Endorsed by the Frontex Management Board on 31 March 2011

Frontex Fundamental Rights Strategy

PREAMBLE

Frontex considers that respect and promotion of fundamental rights are unconditional and integral components of effective integrated border management.

Frontex is fully committed to develop and promote a shared understanding of fundamental rights among the entire European Union (EU) border-guard community and integrate this also into the cooperation with Third Countries.

This shared understanding, based on the EU Acquis, in particular the Charter of Fundamental Rights of the EU and on international law encompassing international protection obligations, shall further reinforce an EU border-guard culture characterised by the spirit of mutual respect and cooperation.

In order to achieve efficient and effective border management, Frontex aims at the highest operational standards also in terms of the safeguards of fundamental rights and professional ethics.

Frontex aims to prevent possible violations of fundamental rights during its operations by, on one hand, developing the requisite knowledge and skills of participating officers and, on the other, implementing proper monitoring mechanisms based on reporting to the competent authorities and sanctioning, applying a zero tolerance policy.

Frontex aspires to the horizontal integration of fundamental rights throughout all its activities and at all stages.

This strategy will be implemented by an Action Plan, integrated into the Frontex Programme of Work, in order to support the achievement of Frontex' mission and operational goals.

An annual progress report will inform the stakeholders and in particular the Frontex Management Board about the implementation of this strategy and Action Plan, while a consultative forum open also to representatives of the civil society shall further enrich the overall evaluation and review processes.

Frontex and its partners shall actively communicate and promote the objectives and content of this strategy among the relevant national, European and/or international bodies and to the public, enhancing hereby also transparency in Frontex activities.

The Objectives

1. **Respect for fundamental rights** is an essential part of **integrated border management** and, more broadly, of EU Migration and Security Policies. The implementation of this Fundamental Rights Strategy shall strengthen the commitment of Frontex and the entire EU border-guard community to respect and promote the fundamental rights in their activities.

2. Frontex is **to adopt and to display an exemplary attitude** based on concrete practical initiatives, and the adoption and promotion of the highest standards in border management practices, allowing for transparency and public scrutiny of its activities.

3. Increasing understanding and sensitivity of Frontex and national officers towards the fundamental rights and values at stake will further establish a **fundamental rights** culture within the **EU border-guard community,** acting as an enabling factor to exploit the full potential for cooperation between the National Border Management Services, Third Countries and other third parties.

The Legal and Political Context

4. The Lisbon Treaty confirms that **respect for human rights** is one of the **founding values of the European Union** (Art 2 of the Treaty on European Union - TEU) and underlines that the **Area of Freedom Security and Justice** shall be constituted with respect for fundamental rights (Art 67 of the Treaty on the Functioning of the European Union - TFEU). The Treaty equally recalls that the EU in **its relations with the world** shall promote the respect of human rights as a guiding principle in its external action (Art 3(5) of the TEU)[1]. The EU Fundamental Rights Policy is therefore fully applicable to Frontex as an **EU Agency**, active in the **Area of Freedom Security and Justice** and mandated to **cooperate with relevant Third Countries and International Organisations.**

5. The Lisbon Treaty recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the EU**[2] and gives the Charter the same binding legal force as the Treaties (Art 6(1) TEU). The Charter applies to the Institutions and bodies of the EU including EU Agencies. They shall respect the rights, observe the principles and promote their application in accordance with their respective powers. For law enforcement bodies in general and for Frontex in particular, the human rights potentially at stake through the sensitive nature of its activities, include, but are not limited to, the right to life, liberty and security, physical integrity and dignity, prohibition of torture and inhumane or degrading treatment, asylum and international protection, *non-refoulement*, non-discrimination, prohibition of slavery and forced labour, rights of the child, right to family life, right to health care, effective legal remedy and personal data protection.

[1] The concepts of "human rights" and "fundamental rights", although not the same, are intrinsically linked and used interchangeably throughout this strategy.
[2] As adopted on 12 December 2007 (OJ C 303/1 of 14.12.2007).

6. The accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) will further complement the existing legal tools in the EU for protection of fundamental rights, making also the European Court of Human Rights (ECtHR) competent to review in accordance with the ECHR and its relevant case-law the actions of the EU (Art 6(2) TEU). Frontex should therefore also take into account the relevant ECtHR case-law in its activities.

7. Jurisdiction by the **Court of Justice of the European Union** (CJEU) has also been extended by the Lisbon Treaty. The CJEU is fully competent to revise the legality or provide interpretation to guide the acts of the EU Agencies (Articles 263, 265 and 267 TFEU) which in turn are obliged to respect fundamental rights in all their activities. Frontex should therefore also take into account the relevant CJEU case-law in its activities.

8. The relevant **EU sectoral legislation,** starting with the Frontex Regulation[3], also underlines respect of fundamental rights. Moreover, the **Schengen Borders Code**[4] in its Articles 3 and 6 as well as in recital 20 calls for the due respect of fundamental rights and the appropriate training of all staff applying this code. This EU legal framework on border control and the respect of fundamental rights has been further reinforced by the **Council Decision for the surveillance of the sea external borders**[5]. Guarantees and respect for fundamental rights are also laid down in the Return Directive[6].

9. The 1951 **Geneva Convention** Relating to the Status of Refugees, which includes the *prohibition of refoulement,* and its Protocol of 1967, is the cornerstone of the European Asylum System (Article 78 TFEU). The relevant EU Asylum *Acquis, inter alia* the "Qualification"[7] and "Procedures"[8] Directives and Dublin II Regulation[9], are also to be observed.

10. The **further development of the EU *Acquis* and policies** in the Area of Freedom Security and Justice in areas such as border management and the fight against organised crime including trafficking of human beings or processing of personal data will take place in full compliance and promotion of the Charter of Fundamental Rights, as also stressed in the **Stockholm Programme**.

11. All human rights instruments adopted by the **United Nations and the Council of Europe Conventions** as ratified by all the Member States are applicable.

12. There are also sectoral international legal instruments relevant to border control, in particular those of the international law of the sea that Frontex has to respect. The UN Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Maritime Search and Rescue (SAR) must be applied in conformity with human rights

[3] See Recital n. 22 of the Frontex Regulation (EC 2007/2004 adopted on 26 October 2004).
[4] 562/2006 of 15 March 2006.
[5] 2010/252/EU of 26 April 2010.
[6] 2008/115/EC of 16 December 2008.
[7] 2004/83/EC of 29 April 2004.
[8] 2005/85/EC of 1 December 2005.
[9] 2003/343/EC of 18 February 2003.

obligations deriving from international, EU or national law. The same applies when Member States implement the "Palermo Protocols"[10], supplementing the United Nations Convention against Transnational Organized Crime.

13. **Member States remain primarily responsible** for the implementation of the relevant international, EU or national legislation and law enforcement actions undertaken in the context of Frontex coordinated joint operations (JOs)[11] and therefore also for the respect of fundamental rights during these activities. This does not relieve Frontex of its responsibilities as the coordinator and it remains fully accountable for all actions and decisions under its mandate. Frontex must particularly focus on creating the conditions for ensuring compliance with fundamental rights obligations in all its activities.

The Operationalisation

Joint Operations

14. Any Frontex JO is based on risk analysis of the situation at the EU external borders. This analysis shall specifically **take into consideration the particular situation of persons seeking international protection**, and the particular circumstances of **vulnerable individuals or groups** in need of protection or special care (e.g. separated and unaccompanied children, women, victims of trafficking, and persons with medical needs). Frontex shall also assess the potential impact on fundamental rights when proposing or preparing operational responses, which may differ according to the nature of the operation at the **sea, air or land borders** or by way of a **return operation**. One particular objective in this context is ensuring that the right to international protection must not be hampered by the law enforcement action and that persons seeking protection are referred to the competent national authorities to assess their case.

15. **Operational Plans** and other similar agreed rules implemented by national border management organisations are elaborated by Frontex in strict conformity with the relevant international standards and applicable European and national laws. The Operational Plan and other similar agreed rules shall provide guidance on how to address identified fundamental rights challenges with a view to preventing breaches or other negative effects. Corrective measures should be taken in case of breach or serious risk of breach of fundamental rights. As last resort, Frontex might terminate a JO if the conditions guaranteeing the respect for fundamental rights are no longer met. Furthermore, in cases of fundamental rights breach in an operation, possibility is given to all partners involved in the operation to request the host Member State, Frontex or other Member State concerned to take immediate and appropriate measures.

