

From: [REDACTED]
To: [REDACTED]
[REDACTED] European Data
Protection Supervisor <EDPS@edps.europa.eu>;
CC: [REDACTED]
[REDACTED]
dataprotectionoffice
<dataprotectionoffice@frontex.europa.eu>
Sent at: 08/12/17 13:00:01
Subject: RE: Case 2017-0874- Ex post prior notification

Dear [REDACTED],

My apologies for coming back to you on this file with a bit of a delay. I have received the following answers to the posted questions:

1. We understand that the legal basis for FAR comes from Frontex Regulation, in particular, Article 28(2). In addition to this, there is a decision of the Management Board of date 23 November 2016. Could you please clarify if these are the only legal basis for the processing operation or if there are others (for instance, for the budget)?

The only legal basis for FAR are the MB decision (which was already provided on earlier communication) and the Frontex Regulation itself. Nevertheless, attached you can find a briefing note that can be of interest, as well as the business case.

2. We have come to the understanding that FAR is included in the IRMA application system. We kindly ask you to clarify the legal basis for FAR and IRMA and the relation between the two.

Taking into account the requests from EU MS/SACs expressed during the various Direct Contact Points (DCP) in return matters and JRO Evaluation and Planning Meetings for more flexibility in the organisational process and a broader exchange of information within the Member States in Return issues, it was considered necessary and beneficial, at this point, to create a web based application, "Frontex Application for Return" (FAR), for Member States to communicate their needs for assistance and coordination in the field of return and to manage the Joint Return Operations (JRO) coordinated by Frontex.

A briefing note was presented (attached) on the Frontex Application for Return PROJECT to Frontex Senior management, for their approval and the development was agreed. Further to a meeting with the Commission (DG-Home Return) on 28th October 2015 where Frontex was informed that the Commission was tasked with the development of a common tool for the management of both voluntary and forced returns, it was agreed that the FAR would be integrated in a wider platform, the so-called Integrated Return Management Application (IRMA), a briefing note detailing the evolution of FAR within the IRMA being produced on the 20.08.2016. RSU and ICT cooperated with DG-HOME C1, DG DIGIT and JRC on the linkage of FAR with IRMA, defining the IRMA and FAR access management.

The Management Board decision 37/2016 of 23 November 2016 adopted the content and modus operandi of the rolling operational plan for return operations and related needs via the Frontex Application for Return (FAR).

3. Point 8 of the notification provides for a systematic restriction of the right of access and other fundamental rights for returnees, on the grounds of national security under Art. 20.1 (d) of Regulation (EC) 45/2001. Kindly elaborate on the need for referral on systematic and generalised restriction of access to personal data for returnees. Please note that, since Art. 20 constitutes an exception to the general rule of access, restriction etc. any restriction should be assessed on a case-by-case basis. Therefore we consider that, by default, a privacy statement should be given to returnees. Please elaborate on this.

As per the rights contained in Article Reg 45/2001 , Frontex would like to partially

restrict the provision of this Right by using the exception of Article 20,1 (a), (b), (c) and (d).

Providing the data subject with the possibility to rectify, blocking or erasing the data contained in FAR based on reasons of data quality would de facto make the entire processing operation senseless, as any correction deletion or blocake would entail de facto that the return operation would not be able to continue. The identification data of the returnee is being provided by the country of return, who has made all steps necessary to issue a valid ID document after verification of identity of the individual. To that end, the returnee would need to claim that his ID documentation is incorrect and demonstrate that he has proof of a different identity. Only valid documents from the country of return would be accepted, as any other document (of an administrative nature, for example) would not have sufficient proof of identity as it would be based on his own declaration. Any person subjected to a return decision could be in the position of cancelling the entire return operation claiming he is not the person who is to be returned. Taking into account the massive costs of renting a charter flight or the costs of boarding people into a commercial flight, that would have a severe impact in the financial and economic interests of the European Union, especially when these operations are in its entirety financed by Frontex out of its budget.

There would be no restriction to the data of Operational personnel and Technical personnel.

With regard to the privacy statement given, it is the responsibility of the MS as data processors to ensure that the provisions are given and that the data subjects are informed, specifically for the data subjects who do not have access to FAR. To that end, the privacy statement as attached contemplates the distinction on data subjects and makes specifically a call to restrict some of the rights for returnees.

I would like to take this opportunity to inform you that the launch of the Pilot on Scheduled fli

From: [REDACTED]
Sent: 13 November 2017 11:06
To: [REDACTED]
Cc: [REDACTED] European Data Protection Supervisor <EDPS@edps.europa.eu>; [REDACTED]
[REDACTED]
Subject: Case 2017-0874- Ex post prior notification
Importance: High

Dear [REDACTED],

We have conducted an initial assessment in relation to the Frontex Application for Return (FAR) procedure and have some initial observations and requests for clarification:

First of all, point 17 of the notification (comments) states that the processing operation has partially started, more particularly, the return via scheduled flights was launched on 18th October and it will continue until March 2018 with potential extension. Following internal discussion and, as already informed you by phone, we consider that the processing operation should thus be *ex post*. This implies that the deadline of Art. 27(4) of Regulation (EC) 45/2001 does not apply; however, this case will be dealt with on a best effort basis and thus as soon as possible.

In addition could you please clarify the following:

1. We understand that the legal basis for FAR comes from Frontex Regulation, in particular, Article 28(2). In addition to this, there is a decision of the Management Board of date 23 November 2016.

Could you please clarify if these are the only legal basis for the processing operation or if there are others (for instance, for the budget)?

2. We have come to the understanding that FAR is included in the IRMA application system. We kindly ask you to clarify the legal basis for FAR and IRMA and the relation between the two.
3. Point 8 of the notification provides for a systematic restriction of the right of access and other fundamental rights for returnees, on the grounds of national security under Art. 20.1 (d) of Regulation (EC) 45/2001. Kindly elaborate on the need for referral on systematic and generalised restriction of access to personal data for returnees. Please note that, since Art. 20 constitutes an exception to the general rule of access, restriction etc. any restriction should be assessed on a case-by-case basis. Therefore we consider that, by default, a privacy statement should be given to returnees. Please elaborate on this.

Please put the functional mailbox (edps@edps.europa.eu) in copy and mention case number 2017-0874.

Yours sincerely,

[REDACTED]

