresponding to its mandate and size” by the Agency.

Regarding the implementation of the complaint mechanism, all the formally necessary steps have been undertaken to make it operational. Rules on the complaints mechanism were adopted by decision of the Executive Director, a complaint form prepared and a memorandum of understanding between the Fundamental Rights Officer and the Data Protection Officer established as required by the new Regulation. The complaint form is accessible on the Frontex website with the possibility of lodging a complaint online being prepared. An e-mail address for the mechanism has been established which can only be accessed by the Fundamental Rights Officer and a case management system is under development. A coordination meeting was held with Member States and nationally responsible bodies for complaints to discuss the follow-up of complaints referred by the Fundamental Rights Officer to Member States.

The Agency’s rules specify that a complaint is admissible, among other requirements, where “it is not made anonymously” by a person directly affected by any of the Agency’s activities within one year from the date of the event that caused the alleged violation of fundamental rights (Article 8). The complaint form provides for a field in which complainants may specify how Frontex or other institutions could do to address the harm caused if the complaint is substantiated.

So far, only five complaints were received, of which four were declared inadmissible mostly because they concerned issues outside of the Frontex mandate.

The Fundamental Rights Officer acknowledged that there should be more information disseminated about the possibility of lodging a complaint and the complaint form should be more widely available. The Fundamental Rights Officer will seek the support from the relevant units within the Agency once staff is available to handle complaints. Information should for instance be visible on the first page of the Frontex website. This has so far not been done due to the fear of not being able to professionally and responsibly handle a larger number of complaints due to a lack of staff.

Regarding other activities, the work programme for 2017 of the Fundamental Rights Officer foresees four main objectives:

- to promote an Agency culture that respects fundamental rights. In this regard, the Fundamental Rights Officer works on updating the fundamental rights strategy of the Agency which dates from 2011. Work for this has already started in 2015 but an update is now necessary to bring the strategy in line with the enhanced fundamental rights related obligations provided for in the new Regulation.
- to provide advice and tools to prevent fundamental rights violations across the Agency. In implementing this objective, activities of the Fundamental Rights Officer focus on internal communication, the provision of training materials as well as training for the various activities of the Agency, pre-deployments briefings as well as the continuous support of risk analysis and for the impact assessment of fundamental rights for operational activities in accordance with the obligations of the new Regulation.

- to ensure compliance with fundamental rights in all Agency activities. Since August 2016, an Associate Fundamental Rights Officer was recruited who focuses on operational matters and does many operation focus and monitoring missions. The Fundamental Rights Officer stressed the importance to increase the capacity of monitoring on the ground, in particular in areas or topics where risks are present. It is also relevant to strengthen fundamental rights aspects in the decision-making both on the ground in operations and at the headquarters. Among the current activities are also the revision of all operational plans (which according to the new Regulation need to contain, for example, referral procedures for persons in need of international protection, procedures setting out a mechanism to receive complaints and a reporting and evaluation scheme containing benchmarks for the evaluation report, including with regard to the protection of fundamental rights). For the monitoring of the Agency’s compliance with fundamental rights a serious incidents reporting system already exists but follow-up activities in this regard will be reinforced.

- to increase accountability and transparency related to fundamental rights in all Agency activities. To reach this objective more competent staff is necessary. So far, the Fundamental Rights Officer works with one Associate Fundamental Rights Officer and one contract agent who works as assistant and secretary of the Consultative Forum. The latter function was recently given to two persons bringing the total staff number to four (plus one interim administrative assistant). The Fundamental Rights Officer estimated that a 9-member staff would be necessary to go forward with her reinforced mandate that requires the recruitment of experts on children and vulnerable groups as well as on return matters. She informed that only three assistants have been allocated in 2016 and 2017 for whom recruitment is pending.