16. The participating officers shall be properly trained and the equipment shall be suitable to address the perceived risks of fundamental rights breaches.

[10] The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted adopted by General Assembly Resolution 55/25, Palermo, 12-15 December 2000).
[11] Including Rapid Border Intervention Teams (RABIT), Joint Return Operations and Pilot Projects.

17. Frontex will put in place an effective **reporting** system to ensure that any incidents or serious risks regarding fundamental rights are immediately reported by any participating officer or Frontex staff member and can be acted upon. This reporting should be the basis for **effective monitoring of all its operations.** The monitoring effectiveness and credibility will rely heavily on the commitment of national border-guard services to report but also on the involvement of external stakeholders. The Operational Plan shall set out the modalities for reporting, including how and to who report.

18. **Monitoring of forced return operations** is an essential requirement in the return policy of the EU. Member States shall therefore guarantee that they can provide for an effective forced return monitoring system in national and Frontex Joint Return Operations. Failing to meet this condition could ultimately lead to postponement or cancellation of the operation or of the participation of the respective Member State. Furthermore, Frontex supports Member State efforts in making arrangements for an effective forced return monitoring system. Frontex also develops a monitoring system in its best practices for returns.

19. **Alleged violations of human rights** reported either by national or Frontex officers or third parties, when substantiated, will be followed up by Frontex by communicating and clarifying the situation in cooperation with the competent national authorities without prejudice to any resulting administrative or penal procedures. Member States should also inform Frontex on the follow-up measures.

20. In addition to the concrete incidents, the monitoring of JOs should also focus on more general consequences or impacts of the JO on fundamental rights, which shall feed into the evaluation and revision process in view of future JOs. In operations which are particularly challenging from a fundamental rights point of view, Frontex will endeavour to include **persons with a qualified fundamental rights expertise** among participating staff.

21. In addition to pursuing a regular **exchange of information with external partners** engaged in fundamental rights protection activities, in particular the Fundamental Rights Agency (FRA), the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the EU Anti-Trafficking Coordinator, Frontex will endeavour to ensure their regular involvement in the relevant operational activities in accordance with the Working Arrangements with these partners. The involvement of these external partners or others should be foreseen in the Operational Plan, which should also define the scope of the cooperation.

22. Frontex will also seek advice from **its external partners on the relevant instructions or guidelines** for officers taking part in Frontex activities. These instructions or guidelines, which should form an integral part of each Operational Plan, could relate to methods for better identifying people seeking international protection, proper treatment of vulnerable groups including potential victims of trafficking or fundamental rights monitoring of operational activities. The final aim is to promote the highest standards in compliance with fundamental rights by the development and promotion of best practices.

Capacity Building

23. Frontex **Common Core Curriculum** (CCC), which is the cornerstone of the education of (EU) national border-guards, shall contain a chapter on the respect of fundamental rights and international protection obligations as laid down in international law and European legislation and provide practical guidance. CCC shall be regularly updated according to institutional and legal developments. These revisions will be done in full association with Member States experts and external partners. These and other common training tools are to be used for the promotion of the respect of fundamental rights among the entire EU border-guard community.

24. Frontex is committed to **effective training methodologies favouring practical approaches** to enhance knowledge and develop required skills and attitudes, and shares this priority with the Member States. The overall aim is to raise awareness and ensure the proper training of all EU border-guards to establish a common playing field, aspiring to ever higher standards of professionalism as part of an EU border-guard culture.

25. Specific training tools on fundamental rights and other related areas such as trafficking in human beings, migrants and border-guards' health or SAR must be complemented with efforts to integrate the fundamental rights aspect in all other specialised training activities, such as in the RABIT training, due to its horizontal nature.

26. Frontex is leading by example in preparing and delivering training on fundamental rights in cooperation with FRA and with the support of UNHCR, to its own staff. Fundamental rights shall be streamlined into Frontex **staff policy development** where knowledge and experience in this field are also taken into account as selection criteria in recruitment.

27. Frontex Research and Development Unit supports the fundamental rights-based approach through its activities, aiming to contribute to the further development and promotion of best practices through evidence based research.

External Relations

28. Frontex **cooperation with Third Countries' border-guard services** is conducted under the EU External Relations Policy and shall therefore be guided by the principle of the respect of human rights. Frontex is committed to adjusting its cooperation arrangements and activities to the EU foreign policy measures adopted as a consequence of the human rights situation in the partner Third Country.

29. The promotion of fundamental rights is of particular importance in the cooperation with EU Candidate or Potential Candidate Countries, as this value underpins the whole EU *Acquis* that they have to assimilate.

30. Frontex' external cooperation capacity enables it to act in this field in coordination and cooperation with Member States, the European Commission (EC) and EU Bodies and International Organisations engaging with the particular Third Country. This creates opportunities for Frontex to promote and streamline the respect of fundamental rights into cooperation activities with the Third Country.

Professional Conduct

31. Frontex' **Code of Conduct**, complementing a set of **"Dos and Don'ts"** which are distributed to all persons acting in Frontex coordinated operational activities, promotes professional values based on the principles of the rule of law and respect of fundamental rights. This will be used to fortify the ethical behavioural standards for persons participating in Frontex activities, namely, Frontex staff, officers of national border-guard services and others performing in Frontex activities.

32. The Code of Conduct sets generally accepted standards (i.e. soft law), whereby Frontex expects all relevant national authorities to ensure that adequate measures are taken to redress potential infringements of the Code of Conduct by national officials upon information provided by Frontex and other concerned parties. On the basis of a "zero tolerance" policy, Frontex will follow up on infringements of the Code of Conduct with appropriate sanctions and/or disciplinary measures as far as its own staff are concerned.

The Implementation

33. The **proper implementation** of the strategy is **essential for the credibility and reputation of Frontex and the entire EU border-guard community**. This strategy is inextricably linked to the commitment of national border-guard services to share their objectives and support Frontex in their implementation. Their commitment is formalised with the endorsement of the strategy by the Frontex Management Board.

34. EU policymakers, in particular the EC, have a crucial role in supporting and promoting this strategy which reflects the EU's overall strategy in this field.

35. Another *conditio sine qua non* for an effective implementation is the support by Frontex' external partners in particular FRA, EASO, UNHCR, IOM and other EU bodies and International Organisations to be provided in the context of mutually beneficial cooperation. This starts by fully acknowledging and respecting the mandate of all parties involved: external partners, national border-guard services and Frontex.

36. The **main tool for the implementation of this strategy will be an Action Plan**. It must be properly **reflected in the Frontex Programme of Work**, thus proving the formal commitment of the organisation's governing structures and allocation of appropriate responsibilities and resources. Early consultations between Frontex and its partners, with whom this Action Plan shall be drawn up jointly, will be the basis for the programming of all the relevant activities.

37. The a**nnual progress report** on the implementation of this strategy shall be presented to the Frontex Management Board and thereafter made public. Frontex shall prepare the groundwork for these reports in cooperation with its external partners.

38. In order to increase the transparency and credibility of this process, external third parties, in particular those representing civil society, shall be involved. Their concerns and perspectives must be taken into account for the evaluation and revision of the strategy. Frontex, national border-guard services, external partners and representatives of civil society shall therefore have the possibility to exchange views and suggest means of improvement for the strategy and the Action Plan in a **consultative forum**, to be convened periodically at Frontex Headquarters.

39. The **active communication and promotion of the objectives and content of this strategy** among National Border Management Services, EU and international partners as well as civil society is vital for an effective implementation. The Heads of the National Border Management Services must take the leading role when communicating and promoting them nationally while Frontex will concentrate efforts at EU and international level.

40. Frontex, National Border Management Services and EU Policy Makers shall also refer to the objectives and content of this strategy when engaging with the general public, media, academics, members of the European or National Parliaments or other civil society representatives in an effort also to provide **higher transparency** of EU and national border management activities.