



THIRD ANNUAL REPORT

**Frontex Consultative Forum
on Fundamental Rights**

2015

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Frontex Consultative Forum on Fundamental Rights

Consultative Forum Members:

- The AIRE Centre — Advice on Individual Rights in Europe
- Amnesty International European Institutions Office (AI EIO)
- Caritas Europa (CE)
- Churches' Commission for Migrants in Europe (CCME)
- Council of Europe (CoE)
- European Asylum Support Office (EASO)
- European Council on Refugees and Exiles (ECRE)
- European Union Agency for Fundamental Rights (FRA)
- International Commission of Jurists (ICJ)
- International Organization for Migration (IOM)
- Jesuit Refugee Service Europe (JRS)
- Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR)
- Platform for International Cooperation on Undocumented Migrants (PICUM)
- Red Cross EU Office
- United Nations High Commissioner for Refugees (UNHCR)

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1 INTRODUCTION



SAR by Norwegian vessel deployed by Frontex to Joint Operation Poseidon off the coast of Lesbos, Greece

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Pursuant to the Frontex Regulation¹⁴, the Consultative Forum on Fundamental Rights (hereafter referred to as the 'Consultative Forum' or 'the Forum') publishes an annual report of its activities¹⁵.

The third annual report of the Consultative Forum, which was presented to the Frontex Management Board on 30 March 2016, provides an overview of the main activities of the Forum in 2015 as well as a brief outlook for 2016. To avoid unnecessary repetitions, the Consultative Forum refers the reader to its first and second reports for an overview of its role and mandate as well as the general nature of its activities.

The Consultative Forum hopes that its third annual report will contribute to discussions on the impact of Frontex operations on the effective fulfilment, respect and promotion of fundamental rights in EU external border management activities.

14 Article 26a(2), third sub-paragraph, of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex Regulation), OJ L 349, 25.11.2004, p. 1, as last amended. According to the working methods (Title I, Article 3.6), the annual report has to be presented to the Management Board before it is 'made publicly available'.

15 The first (2013) and second (2014) annual reports of the Consultative Forum can be accessed on the Frontex website (<http://frontex.europa.eu/partners/consultative-forum/documents/>).

2 COMPOSITION AND ROLE OF THE CONSULTATIVE FORUM



Refugees and migrants at the railway station in Tovarnik, Croatia are boarding a train to take them to Hungary

Officially established in October 2012, and operational since January 2013, the Consultative Forum provides independent advice to the Agency's Management Board as well as its Executive Director on fundamental rights matters. Pursuant to Article 26a of the Frontex Regulation, the Consultative Forum is to be consulted on matters such as the further development and implementation of the Fundamental Rights Strategy, Codes of Conduct and common core curriculum, and shall have access to all information related to the respect of fundamental rights in all activities of the Agency.

The Consultative Forum is composed of 15 organisations, which contribute their expertise and resources on a voluntary basis, and is supported by a Consultative Forum Secretariat provided by Frontex.

Since 26 September 2015, and until 31 December 2018, the Consultative Forum has been composed of:

(i) two European Union agencies:

- ♦ the European Asylum Support Office (**EASO**),
- ♦ the European Union Agency for Fundamental Rights (**FRA**);

(ii) four UN agencies and intergovernmental organisations:

- ♦ the United Nations High Commissioner for Refugees (**UNHCR**),
- ♦ the Council of Europe (**CoE**),
- ♦ the International Organization for Migration (**IOM**),
- ♦ the Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights (**OSCE/ODIHR**);

(iii) nine civil society organisations:

- ♦ the **AIRE** Centre — Advice on Individual Rights in Europe,
- ♦ the Amnesty International European Institutions Office (**AI EIO**),
- ♦ Caritas Europa,
- ♦ the Churches' Commission for Migrants in Europe (**CCME**),
- ♦ the European Council for Refugees and Exiles (**ECRE**),

- ♦ the International Commission of Jurists (**ICJ**),
- ♦ Jesuit Refugee Service Europe (**JRS**),
- ♦ the Platform for International Cooperation on Undocumented Migrants (**PICUM**),
- ♦ the Red Cross EU Office.

In 2015 the Consultative Forum was chaired by UNHCR and the Jesuit Refugee Service.

The role of the Consultative Forum as foreseen in the Frontex Regulation is to advise the Frontex Executive Director and Management Board on the protection and promotion of fundamental rights in Frontex activities. The Consultative Forum has neither the mandate nor the capacity to monitor or assess fundamental rights compliance in Frontex activities. The work of the Consultative Forum should therefore not preclude the necessary oversight of relevant stakeholders such as the European Parliament, national parliaments, civil society and the judiciary.



Young Syrian sitting on railway tracks at Tovarnik station, Croatia

© UNCHR / Rafał Kostrzyński / September 2015

3 MAIN ACTIVITIES IN 2015



Refugees getting off the boat in Lesbos, Greece

© Caritas / Ben White / October 2015

On 2 March 2015, the Consultative Forum adopted the Work Programme that has guided its activities during the year¹⁴:

Consultative Forum priorities in 2015

- (a) Evaluation and strengthening of the Consultative Forum's working methods
- (b) Respect for fundamental rights in the context of Frontex-coordinated Joint Operations, with a specific focus on Frontex screening activities
- (c) Revision and further development of the Frontex Fundamental Rights Strategy and provision of input to the evaluation of Frontex
- (d) Application of Regulation (EU) No 656/2014 establishing the rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex (external maritime borders surveillance Regulation)

In 2015, the Consultative Forum held three official meetings with Frontex and the Management Board¹⁵:

- ♦ from 10 to 12 February at the Frontex headquarters in Warsaw;
- ♦ from 6 to 7 May at the Frontex liaison office in Brussels;
- ♦ from 3 to 5 November at the Frontex headquarters in Warsaw.

3.1. Renewal of the Consultative Forum's mandate

In view of the expiration of the initial Consultative Forum's mandate, and on the basis of the initial decision on the composition of the Forum by the Management Board, Frontex invited the Council

¹⁴ The Consultative Forum's 2015 Work Programme is available at http://frontex.europa.eu/assets/Partners/Consultative_Forum_files/CF_work_programme_2015.pdf

¹⁵ In line with the Consultative Forum working methods, Title I, Article 2.3, formal meetings are attended by the Management Board Chairperson or the Deputy Chairperson, the Executive Director or the Deputy Executive Director and the Fundamental Rights Officer as well as senior Frontex staff.

of Europe, OSCE/ODIHR and the IOM to renew their membership for another term and launched a public call for the selection of civil society organisations. The organisations explicitly mentioned in the Frontex Regulation (i.e. EASO, FRA and UNHCR) continued their membership based on their acceptance of the permanent invitation that had been extended to these organisations by Frontex in 2012.

