

29 September 2012

Professor Nikiforos Diamandouros  
European Ombudsman

Dear Professor Diamandouros,

**Consultation on Frontex and Fundamental Rights**

On behalf of the Independent Monitoring Board (IMB) members who undertook monitoring of three Frontex charter flights I would like to make a few observations in response to your consultation on Frontex and fundamental rights. IMB members are volunteers appointed by the UK Government to monitor conditions in places of detention, but in January 2011 we were asked by the Home Secretary to undertake monitoring of charter flights also. In response to this we have recently completed a feasibility study, with pairs of monitors accompanying those removed on five charter flights, three of them being Frontex ones (Annex 1). It is in the light of our experience of this that we offer the following comments.

First, we noted a considerable variability in standards between participating countries spanning a wide spectrum of issues, e.g.,

- management by the escorts of those being removed (Annex 2)
- use of force during the embarkation process and during the flight (Annex 3)
- independent monitoring
- certification of fitness to fly
- healthcare provision during the flight
- discrimination in the provision of food to those being removed and others on board (Annex 4)
- Appropriate provision of escorts of both sexes, especially when women are removed.

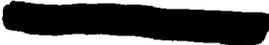
All of this has a bearing on "fundamental rights". They also raise questions about jurisdiction on multi-nation Frontex operations and blur the lines of responsibility.

Secondly, IMB found that there was no credible complaint system covering the flight. This we find unacceptable as it denies people being removed a fundamental right. UKBA conducts surgeries on board during which procedures are explained and concerns often dealt with. After we started monitoring, a formal complaint procedure has also been introduced for those being removed from the UK. As has been pointed out in other submissions to you, it is not clear what the responsibilities of Frontex are regarding general complaints about matters under their control, and how they are being currently discharged. Without a formal procedure, it would be very easy to deny or fudge responsibility.

Thirdly, our monitors had little or no interaction with monitors from other country and we only monitored people being removed from the UK. We are not sure if there is always an independent monitor appointed by Frontex for the whole operation and whether their remit covered monitoring the whole flight and what their relationship to national monitors was.

We have detailed reports of the flights we monitored, covering for example operational details, but we have confined our comments here to issues of principle: lines of accountability and fair and respectful treatment of the people who are being removed.

Yours sincerely,

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## **Annex 1.**

The Frontex Flight monitored by the IMB were:

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|---------------------|--|
| 2/3 March 2011      | Destination Lagos, via Madrid  |
| 24/25 November 2011 | Destination Islamabad, via Madrid with a change of plane at Madrid, the Madrid to Pakistan sector managed by Spain |
| 16/17 May 2012      | Destination Accra, via Dublin.   |

## **Annex 2**

Some escorts seemed to us to be much more confrontational and prone to use force than others. The team of British escorts who routinely accompany people being removed from the country are dedicated to that as their main task and undergo special training in the management of detainees. Those from some other countries appear to be police or similar law enforcement officers who may not do this regularly, may not have the same level of training and do not appear to have the same level of skill at de-escalating situations.

## **Annex 3**

We could not see, but were told that a woman refusing to board the plane was carried on board in Dublin. Body restraints are routinely permissible in some countries as also 'chemical coshes' for non-compliant removes in certain countries, we understand. This raises questions not only of variability of standards, but also jurisdictional issues: once in the air, who has ultimate responsibility for those being removed.

## **Annex 4**

Our monitors were horrified to discover that on the Madrid to Islamabad flight, the food provided for those being removed consisted of baguettes while all others, who were sitting alongside them, were given an airlines-standard hot meal. The IMB members and some escorts felt that they could not accept the hot meal. They stated their concern to the person who appeared to be the Frontex monitor, who was not happy to receive the comment, but we have no idea if there has been any change in policy on this issue.