



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Fabrice Leggeri
Executive Director
European Agency for the Management of
Operational Cooperation at the External Borders
(Frontex)
Rondo ONZ 1
00 124 WARSZAWA
POLOGNE

Strasbourg, 10/03/2015

Re: Targeted consultation in the context of OI/9/2014/MHZ

Dear Mr Leggeri,

On 20 October 2014, I opened the above-mentioned own-initiative inquiry in relation to how Frontex ensures respect for fundamental rights in its Joint Return Operations (JROs). I would like to thank Frontex for the opinion sent to me in this case on 31 January 2015.

In my opening letter, I informed Frontex that I might consider giving interested third parties the opportunity to make observations on Frontex's opinion. I hereby wish to inform you that I have invited a number of organizations to do so by 6 April 2015. Please find, in annex, the questions that I listed in this targeted consultation.

The contributions received will be forwarded to Frontex and I also expect to publish them on my website: www.ombudsman.europa.eu.

Yours sincerely,

Emily O'Reilly

Enclosure: Questions listed in the targeted consultation

**Questions listed in the European Ombudsman's targeted consultation
concerning own-initiative inquiry OI/9/2014/MHZ**

1. Are you aware of concrete violations of returnees' fundamental rights or cases of ill-treatment during JROs (pre-departure; in flight; hand-over of the returnees in the country of destination), or in the post-return phase (the reception of returnees in the country of destination)?
2. According to Frontex, no complaint has yet been made in relation to a JRO coordinated by Frontex. Which actions should Frontex take, in your view, to promote awareness among persons subject to a JRO of the possibility to lodge a complaint with Frontex and to ensure that problems are indeed brought to Frontex's attention?
3. Frontex co-ordinates relatively few JROs, with Member States carrying out the vast majority of forced return operations. Given its co-ordinating role, however, what more do you think Frontex could do to promote among the Member States minimum standards and good practices that ensure respect for human rights and the dignity of returnees? Do you consider that the Frontex *Code for joint return operations* and its *Best Practices for JROs* are sufficient in this respect, specifically as regards standards on fitness to travel and medical examination, the use of coercive measures and the return of vulnerable people, in particular families with children?
4. Do you consider that the *Code* and *Best Practices* provide for sufficient safeguards in terms of respect for human rights, dignity and the welfare of returnees on board when applied to so-called "Collecting JROs"^[1]?
5. Should JROs be monitored by one monitor designated by the country hosting the operation (the country returning the biggest group), or is it better that each country participating in the operation designates one monitor to be present during the JROs?
6. What more could be done to improve the exchange of good monitoring practices between national monitors? What more could Frontex do in this regard? [In its opinion, Frontex mentions that it invites national monitoring bodies to the meetings of Direct Contact Points in Return Matters and supports the project run by the International Centre for Migration Policy Development to create a European pool of independent forced return monitors.]
7. In its opinion, Frontex states that: (i) standards of behaviour in the use of force are regulated by national law; (ii) the only restraints/equipment that may be used during JROs are those that are on the list drawn up by the organising Member State and backed by Frontex's signature on the Implementation Plan, and (iii) no participating Member State is permitted to use restraints not allowed under its national legislation even if those measures are accepted by the organising Member State and Frontex. Moreover, monitors normally observe/report on the decisions and actions in upholding their national law by national public servants/escorts present on board.

^[1] In these JROs, the third country to which migrants are returned provides the plane, escorts and medical staff for the operation. The handing over of migrants by national authorities/escorts takes place in an airport in the EU. Frontex provides training to third country escorts.

Do you have any suggestions as to how to facilitate the reporting of monitors present on board where they are entrusted with reporting on behalf of several participating Member States pursuant to Article 14.5 of the *Code* ("*When feasible and subject to prior agreement between the MSs concerned, monitors may also monitor on behalf of other MSs taking part in the JRO*" - the one-monitor-per-flight principle).

8. Do you consider that the information provided by Frontex on its website as regards JROs is sufficient to ensure their transparency? Do you consider that reports of monitors observing JROs should be submitted to national authorities or to Frontex or both? Should reports be published or not? If so, should they be published on Member States' or Frontex's website?

9. Do you have other comments on Frontex opinion? Please be as concise and concrete as possible.