

# The Pool of Forced-Return Monitors:

## Guidelines for Monitors (September 2021)



Co-funded by the Asylum,  
Migration and Integration  
Fund of the European Union



**ICMPD**

International Centre for  
Migration Policy Development



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This publication has been produced by the International Centre for Migration Policy Development (ICMPD) within the framework of the EU-funded Forced-Return Monitoring III (FReM III) project.

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# Acknowledgements

The Guidelines for Monitors were elaborated within the framework of the project “Forced-Return Monitoring III” (FReM III), co-funded by the Asylum, Migration and Integration Fund (AMIF) of the European Union. The FReM III project was implemented from December 2018 until December 2021 by the International Centre for Migration Policy Development (ICMPD) in co-operation with the 22 partner states: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Sweden and Switzerland and in close coordination with the European Border and Coast Guard Agency (Frontex), and the European Union Agency for Fundamental Rights (FRA).

The FReM III project team at ICMPD acknowledges and expresses deep gratitude for the co-operation, contribution, know-how, and expertise shared by the project partner states throughout the implementation of the project.

Furthermore, profound appreciation is extended to Frontex, in particular the Fundamental Rights Office, the European Centre for Returns Division, the Training Unit and the Capability Programming Office, as well as to FRA, for their partnership, guidance, and mutual expertise.

Finally, special thanks go to the FReM III project team at ICMPD for their continuous commitment and dedicated effort to the management and successful implementation of the project.



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# Introduction

The guidelines for monitors in the pool of forced-return monitors (“The Pool of Forced-Return Monitors: Guidelines for Monitors”) were drafted within the framework of the EU-funded “Forced-Return Monitoring III” project<sup>1</sup>. They are based on the “Guidelines and Monitoring Tools for Forced Return Monitoring”<sup>2</sup>, the “Framework for a European Pool of Forced-Return Monitors – EPFRM”<sup>3</sup> and “the Organisational Structure and Operational Workflows of the Pool of Forced-Return Monitors”<sup>4</sup> as well as the “Forced-Return Monitoring - Background Reader” and related training material and hand-outs.<sup>5</sup> Furthermore, the guidelines are based on the relevant legal conventions, regulations and instructions as indicated in the text and respective footnotes.

This document aims to promote professional monitoring within the framework of the pool of forced-return monitors (Pool) based on the principle that people who are forcibly returned should be treated in a manner that complies with international human rights standards, EU and national legal obligations, in particular the principles governing the legality, necessity and proportionality of the use of force and means of restraint. The guidelines outline the principles and rules that a forced-return monitor is expected to comply with while monitoring forced-return operations within the framework of the Pool. They include procedures related to forced returns by air and follow the different phases of forced-return operations as indicated in further detail below.

These guidelines aim to equip forced-return monitors with the knowledge and tools that will enable them to accurately, objectively and independently observe, gather information and report on forced-return operations. The ultimate objective is to enable the monitor to establish whether a forced-return operation has been conducted in a humane manner, respectful of the dignity of the returnee and in line with fundamental rights as enshrined in the EU Charter for Fundamental Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and international human rights standards, as well as the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) and the Frontex Codes of Conduct.

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1 Implemented between 2018-2021 in partnership with Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Sweden and Switzerland as well as the European Border and Coast Guard Agency (Frontex) and the European Union Agency for Fundamental Rights (FRA). Co-funded by the Asylum, Migration and Integration Fund (AMIF) of the European Union and the partner countries.

2 ICMPD September 2015.

3 ICMPD September 2015.

4 ICMPD August 2021.

5 ICMPD October 2021.



# Background

The Return Directive (Directive 2008/115/EC)<sup>6</sup> is the main piece of EU legislation governing the procedures and criteria to be applied by European Member States (MSs) when returning irregularly staying third-country nationals (TCNs). The Return Directive stipulates that “Member States shall issue a return decision to any third-country national staying illegally on their territory” (Article 6(1)). Once that return decision has been issued, “Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted [...] or if the obligation to return has not been complied with within the period for voluntary departure granted [...]” (Article 8(1)). At the same time, in cases where MSs “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)). Also, in order to comply with the provisions of Article 8(4), the Return Directive states that “Member States shall provide for an effective forced-return monitoring system” (Article 8(6)).

The Return Directive’s deadline for transposition into national law and practice was 24 December 2010. Some Member States and Schengen Associated Countries (both referred to as MSs)<sup>7</sup> had already established national forced-return monitoring systems by this deadline, while others were, or are still in the process of aligning their national systems with the specific requirements set out in the Return Directive. MSs currently use a variety of systems. In a number of MSs, the duty to monitor forced-return operations lies with the National Preventive Mechanisms (NPM) that implement the Optional Protocol to the United Nations (UN) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); in other countries, non-governmental organisations (NGOs), internal police monitoring systems or the national ombudsperson (who can sometimes also be NPMs) are involved in monitoring forced-return operations.<sup>8</sup>

Against this background, in 2011, the International Centre for Migration Policy Development (ICMPD), together with Matrix Insight Ltd.<sup>9</sup>, produced a “Comparative Study on Best Practic-

6 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN>

7 In this document, the term Member States (MSs) includes Member States of the European Union (EU MS) and countries associated with the implementation, application and development of the Schengen acquis (Schengen Associated Countries/SACs).

8 For further information please refer to: <https://fra.europa.eu/en/publication/2020/forced-return-monitoring-systems-2020-update>

9 A consultancy firm based in London, UK.

es in the Field of Forced Return Monitoring”. Responding to the increasing importance and complexity of return flights organised by Frontex, one of the recommendations of this study was to establish a pool of monitors across EU Member States.<sup>10</sup> In 2013, the same organisations conducted an “Evaluation on the application of the Return Directive (2008/115/EC)”. One of the evaluation’s recommendations pointed to the need to harmonise forced-return monitoring systems in MSs and to address weaknesses of national monitoring systems.<sup>11</sup>

In 2013, ICMPD was awarded the “Forced-Return Monitoring” (FReM) project co-funded through the European Return Fund – Community Actions 2012. ICMPD together with the European Border and Coast Guard Agency (Frontex), the European Union Agency for Fundamental Rights (FRA) and eight MSs<sup>12</sup> implemented the project – later referred to as FReM I – from 2013 to 2015. The objective was to facilitate the transposition of Article 8(6) of Directive 2008/115/EC. In particular, a pilot pool of independent forced-return monitors available to the countries needing to implement a forced-return monitoring system was created, and guidelines and a training programme for forced-return monitoring were developed.

Following this, from 2016 to 2018, ICMPD, Frontex, FRA and fifteen MSs carried out the Forced-Return Monitoring II project (FReM II<sup>13</sup>) to support Frontex in the implementation of Article 29 (pool of forced-return monitors) and Article 36 (training of staff involved in return-related tasks) of the European Border and Coast Guard Regulation 2016/1624 in force at the time.<sup>14</sup> Building on the results of the FReM I project, the FReM II project supported Frontex in establishing the pool of forced-return monitors (subsequently referred to as the Pool) within its structures, and MSs in improving their national forced-return monitoring systems.

The third and final Forced-Return Monitoring project, known as FReM III (2018-2021), further contributed to a functioning EU Return System in line with Directive 2008/115/EC. The project supported Frontex in increasing the operational and procedural effectiveness of the Pool and handed over full management and implementation of all related activities to Frontex. FReM III also continued to support MSs to increase the effectiveness of forced-return monitoring at the national level.

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10 Comparative Study on Best Practices in the Field of Forced Return Monitoring, Matrix & ICMPD, 2011, p. 41.

11 Evaluation on the application of the Return Directive (2008/115/EC), EC, 2013, p. 214.

12 Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland.

13 Austria, Bulgaria, the Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Romania, Sweden and Switzerland. The project was co-funded by the Asylum, Migration and Integration Fund (AMIF) of the EU.

14 Regulation (EU) 2016/1624 was in force at the time of the FReM II project. Regulation (EU) 2019/1896, which entered into force in December 2019, refers to the pool of forced-return monitors in Article 51 and the training of monitors in Article 62.

The FReM III project produced the final management structure and procedures for the Pool, contributing to its sustainability, improved day-to-day management and independence. The operational and procedural effectiveness and efficiency of the Pool was enhanced by improved communication, information and reporting tools. The training and capacity-building activities that were conducted, strengthened the professional development of monitors from the Pool.

## Terms and Definitions

The terms and definitions below are taken from the Guide for Joint Return Operations by Air coordinated by Frontex (2016) and complemented by terms and definitions from Directive 2008/115/EC (Return Directive), the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex (2018) and the European Border and Coast Guard Regulation (2019), unless another source is specifically indicated in the footnote. In addition, the following websites were consulted:

<https://www.coe.int/en/web/cpt/faqs#what-is-the-cpt> and  
<http://fra.europa.eu/en/about-fra>.

<b>Acronym (if applicable)</b>	<b>Term</b>	<b>Definition</b>
<b>AP</b>	<b>Advance party</b>	Representative(s) of the Organising Member State/Participating Member State who travel(s) either to the country/countries of return or to another Member State in order to make preparations for the realisation of a return operation.
	<b>Arrival phase</b>	Covers the period starting from arrival in the country of return and ending when the returnees are handed over to the national authority in the country of return.
<b>BUT</b>	<b>Back-up team</b>	A group of escorts – usually provided by the Organising Member State – acting as support to the escorts of both Organising Member State and Participating Member State(s) (i.e. assisting if necessary during violent incidents, or during lavatory procedures, etc.).
<b>BUT-L</b>	<b>Back-up team leader</b>	Leader of the back-up team.

