

Visit to Frontex - Minutes

Frontex premises (Plac Europejski 6, Warsaw),

07/12/18, 09:00 - 16:00

Agenda of the meeting:  [Agenda for the meeting between Frontex and EDPS in Warsaw 7 Dec 2018](#)

Briefing note:  [Briefing WW visit to Frontex](#)

For reasons of time constraints, the discussion on interoperability was postponed to a subsequent meeting, to be held in January 2019.

Main messages

- Frontex wants to develop into a law enforcement agency, following the extended mandate given by the 2016 Frontex Regulation (prevention and detection of serious cross-border crime as part of the Integrated Border Management).
- WW explained that for the EDPS, there were three main lines of focus:
 - Administrative data - Frontex is one more EUI. No specificity from other EUIs.
 - Interoperability
 - Law enforcement activities, including cooperation with the military, national authorities and other EUIs. This is the more challenging aspect for us. We need to know where the problems are to avoid that data protection is instrumentalised.
- Impact on PeDRA. To develop into a LEA, Frontex needs to:
 - expand data sources (reach out to law enforcement authorities, eg through Europol). Currently the only source of personal data are the debriefing interviews. This will also include data exchanges with third countries (not permitted now).
 - Expand categories of data processed (suspects but also what they call “migrants” – see def. Art. 47). Currently, they only store and process data about suspects. They want to also process data about what they call “migrants” (see definition in Art. 47 Frontex regulation)
 - Expand the kind of processing activities and focus on criminal analysis on serious crimes happening at borders

Participants

The participants to the meeting were for most of them former employees of Europol, including .

1. Collection from own staff in joint operations

See presentation from analysts (slides 1-3).  [PeDRA PPTs 4 EDPS visit final](#)

- Data is collected in the context of pilot projects and joint operations (under the coordination of Frontex)
 - Each project has an operational plan which defines geographical scope, set of activities (migration management and/or LE). For example, support MS in identifying nationalities of migrants.
- Data is obtained from debriefing interviews and open sources (eg investigate a website mentioned during a debriefing interview)
- Data concerns only suspicions.
 - In case the information is provided by MS, the report is sent directly to Frontex through JORA.
 - In case the information is obtained by Frontex staff, the information is sent to the Intelligence officer who has 5 days to confirm or reject the suspicion (silence means confirmation).
- Computation of data retention period: starts from moment when confirmation of the suspicion has been obtained from the intelligence officer, not from the moment of collection.
 - █████ put forward that the EDPS agreed to compute the data retention period from the moment the data was accepted by Frontex and not from the moment the data was sent by the debriefing officer to the Intelligence officer for confirmation of suspicion.
 - **To do: check opinion and further discussion on recommendations (talk to █████)**

2. Anonymisation

See presentation from analysts (slides 4-23).  [PeDRA PPTs 4 EDPS visit final](#)

- Problem with the data retention period (90 days). This does not allow them to do criminal analysis as they have to delete the data after 90 days.
 - Risk analysis role: produce actionable intelligence that is instrumental in the fight against cross-border crime threats across the four-tiers¹. For instance, after Paris terrorist attacks of 2015, they could identify travel routes of some of the terrorists (how they manage to get through the borders hiding in the migrants' flow)
 - Risk analysis method: CIRAM (Threat/Vulnerability/Impact)
 - Threat affecting EU borders/security

¹ Four-tier model (IBM): 1) Measures in third countries (includes operational measures), 2) Cooperation with neighbouring countries, 3) Border control (surveillance and checks), 4) Measures in the area of free movement (internal border controls and returns).

- Vulnerability: Capability of the border management system to address that threat
- Impact on security of an area and humanitarian impact (eg life of migrants, victims of THB)
- WW recalled that risk analysis for the data protection framework means to address the risk created for innocent people.
- Proposed solution: key-hashing
 - WW made clear that anonymisation is not a solution we are going to praise.

To do: they will consult the EDPS (DPIA). To be further discussed with Frontex and ITP.

3. Crime Information Cell

See presentation from analysts (slides 25-26).  [PeDRA PPTs 4 EDPS visit_final](#)

- Way forward (pilot project is ending on 5/12):
 - There was a meeting of PSC/COSI on 23/11 to assess results.
 - Positive because there was an increase in information sharing between the military and law enforcement (JHA)
 - But the usefulness for JHA agencies is not clear. The information exchanged related to arm embargo in Lybia and crude oil, ie was limited to the mandated of the CSPD.
 - Problems for Frontex wrt communication channels of EUNAVFORMED. The bandwidth is only 1MB (it takes 40 minutes to connect to JORA, 20 minutes between each click)
 - Still the mission is prolonged (pilot project ends on 5/01/19, new mission starts on 6/01/19).
- Information flows:
 - Team leader is the intelligence officer at vessel level (the information broker)
 - FHQ: Fleet HQ (flagship)
- Not discussed but on the slides: plans to send intelligence packages to Eurojust. Eurojust approached them to sign a working arrangement.

