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Ms. Emily O'Reilly
European Ombudsman
1 avenue de President Robert Schuman
67001 Strasbourg, France

Geneva, 14 April 2015

Dear Ms. O'Reilly,

In relation to your own-initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JROs), please find below the following comments:

1) Potential ill-treatment during JROs (Questions 2 and 3)

In its response, Frontex stresses that each participating member state is “responsible for their own contingent” and is permitted to apply such methods of restraint and resort to the use of force as allowed under its domestic legislation. Since 1991 at least fifteen removals carried out by the member states (i.e. state-led removals, without involvement of Frontex) ended up with the deportee’s deathⁱ and reliable sources reported several instances of ill-treatment occurred during such removals.ⁱⁱ **How does Frontex ensure that similar human rights violations do not occur during JROs?**

2) Risk of collective expulsion (Question 5)

In line with article 9(1) of the Frontex Regulation and article 18(1) of the Code of Conduct on JROs, Frontex’s support to member states for the JROs is conditional upon full respect of the EU Charter of Fundamental Rights. The Charter in its article 19 prohibits collective expulsions. The European Court of Human Rights defines a collective expulsion as “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.”ⁱⁱⁱ With their underlying objective to group non-citizens of the same nationality and deport them together to the same destination country, JROs might encroach on the prohibition on collective expulsions. It could hardly be ruled out that some migrants might be deported without being offered a proper examination of all the elements of their asylum claim or appeal against a return order. In fact, upon learning about an “Offer of a Return Flight” member states may be compelled to finish relevant migration proceedings more swiftly to benefit from a JRO. Frontex’s financial, technical, and logistical assistance operates like an incentive for states

to take part in JROs, rather than conduct a removal on their own. **How does Frontex ensure that JROs do not amount to collective expulsions?**

A more detailed discussion on the human rights implications of JROs and potential responsibility for complicity on the part of Frontex that can arise in this context can be found in my paper titled "Human Rights Violations during EU Border Surveillance and Return Operations: Frontex's Shared Responsibility or Complicity?" (*Silesian Journal of Legal Studies* vol. 7 (2015) (forthcoming in June 2015)).

Yours sincerely,

Izabella Majcher



ⁱParliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Demography, *Expulsion Procedures in Conformity with Human Rights and Enforced with Respect for Safety and Dignity*, Doc. 9196, (September 2001); Institute of Race Relations, *Full List of Deaths during Deportations from Europe*, IRR News, (21 October 2010).

ⁱⁱBirnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, *Outsourcing Abuse: The Use and Misuse of State-Sanctioned Force during the Detention and Removal of Asylum Seekers*, 2008; Amnesty International, *Cruel, Inhuman or Degrading Treatment During Forcible Deportation*, 1994; Medical Foundation for the Care of Victims of Torture, *Harm on Removal: Excessive Force against Failed Asylum-Seekers*, 2004.

ⁱⁱⁱEuropean Court of Human Rights, *Conka v. Belgium*, 51564/99, (5 February 2002), para. 59. The Court stressed that, even when the above procedural pre-conditions are met - measures are taken based on a reasonable and objective examination of the individual circumstances of each case - the manner in which the return operation is carried out has a bearing on whether an expulsion can be considered collective.