Acronym (if applicable)	Term	Definition
	<b>Briefing</b>	A meeting organised before the in-flight phase, with all relevant participants, in particular the escort leaders, the back-up team leader, the monitor(s), doctors and the Frontex representative, in order to provide information about latest developments on the implementation of the return operation.
	<b>Coercive measures</b>	<ul style="list-style-type: none"> <li>- The use of coercive measures must be legal, necessary and proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and their physical integrity. The use of coercive measures takes appropriate account of the individual circumstances of each person, such as their vulnerable condition.</li> <li>- Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property.</li> <li>- Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited. The relevant escort leader periodically reviews the continuing necessity and proportionality of deploying coercive measures, and particularly of applying means of restraint, when these are used for prolonged periods, based on a dynamic risk assessment.</li> </ul>

Acronym (if applicable)	Term	Definition
		<ul style="list-style-type: none"> <li>- The Organising Member State (OMS) and Frontex provide for a list of authorised restraints in the operational documents in advance of the Return Operation (RO) or Return Intervention (RI). Where applicable, this list must be distributed to the relevant Participating Member States (PMSs) prior to the RO or RI (see also further below: Implementation Plan). The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures under medical supervision to ensure flight security.</li> <li>- No PMS participants are required to use coercive measures not allowed under their national legislation even if those measures are accepted by the OMS and Frontex for that particular RO or RI (see also further below: Implementation Plan).</li> <li>- Returnees must not be threatened in order for them to board a means of transport. They must not be punished for not having done so without prejudice to sanctions provided for by applicable legislation.</li> </ul>
	<p><b>Chicago Convention</b></p>	<p>The Convention on International Civil Aviation, known as the Chicago Convention, signed on 7 December 1944, in Chicago. It established the International Civil Aviation Organization (ICAO), a specialised UN agency charged with coordinating and regulating international air travel in the fields of safety, security, aviation environment protection and facilitation.</p>
<p><b>CRO</b></p>	<p><b>Collecting return operation</b></p>	<p>A return operation initiated by an Organising Member State, with aircraft and escorts provided by a country of return and returnees handed over to them by the Organising Member State/Participating Member State on the territory of a Member State.</p>

Acronym (if applicable)	Term	Definition
	<b>Common Guidelines</b>	Common Guidelines on security provisions for joint removals by air, which is annexed to Council Decision 2004/573/EC.
	<b>Council Decision 2004/573/EC</b>	The Council Decision of 29 April 2004 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.
	<b>Council Directive 2003/110/EC</b>	Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.
<b>(T)CoR</b>	<b>(Third) Country of return</b>	<ul style="list-style-type: none"> <li>- The country of origin of the third-country national; or</li> <li>- A country of transit in accordance with Community or bilateral readmission agreements or other arrangements; or</li> <li>- Another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.</li> </ul>
<b>CPT</b>	<b>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</b>	The CPT is a specialised independent monitoring body of the Council of Europe (CoE) <sup>15</sup> . It consists of independent, impartial experts such as lawyers, medical doctors, and specialists in prison or police matters. The CPT visits places of detention in the Member States of the Council of Europe to see how persons deprived of their liberty are treated. Examples of places of detention are: police stations, prisons, juvenile detention centres, immigration detention centres, psychiatric hospitals, or social care homes. They may also participate in and monitor forced-return operations.

<sup>15</sup> The Council of Europe (CoE) is an international organisation based in Strasbourg, which includes 47 member states, 27 of which are members of the European Union (EU). It was set up to promote democracy and protect human rights and the rule of law in Europe.

Acronym (if applicable)	Term	Definition
	<b>Debriefing</b>	A meeting organised during the return-flight phase, with all relevant participants, in particular the escort leaders, the back-up team leader, the monitor(s), and the Frontex representative, in order to assess the implementation of the return operation. If necessary, doctors should also participate.
	<b>Embarkation airport</b>	An airport where passengers from a national contingent embark on a return operation.
<b>EL</b>	<b>Escort leader</b>	Leader of the national escort team and responsible, within his/her team, for the adequate implementation of the return operation. He/she will be the highest authority/decision maker after the captain.
<b>EO</b>	<b>Escort officer</b>	The security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the Member State.
<b>FAR</b>	<b>Frontex Application for Return</b>	The FAR covers all return activities, from the expression of interest for pre-return activities and return (return operation) from a Member State in the rolling operational plan, up to the effective implementation of return operations.



Acronym (if applicable)	Term	Definition
<b>Frontex</b>	<b>European Border and Coast Guard Agency</b>	<p>European Border and Coast Guard Agency is the new name for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004. Its activities are based on the European Border and Coast Guard Regulation No 2019/1896.</p> <p>The Agency ensures European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently. This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.</p>
	<b>Fit-to-travel</b>	Refers to a returnee's medical condition (both physical and mental), which indicates that the person can undertake the journey safely.
	<b>Forced-return</b>	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. <sup>16</sup>
<b>FRA</b>	<b>European Union Agency for Fundamental Rights</b>	The European Union established FRA to provide independent, evidence-based assistance and expertise on fundamental rights to EU institutions and Member States. FRA is an independent EU body, funded by the Union's budget.

<sup>16</sup> EMN Glossary 2014, p.60.

Acronym (if applicable)	Term	Definition
	<b>Head of Operation</b>	The person appointed by the Organising Member State as having the overall responsibility for a joint return operation. Where no particular person is appointed, the escort leader of the Organising Member State is to be considered as the head of the joint return operation.
	<b>Hub</b>	An airport where Organising Member State/ Participating Member State passengers gather and embark on a joint return operation or collecting return operation and from where the airplane will transport all participants and returnees to the country of return.
<b>IP</b>	<b>Implementation Plan</b>	Prior to the implementation day of the return operation, Frontex draws up an Implementation Plan in cooperation with the Organising Member State and distributes it to the Participating Member State, as applicable. The Organising Member State and all Participating Member State escort leaders are responsible for informing each participant in his/her contingent about the content of the Implementation Plan, as well as the annexes, and for ensuring that they comply with the plan. This obligation is specified in each Implementation Plan.

Acronym (if applicable)	Term	Definition
		<p>The Implementation Plan includes a list of authorised restraints and equipment permitted during the return operation that was decided by the Organising Member State together with Frontex in accordance with its national legislation, international law and EU law, in particular the Charter of Fundamental Rights. However, no Participating Member State should use coercive measures that its legislation does not allow, even if those measures are accepted by the Organising Member State for that particular operation.</p> <p>The Implementation Plan has the following annexes available to all participants in the return operation: serious incident report template; code of conduct applicable to all persons Participating in Frontex operational activities; code of conduct for joint return operations coordinated by Frontex; complaint form for potential violations of fundamental rights; rules of the complaints mechanism; list of potential fundamental rights violations during operations.</p>
	<p><b>In-flight phase</b></p>	<p>Starts with the closure of the doors of the aircraft used for the removal and ends with the arrival at the final destination and the opening of the doors on arrival (country of return or, in the case of an unsuccessful return, back to the country of departure or, in the case of joint return operations, back to the hub), including the transit via another country.</p>

Acronym (if applicable)	Term	Definition
	<b>Illegal versus irregular migrant</b>	<p>Migrants and migration are often referred to as either irregular or illegal, sometimes interchangeably. However, language and terms carry certain meanings. In this regard, the term “illegal” carries a criminal connotation. Therefore, when referring to a person, “irregular” is preferred to “illegal”. Furthermore, migration flows are mixed and irregular migrants can therefore also be refugees and/or victims of trafficking. This perspective can also be observed in the fact that the Council of Europe distinguishes between illegal migration and irregular migrant. Based on the Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly, illegal is preferred when referring to a status and process, and irregular is preferred when referring to a person.</p> <p>The term third-country national shall be used as a neutral term for 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) and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.<sup>17</sup></p>
<b>IRMA</b>	<b>Integrated Return Management Application</b>	<p>A common IT platform for all return stakeholders developed by DG-HOME in coordination with Frontex and Member States. The aim of IRMA is to facilitate the planning of return operations and to assist the Member States and Frontex in the gathering and sharing of operational information.</p>

<sup>17</sup> EMN Glossary 2014, p. 283.

<b>Acronym (if applicable)</b>	<b>Term</b>	<b>Definition</b>
<b>JRO</b>	<b>Joint Return Operation by Air</b>	An operation aimed at the removal of irregularly present third-country nationals by air. The initiative for such an operation is to be taken by one Member State, which will invite the participation of others.
<b>MS</b>	<b>Member State</b>	A Member State of the European Union or a Country associated with the implementation, application and development of the Schengen acquis (Schengen Associated Country).
	<b>Monitor</b>	Refers to the person who observes a return operation in accordance with the effective monitoring system established by Member States pursuant to Article 8(6) of the Return Directive.
	<b>Monitoring</b>	“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 (Office of the High Commissioner for Human Rights, United Nations). In this context, the return operation is observed, analysed and reported on whether it was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and applicable international human rights law. The monitor of forced-return operations has no powers of intervention and thus should never intervene.
<b>OMS</b>	<b>Organising Member State(s)</b>	The Member State which is responsible for the organisation of a return operation.

<b>Acronym (if applicable)</b>	<b>Term</b>	<b>Definition</b>
	<b>Participant</b>	Any person, including escorts, monitors, interpreters and medical staff, taking part in a return operation, other than the returnee.
<b>PMS</b>	<b>Participating Member State(s)</b>	The Member State which participates in a joint return operation (or collecting return operation, if applicable) organised by the Organising Member State.
<b>PAX</b>	<b>Positional asphyxia (or postural asphyxia)</b>	This is a form of asphyxia which occurs when someone's position prevents him/her from breathing adequately. A small but significant number of people die suddenly and without apparent reason during restraint by police, prison (corrections) officers, and health care staff. Positional asphyxia may be factor in some of these deaths.
	<b>Pre-departure phase</b>	In the Annex to Decision 2004/573/EC, this is defined as the period starting with transportation to the airport. It covers the period from leaving the (temporary) holding/detention facility until embarkation on the aircraft.
	<b>Removal</b>	The enforcement of the obligation to return, namely the physical transportation out of the Member State. <sup>18</sup>
	<b>Return</b>	The process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to his or her country of origin, 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 in which he or she will be accepted.

