

From: [REDACTED]
To: [REDACTED]
European Data Protection Supervisor
<EDPS@edps.europa.eu>; [REDACTED]
CC: [REDACTED]
Sent at: 25/11/14 15:30:37
Subject: [2014-0978] PeDRA

Dear [REDACTED]

I hope you are well and sorry for taking so long to reply. For your first batch of documents on PeDRA: First of all, thanks for keeping us in the loop. What kind of feedback on substance would you need/want at this stage?

From skimming the documents, I'd have a few small comments:

Legal basis and scope of Frontex' activities

- 1) While Article 11c(3)(a) only talks about "transmission", I understand that it would be more of an analytical product, right? What exactly would Frontex be doing here? Only summarising/classifying the information provided by the MS, or also more?

Transfers to Europol

- 2) On the reference to "Europol and other Union law enforcement agencies": I guess you share our understanding that (for now at least) Europol is the only organisation that would fall under this? It's explicitly about "Union", so no national agencies (if it's relevant for them, they have other instruments to exchange it between themselves).
- 3) For the transfer as such, Frontex is in an Article 9 situation, but with a presumption of adequacy for Europol (see our transfers paper: https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Papers/14-07-14_transfer_third_countries_EN.pdf, page 24 - presumption of adequacy, but still need for Frontex (as controller) to assess)
- 4) Concerning the working arrangement with Europol and its necessary approval under Article 13 of the Frontex Regulation: this can be done at the same time as the prior check notification, in order to strike two birds with one stone.

Conservation period

- 5) From the dataflow diagram (p. 18 of the Business case), it seems as if the conservation period at Frontex will always be 90 days; Article 11(c)(4) of the Frontex Regulation talks about deletion as soon as they're further transferred to Europol / used for risk analysis, and in any case 90 days after collection. The additional deletion requirement "as soon as transferred / used" seems to be missing in the flow diagram - data should be deleted as soon as they've been used for these purposes. Another question on conservation periods is the starting point, since the Article simply talks about "collection". While this could be understood as the initial collection by the Member State in the field, I think that it makes sense to start counting from the time it's transferred to Frontex (the way the data flow diagram does as well).

Forensic examination

- 6) The background part of the business case document refers to forensic examinations of mobile devices (page 7). Just to confirm: these would only be carried out by and under the authority of MS authorities? Frontex would not receive full images, but only relevant information extracted (for example the phone number of a suspected organiser), right?

Data subjects information

- 7) How would Frontex ensure that data subjects are appropriately informed about PeDRA? From Frontex' perspective, it's an Article 12 (not collected from data subject) situation, so this could be tricky. One idea to think about would be to get the Member States to also provide the information about (or at least a reference to) Frontex' processing operations, when they inform the persons.

Procedural aspects - EDPS intervention

- 8) As you mentioned in your mail of 24/11, the consultation of EDPS on implementing measures under Article 11a of the Frontex Regulation can indeed be done before the prior checking notification of the whole data processing and the prior authorisation of the working arrangement with Europol, because this refers in the first place to the general implementing rules; experience in applying Article 11c can be integrated at a later stage. As concerns the "split" between implementing rules for administrative and for core business processing operations, Frontex is free to do so; however, since the principles behind are the same, the added value is not immediately obvious (the rules are meant to be quite general and e.g. a rule specifying the modalities for cooperation between "controllers in practice" and the DPO would apply the same way in both cases, similar for the specification on how to request access etc.). I would read the referrals to Art. 11a in Art. 11b(5) and 11c(7) as saying "the implementing rules adopted under 11a also apply for this processing", not as "you shall adopt separate rules following the same procedure as in 11a". I will also come back to you separately concerning the content of the draft implementing rules - mostly some clarifications/small suggestions.
- 9) On the timing and prior checking as a project risk: for true prior checks, we have clear deadlines, 2 months with a possible extension for further two months. These may be suspended for further information; the example given about the return operations prior check taking one year was mostly due to Frontex taking a long time reply to our questions.

Best regards



Legal Officer

[Redacted]



[Redacted]

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European Data Protection Supervisor

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From: [Redacted]

Sent: 21 October 2014 17:16

To: [REDACTED]
Subject: our phone talk

Dear [REDACTED]

Following our recent short phone conversation, please find below some basic info about the planned processing of personal data, which may help you or your experts better understand the future formal Notification for prior checking:

- After the recent amendment of the Frontex founding Regulation, we did receive a legal basis to process “operational” personal data (personal data of persons suspected by the Member States of being involved in cross-border crime). I attach that legal basis (Art. 11c) for you to know. The full Frontex Regulation (non-consolidated version unfortunately) is of course available on our website. Unfortunately Art. 11c contains not the best possible wording but the MS decided on this text and now we have to apply that partially unclear wording.
- Since the future processing of personal data of suspected persons is a serious thing, we started preparatory works many months ago. Finally, on 2 September 2014 the Directorate Board of Frontex approved a Project Initiation Document for a project entitled: Processing of Personal Data for Risk Analysis (PeDRA). The activities of this project are based on a Business Case developed around Article 11c (Processing of personal data collected during joint operations, pilot projects and rapid interventions). A draft outline for the project was presented to Ute, Owe and Andy during their inspection visit to Frontex in May of this year. A need to prepare/adopt following documents has been identified by us:
 - o Notification for prior checking
 - o draft Working Agreement with Europol reg. transmission of personal data to them to be approved by EDPS according to Art. 13 (2) of the Frontex Regulation.
 - o draft Frontex internal Implementing Rules (to be consulted with EDPS and to be adopted by our Management Board)
 - o Business Case document
 - o Draft Operational Plan to be agreed with the MS and
 - o Draft ICT document to describe technicalities of the data flow, formats, etc.
- I attach to this e-mail also the Business Case 2.0 document; please take into consideration that this is living document which will be updated at any occasion depending on the progress of the project.
- The Regulation mentions both processing of personal data for risk analyses purposes and for the transmission by Frontex to Europol. Quite often it will be however the same data packages.
- During the pilot stage, only few Member States will participate in the project. We aim however at one Notification to cover both the pilot and the main phase.

I think that at this stage it is ok to deliver you this information. In few days we will have the draft Implementing Rules ready and the draft Working Arrangement with Europol. They will be forwarded to you asap. We thank you therefore for the possibility of early consultation and we are ready to answer additional questions by phone, Video Conference or a visit. I am sure there will be a lot of exchanges of questions and information on this matter; moreover, the EU Policy Makers have recently signalled the importance of making full use of the possibilities offered by the Frontex Regulation and bringing the our performance to a new level in order to be more effective in the fight against cross-border crime particularly the human smuggling across the Mediterranean Sea. Therefore, we are under the time pressure on one hand, but on another hand we would like to prepare PeDRA fully in line with your future recommendations and expectations.

Looking forward to receiving your first feedback soon
Will you be present during
Andrzej



[REDACTED]

[REDACTED]

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CHANGE NOTICE: Effective 1 January 2015, Frontex's new address will be Plac Europejski 6, 00-844 Warsaw, Poland.

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Sent: 21 October 2014 16:00
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