The public call for the selection of civil society organisations was launched between 29 June and 12 July 2015. The Frontex Consultative Forum Secretariat received 14 applications within the deadline and two applications after the deadline had expired.

These applications were assessed by the Frontex Executive Director against eligibility and selection criteria established by the Management Board in its Decision No 12/2012 of 23 May 2012 on the establishment and composition of the Frontex Consultative Forum on Fundamental Rights. In line with the Frontex Regulation, the Frontex Executive Director made a proposal, which was adopted by the Management Board on 9 September 2015.

While the Consultative Forum welcomes the renewal of its mandate after an initial period of 3 years, the uncertainties surrounding the late selection process considerably limited the already stretched capacities of the Consultative Forum during the year. The Consultative Forum has therefore recommended that Frontex and the Management Board ensure that criteria and procedures for mandate renewal are developed well in advance to avoid similar situations in the future.

First changes in the composition of the Consultative Forum

The Consultative Forum hereby expresses its gratitude to the **International Catholic Migration Commission** (ICMC) and its representative Petra Hueck for their invaluable contribution to the work of the Consultative Forum between 2013 and 2015.

ICMC is a registered non-profit organisation working in the areas of refugee and migration issues. It was founded in 1951, in the wake of the massive displacement caused by the Second World War to coordinate the work of Catholic organisations in responding to the needs of migrants, refugees and displaced persons, and to advocate in the intergovernmental and governmental institutions on their behalf.

Today, ICMC coordinates a network of structures mandated by the Catholic Bishops Conferences worldwide and has staff and programmes in over 50 countries.

The Consultative Forum is glad to welcome a new member, the **AIRE Centre**, whose legal and capacity building expertise in the field of fundamental rights in Europe will certainly be an asset to the Consultative Forum and to Frontex.

The AIRE Centre — Advice on Individual Rights in Europe — is a London-based specialist law centre whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.

The vision of the AIRE Centre is for all people to enjoy their rights under European law. They do this by: litigating and intervening in cases before the European Court of Human Rights and the Court of Justice of the European Union; providing legal advice to other lawyers and advisers in the voluntary sector; and providing legal advice to individuals directly carrying out training and drafting reports and other publications. The AIRE Centre staff lawyers have extensive practical and academic experience in dealing with issues such as asylum, migration, trafficking, child protection and fundamental rights. The AIRE Centre has been involved in most of the biggest European cases in the area of asylum and migration.

3.2. Strengthening of the Consultative Forum's working structures

3.2.1. Adoption of an internal working structure

In line with the Consultative Forum Work Programme for 2015, and in an attempt to optimise the use of the limited time and resources available to conduct its activities, the Consultative Forum undertook a number of steps to enhance its working methods.

These included the agreement, in March 2015, on an internal working structure complementary to the working methods adopted by the Management Board. The structure has brought more clarity to the role and responsibilities of the Consultative Forum Chairs as well as the support provided by the Consultative Forum Secretariat. In addition it covers the setting up, depending on the annual priorities of the Consultative Forum, of thematic Working Groups under the coordination of forum members elected by consensus. Additionally, the Consultative Forum appoints thematic focal points for other specific areas of work.



Consultative Forum – 9th meeting in Warsaw, Poland

© Frontex / November 2015

Throughout the reporting year, the Consultative Forum established the following:

- ♦ a Working Group on Frontex return operations;
- ♦ a Working Group on training;
- ♦ a focal point on Frontex accountability;
- ♦ a focal point on gender;
- ♦ a focal point on Frontex cooperation with third countries.

Other activities of the Forum were undertaken in plenary with the contribution of interested members.

The internal structure brought further clarity to internal decision-making procedures in line with the working methods of the Consultative Forum. In particular, it is foreseen that Consultative Forum decisions, opinions and recommendations will be adopted by consensus of its members. When consensus cannot be reached, the Consultative Forum Chairs may exceptionally proceed to voting by simple majority of the Forum members with the possibility of recording minority or dissenting positions if requested by any of the members. The structure foresees that members may also

request not to take part in the adoption of certain positions or recommendations, in particular concerning thematic areas, as well as the recording of their abstention. In the course of 2015, all activities and recommendations of the Consultative Forum were undertaken by consensus among its members. No need was found nor was it requested to resort to voting procedures.

Last but not least, the document confirms the commitment of Consultative Forum members as well as its secretariat, and any other parties contributing to the work of the Forum, to ensure respect for the confidentiality of discussions, deliberations and internal exchanges undertaken in the context of the Forum's work.

3.2.2. Communication with the Management Board, Frontex and other relevant stakeholders

Throughout the reporting year, the Consultative Forum remained committed to further strengthening its communication with Frontex staff and Member State representatives. In line with this commitment, a number of formal and informal discussions were held in the margins of the Forum meetings or facilitated by the use of video conferencing equipment.

These included a focus group meeting following the Forum delegation's visit to Joint Operation Poseidon in January and informal exchanges with relevant Frontex units on Frontex return, training and screening activities.

Consultative Forum representatives took part in the annual European Day for Border Guards (ED4BG) held by Frontex on 21 May. The ED4BG presents Europe's border-guard community with an opportunity to share experiences in a forum for topical discussion, which included a session on the rights of children crossing the EU external borders facilitated by the Fundamental Rights Officer.

In 2015, the Consultative Forum presented its Work Programmes for 2015 and 2016 and its 2014 annual report to the Management Board at its March and November meetings. In preparation for the latter, the Forum took the initiative to present an overview of its activities during the year, which served as an initial reference for the drafting of this report.

The Consultative Forum was also invited to take part in an exchange of views on its activities with the European Parliament in January 2015 and in a stakeholder meeting on the establishment of a complaints mechanism in June 2015.

During the year, the Consultative Forum representatives also noted an increase of interest among practitioners and researchers in the work of the Forum, and responded in a timely manner to their interest within the framework of the Consultative Forum mandate.

In November, Consultative Forum representatives participated in the conference 'Frontex: legal questions and current controversies' organised by the Research Unit in Law, University of Luxembourg. The conference brought together academics and practitioners from EU and international law backgrounds to examine various legal issues concerning Frontex activities while addressing the functional reality of Joint Operations led by the Agency. Matters related to human rights and legal responsibility for Agency activities were discussed, with an emphasis on particular cases of search and rescue operations, return operations and the obligation of *non-refoulement* under international law.

3.2.3. Standard operating procedures

With the support of the Consultative Forum Secretariat, the Consultative Forum standardised its procedure for requesting information from Frontex on issues relevant to fundamental rights. This proce-

ture will hopefully contribute to the timely provision of information to the Forum in accordance with the Frontex Regulation.

Standard operating procedures were also adopted for the development of the Consultative Forum annual report, which will continue to be adopted by the Forum prior to its presentation to the Frontex Executive Director and the Management Board.

3.3. Cooperation with the Fundamental Rights Officer

Throughout 2015, the Consultative Forum was glad to maintain its good cooperation with the Fundamental Rights Officer, which contributed to ensuring complementarity of these different but collaborative roles.

As it was the case in previous years, cooperation with the Frontex Fundamental Rights Officer included her reporting obligation to the Frontex Consultative Forum¹⁶, including the timely submission of her periodic reports at the formal meetings of the Consultative Forum.

In view of the positive experience in the context of the last visits, the Consultative Forum regularly invites the Fundamental Rights Officer to join its visits to Frontex operational areas and to take part in the focus group discussions held to jointly reflect on the observations of the Consultative Forum with Frontex and Management Board Representatives.

The assistant to the Fundamental Rights Officer also serves as the Secretariat for the Consultative Forum.

The continued increase in the Frontex budget and responsibilities throughout 2015 has had limited impact on the staffing allocated

¹⁶ Frontex Regulation, Article 26a(3).

to the Fundamental Rights Officer, who continued to count on the support of an assistant (working part-time as the Secretariat to the Consultative Forum), a temporary administrative support staff member and one trainee. The allocation of limited staff to the Fundamental Rights Officer has barred her from fulfilling her supporting and monitoring roles to their full extent throughout 2015.

On the other hand, the Forum notes with satisfaction that in early January 2016 Frontex issued a vacancy notice for the position of a full-time Consultative Forum Secretariat worker as well as an Associated Fundamental Rights Officer, who shall assist the Fundamental Rights Officer in her day-to-day activities, in what is hoped will be the beginning of a renewed commitment to the promotion of fundamental rights within the Agency's activities.

The Consultative Forum remains grateful for the professional and efficient support provided by the Consultative Forum Secretariat.

3.4. Respect for fundamental rights in the context of Frontex-coordinated Joint Operations

3.4.1. Focus group meeting following the Consultative Forum visit in September 2014 to Joint Operation Poseidon (Land)

Frontex-coordinated Joint Operations are undertaken based on risk analysis and following the request of the host Member State. The authorities of the host Member State remain responsible for border operations, including the granting and denying of access to the territory and the provision of protection to those in need. Frontex coordinates the provision of equipment and deployment of guest officers, interpreters and other experts from other Member States.

As described in the 2014 annual report, the Consultative Forum's Work Programme for 2014 had featured a visit to Frontex operational areas in Bulgaria and Greece, but the Consultative Forum was compelled to reduce the scope of the visit to Frontex operational areas in Bulgaria due to the fact that the Greek authorities were unwilling to receive a second visit to the operation in Greece.

Preliminary observations from this visit have already been outlined in the 2014 annual report. They were discussed at a focus group meeting of several Consultative Forum members with Frontex staff and representatives of the Management Board on 13 January 2015 at the Frontex headquarters in Warsaw.

The meeting began with an update on progress since the first visit of the Consultative Forum to Joint Operation Poseidon in 2014. In this regard, the Consultative Forum observed with appreciation that the recommendations that had been made following its first visit to Greece in 2014 had been carefully and proactively considered and many have been implemented. Among them are the following:

- ♦ pre-deployment briefings have been enhanced to include more fundamental rights matters;
- ♦ changes in the handbook attached to Frontex operational plans have been introduced providing better guidance on referral mechanisms;
- ♦ Frontex debriefing guidelines have been reviewed and amended with the support of the Fundamental Rights Officer and the Consultative Forum;
- ♦ a new training module on 'Fundamental rights and international protection in the EU' is being developed by EASO, with the support of several Consultative Forum members and Frontex.

In addition, Greek representatives noted that:

- ♦ two new authorities, i.e. reception and asylum services, have become fully functional since the visit of the Consultative Forum's delegation;
- ♦ referral mechanisms have been strengthened;
- ♦ Greek officers regularly participate in Frontex training on fundamental rights;
- ♦ a checklist on fundamental rights, based on the Frontex manual and national legislation, has been developed.

Following the second visit of the Consultative Forum, further discussions were held on:

- ♦ the rules for deployment of equipment and officers within operational areas;
- ♦ challenges related to the co-existence of national and Frontex-coordinated operations;
- ♦ Frontex screening activities;
- ♦ access to international protection at authorised border crossing points.

All parties welcomed the discussions, which provided the Consultative Forum with a better understanding of the work of Frontex and led to the identification of relevant follow-up points.

The observations made during the visits and the outcome of the focus group discussion also feed into the general work of the Consultative Forum. A mutual agreement was also achieved on the Consultative Forum being invited to participate in pre-deployment briefings to gain a better insight into the respective operations before its visits.

3.4.2. Visit to Joint Operation Triton (Italy) in October 2015

Joint Operation Triton started on 1 November 2014. In line with Frontex's mandate, the operation mainly aims at supporting Italy's border surveillance capacity. The Frontex Executive Director informed the Consultative Forum at its meeting in November 2015 that the Agency had strengthened Joint Operations Triton and Poseidon by deploying additional vessels, aircraft and helicopters. In addition, Frontex had expanded Triton's operational area to 138 nautical miles south of Sicily at that time. Thus, Frontex asserts that the Agency has contributed to strengthening Member States' search and rescue capacities in terms of the number of assets and human resources available.

The Consultative Forum had emphasised that, due to the persistent and extremely high number of incidents at sea, continued investment in search and rescue activities and in enhancing capacities relevant to post-disembarkation support is important to ensure compliance with fundamental rights and applicable EU legislation.