<sup>18</sup> Article 3(5), Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Acronym (if applicable)	Term	Definition
	<b>Return decision</b>	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC.
	<b>Return Directive</b>	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.
	<b>Returnee</b>	An irregularly staying third-country national who is the subject of a return decision issued by a Member State.
	<b>Return-flight phase</b>	The period starting after the handover procedure in the country of return until arrival at the airport of departure (hub in the case of joint return operations).
<b>RO</b>	<b>Return operation</b>	An operation that is coordinated by the European Border and Coast Guard Agency (Frontex) with technical and operational reinforcement provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis.
	<b>Risk assessment</b>	The Organising Member State and each Participating Member State carry out an individual risk assessment of returnees (based on factors such as previous behaviour and removal history). Such assessments should be used to determine the number of escorts and ground staff and the size of the back-up team in order to ensure security during all the return operation phases, as well as for the determination of the possible use of coercive measures.

<b>Acronym (if applicable)</b>	<b>Term</b>	<b>Definition</b>
	<b>Dynamic risk assessment</b>	An ongoing risk assessment (see risk assessment above).
	<b>Rolling operational plan</b>	A rolling forecast for a return operation drawn up by Frontex on the basis of Member States' needs for assistance or coordination in order to provide the requesting Member States with the necessary operational support.
	<b>Seating plan</b>	Distribution of seats on a specific type of an aircraft between all Member States taking part in a specific joint return operation.
<b>TCN</b>	<b>Third-country national</b>	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) and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
	<b>Tokyo Convention</b>	The Convention on Offences and Certain Other Acts Committed on Board Aircraft, concluded in Tokyo on 14 September 1963, which entered into force on 4 December 1969.
	<b>Transit country</b>	A country via whose airport return operation passengers transit to connect to the next flight.
<b>VD</b>	<b>Voluntary departure</b>	In the context of the Union, the return acquis refers to voluntary compliance with an obligation to return to a third country. <sup>19</sup>
	<b>Voluntary return</b>	The assisted or independent return to the country of origin, transit, or third country, based on the free will of the returnee. <sup>20</sup>

<sup>19</sup> EU Return Handbook 2018, p.12.

<sup>20</sup> EMN Glossary 2017, p. 300.



<b>Acronym (if applicable)</b>	<b>Term</b>	<b>Definition</b>
	<b>Vulnerable persons</b>	Including minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with young children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence.

# 1. Pool of forced-return monitors

On 4 December 2019, Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard<sup>21</sup> (Regulation (EU) 2019/1896) entered into force. Article 51(1) requires that the European Border and Coast Guard Agency (Frontex) “[...] after taking due account of the opinion of the fundamental rights officer, [to] 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 and who have been trained in accordance with Article 62 of this Regulation.”

In addition, Regulation (EU) 2019/1896 specifies that the “Member States shall be responsible for contributing [monitors] to the pool by nominating forced-return monitors corresponding to the defined profile.”<sup>22</sup> These monitors have to be members of “[...] competent bodies of the Member States who carry out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC [...]”<sup>23</sup>.

The pool of forced-return monitors was constituted by 7 January 2017, as required by Article 29 of Regulation (EU) 2016/1624 in force at the time<sup>24</sup>. The main Frontex entities involved in the operational activities and management of the Pool are: the European Centre for Returns Division (ECRet Division), which is part of the Operational Response Division; the Capability Programming Office (CAP) and the Training Unit (TRU) which are part of the Capacity Building Division; and the Fundamental Rights Officer (FRO) who reports directly to the Management Board.

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21 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (<https://eur-lex.europa.eu/eli/reg/2019/1896/oj>).

22 Article 51(2).

23 Article 51(1).

24 Article 29 of Regulation (EU) 2016/1642 was then replaced by Article 51 of Regulation (EU) 2019/1896.

## 2. Monitoring within the framework of the Pool

Article 8(6) of Directive 2008/115/EC (Return Directive) requires “*Member States [to] provide for an effective forced-return monitoring system.*” Hence, the pool of forced-return monitors consists of monitors who are members of competent bodies in Member States that carry out forced-return monitoring activities in accordance with this article.

The pool is a subsidiary mechanism of the national monitoring system and is activated whenever a Member State requests a monitor from the pool, either because no monitor is available in the Member State for a specific forced-return operation or because the Member State does not have an effective monitoring system in place. The monitors deployed from the pool replace the national monitoring system of the requesting Member State during a specific forced-return operation.

During return operations coordinated by Frontex, the activity of the forced-return monitor from the Pool is to provide support, on demand, for the national monitoring system of the requesting Member State.

Monitoring carried out by monitors from the Pool means that a contingency of a Member State is monitored at their request by a monitor from another Member State. It is important to note that the monitor from the Pool requested by a Member State to participate in monitoring a return operation monitors that specific contingency, not the entire operation; however, other participating Member States (PMS) may agree that the same monitor also monitors the return operation on their behalf.<sup>25</sup> A requesting Member State can be either the organising Member State (OMS) or a PMS; in practice, it is usually the OMS that requests a monitor from the Pool. The Member States can also request more than one monitor from the Pool.

With the exception of collecting return operations (CRO), where the physical presence of a monitor is mandatory<sup>26</sup>, Regulation (EU) 2019/1896 does not clearly specify the obligation

<sup>25</sup> Article 16(4) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex (2018) specifies that “[w]hen feasible and subject to prior agreement between the MS concerned, forced-return monitors may also monitor on behalf of other MS taking part in [a return operation].”

<sup>26</sup> In line with Article 50(3) of Regulation (EU) 2019/1896 “[...] At least one Member State representative, and one forced-return monitor from the pool established under Article 51 or from the monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.”

to physically monitor all forced-return operations.<sup>27</sup> However, Frontex advises physical monitoring of all forced-return operations by charter flights to safeguard their compliance with fundamental rights.

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*27 According to Article 50(5) of Regulation (EU) 2019/1896 "[e]very return operation organised or coordinated by the Agency shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. The 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".*

### 3. Role of the forced-return monitors of the Pool

The role of the forced-return monitors in the Pool is to observe, analyse and report on whether the return operation was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights, applicable international human rights law and national legislation. They monitor the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return.<sup>28</sup> After the return operation, they submit a report to the Frontex executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation.<sup>29</sup> The monitor of forced-return operations has no powers of intervention and should, therefore, never intervene.

Monitoring is a tool for reinforcing observance of fundamental rights during a forced-return operation. It is a way of verifying that those carrying out the forced-return operation uphold the fundamental rights of returnees during the whole process. Monitors play a preventive role through their presence during forced-return operations and can help to ensure there is a greater level of accountability in the event of actions or omissions by officials carrying out the forced-return operation that contravene the EU Charter of Fundamental Rights, applicable international human rights law and national legislation. The presence of monitors observing and reporting on the forced-return operation means that those responsible for carrying out the return operation can be held accountable for the actions they take, or fail to take, during the operation.

The task of the forced-return monitor is to focus on how the return operation is conducted. The Pool's mandate does not allow monitors to question the decision, or enforcement of the decision to return a third-country national, though they can note down any complaints returnees make about the decision to return them, in their reports about the re-

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28 According to Article 50(5) of Regulation (EU) 2019/1896 “[e]very return operation organised or coordinated by the Agency shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. [...]”.

29 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”.

turn operation.<sup>30</sup> It is important to note that transfers from one Member State to another, which are regulated under the Dublin Regulation, do not qualify as returns in the sense outlined in the Return Directive. Therefore, the Return Directive's obligation to effectively monitor forced-returns does not cover these transfers.<sup>31</sup>

A forced-return monitor is consequently tasked with observing and gathering information in order to produce a report on whether the forced-return operation was conducted in compliance with fundamental rights. Observance of fundamental rights is expected to be enhanced through continuous evaluation of the return operations and improvements that are made to them based on the reports and recommendations made by monitors.

Forced-return monitors should be independent from the State and/or the organisation enforcing the return so that they are not bound by the orders of the members of the return operation carrying out the forced-return operation. They should also preferably not have been involved in providing services such as legal advice or psycho-social counselling, to the returnee beforehand. These measures are important to safeguard the objectivity and independence of the monitor. Thus, when a State nominates a monitor, the monitor's independence from that State should be guaranteed. As mentioned above, under no circumstances can a forced-return monitor working in the Pool question or examine the legality of the return decision.

As described in further detail below<sup>32</sup>, a forced-return monitor is a member of the national body of a Member State that is responsible for forced-return monitoring in accordance with Article 8(6) of Directive 2008/115/EC or a fundamental rights monitor employed as statutory staff of Frontex in line with Article 110(1) of Regulation (EU) 2019/1896<sup>33</sup>, who carries out independent monitoring of return operations as well as return interventions throughout their duration.

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30 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards include allowing returnees to lodge last-minute applications for asylum. In some countries a representative from the national authorities is assigned to the return operation to allow any last-minute asylum application to be lodged, including before a judge.

31 The Dublin (III) Regulation (No 604/2013) of the European Parliament and the Council, in force from 1 January 2014 and replacing the 2003 Dublin (II) Regulation (No 343/2003) sets out the criteria and mechanisms for determining which EU country is responsible for examining an asylum application. Article 3(1) of the Dublin Regulation No. 604/2013, requires that EU Member States examine any application for international protection lodged by a third-country national or a stateless person and that such application be examined by one single Member State. The objective is to avoid asylum seekers being sent from one country to another, and to prevent abuse of the system by the submission of several applications for asylum by one person. The criteria for establishing responsibility to examine an asylum application run, in hierarchical order, from family considerations, to recent possession of a visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly, or regularly. Among the various criteria listed in the Dublin Regulation, the State responsible for allowing the applicant to enter the common area (specifically if entered irregularly, Article 15, Chapter III), is typically determined to be the State responsible for reviewing the application (Chapter III of the Dublin Regulation). (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0604>)

32 See profile of a forced-return monitor.

33 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

In order to fulfil the professional standards expected, monitors need to exercise neutrality, confidentiality, and ethical commitment and have an acute understanding of the importance of the monitor's report. In order to be able to fulfil their role and tasks, the monitor has to understand and accept the mandate and responsibilities of the officials in charge of the operation, in particular the escort officers and escort leaders.

## 4. How does monitoring reinforce observance of fundamental rights?

Monitors from the Pool of forced-return monitors must observe and report on the whole return operation. In accordance with Article 50(3) of Regulation (EU) 2019/1896 on the European Border and Coast Guard *“The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return”*.

