



EUROPEAN DATA PROTECTION SUPERVISOR

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Subject: Outcome of the EDPS pre-investigation into the notification of the Border Violence Monitoring Network on photographing of third country nationals by Frontex Standing Corps (EDPS case 2023-0776)

Dear Ms Bogos,

We are writing to inform you of the outcome of the EDPS' pre-investigation into the notification submitted by you to the EDPS, on behalf of the Border Violence Monitoring Network ('BVMN'), on 25 June 2023.

The notification concerned reports that Frontex Standing Corps members have, on multiple instances, photographed individuals during apprehension, with the officers' smartphones, and outside of formal identification and fingerprinting procedures. BVMN requested the EDPS to verify whether such alleged processing constitutes a breach of Frontex' data protection obligations and whether it is a common practice in Frontex' operational activities. BVMN also submitted a set of questions concerning the investigation into the same matter conducted by the DPO of Frontex between 29 October 2021 and 10 November 2022 and the ability of the DPO to fulfil her tasks and mandate.

In response to this notification, the EDPS initiated a pre-investigation on 28 July 2023 under Article 32 and Article 58(1)(d) of EU Regulation 2018/1725¹ ('EUDPR') in order to clarify its understanding of the facts (EDPS case 2023-0776).

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

In light of the findings stemming from this pre-investigation, the EDPS concludes that it has not found sufficient further evidence or information to confirm the occurrence of a breach of the EUDPR, on which it could ground the opening a formal investigation into this matter.

However, the EDPS has identified risks during the course of the pre-investigation in relation to the lack of a coherent and documented policy, including a clear prohibition by Frontex, on the taking of photographs of third country nationals by Frontex Standing Corps members on smartphones, as well as in relation to the capacity of the DPO's office to conduct investigations, in particular in relation to suspected breaches of the EUDPR that occur in an operational context. As such, and in order to ensure compliance by Frontex with the EUDPR, the EDPS has issued Frontex with a set of recommendations, to be implemented within a period of four months.

These recommendations pertain to the development and integration of a clear policy on the taking of photographs by Frontex Standing Corps of intercepted third country nationals during border surveillance activities including clarification of the general prohibition of the aforementioned processing activity; review of the procedure for the conduct of investigations by the DPO, including to ensure sufficient internal support for such investigations; and on resourcing of the DPO office.

We would like to thank you once again for bringing this matter to the attention of the EDPS.

Yours sincerely,

[e-signed]

Wojciech Rafał WIEWIÓROWSKI