In order to improve the Consultative Forum's knowledge and understanding of Joint Operation Triton, a Consultative Forum delegation undertook a visit to Rome and Sicily from 19 to 23 October 2015. The delegation was able to meet with a range of actors involved in Joint Operation Triton on the ground, such as the National Coordination Centre and International Coordination Centre in Rome, the EU Regional Task Force in Catania, the Italian Maritime Rescue Coordination Centre and the Director-General of the Italian Central Directorate of Immigration and Border Police. Additionally, on two occasions, the Consultative Forum observed the disembarkation in the port of Augusta of persons rescued at sea in the context of Joint Operation Triton, including a debriefing interview and the process of pre-identification and registration. The delegation also participated in a patrolling activity at sea. Unfortunately, due to



Consultative Forum visit to JO Triton 2015

© Consultative Forum / Maria Giovanna Manieri / October 2015

time constraints, it was not possible for the Consultative Forum delegation to participate in the pre-deployment briefing, organised at the start of each deployment cycle in Frontex Joint Operations.

The aspects observed during the visit included: access to medical and material assistance upon disembarkation; access to information about the pre-identification and registration process; the actual pre-identification and registration procedure, conducted with the assistance of Frontex screening officers; debriefing of migrants and refugees by Frontex debriefing officers; fundamental rights training of officers deployed in the framework of the Joint Operation; and gender composition of the debriefing and screening teams.

It should be noted that the application of the provisions in the external maritime borders surveillance Regulation relating to *non-refoulement* and disembarkation in third countries raised no particular concerns since the operational plan for Joint Operation Triton 2015 explicitly excludes the disembarkation in third countries of persons intercepted or rescued by Frontex-deployed assets.

Some of the initial observations and fundamental rights concerns of the Consultative Forum delegation with regard to the abovementioned issues had already been discussed with representatives of Frontex at the Forum's plenary meeting in November 2015. Detailed observations made during the visit were to be discussed with Frontex staff and Management Board representatives in a focus group meeting, scheduled for January 2016.

The Consultative Forum wishes to thank all stakeholders involved in Joint Operation Triton for their constructive attitude in the preparation and execution of the visit, their openness in discussing the fundamental rights challenges arising from the operation and their flexibility in ensuring the delegation's access to the operational activities.

3.4.3. Standard terms of reference for visits of the Consultative Forum to Joint Operations and pre-deployment briefings

In order to improve the facilitation of the Consultative Forum visits to Joint Operations, generic standard terms of reference (ToR) were developed and tested during the preparation for the visit to Joint Operation Triton.

The Consultative Forum nevertheless regrets that its limited capacity has not allowed its representatives to contribute to the pre-deployment briefings delivered to officers deployed by Frontex to its operations as initially foreseen. However, discussions are under way to identify ways within the Consultative Forum's capacity to regularly contribute to the briefing of officers on fundamental rights issues in the context of Frontex operations in 2016.

3.4.4. Consultative Forum participation in Joint Operation VEGA Children 2015

VEGA Children is a Frontex Joint Operation and an initiative aimed at improving the identification and protection of children at risk (e.g. potential victims of trafficking) while crossing the external air borders of the European Union. Following the positive experience in 2014, the Consultative Forum participated in this project for the second year in a row and presented its work at the Frontex Operational Heads of Airports Conference from 3 to 5 March 2015 in Warsaw.

In 2015, the Consultative Forum facilitated the participation of eight representatives (from the Consultative Forum or recommended civil society organisations) in Phase I (June-July) and 11 representatives in Phase II (August-September).

During their deployment, representatives of the Consultative Forum shared their advice and expertise, including through their participation in the pre-deployment briefing and debriefing sessions. Working in tandem with the guest and national officers enabled the representatives of the Consultative Forum and the officers to learn about each other's work in general and their approach to countering trafficking in children in particular. It was also an opportunity to test the methods suggested in the *VEGA Children Handbook*.

In line with its Work Programme, the Consultative Forum looks forward to supporting the process of drafting the *VEGA Children Handbooks* for Frontex land and sea operations in 2016, as they would be applied in a border surveillance environment where fundamental rights and protection mechanisms present more challenges than in an airport environment.

3.4.5. Frontex screening activities

Screening activities are an integral part of the registration process for persons arriving at the EU external borders and aim to establish a presumption of the nationality of undocumented persons having crossed, or having attempted to cross, an external border irregularly.

As a rule, screening is carried out by officers of the host Member State, who can be assisted by experts (including officers as well as cultural mediators and interpreters) deployed by Frontex. In the context of Frontex Joint Operations, screening experts work as part of screening teams (generally composed of one team leader from the host Member State, one/two screener/s deployed by Frontex and one interpreter). In 2015, the Consultative Forum sought to better understand the potential impact of screening activities on fundamental rights and to assist Frontex in establishing procedural safeguards for carrying out screening activities. To that end representatives of the Consultative Forum met staff members of the Return Operations Sector and the Sea Borders Sector at Frontex in September and discussed the working procedures and tools available to screeners in Frontex Joint Operations.

Modalities for screening support were affected in 2015 by the exponential rise in the number of arrivals, the host Member State's capacities with regard to human and technical resources and the facilities available. As part of the EU response to the current situation in Europe, Frontex has increased its support to screening and fingerprinting activities as a key element in the registration of arrivals.

The Consultative Forum will continue to offer its expertise to Frontex in developing standard guidance and tools that contribute to the harmonisation of screening practices and their compliance with fundamental rights.

3.4.6. European Ombudsman's recommendation for an individual complaints mechanism

As described in previous annual reports, the Consultative Forum has supported the recommendation of the European Ombudsman¹⁷ to set up a mechanism that would allow for the reception and follow-up of individual complaints from persons whose fundamental rights have allegedly been violated in the context of Frontex-coordinated Joint Operations.

On 30 June 2015, the Consultative Forum was invited to participate in a stakeholder meeting organised by the European Parliament's Civil Liberties (LIBE) and Petitions Committees (PETI). Discussions contributed to the preparation of a resolution adopted by the European Parliament in plenary on 2 December which '(s)upports 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; calls on Frontex to set up an appropriate complaints mechanism, including within the framework of its working arrangements concluded with the competent authorities of third countries'¹⁸.

17 'Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex' (<http://www.ombudsman.europa.eu/en/cases/specialreport.faces/en/52465/html.bookmark>).

18 No 2 in the European Parliament resolution of 2 December 2015 on the 'Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex' (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0422+0+DOC+XML+V0//EN&language=EN>).

In the context of these discussions, the Consultative Forum presented the following views:

- ♦ The Consultative Forum reiterated its support for the European Ombudsman's findings and recommendations and the views expressed in January 2015, when the Forum sought the European Parliament's support to ensure that a complex division of roles and responsibilities at the EU external borders does not prevent migrants and refugees from having their fundamental rights respected or violations of these rights from being properly addressed.
- ♦ In the Consultative Forum's view, the establishment of an individual complaints mechanism could constitute an important step forward in achieving compliance with the Charter of Fundamental Rights Charter of the European Union and contribute to providing access to justice and effective remedy to those affected by Frontex-coordinated Joint Operations.
- ♦ As already expressed at the European Parliament's LIBE Committee hearing on 13 February 2014, the Consultative Forum welcomed the clear distinction made between monitoring procedures and complaints mechanisms. Indeed, while the complaints mechanism could add value to the monitoring system, the current monitoring activities cannot serve as a substitute for its establishment.
- ♦ The expertise and continued support of the European and national ombudspersons will be key to the development of a well-defined mechanism that provides for the independent, transparent and impartial handling of complaints in line with appropriate procedural safeguards.
- ♦ With regard to scope, the Consultative Forum called for the establishment of a referral mechanism for complaints to competent authorities, such as the national ombudspersons, to address cases where potential fundamental rights

violations are identified, but a direct connection to Frontex Joint Operations is not established. This would also help to ensure that Frontex has a timely and objective overview of fundamental rights-related practices at the external borders, which is key to the implementation of its mandate.

- ♦ The Consultative Forum agreed in principle that, given her role and function, the Fundamental Rights Officer could be the natural addressee of complaints submitted to Frontex provided that adequate and specific additional resources are allocated to cover this function. In particular, the Consultative Forum highlighted the importance of ensuring that the establishment of a complaints mechanism does not hinder the already stretched capacity of the Fundamental Rights Officer to fully implement her current mandate.
- ♦ Within the scope of its mandate and in close cooperation with all relevant interlocutors, the Consultative Forum remains ready to support the development of the system.

3.4.7. Joint Return Operations: handbook on best practices and European Ombudsman's inquiry

In 2015, the Consultative Forum submitted comments on the draft *Handbook on Best Practices for Joint Return Operations (BPs)* to Frontex. The Forum presented its analysis of the handbook and recommendations to the direct contact points (DCPs) meeting with Member States on 16 September 2015 in Geneva. This multilateral exchange was perceived as constructive.

After receiving the first set of recommendations, the handbook was reviewed by Frontex and resubmitted for comments. In line with one of the Forum's recommendations, it has been renamed *Guide for Joint Return Operations by Air coordinated by Frontex*.

The final comments of the Forum, submitted in November 2015, stressed, for example, the importance of referring to the role of the Agency in promoting fundamental rights, for example by providing information on the return and complaints procedures. It was suggested that the guide's reference to the obligation to monitor flights be strengthened. A key recommendation of the Forum is that Frontex develop and apply common standards on the use of coercive measures in Frontex Joint Return Operations (including a list of unacceptable restraint measures), in line with fundamental rights and the principles of necessity and proportionality, and provide necessary information on the guide through training. The need for a more gender neutral language was stressed and it was also highlighted that no reference existed, in the guide or in other documents, to criteria on the basis of which an operation could be either suspended or terminated in case of serious or persistent fundamental rights violations.

At the end of 2015, the final draft of the guide had not yet been shared with the Forum. It should be noted that all recommendations provided by the Forum in this context refer to standard Joint Return Operations carried out under Article 9 of the Frontex Regulation, without any reference to any potential operation that could take place in the frame of the 'hotspots' system.

Frontex shared its draft response to the European Ombudsman's own-initiative inquiry concerning the means through which Frontex ensures respect for fundamental rights in Joint Return Operations, coordinated by Frontex, with the Consultative Forum. The Consultative Forum, in return, submitted their comments, despite the short notice provided for this. Additionally, some Consultative Forum members contributed bilaterally to the own-initiative inquiry. These

contributions and the final version of Frontex's response can be accessed at the European Ombudsman's website¹⁹.

3.5. Risk profiles on trafficking in human beings

A Consultative Forum representative participated in a workshop on risk profiles on trafficking in human beings (THB) organised by Frontex, which took place on 17 and 18 June 2015. Other participants included international organisations and specialised NGOs on trafficking in human beings as well as relevant law enforcement and border authorities from Member States and third countries. The combined input from participants was intended to support the update of the Frontex *Handbook on Risk Profiles on Trafficking in Human Beings* for the detection and protection of potential victims of trafficking in human beings for 2015. The meeting focused on victims and traffickers from nationalities covered in the THB handbook. The Consultative Forum used this opportunity to raise awareness and advise on modalities to mitigate the risks of discrimination that could be triggered through the use of profiling tools.

3.6. Application of the external maritime borders surveillance Regulation

The Consultative Forum's Work Programme for 2015 had envisaged that the Forum would advise Frontex on the fundamental rights aspects related to the application of the external maritime borders surveillance Regulation²⁰ by the Agency, most notably in the context of Frontex operational plans.

19 <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/59007/html.bookmark>

20 Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

This was mainly triggered by the possibility of migrants intercepted or rescued during Frontex-coordinated Joint Operations at sea being disembarked in third countries, as provided for in certain circumstances in the external maritime borders surveillance Regulation. However, since disembarkation in third countries was not foreseen in the Operational Plans for sea operations in 2015, the Consultative Forum has not yet considered this issue in more detail. Nevertheless, this remains an area the Consultative Forum wishes to further examine in 2016, including in the context of its activities relating to Frontex's fundamental rights accountability.

A Consultative Forum representative attended and contributed to the pilot European Border Guards Teams Profile Training for External Maritime Border Surveillance Officers in Helsinki from 23 to 27 March 2015. The participation aimed to enhance and advise on the most effective ways to include applicable fundamental rights safeguards in the training material.

3.7. Frontex fundamental rights accountability

The Consultative Forum initiated a series of exchanges of views with Frontex representatives on the remit of potential fundamental rights implications of Frontex operational activities. This activity is aimed at fostering a common understanding of Frontex challenges vis-à-vis fundamental rights and increase the Forum's capacity to provide recommendations.

