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## EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data  
protection authority

### *“Exchange of personal data between Frontex and Europol - Processing of Personal Data for Risk Analysis (PeDRA) project”*

Hearing at Committee on Civil Liberties, Justice and  
Home Affairs (LIBE)

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## Introduction

Let me start by introducing the institution I represent and explaining why I am here today.

Privacy and data protection are cornerstones in any democratic society based on the rule of law and fundamental rights. Data protection is one of the last lines of defence for vulnerable individuals, such as migrants and asylum seekers approaching EU external borders. It is those most vulnerable whose privacy is at risk of being profoundly impacted. Let me remind that EU Charter is for everybody, not just EU citizens, and so articles 7 and 8 of the Charter on the rights to privacy and to data protection.

The European Data Protection Supervisor (EDPS) is the independent data protection authority for all Union institutions, offices, bodies and agencies. One of our core tasks is to supervise these EU entities, such as Frontex, to help them be exemplary; EU public authorities must be beyond reproach when they process personal data.

## EDPS supervision of Frontex

How has the EDPS role vis a vis Frontex been exercised in past years? Already in 2016, albeit in different legal framework, the EDPS has issued an opinion on first developments of PEDRA - aimed at using personal data collected during joint operations carried out by Frontex and Member States to (1) generate risk analyses and (2) forward information on suspects of cross-border crimes to Europol.

On 18 October 2016, following the adoption of Frontex Regulation 2016/1624, Frontex sent an update notification with the following changes:

- Frontex's staff will assist host Member States in the collection of personal data during debriefing activities.
- Personal data received from source Member States will not only be forwarded to Europol but also sent back to the source Member State in a pre-process and structured form. In the longer term, Frontex may start forwarding the personal data package to other Member States concerned (e.g. when nationals of Member State B are suspected of criminal activity based on a debriefing carried out in Member State A).
- the scope of criminal activity covered by PeDRA will also explicitly include terrorism.

The case has been closed following the implementation of our recommendations



In the last few years, the role of the European Border and Coast Guard Agency (EBCG), also known as Frontex, has grown substantially. The 2019 revision of its founding Regulation extended its mandate to support Member states' activities, especially on border control, return and cooperation with third countries. Frontex has become a key actor in EU border management moving from a merely coordinating and supporting role to a stronger operational one. It has also become one of the largest EU agencies in terms of staff and budget.

As Frontex is increasingly engaging in activities carried out on its own and involving the processing of personal data, the EDPS is increasing its scrutiny on the Agency. On 10 November 2021, we issued an opinion on a draft MB Decision implementing the rules on the application of the EU DPR concerning the tasks, duties and powers of the DPO in which we provided a set of recommendations that focused on strengthening the independence of the DPO.

The MB decision 56/2021 implementing rules on the DPO was adopted on 15 October 2021, i.e. before the issuance of our opinion. On 7 September 2022, Frontex sent us an implementation plan to revise the MB decision implementing rules concerning the tasks, duties and powers of the DPO in line with our recommendations.

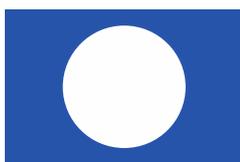
## **EDPS opinions on PEDRA**

Frontex's expansion of "Processing of Personal Data for Risk Analysis (PeDRA)" was drawn to the EDPS attention with the adoption of Agency's Management Board decisions:

- 68/2021 and 69/2021 adopted on 21 December 2021
- on which the EDPS issued two critical opinions on 7 June 2022. They were issued after the adoption of these decisions.

In the opinions, the EDPS recalled in particular that any activity by Frontex in relation to the prevention, detection and investigation of criminal offences is thus secondary and should be carried out primarily as a form of support to Europol, Eurojust and Member States' competent authorities.

I note positively that since the issuance of the EDPS opinion, Frontex has suspended the works on the development of PEDRA capabilities, and has been presenting the EDPS with implementation that is ongoing and will continue until 2023.



## Audit of Frontex

Recently, the EDPS has carried an audit at Frontex, dedicated in particular to the topics we are discussing today. While the EDPS has not yet prepared a report from the inspection, I would like to share our observations that that Frontex has indeed had not expanded PeDRA following the EDPS opinion.

In terms of data processing activities, Frontex is focusing on the identification of suspects of cross-border crimes and the related cooperation with Europol. Interviews of migrants (debriefing interviews) are Frontex's main source of collection of personal data about suspects of cross-border crime. Through these interviews, Frontex's officers collect information including personal data on people suspected of committing cross-border crimes and referred to by the interviewed migrants. Frontex processes these data for the main purpose of their transmission to Europol.

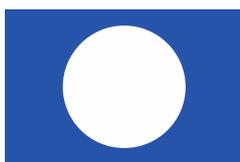
During the audit, we could observe that Frontex does not further enrich or assess this information but automatically transmits all of this information, including any personal data collected to Europol. However, as reflected in its Management Board decision 69/2021 adopted on 20 December 2021, we know that Frontex has intended to develop further its activities in the field of criminal operational analysis.

Information extracted from the interviews is also used by Frontex for risk analysis, to build up a picture of patterns and trends in irregular migration and cross-border criminal activity at the external borders. These analyses then are fed back into the activities conducted under joint operations (to support border control tasks) and are used as one main source of information to provide evidence for policy makers in the context of policies in the area of freedom, security and justice, in particular as regards border management.

The EDPS is currently assessing the information collected during the audit including on the exchanges of personal data with Europol. I am also closely monitoring the development of the Frontex's MB decisions on the processing of personal data, which had been suspended in July following our critical opinions and which are currently under revision to implement our recommendations.

## Conclusion

EDPS will continue to monitor the compliance with data protection and is ready to act when necessary and to use its powers. As I repeat many times, there can be



effective EU institutions, there can be effective Frontex on one hand, and there can be high culture of privacy in its actions, especially when facing problems related to humans dignity. I would like to convey to this committee my personal commitment to ensure that this is the case.

Check Against Delivery