The following definition of forced-return monitoring helps to clarify how monitoring reinforces the observance of fundamental rights:

Forced-return monitoring is an activity during which a return operation is observed, analysed and reported on whether it was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and applicable international human rights law. The monitor of forced-return operations has no powers of intervention and thus should never intervene.

Forced-return monitors must know and understand their mandate during a forced-return operation and always use this mandate as a framework for their actions. Monitors must have knowledge and understanding of the international human rights standards relevant to their role during the operation. This knowledge can be gained through participation in training on fundamental rights, and by regular consultation with colleagues and/or supervisors on the various aspects of fundamental rights monitoring. In this regard, all monitors of the Pool have to complete the same course for forced-return monitors and participate in other related events organised by Frontex for the Pool.

It is important to note that during return operations coordinated by Frontex, the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex<sup>34</sup>, which complements the provisions of the Frontex Code of Conduct for

<sup>34</sup> [http://195.13.183.215/moodle/pluginfile.php/18084/mod\\_resource/content/1/Code\\_of\\_Conduct\\_for\\_Return\\_Operations\\_and\\_Return\\_Interventions.pdf](http://195.13.183.215/moodle/pluginfile.php/18084/mod_resource/content/1/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf)



all persons participating in Frontex activities<sup>35</sup>, also applies to the monitors. Monitors thus have to be conversant with the content of these Codes of Conduct.

Monitoring can act as control mechanism in return practices and can be a tool for a greater level of transparency to ensure that return operations are carried out in line with fundamental rights standards. The presence of independent monitor(s) accurately and impartially monitoring the operation and submitting their reports can lead to increased awareness among those conducting the return operations about the importance of complying with human rights law and adhering to the rules and standards set by national, regional and international bodies. The unbiased and neutral reporting by an independent monitor contributes to creating greater transparency, and serves the interest of both the returnees and the enforcing authorities:

- ♦ For the returnee, a monitor's report can provide evidence for supporting, for example, possible claims of mistreatment and excessive use of force<sup>36</sup>;
- ♦ For the escorts and the escort leader (EL), a report can be used as evidence in investigations by an independent authority into the claims or accusations to clear the escorts if the allegations prove to be unfounded.<sup>37</sup>

Monitors must be objective. Therefore, it is crucial they gather as much information as possible, especially through dialogue with the officials responsible for carrying out the operation, throughout every phase of the operation.

Reporting is the final step in the monitoring process, the ultimate aim of which is to safeguard the fundamental rights of the returnees. Therefore, the monitoring reports must be objective, precise and accurate to clearly document possible violations of fundamental rights during the forced-return operation. The reports should also include other observations and recommendations on steps to improve the way a forced-return operation is conducted and raise standards of protection. They should also report good practices, as applicable.

Monitoring reports together with reports submitted by the Organising Member State (OMS) and/or Frontex, may be used in investigations following claims or accusations against officials. Similarly, monitoring reports serve as an important tool to continuously evaluate and revise future return operations by taking corrective measures, where required.

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35 [https://frontex.europa.eu/assets/Publications/General/Frontex\\_Code\\_of\\_Conduct.pdf](https://frontex.europa.eu/assets/Publications/General/Frontex_Code_of_Conduct.pdf)

36 The term 'use of force' means any type of physical intervention used on another person.

37 A report submitted by independent personnel from the law enforcement body (or private security personnel) implementing the return operation is considered relevant as it circumvents the possibility of the application of the so called "blue code", an allegedly unwritten rule amongst law enforcement personnel that might impede officers from reporting the misconduct of fellow officers.

## 5. Key tasks and responsibilities of a forced-return monitor

A forced-return monitor has a number of specific tasks and responsibilities to perform during the course of the different phases of a forced-return operation. These are described in more detail under the various headings below. The following are a forced-return monitor's key tasks and responsibilities:

- ♦ Report on whether the forced-return operation was conducted in a humane manner and in compliance with fundamental rights<sup>38</sup>;
- ♦ Report on whether returnees were treated respectfully and in compliance with fundamental rights;
- ♦ Report on whether any use of force was in line with the rules set out in the Implementation Plan, did not exceed reasonable force and was used with due respect for the returnee's rights, dignity and physical integrity;
- ♦ Report on the returnees' behaviour towards the escort officers and other participants<sup>39</sup>;
- ♦ Report on any other incidents;
- ♦ 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;

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38 A monitor needs to observe fundamental rights compliance in forced-return operations, paying particular attention to the following rights: right to life; right to liberty and security; prohibition of torture and inhuman or degrading treatment or punishment; prohibition of refoulement; right to human dignity; right to non-discrimination; freedom of thought, conscience and religion; access to information; right to health; access to food and water as basic needs; rights of vulnerable groups (Vulnerable persons include minors, 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); right to family unity; rights of the child/best interest of the child; right to personal data protection; right to privacy; right to property; right to complaint/good administration.

39 The term 'participant' means any person, including escorts, monitors, interpreters and medical staff taking part in a return operation or return intervention, other than the returnee (see Article 3(b) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex (2018)).

- ♦ Collect all the relevant facts during the pre-departure, in-flight, arrival and return flight phases focusing on the questions: What do I see? What does it mean? What needs to be improved (bad practice) or multiplied (good practice)?
- ♦ Respect the principles of accuracy, confidentiality, impartiality, and non-discrimination at all times;
- ♦ May address the escort leader with any observations or questions at an opportune moment;
- ♦ Indicate when information was received from third-parties;
- ♦ Make recommendations to end or improve bad practices or ones to spread good practices based on the facts they have observed and where applicable, address them to the relevant stakeholders.

## 5.1 What it means to be a forced-return monitor

### **The essential questions the monitor should ask themselves are:**

- ♦ What do I see and hear?
- ♦ What does it mean?
- ♦ What aspects of the return operation need to be improved and what aspects work well that could be duplicated elsewhere?

### **In order to fulfil their duties, forced return monitors should:**

- ♦ Have the necessary training in forced-return monitoring;
- ♦ Be physically, medically and psychologically fit to perform the duties of a forced-return monitor;
- ♦ Demonstrate the maturity and emotional stability to be able to perform their tasks as a forced-return monitor;
- ♦ Have very good knowledge of the procedures, and the duties and rights of all the officials involved;

- ♦ Follow the principles of accuracy, confidentiality, impartiality and non-discrimination;
- ♦ Carry out their assigned tasks in a dutiful, timely, and accurate manner throughout the forced-return operation;
- ♦ Know what coercive measures are permitted;
- ♦ Have access to all the necessary information prior to and during the return operation;
- ♦ Keep calm in all situations;
- ♦ Maintain a professionally distant manner throughout the entire return operation;
- ♦ Be impartial and objective towards all parties involved in a forced-return operation;
- ♦ Be able to distance themselves emotionally;
- ♦ Respect confidentiality and not disclose any information gained while fulfilling their monitoring obligations to any other parties besides those clearly stated in the reporting criteria;
- ♦ Have the necessary equipment, such as a pen and notebook during the return operation and a username, password and device to access the reporting application.

## 5.2 Profile of a forced-return monitor<sup>40</sup>

Pursuant to the Frontex Management Board Decision 40/2020 of 26th November 2020, the number of forced-return monitors to be made available to the Pool shall be composed of a minimum of:

- a) fifty forced-return monitors to be nominated by the Member States; and
- b) five fundamental rights monitors, acting as forced-return monitors, to be nominated by the Fundamental Rights Officer on the basis of Article 109(3)(c) of the Regulation.

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<sup>40</sup> The Frontex Management Board adopted Decision MB 40/2020 of 26 November 2020 with the revised the profile for a forced-return monitor and set out determining the number of forced-return monitors to be made available to the pool of forced-return monitors.

## Definition

A forced-return monitor is a person from a national body of a Member State competent for forced-return monitoring in accordance with Article 8(6) of Directive 2008/115/EC or a fundamental rights monitor employed as statutory staff of the Agency who carries out independent monitoring of return operations as well as return interventions throughout their duration. Forced-return monitors do not intervene during the execution of the return operation or return intervention.

## Indicated tasks and functions

- ♦ To monitor fundamental rights compliance in return operations as well as in return interventions, in line with national legislation and regional, EU and international fundamental rights standards, and in particular to observe whether fundamental rights are complied with, legal obligations met and returnees are treated in a humane manner in respect of the dignity of persons.
- ♦ To report the findings in relation to fundamental rights compliance in return operations and return interventions to the Executive Director, to the Fundamental Rights Officer and to the competent national authorities of the Member States taking part in the given operation or intervention.

## Qualifications and experience required

A forced-return monitor has to have knowledge and understanding of:

- ♦ Fundamental rights obligations, in particular fundamental rights protection in the context of return operations such as human dignity, respect for the principle of *non-refoulement*, the necessity and proportionality principles and the duty of precaution in the context of use of force and measures of restraint;
- ♦ The principle of non-discrimination and the right to complain to the competent authorities;
- ♦ The Return Directive (2008/115/EC), the Council of Europe's Twenty Guidelines on Forced Returns (2005)<sup>41</sup>, the standards of the European Committee for the Preven-

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<sup>41</sup> Adopted by the Committee of Ministers on 4 May 2005 at the 925th meeting of the Ministers' Deputies of Council of Europe.

tion of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>42</sup> as well as other applicable procedures, laws and recommendations related to return operations and return interventions;

- ♦ International and European standards on child protection<sup>43</sup>, other vulnerable groups as well as gender aspects, including those reflected in the Frontex Guide for Joint Return Operations by Air (JROs)<sup>44</sup>, the Return Handbook<sup>45</sup> and/or further guidelines on this matter;
- ♦ Cultural and social contexts of the returnees.

**A forced-return monitor has to be able to:**

- ♦ Impartially observe fundamental rights compliance in return operations and return interventions;
- ♦ Identify conduct which raises concerns from a fundamental rights point of view and link this to the relevant legal standards;
- ♦ Draft a detailed monitoring report in accordance with the procedures and reporting tools, outlining all relevant information as well as detailing relevant observations, including recommendations as well as good practices and lessons learned concerning return activities;
- ♦ Demonstrate flexibility, openness and resilience to face the complexities of the role.

**In addition, a forced-return monitor shall:**

- ♦ Exercise the appropriate level of autonomy and the good ability to assess and act adequately in complex situations in the process of monitoring return operations and return interventions.

**Eligibility criteria**

To be eligible to join the pool of forced-return monitors, a person must meet the following criteria:

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42 Council of Europe, <https://www.coe.int/en/web/cpt/standards>

43 The required knowledge will be applicable for a limited number of monitors.

44 Guide for Joint Return Operations by Air coordinated by Frontex issued on 12.05.2016;

45 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 (*OJ L 339, 19.12.2017, p. 83*).

- ♦ Be a member of a competent body in a Member State that carries out independent forced-return monitoring in accordance with relevant international, EU and national law, or for statutory staff of the Agency, be nominated by the Fundamental Rights Officer on the basis of Article 109(3)(c) of the Regulation;
- ♦ Possess knowledge, skills and competences as described under “3. Qualifications and experience required”;
- ♦ Have undergone advanced training relevant to the tasks and powers of a forced-return monitor. In particular, this training should cover relevant Union and international law, including on fundamental rights, access to international protection, protection of children and other persons in vulnerable situations, gender aspects;
- ♦ Have experience in monitoring return operations, readmissions and/or places of detention or deprivation of liberty or other similar areas, preferably in a migration context;
- ♦ Have an adequate knowledge of the English language (equivalent to CEFR level B2);
- ♦ Be able to physically and psychologically cope with the tasks, including the ability to remain patient and calm in challenging situations.

**In addition, the following would be advantageous:**

- ♦ Experience in cooperating or working with the Agency, relevant national authorities and/or with international or non-governmental organisations in the area of returns;
- ♦ Specific expertise in child protection;
- ♦ Experience of working with children/other vulnerable groups;
- ♦ Knowledge of languages spoken in countries of destination of return operations;
- ♦ Knowledge and/or experience in de-escalation and/or mediation techniques and methodologies;
- ♦ Basic medical knowledge;
- ♦ Training on emergency procedures on board aircraft.

### 5.3 Communication platform for the pool of forced-return monitors

Frontex maintains a communication platform for the Pool's forced-return monitors on the Frontex One-Stop-Shop (FOSS). FOSS is the Agency's platform for sharing information with Member States, Schengen-Associated-Countries and other designated partners. This platform is set up to allow the monitors to exchange information with each other. It enables them to:

- ♦ Download the monthly calls for return operations;
- ♦ View and upload events in the calendar via the FRO;
- ♦ Raise various work-related issues via a discussion forum;
- ♦ Download general information and background documents relevant to their work;
- ♦ Upload documents via the FRO that they wish to share;
- ♦ Access information about the way the Pool functions;
- ♦ Contact other users on various work-related issues.

The Secretariat of the Pool and the Information Fusion Centre (IFC) maintain the communication platform for the Pool's forced-return monitors on FOSS<sup>46</sup>. The FRO is the content owner of the communication platform, while the IFC is responsible for technical support and maintenance of the communication platform. Monitors can request access to the platform via their National Frontex Point of Contact (NFPOC) in their country.

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<sup>46</sup> <https://foss.frontex.europa.eu/PlatformforForcedReturnMonitors/tabid/4240/Default.aspx>.



## 6. Types of forced-return operations

In line with Article 2(27) of Regulation (EU) 2019/1896 “*return operation*’ means an operation that is organised or coordinated by the European Border and Coast Guard Agency and involves technical and operational reinforcement provided to one or more Member States under which returnees from one or more Member States are returned, either on a forced or voluntary basis, irrespective of the means of transport”.

During chartered forced-return operations coordinated or organised by Frontex (national return operations – NROs, joint return operations – JROs and collecting return operations – CROs), escorts accompany individuals being returned.<sup>47</sup> When a return operation is being organised (including NROs, JROs, and CROs), the country or countries of return selected for that particular return operation depends on the number of nationals from that country waiting to be returned, the travel documents available and the conditions applied by the country of return regarding the return of nationals. Such conditions may include whether the country of return accepts charter flights, readmission agreements or the ability of the country of return to receive the returnees. The ability to resolve practical arrangements and co-operation between the Member State(s) carrying out the return operation and the country/countries of return will determine the success or otherwise of the return operation.

According to Council of the European Union Decision 2004/573/EC, and the Common Guidelines on security provisions for joint removals by air attached to the decision, further endorsed in Article 8(5) of Directive 2008/115/EC, one organising Member State (OMS) is responsible for organising joint removals by air. Frontex provides the necessary assistance and, either at the request of a Member State, or on the basis of its own proposal, coordinates and jointly organises the operations.

In return operations coordinated by Frontex, the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, applies to all participants of the operation. This code of conduct (CoC) outlines the general principles

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<sup>47</sup> A returnee can also be forcibly returned by scheduled flight (i.e. normal passenger flights with an airline to a scheduled destination carrying other passengers), and in most of these cases the returnee is accompanied by escorts, if they are being forcibly returned. In certain cases, however, if the returnee is cooperative, does not oppose the return and a risk assessment has been carried out, they might only be accompanied to the aircraft by the escorts who then wait until the aircraft departs. In some cases, the authorities in the country of return will come to the gate when the aircraft arrives to pick the person up; in other cases, the person will just disembark the aircraft on their own.

related to the respect for fundamental rights, cooperation with returnees, and standards for the use of coercive measures, as well as related to the organisation of the removal and effective forced-return monitoring. In this regard and pursuant to the Article 15(2) of the CoC, Member States taking part in a return are required to ensure that they have an effective forced-return monitoring system in place. In return operations coordinated by Frontex, the OMS tells Frontex in advance about the planned return operation. All operational information is included in the Frontex Application for Returns (FAR)<sup>48</sup> where the OMS, PMS and Frontex interact in real time during the organisation of the return operation.

## 6.1 National Return Operations - NROs

National Return Operations (NRO) to return third-country nationals who are subject to individual return decisions issued by the respective Member State (taken by a court or competent administrative body of the Member State) to a country of return, are organised and carried out via charter flight by the respective Member State in coordination with Frontex and the country of return. The Member State organises the national escorts and all the necessary support staff who will be on the flight. This also includes medical personnel and interpreter(s), if required. In addition, the Member State arranges for the participation of forced-return monitor(s) who can also be requested from the Pool. Prior to departure, the authorities of the Member State are required to carry out a medical examination of a returnee, where they are known to have a medical condition or where medical treatment is required. This is subject to the returnee's agreement. Individuals can only be returned if they are considered by a doctor to be fit to travel. The processing of medical information related to the returnee must be carried out in line with relevant data protection legislation regarding use of personal data.

## 6.2 Joint Return Operations - JROs

Joint Return Operations (JRO) are those that are organised when third-country nationals who are subject to individual return decisions made by a court or competent administrative body of a Member State, are returned from different Member States using a chartered aircraft. Therefore, JROs involve more than one Member State and returnees from more than one Member State. Usually, one Member State organises the JRO (referred to as the Organising Member State, OMS) and other States participate (referred to as the Participating Member States (PMS)).

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<sup>48</sup> FAR is an online tool to coordinate the organisation of forced-return operations and is accessible only to Frontex and return-enforcing institutions in MSs. FAR is part of the Integrated Return Management Application (IRMA).

The OMS organises, prepares and manages the return operation and ensures that a medical doctor/and or nurse and interpreter(s) is present, if required. During a JRO, the escort leader of the OMS is the head of the operation. They have the final say regarding the implementation of the operation. However, everyone on board the aircraft, including the head of the operation, escorts, Frontex personnel, etc., has to follow the orders of the pilot in command (PIC), who has the ultimate say in situations that might endanger the flight. In some countries, a representative from the national authorities responsible for the return is also on the flight to support the administrative handover process in the country of return. In the case of a JRO coordinated by Frontex, a member of the European Centre for Returns Division (ECRet Division) might participate as coordinator and observer in the JRO ensuring, among other tasks, that it is carried out in accordance with the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex.

In JROs, the returnees, accompanied by escorts of the respective PMS, normally travel from their country of departure to where the hub of the forced-return operation is located in the OMS. This part of the journey, i.e. from the country of departure to the hub, is also referred to as the national feeder. Once they arrive at the hub of the return operation, the returnees and escorts from all the PMS board the main chartered aircraft being used to transport returnees to the country(ies) of return. En route to a specific country of return, the chartered flight may also land in another Member State to pick up other returnees and escorts located there (stopover).<sup>49</sup>

In a JRO, only returnees who are considered by a doctor to be fit to travel may be removed from the country and the OMS must refuse to allow the removal of a person who is not fit to travel. Where a returnee is known to have a medical condition or where medical treatment is needed, the authorities of the Member State are required to carry out a medical examination, subject to the returnee's agreement. All PMS have to inform the OMS in advance about any medical condition a returnee has which would need special care and attention. The processing of any medical information related to the returnee must be carried out in line with relevant data protection legislation regarding use of personal data.<sup>50</sup>

From the beginning of a JRO and throughout its duration, those involved in the return operation from the OMS and PMS, including medical staff and interpreters should communicate and cooperate respectfully with returnees. Throughout the entire return operation, individual, ongoing and dynamic risk assessment of the returnees based on factors such as previous behaviour and removal history should be taken into account. The use of

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<sup>49</sup> In practice, JROs normally only stop once as they tend to be quite long.

<sup>50</sup> Article 8 of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

coercive measures may be used only when strictly necessary on returnees who refuse or resist removal, or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property.<sup>51</sup> The use of coercive measures must be proportional, must not exceed reasonable force, and must be carried out with due respect for the returnee's rights, dignity, and physical integrity.<sup>52</sup>

The safety of everyone in the JRO, including all the participants, returnees, as well as the crew is paramount. If a returnee's resistance to being removed puts the possibility of being able to carry out the operation safely at risk, the escort leader from the OMS can suspend it and send the returnees back to the appropriate holding facility. The details are set out in Article 4(3)<sup>53</sup> of the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex and are covered in more detail in Chapter 7 on the use of force and means of restraint. However, it is important to note that, as long as the safety of the returnees and other participants is guaranteed, the operation will continue, even if the returnee is resisting removal. Force and/or means of restraint may be used in such a situation in order to enforce the return, while respecting the fundamental rights of the individual.

### 6.3 Collecting Return Operations – CROs

A Collecting Return Operation (CRO) coordinated by Frontex is a return operation initiated by an OMS for which the aircraft and forced-return escorts are provided by a third-country of return (TCoR) and where the returnees are handed over to the escorts of a third-country of return by the OMS/PMS on the territory of a Member State. As with the other types of return operations, the purpose of a CRO coordinated by Frontex is to remove third-country nationals who are subject to individual return decisions issued by the respective Member State(s) from the territory of one or more Member States to their respective country of origin or third country of return.

TCoRs subject to CROs need to fulfil the following specific requirements and conditions:

- ♦ The escorts of the third country of return need to be trained by Frontex according to the standards set at EU level prior to their participation in a CRO coordinated by Frontex;

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51 Article 7(2) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

52 Article 7(1) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

53 Article 46(4) of Regulation 2019/1896 states that "[t]he executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist."

- ♦ All participants need to ensure full compliance with the Charter of Fundamental Rights, including respect and dignity for all persons during the entire operation, with the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex and the Frontex General Code of Conduct;
- ♦ The Guide for Joint Return Operations by Air coordinated by Frontex shall apply, especially in the aspects related to fundamental rights and use of force and means of restraint.

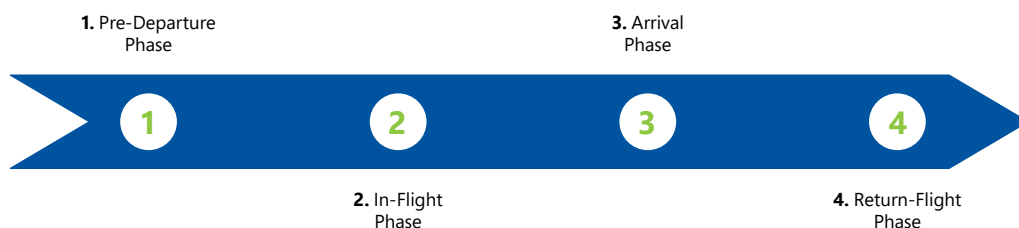
Although during a CRO the technical and administrative handover of returnees as well as handover of the personal belongings and luggage takes place on the territory of a Member State before the flight departs, according to Article 50(3) of Regulation (EU) 2019/1896, the forced-return operation still needs to be monitored during the flight until the plane arrives in the third country of return<sup>54</sup>. Specifically, Article 50(3) of Regulation (EU) 2019/1896 specifies that “[...] *[a]t least one Member State representative, and one forced-return monitor from the pool established under Article 51 or from the monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.*” Therefore, the monitor is mandated to observe whether the entire CRO is conducted in compliance with fundamental rights. In this regard, Article 50(3) of Regulation (EU) 2019/1896 specifies that “[...] *[t]he participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of non-refoulement, the proportionate use of means of constraints and the dignity of the returnee are guaranteed during the entire return operation.*” Monitoring ends once the flight arrives in the country of return, as the handover of returnees to the national authorities already took place on EU territory.<sup>55</sup>

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54 Third country monitors on board a CRO coordinated by Frontex are an additional safeguard for fundamental rights compliance and for follow-up of possible incidents involving third country of return escorts on the flight. However, their mandate is entirely national and therefore, it is not sufficient to only have a third-country monitor on board the CRO. As a result, monitoring from the pool or the national monitoring system must be ensured. Monitors shall exchange information with the third country monitor, in particular if a returnee is considered vulnerable or there are security considerations.

55 The escort leader and escorts of the third country of return are trained by Frontex and understand the monitor’s role and mandate. The monitor’s report of a CRO should cover the relevant phases of a forced-return operation including the in-flight phase and disembarkation in the third country of return.

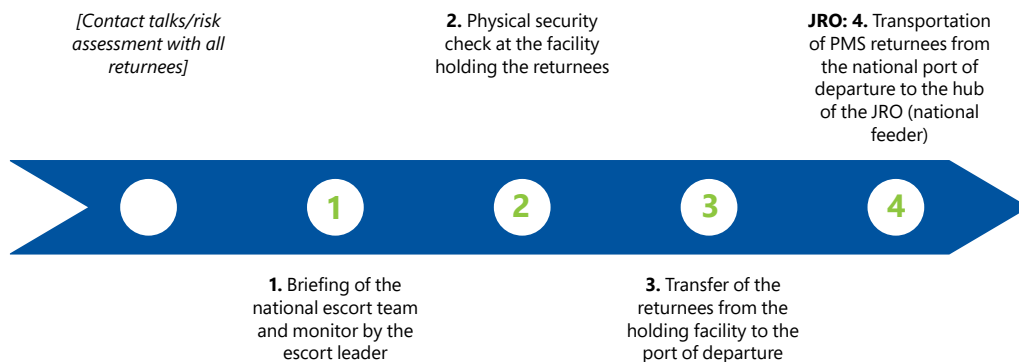
## 7. Phases in a forced-return operation



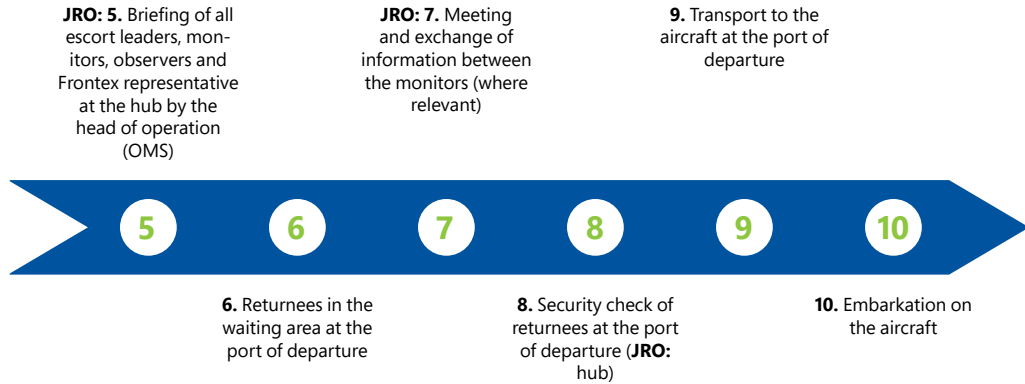
Where there are several countries of return, there are also several in-flight and arrival phases.

### 7.1 Pre-departure phase

The pre-departure phase covers the period from leaving the (temporary) holding facility until embarkation on the aircraft. In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation. The pre-departure phase ends after embarkation on the aircraft.<sup>56</sup>

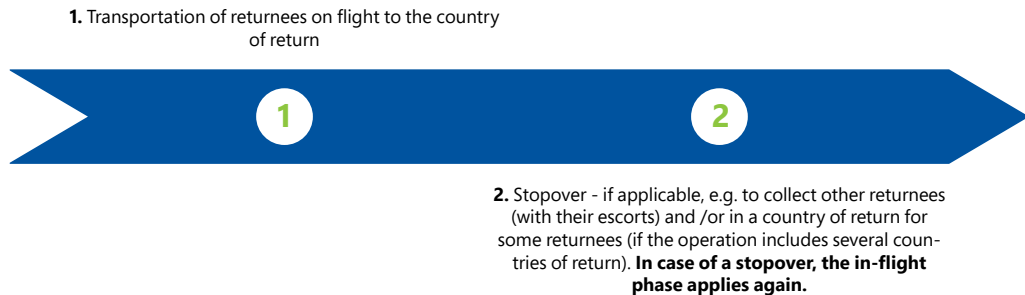


<sup>56</sup> With JROs, this phase begins at the hub, meaning that returnees escort teams and monitors from the PMS have already completed all phases of pre-departure, in-flight (or on board a bus/ train) up to the arrival at the hub of the JRO, where the procedures start anew when they join the JRO.



## 7.2 In-flight phase

The in-flight phase begins once every passenger has boarded the aircraft and the door of the plane door has been closed. It ends with the arrival at the final destination, i.e. the country of return or, in the case of an unsuccessful return, back to the country of departure, including transit via another country.



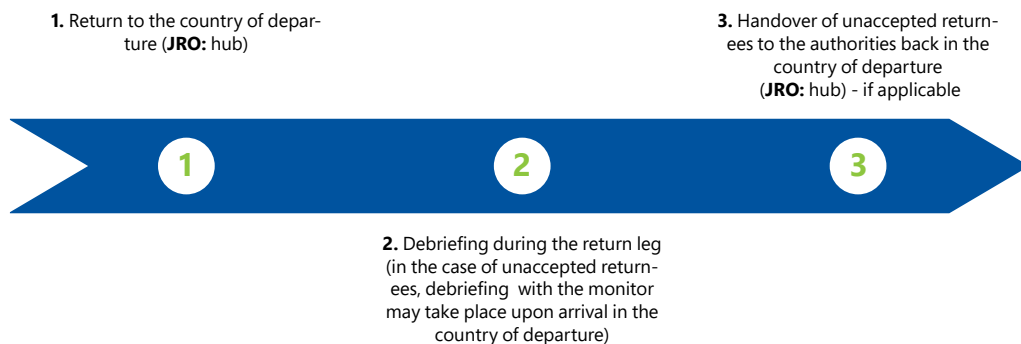
### 7.3 Arrival phase

The arrival phase covers the period starting from arrival at the country of return, and ends when the returnees are handed over to the national authorities in the country of return, or in the case of an unsuccessful return, with the handover to the authorities back at the country of departure.



### 7.4 Return-flight phase

The return-flight phase covers the period starting after the handover procedure in the country of return until arrival at the airport of departure (hub in the case of JROs).



### 7.5 Collecting Return Operations (CRO) – main phases

CROs are initiated by an OMS, in which the escorts and the main chartered flight are provided by a country of return and where returnees are handed over to the escorts of the country of return by the OMS/PMS on the territory of a Member State. CROs only include the pre-departure phase and one or several in-flight phases. The handover of the



returnees to the authorities of the country of return has already been done during the pre-departure phase.

Where there are several countries of return, there are several in-flight phases.

### **Advance party from the TCoR:**

In a CRO, the advance party consists of representatives from the authorities of the third-country of return (TCoR) who travel to the OMS territory, and/or to the main hub of embarkation in the EU, the day before the operation in order for the OMS and/or PMS to fulfil the roles and responsibilities listed below. An advance party should consist of not more than three people, one of whom may also be a doctor. It is highly recommended that an advance party be organised for a CRO to help finalise the details of the operation and ensure its success.

### **Roles and responsibilities:**

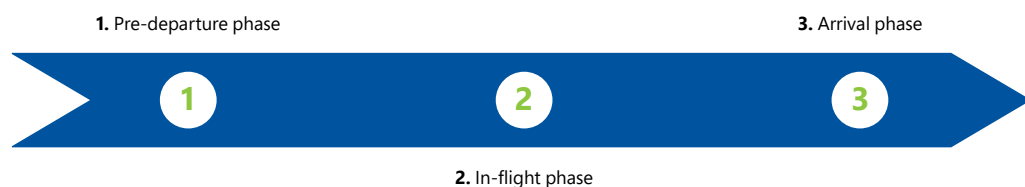
**The OMS and/or the PMS that is hosting the advance party from the TCoR has the following roles and responsibilities during the organisation and implementation of CROs:**

- a) Pre-Return phase:
  - ♦ Keeping in contact with the advance party.
  - ♦ Providing the advance party delegation with the necessary information about the returnees and information on the travel documents that they have.
  - ♦ Arranging travel for the TCoR advance party including adequate accommodation if they need to stay over.
- b) Pre-Departure phase:
  - ♦ On the day of the operation, the Member State escort leader meets the members of the advance party and drives them to the secured operational area for the start of the pre-departure phase process.
  - ♦ The OMS escort leader, and/or the PMS escort leader hosting the advance party delegation conducts a briefing to explain how the operation is being organised and update them on developments about the return operation.

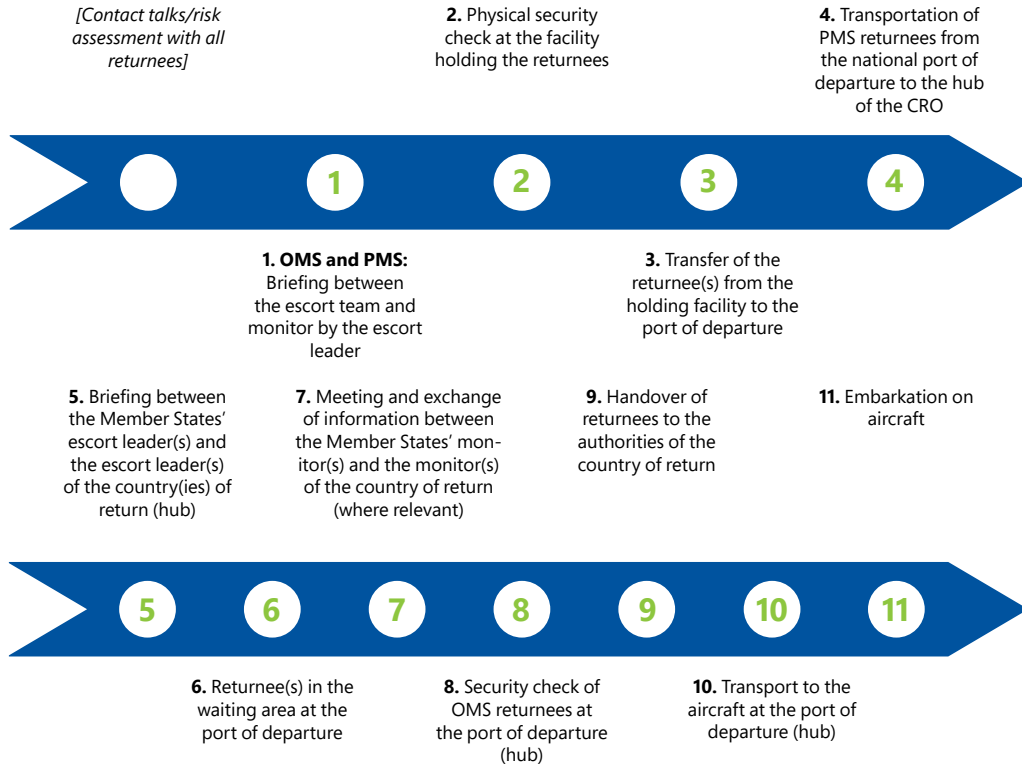
- ♦ Assisting them during the whole handover procedure.
- ♦ Keeping them updated and facilitate information exchange among all participants involved in the return operation.
- ♦ The OMS escort leader will be in charge of the operational briefing prior the departure with all participants, including the advance party representatives.

**The representatives from the advance party have the following roles and responsibilities during the organisation and implementation of CROs:**

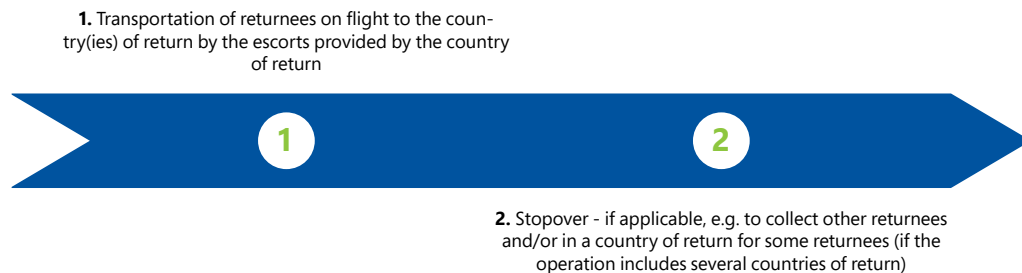
- a) Pre-Return phase
  - ♦ Providing the OMS and/or the PMS hosting the advance party with information about the officers and other members (e.g. doctor or monitor) in their delegation.
- b) Pre-departure phase
  - ♦ Remaining in contact with OMS/PMS escort leaders for updates on latest developments in the operation and for information relating to the risk assessments that have been carried out.
  - ♦ Carrying out the administrative handover of the returnees, which includes verification and acceptance of the travel documents as well as acknowledgement of the protocol document between MS and TCoR related to the handing over of all administrative and personal belongings of the returnees.
  - ♦ Participating in the operational briefing conducted by the OMS escort leader prior to embarkation and departure.
- c) Arrival phase
  - ♦ On arriving at the third country of return, participating in the debriefing conducted by the Frontex representative, or by the OMS representative, with all the participants involved.



## 7.6 Pre-departure phase – CRO



## 7.7 In-flight phase – CRO



## 7.8 Arrival phase – CRO

1. Transport of the returnees to the designated area.  
Medical and other urgent support, as applicable and pre-arranged



2. Debriefing with all participants (third-country escort leader, OMS escort leader, Frontex representative, EU MS monitor, third-country monitor, medical staff, etc.)

The debriefing of the CRO takes place after the return operation has arrived in the country of return, either at the airport or in a designated area.

## 8. Preparation of the monitoring mission

Monitoring forced-return operations requires a large amount of preparation, including by the monitor. The following preparatory steps involve the monitor:

- ♦ The ECRet Division collects the operational details of the mission (via FAR) and an automated email is sent to the monitors concerned. The email contains information on the flight schedule, the contact details of the main contact for the operation (the Escort Leader if available), financial rules etc.
- ♦ If monitors request additional support (e.g. visa support letter, information on vaccinations etc.), the ECRet Division refers them to the requesting MSs. If their specific request is not addressed by the requesting MS, the ECRet Division offers support.
- ♦ If there are changes to the flight schedule, the ECRet Division contacts the monitors via an automated email generated by FAR.
- ♦ The ECRet Division uploads the accreditation cards in PDF for the Member States in the FAR and emails the accreditation card to the monitor. In addition, on the day of the operation, the monitor(s) receive the printed accreditation card in a plastic badge holder. When a Frontex representative participates in a forced-return operation, they provide the monitor with the accreditation card. When no Frontex representative is present during the pre-departure or in-flight phase, the person responsible in the host MS prints out the accreditation card, puts it in a plastic badge holder, and hands it to the monitor who is being deployed. At the end of the operation, the monitor needs to return the accreditation card to the OMS escort leader or another Member State representative in charge.
- ♦ If a monitor other than the one who was assigned to a particular return operation is needed (e.g. the assigned monitor falls ill and cannot be deployed), the CAP contacts the national monitoring bodies to try to arrange for another nomination (outside of the monthly call).
- ♦ As soon as new/additional operational information becomes known, the ECRet Division forwards it to the monitors.

- ♦ In cooperation with the OMS, Frontex draws up an Implementation Plan and distributes it to the PMSs before the implementation of the forced-return operation. The OMS and all PMS escort leaders are responsible for: informing all the participants in their contingent (i.e. EOs, monitors, etc.) about the contents of the implementation plan, sharing the annexes and ensuring compliance with the plan. This obligation is specified in each Implementation Plan.
- ♦ The Member States share the Implementation Plan as soon as possible with the monitor. The ECRet Division regularly reminds MSs about the importance of sharing information as soon as possible with the monitor.
- ♦ The Implementation Plan includes a list of the authorised restraints and equipment permitted during the forced-return operation agreed by the OMS together with Frontex in accordance with its national legislation, and in line with international and EU law.<sup>57</sup>.
- ♦ As regards CROs, the information on the restraints that can be used for specific operations is provided by the OMS in cooperation with the escort leader of the third country of return. They are responsible for informing the monitor about the level of restraints allowed on the flight at the briefing at the beginning of the CRO at the latest.
- ♦ The Implementation Plan includes the following annexes available to all participants in the forced-return operation:
  - Serious incident report template;
  - Code of conduct that applies to everyone participating in Frontex operational activities;
  - Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex;
  - Complaints form for potential violations of fundamental rights;
  - Rules of the complaints mechanism;
  - List of potential fundamental rights violations during operations.
- Frontex provides reflective vests to all participants in forced-return operations coordinated by Frontex including to the national monitoring bodies that contribute to the Pool. These vests have to be used when monitoring a Frontex-coordinated return operation.