In the frame of this activity, the Consultative Forum and Frontex representatives held a first focus group meeting on 29 September. An exchange of views took place on the basis of fictional scenarios with a view to better understanding the implications of Frontex activities from a fundamental rights perspective, particularly with a view to preventing and identifying risks of fundamental rights violation in the activities of the Agency.



Part of the metal fence near the village of Idomeni on the border between Greece and the former Yugoslav Republic of Macedonia.

© UNHCR / Achilleas Zavallis / November 2015

Participants agreed on a similar methodology for the continuation of focus group discussions in 2016.

3.8. Frontex training activities

In 2015, the Consultative Forum continued to support Frontex training activities at the development, pilot and roll-out stages.

Throughout the year, Consultative Forum representatives participated as observers in four of the five contact weeks of the pilot EU Mid-Management in Border Guarding course (MLC), and discussed its observations and recommendations at the MLC evaluation meeting, held in Warsaw on 17 November.

The Consultative Forum also provided support to the European Joint Master's Programme on Strategic Border Management, taking part in the official opening on 7 and 8 September and providing a lecture on fundamental rights and ethics issues in human smuggling and trafficking and the right to equality and non-discrimination in October.

A Consultative Forum representative attended the European Border Guard Team Land Border Surveillance Officer training in Lithuania from 14 to 18 September and contributed expertise and recommendations.

Another representative contributed to the development of the e-learning course on fundamental rights training for border guards and took part in the development meeting, held on 17 and 18 November.

One of the important lessons learned is that the Consultative Forum's contribution to and participation in the development stage of any training products led by the Frontex Training Unit contributes to a better targeting and/or mainstreaming of fundamental rights considerations in the material used for the training of border officials participating in Joint Operations. The Consultative Forum's contribution to the inclusion of all applicable EU, regional and international standards in relevant training materials is also expected to have an impact on the promotion and respect of fundamental rights in Frontex operational activities.

The Consultative Forum and the Frontex Training Unit's mutual interest in continuing to have good cooperation and engage the Forum's expertise was key to enabling the Forum to effectively support Frontex training activities.

3.9. Evaluation of Frontex

Article 33 of the Frontex Regulation provides for the commissioning of an independent external evaluation that examines how effectively the Agency fulfils its mission and assesses the impact of the Agency and its working practices. Paragraph 2b of Article 33 specifically calls for the evaluation to include an 'analysis on the way the EU Charter of Fundamental Rights was complied with' in the work of Frontex.

In 2015, Frontex organised the second evaluation of this type, which was conducted by external consultants. Since fundamental rights are clearly a horizontal element in the Agency's activities, the Consultative Forum had expressed its expectation that it would be consulted

as a body in the course of the evaluation. However, the Consultative Forum was neither consulted nor otherwise involved in drafting the terms of reference or in the implementation of the evaluation.

In addition, in the Consultative Forum's view, the methodology lacked a sufficiently qualitative approach. In discussions with Frontex and the external evaluators, the Consultative Forum expressed several concerns which can be summarised around three main areas.

- ♦ Since the evaluation was expected to provide an analysis of how fundamental rights are respected and promoted in the context of Frontex's activities, the Consultative Forum noted with regret that the evaluators' questions to different stakeholders referred to fundamental rights only in a very generic manner. None of the questions, for instance, addressed challenges concerning specific fundamental rights such as the non-refoulement obligation or the right to life.
- ♦ Regrettably, the opportunity was missed to meaningfully involve the expertise of the Consultative Forum and its members. In particular, the Consultative Forum was only involved as a collective body in the evaluation process at a very late stage and after having repeatedly raised its concerns. Given the very short time provided for preparing answers to the evaluators' questions, the Consultative Forum was not in the position to contact some of the partners who are working on the ground and who could have contributed valuable information from day-to-day practice.
- ♦ For future evaluations, the Consultative Forum strongly recommends a wider involvement of the Fundamental Rights Officer that properly reflects her important role with regard to the day-to-day implementation of fundamental rights provisions in Frontex's activities.

After the evaluators had submitted their report²¹, the Frontex Executive Director requested the Consultative Forum's view on the recommendations included in the document. In response, the Consultative Forum (in a letter to the Frontex Executive Director dated 24 September 2015, which was also distributed to the Management Board) made a number of observations on areas covered by the evaluation report or which should have been considered in the evaluation, as follows:

The Consultative Forum agreed with the finding of the evaluator regarding the limited human resources allocated to the Fundamental Rights Officer and the Consultative Forum Secretariat, and stressed the need for the fundamental rights office to be adequately staffed to support the further promotion of respect for fundamental rights in the activities of Frontex. The allocation of a separate staff member dedicated to the Consultative Forum Secretariat would also facilitate coordination and help to clarify the different and complementary roles of the Fundamental Rights Officer and the Consultative Forum to various relevant interlocutors. Provision of adequate human resources to the Fundamental Rights Officer is ever more important in view of the enhanced role of Frontex in the areas of registration, identification, search and rescue and returns.

- ♦ To ensure that the objectives and scope of Frontex Joint Operations fully comply with relevant fundamental rights provisions, Frontex was also encouraged to further engage with the Fundamental Rights Officer and the Consultative Forum in the development and evaluation of Frontex Joint Operations.

21 See 'External evaluation of the Agency under Article 33 of the Frontex Regulation — Final report, 28 July 2015' (http://frontex.europa.eu/assets/Publications/General/Final_Report_on_External_Evaluation_of_Frontex.pdf).

- ♦ Within the obligation to establish an effective monitoring system for fundamental rights, the Fundamental Rights Officer has a clear monitoring role that covers all Frontex-coordinated Joint Operations and activities. She receives all incident reports and should have unfettered access to documents and officials. She can also observe Frontex-coordinated Joint Operations in situ and participate in internal Frontex briefings, debriefings and discussions. However, the monitoring system relies heavily on the responses provided by the Member States. A robust system should be put in place to ensure that Frontex monitoring activities are supported by an effective mechanism leading to adequate remedies.
- ♦ Following the fruitful discussions fostered by the European Parliament and the European Ombudsman on the establishment of an individual complaints mechanism by Frontex, the Consultative Forum encouraged Frontex to take all necessary steps to set up the said mechanism and to allocate staff specifically devoted to this function within the fundamental rights office.
- ♦ To ensure that the Consultative Forum recommendations are well grounded and relevant, the Consultative Forum fully supported the conclusion that the Forum should be strengthened through more exposure and exchange of information on Frontex activities.
- ♦ The Consultative Forum noted that, according to its mandate as laid down in the amended Frontex Regulation, the Consultative Forum shall have access to all information related to respect of fundamental rights in all activities of the Agency. Accordingly, the Consultative Forum called on Frontex to ensure the full implementation of this provision in practice and to facilitate the proactive and timely sharing of information with the Consultative Forum. Timely access to

documents of relevance to fundamental rights must be provided to the Consultative Forum, if the Forum is expected to effectively carry out its tasks.

