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**CC:** 'dataprotectionoffice@frontex.europa.eu'  
<dataprotectionoffice@frontex.europa.eu>  
**Sent at:** 23/09/19 16:35:10  
**Subject:** Our ref.: 2017-0874 - D 1965

Dear Sir,

Please find attached a scanned version of a letter sent to you by regular mail today.

Kind regards,



**EDPS Secretariat**

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**23 SEP 2019**

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WW/ALS/vm/ D(2019) 1965 C 2017-0874  
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**Subject: Prior-checking Opinion on Frontex Application for Return (FAR) - (EDPS case 2017-0874)**

Dear Mr Leggeri,

On 20 March 2019<sup>1</sup>, Frontex informed the European Data Protection Supervisor (EDPS) about the follow-up measures taken or planned in reply to the EDPS' prior checking Opinion on the processing of personal data for Frontex Application for Return (FAR), issued on 26 September 2018.

Frontex' reply and the accompanying documentation show good progress in implementing the recommendations, which will be addressed below following their order in the Opinion.

1. 'The EDPS **recommends** that the Agency draft a separate data protection notice for returnees containing all the requirements stated in Article 12 of the Regulation.'  
Frontex provided a data protection notice for this particular processing activity.  
This recommendation is **closed**.
2. 'The EDPS **recommends** that the Agency publish a data protection notice for returnees on the internet.'

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<sup>1</sup> Additional information was provided 6 September 2019.

Since the data protection notice is published on Frontex website, this recommendation is **closed**.

3. 'The EDPS **recommends** that the Agency ensure that returnees are individually (and actively) informed on the processing operation through the handling of a data protection notice.'

Frontex provided a document with the outcome of the discussions with the Member States from a DPC/PRAN meeting. The Member States concluded that they will inform returnees that their data is being processed in FAR, either by including this information together with the return decision or by delivering the data protection notice to returnees whenever appropriate. Frontex will upload the data protection notice in FAR so that the Member States may print and share it with returnees when feasible, supporting the translation of the data protection notice when necessary and add this requirement in the Implementing Plan.

The EDPS considers that these conclusions as an appropriate way forward and we trust that Frontex will stay in contact with MS to ensure that they follow through.

This recommendation is therefore **closed**.

4. 'The EDPS **recommends** that the Agency include the details of the controller in the data protection notices and consider indicating that the Agency cannot assess the merit of return decisions.'

Frontex included this information into the data protection notice.

This recommendation is **closed**.

5. 'The EDPS **recommends** that the data protection notice contain reference to the legal basis setting up FAR and governing return operations.'

The data protection notice contain this information.

This recommendation is **closed**.

6. 'The EDPS recommends that the Agency perform and document a case-by-case analysis to examine whether access to certain categories of data (such as the security risk assessment) need to be restricted or deferred on the basis of Article 20 of the Regulation.'

Frontex provided an internal policy on access requests by data subjects. However, in line with Article 41(2) of Regulation (EU) 2018/1725, Frontex must consult the EDPS when drawing up internal rules in relation to restrictions under Article 25 of the Regulation. The EDPS has not received such consultation and would like to point out that Frontex can not apply any restrictions of data subjects' rights without such internal rules in place.

This recommendation is no longer relevant and therefore **closed**. However, Frontex must consult the EDPS in relation to their internal rules under Article 25 of Regulation (EU) 2018/1725.

7. 'The EDPS **recommends** that the data relevant for the financial checks is retained for as short as possible, used only for verification purposes and accessible only to users on a need to know basis.'

Frontex provided information on who has access and the reasoning for different retention periods. However, there seem to be no clear reason for keeping the paper copies of financial documents indefinitely. This appears to be linked to Frontex' general approach to retaining/archiving financial documents and not limited to FAR specifically. To keep such documents for an indefinite period of time is in breach of Article 4(1)(e) of Regulation (EU) 2018/1725.

By way of example, please be informed that the Common Commission-level retention list for European Commission files<sup>2</sup> sets out an administrative retention period of 10 years for example concerning files reflecting the preparation and launch of procurement procedures, the opening and evaluation of tenders, and the award of contracts (see section 7.1.4). The EDPS has accepted that retention period.

In light of the above, the EDPS trusts that Frontex will amend its general approach so that it will not keep certain documents for an indefinite period. This recommendation is therefore **closed**.

Please note that if judicial or audit procedures are still ongoing by the end of the 'normal' administrative retention period, you can use a legal hold to keep the documents concerned until those procedures are definitely closed.

8. 'The EDPS recommends that the Agency re-design the anonymisation procedure to ensure that re-identification is impossible.'

Frontex addressed the re-identifiability issue only in relation to the 'age' category of data. However, according to the Opinion<sup>3</sup>, Frontex keeps additional information for statistical purposes: country to which the returnee is attached, third country of origin to which the returnee is travelling, nationality, gender, type of travel document, security risk assessment, health status and type of return. Frontex should therefore re-design the anonymisation procedure for all categories of data retained to ensure the implementation of this recommendation.

In light of the accountability principle, the EDPS trusts that Frontex will assess and mitigate the re-identification risk posed by all retained categories of data. Therefore, this recommendation can be **closed**.

9. 'The EDPS **recommends** that the Agency adopt and implement a plan to close its liaison with the Member States. The aim of this plan should be to get a better knowledge of the security measures applied at Member State level and, on the long run, to agree baseline security measures.'

Frontex provided a document that sets out such plan, therefore this recommendation is **closed**.

10. 'The EDPS **recommends** that the Agency take as soon as possible appropriate mitigation measures for the known vulnerabilities.'

Frontex provided a document on the mitigation measures implemented to address the identified vulnerabilities.

This recommendation is **closed**.

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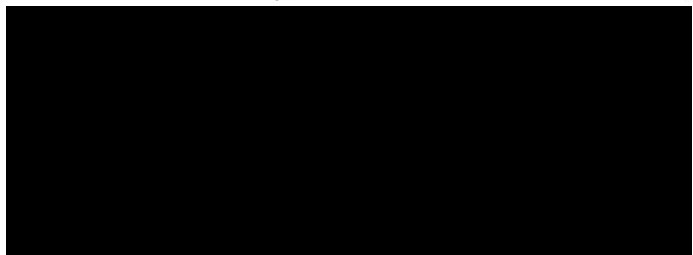
<sup>2</sup> Please find the explanatory document and the retention schedule available on the following links:  
<https://ec.europa.eu/transparency/regdoc/rep/2/2019/EN/SEC-2019-900-1-EN-MAIN-PART-1.PDF>  
<https://ec.europa.eu/transparency/regdoc/rep/2/2019/EN/SEC-2019-900-1-EN-ANNEX-1-PART-1.PDF>

<sup>3</sup> See page 4, data retention period.

In light of the accountability principle, the EDPS trusts that the Frontex ensure that the outstanding recommendations will be fully implemented. The EDPS has therefore decided to **close case 2017-0874**.

Thank you for your cooperation.

Yours sincerely,



Wojciech Rafał WIEWIÓROWSKI

Cc:

