

From: European Data Protection Supervisor
To: [REDACTED]
CC: [REDACTED]
Sent at: 28/02/12 16:07:53
Subject: Our ref. C 2009-0281 D-0430

Dear Sir,

Please find attached a scanned version of a letter sent to you by regular mail today.

Best regards,

EDPS Secretariat
European Data Protection Supervisor
Contrôleur Européen de la protection des données

Postal address :rue Wiertz 60, Brussels B-1047

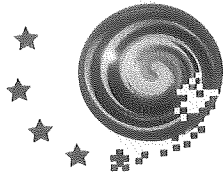
Office address: rue Montoyer 63, Brussels

+32-2-283.19.00 (direct phone)

+32-2-283.19.50 (fax)

www.edps.europa.eu





EUROPEAN DATA
PROTECTION SUPERVISOR

GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

[REDACTED]
European Agency for the Management of
Operational Coordination at the External
Border (FRONTEX)
Rondo Onz 1
PL-00124 Warsaw
POLAND

Brussels, 28 February 2012

[REDACTED] D(2012) D(2012)-0430 C 2009-0281

Subject: Measures taken by FRONTEX as follow up to the recommendations contained in Opinion 2009-0281

Dear [REDACTED]

Thank you very much for your letter of 8 February 2012 outlining the measures taken by FRONTEX as follow up to the Opinion 2009-0281 issued by the EDPS on 26 April 2010.

The recommendations included first of all reviewing the need for a more specific legal basis. Additionally, the EDPS recommended examining compliance with Article 9 of Regulation (EC) No 45/2001 ('the Regulation') before transferring data under its scope; implementing the necessary procedures to guarantee the rights of the data subjects, as well as providing information to the data subjects pursuant to Article 12 of the Regulation.

The changes to Regulation (EC) No 2007/2004 which were introduced by Regulation (EU) No 1168/2011 provide a clear legal basis for the processing of personal data in the context of joint return operations (JROs). These amendments also provide that equipment, including airplanes, chartered by FRONTEX for JROs needs to be registered in EU Member States. This contributes to ensuring that Article 9 transfers to recipients in third countries do not occur.

Regarding the rights to access, rectification and blocking of data, the EDPS notes that FRONTEX commits itself to granting requests for access. For rectification and blocking, FRONTEX is not in a position to do so itself; requesting the relevant Member State to deal with such requests is an acceptable substitute. However, FRONTEX should ensure that, if necessary, follow-up is given to such requests in case Member States do not react in due time.

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

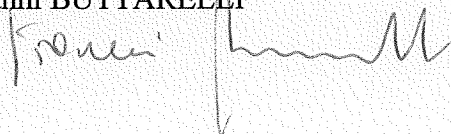
As already mentioned in the Opinion, if appropriate information –to recall: provided in a language the returnee can reasonably be expected to understand, in an age-appropriate way and if necessary, read out– is supplied to the returnees by the organising or participating Member State, FRONTEX is relieved of the obligation to provide this information on its own. If Member States do not provide appropriate information, the duty to do so is incumbent on FRONTEX (this derives from Article 12 of the Regulation). In order for FRONTEX to be in compliance with the Regulation, it would therefore either have to ensure that the Member States provide this information, or do so itself. In this regard, we take note that FRONTEX committed itself to discussing with Member States and Schengen Associated Countries how it can be operationally ensured that this information is provided by them.

We would also like to point out that organising a specific briefing on this topic for escort staff (as suggested in the second indent on page 3 of your letter) would not be a sufficient measure to ensure the right to information. This information would need to be provided earlier, in line with Article 12 of the Regulation, which demands that this information be provided "*at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed*". Providing this information just prior to the flight would be too late. Supporting the Member States in distributing leaflets informing the data subjects –as you mentioned in the third indent on the same page– seems to be a more appropriate measure in this regard, provided they are distributed in due time.

After analysing the information provided, we are satisfied with the follow-up given to the recommendations. We have therefore decided to close the case.

Yours sincerely,

Giovanni BUTTARELLI



Cc: [REDACTED]