

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

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The EU Return Directive (hereinafter: Directive 2008/115/EC or RD) is the main piece of EU legislation governing the procedures and criteria to be applied by EU Member States (MSs) when returning irregularly staying third-country nationals (TCNs). The Return Directive obliges MSs to issue return decisions to any illegally staying third-country national (Art. 6(1) RD); and take all necessary measures to enforce that decision (Art. 8(1) RD) in cases

“ where Member States use — as a last resort — coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned. ”

Article 8(4), Directive 2008/115/EC

Furthermore, Article 8(6) states that

“ Member States shall provide for an effective forced-return monitoring system ” .

The objective of forced-return monitoring is to document human rights compliance during the removal with a view to increasing transparency and accountability in the removal process, where the fundamental rights of returnees and principles could be at stake.

The overall objective of the FReM III project was to contribute to a functioning EU Return System in line with Return Directive, protecting the fundamental rights of returnees through independent and transparent forced-return monitoring based on a common European approach and harmonised procedures. The second specific objective was aimed at increasing the effectiveness of forced-return monitoring in MSs, based on the specific national needs. To identify these needs, as well as to suggest tailored support that can best be offered to partner countries in the framework of the FReM III project but also beyond, a gaps and needs analysis was conducted in 2019 – 2020.

This document summarises main findings of the gaps and needs analysis of national monitoring capacities of 22 FReM III partner countries. The methodology employed comprises secondary data analysis (i.e. desk research including information from various available sources and relevant reports of previous FReM projects), and primary analysis of data collected through a targeted survey of relevant National Monitoring Bodies (NMB) from all 22 FReM partner countries¹.

The analysis was conducted by the FReM III project team at ICMPD, composed of staff members of the Migration Dialogues & Cooperation Directorate in collaboration with two researchers from the Policy, Research and Strategy Directorate.

¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Greece, Finland, Hungary, Italy, Luxembourg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Sweden and Switzerland

Topic / Area	Gaps (in the current FRM system as identified by respondent)	Needs that, if met, would improve FRM
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General monitoring mandate

- a. Limited legal mandate (limited mandate of a forced-return monitor)
- b. Cumbersome bureaucratic processes
- c. Limited funding

- Institutionalisation of an adequate standardised profile of a forced-return monitor
- Increase in institutional funding



Institutional capacity to monitor forced-return

- a. Limited available funding
- b. Limited number of (operational) monitors
- c. Lack of adequate training and insufficient training
- d. Limited monitoring mandate of the NMB
- e. Limited inter-institutional communication

- Provision of adequate training for monitors
- Stable source of (increased) funding
- Increased number of monitors working in forced-return monitoring
- Protection of rights of monitors, particularly when they work on a voluntarily basis (e.g. long working hours)
- Increased and formalised institutional cooperation, particularly when monitors are from a non-governmental organisation





Monitors' preparedness for monitoring forced-return


- a. Too short a time to prepare to participate in a return operation (RO)
- b. Lack of information about an upcoming RO
- c. Late receipt of relevant information regarding an upcoming RO (e.g. vulnerabilities of returnees)
- d. Unclear information flow/lack of procedures when communicating relevant information to monitors


- Increase the time monitors have for preparing their participation in an upcoming RO by notifying them well in advance about upcoming returns
- In order to increase the time monitors have for preparing, one suggestion was that the return enforcing institution plans ROs well in advance
- Improve communication with monitors regarding relevant information about an upcoming RO (e.g. information about the returnees, their vulnerabilities and not just countries of origin and the number of returnees)

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 <p>Deployment of monitors</p>	<ol style="list-style-type: none"> Inter-institutional communication between the return enforcing institution and the NMB Length of a mission, particularly when only one monitor is deployed in a mission longer than 24h and with several returnees Limited monitoring legal mandate 	<ul style="list-style-type: none"> Timely, accurate and detailed communication between the enforcing institution and the NMB Allocation of funding for monitors' work (to avoid voluntary work and to increase flexibility of NMBs) Improvement (widening) of a monitor's legal mandate Increase the number of monitors
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 <p>The monitoring process</p>	<ol style="list-style-type: none"> Lack of an interpreter Lack of specific monitoring guidelines Lack of/late receipt of information about the returnees 	<ul style="list-style-type: none"> Specific monitoring guidelines Presence of an interpreter and of specialists (e.g. psychologists)
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 <p>Writing and submitting a monitoring report</p>	<ol style="list-style-type: none"> In some countries, the poor practical applicability of the currently used monitoring report template No obligation to write and submit a report Lack of a reporting template Lack of monitoring guidelines The absence of recommendations from monitoring reports The unclear and limited use of monitoring reports by institutions involved in forced-return 	<ul style="list-style-type: none"> Standard procedures for information sharing and an improved collaboration and communication between the monitoring institution and the return enforcing institution Access for monitors to previous monitoring reports More institutional discussion/reflection on the recommendations from monitors' reports
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 <p>Following-up on monitoring reports</p>	<ol style="list-style-type: none"> Lack of follow-up of monitoring reports Collaboration and information sharing between relevant institutions, e.g. between the institutions conducting monitoring (if several) and also between the enforcing institutions and the NMB 	<ul style="list-style-type: none"> Establishment of a formal follow-up on reports, particularly regarding the recommendations from the monitoring reports
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