Meeting with the Chair of the Frontex Consultative Forum on Fundamental Rights

As laid down in the Regulation, the role of the Consultative Forum is "to assist the executive director and the management board with independent advice in fundamental rights matters." (Article 70) The provisions regarding the Consultative Forum in the new Regulation were strengthened at the insistence of Parliament. It may now itself define its working methods, which the Forum has already adopted upon consultation with Frontex and the Management Board, and it "shall have effective access to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits" to operations. The Consultative Forum is currently composed of representatives from 15 organisations. Three of them are according to the Regulation permanent (FRA, EASO and UNHCR); three received a bilateral invitation (Council of Europe, IOM and OSCE/ODIHR) and the other ones were chosen by the Agency’s Management Board following a proposal of the Executive Director after an open call to civil society organisations. The UNHCR currently chairs the Forum with the Jesuit Refugee Service acting as co-chair. Information on its work and relevant documents
such as work programmes and reports are available on the Frontex website.\(^1\)

Based on its work programme the priorities of the forum in 2017 are the implementation of the new Regulation, the revision and further development of the fundamental rights strategy and the codes of conduct, fundamental rights and Frontex operations, with a specific focus on Frontex enhanced mandate on returns and operations in third countries (where the importance of setting up a clear framework and additional safeguards to ensure fundamental rights compliance in the context of Frontex operational engagement was stressed), and contributions to the development and evaluation of Frontex training materials and methodologies in areas related to fundamental rights.

In 2017, the Forum intends to attend return operations. The Chair considered that it is necessary for the Forum to fully understand the activities of the Agency in order to be able to advise it. The Forum also supports the trainings on fundamental rights matters. The Chair regarded time and resources as a permanent constraint for their work.

The Chair of the Consultative Forum expressed serious concern about the understaffing of the Fundamental Rights Officer’s office. This has always been an issue but with the new tasks given to the Fundamental Rights Officer the situation has worsened.

The Chair also stressed that the complaints mechanism is a good tool with the lack of staff being, however, a risk factor. This tool has been developed quickly and there is a strong political will backing this initiative. It has, however, to be ensured that this mechanism works and the Consultative Forum has made a number of recommendations in this regard some of which remain to be addressed. An information campaign to make it known is necessary. There are big expectations regarding the complaints mechanism, so equipping the Fundamental Rights Officer properly is of major importance.

On the vulnerability assessment, the Chair regretted that the methodology looks exclusively at border control and not the wider picture (including for instance reception or referral capacity) which would be necessary in order to assess the capacity for dealing with a potential arrival and fair and effective response to large numbers of persons. In addition, not only data from Member States should be used but other sources as well.

The Chair welcomed increased cooperation between Frontex and EASO. The Consultative Forum has encouraged Frontex reliance on EASO’s Country of Origin expertise to enhance the quality of country assessments for the purpose of disembarkation and returns as well as highlighted the importance of ensuring these do not only rely on assessments by the respective Member State’s border authorities but also on all relevant and available sources.

The Chair deemed that the Forum was able to have an impact in some areas of the Agency’s work. She underlined the excellent relationship with the Fundamental Rights Officer, whose role and that of the Forum duly complement each other, and its involvement in training activities. Regarding the operations, the Chair recognised that the Consultative Forum has less impact even if it can formulate formal recommendations to the Executive Director if it is concerned by a particular situation. Such concerns as well as any other activities undertaken by the Consultative Forum throughout the year may also be outlined in its annual report (the 2016

\(^1\) [http://frontex.europa.eu/partners/consultative-forum/general-information/]
annual report is in the process of finalisation and will be made public after it is presented to Frontex and the Management Board end of March). A method that has proven its usefulness in the past was direct discussions with the Management Board and Frontex staff after Consultative Forum visits to Frontex Joint Operations. In this way the Forum has, for example, voiced its concerns regarding the low level of proficiency in English of some officers deployed in Frontex operations impeding them to communicate properly or understand guidance on issues of relevance to fundamental rights, and engaged in constructive discussions with Management Board representatives on how this could be addressed. It also has concerns regarding the potential risks involved in return operations due to Frontex limited access to return decisions by the respective Member States and called for a profile and additional training and quality resources to be invested on interpreters as they are important vectors of information for arriving migrants. The forum also expressed openness to undergo an internal evaluation of its work and impact.
III. Conclusions