- ♦ The Consultative Forum also endorsed the finding that proper criteria for the suspension and termination of Joint Operations in view of fundamental rights violations must be defined and applied in practice, and expressed its readiness to support Frontex in this regard.
- ♦ For such a suspension and termination mechanism to function, the Consultative Forum recommended the strengthening of means, available to Frontex, to obtain timely and relevant information about fundamental rights practices at EU borders, particularly those where Frontex is either engaged or considering engagement.
- ♦ As Frontex increases its cooperation with third countries, the impact of such cooperation on the protection of fundamental rights may require further assessment and attention. The Consultative Forum welcomed the recommendation made to further engage its expertise in this area.
- ♦ The Consultative Forum welcomed the flexibility demonstrated by Frontex with regard to its support for registration and fingerprinting activities, including the increased deployment of officers and interpreters. The Consultative Forum encouraged Frontex to consider the inclusion of a profile for interpreters and/or cultural mediators in its pool of experts, thereby enabling them to be trained in line with well-established and common curricula in support of their crucial and required impartial role.
- ♦ The Consultative Forum regretted the little attention devoted in the evaluation report to the Fundamental Rights Strategy, a key reference document outlining important objectives such as ensuring that respect for fundamental rights remains an essential part of integrated border management,

that Frontex adopts an exemplary attitude with regard to the promotion of fundamental rights or that a 'fundamental rights culture' is established in the EU border guard community, and calls for the provision of all necessary time and resources to its amendment and evaluation under the auspices of the Fundamental Rights Officer.

- ♦ Gender mainstreaming is a struggle for equity and equality, and as such it is firmly based on the principle of non-discrimination (already recognised in the Frontex Fundamental Rights Strategy, the Code of Conduct and many other documents). Specific efforts should be made to ensure that gender is mainstreamed in Frontex as an institution, as well as in its activities.
- ♦ The Consultative Forum continues to regret the negative decision made by the Management Board to its request to extend the eligibility for chairmanship of the Consultative Forum to all its members. The current limitation to three organisations does not respect the principle of equality which is at the core of the work of the Consultative Forum and may jeopardise its capacities in the near future.

At its meeting in November 2015, the Consultative Forum learned that the Management Board had submitted recommendations²² related to the amendment of the Frontex Regulation and based on the external evaluation²³. These recommendations, however, did not reflect the views and proposals of the Consultative Forum on fundamental rights matters for the amendment of the Frontex Regulation.

22 Management Board Decision No 40/2015 of 28 October 2015 adopting recommendations of the Management Board following the evaluation of Frontex (Article 33) (http://frontex.europa.eu/assets/Publications/General/MB_Decision_40_2015_adopting_the_recommendations_of_the_Management_Board_following_the_evaluation_of_Frontex_Article_33.pdf).

23 Frontex External Evaluation, 10.

3.10. Revision of the Frontex Fundamental Rights Strategy

The Frontex Fundamental Rights Strategy was adopted by the Management Board in March 2011. According to the Frontex Regulation, the further development and implementation of the strategy is one of the core tasks of the Consultative Forum and, as such, it was included among the main priorities for the Forum for 2015. To this end, the Fundamental Rights Officer, in cooperation with relevant stakeholders at the Agency, has developed a revised and updated draft based on internal updates and after consolidating external recommendations to Frontex collected since the amendment of the Frontex Regulation in 2011. The Consultative Forum will work further on the strategy with the Fundamental Rights Officer and other Frontex stakeholders in 2016.

3.11. Gender mainstreaming in Frontex activities

The Consultative Forum has initiated a study on gender mainstreaming in Frontex activities. With the support of Frontex units, a sample of documents — including Frontex codes of conduct, handbooks, training materials, guidelines and public information materials — was collected to carry out a preliminary analysis of gender considerations in Frontex activities. This study will be continued throughout 2016, within the framework of the Frontex Fundamental Rights Strategy.

3.12. Frontex cooperation with third countries

In early 2015, the Consultative Forum held an exchange of views with the Frontex Risk Analysis Unit on the content of the Africa – Frontex Intelligence Community (AFIC) joint report for 2014. The Consultative Forum was then invited to share its views on the wording of a draft

version of the AFIC report for 2015²⁴ and to provide some alternative suggestions. Despite a very short deadline, the Consultative Forum provided views and suggestions in a timely manner. However, the timing did not allow for an extensive review, or for the provision of comprehensive additions and recommendations for alternative wording. For the same reasons, the Consultative Forum was not able to comment on the methodology and deductive reasoning used in this report. The Forum took this opportunity to highlight that respect for the fundamental rights of migrants and refugees should be at the heart of Frontex's cooperation with third countries and that this should be adequately reflected in the AFIC and other reports.

²⁴ The final report has been published by Frontex (http://frontex.europa.eu/assets/Publications/Risk_Analysis/AFIC/AFIC_report_2015.pdf).

4 CONCLUSIONS FOR 2015



Life jackets abandoned at a beach in Lesbos, Greece

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By the end of 2014, 59.5 million persons had been forcibly displaced worldwide as a result of persecution, conflict, generalised violence or human rights violations, the largest displacement since World War II. Throughout 2015, war, armed conflict and the fragility of states, which underpin much of the displacement, continued, without a resolution in sight. As a result, by the end of 2015, the number of displaced persons worldwide was likely to have far surpassed 60 million, as more refugees, asylum-seekers, and internally displaced persons (IDPs) have been forced to flee¹⁴.

In 2015, the effects of the worldwide refugee and migration crisis began to be felt across Europe. More than a million persons undertook dangerous sea journeys to seek safety in Europe, and an estimated 3 771¹⁵ died or went missing. The number of sea arrivals in 2015 was more than 4.5 times that in 2014, and the majority of them came from the world's top 10 refugee-producing countries, such as Syria, Afghanistan and Iraq¹⁶.

