Emily O'Reilly
European Ombudsman

1, avenue du President Robert Schuman
F-67001 Strasbourg Cedex,
FRANCE

Subject: Ombudsman own initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations

Vienna, 11 April 2015
2015-outgoing-000563

Dear Ms O'Reilly,

On 5 March 2015, you invited FRA to give its position in light of the European Ombudsman's own-initiative inquiry in relation to how Frontex ensures respect of fundamental rights in its Joint Return Operations. FRA is not directly involved in monitoring these operations. Therefore, FRA cannot reply to all the questions in your request. However, please find below information relevant to your inquiry.

FRA and Frontex cooperate in a number of ways. FRA and Frontex have a bilateral cooperation agreement which has been in place since 2010. It covers key Frontex activities such as operations, training and risk analysis. In light of this agreement, FRA has advised Frontex to promote and operationalise fundamental rights in its activities.

FRA is also a member of the Frontex Consultative Forum – a body composed of 15 organisations including civil society organisations – which is mandated to provide fundamental rights advice to Frontex senior management and its Management Board. FRA co-chaired the Forum from 2013-2015. It has substantially contributed to the drafting and development of the Frontex 'Code of Conduct for joint return operations coordinated by Frontex'.

The Code is a positive step towards fostering a common understanding of the fundamental rights obligations related to forced return among practitioners. However, it does not completely offer the highest level of fundamental rights protection. Although the Code aims to provide clear operational guidance to deployed staff, it does not provide sufficiently detailed and concrete provisions on several essential issues[1]. There are two major deficits. One is the lack of clear procedures concerning the lodging and handling of individual complaints by returnees. The second concerns the monitoring of Frontex coordinated joint return operations. Although monitoring is anchored in the Code and should result in the monitoring of all return operations, this is currently not the case. Other deficits are mentioned in the Forum's annual report.

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[1] See Frontex Consultative Forum Annual Report: http://frontex.europa.eu/partners/consultative-forum/documents/

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Frontex has a publication on 'best practices' which provides guidance on how to carry out forced return operations. This publication requires, updating in light of developments since 2011 when it was last reviewed. The Forum has offered to help update these practices, to reflect monitoring, as outlined in the Code of Conduct. However, this update is still pending.

FRA is also a member of the steering group of the ICMPD's project on forced return monitoring. This project aims at setting up a European pool of monitors, and to develop training and capacity building tools for monitors. This pool is primarily being set up to cover Frontex joined return operations, and to enable one person to monitor on board return flights for several participating Member States. One of the main challenges in this regard relates to the fact that national standards on the use of force differ among Member States. Monitors responsible for more than one Member States need to be familiar with such the different national standards. To enable them to do this, national standards on the use of force could be compiled and made available to monitors. Given frequent case law on the matter, such a compilation would need to be regularly updated.

FRA has a section on the state of affairs on return monitoring in the EU in the latest FRA Annual report.[2] This will be updated in the forthcoming Annual report 2014.

Sincerely,

Constantinos Manolopoulos
Director ad interim

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[2] FRA Annual report 2013: http://fra.europa.eu/en/publication/2015/eu-internal-strategic-framework-fundamental-rights-joining-forces-achieve-better