

From:

[REDACTED]

To:

[REDACTED]

CC:

[REDACTED]

Sent at:

22/03/10 20:57:01

Subject:

case 2009-0281

Dear [REDACTED]

Please find attached the answers to your questions.

I stay at your disposal to set up a short conference call during which I could also comment these answers and provide further help if needed.

Kind regards

[REDACTED]
[REDACTED]

1) Who would make the transfer of data to third countries, FRONTEX or the Organising MS? (contradicting information has been provided)

Please refer to the doc “Opinion on a notification”, Jan. 2010

“CONCLUSION:

The data necessary to set up the passenger list and to establish identity, without which it is impossible to organise the JRO, are processed by Frontex. Frontex transfers no data at all to third countries. The necessary data are transferred by the OMS.

In addition Frontex may process in the future the “security risk assessment” and *one* administrative information related to health (see *supra*, “yes/no” answer). These data are not transferred to the destination third country, neither by Frontex nor by the OMS.”

Please also refer to the doc “further questions / JRO of MS, led by an OMS, Frontex acting as co-organiser” Jan. 2010

“ Question 3.3 : Third countries: Who would transfer the personal data of returnees to third countries, FRONTEX or the organising Member State?

The OMS is in charge of the operation and will be responsible for transferring the personal data of returnees to third countries; no data regarding health and risk assessment are transferred.”

Note:

After the paragraph quoted above, our document “further questions” then carries on (always in question 3.3) envisaging Art. 9 of Regulation 45/2001. Doing so, we have provided, indeed, comments about “adequate level of protection in the destination country” and “necessity of the transfer”.

But this was done solely because we have been urged to answer this question.

Furthermore, we took extra care to mention that :

- “ Frontex does not make transfers to third countries and it is not foreseen that it will be the case in the future.”

- “ (...) comments are provided (...) for the sake of completeness”.

Please note that in a recent phone conversation, we have agreed that we should not speculate about the long term. We understand that the Opinion which will be issued shortly will reflect the existing situation.

2) What is the state of the discussion about chartering of aircraft by FRONTEX?

It has been decided that Frontex would charter aircrafts. To that purpose, the procedure for drafting terms of reference for chartering aircrafts has started.

3) In your last e-mail with information it is expressed:

"...when processing the data related to the health of the returnees, Article 20(1)(c) applies, since this is done in order to be able to provide appropriate medical care during the JRO."

Then, how this purpose (provide medical care) be fulfilled if FRONTEX don't have the medical file (just healthy/not healthy)?

Please refer to the doc "further questions / JRO of MS, led by an OMS, Frontex acting as co-organiser" Jan. 2010

"If a returnee is not completely healthy, (s)he can be still returned, if stated by PMS' medical staff that (s)he is fit for fly. In such a case the relevant PMS' authority responsible for returnees should collect medical information about the health case. It is to be used only by the OMS' medical staff present during the JRO, if necessary, in order to provide the right medical treatment. The medical staff present during the JRO is usually arranged by an OMS, but a PMS can also provide its own medical staff, if needed. Medical records or medical arrangements are not disclosed to Frontex. Medical staff are not Frontex staff and do not report to Frontex staff "

Please also refer to the doc "Opinion on a notification", Jan. 2010

Similar information + (in categories of data) :

"The Member States are responsible for returnees and have to ensure their physical condition is consistent with a safe return by air. All the passengers are fit for flight."

4) In the retention policy it is said:

The data is stored for the following purposes: organisation of JRO, evaluation of JRO (internal within Frontex Return Operations Sector and then also together with MS/SAC), internal and external controls, audits.

4.1) Why personal data is needed for the evaluation of the JRO?

Not all listed data are kept for the evaluation of the JRO, just the nationalities, which correspond with the destination third countries, and returning MS/SAC. Besides, this information is used for general overviews of Frontex activities.

4.2) The audit purpose is only applicable if FRONTEX rents an aircrafts, then, answer to question 2 is also relevant here.

See answer to question 2, supra.