

Assessment of the day-to-day operations and management of the Pool of forced-return monitors in Frontex

Executive summary

Introduction

On 7 January 2017, the pool of forced-return monitors (hereinafter referred to as the Pool) was established by the European Border and Coast Guard Agency (Frontex), in line with Article 29 of the European Border and Coast Guard (EBCG) Regulation (EU) 2016/1624 in force at the time, and on the basis of the outcomes of the Forced-Return Monitoring I project (FReM I)¹. The Pool is managed by Frontex and consists of monitors from the bodies of Member State responsible for carrying out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC. Since the Pool was established, the Forced-Return Monitoring projects (FReM II and III) have been supporting Frontex in institutionalising the Pool within the structure of the organisation.

The day-to-day coordination, including the deployment of monitors to specific forced-return operations, is largely handled to varying degrees by: the Capability Programming Office (CAP), the European Centre for Returns (ECRet) and the Fundamental Rights Office (FRO). Currently, the training of Pool monitors is conducted within the framework of the FReM III project, in close cooperation with the aforementioned Frontex Units as well as the Training Unit (TRU).

One of the aims of the FReM III project is to provide a final concept for the Pool's management structure and procedures, contributing to its sustainability, improved day-to-day management, transparency and independence. The Pool's operational and procedural effectiveness and efficiency will be enhanced by improved communication, information and reporting tools. The full conceptualisation of the approach for the management of the Pool and all the procedures and activities will be handed over to Frontex by the end of the FReM III project. As part of the project and in order to achieve this goal, an assessment of how the Pool currently functions was conducted in 2019.

Methodology

The assessment of how the Pool of forced-return monitors is currently functioning is based on a multi-method study conducted between February and September 2019 as part of the FReM III project. The aim of the study is twofold. First, it aims to better understand and describe how the Pool currently operates and how it is managed. Second, it seeks to identify possible gaps and needs, as well as good practices in its operations and management, with a view to suggesting possible approaches that contribute to the Pool's sustainability, improved day-to-day management, transparency and independence.

¹ FReM I was conducted from 2013 to 2015 by the International Centre for Migration Policy Development (ICMPD) in co-operation with Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland.

The study was designed to take into account the experience and views of two main groups of stakeholders involved in the Pool's current operations and management. It included semi-structured interviews with key Frontex personnel involved in the day-to-day operations and management and an online survey addressed to forced-return monitors who are nominated to the Pool. In addition, the study makes use of various reports that were produced during the FReM projects and available at the time of drafting, in particular: the Annual Lessons Learned Meeting (ALL) reports from the FReM I, FReM II and FReM III projects, the Good Practice Report on Fundamental Rights Compliance in Forced-Return Operations from FReM II and the Project Steering Group Meeting reports from FReM III.

Drawing from the assessment that was carried out, this report documents its main findings and recommendations and takes into account several factors: the Pool as it currently functions within Frontex, the suggestions from monitors' who are part of the Pool (as collected through the online survey), and relevant European legislation.

Main findings and recommendations

Nominations to the Pool

MSs are responsible for nominating monitors to the Pool². Nominations are made by the national bodies responsible for conducting forced-return monitoring activities in accordance with national legislation transposing Article 8(6) of the Return Directive (2008/115/EC). In general, nominations are communicated to the CAP via the respective National Frontex Points of Contact (NFPOCs) in MSs. However, the national monitoring institutions can also send the nominations directly to the CAP.

While the process of nominating monitors to the Pool is one that is open and ongoing, respondents raised a number of issues they felt need addressing to improve this process. They are the:

1. Effectiveness and transparency of procedures in place for nominating monitors to the Pool;
2. Transparency regarding the criteria for nominating monitors to the Pool;
3. Monitors' limited monitoring experience at the time they are nominated to the Pool.

Considering the legal framework within which the Pool functions, in particular Article 51(2) of Regulation (EU) 2019/1896, the following is recommended to improve the current procedures for nominating monitors to the Pool:

1. Remind MSs, e.g. on a yearly basis, that providing nominations to the Pool is an ongoing process i.e. that the call is an open one and monitors can be nominated at any time;
2. Ensure that information about the nomination procedure is uploaded on to the communication, coordination and information platform;

² For more details, see Section 4.2 *Monitors' nomination, by their respective Member States, to be part of the Pool* of this report.

3. Upload the general profile of a Pool monitor on to the communication, coordination and information platform;
4. Consider including the national nomination criteria in the respective national factsheets;
5. The National Monitoring Bodies (NMBs) should:
 - a. Continue using the opportunity of the training and other activities offered through the Pool to train their staff;
 - b. Continue nominating monitors to the Pool so they gain international experience;
 - c. Ensure that the monitors proactively use the opportunity of pilot monitoring missions to gain practical experience.

Training of Pool monitors

In order to be eligible for deployment from the Pool, monitors need to undergo training on forced-return monitoring³. This training was developed within the framework of the FReM projects and is currently being delivered to Pool monitors as part of the FReM III project. Even if the monitors have not received the FReM training, they can still be nominated to the Pool. However, they can only be deployed once they have received this training which is currently offered once or twice a year.

Pool monitors considered the basic training to be extremely useful as it addresses a wide range of relevant topics and includes numerous practical sessions. Thus, it is a sound introduction to forced-return monitoring, providing both a theoretical and practical basis for the work of the Pool monitors. At the same time, 4.5 days of training is not considered sufficient to cover all the topics of concern to a monitor. In addition to their basic training, monitors require further support in their ongoing professional development.

Therefore, it is recommended that:

- Monitors are provided with additional practical training possibilities, including a refresher course every three years;
- Targeted training opportunities on specific topics of concern, including targeted training modules on monitoring forced-return by scheduled flights are organised on request and based on need;
- The opportunity is maintained for monitors to exchange experiences with other stakeholders involved in returns (e.g. escorts);
- Training content is made available online;
- An e-learning platform is provided.

³ For more details, see Section 4.1 *Training of Pool monitors*.

Monthly call for monitors

Monitors from the Pool can only be deployed based on a request made by a MS. The requesting MS – either the organising MS (OMS) or a participating MS (PMS) – indicates its need for a monitor in a specific return operation (RO) via the Frontex Application for Returns (FAR). The FAR system automatically sends notifications to the CAP regarding MSs' requests for monitors. CAP collects the requests for monitors and prepares a monthly call (i.e. a letter) for monitors for operations the following month which is sent to the NFPOCs of all MSs who contribute monitors to the Pool, with copies to the NMBs. The call requests the NMBs indicate which operations they would be available for and interested in nominating monitors to. MSs then usually have one week to respond to the call. The NMBs can nominate monitors to specific operations listed in the call. Soon after the one-week deadline, CAP gathers all the nominations, prepares an overview of the upcoming return operations that month and calls a meeting with ECRet and FRO. Based on a number of criteria, CAP, ECRet and FRO assign the available monitors to specific ROs. CAP informs MSs, via the NFPOCs, where each monitor has been assigned.

While the organisational aspect of the monthly calls functions well, monitors identified a couple of issues with the monthly call which need addressing. These are:

1. Insufficient information in the Frontex monthly call for the monitors and their institutions to decide whether they can monitor a specific RO listed in the call;
2. A general lack of communication/information shared with monitors at this stage.

Considering the limited operational information about an upcoming RO at the time Frontex sends the monthly call to the MSs, as well as the communication channels established under the EBCG Regulation that exist between Frontex and MSs, it is recommended that:

1. Information is shared on how the Pool functions, e.g. organise regular meetings during which all the procedures, workflows and responsibilities are explained to the monitors (including information on the FAR system and communication between the OMS, PMS and Frontex);
2. Information regarding requests for monitoring ROs by scheduled flights is shared, e.g. request by email, specific training for monitoring scheduled flights etc.;
3. Monitors are informed about the procedures and limitations in the preparation of a Frontex-coordinated RO;
4. As much information as possible is included in the FAR when requesting monitors for upcoming ROs;
5. The individual monitors assigned to the ROs are included in any communication from an early stage onwards;
6. Information is duly shared with the monitoring bodies as well as information on the RO;
7. Monitors are informed about the general criteria used to assign monitors to specific ROs;
8. The selection criteria are shared via the web-based communication, coordination and information platform for Pool monitors;
9. This platform is used to improve communication with the monitors.

Preparation for deployment

The responsibility for requesting a monitor lies with the MSs. When monitors are deployed in the framework of the Pool, they are deployed based on a request made by a MS. As explained above, the NMBs are responsible for nominating monitors to upcoming ROs, listed in the monthly call. However, the selection of monitors that have been nominated for ROs, and their subsequent deployment from the Pool, is made and coordinated by Frontex. In this sense, Frontex is responsible for selecting and coordinating the deployment, but the responsibility for requesting a monitor remains with the MSs.

With regard to preparation for deployment, some of the issues raised by respondents were similar to those regarding the monthly call for monitors:

1. Insufficient information on an upcoming RO;
2. Insufficient time between receipt of relevant operational information about an upcoming RO and the actual start of that RO;
3. Non-responsiveness or late response from the OMS's contact point.

To address these issues, it is recommended that:

1. The OMS regularly updates the information relevant for an upcoming RO on to the FAR as soon as possible, i.e. as soon as new information becomes available, it should be uploaded on to the FAR and shared with the monitor;
2. The OMS Escort Leader (EL) shares the Implementation Plan (IP) with the monitor as soon as it is available;
3. Standardised procedures for the MSs are put in place on how to communicate with the monitors in the Pool, including the kind of information to provide to them;
4. The standardised procedures in place are communicated to the monitors.

Reporting and reimbursement of monitoring costs

Currently, Frontex provides monitors in the Pool with a reporting template in Excel and a guide to the reporting process. The template is not mandatory and at the moment, monitors/NMBs may choose the format for monitors' reports. In line with existing legal requirements, the monitors should submit a report on each forced-return operation to the Frontex Executive Director, the Frontex Fundamental Rights Officer and the relevant national authorities of all the Member States involved in a given operation. If necessary, the Executive Director and relevant national authorities should ensure appropriate follow-up⁴. To comply with Article 50(5) of the EBCG Regulation, ECRet also instructs the Pool monitors to send their

⁴ According to Article 50(5) of Regulation (EU) 2019/1896, "[t]he forced-return monitor shall submit a report on each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. If necessary, appropriate follow-up shall be ensured by the executive director and competent national authorities respectively".

monitoring reports⁵ to ECRet which then uploads the reports on to the FAR so that the relevant national authorities of all the MSs involved in a given operation (the institutions enforcing the return decision) have access to the information.

Monitors identified two main issues regarding the reporting process of monitoring a forced-return operation through the Pool, namely that:

1. The monitoring template provided by FRO is not user-friendly for reporting. Rather, it is a check-list on what to monitor;
2. The overall communication and feedback to monitors regarding their monitoring reports needs improvement.

To address these issues, it is recommended that:

1. Monitors use the same reporting format;
2. The same reporting standards are applied by all monitors;
3. Training on the usage of the reporting tools is carried out;
4. Receipt of monitoring reports is acknowledged;
5. Monitors are given feedback about their reports;
6. Recommendations from monitoring reports are followed-up;
7. There is transparency regarding the monitoring recommendations;
8. Good practices are shared and replicated;
9. A newsletter is sent out periodically informing monitors about the ways in which their reports and recommendations have been used.

All costs related to participation in a forced-return operation, including the flight ticket to and from the hub/port of departure, accommodation, daily subsistence allowance (DSA), monitoring fee, insurance and any other related costs are either born directly by the requesting MS or reimbursed on an individual basis/agreement between the requesting MS and the monitoring body in line with the national rules governing the monitoring body in the respective MS.

Currently, there are two methods for financing the monitoring costs:

1. Primarily, all costs and mission arrangements related to monitoring the RO are borne directly by the requesting MS and Frontex reimburses the MS after the RO. An estimation of the costs must be sent by the NMB to the requesting MS before the RO.
2. Another option is that the monitoring institution covers the costs and mission arrangements based on a specific and direct agreement with the requesting MS. In this case, the monitor(s) and/or the respective monitoring body organises the flight ticket to/from the hub/port of departure and the accommodation themselves and pre-pays all related costs. After the forced-

⁵ In addition to sending their monitoring reports to the Frontex executive director, the fundamental rights officer and to the competent national authorities of all the MSs involved in the given RO, the monitors are instructed to send their monitoring reports also to FJRCC@frontex.europa.eu.

return operation, all costs are submitted to the requesting MS for reimbursement. The requesting MS will then include these costs in their claim to Frontex for reimbursement.

With regard to reimbursement of monitoring costs, monitors identified three main issues:

1. Compensation for monitors' working time, i.e. salary for time spent while on mission and for writing the report after the mission;
2. Cumbersome reimbursement procedures;
3. Standardisation of monitors' fees, i.e. some monitors receive a monitoring fee, while others do not. Even though it is nationally regulated, some monitors were concerned about the unequal treatment.

To address these issues, it is recommended that:

1. All Pool monitors are informed and know about the rules for reimbursement;
2. A targeted workshop to discuss how to reach a possible standard monitoring fee for monitors is organised.

In addition to some issues regarding transparency of procedures put in place at different stages of the process, a few monitors also raised the issue of independence of the Pool. Article 51(1) of Regulation (EU) 2019/1896 stipulates that Frontex shall "[...]constitute a pool of forced-return monitors from competent bodies of the Member States who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC[...]". The Pool, therefore, consists of independent monitors, from competent monitoring bodies in MSs and the nomination to the Pool and the individual oversight is within the competence of the monitors' home institutions.

However, a few monitors highlighted that there is a need for an "external, independent control mechanism" and suggested to "[...]place the Frontex Pool with an independent organi[s]ation that deals with deployment and payments ". Moreover, they suggested that "safeguarding the independence of monitors [...] should be further discussed and addressed" to "[avoid] [f]urther internalisation of the monitoring process [...]".