To do: Ask [REDACTED] about the legal basis

4. Expansion of PeDRA

See presentation “Frontex contributing to cross-border crime tackling”.  [2018.12.07 - ISA-CBC PP to EDPS](#)

- Frontex wants to expand and be more and more involved in law enforcement activities (cross-border serious crime). They want to provide criminal intelligence for the fight against serious crime at borders.
- Example of what they plan to do: They have a project to support MS in the fight against deliveries of cocaine in the Atlantic.
 - Problem: they are coordinating and funding several joint operations which involve MS, Europol, Eurojust, Interpol but as soon as they start exchanging personal data (core of the operation), Frontex has to withdraw from data exchanges.
 - NB (not discussed during the meeting): The proposal for a new Frontex Regulation is expanding the categories of data that Frontex can process:
 - Under Art. 47 of current Regulation, Frontex can only process data collected and transmitted to it by MS and its own staff. Under Art. 89 of the proposed Regulation, Frontex can process data collected and transmitted to it by MS, its own staff, EASO, Europol or Eurojust.
 - Under Art. 47 of current Regulation, Frontex can only process information from suspects of involvement in cross-border crime such as migrant smuggling, trafficking in human beings or terrorism, provided by competent authorities of MS. Under Art. 89(1)(a) of the proposed Regulation, Frontex will be able to process data about suspects provided by MS but also EASO, Europol and Eurojust
- For that, they need to have new sources of information.
 - Their plan is to support MS with technical equipment in their investigations (related to border management) and to ask MS to give them back relevant information at the end of the investigation.
 - This would be done through joint operations.

5. Exchanges of data with Europol

Discussed during lunch.

- ■■■ considers that the reference to the vulnerability of migrants in our opinion is wrong because the data only refers to “suspects”
 - *Yet the only data input into PEDRA are data obtained through debriefing interviews. (confirmed afterwards in the discussion)*
- WW put forward that even suspects have fundamental rights and that they are human beings, that they were a danger of criminalization of migrants
- ■■■ proposed another way to enable Frontex to receive data from Europol:
 - Launch a pilot project or joint operation with MS and Europol.
 - Europol would be only the service provider of the communication channel (SIENA).
 - MS would send the information to Europol and indicate that this information is of interest for Frontex. Europol would thus forward them the information on behalf of the MS.
 - ■■■ considers that as MS retain data ownership, Frontex would then receive data from MS.
 - We told ■■■ that we had already considered this scenario (on the basis of her proposal) but ■■■ claims that the idea is now much more mature. But this is still not clear for us.
 - **To do: clarify with ■■■**

6. Difference between Frontex and Europol

Discussed during the lunch.

- They claim that their scope of analysis is much broader than the one of Europol but it does not go into so much detail.
- They also claim that their mandate is broader than the one of Europol because Europol is limited by the requirement of having 2 MS involved (cross-border crime). Their mandate is (cross-border) serious crime. They consider that they have freedom to interpret it as they want as they do not have a list of “serious crimes” and they are not limited to the requirements of having 2 MS involved.
- After discussing, we agreed that one main difference is in the nature of the data processed. Europol processes data related to criminal investigations. Frontex only receives data from border control authorities.

- Other difference (according to Frontex) is the moment when criminal analysis is performed: Frontex would do criminal analysis for purposes of prevention, even before a criminal investigation is launched. Europol do criminal analysis to support criminal investigations.

7. New MB rules

See presentation “Revision of MB Decision 58/2015”.  [PPT for EDPS visit - 7 December 2018 - new MB rules on processing of personal data v.1](#)

- Existing rules are too limited in scope. They are based on the architecture and spirit of Frontex Regulation of 2004.
- Need for a review to be able to achieve the new goals set up by 2016 Regulation (prevention of serious crime).
- ██████ suggests distinguishing between:
 - Categories of data subjects (Art. 47): migrants and suspects
 - Purposes: border management (falls under general regime Reg. 2018/1725) and law enforcement (Chapter IX Reg. 2018/1725)
 - Recipients will differ depending on the purpose.
- ██████ argues it is important for the application of the restrictions to the rights of data subject (processing for purposes of law enforcement would not fall under Art. 25)
- ██████ also proposes to consider that MS and Frontex are joint controllers in order to clearly allocate responsibilities. Yet, Frontex would keep full control over the processing of data after being accepted.
 - In EDPS Opinion of 2015, the EDPS stated that MS were the data controllers. **To do: check opinion.**
 - We expressed doubts (including WW) about this approach. This seems more likely that this is a transfer between two controllers where Frontex defines the means of transmission.
 - ██████ put forward the argument of the retrieval of data by MS with HC
 - **Follow-up: meeting on 11/12/18 at the EDPS.**
- WW asked ██████ not to use the words “data ownership”. This terminology is wrong from a data protection perspective.
- RAU= Risk Assessment Unit

To do:



- **How to proceed with the rules for Frontex to expand their data processing activities on basis of Regulation of 2016. Ask OL.**
- **EDPS sends [REDACTED] the EDPS Opinion on what is staff.**