



DELIVERABLE D7.1:

IMPROVED RETURN MONITORING GUIDELINES

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DELIVERABLE 7.1

IMPROVED RETURN
MONITORING GUIDELINES

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Authors	Mădălina Lepşa-Rogoz (ICMPD) Anna Makarenko (independent expert) Alexis McLean (ICMPD) Marzia Ferraro (ICMPD)
Contributing Authors	Andrew Hallan (independnet expert) EUR: Laura Cleton, Ana Maria Torres Chedraui INP PAN: Antonella Patteri, Monika Szulecka SH: Nassim Majidi, Marta Rocha
Reviewers	FAR: Valeria Ilareva PICUM: Davide Gnes, Silvia Carta ICMPD: Veronika Bilger, Nazanine Nozarian

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EXECUTIVE SUMMARY



This report is dedicated to the improvement of human rights monitoring of forced returns in Europe. It summarises the work undertaken with the aim to formulate harmonised guidelines for monitors of forced return in Europe via land and sea borders, as well as through scheduled flights. The guidelines are conceived to be applicable to different types of return operations and to support national monitors working within their respective frameworks of national monitoring systems.

This report contributes to the “Finding Agreement in Return” (FAiR) project’s research component on fundamental rights in return. Reflecting the prevalent interpretation of forced return monitoring in Europe, this report does not engage in monitoring post-return (covered elsewhere within the FAiR project). Similarly, the report does not engage with the legality of issued return decisions taken in EU Member States, since assessing return decisions’ grounds is not a competence of national monitoring bodies. Accordingly, the recommendations follow a “baseline” approach which, in practical terms, considers monitoring to be effective from the moment the return order is enforced and the operation starts (transport of a returnee to the point of departure) until the moment the returnee is handed over, in the case of escorted returns, to authorities in the country of return.

Considering the plurality of mechanisms and regulations applying to forced return monitoring in Europe, the research followed a two-step approach consisting in: 1) A thorough mapping of existing monitoring practices in forced return at national and international level which included researching the main features of monitoring systems in 11 European countries (10 EU MS + Switzerland); 2) A series of consultations with relevant forced return stakeholders, including monitors and escort officers centred around harmonisation needs and challenges.

This approach revealed that (1) harmonisation of human rights monitoring in Europe is gaining traction and this is widely considered to benefit human rights safeguards, and (2) a lack of common standards in the deployment of monitors on return operations is a persistent challenge which calls for greater attention.

Stakeholders assert that fundamental rights and principles applicable to monitoring in forced return are consistent across countries and types of operations conducted. To a large extent, human rights monitors participating in commercial flight, land or sea operations are expected to broadly follow the same steps and rules, and to draw on the same observation methods, as monitors in charter flights. Above all, monitors are advised to continue to:

- Focus attention on the needs and vulnerabilities of returnees, particularly in case families or minors are returned.
- Assess the effectiveness and clarity of communication by escort teams and evaluate the use of force considering principles of proportionality and individuality.
- Check for medical supervision and guarantees during the operation.
- Submit detailed and impartial reports on the conduct of the operation upon its completion.

In contrast, limitations and inconsistencies are identified with respect to monitoring systems, and the deployment of monitors, which tend to affect human rights monitoring and its impact on safeguarding human rights in the context of national return operations. Inadequate funding, restricted monitoring mandates curbing monitors’ access to certain operation stages as well as unsuited reporting channels to enforcing authorities and lawmakers have been reported to hamper monitor’s work. For this reason, in addition to promoting convergence in monitors’ practices, harmonisation efforts and guidance needs to shift towards enhancing standards in the deployment of monitors, and empowering structures of monitoring across European countries.

Based on these results, the report invites national and European bodies to consider the following steps:

- Increase resources available for monitoring bodies to maximise monitors' presence in forced return operations.
- Clarify (and extend) mandates for monitors to link different operation stages.
- Set new benchmarks for the timely exchange of information, including passengers' details, between participants to return operations.
- Establish direct and systematic reporting to enhance feedback loops with law enforcement authorities and legislative bodies.

Some of these are already reflected in practice and pre-existing literature on the subject, but still require actionable suggestions which public administrations in Europe can act upon, ideally within their respective national monitoring systems – irrespectively whether monitoring is being undertaken by the Ombudsman institution or through a project-based activity conducted by a specialised civil society organisation.

The proposed guidelines entail baseline operational guidance, which is purposefully designed to conform to different national regulations on the subject and to types of operations monitors might be assigned to. Primarily dedicated to informing and improving national forced return monitoring practices, these guidelines promote common standards and harmonisation in the safeguarding of human rights in return. On that account, the report draws attention to contextual factors susceptible to improve monitoring's effectiveness, such as more effective follow-up to monitors' reports and improvements in the overarching fundamental rights frameworks.

Acknowledging that the implementation of "effective monitoring systems" in forced return remains a national competence, the guidelines serve to benefit monitors' work on the ground but also to lay foundations for structural enhancement of human rights compliance in the conduct of forced return in Europe.

LIST OF ABBREVIATIONS



CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CFREU	Charter of Fundamental Rights of the European Union
CoR	Country of Return
CPT	Committee for the Prevention of Torture
CRO	Collecting Return Operation
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EL	Escort Leader
EO	Escort Officer
EU MS	European Union Member State
FRA	European Union Agency for Fundamental Rights
FRMS	Fundamental Rights Monitoring System
Frontex	European Border and Coast Guard Agency
JRO	Joint Return Operation
NMB	National Monitoring Body
NPM	National Preventive Mechanism
NRO	National Return Operation
OMS	Organising Member State
PMS	Participating Member State
SMA	Swedish Migration Agency
UDHR	Universal Declaration of Human Rights

GLOSSARY



Arrival phase – Covers the period starting from the opening of the transport’s doors in the country of return and ending when the returnee(s) are handed over to the national authority in the country of return.¹

Back-up team – A team of escort officers who are not assigned to care for specific returnees but are used to coordinate the flow of returnees through procedures and as a reserve when assigned escorts need help.

Coercive measures – Any action imposing a form of constraint on an individual, either by bodily force or by the fitting of physical restraints. Measures are considered to be lawful provided that they respect the principles of strict necessity, proportionality and respect for the dignity of the returnee, as well as the right to physical integrity and the prohibition on inhuman or degrading treatment or torture.² The use of coercive measures should take into account the individual circumstances of each person, such as their vulnerable condition. Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited.³

Collecting Return Operation (CRO) – A return operation initiated by an organising Member State, with aircraft and escorts provided by a country of return. Returnees are handed over to them by the Member State/participating Member State(s) on the territory of a Member State.

Country of Return (CoR) – The country of origin of the third-country national; or a country of transit in accordance with Community or bilateral readmission agreements or other arrangements; or another third country, to which the third country national concerned voluntarily decides to return and fulfils the conditions for legal entry.

Deportation – See “removal”.

DEPA: “ - “deportation accompanied by escorts”.

DEPU - “unaccompanied deportation” whereby travelling escorts are not involved in the transportation phase.

Escort Leader (EL) – Leader of the national escort team and responsible, within their team, for the correct implementation of the return operation.

Escort Officer (EO) – Security personnel, who may include persons employed by a private contractor, responsible for accompanying the returnees, up to the point of handover in the country-of-return, in order to enforce the return decision.

Forced return – In the global context, forced return (also referred to as compulsory return) is the obligatory return of an individual to the country of origin, transit, or third country (i.e. country of return), on the basis of an administrative or judicial act.⁴ The Return Directive uses the word “return” broadly, encompassing the process of a third-country national going back to their country of origin, a country of transit based on readmission agreements, or another third country. In

1 See ICMPD, *Report: Assessment of the day-to-day operations and management of the pool of forced-return monitors in Frontex*, 2020

2 See FRONTEX, *Guide for joint return operations by air coordinated by Frontex*, 2020. Available at: [Guide for Joint Return Operations by Air coordinated by Frontex](#)

3 See n. 1

4 See European Commission, *EMN Asylum and Migration Glossary*, 2024. Available at: [EMN Asylum and Migration Glossary - European Commission](#)

the context of forced return monitoring, forced return refers specifically to organised removals, involving escorted, and possibly coerced, transportation (on the entire journey or on sections of that journey) of individuals by air, land, or sea to their country of origin or another designated return country. Such operations are organised by police and/or migration authorities for individuals subject to a return decision and a removal order.⁵

Return procedure – Consists in the set of measures and arrangement resulting from the adoption of a return decision and covering the different stages of a returnee leaving the territory of a returning Member State, until the arrival in the country of return.

Forced return operation – Consists in the enforcement of a judicial removal order. It begins with the placing of returnees in the care of escort officers and finishes when they are handed over to the authorities of their country-of-return. The European Border and Coast Guard Agency (Frontex) uses three categories of forced return operations, irrespective of the means of transport used, namely National Return Operations (NROs), Joint Return Operations and Collecting return Operations.⁶ All three categories are supported by Frontex but there are many NROs without Frontex support or coordination which are organised by individual Member States.

Fundamental rights of returnees in return procedures – Set of legal norms and safeguards applicable to individuals (in the context of forced return) as enshrined in the Charter of Fundamental Rights of the European Union and in other relevant international or national instruments.⁷

Good practice – for the purpose of this task, a collective action, initiative or similar undertaken in the context of forced return which “has demonstrated a high degree of success in its single setting, and the possibility of replication in the same setting is guaranteed”.⁸ According to the EC, “good practices’ can be defined in multiple ways. However, a thread common to most definitions implies strategies, approaches and/or activities that have been shown through research and evaluation to be effective, efficient, sustainable and/or transferable, and to reliably lead to a desired result”.⁹

Hub – Refers to a port of departure where participants to a return operation gather and embark on a joint return operation or collecting return operation and from where the airplane/other means of transport will transport all participants and returnees to the country of return.¹⁰

In-flight phase – Starts with the closure of the means of transportation’s doors (e.g. aircraft, bus, train, ship) and ends with the arrival at a final destination and the opening of the doors on arrival.¹¹

Joint Return Operation (JRO) by air – Forced return of third-country nationals from two or more Member States or Schengen Associated States on the same flight. The initiative for such an operation is to be taken by one Member State,¹² which invites the participation of others. In some circumstances Frontex itself may initiate a JRO.

5 See ICMPD, *Background Reader: Forced-Return Monitoring*, 2021. Available at: https://www.icmpd.org/content/download/56830/file/FReM%20III_Background%20Reader_WEB.pdf

6 See ICMPD, *Forced-Return monitoring*, 2021. Available at: [frem iii_background_reader_web.pdf](#)

7 See the Section on Fundamental Rights in Forced Return of this report.

8 FAO, *Good practices at FAO: Experience capitalization for continuous learning*, 2016

9 See European Commission, *What are ‘good practices’?*, 2021. Available at: [What are ‘good practices’? | European Website on Integration \(europa.eu\)](#)

10 See n. 1

11 Ibid

12 The organising Member State is the one responsible for the organisation of a joint return operation.

Monitor – Refers to the person who is mandated by national authorities to observe a return operation in accordance with the monitoring system established by Member States pursuant to Article 8(6) of the Return Directive. The monitor may come from the Member State concerned or from the Frontex pool of monitors, if requested by the Member State.

Monitoring (forced return operations) – “Monitoring” is a broad term describing the active collection, verification and immediate use of information to address human rights issues. Human rights monitoring includes gathering information about incidents, observing events, visiting sites, discussions with authorities to obtain information and to pursue remedies and other immediate follow-up.¹³ In the context of forced return, monitoring consists in assessing whether the operation is conducted in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and applicable international human rights law.

National Monitoring Body – National mechanism in charge of monitoring compliance with fundamental rights during forced return operations.

National Preventive Mechanism (NPM) – National body with a role in implementing the United Nations Convention against Torture. “NPMs have the mandate to regularly visit places of deprivation of liberty in their country, such as police stations, prisons and other detention facilities, psychiatric hospitals, and any other places where persons are not permitted to leave at their own will. NPMs also have the mandate to make recommendations to national authorities to work with them on the prevention of torture and ill-treatment and on the improvement of conditions of living in places of deprivation of liberty, for which they have a key role.”¹⁴

National Return Operation (NRO) – Operations to return third-country nationals who are subject to individual return decisions issued by the respective Member State to a country of return, organised and carried out by one single state. NROs may have one or several destinations.¹⁵ They may or may not be supported by FRONTEX.

Organising Member State (OMS) – Member State choosing to organise and have the command of a JRO, or of a CRO, involving other Member States.

Participating Member State (PMS) – Member State other than the OMS and participating in a JRO or a CRO.

Pre-departure phase¹⁶ – According to the Annex of Decision 2004/573/EC, it is the period starting with transportation to the airport. It covers the period from leaving the (temporary) holding/detention facility until embarkation on the means of transportation (e.g. aircraft, bus, train, ship).¹⁷

Pre-return phase – For the purpose of this report, this phase includes the preparatory work conducted prior to a return operation, including, for instance, the issuance of travel documents for returnees.

¹³ High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring*, Professional Series No. 7, 2001

¹⁴ See OHCHR dedicated website on “National Preventive Mechanisms. Subcommittee on Prevention of Torture”. Available at: <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms> (24

¹⁵ See n. 6

¹⁶ Some monitors include the contact talks in pre-departure.

¹⁷ See n. 1

Removal – Refers to the enforcement of the obligation to return, namely the physical transportation of an individual subject to a removal order to a country-of-return.

Removal order - An administrative or judicial decision or act ordering a removal.¹⁸

Return – In the context of this report, return is the process of a third-country national going back – whether in voluntary compliance with an obligation to return or enforced through a removal order – to their country of origin– in accordance with Community or bilateral readmission agreements or other arrangements, or another third country, in which he or she will be accepted.¹⁹

Return decision – An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be irregular and imposing or stating an obligation to return that respects Directive 2008/115/EC.²⁰

Return Directive - Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.²¹

Returnee – In the context of this report, a returnee is a third-country national who is the subject of a return decision issued by a Member State.

Returning country - In the context of forced return, country issuing the legal order for the return of a third country national.

Return phase - An in-flight phase may also occur after the failure of a handover, when returnees are taken back to the Member State which sent them. This is usually referred to as a “return phase”.

Scheduled flight – Regular scheduled flight by an airline.

Third-country national - Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of Treaty on the Functioning of the European Union (TFEU) or is not a national of a Schengen Associated State and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.²²

Transit (also known as “stopover”) – This is a stage in a forced return operation which occurs when, at an intermediate point on their journey, a Member State contingent leaves one form of transport and then departs on another. It occurs (1) when PMS contingents disembark at a hub; (2) when there is a return after a failed handover and the contingent has to make an overnight stop; (3) when a contingent using scheduled flights has to change flights at an intermediate airport.

¹⁸ Article 8(3), “Return Directive” 2008/115/EC. Available at: EUR-Lex - 32008L0115 - EN - EUR-Lex (europa.eu)

¹⁹ See n. 1

²⁰ Preamble 4, “Return Directive” 2008/115/EC. Available at: EUR-Lex - 32008L0115 - EN - EUR-Lex (europa.eu)

²¹ See n. 1

²² Art. 3(1) “Return Directive” 2008/115/EC. Available at: EUR-Lex - 32008L0115 - EN - EUR-Lex (europa.eu)

Vulnerable person – any person who, due to specific conditions, requires additional measures during the return procedures. According to the Return Directive, vulnerable persons include children, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with small children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence, exploitation and abuse.²³ The European Commission’s Return Handbook specifies that victims of female genital mutilation, and persons with mental disorders may also be considered vulnerable in this context.²⁴

²³ See n. 1

²⁴ See European Commission, Recommendation 2017/2338 *Establishing a common ‘Return Handbook’ to be used by Member States’ competent authorities when carrying out return-related tasks, 2017*. Available at: COMMISSION RECOMMENDATION (EU) 2017/ 2338 - of 16 November 2017 - establishing a common ‘Return Handbook’ to be used by Member States’ competent authorities when carrying out return-related tasks

INTRODUCTION



This document is a report on human rights monitoring of forced returns in Europe. It summarises the work undertaken with the aim to formulate improved guidelines for monitoring forced returns in Europe which take place via scheduled flight, land borders as well as at sea borders. The report contributes to the “Finding Agreement in Return” (FAiR) project’s research component on fundamental rights in return. This component focuses, in addition to forced return monitoring, on the fundamental rights in return processes, fundamental rights in “voluntary” return, as well as on post-return realities in selected third countries.

The report is structured in five main sections. The first section describes the methods employed and the scope of the report. The second and third sections provide background information on forced return operations and fundamental rights in forced return. The fourth section describes how monitoring forced return is currently being conducted, summarising the results of the research conducted in FAiR. Finally, the fifth section presents guidelines for monitoring forced return, with specific suggestions for monitors and for national administrations. The guidelines are intended for national monitoring bodies, return enforcing institutions, and other authorities in Member States which play a crucial role in facilitating the deployment of forced return monitors. By including relevant background information and summary of research findings, the report can also be useful for various organisations as well as members of the public interested in some of the legal and practical aspects of monitoring forced return operations.

METHODS AND SCOPE



METHODOLOGICAL CLARIFICATIONS

Prior to presenting the report’s methodology and rationale, some clarifications regarding the premises of this research (on monitoring fundamental rights in forced returns) are required. The starting point of this endeavour subscribes to OHCHR’s justification of monitoring in the context of human mobility:

“In the context of migration, human rights monitoring improves transparency, oversight and accountability. It is especially relevant because the rights of migrants are frequently violated and abused, and few actors may be able to access migrants or carry out independent monitoring. In addition, migrants are rarely able to obtain effective remedies. Monitoring strategies should seek to promote and protect the human rights of migrants and address protection gaps in law, policy and practice”.²⁵

Forced return procedures have been described as “detention on the move”.²⁶ Through the nature of activities and stakeholders involved, these procedures correspond to those situations in which “few actors may be able to access migrants or carry out independent monitoring”.

Another important premise for this report relates to the current European legal framework. While the report takes into account various stakeholders’ perspectives to bridge gaps in monitoring effectiveness (more on this in the background chapter), the report does not tackle changes in legal frameworks governing national level forced return monitoring. Rather, in order to contribute to the improvement and harmonisation of monitoring practices, the formulated guidelines articulate baseline standards which may be mobilised by stakeholders operating in different monitoring systems.

Despite increased political interest in deportation as an instrument of migration management and the resulting pressure exerted on national and European return systems,²⁷ the monitoring of human rights compliance in national return operations has rarely been subject to a comparative perspective²⁸, with the exception of monitoring chartered flights supported by Frontex. At the time of drafting this report, no European-level harmonised guidelines (for monitoring forced returns via land and sea border, as well as via scheduled flights) are available.

To formulate guidelines useful for different institutions mandated to monitoring forced return procedures in different European countries, the preparatory work to this report followed a two-step approach:

- 1) A mapping of existing monitoring practices at national and international level; this resulted in a comprehensive description of current practices of forced return monitoring in 11 European countries; in addition, a review of international relevant documents and standards pertaining to human rights in forced returns was conducted.
- 2) Taking stock of the above, a series of consultations with relevant forced return stakeholders, including monitors and escort officers, were organised to reveal baseline practices and contribute to the development of harmonised forced return monitoring guidelines.

²⁵ OHCHR, *Manual on Human Rights Monitoring: Monitoring and Protecting Human Rights in the Context of Migration*, Chapter 26, 2011

²⁶ Interview with Monitor.

²⁷ Madeline Chambers, “Scholz vows to toughen up German deportation rules after attacks”, Reuters, June 6th 2024. Available At: [Scholz vows to toughen up German deportation rules after attacks | Reuters](#)

²⁸ With the exception of monitoring guidelines for chartered flights supported by Frontex.

The research conducted for mapping existing practices aimed to answer the following questions:

- 3) What are current practices of forced return in Europe?
- 4) What are current practices of human rights monitoring of forced return procedures in Europe?
- 5) How procedures can be improved to increase human rights compliance of forced return?

The methods employed comprised a literature review of all relevant EU and selected national-level policies on monitoring, as well as all relevant reports, guidelines, opinions, analyses from national bodies and international organisations. In addition, data was collected by means of fieldwork conducted between December 2023 and June 2024, involving the following:

- 39 semi-structured interviews with relevant stakeholders in selected European countries,
- 1 participant observation of a Joint Return Operation via chartered flight,
- 2 stakeholder workshops during which the main approach and preliminary results were discussed with relevant stakeholders,
- Finally, results of the research and this report was shared with relevant stakeholders in a webinar organised in September 2024.

Semi-structured interviews were conducted with:

- human rights monitors – volunteers or employed by institutions and organisations mandated with monitoring national forced returns, and other representatives of National Monitoring Bodies;
- escort officers with experience in carrying out forced returns;
- representatives of NGOs active in the area of safeguarding migrants' rights,²⁹ including in return processes;
- EU Agencies;
- independent experts, including academics and researchers;
- immigration lawyers;
- experts from international organisations;
- a passenger who witnessed a forced return operation by scheduled flight.

The participant observation of a Joint Return Operation took place in February 2024. The observation gave the FAiR project team critical insights in relation to the operational side of forced return, including the types of stakeholders participating to a return operation and the interactions between them, the steps of a forced return operation, as well as main tasks of a monitor during a forced return operation.

Countries included in the research on forced return monitoring are Austria, Bulgaria, Czechia, Germany, Italy, the Netherlands, Poland, Romania, Spain, Sweden and Switzerland.

The selection of countries responds to two main criteria: 1) variety and geography of monitoring systems and 2) alignment on FAiR's overarching scope (maximising the geographic overlap with other strands of research in FAiR).

Results of this research are set to inform other FAiR components, notably the MIREX's indicators on human rights monitoring. Results may also help shedding light on the factors, such as monitoring mechanisms, that are susceptible to shape the legal and political legitimacy of intergovernmental return and readmission frameworks between EU MS and third countries and that could benefit intergovernmental discussions on the subject.

²⁹ Interviews with representatives of organisations in touch with forced returnees in their countries of origin are foreseen in a later stage of the FAiR fieldwork.

SCOPE OF REPORT

The main goal of this strand of research in FAiR is to formulate guidelines for human rights monitoring of forced returns. These guidelines are conceived to be applicable to different types of Return Operations and to support monitors operating within the respective frameworks of national monitoring systems. In order to achieve this, the research embraces the conventional interpretation ascribed to Article 3(3) and Article 8(6) of the Return Directive. Invoking Article 3(3) which “refers to the ‘process’ of going back to a third-country and thus covers more stages than just the phase of the actual physical transfer out of the European Union”, commentators have argued that “forced-return monitoring is to be understood as covering all activities undertaken by Member States in the run-up and aftermath of a removal, including the pre-return phase, the pre-departure phase, the inflight procedure, a possible transit phase and the arrival and reception of the returnee in the country of return. It also implies that post-return monitoring (the period following reception of the returnee in a third country) is not covered”.³⁰

In line with the above interpretation of the current European framework, the report does not engage in monitoring post-return realities,³¹ although stakeholders have mentioned it as a relevant issue particularly with respect to sustainable return and reintegration. This will be investigated in another phase of the FAiR project.

Similarly, the report does not engage with the legality of issued return decisions taken in EU Member States. Assessing return decisions’ grounds usually falls outside national monitoring bodies’ scope of action, whose responsibilities tend to be restricted to return *operations*. In accordance, the report does not aim to inform discussions on the legality and legitimacy of return decisions, focusing rather on the practical enforcement of return decisions and how fundamental rights compliance can be strengthened in these contexts.

Moreover, in order to be relevant to various national monitoring systems, the report employs a “baseline” approach to fundamental rights which includes adopting a strict understanding of the start and finish of forced return procedures. In practical terms, monitoring forced return is considered from the moment a return operation starts, including preparatory work and contact talks in the pre-departure phase, until the moment the returnee is handed over, in the case of escorted returns, to immigration authorities in the country of return (also known as the “arrival phase”). The rationale for employing this narrow approach resides also in fostering the applicability of monitoring guidelines for a wider set of national monitoring systems.

Similarly, the report does not engage in addressing issues related to barriers to returns (which are relevant particularly with regard to the legality of the removal decision) nor enters in-depth discussions on forced return in the context of specific vulnerable groups, but instead offers a baseline required for human rights compliance in forced return.

³⁰ Lutz, Fabian; Mananashvili, Sergo, *EU Immigration and Asylum Law (2nd ed.)*, p. 701, 2016, Nomos Verlagsgesellschaft mbH & Co

³¹ Pahladsingh, Aniel, *Crimmigration and the Return Directive: fundamental rights, criminal sanctions and the legal position of the migrant*, 2023, The Hague, Eleven

BACKGROUND



LEGAL INSTRUMENTS

International treaties and conventions have shaped the international legal framework governing forced returns. The Universal Declaration of Human Rights (UDHR) establishes core human rights principles that apply in the context of returns. Article 14 of the UDHR guarantees the right to seek asylum from persecution, underlining the necessity of safeguarding those fleeing danger. Similarly, the International Covenant on Civil and Political Rights (ICCPR) strengthens the rights of those facing forced return. Article 13 of the ICCPR provides the right to freedom of movement, including the right to leave any country and seek asylum from persecution. According to the Covenant's Article 7, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", thus establishing safeguards for forcibly returned migrants. Furthermore, the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) forbids individuals from being sent to countries where they may be tortured or subjected to other forms of mistreatment.³² There are a number of principles in international legal systems pertinent to the topic of forced return, namely: non-refoulement, voluntary repatriation, non-discrimination, the prohibition of mass expulsion, safe and dignified return and sustainable reintegration, children's best interests, the right to family life and respect for the migrant's private life, state obligations to protect, fulfil, and promote human rights, and due process and procedural safeguards, including the right to effective remedy. While some of these principles have been discussed elsewhere,³³ the remaining of this section will provide a short history of human rights monitoring of forced return in Europe.

Within the context of the European Union (EU), the decade of the 1990s marked the beginning of the process of conceptualising expulsion^{34, 35} In the same period, the EU adopted its first regulatory provisions relating to forced-return monitoring.³⁶

An initial effort to standardise the treatment of non-EU nationals during forced return started with the adoption in 1992 of the Recommendation addressing Member States' practices on expulsion³⁷. The prevailing approach involved removal (originally conceptualised as "expulsion") to the country

³² The CoE system also establishes a comprehensive institutional framework for monitoring the protection of human rights. In the context of forced-return operations, particular significance is attributed to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). See section on Fundamental Rights in Forced Return.

³³ See Petkov et al. (forthcoming), FAiR Working Paper to Deliverables D9.5. on Legal Review of Fundamental Rights in Return Processes.

³⁴ Ruben, Rued; Van Houte, Marieke; Davis, Tine, "What Determines the Embeddedness of Forced-Return Migrants? Rethinking the Role of Pre- and Post-Return Assistance", *International Migration Review*, 2009, pp. 908-937

³⁵ Due to an increasing influx of immigrants since the 1970s, Western European countries started to demonstrate a growing interest towards return migration. This inclination arose from the perception that repatriation, or the return of refugees to their home countries, represented the most "natural" and optimal alternative compared to integration within the host country or resettlement in third countries, as articulated by Ruben, Rued; Van Houte, Marieke; Davis, Tine in n.34.

³⁶ In the late 1990s and even 2000s several migrants lost their lives during return procedures: Semira Adamu died in 1998 during a forced return from Belgium to Togo, Aamir Mohamed Ageeb died in 1999 during a forced return from Germany to Sudan, Marcus Omofuma died in 1999 during a forced return from Austria to Bulgaria, Samson Chukwu died in 2001 in a detention centre in Switzerland right before a return operation, Ricardo Barrientos died in 2003 in a deportation from France to Argentina, Mariame Getu Hagos died in 2003 during deportation preparation from France to South Africa, Jimmy Mubenga died in 2010 during a deportation from the UK to Angola, Abdelhak Goradia died in 2014 during preparations for his deportation from France to Algeria.

³⁷ European Community, *Recommendation regarding practices followed by Member States on expulsion*, 1992. Available at: Expulsion of Non-EU Member Country nationals (europa.eu)

of origin, accompanied by the authorisation of administrative detention pending removal and the utilisation of fingerprinting for identification purposes. Regarding migrants' rights, it is mentioned that "Member States will ensure that without prejudice to Community Law, their *policies and practices with regard to expulsion are fully consistent with their obligations under the 1951 Geneva Convention [...] and the 1967 New York Protocol. Account should also be taken of other relevant international instruments, including the 1950 Convention for the protection of Human Rights and Fundamental Freedoms*".³⁸ It is worth noting that the Recommendation is not legally binding.

The first legally binding measure at the European level materialised almost a decade later, with the 2001 Directive on the mutual recognition of decisions on the expulsion of third-country nationals.³⁹ Its primary objective was to ensure that decisions by EU Member States to expel non-EU nationals residing in the EU were respected and adhered to across Member States. This Directive stipulates that "Member States *should apply the directive with respect for fundamental rights and freedoms*," yet it provides no further details regarding the concrete measures for ensuring the effective protection of these rights.

Subsequent developments in European legislation on returns took place with the Council Decision "on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders"⁴⁰ and in the Council regulation "establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (now known as Frontex)" in 2004.⁴¹ The Council Decision strengthens returnees' safeguards through an annex delineating "*common guidelines on security provisions for joint removals by air*". However, these guidelines lack legal binding nature since Article 7 of the Decision merely requires the Annex to be "taken into account". As concerns the establishment of Frontex, it represented, among others, an endeavour to harmonise and oversee forced return practices at the EU level.

Impetus for the introduction of a comprehensive monitoring system for forced returns was provided with the formulation of the twenty guidelines on forced return by the Council of Europe in 2005. Explicitly, these guidelines assert that "Member States *should implement an effective system for monitoring forced returns*." Additionally, they emphasize that "the forced return operation should be *fully documented*, particularly concerning any *significant incidents* or the *use of any other means of restraint* during the operation."⁴²

It was not until the enactment of the Return Directive⁴³ in 2008, the main piece of EU legislation

38 Draft Recommendation regarding practices followed by Member States on expulsion. Available at: Microsoft Word - 19IMMRES.DOC (statewatch.org)

39 European Council, Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals. Available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0040

40 European Council, Decision 2004/573/EC on *The organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004D0573>

41 European Council, Regulation 2007/2004 on *Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R2007>

42 Council of Europe, *Twenty Guidelines on Forced Return*, September 2005. Available at: 20_Guidelines_Forced_Return_en.PDF

43 European Union, Directive 2008/115/EC on *common standards and procedures in Member States for returning illegally staying third-country nationals*. Available at: <http://data.europa.eu/eli/dir/2008/115/oj>

governing the procedures and criteria to be applied by Member States when returning “illegally residing” third-country nationals, that a formal monitoring system for forced returns became an obligation for Member States. Notably, Decision 575/2007, which established the European Return Fund for the years 2008-2013, merely stated that “enforced return operations *shall be implemented in full compliance with humanitarian principles and respect for the persons’ dignity.*” While it highlighted “best practices in the field of return,” the specific implications of these practices remained unspecified.

Meanwhile, looking into the drafting history of the Return Directive,⁴⁴ it is worth noting the 2001 Commission Communication on a “Common Policy on Illegal Immigration”, which emphasises that “a Community return policy should be based on the three elements: common principles, common standards and common measures. Important common principles are, for example, the priority of voluntary return over forced return and the strengthening of the obligation under international law to readmit own nationals. *On the basis of such principles, common standards on expulsion, detention and deportation could be developed.*”⁴⁵ The subsequent 2002 “Green Paper on a Community Return Policy on Illegal Residents” aimed to “put forward suggestions for a co-ordinated and efficient policy based on common principles and standards, and respectful of human rights and human dignity”. Neither the 2001 Communication, nor the 2002 Green Paper refer to monitoring human rights compliance of return procedures.

The 2002 Commission Communication on a “Community Return Policy on Illegal Residents” draws a return action program which includes some clarifications regarding “*common minimum standards to ensure efficient return policies*”. Among these, removal “should be subject to minimum standards, safeguarding both the rights of the person concerned and the effectiveness of the removal”. Furthermore, it is mentioned that “*Minimum standards on removal should be set at EU level, setting a final safeguard for non-refoulement requirements in a future Directive on Minimum Standards for Return Procedures, defining common guidelines for removal on the physical state and mental capacity of the returnee as well as on the returnee’s integrity during the removal operation*”. The Communication mentions the need to establish an assessment mechanism, not in relation to how removals are carried out, but with regard to the “assessment of the actual situation in certain countries as to whether removals are feasible or not”.⁴⁶ In the Hague Program, adopted in November 2004, the Council “considers it essential that the Council begins discussions in early 2005 on *minimum standards for return procedures, including minimum standards to support effective national removal efforts*”.⁴⁷

The 2005 Commission proposal needed more than three years of negotiations and, at times, parallel discussions at the level of the Council and of the Parliament,⁴⁸ before it was adopted in 2008. It is worth noting that “the compromise solutions found on the numerous contentious issues have often been inspired by the Council of Europe’s ‘Twenty Guidelines on Forced Returns’ from 2005”.⁴⁹

⁴⁴ See n. 30

⁴⁵ Commission of the European Communities, COM(2001) 672 final *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration*, 2001. Available at: LexUriServ.do

⁴⁶ Commission of the European Communities, COM(2002) 564 final *Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents*, 2002. Available at: Microsoft Word - DGjai-PE-COM_2002_564-D5665_EN_ACTE.doc

⁴⁷ European Council, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (2005/C 53/1). Available at: EUR-Lex - 52005XG0303(01) - EN - EUR-Lex

⁴⁸ See n. 30

⁴⁹ Ibid

What warrants attention is, besides the negotiation process and the motivation behind the proposal, how the monitoring provision came into play during this process, since it was not part of the initial proposal. Reaching an agreement with the European Parliament, monitoring was included in a document prepared by the Council Presidency and released on 25 April 2008, without discussion nor clarifications for implementation.⁵⁰ Inspired by the CoE Guidelines, the specific notion of monitoring emerges during the *travaux préparatoires* and remains in the final version of the directive is Article 8(6), which stipulates that: “*Member States shall provide for an effective forced return monitoring system*”. It is noteworthy to highlight the wording of Article 6(1). This article mandates that “*Member States shall issue a return decision to any third-country national staying illegally on their territory*”. Consequently, the Directive establishes an obligation for Member States to return irregularly staying third country nationals, in the event they do not opt to provide them with a residence permit or authorisation to stay.

In 2015, the European Commission published the Return Handbook which was subsequently revised as part of the European Agenda on Migration published in 2017, aiming at providing direction to the national authorities regarding the standards and procedures for implementing the return directive’s requirements. The updated handbook provided additional insights into the comprehension of forced return monitoring. This included emphasizing the importance of independence between the entities responsible for enforcing returns and those conducting monitoring. The revised guidelines also specified that monitoring should be “[...] covering all activities undertaken by Member States in the respect of removal – from the preparation of departure, until reception in the country of return or in the case of failed removal until return to the point of departure. It does not cover post - return monitoring, i.e., the period following the reception of the returnee in the country”.⁵¹

As of 2013, monitoring guidelines (for forced return operations by chartered flights) were subsequently developed through a series of three AMIF-funded projects (Forced Return Monitoring – FReM), coordinated by the International Centre for Migration Policy Development (ICMPD), in partnership with (initially 8, then 22) EU and Schengen associated Member States, as well as with Frontex and the EU Agency for Fundamental Rights (FRA).

The 2018 legally binding⁵² Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex⁵³ established at Article 15 that “*The monitoring of forced return operations aims at gathering information on and reporting of fundamental rights compliance and, where appropriate, at making recommendations for the strengthening of the protection of returnees. The monitoring system [...] must be effective and must involve monitoring by organisations/bodies that are independent from the authorities enforcing return [...]*”.⁵⁴

Rules governing the airborne removal of third-country nationals subject to removal orders are laid down in Council Decision 2004/573/EC. Additionally, the Frontex Guide for Joint Return Operations (JRO) by air provides operational guidance for the implementation of Frontex-supported JROs. Regulation (EU) 2016/1624 granted Frontex considerably expands the prerogatives and capacities of the Agency in the field of forced return.. Frontex’s role was further enhanced by Regulation (EU) 2019/1986⁵⁵ which states that:

⁵⁰ Peers, Steve, “The Returns Directive. Statewatch analysis”, Human Rights Centre, University of Essex, 2008

⁵¹ See n. 24

⁵² The Code of Conduct is legally binding for all participants to a forced return operation.

⁵³ Frontex, Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex, 2018. Available at: [Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf](#)

⁵⁴ Ibid art. 15

⁵⁵ See n.1

“Without entering into the merits of return decisions, which remain the sole responsibility of the Member States, the Agency shall provide Member States with technical and operational assistance and shall ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations and organising returns on scheduled flights or by other means of transport. The Agency may, on its own initiative and with the agreement of the Member State concerned, coordinate or organise return operations”.

With regard to monitoring, the main change introduced by Regulation (EU) 2019/1896 concerns the provision relating to the contribution of personnel to the Pool.⁵⁶ In particular, as article 51 states: *“Member States shall be responsible for contributing to the pool by nominating forced-return monitors corresponding to the defined profile, without prejudice to the independence of those monitors under national law, where national law so provides. [...]”*.⁵⁷

According to the Frontex website, “as of October 2022, the pool of forced-return monitors counted 60 monitors from 24 EU Member States and Schengen Associated Countries. Additionally, five of the 46 fundamental rights monitors recruited by the Frontex Fundamental Rights Office were nominated as forced-return monitors to the pool. The fundamental rights monitors, who work independently on behalf of the Fundamental Rights Officer, contribute to return monitoring activities in Member States.”⁵⁸

The latest development at the EU level is the adoption of the new Pact on Migration and Asylum, which is essentially a set of rules managing migration and establishing a common asylum system. Under the pillar on secure external borders measures on screening, as well as border procedures and returns are included. For human rights monitoring systems most relevant is the advancement included in the Regulation (EU) 2024/1356 introducing the screening of third-country national at the external borders (“Screening Regulation”). The Regulation establishes, among others, “the screening of third-country nationals illegally staying within the territory of the Member States where there is no indication that those third-country nationals have been subject to controls at external borders, before they are referred to the appropriate procedure”. Furthermore, according to Article 10, on Monitoring fundamental rights:

⁵⁶ The pool of monitors was established as a subsidiary mechanism to the national monitoring mechanisms and is a requirement included in the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (Art. 8 (6) and in the Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (Art. 51). See <https://www.frontex.europa.eu/fundamental-rights/fundamental-rights-at-frontex/pool-of-forced-return-monitors/>.

⁵⁷ ICMPD, Human Rights Monitoring of Forced Return in Europe, 2021

⁵⁸ See Frontex, *Fundamental rights at Frontex*. Available at: Pool of Forced-Return Monitors (europa.eu)

“Member States shall adopt relevant provisions to investigate allegations of failure to respect fundamental rights in relation to the screening.

Member States shall ensure, where appropriate, referral for the initiation of civil or criminal justice proceedings in cases of failure to respect or to enforce fundamental rights, in accordance with national law.

2. Each Member State shall provide for an independent monitoring mechanism in accordance with the requirements set out in this Article, which shall:

(a) monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening; and

(b) ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations.

The independent monitoring mechanism shall cover all activities undertaken by the Member States in implementing this Regulation. The independent monitoring mechanism shall have the power to issue annual recommendations to Member States.”⁵⁹

Different than the Return Directive, the Screening Regulation provides more explanation with regard to the national institutions which “**shall** participate in the operation of the independent monitoring mechanism and **may be appointed to carry out all or part of the tasks of the independent monitoring mechanism**”. At the time of drafting this report, MS are drawing and preparing their respective National Action Plans for implementing the Pact, which includes setting up the independent monitoring mechanism to ensure respect of fundamental rights in relation to screening.

At the request of the Commission, in 2022 the Fundamental Rights Agency (FRA) developed practical guidance to provide assistance to MS in setting up their respective national independent mechanisms to monitor fundamental rights compliance at EU External Borders (FRA, 2022). This guidance, updated in 2024, includes nine building blocks for setting up effective monitoring mechanisms: 1) independence and operational autonomy; 2) thematic coverage of the mandate; 3) clear powers of the monitoring mechanism; 4) facilitating investigations (of allegations of fundamental rights allegations); 5) appropriate expertise and staff, 6) appropriate resources and funding; 7) reporting, transparency and accountability; 8) synergies with existing monitoring mechanisms; 9) cooperation with other authorities and actors.⁶⁰

⁵⁹ European Union, Article 10, Regulation (EU) 2024/1356 *introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, 2024. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401356

⁶⁰ FRA, *Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms*, 2024. Available at: [Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms | European Union Agency for Fundamental Rights](https://fra.europa.eu/en/monitoring-fundamental-rights-during-screening-and-the-asylum-border-procedure-a-guide-on-national-independent-mechanisms)

FORCED RETURN OPERATIONS

RETURN OPERATIONS

According to OHCHR, removals can take many forms, and states employ a variety of terms to characterise returns and their implementation. Returning states have a responsibility to guarantee that returns are grounded in legality and lawful. They must observe due process rights, the principle of non-refoulement (as explained in the glossary), and the prohibition on collective or arbitrary expulsion. Returns should take place in secure and dignified conditions, which excludes arbitrary detention, assault, ill-treatment, extortion, or violations of the right to health. While for a return to be declared voluntary, migrants must have provided free, prior, and informed consent, forced return does not imply these conditions. However, irrespectively of how is being carried out, migrants should not be exposed to human rights violations or irreparable harm upon their return. The legal requirement of human rights monitoring assumes that forced return is a distressing experience that is likely to violate human rights both during and after it occurs.⁶¹

To explain how monitoring forced return is carried out in Europe, some clarifications regarding forced return are required. First, according to some stakeholders interviewed, and in line with the general framing of return policies, forced return should take place as a last resort (after all other legal options have been explored). Second, return takes place to maximise resources available for migrants in need of international protection and hence not eligible for return.⁶² “The premise is that a return policy is needed in order to safeguard the integrity of the legal and humanitarian admission systems.” (European Commission, 2002). In a more recent statement on “managing migration responsibly”, the EC writes: “As part of a functioning asylum and migration system, those who have no legal right to stay in Europe must be returned”.⁶³

“Compulsory return presents the state[s] last resort to enforce the obligation to leave the country of a foreigner who is residing illegally after he or she has not made use of the option to leave the country voluntarily. If necessary, a security escort is indicated due to his behaviour, aggressive behaviour in particular can lead to Security escorts. It’s always the last resort. First is the voluntary return and if the foreigner doesn’t make use of the possibility to leave the country voluntarily after the asylum request is rejected, then it comes to a forced return and forced return has two options: You can do forced return unaccompanied and you can do forced return accompanied. And accompanied, which is my job when we have police escorts on board, then it’s always a question of the behaviour of the person” – interview with escort officer

⁶¹ See n. 25

⁶² Two interviews with two monitors from different countries.

⁶³ European Commission, *Achievements of the von der Leyen Commission. Managing migration responsibly*, 2024. Available at: 8. Democracy and rule of law.pdf

“The purpose of forced returns? I think the main purpose is to show all the rest that if you don’t return voluntarily, there is a state that will at least try to enforce the law and remove you. And also, it’s a message not only for the people itself, but perhaps it’s more a signal to the citizens to show them that their state is able to act”. – interview with monitor

“The purpose of forced returns... yes, it’s actually more like a measure to undertake if voluntary and independent return fails. It is of course the effectuation of the decision of the Immigration Services, which is reviewed by the judge. But that doesn’t work out very often for all sorts of reasons. [...] I answered your question very much from the procedural point of view now. [...] But forced return is an effort to keep some support for asylum seekers who come here and who need help, get a residence permit, etc. So that there won’t be any support for them at a certain moment, when there are no forced returns. At least, that’s how it’s perceived or at least presented by the government...” – interview with monitor

There are several types of return operations: National Return Operations - NROs (carried out by a national return institution, without the participation of another state), Joint Return Operations – JROs (carried out by an organising member state with the participation of another) and Collective Return Operations – CROs (carried out with the support of a country of return). Article 50 of Regulation (EU) 2019/1896 (Frontex Regulation) mentions return operations for which Frontex “shall provide member states with technical and operational” support, including “through the chartering of aircraft for the purpose of such operations and organising returns on scheduled flights or by other means of transport”. In most cases, “the role of Frontex is to coordinate, while the responsibility for the concrete return procedures remains with the participating Member States, as regards ‘their’ respective returnees present on board. From a legal point of view such ‘joint return operations’ constitute a concerted carrying out of a number of individual return/removal operations (each based on a separate return decision, each subject of individual remedies and each issued in accordance with the applicable national legislation) within the context of one and the same flight”.⁶⁴ In practice, there are also “combined return operations including returnees falling under voluntary and forced returns”. In the 1st half of 2023, for instance, two such operations were organised by Spain and “supported by Frontex under a pilot project and monitored by the fundamental rights monitors”.⁶⁵

Finally, some Member States also organise “unaccompanied returns”, whereby the escort team does not take part in the full length of the journey. As conducted in Poland and Czechia, unaccompanied returns entail the returnee being escorted up to their seat in the aircraft, at which point the escorted operations ends. Unaccompanied returns are considered more cost-effective as they suggest a reduced deployment of escort staff, and, in accordance, limited monitoring responsibilities.

⁶⁴ See n. 30 p. 700

⁶⁵ Frontex, *Observations to Return Operations Conducted in the 1st Half of 2023 by the Fundamental Rights Officer*, 2023. Available at: [Observations to Return Operations conducted in the first half of 2023 By the Fundamental Rights Officer](#)

A JOINT RETURN OPERATION

According to the Common Guidelines on the Security Provisions for Joint Removals by Air,⁶⁶ one can distinguish the following phases of a Joint Return Operation (JRO):⁶⁷

- Pre-return phase
- Pre-departure phase
- In-flight procedure
- Transit phase
- Arrival phase⁶⁸

Carrying out return operations usually involves standardised work processes. As mentioned, monitoring is harmonised for return operations by chartered flight supported by Frontex. A FAiR researcher was granted access to observe a JRO supported by Frontex, with the participation of two Member States.⁶⁹ This JRO is briefly described below:

The researcher had access to the operation on the day of the flight, so including the pre-departure phase, but not the pre-return phase (which includes the communication between the European country and the third country – country of return or country of origin of the returnees)⁷⁰. In the pre-departure phase, the Escort Leader (EL) of the Organising Member State (OMS) briefed all escort officers by presenting the participants in the operation, the exact schedule, some background information on the returnees (all male, all with criminal records)⁷¹, and reminded all participants the basic rules (no alcohol, no headphones, no political discussions etc.). All participating staff were handed over vests which they would wear throughout the operation: Escort Leader, Escorts, Back-up Team Leader, Back-up team officers, medical doctors, monitors and officials.⁷²

Returnees were brought to the point of departure (the airport) under escort from detention. Each returnee was briefly interviewed either by the Escort Leader or the Leader of the Backup Team – 2 interviews were taking place at the same time. Returnees' personal belongings were packed in travel bags or large nylon bags, with tags. Returnees' documents and valuables were placed in plastic envelopes/ bags and held by the escort who accompanied them from detention – the documents were then handed over to the EL officer conducting the interview. During the interview the EL

⁶⁶ An Annex to the Council Decision 2004/573/EC on the organisation of on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders.

⁶⁷ Council of the European Union, Council Decision *on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders* (2004/573/EC), 2004. Available at: Decision - 2004/573 - EN - EUR-Lex

⁶⁸ See the Frontex webpage on Return Operations. Available at: <https://www.frontex.europa.eu/return-and-reintegration/return-operations/return-operations/>.

⁶⁹ The FAiR researcher had access to the operation, by being able to directly observe all return procedures from the land preparations (the preparations taking place on the day of the flight), as well as the flight itself. On the plane, the researcher was assigned a seat in the middle of the plane, next to one of the monitors.

⁷⁰ Research on the bureaucracy of return, including on how travel or identity documents for returnees are being issues, is foreseen in a later stage of the FAiR fieldwork.

⁷¹ This is part of the background information shared with all escort officers, as well as with monitors.

⁷² Officials were all those with no role in the return procedures, and who had the role of an observer – including the FAiR researcher.

asked each returnee⁷³: “Do you know what is happening today? Today you return to [your country of origin]” and briefly explained the procedure. Each returnee had the possibility to mention a telephone number for emergency issues, number which the escort officer would write down. After this interview, the EL assigned each returnee 2 (sometimes 3) escort officers who from that moment on were responsible for that respective returnee until hand-over in the country of origin. Those returnees who had no money, or less than 50 EUR, were given 50 EUR. From the desk where the interview was carried out, returnees and their belongings went through the security check. From the 30 returnees, there were six unclothed body searches which led to four cases with plastic hand ties. In addition, one returnee was restrained with Velcro hand ties.⁷⁴ After the security check, the returnees stopped by the doctors’ desk for a short discussion.⁷⁵ All received the fit-to-fly certificate. Afterwards the returnees went into two waiting areas where they waited (each escorted at all times by 2 or 3 officers) to board the plane.

Two monitors from the Pool of forced return monitors in Frontex⁷⁶ were observing the JRO. They had access to all steps of the operation and could walk freely in the area where returnees were interviewed.

Right before boarding, the EL (from the OMS) briefed all JRO participants (2 Pool monitors, 3 doctors – 2 from OMS and 2 from the Participating Member State (PMS), 2 EL from the PMS and 3 Officials)⁷⁷. This briefing was a summary of activities until that point and the planned boarding: number of returnees, reference to personal belongings of returnees including mobile phones carried by escorts who are to hand these over to the authorities in the country of origin. The rules, particularly with regard to no pictures policy, were again mentioned.

Monitors, officials and doctors were boarded first. Seats were assigned in advance – monitors and one observer were assigned the seats by the emergency exits, in the middle of the plane. Two other officials were seated in the front of the plane. Each returnee was boarded according to standard procedures – one escort officer in front of the returnee, facing the returnee, the other escort officer following, holding one hand up, in the area of the returnee’s head, so that the returnee does not hit his head against the plane. Each returnee was then seated either in the middle seat or on the window seat.

The in-flight and the arrival phases took place without major events. The flight took about 7 hours (including a stop-over for fuel and crew change). During the flight, all passengers were offered food and water (no alcohol). Upon arrival, the handover of all returnees took 45 min, with each returnee being called from the list and being escorted to the front of the airplane – the assigned numbers instead of returnees’ names were called. One monitor had access to the handover process.

⁷³ The purpose of these police interviews, among others, was to make sure returnees have been informed about their return. From the interviews observed by the FAiR researcher, only 2 required interpretation, most took place in German and English.

⁷⁴ Mechanical restraints which can be used during a forced return operation (depending on the national legislation), include: “hand cuffs (steel, plastic, Velcro, textile), body cuffs, head protections (helmet)”. See ICMPD, *FReM Training Manual: Forced Return Monitoring. Comprehensive Training for Forced Return Monitors*, 2015

⁷⁵ There were two doctors participating in the JRO from the OMS. The returnees from the PMS came accompanied by a doctor from the PMS who handed over the documents to the OMS doctors.

⁷⁶ The Pool of forced return monitors was established in 2017 and is comprised by EU-level trained national monitors who, based on MS requests, are called upon to monitor forced return operations. The deployment of monitors is managed by Frontex (through the FAR application), but the monitors are nominated to the Pool by MS. See n. 1

⁷⁷ One of them was the FAiR researcher who conducted the participant observation, the other two were from the returning institution of the OMS. These three participants were offered vests which read “Official”.

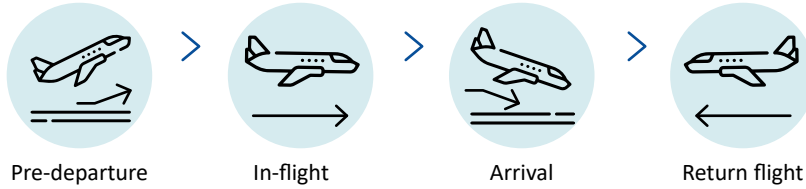
After the handover, the EL gathered participants (monitors, PMS EL, observers) at the front of the plane for a debriefing⁷⁸. EL summarised the operation and answered all questions. One monitor commended the professional organisation and respectable handling of returnees and underlined the usefulness of (de)briefings. The PMS EL raised two points: 1) they were not informed about the stop-over, so the returnees got anxious; 2) the aircraft was too small for such an operation involving 140 passengers (a Boeing 737–800 which seats between 162 and 189 passengers). The PMS EL was informed that the latest schedule, including one stop-over, had been updated in the Frontex Application for Returns (FAR), so that all participating states had access to this information. The relatively small size of the plane was ascribed to difficulties in securing a charter flight for such an operation and the fact that no distance requirements (e.g. for medical reasons) between passengers were specified.

Four hours later the plane landed in a stop over destination, where participating staff spent about 24h. The next day all flew back to the OMS point of departure with the same chartered flight.

⁷⁸ This debriefing is a standard procedure in the arrival phase of a return operation, particularly in forced returns by chartered flights supported by Frontex.

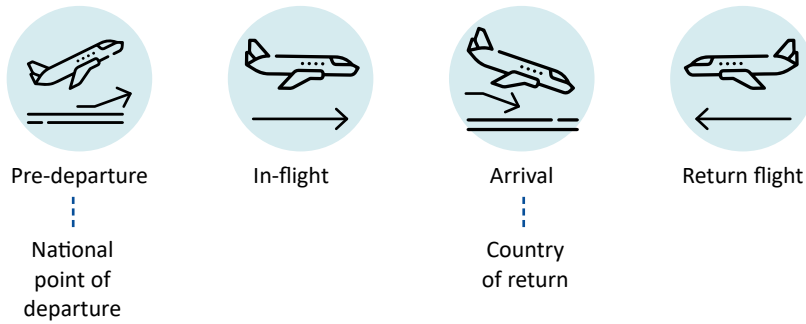
STRUCTURE OF OPERATIONS

While national return operations might not subscribe to the same type of formalisations, a similar structure applies. Some of these phases are common to all return operations, namely, pre-departure, transportation (in-flight and transit) and arrival. The standard phases of a return operation by flight are⁷⁹:

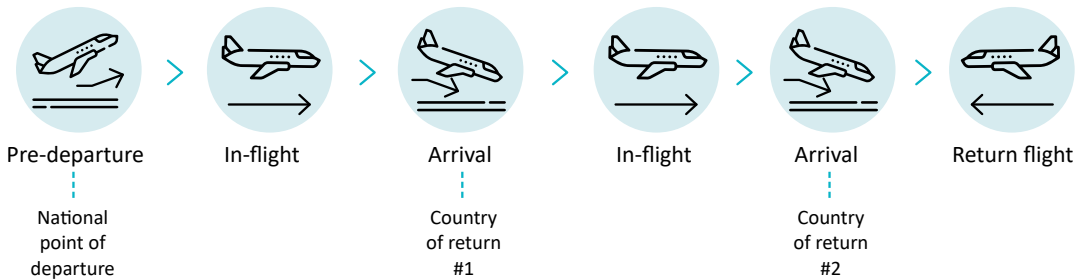


However, the standard phases may be combined in different patterns according to the nature of the operation (NRO, JRO or CRO) and the number of countries of return. For instance, in case of a NRO by scheduled flight, depending on its structure, its phases can be:

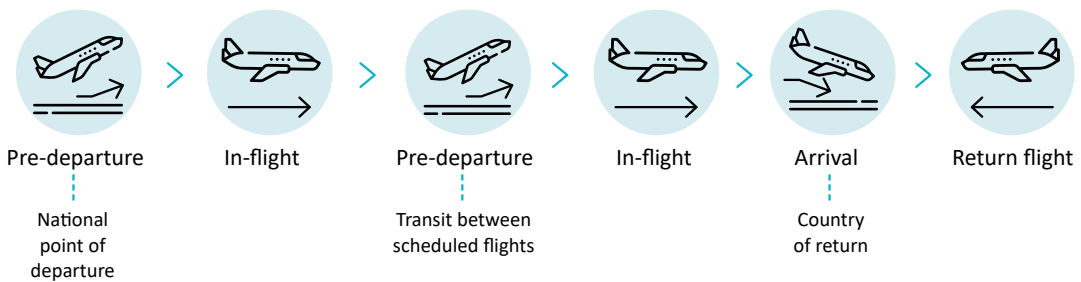
National Return Operation (NRO) with a single Country of Return



National Return Operation (NRO) with two Countries of Return



National Return Operation (NRO) with a single Country of Return and using two scheduled flights



⁷⁹ Monitor, expert in reporting tools, direct communication.

**FUNDAMENTAL
RIGHTS IN
FORCED RETURN**



LEGAL FRAMEWORK

Returnees' Fundamental rights are enshrined in a number of international legal instruments including United Nation's (UN) and Council of Europe (CoE) frameworks. With international law reflected in the EU Fundamental Rights acquis, these frameworks apply to all forced return operations conducted by European Union Member States.

From the CoE system, central for human rights compliance of forced returns is the European Convention of Human Rights and Fundamental Freedoms (ECHR) and its protocols as well as rulings from the European Court of Human Rights (ECtHR). As regards the relation between the Charter of Fundamental Rights of the EU (Charter) and the ECHR, according to article 52(3) of the Charter, in so far as it contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights should be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection. Moreover, according to article 6(3) of the Treaty on European Union (TEU), "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law". The CoE system also establishes a comprehensive institutional framework for monitoring the protection of human rights. In the context of forced-return operations, particular significance is attributed to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). This committee serves as a non-judicial preventive mechanism, safeguarding individuals deprived of their liberty from torture and other forms of ill-treatment. It complements the judicial functions of the European Court of Human Rights. Additionally, the CPT monitors individuals being forcibly returned to their country of origin or another third country. Hence, the CPT is authorized to oversee and report on forced-return operations, with its findings and recommendations serving as a valuable resource for establishing Europe-wide standards and improving forced-return procedures with regard to human rights.

In addition, UN Conventions represent global frameworks for human rights standards and protection. The 1948 Universal Declaration on Human Rights is the starting point in this reasoning. Although it is not an international treaty and therefore does not impose obligations upon states, its rights have been enshrined in international law and manifested in customary international practices; they have been reproduced in numerous conventions and incorporated into national Constitutions.

Several regional and international instruments on fundamental rights and refugee law give rise to specific rights and principles applicable to forced-return operations as well as the process before and during their execution. The following list provides a summary of key documents applicable in the specific case of forced-return operations:

- The Universal Declaration of Human Rights (1948)
- The European Convention on Human Rights (1950) and all related Protocols
- The Convention relating on the Status of Refugees (Geneva Convention, 1951)
- The International Covenant on Civil and Political Rights (1966)
- The Optional Protocol relating to the Status of Refugees (1967)
- The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- The European Convention for the Prevention of Torture (1987)
- The UN Convention on the Rights of the Child (1989)
- The Charter of Fundamental Rights of the European Union (2000)

RIGHTS AT RISK IN FORCED RETURN

During a forced-return operation, returnees are obliged to cooperate in a process in which, one can assume, they are unwilling to take part. They are exposed to situations and behaviours on the part of other people that may adversely impact particular fundamental rights. A forced return implies loss of liberty, but even when they have lost their liberty, returnees have numerous other fundamental rights that may be impacted – these are referred to as “rights at risk”⁸⁰.

For this reason, monitors play an important part in verifying the fundamental rights compliance of the entire removal process. Monitors fulfil a preventive role through their presence during forced-return operations, contributing to increased accountability in cases of actions or omissions by officials involved in the forced-return operation that contravene the EU Charter of Fundamental Rights, relevant international human rights law, and national legislation.

In the context of return, a fundamental principle to adhere to is non-refoulement. The principle constitutes a fundamental safeguard within the framework of international human rights, refugee, humanitarian, and customary law. Although outside of the scope of this report, it is important to mention that the principle mandates that states refrain from transferring or removing individuals from their jurisdiction or effective control if there are substantial grounds to believe that the person would face the risk of irreparable harm upon return, encompassing persecution, torture, ill-treatment, or other grave human rights violations. In the realm of international human rights law, the prohibition of refoulement is explicitly incorporated into the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Regionally, this principle finds explicit recognition in instruments such as the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, and national courts have consistently asserted that this principle constitutes an implicit guarantee derived from the obligations to respect, protect, and fulfil human rights. The prohibition of refoulement is absolute, meaning that it does not allow any derogation or exception. Moreover, the principle of non-refoulement prohibits not only the direct return to the country of origin (direct refoulement) but also the transfer to countries where individuals may face the risk of subsequent removal to the country of origin (indirect or onward refoulement).

⁸⁰ It should be noted here that there are some rights in the European Charter that are not relevant during the course of an operation, such as the right to education.

Member States are also bound to follow obligations relating to the ban on collective expulsion, as laid down in EU and international law. Any form of removal or interception operation preventing entry may constitute collective expulsion if it lacks an individual assessment and if there are no accessible and effective remedies against the decision. Both the principle of non-refoulement and the ban on collective expulsion are important in relation to forced return. However, considering the restricted scope of this report – monitoring forced return and guidelines for monitoring – these topics are addressed in other FAiR publications⁸¹.

With regard to forced return operations, the following list includes those rights that are at greater risk of being compromised during such an operation:

- Right to life
- Right to liberty and security
- Prohibition of torture, persecution and other inhumane or degrading treatment or punishment
- Right to human dignity
- Right to non-discrimination
- Freedom of thought, conscience, and religion
- Access to information
- Right to health and access to medical assistance
- Access to food and water as basic needs
- Rights of vulnerable groups (victims of trafficking, persons with disabilities, etc.)
- Right to family unity
- Rights of the child/best interest of the child
- Right to personal data protection and privacy
- Right to property
- Right to good administration/ to complaint/ right to be heard/ right to access adequate protection

Infringement to the fundamental rights listed above can be done while respecting the principle of legality, necessity and proportionality. This does not apply to the right to life and the prohibition of torture.

According to UNODC, “The principle of necessity has three interrelated elements: the duty to use non-violent means wherever possible; the duty to use force only for a legitimate law enforcement purpose; and the duty to use only the minimum necessary force that is reasonable in the prevailing circumstances”. Moreover, the principle of proportionality “sets a ceiling on what amounts to lawful use of force, in accord with the threat posed by an individual or group of individuals and the offence that has been or is about to be committed”⁸²

⁸¹ The level of protection of the fundamental rights of irregular migrants during different stages of return processes has been examined in the FAiR Working Paper on Legal review of fundamental rights in the return process.

⁸² See UNODC, *Course material on the general principles of use of force in law enforcement*. Available at: Crime Prevention & Criminal Justice Module 4 Key Issues: 3- The General Principles of Use of Force in Law Enforcement (unodc.org)

The right to life

The Charter of Fundamental Rights establishes in Article 2 that “everybody has the right to life, and that nobody shall be condemned to death penalty or executed.” Furthermore, the European Convention on Human Rights establishes also in Article 2:

*“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally ...
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
(a) in defence of any person from unlawful violence;
(b) in order to carry out a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”*

The right to liberty and security

The right to liberty and security is guaranteed by both the Charter of Fundamental Rights of the European Union (Article 6) and the European Convention of Human Rights (Article 5). The latter foresees that “everyone has the right to liberty and security of person” and “no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...]”

b) The lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

f) The lawful arrest or detention of a person to prevent his affecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

Prohibition of torture and inhuman or degrading treatment or punishment

The prohibition of torture and inhuman or degrading treatment or punishment is explicitly articulated in several declarations and conventions. The prohibition is notably enshrined in Article 3 of the ECHR. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is of specific relevance for forced-return operations:

“For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination

of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

When enforcing a forced-return operation, the right to life, the right to liberty and security and the prohibition of torture are of fundamental relevance to protect the rights of the returnee. They constitute the principles under which the use of force may be applied in practice. Besides these, adherence to the principles of legality, proportionality and necessity also limit the use of force. Therefore, any measure taken shall be proportional to the legitimate objective pursued, not exceeding reasonable force, and in line with national legislation. Another crucial factor for consideration when monitoring the use of force is that the use of force should be used as the means of last resort, after attempts at de-escalation or when there was no possibility to de-escalate prior to using force.

Human dignity

The preservation of the dignity of returnees is imperative at every phase of the forced-return operation. This right is notably enshrined in the CFREU’s Article 1 (“Human dignity is inviolable. It must be respected and protected”).

The right to human dignity is likewise intertwined with the use of force, signifying that coercive measures should be employed with a conscientious regard for the human dignity and physical integrity of the returnees.

Non-discrimination

The principle of non-discrimination is codified in Article 21 of the Charter of Fundamental Rights and Article 14 of the European Convention on Human Rights. This principle extends across the entire forced-return operation, ensuring that no returnee is subjected to any unjust treatment or arbitrary actions.

Freedom of thought, conscience and religion

Besides the right to religion enshrined in Article 10 of the EU Charter of Fundamental Rights and Article 9 of the European Convention on Human Rights, returnees should be afforded the necessary time and space to observe the customs associated to their faith and to pray.

The dietary preferences influenced by returnees’ conscience or religion should be duly acknowledged. Returnees may opt to observe fasting, consequently abstaining from food for a specific duration. It is essential to recognize that the conclusion of the fast may need to occur at a precise time that does not align with the regular schedule for food provision.

Access to information

Prior to their return, returnees should be provided with relevant information in a language they understand concerning for instance the detailed process of the return operation or the possibility of further support in the country of return. In addition, the Organising Member State (OMS) shall consider always having an interpreter available to ease the communication between the returnees and the escorts and medical staff.

Right to health and access to medical assistance

The Frontex Code of Conduct for return operations and return interventions provides at article 8(1) that “the returnees are to be removed only as long as they are “fit-to-travel” at the time of the RO or RI. The OMS must refuse the participation of a returnee who is not fit-to-travel”.

Access to food and water as basic needs

Numerous international instruments pertain to the entitlement of every individual to be free from hunger and to have access to sufficient and appropriate food. Consequently, throughout the entirety of the forced-return operation, it is imperative to furnish returnees with ample and suitable provisions of food and water. Standard practice involves offering the same category of food to returnees as to other participants. Moreover, individual dietary requirements of returnees (such as gluten-free, sugar-free, Halal, Kosher, vegetarian meals, etc.) must be considered.

The rights of vulnerable groups (victims of trafficking, persons with disabilities, etc.)

Vulnerable groups are commonly defined as groups and persons that ‘require special attention to ensure that they enjoy their human rights, because their perspectives are not automatically included in the actions and thoughts of dominant groups’, that is, ‘the people whose rights are most at risk of being violated’⁸³ (Mustaniemi-Laakso, et al., 2016). Applied to forced return, vulnerable individuals are those who, due to factors such as age, gender, race, ethnic or social origin, religion or belief, or social, economic, ethnic, and/or cultural circumstances, may be susceptible to discrimination or necessitate particular attention and protection. Many of these individuals experience intersecting forms of discrimination, stemming from factors like disability, age, social origin, or sexual orientation, gender identity and expression.

In the context of a forced-return operation, the distinctive requirements of vulnerable individuals or groups should be considered, and they should receive appropriate assistance.

⁸³ Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Nagore Casas, M., Morondo, D., Hegde, V. G., & Finlay, G., *The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration: FRAME Research Report. European Commission*, 2016. Available at: <http://www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-11.3.pdf>

Right to family unity

The right to family unity is laid down in several international legal frameworks. ECHR article 8 ensures that “everyone has the right to respect for his private and family life” and that “there shall be no interference by a public authority with the exercise of this right”. The CFREU article 7 reaffirms the right to family unity (“Everyone has the right to respect for his or her private and family life”).

In instances where feasible, families should be transported and seated together, distinct from other adult returnees, particularly in situations involving convicted criminals or returnees assessed with a significant risk of engaging in violent behaviour.

Rights of the child/best interest of the child

Article 3 of the Convention on the Rights of the Child requires that “*in all actions concerning children and young people, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”.

The term “best interests” comprehensively encompasses the overall well-being of a child, which is contingent upon various individual circumstances, including age, level of maturity, parental presence or absence, the child’s environment, and their experiences. In decision-making processes that may impact children, the primary focus should be on their best interests. All adults are duty-bound to prioritize what is in the best interest of children. When adults are confronted with decisions, a careful consideration of how those decisions will affect the children in question is imperative. In ascertaining the best interests of the child, due consideration must be given to all rights afforded to the child. The implementation of a return decision by a returning country must fulfil a certain number of key steps and procedures to be considered consistent with the best interests of the child principle.⁸⁴ Beyond the standards outlined in the Convention on the Rights of the Child (CRC), countries are encouraged to adopt superior standards and more stringent protection for the rights of children, in line with CRC article 41.

Right to personal data protection and privacy

The Charter of Fundamental Rights of the European Union establishes the protection of personal data in Article 8:

1. *Everyone has the right to the protection of personal data concerning him or her.*
2. *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*

⁸⁴ UNICEF, IOM, Save the Children, PICUM, ECRE, Child Circle, *Guidance to respect children’s rights in return policies and practices. Focus on the EU legal framework*, 2019. Available at: [Guidance to Respect Children’s Rights in Return Policies and Practices | European Council on Refugees and Exiles \(ECRE\)](#)

3. Compliance with these rules shall be subject to control by an independent authority.

The handling of personal information concerning the returnee, encompassing files maintained by the authorities, the return decision, and related details, is imperative to align with the (national) legal framework and stipulations governing personal data protection. Consequently, this information should not be accessible to all participants involved in a forced-return operation; instead, it should be maintained in accordance with designated responsibilities either by the head of the operation and/or the respective escort leader. As for information pertaining to the medical conditions of returnees, it is to be securely retained under the supervision of the onboard medical personnel.

Right to property

In upholding the right to property as outlined in Article 17 of the Charter of Fundamental Rights, the establishment of systems is imperative. These systems are designed to facilitate the retrieval of crucial property by returnees and to provide assistance in concluding any outstanding matters in the country from which they are being repatriated. Such matters may include interactions with social services, healthcare, or banking institutions, and these processes typically occur in the pre-return phase. It is noteworthy that the oversight of these activities generally falls beyond the purview of the forced-return monitor.

Right to good administration/right to complaint

Article 41 of the EU Charter of Fundamental Rights establishes the right to good administration, intricately connected to the right to an effective remedy, which is safeguarded by both Article 47 of the EU Charter of Fundamental Rights and Article 13 of the European Convention on Human Rights. These international instruments hold legal binding force and are applicable to all EU institutions, bodies, and agencies.

In the context of forced return, the right to good administration requires Member States to communicate clearly and effectively with the returnee(s), in particular with regards to the operation's details and steps. It also suggests an obligation for returning countries to effectively inform returnees on their right to lodge a complaint and seek effective remedy in case ill-treatment has occurred over the course of the operation (ICMPD, 2021).⁸⁵

⁸⁵ See n. 5

MONITORING OF FORCED RETURNS

According to the Return Handbook, “forced-return monitoring is an important tool which may serve the interest of both the returnee and the enforcing authorities as an inbuilt control mechanism for national day-to-day return practices. Effective monitoring may help to de-escalate. It allows quickly identifying and correcting possible shortcomings. It also protects enforcing authorities (...) by providing unbiased and neutral reporting”.⁸⁶

According to OHCHR, human rights monitors can investigate how a forced return was carried out. They can determine whether needless or excessive force or restraints were employed. They can determine whether the use of tranquillizers, sedatives, or other medications to aid in deportation is illegal, and whether this prohibition has been followed in practice. They can see what modes of transportation were used and assess whether due process guarantees were followed.⁸⁷

Furthermore, when monitoring *return conditions*, monitors can ask:

*“What information about the returns process do migrants receive? Do returns take place overnight? Do migrants arrive at night? Does the gender composition of accompanying staff match that of the migrants? Do child protection officers accompany child migrants throughout the process if they are not with a parent or guardian? Does a doctor certify that returning migrants are medically fit to travel? Do officials use force? Do they use restraints, dogs, tranquilizers or other types of force? Do the officials who implement returns adopt gender-responsive approaches and respect the dignity and privacy of migrants in their custody? Are complaint mechanisms in place? Do migrants know how to use them?”.*⁸⁸

In the European context, these questions are reflected in existing national-level guidelines⁸⁹. Previous research on national monitoring systems (ICMPD, 2020),⁹⁰ which covered the countries in focus under this strand of research in FAIR, indicates that monitors from most countries consistently pay attention to the seven following issues (among others):

- 1) Access of returnees to food and water as basic needs
- 2) Health care of returnees
- 3) Rights of the child
- 4) Right to the integrity of the person
- 5) Prohibition of torture and inhumane or degrading treatment or punishment
- 6) Proportional use of force and restraints
- 7) Right to life.

⁸⁶ See n. 24

⁸⁷ See n.25

⁸⁸ Ibid p. 48

⁸⁹ See, for instance Italian National Guarantor for the Rights of Persons Deprived of Liberty, *Guidelines for the Monitoring of Forced Returns*. Available at: [b5f75f04cf7948ef41f19d4728d230ee.pdf](https://www.garantenazionaleprivatiliberta.it/) (garantenazionaleprivatiliberta.it)

⁹⁰ ICMPD, Gaps and Needs Analysis of the National Monitoring Systems in Twenty-Two European Union Member States and Schengen Associated Countries, 2020

In practice, what are the rights and issues the monitor pays specific attention to during the monitoring operation?



Source: ICMPD (2020)

Since the beginning of 2022, monitors from the Frontex Pool have to use a software reporting system (the Fundamental Rights Monitoring System – FRMS) which obliges them to observe the respect of all of the above-mentioned rights. It contains detailed guidelines to help them identify behaviours and situations that may constitute infringements of rights.

Previous research, but also results of the FAiR research on the 11 countries in focus indicate that main issues at stake now – where monitoring is already established and to a certain extent already institutionalised – is the structural characteristics of the monitoring system as such more than guidelines for specific aspects to be observed. One issue raised by both previous research and various stakeholders interviewed in the FAiR project relates to the access of monitors to the entire return operation. In some countries (particularly where monitoring is being conducted by an NGO mandated to monitor), monitors do not have full access to the pre-departure phase, especially to the transportation from the accommodation/detention to the point of departure. In countries where the monitor has full access to the pre-return phase⁹¹, monitors may be empowered to raise procedural flaws or irregularities (failure by the administration to notify the returnee for example) or alert authorities on a particular medical condition affecting the returnee's fitness to travel. Nevertheless, having access to relevant documents regarding the return decision or the fit-to-fly certification and observing shortcomings with regard to human rights compliance does not imply

⁹¹ See the section on Guidelines.

a direct consequence for that respective returnee. In line with the principle of non-interference, monitors can raise some of the issues observed with the EL, at the opportune moment, but they are not to intervene in the return procedure itself. All such observations are to be documented in the respective monitoring report.

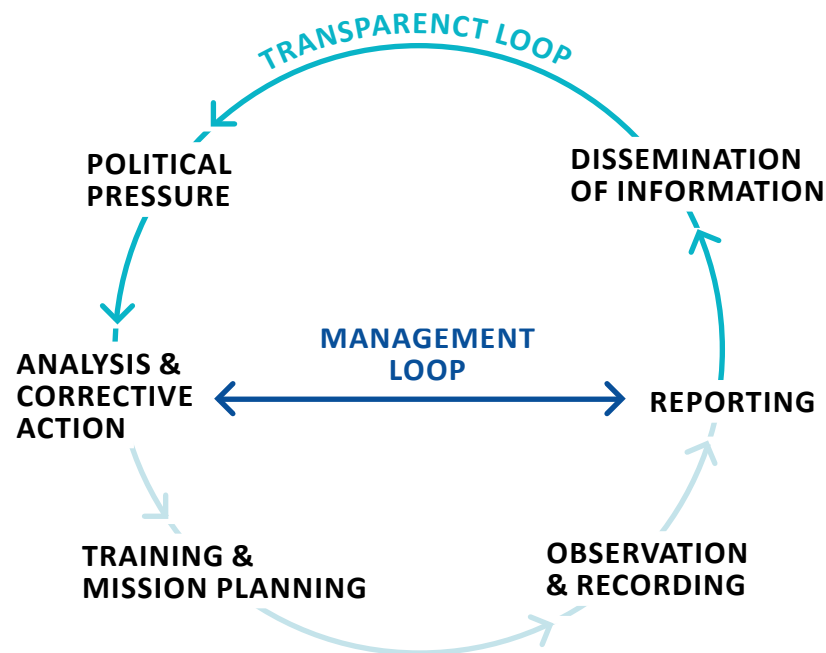
With regard to the differences in monitoring implied by different types of return operations (land, sea and scheduled flight operations), monitors and escort officers consulted agree on several points:

- 1) Monitoring is seen as beneficial to safeguarding fundamental rights. Effects of monitoring can be observed through changes in forced return operations implemented in the past decade, particularly with regard to the use of restraints. Moreover, in general, monitoring observations are increasingly being reflected in the development of escort officers' manuals, standard operating procedures, and training curricula. Due to monitors' "neutral" perspective, their reports are also instrumental in assessing the validity of submitted complaints. Monitors essentially play a pre-emptive role, their presence acting as a deterrent against abusive practices.
- 2) The general approach to monitoring and safeguarding of rights is broadly consistent across different types of operations. Land or sea operations typically entail shorter waiting times (embarkation and disembarkation), minimising the potential for friction in the conduct of the operation. However, in the perspective of monitors with experience in car and bus operations, it is common for transporting vehicles not to meet comfort levels required for forced return operations. Furthermore, land operations tend to last several days and may include a few stop-overs and handovers between police teams over the course of the journey, exposing returnees to possible ill-treatment. Some monitors also reported not being granted access to the vehicle transporting the returnee in the case of car transportation.
- 3) Structural limitations affect monitoring functions in certain national contexts. This is a recurring issue with regard to the limited timeframe monitoring bodies have between the information they receive from enforcing institutions and the operation itself. It has been reported that oftentimes monitoring bodies do not have sufficient time to deploy on such a short notice.
- 4) In general, human rights compliance in return processes has come a long way. Particularly beneficial are the standard and refresher trainings for escort officers which include input and sometimes active involvement from human rights monitors.
- 5) Another aspect highlighted by relevant stakeholders was the effects of monitoring. While from a basic understanding, the role of a monitor is to observe, make themselves visible and note any issues regarding human rights compliance in their respective report⁹², the impact of monitoring on forced returns is deemed to significantly shape monitors' conception of their role. Reporting is fundamental for ensuring that monitoring produces changes. In most cases, during each mission, the monitor observes and records their observations in a report which is circulated to the monitor's management line and the return enforcing institution⁹³.

⁹² Interview with monitor.

⁹³ There are at least two modes to record observations: through a descriptive report, where all stages are describes or through the principle of exceptionality, where the exceptions/ deviations from the norm are noted.

According to a monitor with extensive expertise on reporting tools, there are at least two feedback loops in the reporting mechanism. First there is what can be called the “management loop”, which ensures that data collected in the report is analysed and, to the extent possible and where needed, corrective action is being taken⁹⁴. Another, larger loop, refers to the dissemination of information and it involves, among others, informing the general public with regard to how forced return takes place. This “transparency loop” involved applying political pressure in favour of changes in national regulations applying to forced return. Both these loops are equally relevant for driving changes in forced return procedures and maximising these operations’ human rights compliance.



Source: Monitor, reporting expert, direct communication

Recital 3 of the Return Directive refers to the CoE Twenty Guidelines, which in Guideline 20 “clarify the philosophy behind forced return monitoring as aiming at ‘reinforcing the accountability of those responsible for implementing and facilitating ‘independent investigation’ against alleged ill-treatment. Even though there is no express reference to ‘independence’ in Article 8(6), it can reasonably be argued from this context that in order to be effective, monitoring systems in accordance with Article 8(6) need to be composed of organisations or bodies different from the authorities enforcing return (*nemo monitor in res sua*). This interpretation implies that public bodies (such as a national Ombudsman or specially assigned committees composed of members who en-

⁹⁴ Corrective action is taken by the return authority to address gaps in future operations and/or to remedy a situation of ill-treatment or misconduct.

joy safeguards of independence) may act as monitor. It also implies that it would be problematic to assign a monitoring role to a subsection of the same administration which also carries out return/removals”.⁹⁵ Adopting the same understanding, the European Union’s Fundamental Rights Agency also underlines the importance of entrusting monitoring to “entities that are sufficiently independent from the authority in charge of returns”.⁹⁶

The issue of independence of monitoring is further addressed in the Frontex Code of Conduct for Return Operations which foresees that the “The monitoring system established in accordance with Article 8(6) of the return directive must be effective and must involve monitoring by organisations/bodies that are independent from the authorities enforcing return. MS taking part in a forced RO are required to ensure that they have an effective forced return monitoring system in place”.⁹⁷

While the text of the Return Directive does not provide any explanation regarding the effectiveness of monitoring, there are some indications in other relevant texts. For instance, the Return Handbook alludes to the fact that while States are not required to monitor all return operations, they are required to have a monitoring system up and running and which may rely on “spot checks and monitoring of random samples” of return operations to be considered efficient. Similarly the Directive’s Article 8(6) “does not imply a subjective right of a returnee to be monitored”.⁹⁸

In its overview of monitoring systems, the Fundamental Rights Agency (FRA) operationalises effectiveness through indicators such as: “information about the organisation responsible for monitoring forced return, the number of operations monitored in the given year, the phases of monitored return operations, the number of staff trained and working as monitors, and whether the monitoring body issued public reports about the monitoring”.⁹⁹ The FAiR stakeholder consultations addressed the issue of an effective monitoring system. When assessing effectiveness, the following features of national systems deserve attention:

- Access of monitors to key stages of the return operation
- Early notification and exchange of information
- Standardisation of monitoring practices
- Maximising national monitoring bodies’ capacities

⁹⁵ See n. 30 p. 701

⁹⁶ FRA, *Forced return monitoring systems - 2023 update*, 2023. Available at: [Forced return monitoring systems – 2023 update | European Union Agency for Fundamental Rights](#)

⁹⁷ See n. 54 p. 18

⁹⁸ See n. 30 pp. 701-702

⁹⁹ See n. 97

MONITORING BY MEMBER STATES



OVERVIEW

Directive 2008/115/EC (also known as the “Return Directive”) is a cornerstone of the EU return policy. The Directive establishes common rules and procedures for the return of third country nationals not meeting requirements for legal residency. Above all, the directive requires Member States to implement forced returns “in accordance with fundamental rights” (Article 8 (4)) and to provide for “effective monitoring systems” (article 8 (6)).

As mentioned above, the obligation from the Return Directive to provide for national monitoring systems does not prescribe how such a mechanism is meant to operate nor what it should cover.¹⁰⁰ By virtue of this discretion, national transpositions of the Directive have established different national “systems”, which primarily reflect domestic considerations and priorities related to forced return, resulting in a heterogeneous environment of forced return monitoring at EU level.

Research in forced return monitoring shows that national monitoring “systems” differ in several key characteristics of significance for monitoring’s effectiveness.¹⁰¹ The most prominent differences relate to the stages of return and the type of operations monitored in national contexts. In addition to that, stark differences exist between National Monitoring Bodies (NMBs) in terms of access to resources, training possibilities, profiles of national monitors, timely notification of upcoming missions, and reporting modalities.

These nuances in the national systems of monitoring matter for the reflexion on the effectiveness of forced return monitoring practices in the EU. Considering these differences, there is limited consistency in the way EU MS approach fundamental rights monitoring in forced return. This in turn affects the EU’s capacity to respond uniformly and structurally to human rights infringements in return.

The following section studies/compares the characteristics of national monitoring systems of forced return in the EU. Drawing on research on national monitoring systems in 11 EU Member States (Austria, Bulgaria, Czechia, Germany, Italy, Netherlands, Poland, Romania, Spain, Sweden, Switzerland), it sheds light on the infrastructure of forced return monitoring resulting from the implementation of article 8 (6) of the Return Directive.

Focusing on key commonalities and divergences in national monitoring systems, the section shows how this situation leads to uneven forced return monitoring standards and affects the fundamental safeguards for forced returnees in European countries. In this regard, the section will present several findings on monitoring systems which have pertinence for the human rights compliance of forced return.

¹⁰⁰ See n.24

¹⁰¹ See n. 91

DEPLOYMENT OF MONITORS

The Return Directive sets no specific expectations in terms of organisations or bodies responsible for forced return monitoring at the national level. Member States are free to designate in law or via simple agreement the national body entrusted with monitoring responsibilities. Confirming findings of previous studies, FAiR has identified three distinct categories of organisations responsible for monitoring forced returns at the national level:

National Ombudsman's offices (or independent national organisations)	Non-governmental organisations	Dedicated monitoring units / executive branches of government
Bulgaria, Czechia, Italy, Spain, Switzerland	Germany, Poland, Romania	Austria, Netherlands, Sweden

Considering their independence, and extensive prerogatives enshrined in national law, the national Ombudsman, in some contexts also known as “(Public) Defender of rights”, benefits from what is generally considered the most empowering framework to monitor fundamental rights in the context of forced return. Because their mandates tend to extend to any locations where individual freedoms are restricted, monitors from Ombudsman offices may visit places of detention, including pre-departure detention centres or prisons. Ombudsman monitors are also granted access to individuals’ personal files. Consulting returnees’ files may reveal procedural irregularities or health condition susceptible to activate return safeguards as laid down in national laws on forced return. The Ombudsman also has direct access to national parliaments, giving them the opportunity to highlight issues and raise matters directly with lawmakers.

Some Member States rely on civil society stakeholders and non-governmental organisations to monitor forced returns. NMBs in Germany¹⁰², Romania (National Council for Refugees), Poland (Rule of Law Foundation¹⁰³) belong to that category. This group includes organisations fulfilling different roles and activities in their respective national contexts, including legal counselling and advocacy, most often with a specialisation on migrant or minority groups. These organisations tend to benefit from a strong in-house expertise on migrants’ rights and to be independent from authorities enforcing returns. Nevertheless, in all these contexts, funding gaps have been found to be a recurring penalising factor: the lack of funds drives some NGOs who serve as monitoring bodies to restrict their operations to the pre-departure phase (up until boarding of the plane) and/or to minimise the number of operations conducted. In its 2023 report, the FRA also highlights issues in funding as potentially detrimental to these NMBs’ independence, especially in contexts where

¹⁰² There is no unique organisations for monitoring forced return in Germany. The responsibility is shared between, at the federal level, an independent organisation (National Agency for the Prevention of Torture) and, in the Laender, local “foras” bringing together representatives from NGOs and local agencies. See Report to the German government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment (CPT). Council of Europe, CPT/Inf (2024)

¹⁰³ The FRA report on monitoring systems indicates 3 other organisations as susceptible to monitor forced return operations. This research has found no evidence pertaining to these organisations’ involvement in forced return monitoring.

public funding is prescriptive or non-sustainable.¹⁰⁴

Finally, in a certain number of countries, monitoring is assigned to dedicated agencies under the purview of authorities responsible for the enforcement of return decisions. This is the case in Austria (Federal Agency for Reception and Support Services - BBU), the Netherlands (Inspectorate for Justice) and Sweden (Swedish Migration Agency - SMA). Interviews with key respondents suggest this configuration allows for efficient planning, satisfying levels of cooperation with the police and a proportionally high number of monitored operations.¹⁰⁵ However, their involvement has been described as “problematic” given doubts on the capacity of “sub sections” of law enforcement agencies to impartially report on operations.¹⁰⁶ Additionally, research shows that these organisations’ observations are not subject to wide dissemination and that reporting is in principle restricted to internal channels. As we will see below, this represents a limiting factor in the effective implementation of monitors’ recommendations.

Monitoring’s frequency is another area of divergence among NMBs. The terms of the Return Directive do not compel MS to monitor all national forced return operations. Instead, Member States possess a wide margin of discretion to decide a) which operations to monitor and b) how often to do so. Additional guidance is provided in the EC’s Return Handbook, which specifies that the overall monitoring “intensity” should support the efficiency of national monitoring systems. Member States are encouraged to opt for a system based on “spot checks and monitoring of random samples [of operations]”.¹⁰⁷ In practice, this flexibility leads the deployment of monitors to be primarily driven by national characteristics pertaining to forced return, including prevalent types of transportation and funding structured for NMBs.

In general, NMBs prioritise charter flights in their monitoring due to the number of returnees, diversity in their profiles and the heightened risks for human rights infringements these operations are perceived to entail.¹⁰⁸ Amongst NMBs regularly participating in the transportation phase, research shows for example that deployment of monitors often occurs only in charter flights and that monitoring scheduled flights is rarely or never an option in several MS, including Austria, Germany, Italy, Poland, Spain, and Switzerland. As underlined previously, some stakeholders question the utility of monitoring in the context of commercial flights, preferring to maximise deployment in charter operations.¹⁰⁹ In commercial flights, regular passengers are indeed assumed to play a preventive role due to their capacity to draw public attention if human rights infringements do occur.¹¹⁰

Taking a different approach, the Dutch, Swedish and Romanian monitors are regularly deployed to commercial flights operations, when pre-departure screening reveals particular vulnerabilities amongst returnees. The Czech NMB exclusively participates in commercial flights because no charter flight operations take place at the national level.

¹⁰⁴ See n. 97

¹⁰⁵ AT_1_FR

¹⁰⁶ See n. 24

¹⁰⁷ Ibid

¹⁰⁸ LU_1_FR

¹⁰⁹ Stakeholder workshop conclusions.

¹¹⁰ CH_1_FR

The monitoring of returns by land or by sea is not standard practice for NMBs, even in returning countries where such operations are more frequent because of geographical proximity with countries of return. For example, Bulgarian monitors are not currently involved in any return operations by land.¹¹¹ In Poland, the monitoring body has since 2023 been informed of return operations occurring via land borders, yet with insufficient notice to allow for the deployment of monitors. The Spanish NPM participated in just two sea operations between 2010 and 2022, respectively in 2016 and 2017.¹¹²

Budget constraints also limit the number of monitored operations or restrict participation to pre-departure phases or to remote monitoring. The German National Agency for the Prevention of Torture reports participating in only 5 forced return operations per year¹¹³. The NGOs conducting forced return monitoring in the major German airports focus on pre-departure and never participate in the in-flight stages of operations. In Spain, the Ombudsman takes part in approximately 1-4 operations on a yearly basis and is piloting remote monitoring to try extending its reach. In Bulgaria forced return operations are only monitored up until boarding. Reflecting these limitations, FRA's 2023 report on forced return monitoring systems in the EU highlights the low number of operations as a key concern "for the effectiveness of forced return monitoring".¹¹⁴

SCOPE OF MONITORING

According to monitors interviewed, "accessing all phases of the return operation" is critical to the effectiveness of forced return monitoring systems.¹¹⁵ However, prerogatives differ in this domain as not all NMBs are mandated to cover the same phases, or sequence, of return operations, with significant nuances in approaches, particularly with regards to the pre-return and post-return phases of return operations.

Forced return monitoring usually covers operations from pre-departure until handover to authorities in the country of return.¹¹⁶ This includes the contact talk, transfer to port of departure, security check and boarding (all part of the pre-departure phase), transportation towards the country of return (also known as in-flight phase, for removals via air), handover to authorities (arrival phase) and return phase.¹¹⁷

It is standard practice for the contact talk in the pre-departure phase to mark the beginning of monitoring missions. In most cases, the contact talk takes place the "*day before deportation or (...) on the day deportation takes place*".¹¹⁸ During the contact talk, the escort leader presents himself and informs the returnee on the upcoming operation, including operation timings, means of transport

¹¹¹ BG_1_FR

¹¹² Data extracted from the Spanish NPM "Defensor del Pueblo" reports (2010-2022)

¹¹³ In contrast, Germany organised 73 national return operations with Frontex support in the second half of 2023.

¹¹⁴ See n. 97

¹¹⁵ SE_1_FR

¹¹⁶ See n.42 p.57

¹¹⁷ If the returnee has not been handed over and returns to the returning country.

¹¹⁸ AT_1_FR

tation, presence of staff, steps of the operation, etc. Monitors present in this stage appraise whether the returnee is duly notified of the deportation order and if the briefing meets requirements in terms of the returnee's right to information. Monitoring the contact talk implies the returnee(s) is detained, assigned to residence or present for an appointment with authorities prior to deportation. Respondents from several NMBs have highlighted contact talks as beneficial because they notably allow NMBs to be made aware of vulnerabilities amongst returnees and to assign monitors in response to the profile of the returnees and/or perceived risk of the operation.¹¹⁹

Respondents from several NMBs have highlighted contact talks as important because they allow NMBs to detect potential vulnerabilities and optimise monitoring bodies' decision-making in relation to deployment of monitors.¹²⁰

Ombudsman monitors: By virtue of specific national prerogatives, it is worth noting some NMBs start monitoring operations ahead of the pre-departure phase. This is predominantly the case for Ombudsman monitors who are entitled to access and inspect pre-departure detention centres. In this respect, they may take steps towards supervising detention conditions, for example by checking the returnee's personal files and interviewing detention centre personnel. An Ombudsman monitor may also attend apprehension operations, whereby an individual subject to a return order is taken into custody prior to being forcibly returned. The monitor may thus alert on the police's use of restraints on this occasion or point to issues regarding the returnee's ability to attend to his/her personal affairs before detention and deportation ensues.

Some monitors may also have access to the administrative files of the returnee, allowing them to inspect the lawfulness of the return procedure. In these instances, such inspection may point to existing irregularities in the implementation of the return order. This could include a failure by authorities to duly notify returnees of the return decision, an existing court order suspending the execution or the existence of pending appeals, which, by virtue of national regulations, may lead to the suspension of the operation when duly notified to the escort leader and accepted by immigration authorities.

NGO Monitors and administrations: NMBs from NGOs and governmental units usually refrain from monitoring the pre-removal phase. According to a German respondent, *"no one does [monitor the pre-removal phase]. There are very few instances [of monitoring pre-removal], and that [is] only because people are directly being picked up at the detention facility."*¹²¹ Similarly, in Romania, *"monitoring starts [only] when the pre-departure phase starts"*.¹²²

Some respondents ascribe this situation to a lack of trust between police personnel in detention facilities, who may not be inclined to be subject to monitoring, and return monitoring bodies.¹²³ In some contexts, the scope of NMBs is tailored to exclusively match mandates of return-executing agencies – excluding from return monitoring other law enforcement stakeholders, such as penitentiary services or local police units.

For example, in Sweden, *"[monitors] only cover the escort and the escort leader and their treat-*

¹¹⁹ Ibid

¹²⁰ Ibid

¹²¹ DE_1_FR

¹²² RO_1_FR

¹²³ LU_1_FR

ment during the pickup, but not the staff from the detention centre or the circumstances [in] detention centres.” Monitors interviewed in the framework of the research underline that this limitation doesn’t affect their capacities to duly carry out monitoring functions.¹²⁴

In this respect, it is important to note that the Bulgarian, Czech, Italian, Spanish and Swiss NMBs are also established as National Preventive Mechanisms (NPM) pursuant to the Optional Protocol to the UN’s Convention against Torture (OPCAT). This role grants them extensive prerogatives compared to other, non-NPM NMBs, including access to places of deprivation of liberty.¹²⁵ NPMs have access to a series of facilities which may happen to host migrants pending deportation, including for example state prisons, psychiatric clinics or juvenile institutions.

Like for the Ombudsperson, this mandate allows for monitors to pay attention to these specific and particularly vulnerable cases, and to maximise the scope of fundamental rights monitoring also in the context of pre-departure detention.

Interestingly, some NMBs are also developing instruments to continue monitoring returnees in post-return, namely after returnees have passed immigration checks in the country of return. This is notably the case of the Italian Guarantor of Rights, which has recently entered into cooperation agreements with its NPM counterparts in Georgia and Albania under the umbrella of the OPCAT.¹²⁶ Combining joint monitoring missions and exchange of information on the treatment of returnees by authorities after handover, such agreements are currently focused on analysing “*what happens to people in the first 24 hours after landing, and it is above all aimed at verifying that the authorities of the [origin] country do not carry out, for example, retaliatory practices because perhaps they are people who have tried to seek asylum [in countries of destination]*”.¹²⁷

An agreement also exists between the Swiss monitoring body and the NPM in Kosovo. However, this form of collaboration is limited to the NPM in the country of return ensuring immediate support is provided upon landing.¹²⁸

Most EU MS refrain from investing in post-return monitoring systems. They point to a “lack of practicability” of post-return monitoring¹²⁹ and to the philosophy of the Return Directive, which pertains to the return “process” and excludes the period following the reception of a returnee in the country of return.¹³⁰ Academics and practitioners alike have underscored post-return monitoring’s positive effects in different areas of migration policy in hosting countries: Post-return monitoring provides critical insights on the fundamental rights of returnees, notably by enriching country of origin information and supporting safeguards against non-refoulement in countries of return.¹³¹

¹²⁴ Ibid

¹²⁵ The UN’s Human Rights Office of the High Commissioner describes NPMs as having the mandate to “regularly visit places (...) where persons are not permitted to leave at their own will”.

¹²⁶ See Cooperation Agreement between the Public Defender (Ombudsman) of Georgia (Georgia) and the Garante Nazionale dei diritti delle persone private della liberta personale (Italy).

¹²⁷ IT_4_FR

¹²⁸ CH_1_FR

¹²⁹ Council of Europe, *Response of the German Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CT) on its Visit to Germany CPT/Inf (2024)15*, 2024. Available at: 1680af2746

¹³⁰ See n. 30

¹³¹ Jari Pirjola, “Out of Sight, Out of Mind”, *Refugee Survey Quarterly*, Vol. 38, No. 4, Oxford University Press, 2019 pp. 363-386. Available at: Out of Sight, Out of Mind on JSTOR

ACCESS TO INFORMATION

Stakeholders participating in the foundational FAiR workshop in Warsaw highlighted the particular importance of information-sharing mechanisms as key to maximising the effectiveness of monitoring. Because monitoring implies logistical preparation as well as a careful consideration of cases to monitor, NMBs ask for planned return operations to be communicated ahead of time. These briefings also need to include key data points including operation destination and timings, means of transportation, details relating to the composition of the escort team and, the extent possible, information relating to returnees' profiles.¹³²

Although countries' operational protocols are geared towards supporting cooperation between entities, and maximising the participation of monitors to forced returns, the research points to some unequal standards in this domain.

Some countries have imposed strict deadlines to regulate communications on operations: planned operations in the Netherlands need to be notified to the Inspectorate for Justice at least 7 days in advance. In Sweden, the planning of operations is shared twice a week with the SMA. In Italy, information about upcoming operations is shared daily to the National Guarantor.

Despite these frameworks, some NMBs report being informed too late to allow for a diligent and effective deployment of monitors:

“According to the provisions of the ordinance (...) we should be notified seven working days before or at least 48 hours before the departure. And to be honest, even in the case of flight operations, it doesn't always work out that it was 48 hours before (...) I saw, with an escort somewhere to Guatemala, where we were notified at 3 p.m., and the deadline for submitting a declaration to participate, to buy the ticket to Guatemala was the next day at 3 a.m. (...) And it was 12 hours to check if you need a visa, buy a ticket and so on, and the flight is in 36 hours, so in this mode you can't decide and send someone on a long flight. So, at that time we didn't even consider it. (...) late notification is common, especially when it comes to land operations.”¹³³

This concern was also raised by the Spanish NPM in its 2021 annual report, despite having previously urged its counterpart in law enforcement to improve the terms of information-sharing:

In 2020, the Ombudsman requested the General Commissariat for Aliens and Borders to provide him with sufficient advance information on each of the operations organized by the Central Unit of Expulsions and Repatriations (UCER), whether by air, sea or land, so as to be able to evaluate the participation of the National Preventive Mechanism (NPM) team from its mandate of preventive visits. (...) The Ombudsman is awaiting the normalisation of the regular sending and receipt of this information, without which it would not be possible to adequately program the eventual supervision of these operations.”¹³⁴

The scarcity of information exchanged represents an additional limitation in some contexts. Since only medical staff has access to returnees' medical files, NMBs are sometimes constrained in their

¹³² FAiR Workshop, June 18th, conclusions

¹³³ PL_2_FR

¹³⁴ Defensor del Pueblo, *Informe anual 2021, Mecanismo Nacional de Prevención*, 2021, p.175. Mecanismo Nacional de Prevención. Informe anual 2021 | Defensor del Pueblo

capacity to conduct individualised risk assessments based on returnees’ profiles. In Austria, data protection regulations forbid law enforcement authorities from sharing details on returnees’ health condition, medical needs or convictions in case of offenses with monitors. Instead, the BBU is only informed of potential vulnerabilities on the day of the contact talk, shortly prior to deportation. This has been reported to represent a challenge to deployment decisions made by the NMB.¹³⁵ Similarly, the Swiss National Agency is not entitled to receive information on returnees’ health condition.

In Czechia and Italy, monitors are entitled to access the returnee’s medical files, as part of the Ombudsman’s mandate. In Italy, forced return monitors can for example request a briefing from the medical team in the pre-departure phase up until boarding. Should the medical evidence reveal a serious risk posed by forced removal to the individual’s health, the Italian monitor may even take steps towards suspending the operation:

“Monitors from the [Italian Guarantor] make further effort to assess these situations and understand if there are cases that could hinder the forced repatriation. Some returnees would tell the monitor that they have therapies on-going that usually do not emerge from the health documentation or have effective ties in Italy. After collecting a range of information, monitors start a dialogue with the escort leader.”¹³⁶

Most NMBs are nevertheless not empowered to assess the legitimacy of the return decision, including from a medical perspective. Except for Ombudsman offices, forced return monitors exclusively focus on the treatment of returnees and interactions with the escort team:

“The limitations of the monitors’ powers in the Polish system are large, because we are not able to verify any legal basis for the implementation of this operation, we cannot check the foreigner’s documents or decisions that have been issued against him, we do not have access to the medical examinations of this foreigner to check whether he can be deported from a medical point of view, so we can actually only focus on our observations regarding the treatment of him during this phase or during a joint flight”.¹³⁷

REPORTING AND INDEPENDENCE

Prior sections of this report highlight the role of monitors’ reporting mechanisms in effectively supporting fundamental rights compliance in forced return. Monitoring reports include tailored recommendations for law enforcement authorities based on observations drawn from monitors. They may also flag spontaneous or recurring issues susceptible to have undermined the exercise of the returnee’s fundamental rights.

¹³⁵ AT_1_FR

¹³⁶ IT_4_FR

¹³⁷ PL_2_FR

The EC's Schengen Evaluation and Monitoring Mechanism represents another impact vehicle for forced return monitoring. Carried out every 7 years, this assessment purports to review Member States' application of Schengen rules. In this context, monitoring reports represent a useful resource to shape the assessment on return practices and formulate recommendations geared to authorities.

Monitors interviewed in this research are keen to stress overall progress in fundamental rights compliance and the cooperative attitude of law enforcement with regards to recommendations issued in the framework of forced return monitoring, in particular in areas relating to the use of restraints, children's well-being or attendance by medical staff of return operations.¹³⁸ Escorts are also grateful for monitors' role in reporting facts and the guarantees reporting provides against alleged accusations.

National monitoring systems in Europe are not uniform in the way they report, including in the content, recipient, and accessibility of monitoring reports. Like for other aspects of monitoring, reporting modalities are coded in national law or embedded in practice, leading to nuances in reporting configurations, which may influence the impact of monitoring. The credibility assigned to NMBs is also key in driving positive outcomes.

Discussions during the FAiR foundational workshop also pointed to the inherent benefits deriving from "public" forms of reporting: monitors notably stressed that the public accessibility of reports was instrumental, in many instances, for maximising public pressure in favour of reform, ultimately facilitating the adoption of monitors' recommendations in forced return procedures.¹³⁹ In contrast, monitoring reports are found to be less impactful in national contexts where law enforcement authorities are, as per reporting mechanisms, the sole recipients of monitoring reports.

In this regard the situation is vastly different across Member States. Some NMBs report exclusively to the entities in charge of conducting forced returns (police). Others produce reports and accounts that are more broadly disseminated, including to different levels of the administration and to the general public.

In Austria, reports from the BBU are submitted to the Head of the Human Rights Observation Department at the BBU. This report is then submitted to the Ministry of Interior and the Ombudsman's Office. In the Netherlands, monitoring reports are submitted to all organisations taking part in the removal, including the custodial institution (responsible for detention centres and transportation to airport) and the escorting authority (KMar). In Romania, reports are handed to the Ombudsman office and to the General Inspectorate for Immigration.

In addition to the law enforcement authority in charge of conducting forced return, the Swedish Migration Agency (SMA) reports on forced return monitoring are sent to a board of NGOs which convenes regularly to exchange on issues noted down by the SMA. The reports from the Swiss NMBs are also to be shared with a consultative forum bringing together multiple stakeholders from public and non-public agencies.

¹³⁸ RO_1_FR; SE_1_FR

¹³⁹ Conclusions from FAiR stakeholder workshop in Warsaw, 16th April 2024.

According to a Swedish monitor, the consultation with NGOs leads to a fruitful exchange and induces positive impact:

*“So normally, [no] information about the right to complain about the treatment during the return operations [is provided], and that this was something that was commented on by the consultative forum a number of times and after a joint meeting on this aspect, they come to the conclusion, OK, this is something we really need to improve on. And they made guidelines, and they also follow up followed up on the guidelines that it was really carried out in practice as well”.*¹⁴⁰

The situation is different in Italy, where reports are submitted to the Board of the National Guarantor which reports to the Ministry of the Interior after every mission. The GNPL reports yearly to Parliament on all issues covered and these reports are made available on the GNPL’s website, including the responses formulated by the administration. The Spanish Ombudsman produces a yearly report on all its activities, and this report includes dedicated sections on forced return monitoring. Following a similar approach, the reports from the Czech Ombudsman are also made available to the public.

MONITORING BY FRONTEX

For the purpose of comparison with national systems, this sub-section briefly describes the monitoring system coordinated by Frontex.

Deployment of pool monitors to forced return operations is done in response to requests from Member States. At the present time the majority of requests come from Germany, with a lesser number from France and other states. Requests are forwarded to pool monitors via the Member States’ administrations and the NMBs from which they come. The monitors submit offers to cover individual operations and Frontex selects from these offers. Monitors’ participation to Frontex operations is voluntary, predominantly because monitors are employed in other jobs. From that point onwards the monitors are in a sense “engaged” by the requesting Member State but without any kind of contract. The terms and conditions of their work are set by the Member State and the NMB to which they belong.

The requests, offers and selection follow a monthly cycle, which normally gives monitors adequate time to prepare for the missions assigned to them. The monitors participate in the operation to which they have been assigned, where they monitor the contingent of the Member State which requested them, normally the OMS. If the operation is a JRO or CRO, there may be other contingents that do not have a monitor of their own. The OMS monitor may also monitor them, with the consent of their escort leader. During the operation, the monitor may consult the Checklist of points to observe, which is built into the FRMS application in their smartphone. At the debriefing at the end of the operation, the monitor provides immediate feedback to the escort leader(s) and others on points that could be improved and on particular good practices.

When the operation is over, the monitor drafts a report using the FRMS software. The report is data-driven, with well-defined fields. Note that the monitor always has the option of writing extensive descriptive text where is necessary. The report contains a number of mandatory fields which must be completed (particularly in the case of coercive measures). It also has many other fields where completion is optional. If the monitor has observed situations and behaviours as listed in the checklist that may be evidence that rights have been respected, then they must report it.

Monitors' reports are submitted to a database managed by the Fundamental Rights Office of Frontex, who use FRMS software to analyse them. At the same time, they are automatically forwarded to the administrations of all Member States participating in each operation. The monitor receives a copy which can be kept by their NMB.

Follow-up to the reports is in the hands of the participating Member States and of the Frontex FRO. The FRO can request immediate clarifications of what happened. They also make a half-yearly public report which is circulated to all Member States and EU institutions. The deficiencies and good practices listed are based on a consistent analysis of the FRMS database, so that recurring problems can be highlighted. The Member States themselves can follow-up points for investigation and improvement with their respective enforcement authorities.

FORMULATION OF GUIDELINES: EFFECTIVE DEPLOYMENT OF MONITORING

Stakeholder interviews and consultations with practitioners (including forced return monitors, escort officers, etc.) have shed light on key issues relating to both the harmonisation of human rights monitoring of forced return in Europe and its overall effectiveness across settings.

With regard to harmonisation between countries, several stakeholders point out that, irrespective of the type of return operation considered, characteristics of fundamental rights monitoring in forced return remain the same. In this sense, existing guidelines and practices relating to monitoring human rights by chartered flight apply across different types of operations¹⁴¹. In contrast, stakeholders report challenges regarding deployment of monitors which in turn adversely impact monitoring's effectiveness in the context of national return operations. For instance, in addition to highlighting what monitors should observe (a core aspect of guidelines), guidance should also mention core components of an effective system for monitors' *deployment* across European countries. This includes resources, a clear (and extended) mandate for monitoring, as well as a fit-for-purpose reporting system. Some of these have already been formulated by previous studies, but still require actionable suggestions which Member States can act upon (ideally within their respective national monitoring system – irrespectively whether monitoring is being undertaken by the Ombudsman institution or through a project-based activity conducted by a specialised civil society organisation).

The task's scope (within the FAiR project) has been adjusted over the course of the research to re-

¹⁴¹ Developed through the FReM projects (as of 2013) which employed a participatory approach.

flect these priorities. The guidelines therefore also prioritise the formulation of baseline actionable points supporting NMBs in the deployment of monitors. These will be highlighted as such in the monitoring guidelines.

HARMONISATION

For the purpose of this report, harmonisation is understood as any common measures at the level of the Member States or of the EU. By “common measures” we mean:

- firstly, improved practices which are adopted by more than one Member State (but not necessarily by all)
- secondly, those adopted by all Member States by agreement at the EU level.

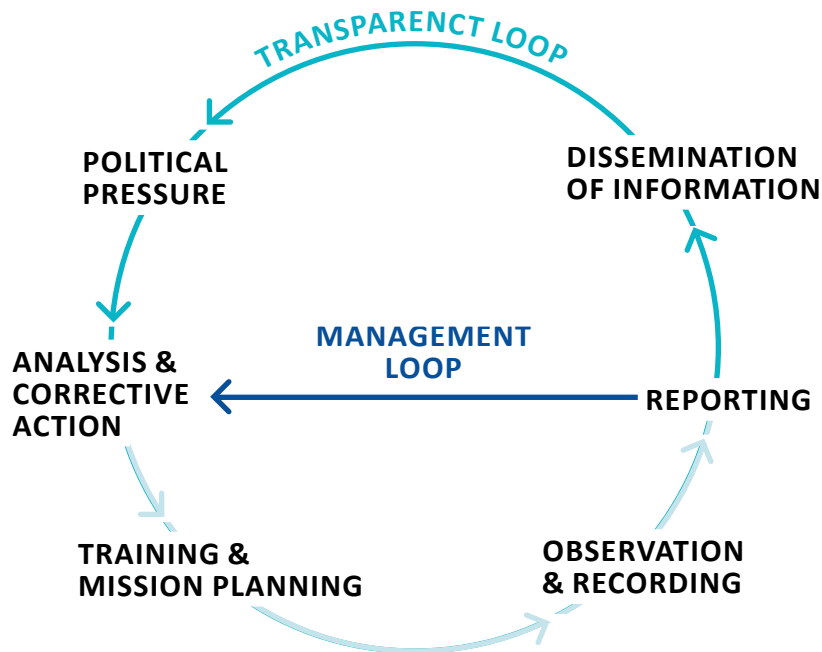
Harmonisation then should be seen as a means of making the monitoring of forced returns more effective in protecting fundamental rights across the whole of the EU. It is not an end in itself. This report proposes guidelines for good practices which, if adopted widely in a process of harmonisation across the EU, are expected to increase effectiveness of monitoring.

GUIDELINES



THE MONITORING SYSTEM

Effective monitoring requires a complete monitoring system to adequately protect fundamental rights. We mean by “system” at least the following components and relationships:



The guidelines below are divided in two groups:

- 1) Guidelines for the monitors themselves, concerning their conduct and what they should observe.
- 2) Guidelines for national authorities for deployment of monitors and follow-up to their reports.

One of the main sources of the guidelines for monitors are the existing harmonised guidelines developed through the FReM projects (between 2013 and 2021) for monitoring returns via chartered flights. As explained above, the fundamental rights to be observed by monitors remain the same.

GUIDELINES FOR MONITORS

RESPONSIBILITIES

Forced-return monitoring covers the entire return operation from the pre-departure phase until the handover of the returnees in the Country of Return. The monitors monitor the pre-departure phase, the transport phase, the arrival phase and also a so-called return phase, if the national

authorities of the Country of Return did not accept the returnee and the transport has to be redirected back to the Country of Departure.

Monitors actively look for situations and behaviours that may be evidence of a breach of those fundamental rights still possessed by returnees (“rights-at-risk”), given that they are in detention.

Monitors maintain a position where they can properly observe the return operation, but without obstructing the work of the escort officers or hampering the effectiveness, security, or safety of the operation.

Monitors are **pro-active** and clearly visible while deployed in Return Operation. By actively engaging, his/her presence can enhance compliance with human rights standards. Monitor’s presence has a preventative role by deterring potential violations and promoting a culture of adherence to established procedures.

Monitors may address the escort leader with any observations or questions at an opportune moment. That is a time of calm, offering privacy, and without the monitor impeding the escort leader’s duties.

Monitors report on

- 1) whether the forced-return operation was conducted in a humane manner and in compliance with fundamental rights;
- 2) whether returnees were treated respectfully and in compliance with fundamental rights;
- 3) whether the rights of vulnerable people were addressed and respected;
- 4) whether any use of force was in line with the rules set out in law, did not exceed reasonable force and was used with due respect for the returnee’s rights, dignity and physical integrity;
- 5) any other incidents that could lead to returnee’s fundamental rights breach.

CONDUCT

The monitor must respect the three key rules:

- 1) safety (taking care of own safety, keeping safe distance);
- 2) alertness (no sleeping, no earphones);
- 3) non-intervention.

Furthermore, the monitor

- 1) acts in **caution and in confidentiality** – speaking with the returnees should take place in private, notes or observations may not be shared or accessible for others during the operation; if any feedback must be shared it should be done in a respectful manner, not in front of other participants.¹⁴²

¹⁴² This is particularly relevant for 1) monitors working in team and providing feedback to each other but also 2) when a monitor provides any feedback to the escort leader.

- 2) cannot act as an interpreter or taking up other responsibilities that belong to other participants to the return operation. It could be perceived as a breach of principle of independence
- 3) must be ready to inform the returnee and any other participant about his/her mandate and the role in the return operation.
- 4) never makes any promises (monitor refers returnee to the escort leader if a returnee asked for anything).
- 5) offers his/her findings and recommendations during the de-briefing, provided national legislation/standard operation procedure allows it.
- 6) respects the principles of **accuracy, confidentiality, impartiality, and non-discrimination** at all times.

If a Return Operation extends over several days, it's recommended that the monitoring team includes more monitors who can collaborate effectively. This approach helps ensure safety, attend to the basic needs of monitors, and maintain vigilance.

OBSERVATION

Prior to the PRE-DEPARTURE

If the national mandate of a monitoring body allows, forced-return monitors should commence their monitoring work in the detention-centre **prior the pre-departure phase (ideally either the day before the operation or on the day of the operation)**. If this is the case:

Reviewing files:

- 1) The monitors should check the relevant files kept in the detention centre. These may include social services files to inquire about potential vulnerabilities, special needs or security risks; medical records, if permitted by national legislation; any documents supporting the legal basis for return.
- 2) The monitors should check whether the documents and instructions provided to the returnees are in a language they understand. If not, they check what means of interpretation or translation are used, to ensure that returnees understand their rights, obligations and relevant procedures.

Availability of Complaint Forms:

Monitors check if the complaint forms are readily available and in the language that the returnee understands. Returnees should have a good understanding of the relevant complaint procedures. Complaints by returnees can address any issue related to the treatment by the escorts or other participants or any potential violations of fundamental rights. National authorities may have their specific formats of complaint forms. In any case, returnees should be informed about the contact details (where to send the complaint) and the upcoming procedure, including the timeframe for handling the complaint.

Interviews:

If national rules and standard operating procedures allow, monitors should conduct interviews with both the detention centre staff and the returnee (ideally on the day before the operation or on the day of the operation).

Monitors should not conduct an interview with the returnee if the returnee has not been informed about their return, as it is not in their mandate to inform a returnee about an upcoming forced-return operation. However, the monitor can be present at the return notification interview, if national rules permit.

Verification checks:

Monitors should check whether:

- 1) **A medical examination** was conducted on a returnee with medical problems/special needs and the returnee is fit to travel;
- 2) The returnee was duly **informed** about his/her return in a timely manner;
- 3) any issues need resolving before the forced-return;
- 4) the returnee could establish **contact** with relatives and family in both the Country of Departure and the Country of Return.

Applicable national rules vary. If the national mandate does not allow its monitors to conduct interviews in the detention centre, monitors should obtain the above-mentioned information during the subsequent phases of the forced-return operation when the opportune moment arises (a time of calm, free from incidents, offering privacy, and without impeding the escort leader's duties). This information can be obtained from the returnee or other participants in the operation who have the relevant knowledge (such as the escort leader or the medic).

Monitoring the pre-departure phase

The pre-departure phase covers the period from leaving the “holding facility” or accommodation until embarkation on the aircraft (if scheduled flight) or boarding another form of vehicle used for the operation (if land or sea operation).

The process **should** be consistent across different types of return operations (sea, land, air), though variations typically arise in the mode of transportation and duration. There are no major significant differences between the pre-departure phases of different types of return operations (sea, land or scheduled flight). The variations typically lie in the mode of transportation, as well as the duration of the operation. Return operations by land and sea operations may be more physically demanding, lengthier longer in duration, and necessitate require a greater larger number of monitors compared to scheduled flights.

During the pre-departure phase, the following key aspects should be observed:

Escort Team Briefing:

When the escort team is briefed on the time frame, applicable procedures, risk assessment, and identified vulnerabilities, the monitor should be present to gather relevant information and ensure that the escort team is adequately informed and prepared.

Information on health and security Risk Assessment for Returnees:

- 1) Monitors should **proactively request information** about the returnees' conditions and any potential issues or medical problems, especially regarding any hunger strikes, self-injury, medical conditions, threats against escorts, and/or aborted removals;
- 2) The monitor they should be informed about the outcome of the **risk assessment** for both the returnees and the operation itself. The monitor shall gather this information at the Escort Team briefing or by directly approaching the escort leader.

Vulnerabilities:

The monitor should gather information on any specific **vulnerabilities** among the returnees and verify whether special attention is given to their needs (for ex. physical health, mental health, history of ill-treatment). The monitor shall gather this information at the briefing or by directly approaching the escort leader; If vulnerabilities are not communicated to escort officers, appropriate actions or care cannot be provided. Therefore, addressing these concerns during the briefing is crucial.¹⁴³

Physical Security Check:

- 1) The monitor should observe that the escorts clearly explain to the returnee that a physical security check will be conducted before starting; the check must be carried out by officers of the same sex and with due respect for privacy and dignity.
- 2) If the mandate allows, monitors should be present while the returnees are undergoing a **body search**, to gather information to observe any incidents, medical problems or self-harm issues, that may have occurred. If the monitor is of a different sex than the returnee, the monitor should observe from outside the room (with the door kept only slightly ajar).
- 3) The monitor observes whether measures to prevent returnees from self-harming have been taken, while boarding the vehicle.

Restraint Use:

If restraints are used, the monitor **should** observe their application, focusing on proportionality, the type of restraints used, and the duration of their use.

Facility Equipment:

- 1) The monitor verifies that the waiting facility is properly ventilated, heated and with sufficient lighting.

¹⁴³ For consolidated guidance on to the situation of vulnerable persons and children consult n. 85, as well as the FRA, *Returning unaccompanied children: fundamental rights considerations*, 2019. Available at: [Returning unaccompanied children: fundamental rights considerations | European Union Agency for Fundamental Rights](#)

- 2) The monitor verifies that the waiting facility is properly equipped including adequate seating and, if possible, a designated play area for children; Families with children or women are separated from other returnees, especially in large groups, and that individuals exhibiting disruptive behaviour are also separated from families and children in particular.
- 3) The monitor verifies that waiting facility is accommodated to address different forms of vulnerabilities if applicable in the specific return operation.

Personal Belongings and Basic Needs:

- 1) The monitor observes whether the returnee is duly informed about the handling of their **personal belongings** and valuables, including who is responsible for safekeeping during transport and when they will be returned to the returnee. The monitor should notice the state of bags and luggage of returnees (luggage is packed, identifiable, within weight limits);
- 2) The monitor observes whether adequate food and water and other **basic necessities** are provided, paying attention to special needs of vulnerable persons; returnees are given the opportunity to use the restrooms, ensuring their privacy and dignity of the returnee is maintained; the needs of smokers are addressed as far as possible; religious needs are accommodated as far as possible and the returnees are duly informed about their right to practice their religion;
- 3) The monitor observes if requests of returnees are being taken into account, such as calling relatives, families, friends, lawyer before departure.

In some scenarios (i.e. unaccompanied returns), returnees are brought to the aircraft on a scheduled flight and continue unescorted, thus not under the effective control of the police authority. In this case, the mandate of the forced-return monitor finishes at the moment the door of the plane closes and the aircraft takes off.

Monitoring the transport phase

The transport phase begins when all passenger have boarded the aircraft/other vehicle and the door of the plane/other vehicle door has been closed. It ends upon arrival at the final destination, i.e. the country of return or, if return fails, the country of departure, including any transit through other countries.

The monitor must be present in the same **vehicle** as the returnees. If more than one vehicle is used for transportation, the monitor, following the instructions of the escort leader, must travel in the same vehicle as returnees who are considered at higher risk of resisting or those identified as vulnerable.

The monitor must be seated in the best position that allows for clear visibility and hearing what is happening during the transport. The escort leader determines the most suitable seating position based on his/her assessment. Special attention should be given to ensuring that vulnerable individuals, such as families with young children and those with disabilities, are handled with care and consideration throughout the boarding process. Vulnerable persons among the returnees are attended to appropriately, and that due consideration is given to how and when vulnerable groups such as families with young children and individuals with disabilities are boarded.

During transportation, the following key aspects **must** be observed:

Vehicle conditions:

- 1) the monitor must verify that any air-conditioning/heating system is used appropriately;
- 2) the monitor must verify that vehicles used are clean, well maintained and protected against excessive heat, cold and noise; Similar applies in case of return operation by sea.
- 3) the monitor must verify that vehicle doors are kept open during delay or stops, weather permitting.

Well-Being:

- 1) the monitor must pay attention to seating positions, including the location of children in relation to other passengers and the accompanying adult(s);
- 2) the monitor must observe whether with stops at petrol stations handled with dignity and privacy, and lavatory visit frequency managed appropriately;
- 3) the monitor must observe whether there is an access to sufficient food, water and other non-alcoholic beverages, including provisions for those with specific health and religious requirements;

Safety and Restraint Practices:

- 1) the monitor should verify that sedatives are not used for removal purposes. They are only allowed in exceptional in emergency situations under medical supervision. to ensure security as they are forbidden without prejudice to emergency measures under medical supervision to ensure security throughout the transportation phase.
- 2) if applicable: observes the use of restraints focusing on proportionality, the type and the duration of the measure.

Monitoring the arrival phase

The arrival phase begins with arrival in the Country of Return, and ends when the returnee is handed over to the national authorities in the Country of Return. In the event of an unsuccessful return, the arrival phase ends with the handover to the authorities back in the country of departure.

Before the handover takes place, the monitor must observe:

Return of Personal Belongings:

the monitor must verify that personal belongings, including medication stored with the escort leader or medical personnel (if present) , are returned to the respective person before the handover to national authorities.

Handling of Complaints:

the monitor must verify that respective personnel of the return operation handled any complaints by returnees in full compliance with the law.

Information Confidentiality:

the monitor oversees that the escort leader does not provide information to the authorities of the receiving country, that could endanger the returnee's safety upon handover (e.g. information about an asylum claim or criminal activity). The monitor should be present during the handover to directly observe this process.

If applicable: Restraint Removal

the monitor observes that any remaining means of restraints are removed upon arrival. Should this not be the case, the monitor checks the reason for this, including reference to the relevant procedures (such as consultation with the receiving country⁹⁰ was consulted, as it pertains to state sovereignty), at the opportune moment;

Note: Currently, monitoring the treatment of the returnees by the national authorities upon arrival after "hand-over" is not within the forced-return monitor's mandate.

Monitoring the return phase

National authorities in the country of return may refuse accepting a returnee to be "handed-over". This may be the case when documents are not accepted, if there are doubts about the nationality of the returnee, or the returnee is in need of specific medical care, which the country of return is not equipped to provide.

The return phase covers the period starting after the (planned) handover procedure in the country of return until arrival at the airport of departure or all the way to a facility, depending on the national mandate.

Depending on national procedures, either the same escorts remain responsible for a returnee not readmitted, or a back-up team of escorts, if available, must be responsible for the returnee on the way back to the country of departure. **The same rules to the transport and hand-over phase apply.**

Monitoring the use of force and means of restraint

Use of force and means of restraint can occur at any phase of the Return Operation, jeopardizing rights such as the right to life, right to liberty and security, prohibition from torture and inhuman or degrading treatment or punishment, right to human dignity and others.

The direct threat that the misuse of force poses to these rights underscores the significance of closely observing the treatment of returnees by the escort officers.

Therefore, as a general principle:

- 1) Monitors must be well versed in **applicable national rules** on the use of force and coercive measures. It is recommended that they undergo **training** on techniques used to be able to accurately draw recommendations if they observe any irregularities that have implications for fundamental rights of returnees.

- 2) In all phases, the monitors must pay particular attention to every incident that involves the use of force or means of restraint on a returnee – each time it is used and/or used more than once or repeatedly.

They should make careful notes of the incident and thorough description of the techniques and restraints that were used.

In all phases, the monitor notes down all the facts and observations so that the **necessity and proportionality** of use of force and means of restraint can be fully assessed.

The monitor must absolutely note down if a returnee was restrained in a way that may prevented or impeded the mechanism of normal **breathing**.

The monitor checks the use of **de-escalation and communication skills** prior and during the use of force or restraints.

Monitors must pay attention to the **duration** of the use of restraints and use of force. This also includes taking note any effects of the restraint on the returnee; whether there are any injuries; what was going on around the returnee (e.g. were other family members or children present who witnessed the use of force?); if there were threats to other returnees or escorts.

The monitor may request additional information including details about the measures applied, justification, time duration etc. from the escort leader, at an appropriate time.

In case of movement in a public area (e.g. airport in scheduled flights, petrol station in land operations), the monitor must check whether the means of restraints are used in a way that guarantee respect for dignity and privacy of the returnee.

Monitoring return of families with children and other vulnerable persons

While all rights are equally important, special attention is warranted for children and other vulnerable individuals to ensure that their specific needs are addressed.

Vulnerable persons may have diverse needs based on their unique circumstances, and vulnerabilities can be either apparent or concealed. It is recommended that monitors gather comprehensive information and take a proactive approach in assessing varying needs of vulnerable individuals.

Monitors observe and assess whether these specific needs are appropriately addressed by escort officers and other actors, such as medical personnel and detention centre staff.

Monitors observe that children or other vulnerable persons are not exposed to a possible violent behaviour of other returnees throughout the whole return procedure.

With regards to unaccompanied minors, special considerations apply. In line with obligations deriving from the Return Directive's Article 10, monitors may observe whether assistance by specialised organisations has been sought by returning authorities and if adequate reception in the country of return has been organised prior to departure.

REPORT WRITING

In order for the national forced-return monitoring system to be fully effective, a report should be carefully drafted and sent to appropriate addressees in a timely manner. This ensures that relevant stakeholders are promptly informed of any findings and can take necessary actions. Monitors formulate recommendations for relevant stakeholders to end bad practices or improve current practices, as needed to safeguard the fundamental rights of returnees.

Different practices exist regarding the **format** of the forced-return monitoring report. It is recommended that, regardless of the format, the **reports are data-driven and offer comparable subject matter**. This helps in evaluating the effectiveness of current practices and identifying areas that require further attention.

- 1) Monitors must respect the principle of accuracy.
- 2) They must indicate in the monitoring report when information was received from third parties.
- 3) States should have **clear and transparent procedures** regarding the appropriate follow-up that comes after a monitoring report is received. This promotes **accountability** and continuous improvement in upholding fundamental rights in forced-return operations.

The following elements are essential to be gathered in every return operation and they should be included in the report for every return operation:

- **the use of force and means of restraint,**
- the treatment of **vulnerable groups,** and
- any other relevant **recommendations** or exceptionally **“good practices”**.

Report for each return operation should also contain a **factual description** to illustrate how the operation unfolded. ¹⁴⁴This description serves to provide insight for individuals not directly involved in the operation. By making these reports public, it promotes accountability and transparency.

Standardizing the report content and structure enhances the efficiency of follow-up procedures. This ensures consistent monitoring and addressing of recommendations.

¹⁴⁴ The Frontex FRMS system does not do this but follows the “exception principle”, only reporting deviations from standard practice. Mandatory data fields provide coverage of critical points such as coercion.

GUIDELINES FOR NATIONAL ADMINISTRATIONS

MONITORS' MANDATE¹⁴⁵

Member States, in their harmonization efforts, should learn from the best practices of other Member States and empower their monitoring bodies with the widest mandate possible to ensure that forced-return monitoring is as effective as it can be.

Forced-return monitoring bodies must be independent from the return-enforcing authorities.

Forced-return monitoring covers all phases of a return operation. This also means that return enforcing authority shall ensure that the monitors can be **physically present during all phases of a return operation**, including in the locations where all relevant procedures take place, such as transport vehicles, private accommodation during pick-ups etc.

DEPLOYMENT OF MONITORS

Return enforcing authority should reach a **joint functional agreement** for the timely notification of a planned operation so that the monitoring body staff have sufficient time to prepare their deployment and physical participation in the mission.

ACCESS TO INFORMATION

Return enforcing authority and monitoring body ensures a **continuous flow of information** so that both entities are kept up to date regarding all aspects relevant to return operations and current practices.

Requested operational and factual information is to be shared in advance to ensure that monitoring bodies have all the necessary details. This allows monitoring bodies to decide whether to proceed with a monitoring operation, or make necessary arrangements beforehand, especially when resources are limited. If the country of return requires a visa for the monitor, the monitoring body should be informed well in advance, at least 2-3 weeks prior due to potentially lengthy visa procedures.

Return enforcing institution provides monitors with the **following information**. If this information is no received, monitors should proactively request it. This includes:

¹⁴⁵ These sub-sections are based on ICMPD (2020) Gaps and Needs Analysis of the National Monitoring Systems in Twenty-two European Union Member States and Schengen Associated Countries, FRA (2023) Forced return monitoring systems – 2023 update, as well as results of stakeholder consultations organised in the FAiR project.

Operational information:

- 1) date and time of the return operation and ports of departure;
- 2) country/ies of return;
- 3) travel itinerary;
- 4) contact information of the return-enforcing authority in charge (allowing the monitor to establish contact prior to the operation and request additional information);
- 5) contact information of the detention centre representative (allowing the monitor to establish contact prior to the operation and request additional information if national rules permit. Note that some monitoring bodies do not access the detention center);
- 6) visa arrangement details (the relevant authorities should assist the monitoring body in arranging visas for the return operation);
- 7) vaccination arrangement details (if required by the Country of Return);
- 8) accommodation details in the Country of Return/transit country (if applicable).
- 9) details/information regarding the journey back to the Country of Departure after the successful handover.

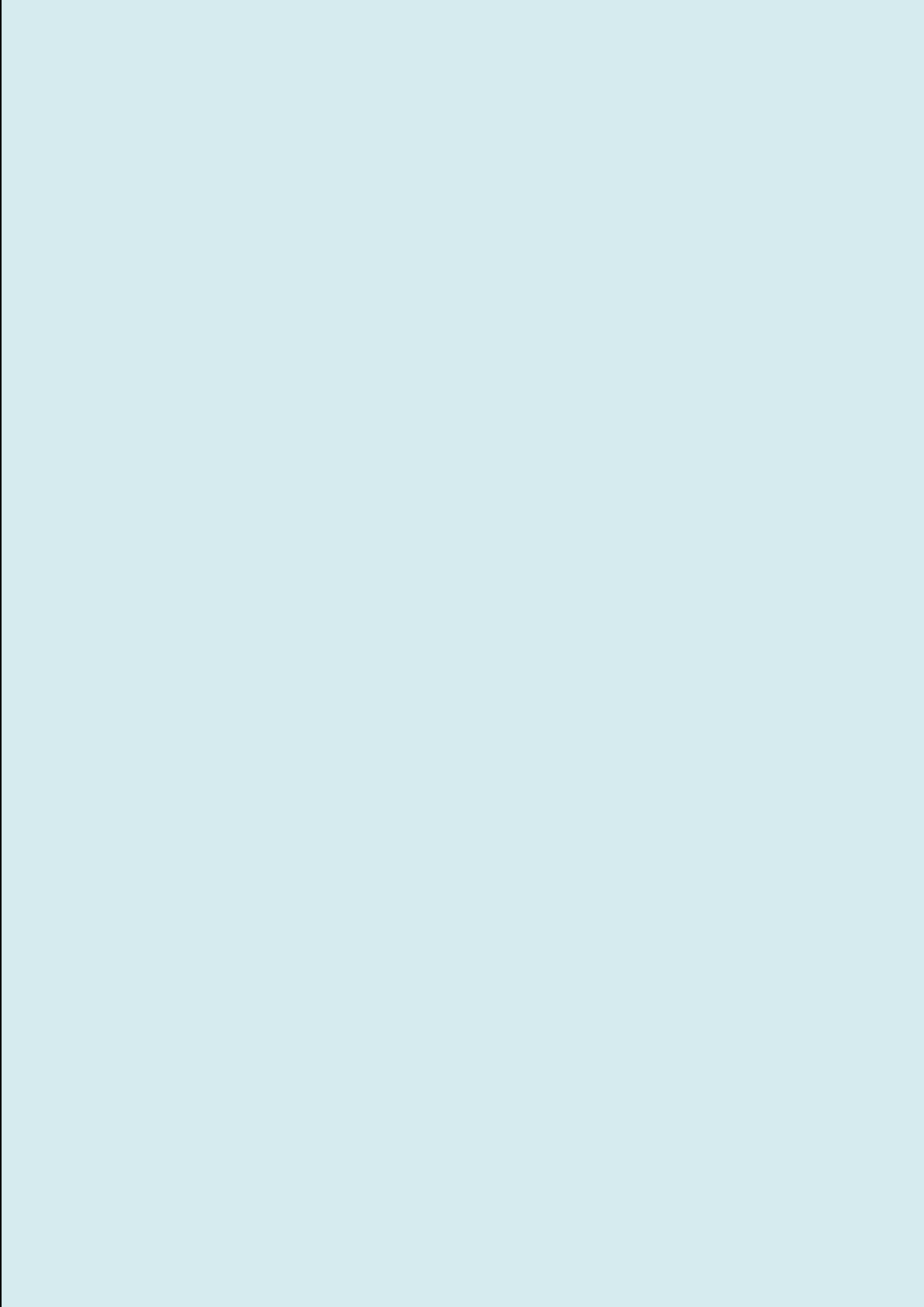
Factual information:

- 1) number of returnees concerned, their gender and age;
- 2) indication of any returnees considered vulnerable including children, unaccompanied and separated children, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with small children, persons with medical conditions (including ongoing medication), and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence. Indication of any returnees with specific sexual orientation, gender identity gender expression and sex characteristics, that would render them vulnerable.

RESOURCES

Member States should ensure their respective national monitoring bodies adequate, stable and foreseeable funding to cover all aspects related to fulfilling monitoring duties (e.g. insurances during return operations) and capacity building including training and refresher courses. For instance, Member States can support their respective NMBs to establish functioning networks for exchanging promising practices and capacity building exercises.

Limited and temporary funding negatively impacts on the implementation of national monitoring systems, especially in cases where monitoring activities are project-based and/or based on a temporary agreement with an expert organisation mandated to monitor forced return. Ensuring a stable source of (increased) funding will improve the effectiveness of national monitoring systems. .



CONCLUSIONS



This report on human rights monitoring of forced returns in Europe summarised the work undertaken with the aim to formulate improved and harmonised guidelines for monitoring forced returns in Europe which take place via scheduled flight, land borders as well as at sea borders. The report contributes to the “Finding Agreement in Return” (FAiR) project’s research component on fundamental rights in return.

After providing background information on monitoring forced return from a historical perspective, as well as on forced return operations and fundamental rights in forced returns, the report outlines the main results of the research focusing on 11 EU countries’ monitoring systems. Finally, the report formulated monitoring guidelines for monitors as well as for national administrations to improve deployment of monitors. The main goal of these guidelines is to promote harmonisation of human rights monitoring of forced return in Europe. FAiR research on monitoring practices has shown that (1) there is already considerable convergence in what monitors pay attention to and report on but (2) there is much variation in the organisation of monitoring deployment and in the distribution and follow-up to monitors’ reports. Therefore, the report proposes guidelines as a baseline from which national authorities may improve and meet needs for a community harmonisation at the EU level: 1) an even coverage of forced returns by each Member State, 2) a common standard of observation of risks to fundamental rights, both within and between Member States as well as 3) more effective follow-up to reports and improvement in the protection of fundamental rights.

Recognising that that the implementation of an “effective system of monitoring” remains the legal responsibility of each Member State, the report’s guidelines represent a foundation for informing harmonisation between Member States, in view to enhance common standards in forced return’s fundamental rights’ compliance and clarify the EU practices to policy audiences in countries or return.

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ANNEX



POINTS FOR OBSERVATION & REPORTING – A MODEL LIST

The list below is a simplified form of the reporting fields used in the Frontex FRMS system. The use of separate fields instead of continuous text means that the monitor’s report is built from well-defined data. Against each field there are listed specific points for the monitor to observe and report on. These are chosen such that they protect specific rights-at-risk.¹⁴⁶

The list was developed collaboratively over a period of years by the EU’s FReM projects. It contains different types of “records”, such as Pre-Departure, Arrival, Coercion, etc., that can be used selectively to match the different types of forced return operations. **A small number of observation points and fields have been added by the FAiR project in order to deal with land, sea and scheduled flight operations.**

When monitoring reports are built with well-defined fields, reports can be more easily compared and analysed. Some features, e.g. “Shortcomings” reported, may yield useful statistics at the national level. To the extent that forced return operations are supported and co-ordinated by Frontex, monitoring reports for these operations can be centralised and compared at the EU level.

Note: harmonised data fields for monitoring reports do not imply any common document format, user language or software system. It is recognised that national administrations and national monitoring bodies have their own systems and procedures to meet their own needs. This list is only about compatibility of data.

Explanation of the types of records.

OVERVIEW: Identifies participants (other than returnees themselves).

OUTCOME: Details the de-briefing and any shortcomings and good practices.

COERCION: Details all use of bodily force and/or restraints. Note: Records normally apply to individual returnees.

INCIDENT: Anything that threatened the conduct of the operation (but excluding cases of coercion).

PRE-DEPARTURE: Pre-departure procedures at the point of departure for each contingent.

CRO HANDOVER: Handover to country-of-return at the point of departure from the Member State (for a CRO)

SURFACE JOURNEY: Transport by land or sea.

IN-FLIGHT: Transport by air, when actually in the aircraft.

TRANSIT: Procedures at intermediate airports/ports, where contingents change transports.

ARRIVAL: Handover of returnees to country-of-return.

RETURN: Version on in-flight when bringing rejected returnees back to the Member State.

¹⁴⁶ A comprehensive spreadsheet is available from the FReM project, which details the intersections between rights-at-risk and points of observation.

Field references

To enable easy and consistent reference, each field has a reference label, as well as a field name, e.g. B6.3.1 refers to “PRE-DEPARTURE - not boarded”. Field names may be translated into other languages but for consistency the reference labels should stay the same.

Repeats of fields

To ensure accurate documentation, some blocks of fields may need to be repeated, e.g. to handle more than one country-of-return in an operation. The tables below do not (with one or two exceptions) show the possibilities of repeats.

REPORT FIELDS		POINTS TO OBSERVE
A	OVERVIEW	Highlight good practices as well as failings.
A1	RETURN OPERATION IDENTITY	
A1.1	Date of return operation*	
A1.2	Operation ID*	Only if part of Frontex operation. Otherwise blank.
A1.3	Return Operation name*	Meaningful text name - standard syntax
A1.4	Operation type*	
A1.5	CoR #1 name*	
A1.6	CoR #2 name*	
A1.7	CoR #3 name*	
A2	MONITOR(S)	
A2.1	Monitor	
A2.1.2	Monitor initials*	-
A4	OMS	
A4.1	OMS country name*	
A5	MEMBER STATE	
A5.1	Role in operation*	
A5.2	Escort leader*	Initials only
A5.3	Total escorts (male)*	Total number of <u>male</u> escorts in Luxembourg contingent and actually boarded. Includes back-up team of the contingent. Excludes ground teams at airport.
A5.4	Total escorts (female)*	Total number of <u>female</u> escorts in Luxembourg contingent and actually boarded. Includes back-up team of the contingent. Excludes ground teams at airport. <u>Enter 0 if none.</u>
A5.5	Medical team*	What categories of medical staff were present: doctor, paramedic, nurse, psychologist? No names or initials! Were they absent during any phase of the operation? Please explain any absence.
A5.6	Medical cases	Report if cases occur. What type and number of cases? (See ARRIVAL for medical handover.) Were medical interventions always with the patient's consent? Report if NO. Were any sedatives given to any returnee? Report if YES. Were the sedatives agreed to by the returnee in conversation with a doctor or nurse? Report if NO.
A5.7	No. of interpreters*	Were one or more interpreters present? No names or initials!

REPORT FIELDS		POINTS TO OBSERVE
A5.8	Interpretation services	Were they able to handle the languages of the returnees? Report if NO.
		Were they able to handle the number of demands for interpretation? Report if NO.
		Were they absent at any stage? Report if YES.
		If no interpreter was present at any stage, how were escorts able to communicate with returnees? Report if no interpreter.
A6	OTHER PARTICIPANTS	
A6.1	<i>Other state(s)*</i>	Name(s) of other state(s), not monitored by you.
A6.1.1	Role(s) in operation*	Edit if any planned contingent was absent.
A6.1.2	Other state personnel	Report any significant facts about state team, e.g. presence of a doctor or psychologist. No names or initials!
A6.1.3	Monitor(s) of other state*	Was the other state's contingent monitored?
A7.2	<i>Other participants</i>	
A7.2.1	FRONTEX representative	No name or initials. Only Yes or No.
A7.2.2	Other participants	Report if any other relevant information, e.g. press representatives, CPT monitors, embassy staff, other official observers, etc. No names or initials!

REPORT FIELDS		POINTS TO OBSERVE
H	COERCION #n	Highlight good practices as well as failings.
H0	On-screen notice	A single record of coercion can be used to cover more than one case if the sex, situations and treatment were the same, e.g. in preventive use of measures
H1	RETURNEE(S)	
H1.1	Male passenger list no(s)*	Number(s) for males from escorts' list of all returnees
H1.2	Female passenger list no(s)*	Number(s) for females from escorts' list of all returnees
H2	COERCION SITUATION	
H2.1	Contingent(s) involved*	Record other state if involved as well as the OMS.
H2.2	Description of situation*	Activity/ activities during which the coercive measures were applied. Location, time.
H2.3	Preventive/Reactive?*	Were the measures in reaction to active resistance?
H2.4	Coercive measures serial no.	Internally generated serial number
H3	COERCION DETAILS	
H3.1	<i>Relations in coercion</i>	
H3.1.1	Enforcers*	Were escorts other than this contingent responsible for enforcing coercive measures? Report if occurs.

REPORT FIELDS	POINTS TO OBSERVE
H3.1.2 Escort-returnee relations	Did the escorts to inform the returnee(s) of their intention to apply coercive measures? Report if not.
	Did escorts explain briefly why this was necessary? Report if NO.
	Was the escorts' communication respectful of the returnee(s)? Report if NO.
	Did the returnee(s) respond with verbal attacks? Report if YES.
H3.2 Coercive measures applied	Did the returnee(s) respond with (attempted) physical attacks? Report if YES.
H3.2.1 Bodily force*	Did escorts apply bodily force whilst physical restraints were fitted to the returnee? Confirm YES or NO.
	Context of bodily force: Location? Children removed?
	How many escorts applied force?
	How were escorts and returnee positioned?
	What holds were used?
	Any risk to breathing? Report if YES.
	Complaint of pain or difficulty in breathing? Were the medical staff consulted? Report if YES.
H3.2.2 Restraints used*	Was bodily force applied only for the duration taken to fit physical restraints? Report if NO.
	Were children separated in the case of the use of force on a parent? Report if NO.
H3.2.3 Restraints conditions*	Which types of restraints were used?
	Were any of the restraints applied (including material type) not on the authorised list of restraints <u>for this operation</u> ? Report if YES.
H3.2.4 Sedative measures*	Did any restraint give rise to complaint or evidence of pain or difficulty in breathing? Were the medical staff consulted? Report if YES.
	Were children separated in the case of the fitting of a restraint on a parent? Report if NO.
	Did escorts remove the coercive measures before handover? Report if NO.
H3.2.4 Sedative measures*	Were any sedatives given to a returnee?

REPORT FIELDS		POINTS TO OBSERVE
H3.2.5	Consent to sedatives*	Were the sedatives agreed to by the returnee in conversation with a nurse or a doctor? Report if not, otherwise mark as N/A.
H3.3 JUSTIFICATION		
H3.3.1	Justification*	<ol style="list-style-type: none"> 1. Refusal or resistance to removal. 2. Immediate and serious risk of escape. 3. Risk of injury to self or others. 4. Risk of damage to property. 5. Other.
H3.3.2	Explanation of other justification*	Please explain a justification classed as "Other".
H3.3.3	Necessity & proportionality*	Were the measures applied and their duration, necessary & proportionate to the risks? Explain any use of unauthorised restraints.
	COERCION?	If an additional case of coercion of any kind observed, open an extra COERCION tab.
	INCIDENT?	If non-coercive incident of any kind observed, open an INCIDENT tab.

REPORT FIELDS		POINTS TO OBSERVE
Q	INCIDENT #n	Any behaviours or situations that involve a threat to fundamental rights, but do NOT result in coercive measures. NB This is not the same as a Frontex Serious Incident Report but the contents may coincide.
Q1	Contingent(s) involved*	Use multiple choices if more than one contingent involved.
Q2	Description of incident*	Activity/ activities during which the incident(s) occurred. Location, time.
		What was done to de-escalate and close the incident?
		What happened and what result?

REPORT FIELDS		POINTS TO OBSERVE
B	PRE-DEPARTURE	Highlight good practices as well as failings.
B1	LOCATION & PARTICIPANTS	
B1.1	Airport / city*	Use IATA codes for airports.
B2	PARTICIPANTS BRIEFING	
B2.1	Information for returnees	To inform returnees about timing and conditions of forced return.
B2.1.1	Contact talks monitored by CRL?*	Were contact talks monitored by CRL?

REPORT FIELDS		POINTS TO OBSERVE
B2.1.2	Advance information	Had detailed information been provided to the returnee (date, route, proceedings with baggage, etc.)? Report if NO. Were returnees informed in advance about their removal? Report if NO.
B2.2	<i>Escort briefing</i>	May be on day prior to departure!
B2.2.1	Escort briefing contents	Did the monitor participate in the briefing by the escort leader? Report if NO. Did the briefing include a risk assessment? Report if NO. Did the escort leader give a timetable for the operation? Report if NO. Did the briefing make clear the allocation of returnees to escorts? Report if NO. Did the briefing provide a seating plan? Report if NO. Did the briefing inform the monitor on previous incidents occurred with returnees if any? Report if YES and in details. Did the escort leader inform the escorts about the code of conduct and restraints allowed? Report if NO.
B2.2.2	Vulnerable persons?	If vulnerable persons or those with special needs were present, were they mentioned in the briefing? Report if NO. Is the presence of children with families reflected in the seating plan and embarkation procedure? Report if NO. Will families with children be separated from returnees subject to coercive measures? Report if NO.
B3	RECEPTION	
B3.1	<i>Reception</i>	Point of handover to the care of the escorts.
B3.1.2	Holding conditions	Were there sufficient seats to enable returnees to wait in comfort at the holding facility? Report if NO. Were returnees able to use the toilets in the holding facility without being prevented or delayed? Report if NO.
B3.1.3	Medical checks	Were any returnees refused permission to travel by a doctor at the start of the operation? Report if YES. Were any returnees refused permission to see the doctor at the start of the operation? Report if YES.
B3.2	<i>Communications</i>	During whole of pre-departure

REPORT FIELDS		POINTS TO OBSERVE
B3.2.1	Escort relations	Did escorts wear civilian clothing and were they identifiable? Report if NO
		Did escorts inform returnees about what was happening and answer their questions? Report if NO.
		Did escorts and officials speak courteously? Report if NO.
		If children were present, were there any officers present who were trained in child protection and communication with children? Report if YES.
		Were children used as interpreters to facilitate communication between parents and escorts or other participants? Report if YES
B3.2.2	External contact	Were returnees in the pre-departure phase prohibited to make calls to contact lawyers, family or friends? Report if YES and from which point in pre-departure.
B3.3	<i>Provision for vulnerable persons</i>	
B3.3.3	Children	If children were present, was adequate provision made to look after them? Report if NO.
		Were female escorts assigned to look after them? Report if NO.
		Were the needs of each child assessed on an individual basis? Report if NO.
		Are children allowed to keep their own belongings: bottles, small toys or mementos? Report if NO
B3.3.4	Other vulnerable persons	Report if there were any vulnerable persons. How many were there and of what kinds (pregnant women, single parents with small children, weak elderly persons, persons with difficult health conditions, handicapped persons)?
		Was adequate provision made to look after them? Report if NO.
B4	CHECK-IN	
B4.1	<i>1st security check</i>	May be inside detention centre or airport.
B4.1.1	Searches of belongings	Were personal valuables put into a separate transparent bag and given to the escort? Report if NO.
		Was there a written record of the personal valuables? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
B4.1.2	Body searches - 1st check	Were all body searches always carried out by a person of the same sex as the returnee? Report if NO.
		Was unclothed body search carried out taking in consideration the returnee's human dignity (as, for instance, by letting them not staying completely naked, rather to have each time the body partially unclothed)? Report if NO.
		In case of unclothed body search, was it justified, necessary and proportional to the risk posed by the returnee? Report if NO.
		If children are present, is the security check carried out in a culturally-,gender-,age-sensitive manner and as much as possible, with the cooperation of parents? Report if NO.
B4.1.3	Baggage handling	Was the room at a suitable temperature and equipped to ensure the safety and dignity of returnees and escorts? Report if NO.
		Did the returnee have a possibility to observe all the procedures regarding valuables and luggage? Report if NO.
		Was baggage adequately packed and labelled? Report if NO.
B4.2	<i>Transfer of returnees</i>	Was a baggage receipt handed back to the returnee? Report if NO.
		Moving to airport from detention centre. If a long road journey, include a SURFACE JOURNEY record instead.
B4.2.1	Transfer to airport	Was there any excessive waiting time in the vehicle? Report if YES. Were returnees informed of the reason and assisted as necessary? Report if NO.
		Were families and couples allowed to move together? Report if NO.
		Were children separated from adult returnees who were subject to restraints? Report if NO <u>and</u> children in operation.
		If families were not allowed to move together, were the reasons properly communicated to the children involved? Report if NO.
		Were there sufficient seats for all returnees in the vehicle used for transfer to the aircraft? Report if NO.
B4.3	<i>Waiting area</i>	Was the vehicle used clean, ventilated and without excessive heat or cold? Report if NO.
		If a long journey, was there adequate food and drink and were there toilet stops? Report if NO.
		Area immediately before embarkation.

REPORT FIELDS		POINTS TO OBSERVE
B4.3.1	Basic needs	Were there sufficient seats to enable returnees to wait in comfort at the waiting area prior to boarding? Report if NO.
		Was any returnee prevented or delayed in using the toilets? Report if YES.
		Did escorts accompanying returnees to the toilets allow them privacy? Report if NO.
		Were returnees escorted to a toilet by escorts of the same sex? Report if NO.
		Was adequate food & drink provided for returnees, taking into account the time of day? Report if NO.
		Was any returnee for any reason unable to benefit from the food & drink provided? Report if YES.
		Were smokers given the opportunity to smoke? Report if NO.
		Was the area sufficiently ventilated, equipped with cold/heating system and furniture and clean? Report if NO.
		Was the waiting area sheltered? Report if NO.
		B4.3.2
Was the presence of families with children reflected in the the lay-out of the waiting area? If feasible, a separate waiting and a distinct lavatory should be designated for families with children. Report if NO.		
Was there a play area set up with sufficient number of toys that were culturally appropriate and suitable for both boys and girls? Report if NO. Were children allowed to play? Report if YES.		
If younger children were present, was a parent allowed to accompany them to a lavatory? Report if NO.		
If infants were present, was there a changing table in the lavatory? Report if NO.		
If infants were present, as there a designated area for breastfeeding mothers? Report if NO.		
If infants (up to 5 years) were present, was there suitable food and drink for them? Report if NO.		
If children were present, did escorts make adequate food, water available at frequent times throughout the return operation? Report if NO.		
Were returnees who wished to pray allowed to do so? Report if NO.		
Were there any other health needs or other special needs that were not satisfied? Report if YES.		
B5	JRO/CRO MEETINGS	
B5.1	<i>JRO/CRO briefing</i>	
B5.1.1	JRO/CRO briefing	Did the monitor participate in the briefing by the escort leader? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
		Did the briefing include a risk assessment? Report if NO.
		Did the OMS escort leader give a timetable for the operation? Report if NO.
		Did the briefing provide a seating plan? Report if NO.
B5.1.2	Vulnerable persons?	If vulnerable persons or those with special needs were present, were they mentioned in the briefing? Report if NO.
B5.2	Monitors' meeting	
B5.2.1	JRO/CRO meeting of monitors	If there was more than one monitor in the JRO or CRO, did they have a meeting to inform each other about the contingents they were monitoring? Report if NO.
B6	EMBARKATION	
B6.1	2nd security check	2nd security check may be needed at airport if 1st check was elsewhere.
B6.1.1	2nd security check	Was a second security check carried out, e.g. at the airport?
		Were all body searches, clothed and unclothed, always carried out by a person of the same sex as the returnee? Report if NO.
		In case of unclothed body search, was it justified, necessary and proportional to the risk posed by the returnee? Report if NO.
B6.1.2	Body searches - 2nd check	Was unclothed body search carried out taking in consideration the returnee's human dignity (as, for instance, by letting them not staying completely naked, rather than have each time the body partially unclothed)? Report if NO.
		If children are present, is the security check carried out in a culturally-,gender-,age-sensitive manner and as much as possible, with the cooperation of parents? Report if NO.
		Was the room at a suitable temperature and equipped to ensure the safety of returnees and escorts?
B6.2	Transfer to aircraft	
		Was there any excessive waiting time in the vehicle? Report if YES. Were returnees informed of the reason and assisted as necessary? Report if NO.
		Were families and couples allowed to move together? Report if NO.
B6.2.1	Conditions of transfer	Were children separated from adult returnees who were subject to restraints? Report if NO and children in operation.
		If families were not allowed to move together, were the reasons properly communicated to the children involved? Report if NO.
		Were there sufficient seats for all returnees in the vehicle used for transfer to the aircraft? Report if NO.
		Was the vehicle used clean, ventilated and without excessive heat or cold? Report if NO.
B6.3	Boarding	

REPORT FIELDS		POINTS TO OBSERVE
B6.3.1	Not boarded	Were any returnees not boarded as a result of pre-departure checks or legal action? Report if YES. If so, how many and why?
		Did escorts accompany (escort) their returnees during embarkation? Report if NO.
B6.3.2	Embarkation	Were special needs of returnees taken into account (vulnerable persons, medical conditions)? Report if NO.
		Were families allowed to embark and be seated separately? Report if NO.
		Did escorts wear uniforms or badges? Report if YES.
B.6.3.3	Scheduled flight	Were returnees boarded before regular passengers? Report if NO.
		Were returnees seated behind all other regular passengers? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
S	SURFACE JOURNEY	Highlight good practices as well as failings.
S1	ITINERARY	Monitors' notes should be marked with times in the <u>time zone of the start point</u> of the operation, in order to clearly understand durations.
S0	Transport type*	
S1	JOURNEY	By land or sea transport.
S1.1	Actual departure date & time*	Time vehicle door <u>closes</u> . Please use time as in time zone at your mission start point.
S1.2	From country*	
S1.3	From city*	Name of city.
S1.4	Actual arrival date & time*	Time vehicle door <u>opens</u> . Please use time as in time zone at your mission start point.
S1.5	In Country*	
S1.6	At city*	Name of city.
S1.7	Duration*	Duration of surface journey.
D2	RELATIONS ON-BOARD	
D2.1	Seating	Were couples & family groups kept seated together? Report if NO.
		Were returnees subject to restraints separated from any families on board? Report if NO.
		Was adequate provision made to look after any children present? Report if NO.
		If the monitor asked for a different seat, was this refused? Report if YES.
		Was the monitor able to travel in the same vehicle(s) as the returnees? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
		If scheduled transport, did contingent occupy rearmost seats behind all other passengers? Report if scheduled transport and NO.
D2.2	Communication	<p>Did escorts inform returnees about what was happening and answer their questions? Report if NO.</p> <p>Did escorts and officials always speak courteously? Report if NO.</p> <p>If children are involved, is the communication clear, informal, and suitable to the level of maturity of the child? Do children receive comprehensive and understandable information on what is happening and the next steps? Report if NO.</p> <p>Were children used as interpreters to facilitate communication between parents and escorts or other participants? Report if YES.</p>
D3	WELFARE ON-BOARD	
D3.1	Basic needs	<p>Was any returnee prevented or delayed in using the toilets? Report if YES.</p> <p>Did escorts accompanying returnees to the toilets allow them privacy? Report if NO.</p> <p>Were returnees escorted to a toilet by escorts of the same sex? Report if NO.</p> <p>Was adequate food & drink provided for returnees, taking into account the time of day? Report if NO.</p> <p>Was any returnee for any reason unable to benefit from the food & drink provided? Report if YES.</p>
D3.2	Special needs	<p>If babies were present, was there suitable food and drink for them?</p> <p>If younger children were present, were parents allowed to accompany them to the toilet?</p> <p>Were returnees who wished to pray <u>away from their seat</u> allowed to do so? Report if YES.</p> <p>Were there any other health needs or other special needs that were not satisfied? Report if YES.</p>

REPORT FIELDS		POINTS TO OBSERVE
C	CRO HANDOVER	Highlight good practices as well as failings.
C1	HANDOVER PREPARATION	
C1.1	CoR name*	
C1.2	Preparation for handover	<p>Were all restraints removed before handover? Report if NO.</p> <p>Were personal valuables taken at time of security check given back to returnees before handover? Report if NO.</p> <p>Were personal medical records and medicines given back to returnees before handover? Report if NO.</p>

REPORT FIELDS		POINTS TO OBSERVE
C2	HANDOVER	From the contingent(s) being monitored.
C2.2	Handover conditions	Handover of returnees at the aircraft? Report if NO. Were family groups and couples kept together when they were handed over? Report if NO. If families were not kept together, were the reasons properly communicated to the children involved? Report if NO.
C2.3	Personal & medical information	Did any MS escort or official pass over any unauthorised personal data to CoR officials, e.g. criminal history? Report if YES. Were personal medical records and medicines handed over to local medical teams during handover? Report if YES.
C2.3'	Not handed over?	Either because not presented for handover or because refused by the country-of-return
C2.4	Not presented	Any returnees not presented for handover : number plus explanation. Report if occurs.
C2.5	Refused	Any returnees refused by the country-of-return: number plus explanation. Report if occurs.
C3	RETURNEES	From the contingent(s) being monitored.
C3.1	From <MS name>*	
C3.1.1	Adults male 18 and over*	
C3.1.2	Minors male between 6 and 17*	
C3.1.4	Infants male 5 and under*	
C3.1.5	Total numbers of returnees male*	
C3.1.6	Adults female 18 and over*	
C3.1.7	Minors female between 6 and 17*	
C3.1.9	Infants female 5 and under*	
C3.1.10	Total numbers of returnees female*	
C3.1.11	Country totals*	
REPORT FIELDS		POINTS TO OBSERVE
D	IN-FLIGHT #n	Highlight good practices as well as failings.
D1	ITINERARY	<u>Monitors' notes</u> should be marked with times in the <u>time zone</u> of the start point of the operation, in order to clearly understand durations.
D1.1	Flight number	Ask escort leader or crew
D1.2	<i>Flight section #1</i>	From one airport to the next.

REPORT FIELDS		POINTS TO OBSERVE
D1.2.1	Actual departure date & time*	Time aircraft door <u>closes</u> . Please use time as in time zone at your mission start point.
D1.2.2	From airport / city*	Name of airport (or city). Please edit if actual airport used is different.
D1.2.4	Actual arrival date & time*	Time aircraft door <u>opens</u> . Please use time as in time zone at your mission start point.
D1.2.5	Arrive at airport / city*	Name of airport (or city). Please edit if actual airport used is different.
D1.2.8	Duration*	Duration of flight section.
D1.2	Flight section #2	From one airport to the next.
D1.2.1	Actual departure date & time	Time aircraft door <u>closes</u> . Please use time as in time zone at your mission start point.
D1.2.2	From airport / city	Name of airport (or city). Please edit if actual airport used is different.
D1.2.4	Actual arrival date & time	Time aircraft door <u>opens</u> . Please use time as in time zone at your mission start point.
D1.2.5	Arrive at airport / city	Name of airport (or city). Please edit if actual airport used is different.
D1.2.8	Duration	Duration of flight section.
D2	RELATIONS ON-BOARD	
D2.1	Seating	<p>Were couples & family groups kept seated together? Report if NO.</p> <p>Were returnees subject to restraints separated from any families on board? Report if NO.</p> <p>Was adequate provision made to look after any children present? Report if NO.</p> <p>If the monitor asked for a different seat, was this refused? Report if YES.</p> <p>Did the monitor request a seat other than the one assigned? Report if YES.</p> <p>If scheduled transport, did contingent occupy rearmost seats behind all other passengers? Report if scheduled transport and NO.</p>
D2.2	Communication	<p>Did escorts inform returnees about what was happening and answer their questions? Report if NO.</p> <p>Did escorts and officials always speak courteously? Report if NO.</p> <p>If children are involved, is the communication clear, informal, and suitable to the level of maturity of the child? Do children receive comprehensive and understandable information on what is happening and the next steps? Report if NO.</p> <p>Were children used as interpreters to facilitate communication between parents and escorts or other participants? Report if YES.</p>

REPORT FIELDS		POINTS TO OBSERVE
D3	WELFARE ON-BOARD	
D3.1	Basic needs	<p>Was any returnee prevented or delayed in using the toilets? Report if YES.</p> <p>Did escorts accompanying returnees to the toilets allow them privacy? Report if NO.</p> <p>Were returnees escorted to a toilet by escorts of the same sex? Report if NO.</p> <p>Was adequate food & drink provided for returnees, taking into account the time of day? Report if NO.</p> <p>Was any returnee for any reason unable to benefit from the food & drink provided? Report if YES.</p>
D3.2	Special needs	<p>If babies were present, was there suitable food and drink for them?</p> <p>If younger children were present, were parents allowed to accompany them to the toilet?</p> <p>Were returnees who wished to pray <u>away from their seat</u> allowed to do so? Report if YES.</p> <p>Were there any other health needs or other special needs that were not satisfied? Report if YES.</p>

REPORT FIELDS		POINTS TO OBSERVE
E	TRANSIT	For use when (a) there is a stopover with returnees during a return flight or (b) the MSs monitored disembark at a JRO stop before the CoR. Highlight good practices as well as failings.
E1	LOCATION & PARTICIPANTS	
E1.1	Transit at <airport / city name>*	If you stopped over away from the airport, enter the city name.
E2	SECURITY & COMMUNICATIONS	
E2.1	Security	From disembarkation to re-embarkation
E2.1.1	Transit security*	Were security measures during the stopover both necessary and proportionate? Report if NO.
E2.2	Communications	During whole of Stopover
E2.2.1	Escort relations	<p>Did escorts wear civilian clothing and were they identifiable? Report if NO</p> <p>Did escorts inform returnees about what was happening and answer their questions? Report if NO.</p> <p>Were children used as interpreters to facilitate communication between parents and escorts or other participants? Report if YES</p>
E2.3	Provision for vulnerable persons	

REPORT FIELDS		POINTS TO OBSERVE
E2.3.3	Children	If children were present, was adequate provision made to look after them? Report if NO.
E2.3.4	Other vulnerable persons	Report if there were any vulnerable persons. How many were there and of what kinds (pregnant women, single parents with small children, weak elderly persons, persons with difficult health conditions, handicapped persons)? Was adequate provision made to look after them? Report if NO.
E3	WAITING AREA	
E3.1	<i>Transfer of returnees</i>	
E3.1.1	Transfer to waiting area	Was there any excessive waiting time in the vehicle? Report if YES. Were returnees informed of the reason and assisted as necessary? Report if NO. Were families and couples allowed to move together? Report if NO. Were children separated from adult returnees who were subject to restraints? Report if NO and children in operation. Were there sufficient seats for all returnees in the vehicle used for transfer to the aircraft? Report if NO. Was the vehicle used clean, ventilated and without excessive heat or cold? Report if NO.
E3.2	<i>Waiting area</i>	Area immediately before embarkation.
E3.2.1	Basic needs	Were there sufficient seats to enable returnees to wait in comfort at the waiting area prior to boarding? Report if NO. Was any returnee prevented or delayed in using the toilets? Report if YES. Did escorts accompanying returnees to the toilets allow them privacy? Report if NO. Were returnees escorted to a toilet by escorts of the same sex? Report if NO. Was adequate food & drink provided for returnees, taking into account the time of day? Report if NO. Was any returnee for any reason unable to benefit from the food & drink provided? Report if YES. Were smokers given the opportunity to smoke? Report if NO. Was the area sufficiently ventilated, equipped with cold/heating system and furniture and clean? Report if NO. Was the waiting area sheltered? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
E3.2.2	Special needs	<p>Was there a private room for medical examination and rest? Report if NO.</p> <hr/> <p>Was the presence of families with children reflected in the the lay-out of the waiting area? If feasible, a separate waiting and a distinct lavatory should be designated for families with children. Report if NO.</p> <hr/> <p>Was there a play area set up with sufficient number of toys that were culturally appropriate and suitable for both boys and girls? Report if NO. Were children allowed to play? Report if YES.</p> <hr/> <p>If younger children were present, was a parent allowed to accompany them to a lavatory? Report if NO.</p> <hr/> <p>If infants were present, was there a changing table in the lavatory? Report if NO.</p> <hr/> <p>If infants were present, as there a designated area for breastfeeding mothers? Report if NO.</p> <hr/> <p>If infants (up to 5 years) were present, was there suitable food and drink for them? Report if NO.</p> <hr/> <p>If children were present, did escorts make adequate food, water available at frequent times throughout the return operation? Report if NO.</p> <hr/> <p>Were returnees who wished to pray allowed to do so? Report if NO.</p> <hr/> <p>Were there any other health needs or other special needs that were not satisfied? Report if YES.</p>
E4	MEETINGS	
E4.1	<i>Transit briefing</i>	
E4.1.1	Transit briefing	<p>Did the monitor participate in the briefing by the escort leader? Report if NO.</p> <hr/> <p>Did the briefing include a risk assessment? Report if NO.</p> <hr/> <p>Did the escort leader give a timetable for the operation? Report if NO.</p> <hr/> <p>Did the briefing make clear the allocation of returnees to escorts? Report if NO.</p> <hr/> <p>Did the briefing provide a seating plan? Report if NO.</p> <hr/> <p>Did the briefing inform the monitor on previous incidents occurred with returnees if any? Report if YES and in detail.</p>
E4.1.2	Vulnerable persons?	<p>If vulnerable persons or those with special needs were present, were they mentioned in the briefing? Report if NO.</p>
E4.2	<i>Monitors' meeting</i>	
E4.2.1	Transit meeting of monitors	<p>If there was more than one monitor in the JRO or CRO, did they have a meeting to inform each other about the contingents they were monitoring? Report if NO.</p>
E5	EMBARKATION	

REPORT FIELDS		POINTS TO OBSERVE
E5.1	Transfer to aircraft	<p>Was there any excessive waiting time in the vehicle? Report if YES. Were returnees informed of the reason and assisted as necessary? Report if NO.</p> <hr/> <p>Were families and couples allowed to move together? Report if NO.</p> <hr/> <p>Were children separated from adult returnees who were subject to restraints? Report if NO and children in operation.</p> <hr/> <p>If families were not allowed to move together, were the reasons properly communicated to the children involved? Report if NO.</p> <hr/> <p>Were there sufficient seats for all returnees in the vehicle used for transfer to the aircraft? Report if NO.</p> <hr/> <p>Was the vehicle used clean, ventilated and without excessive heat or cold? Report if NO.</p>
E5.2	Boarding	<p>Did escorts accompany (escort) their returnees during embarkation? Report if NO.</p> <hr/> <p>Were special needs of returnees taken into account (vulnerable persons, medical conditions)? Report if NO.</p>
B.6.3.3	Scheduled flight	<p>Did escorts wear uniforms or badges? Report if YES.</p> <hr/> <p>Were returnees boarded before regular passengers? Report if NO.</p> <hr/> <p>Were returnees seated behind all other regular passengers? Report if NO.</p>

REPORT FIELDS		POINTS TO OBSERVE
F	ARRIVAL #n	Highlight good practices as well as failings.
F1	Arrival in <CoR#n name>	
F2	ARRIVAL PROCESS	
F2.1	Preparation for handover	<p>Were all restraints removed before handover? Report if NO.</p> <hr/> <p>Were personal valuables taken at time of security check given back to returnees before handover? Report if NO.</p> <hr/> <p>Were personal medical records and medicines given back to returnees before handover? Report if NO.</p>
F2.2	Conditions on arrival	<p>If luggage is not sent to the terminal after arrival in the CoR, did escorts ensure that correct luggage was handed over to the actual owner? Report if NO.</p> <hr/> <p>Was there any immediate medical intervention by the receiving state on arrival? Report if YES.</p>
F3	HANDOVER	From the contingent(s) being monitored.
F3.0	Scheduled flight	Was handover conducted after all other passengers had left the aircraft? Report if NO.

REPORT FIELDS		POINTS TO OBSERVE
F3.1	Handover conditions	Handover of returnees at the aircraft? Report if NO. Were family groups and couples kept together when they were handed over? Report if NO. If families were not kept together, were the reasons properly communicated to the children involved? Report if NO.
F3.2	Personal & medical information	Did any MS escort or official pass over any unauthorised personal data to CoR officials, e.g. criminal history? Report if YES. Were personal medical records and medicines handed over to local medical teams during handover? Report if YES.
F3.3	Not handed over?	Either because not presented for handover or because refused by the country-of-return
F3.4	Not presented	Any returnees not presented for handover : number plus explanation. Report if occurs.
F3.5	Refused	Any returnees refused by the country-of-return: number plus explanation. Report if occurs.
F4	RETURNEES	
F4.1	From <Member State>	
F4.1.1	Adults male 18 and over*	
F4.1.2	Minors male between 6 and 17*	
F4.1.3	Unaccompanied minors male between 6 and 17*	
F4.1.4	Infants male 5 and under*	
F4.1.5	Total numbers of returnees male*	
F4.1.6	Adults female 18 and over*	
F4.1.7	Minors female between 6 and 17*	
F4.1.8	Unaccompanied minors female between 6 and 17*	
F4.1.9	Infants female 5 and under*	
F4.1.10	Total numbers of returnees female*	
F4.1.11	Country totals*	