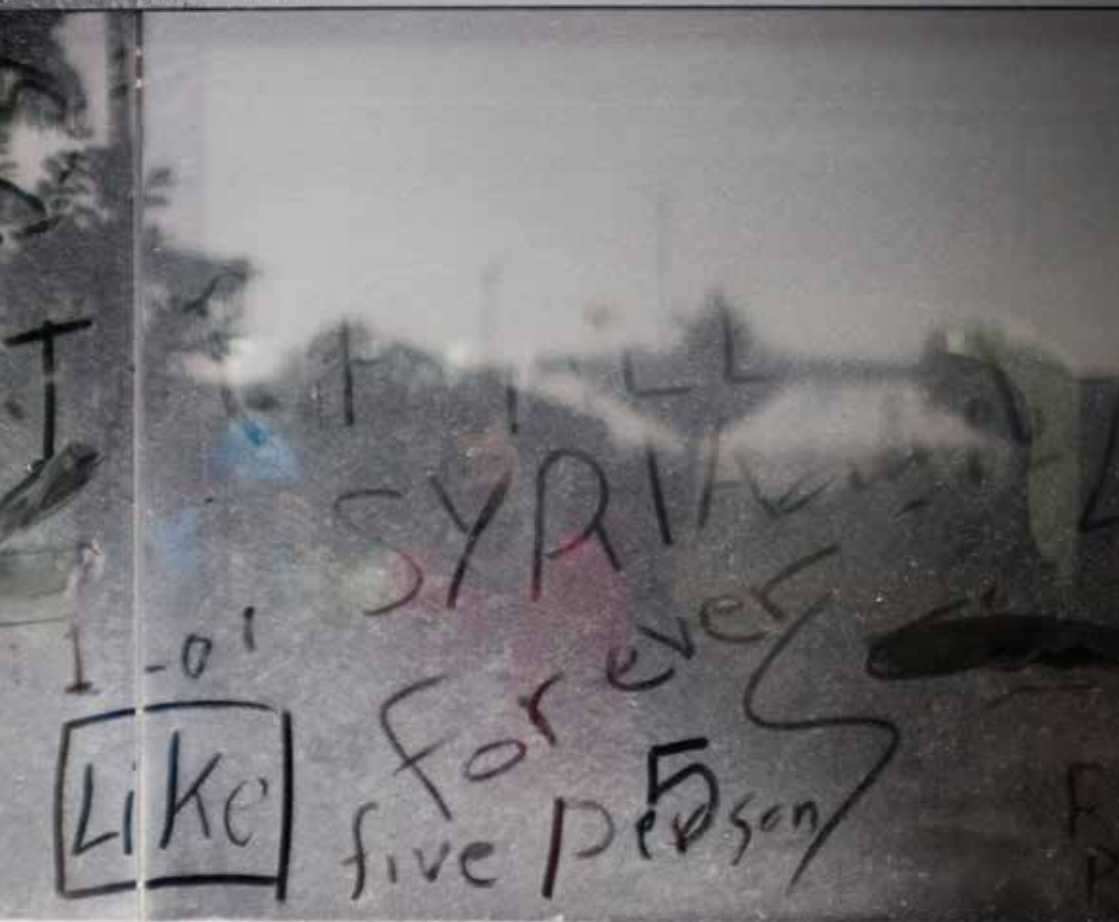
In response, the EU adopted a number of new policy measures, including the 10-point Action Plan on Migration, the European Agenda on Migration and the scheme for relocation from Greece and Italy. The European Commission also tabled a proposal for the establishment of a European Border and Coast Guard, built from Frontex. The financial and human resources put at the disposal of Frontex were significantly increased, and its Joint Operations Triton and Poseidon (Sea) reinforced. In the meantime, some EU Members States continued to receive and host the vast majority of refugees and migrants, whereas others introduced restrictive deterrence measures, some contrary to international law and European case-law.

14 UNHCR, *Mid-year trends 2015*, June 2015 (<http://www.unhcr.org/56701b969.html>).

15 <http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>

16 UNHCR (<http://data.unhcr.org/mediterranean/regional.php>).

This mixed response has underscored the need for a unified European approach to the refugee and migration crisis, in line with international protection and human rights obligations. As long as people are forced to flee persecution, war, conflict or serious human rights violations, the European Union will have to shoulder its legal and moral responsibility to provide international protection to those in need, while ensuring respect and protection of the human rights of all individuals in its jurisdiction. This includes granting access to international protection and due process safeguards at the EU's external borders and preserving protection and rights across its Member States. In this context, among others, Frontex plays an important role in ensuring that the people who arrive in Europe can exercise their fundamental rights at the borders, including the rights to life, dignity, asylum, non-discrimination and protection from arbitrary or collective expulsion and *non-refoulement*. Frontex involvement in the planned increase in return operations and cooperation with third countries will also require further attention to ensure fundamental rights and rule of law are respected and protected.



One of the buses used for the transportation of refugees and migrants from the border point in Bapska to the registration point in Opatovac, Croatia

5 PREVIEW OF 2016



Refugees look on as a boat sails from
Lesbos to Athens, Greece

© Caritas / Ben White / October 2015

The Consultative Forum has set the priorities for 2016 in its Work Programme. These were discussed with Frontex Executive Director and Deputy Chair of the Management Board during the eighth Consultative Forum meeting on 5 November 2015 in Warsaw. During that meeting, both the Frontex Executive Director and the Deputy Chair of the Management Board were able to present their views with regard to the current needs and how best the Consultative Forum could support the Agency in 2016.

The Work Programme was adopted by the Consultative Forum on 16 November and presented to the Frontex Management Board on 26 November. It contains a number of activities and expected outputs which the Forum aims to achieve during the year. For 2016, the priorities of the Consultative Forum are as follows:

- (a)** the fundamental rights implications of the development of the Frontex mandate and the outcome of the negotiations on the Commission's proposal for a Regulation on the European Border and Coast Guard;
- (b)** revision and further development of the Frontex Fundamental Rights Strategy and action plan;
- (c)** fundamental rights and Frontex-coordinated Joint Operations, with a specific focus on pre-identification and screening activities;
- (d)** development and evaluation of Frontex training tools and methodologies in areas related to fundamental rights.

The Consultative Forum Work Programme remains nevertheless flexible for ad hoc consultation of the Consultative Forum by the Executive Director of Frontex and the Frontex Management Board in line with emerging needs.





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