

From: [REDACTED]
To: [REDACTED]
CC: [REDACTED]
Sent at: 10/02/12 11:39:40
Subject: RE: Follow-up of prior check "Collection of names and certain other relevant data of returnees for joint return operations (JRO)" (case 2009-0281)

Dear [REDACTED]

We are pleased to provide the European Data Protection Supervisor with the requested information on the actions taken by Frontex to implement the recommendations from EDPS.
You will find the information in the attached letter.

Kind regards,
[REDACTED]

[REDACTED]
[REDACTED]

Frontex
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From: [REDACTED]
Sent: 06 December 2011 17:00
To: [REDACTED]
Cc: [REDACTED]
Subject: Follow-up of prior check "Collection of names and certain other relevant data of returnees for joint return operations (JRO)" (case 2009-0281)

Dear [REDACTED]

On 26 April 2010, the EDPS issued a prior check opinion on the "Collection of names and certain other relevant data of returnees for joint return operations (JRO)" (our case 2009-0281) which contained several recommendations which FRONTEX should implement to be in compliance with Regulation (EC) 45/2001.

As a follow-up to this opinion, I am writing to you to request information on the actions FRONTEX has taken to implement these recommendations.

Kind regards,

[REDACTED]

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[REDACTED]
Policy and Consultation Unit
European Data Protection Supervisor
Rue Montoyer 63 - 08S004
tel: [REDACTED]
www.edps.europa.eu



Warsaw, 8 February 2012
Frontex Reference Number:
2312/10.02.12

Mr. Peter Hustinx
European Data Protection Supervisor
Rue Wiertz 60-B
1047 Brussels
BELGIUM

Subject: Follow-up of prior check "Collection of names and certain other relevant data of returnees for joint return operations (JRO)", Case 2009-0281

Dear Mr. Hustinx,

Further to the email from Mr. Owe Langfeldt of 6 December 2011, we are pleased to provide you with the following elements of response.

As soon as the prior check opinion was issued by the EDPS on 26 April 2010 on the "Collection of names and certain other relevant data of returnees for joint return operations (JRO)", Frontex started working on the implementation of the recommendations.

For convenience we distinguish before and after the entry into force of the amended Frontex Regulation, but protections measures decided before the entry in force are of course still relevant.

1) Before the entry of force of the amended Frontex Regulation

From the EDPS' opinion on 26 April 2010, until the entry in force of the amended Frontex Regulation on 12 December 2011, Frontex has worked on the implementation of your recommendations.

Hence, Frontex has established an action plan for the formal carrying out of your opinion.

This action plan relates explicitly to the content of the EDPS opinion as regards the handling of the processing operations for personal data of returnees according to the EDPS' opinion.

❖ **As regards data quality [no complaint so far]:**

Frontex plans is willing to document, process and archive any incident and complaints regarding the data inaccuracy. The processing operations would include the possibility to correct or erase the incorrect data, by asking the relevant Participating Member State to do so.



- Accuracy of data: since the personal data comes directly from the embassies and Member States which guarantees the quality in the first place, Frontex could not take preventive actions. Frontex could only act when there were complaints that data are incorrect or inaccurate. In such a case, Frontex would have to liaise with the Member States to handle the complaint.
- Necessity: Frontex would have an obligation to periodically re-assess the list of indispensable personal data. We refer to our previous exchanges when carrying out the prior check procedure. So far that list of data is kept to the bare essentials.
- Keeping up-to-date: when Frontex organises a JRO, the passengers list could be updated by the Return Operations Sector.
- Limit access: the access to the data would be limited to ROS staff members (and the DPO, if necessary), without prejudice to exceptional access by auditors or authorised persons in accordance with the Financial Regulation.

❖ **As regards transfer of data [no complaint so far]:**

As a general rule, Frontex did not and still does not transfer the data to third countries. Such transfer, if any, would always be done by the Member State concerned, i.e. either by the organising Member States or by the participating Member States.

- Before the entry into force of the amended Frontex Regulation: in case of chartering important technical equipment, such as aircrafts or vessels, the registration of the latter in one of EU MS/ SAC and the compliance of the company with a national law adopted for the implementation of Directive 95/46/EC¹ or of the Framework Decision 2008/977² would be included in the tender specification, thus forming an eligibility criteria.
- After the entry into force of the amended Frontex Regulation: Article 7 of the amended Frontex Regulation, reads as follows:

“(...) Where the Agency acquires or leases important technical equipment, such as open sea and coastal patrol vessels or vehicles, the following provisions shall apply: (...) in case of leasing, the equipment must be registered in a Member State.”

This Article applies as well to aircrafts, not only to open sea and coastal patrol vessels or vehicles.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

² Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters – November, 29th 2008.



❖ **As regards the right of access, rectification and blocking of the data [no complaint so far]:**

There were no requests so far, but should it be the case, Frontex would agree to process returnees' requests as described below:

- For all requests related to access, rectification or blocking of data, Frontex would ask to receive an explicit request sent to Frontex directly by the returnee or via the MS.
- Frontex would only take care of the whole process by itself when the request deals with "access".
- For requests concerning rectification and blocking, Frontex would ask the Member State to investigate (we are not authorised to do it).

❖ **As regards the information to the data subject [no complaint so far]:**

As a main rule, the information to the returnees transits via the Participating Member States (Frontex has no direct mandate to do this).

Additionally, when possible, Frontex could still take various actions:

- Reminding Member States about their responsibilities in this regard;
- Bringing support in organising a specific briefing set up for escort staff of the Member States during the operational briefing (just before the flight);
- Bringing support to Member States in organising the distribution of leaflets for returnees via Member States.

2) Frontex amended Regulation and the insertion of Article 11b

The new Frontex Regulation, after the amendments introduced by the Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011³, includes a new Article 11b on the "processing of personal data in the context of joint return operations".

The introduction of this Article within the Frontex Regulation itself aimed to strengthen the protection of the personal data by allowing the processing of such data only for limited purposes and under strict conditions.

Hence, this Article sets up a framework for the processing of personal data in the specific field of joint return operations. This Article reads as follows:

³ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304, 22.11.2011, p.1



“1. In performing its tasks of organising and coordinating the joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.

2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.

3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the end of the joint return operation.

4. Where the personal data are not transferred to the carrier by a Member State, the Agency may transfer such data.

5. This Article shall be applied in accordance with the measures referred to in Article 11a.”

With the entry of force of the amended Regulation on 12 December 2011, Frontex has a new binding framework for the processing of personal data for joint return operations purposes.

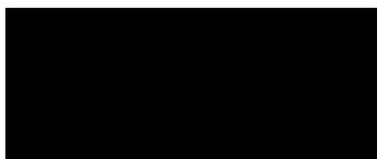
3) Conclusion

Frontex commits to fully take into account the EDPS opinion.

It is also worth noting that Frontex has only chartered one aircraft for a joint return operation from Warsaw to Tbilisi in September 2010. The operation was fully organised by Poland. This pilot was not repeated and is not scheduled in the very near future.

Frontex has never been organiser – so far – of a JRO; the organising Member State still assumes primary responsibility in that regard.

Yours sincerely,



cc:

