

Honourable Members of the European Parliament
Attn Honourable MEP Barbara Spinelli

Subject: Letter on recurrent use of weapons by coast guards within Frontex operations

Your ref: Email dated 23 September 2016

Our ref: LAU/MAPE/18824b/2016

Warsaw, 29 September 2016

Dear Honourable Members of the European Parliament,

I thank you for your letter exposing your concerns on the recurrent use of weapons by coast guards within operations of Member States assisted by Frontex.

Frontex operational activities, in particular Joint Operations and Rapid Interventions, are implemented in accordance with the Frontex Regulation, the laws of both the Member State hosting such activities and the Member States participating in them and finally the procedures agreed in the operational plan.

As regards the exercise of law enforcement powers, including the use of weapons, and in accordance with Article 10(2) of Frontex Regulation, the law of the host Member State applies to the officers from that Member State and to the officers deployed by the participating Member States¹.

Furthermore and pursuant to Article 20(2) of the Frontex Code of Conduct for all persons participating in Frontex activities, the use of weapons is subject to the principles of necessity and proportionality.

Based on the information available in Frontex and upon analysis of the Serious Incident Reports concerning the period 2014-2016:

- a) In half of the incidents reported, the weapons were shot to the air, with no possible harm to anyone and thus, in full respect for the principles of necessity and proportionality;
- b) In the remaining cases, shots were fired upon attempts by the facilitators to violently ram the patrol vessel, putting in danger the lives of the migrants and of the persons on board the patrolling vessel. In these situations, the law enforcement officers are entitled to the right of self-defence. In these situations, weapons were used to stop the action endangering the lives of the migrants and of the persons on board the patrol vessels, by targeting the engine of the offensive vessel.

I would also like to add that, so far, Frontex has not concluded that rules of engagement have not been respected by Member States.

Allow me to also address now your specific questions as follows:

¹ Pursuant to Article 10 (5) of the Frontex Regulation "...while performing their tasks and exercising their powers, guest officers may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law". Furthermore, Article 10(6) allows guest officers to "use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State". Finally, Article 10(7) provides for the use of weapons in "... in legitimate self-defence and in legitimate defence of guest officers or of other persons, in accordance with the national law of the host Member State"

Question: If and in what capacity the procedure of using weapons to immobilize vehicles with refugees on board will continue, both by Frontex and by Member States' coast guards, and how is it going to be guaranteed that all relevant provisions for use of weapons are respected?

Weapons will be used in accordance with the provisions of the new Regulation (Article 40) and the law of the host and participating Member State, and foremost, in respect to the principle of necessity and proportionality.

Question: Who takes the decision and/or the responsibility on the Frontex ships to shoot boats carrying refugees: the ship captain, Frontex headquarters on land, or Member States' Coastal Guards on land?

I should clarify that there are no "Frontex ships". The patrolling vessels flying the flag of a Member State are under the command of the respective Member State deploying them.

Furthermore, there are no decisions taken with a view to "shoot boats carrying refugees". Based on the information available in Frontex, there are situations where there is a need to stop the practice of a crime or where the patrolling vessels have to adopt defensive measures towards the aggressive behaviours of criminals that are in charge of the boats used for migrant smuggling.

In these situations, the decisions are taken on the spot are responsibility of the Commanding Officer as regards the tactical command of the vessel and by the Liaison Officer of the host Member State on board the participating vessel in accordance with the applicable laws and the requirements for the use of weapons defined in the operational plan.

Question: Given the new EBCG's ability to intervene in a country against its own will, if a police/coast guard officer from Member State A deployed as a Frontex officer violates the code of conduct in an operation in a Member State B that is against the Member State's B government's will, to whom any civil or other liability lies, to which body should complaints be directed and which jurisdiction would hear the court case?

If the assumption is that the European Border and Coast Guard Agency can intervene in a Member State against its own will, I am afraid I cannot share it. Indeed, even if as a last resort, the Council adopts a decision identifying measures to be implemented by the Agency, the Member State concerned is always required to cooperate with the Agency in the implementation of those measures.

Concerning the question itself, the provisions of the new Regulation on civil and criminal liability apply to both joint operations requested or not requested by the host Member State. Therefore and pursuant to those provisions civil liability lies upon the host Member State without prejudice to the right of redress of the host Member State towards the guest officer' Member State in case of damages caused by gross negligence or wilful misconduct.

Question: Will the EBCG continue using weapons during its operations?

Frontex does not perform law enforcement powers by itself, and therefore it can never use weapons.

Weapons are used by the officers of the Member States, in accordance with their national legislation and the legislation of the host member State and in strict compliance with the conditions set out in the Frontex regulation as recalled above.

Question: Will the EBCG be able to acquire weapons, firearms etc. under the provisions of its new framework?

Although it may acquire technical equipment, pursuant to Articles 38 and 39 of the European Border and Coast Guard Regulation, Frontex does not plan to acquire weapons.

Question: In case of joint operations with third countries or in their territory, who has the decision making power for the use of weapons and to whom lies the responsibility and accountability for the different situations that may occur on the ground?

These matters will be addressed in the Status Agreement concluded with the third countries concerned and implemented by Frontex and the Member States accordingly. The Commission will draw up a model Status Agreement to be signed by the Union and the third country.

Question: If the EBCG decides to discontinue this practice, which actions would it take with regards to Members States' coast guards that do not follow suit, and that continue using weapons to stop boats that carry refugees?

Frontex will monitor compliance with the legal framework including fundamental rights provisions and alert the responsible national and European authorities as necessary.

Yours sincerely,



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Executive Director