The Members of the mission:

1. welcome the progress made in implementing the new Regulation and thereby operationalising the European Border and Coast Guard; particularly thank the entire staff of the Agency for the hard work done in this process;

2. welcome the conclusion of the negotiations on the headquarters agreement with Poland and express the expectation that that this agreement will contribute to ensure the recruitment of the necessary staff for the Agency; in this regard express their concern about the low correction coefficient in Poland;

3. welcome the enhanced operational activity of the Agency made possible by the new Regulation and the significantly increased resources provided to the Agency through the EU budget and Member States; calls on Member States to provide the agreed resources to the Agency and to ensure that identified gaps are closed;

4. welcome the positive commitment of the Agency to make more information available to the European Parliament and the general public thereby implementing the accountability provisions as foreseen in the new Regulation; stress that transparency is necessary to increase legitimacy and to avoid false impressions as to the role of the Agency;

5. express their concern about the lack of staff for the Fundament Rights Officer; expect the complaints mechanism to be made more visible;

6. look forward to a close cooperation with the Agency and are ready to assist the Agency as far as possible in case any problems arise;

7. thank the staff of the Agency for the very professional and warm welcome of the LIBE mission.

Annex
Programme
MISSION TO FRONTEX – WARSAW, POLAND
20-21 FEBRUARY 2017

FINAL PROGRAME

**Monday 20 February 2017**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.45</td>
<td>Arrival to Frontex HQ</td>
</tr>
</tbody>
</table>
| 11.00 | General presentation by the Executive Director, Mr. Fabrice Leggeri  
  • State of play of the implementation of the European Border and Coast Guard Regulation;  
  • Organisation, budget and recruitment challenges for the coming months and years;  
  • Frontex role in ETIAS. |
| 12.30 | Lunch with the Frontex Executive Director |
| 14.00 | Operational State of Play by the Director of Operations Division, Mr. Klaus Rösler  
  • Presentation of Frontex Joint Operations at the EU external land, sea and air borders: Operations Triton and Poseidon, the multipurpose scope, Hotspots and Coast Guarding  
  Speaker: Operational Officer, Ms. Barbara Urbanovic;  
  • Risk Analysis supporting strategic decision-making  
  Speaker: Head of Risk Analysis Unit, Mr. Javier Quesada;  
  • Visit to the Frontex Situation Centre: Situation monitoring and Role of Frontex in Eurosur  
  Speaker: Information Management Officer, Ms. Kinga Wilkus. |
| 15.30 | Vulnerability Assessment (state of play and the deployment of Liaison Officers in Member States)  
  Speaker: Head of Risk Analysis Unit, Mr. Javier Quesada |
| 16:15 | Frontex role on Return  
  • Return Operations  
  • Pre-return assistance to Member States  
  Speaker: Operational Officer, Mr. Antonio Fernandez Esteban |
| 17.00 | Pooling Resources (state of play regarding the different pools) |
• European Border and Coast guard Teams
• Return Teams
• Assets
• Rapid Response

Speaker: Acting Head of Pooled Resources Unit, Mr. Edgar Beugels

---

**Tuesday 21 February 2017**

9:30  **Frontex Cooperation with Third Countries**  
- Priority countries/regions (deployment of liaison officers, capacity building initiatives…)
- Operational action in third countries (priority countries, timelines)  
  **Speaker:** Head of International and European Cooperation Unit, Mr. Götz Brinkmann

11:00 **Meeting with the Fundamental Rights Officer**  
  **Speaker:** Fundamental Rights Officer, Ms. Inmaculada Arnaez

12:00 **Meeting with the Chair of the Frontex Consultative Forum on Fundamental Rights**  
  **Speaker:** Ms. Marta Ballestero