

Responses to Questions asked by IRR:

clarify the nature of Frontex's mission at the Hungarian-Serbian border, the nature of 'flexible operational activities' and how closely Frontex works with Hungarian border guards

Frontex supports, coordinates and develops European border management in line with the Treaties including the Charter of Fundamental Rights of the EU as well as other international obligations. The Agency supports the Member States (MS) to achieve an efficient, high and uniform level of border control in accordance with the relevant EU Acquis in particular the Schengen Borders Code. Frontex coordinates operational and EU measures to jointly respond to exceptional situations at the external borders.

While regular border control is the exclusive responsibility of the Member States, Frontex's role focuses on coordination of deployment of additional experts and technical equipment to those border areas which find themselves under significant pressure. In order to ensure an effective response, the Agency in conjunction with the Member States prioritize the proposed operational activities on the basis of their importance and the resources.

An Operational Plan is drafted for each operation and formally agreed between Frontex and the country hosting the operation (host member state) in consultation with the countries who will support the operation by deploying their border guards and technical equipment (participating member states). A Standard Operational Plan applies uniform safeguards for respect and promotion of fundamental rights in all operational activities.

The Joint Operation "Flexible Operational Activities Land on Border Surveillance" is implemented at the Hungarian-Serbian border (but also at the Bulgarian-Turkish land border, the Greek – Turkish land border, the Bulgarian – Serbian border and the Greek – FYROM border) based on an **Operational Plan** that, among others, contains the necessary guarantees for the protection of fundamental rights in accordance with the relevant EU law (including the Charter of Fundamental Rights), the relevant international law (including the Convention Relating to the Status of Refugees of 1951), the respect for fundamental rights (in particular the access to international protection and the compliance with the principle of *non-refoulement*), and takes into account the recommendations of the Frontex Consultative Forum on fundamental rights.

In addition, the **Frontex Code of Conduct**, which is an integral part of the Operational Plan, lays down procedures intended to guarantee the principle of the rule of law and the respect for and promotion of fundamental rights with particular focus on unaccompanied minors and other vulnerable persons, as well as on persons seeking international protection, including the obligation of referral to national authorities competent for receiving asylum requests.

The Operational Plan also stipulates the implementation of the **Serious Incident Reporting Mechanism**. A Serious Incident Report is an alert message that shall be reported immediately to the Frontex Situation Centre and the Host Member State's authorities in case an incident, natural or caused by human action, occurs which may affect or be relevant to a particular Frontex activity.

Officers deployed in the framework of the Joint Operation “Flexible Operational Activities Land on Border Surveillance” perform their tasks in accordance with the provisions of the Schengen Borders Code and the Operational Plan of this particular operational activity.

The national border guard service of the host countries and first of all the local staff, have the leading role in the implementation of the activity.

The tasks that are performed by the officers deployed by Frontex comprise of:

- Border surveillance: The main purpose of border surveillance is to prevent and detect unauthorized border-crossings, to counter cross-border criminality and to make the respective national authorities aware of any illegal activity at the external border. When performing their duties, Frontex-deployed officers may participate and support the interception of irregular migrants. Other activities, like escorting the migrants to the closest transit zone, are not performed by Frontex-deployed officers;
- Border checks: The deployed officers use their know-how, expertise, access to their national and EU databases and provide any other relevant assistance during the Joint Operation. Additionally, the experts deployed perform checks on vehicles in order to detect any attempts for clandestine entry of persons hidden in vehicles at the border crossing point. All travelers have the right to be informed on the nature of the control. They also have the right to a professional, friendly and courteous treatment, in accordance with applicable international, EU and national law.
- Debriefing activities: Debriefing experts conduct voluntary interviews with migrants for intelligence in order to gain insight into (i) factors that determine the migratory flows from countries of origin, (ii) methods used by people smugglers and (iii) the functioning of routes across transit and destination countries. The collection of information is carried out on a strictly voluntary and anonymous basis, this can only be done with migrant’s consent. There are no legal consequences to debriefing.

b) comment on what measures it has taken to persuade the Hungarian authorities to stop its breaches of international law?

With reference to the Frontex Activities at the Hungarian Serbian border, Frontex Executive Director, Mr. Leggeri, informed the Frontex Consultative Forum on Fundamental Rights (CF) about the nature of Frontex activities at the Hungarian-Serbian border as well as the reasons for the Agency’s continued presence at this border.

As regards information received so far, it should be noted that - within the context of operational activities coordinated by Frontex - no incidents of illegitimate use of force by Hungarian police have been confirmed.

As regards the Joint Operation at the Hungarian-Serbian border, there are, in principle, as in any other operation, two options of addressing challenges, namely either to suspend Frontex operational action (in which case the situation would become very

difficult to assess and appropriate actions or follow up could not take place properly) or – with all relevant safeguards – to continue the presence in order to be able to guide, support and observe in accordance with Frontex standards.

Frontex has, for the time being, taken the decision that the presence of members of the EBCG Teams and Frontex staff in the Hungarian-Serbian border can actively contribute to minimize any possible risk as those highlighted by the Consultative Forum, as well as to provide an objective and reliable source of information on all the circumstances on the ground. For the time being it was decided that the absence could in fact negatively impact procedures and conditions in the area.

The continuation of Frontex operational activities in this area – even stepping up the support - is therefore assessed as important and was also consulted with the Commission for ensuring the execution of EU law in terms of border management at EU external borders. Also the Frontex Fundamental Rights Officer continues to pay special attention to the implementation of the joint operations and any serious incidents reported to the Agency and/or complaints submitted are followed up properly.

c) and further comment on: what representations Frontex has made to the Hungarian authorities as a result of the deaths of Rahmat Ullah Hanife and Farwan al-Hwaish - and whether these deaths have led Frontex to consider whether it should end its operations at the Hungarian-Serbian border.

With regard to the deaths of Rahmat Ullah Hanife and Farwan al-Hwaish, Frontex has received two Serious Incident Reports that may refer to these incidents.

It is important to stress that Frontex does not have a mandate to carry out investigations in the Member States thus relevant investigations were carried out by the Hungarian authorities without Frontex involvement.

In both reports there was no evidence indicating that violations of fundamental rights or international protection obligations had taken place.

Frontex is aware of the alleged cases of illegitimate or disproportionate use of force by Hungarian police as has been reported in the media and brought to our attention by the Consultative Forum and other international organisations. To this end, consultations were made with the Fundamental Rights Officer and the operational entities to establish whether such incidents have occurred within the context of operational activities coordinated by Frontex.

As regards your question whether Frontex should end its operations at the Hungarian-Serbian border please see our answer to questions b).

Until present, Frontex decided to keep its presence in the area and continues to pay special attention to monitoring the situation and ensuring the respect for fundamental rights in all activities carried out with Agency's support. The Agency's continued presence allows us to guide, support and observe activities at the Hungarian-Serbian border, and ensure that they are performed in accordance with Frontex standards. Furthermore, the fundamental rights aspects are discussed with the Member States, including the Frontex Management Board (which is made up of the heads of border authorities in the Member States), the European Commission, other EU Agencies and partner organizations.