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<sup>57</sup> However, no PMS is allowed to use restraints that are not permitted in their national legislation, even if those measures are accepted in the Implementation Plan for that particular operation.

## 8.1 Reimbursement of monitoring costs

- All costs related to the participation in a forced-return operation, including flight ticket to/from the hub/port of departure, accommodation, daily subsistence allowance (DSA), monitoring fee, insurance<sup>58</sup>, visa costs, vaccination costs and any other related costs are always reimbursed on an individual basis/agreement between the requesting MS and the monitoring body in line with the national rules of the monitoring body in that MS.
- ♦ Once the monitor has been selected for an operation, the monitor or the monitoring body responsible submits the estimated costs of their participation prior to the return operation;<sup>59</sup>
- ♦ The requesting MS includes the estimated costs of the monitor's participation in the estimated budget that is sent to Frontex;
- ♦ After the forced-return operation, the Member State reimburses the monitoring body's costs. Frontex then reimburses the Member State.

There are two methods for financing the monitoring costs:

1. Primarily, all costs and mission arrangements related to monitoring the return operation are borne directly by the requesting Member State and Frontex reimburses the Member State after the return operation. The requesting Member State organises the flight ticket to and from the hub/port of departure and the accommodation for the monitor(s). Following the return operation, the monitor submits all the remaining costs (e.g. insurance, monitoring fee, etc.) estimated before the forced-return operation, to the Member State for reimbursement.
2. Another option is that the monitoring institution covers the costs and mission arrangements based on a specific and direct agreement with the requesting Member State. In this case, the monitor(s) and/or the respective monitoring body organises the flight ticket to and from the hub/port of departure and the accommodation themselves and pre-pays all the related costs. After the forced-return operation, all

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<sup>58</sup> The insurance (e.g. health, travel or any other type) needs to be ensured by the requesting MS under the general principle of duty of care. If the national monitoring body arranges such insurance for the monitors from the Pool, the costs can be claimed from the requesting MS.

<sup>59</sup> In order to ensure that both the amount and nature of the costs sent to the Member State/Frontex are in line with the national rules of the monitor's home country, the monitor/national monitoring body needs to copy the Direct Contact Point in Return Matters (DCP) and the NFPOC.

the costs are submitted to the Member State for reimbursement. The estimated costs have to be submitted to the requesting MS prior to the forced-return operation.

## 8.2 Preparation checklist for monitors

### **Information a monitor should have received in preparation for a forced-return monitoring mission:**

- ♦ The Implementation Plan;
- ♦ The date and time of the return operation and ports of departure;
- ♦ The country(ies) of return;
- ♦ Port of departure, stopover information (when applicable);
- ♦ If it is a JRO, the names of the OMS and PMS;
- ♦ Essential travel documents and other documentation;
- ♦ The number of returnees and their gender and origin;
- ♦ List of recommended immunisations (if required by the country of return). It is the responsibility of the monitor to get their immunisations and/or other necessary medical precautions;
- ♦ List of restraints that are authorised and those that are forbidden;
- ♦ Indication of any returnees considered vulnerable including minors, 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.

### **Essential travel documents:**

- ♦ Details/information regarding visa arrangements;
- ♦ Valid passport and visa, if required;
- ♦ Letter of appointment to the mission (if available);



- ♦ ID card/passport (also required to show alongside the letter of appointment to confirm the monitor's identity, if available);
- ♦ Valid certificate of vaccination (if required);
- ♦ Travel and health insurance information.

**Personal belongings:**

- ♦ Backpack for ease of movement and to keep both hands free;
- ♦ Pocket-sized notepad (not A4) and pen;
- ♦ Mobile phone for personal use with the approval of the escort leader;
- ♦ Some cash and a credit/ATM card;
- ♦ Mosquito repellent (if required);
- ♦ Spare set of glasses (if required);
- ♦ Any medication required.

**Dress code:**

- ♦ Civilian clothes (avoid uncomfortable clothing such as high heels, neck tie, etc.);
- ♦ Extra set of clothes, whether a stopover is planned or not, as the schedule might change;
- ♦ Reflective vest, identifying the person wearing it as a "monitor", and ensuring they are easily identified so they can access restricted areas, such as the airfield. The reflective vest is to be worn in all weathers over the coat;
- ♦ Waterproof clothing with a hood or cap; no umbrellas as they impede movement and observation;
- ♦ Sleeping masks, headphones and earplugs are not permitted (with the exception of returns completed successfully and an empty flight back to the country of departure).

## 9. Key monitoring standards that apply throughout every phase of the forced-return operation

The monitoring standards outlined below apply to all the phases of the forced-return operation.

### 9.1 Access to information

In order to ensure an effective monitoring system, monitors must be provided with all the relevant information concerning the forced-return operation, have access to returnees, and unless the risk assessment carried out prescribes otherwise, have unimpeded access to all areas used for the return operation. Monitors should document in writing any situation in which access was denied and provide details accordingly.

Only if the monitor has access to all relevant information can they decide where to position themselves in order to conduct the monitoring duties in the best way possible, i.e. to observe, listen and make notes about the conduct of the return operation. As the escort leader/head of operation is responsible for the security of the persons involved in the operation, the escort leader and the monitor need to come to a mutual understanding about where the monitor positions themselves in order to best fulfil their role that is, to observe, analyse and report on whether the return operation was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights, applicable international human rights law and national legislation. This understanding is ideally based on a level of flexibility between the two parties so that any security concerns are balanced with the monitor's ability to observe what is going on.

### 9.2 Interaction of monitors with escort leaders

Monitors must follow the instructions given by the escort leader at all times. Monitors should inform the head of operation (JRO) and/or the escort leader(s) of any perceived irregularities as soon as possible or at the earliest opportunity or opportune moment. The monitor may not, under any circumstances, interfere with the planned implementation of the return operation or any measures taken by the escorts. In other words, the monitor should never impede or interfere in the work of the escorts and should keep a safe distance from any incident.

If a returnee expresses their wish to complain about the treatment they have received during the forced-return operation, the monitor should note down what the returnee says and pass this information to the escort leader. The escort leader should then inform the returnee about the procedure to follow if they wish to make a complaint and should hand them a copy of the complaint form for potential violations of fundamental rights and the rules of the complaints mechanism which are annexed to the Implementation Plan.

### 9.3 Documentation

In line with Article 13 of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex *"Any form of recording during [a return operation] or [return intervention] is possible only when specifically agreed between the relevant MS, Frontex and/or the company operating the means of transport and when in compliance with applicable legislation on the protection of personal data. Recording for private use is prohibited."*

If any significant incidents occur or any coercive measures are used in the course of the operation, the escort leader is obliged to make a detailed report about these incidents. The obligation of the escort leader to report these incidents should not prevent the monitor from carrying out their duty to observe, document and report on incidents or use of coercive measures during the forced return operation.

### 9.4 Coercive measures (use of force and means of restraint)

The role of escorts is to ensure that the return takes place in a safe and humane manner and in accordance with fundamental rights. However, if the safety and health of returnees, escorts and other participants, and the airline crew or property is threatened by the actions and behaviour of returnees or to secure the continuation of the forced operation, coercive measures in line with those permitted in the Implementation Plan and by national law may be used.

The core principles of legality, necessity, and proportionality must be observed at all times. Coercive measures shall be used as a last resort and where possible only used after de-escalation has failed and/or the returnee and/or other participants are put in danger.

During the pre-departure phase, the escort leader must provide returnees with all the relevant information related to their removal in a language they understand that includes information that uncooperative behaviour will not result in the return operation being

aborted. The returnees' behaviour, and the security checks, will give a good indication whether coercive measures are or might be required.

The OMS and each PMS carry out individual and systematic (ongoing, dynamic) risk assessments of the returnees based on factors such as previous behaviour and removal history. Such assessments are used to determine the number of escorts and ground staff and the size of the backup team in order to ensure the security of every phase of a return operation, as well as for determining the possible need for the use of coercive measures.

In cases where a prior risk assessment has revealed a returnee/s might refuse to co-operate or might resort to violence, the escorts can determine the use and level of coercive measures permitted in the Implementation Plan and by national law in order to guarantee the safety and security of the returnees and everyone else. As already highlighted above, the core principles of legality, necessity, and proportionality must be observed at all times.

Article 7 of the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex contains the following general principles regarding use of coercive measures:

- ♦ The use of coercive measures must be legal, necessary and proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and physical integrity. The use of coercive measures takes appropriate account of the individual circumstances of each person, such as their vulnerable condition.
- ♦ Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property.
- ♦ Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited.<sup>60</sup> Based on a dynamic risk assessment, the relevant escort leader periodically reviews the continuing necessity and proportionality of deploying coercive measures and particularly of applying means of restraint when these are used for prolonged periods.
- ♦ The OMS and Frontex provide a list of authorised restraints in the operational documents in advance of the return operation and return intervention. Where appli-

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<sup>60</sup> Positional asphyxia (or postural asphyxia) is a form of asphyxia that occurs when someone's position prevents them from breathing adequately. A number of people have died during restraint procedures. Therefore, the use of force that impedes the breathing of a returnee is strictly forbidden.

cable, this list must be distributed to the relevant PMS prior to the return operation or return intervention. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures under medical supervision to ensure flight security.<sup>61</sup>

- ♦ No PMS participants are required to use coercive measures not allowed under their national legislation even if those measures are accepted by the OMS and by Frontex for that particular RO or RI.
- ♦ Returnees must not be threatened in order for them to board a means of transport. They must not be punished for not having done so without prejudice to sanctions provided for by applicable legislation.

Whenever coercive measures are applied, the monitor needs to observe: the circumstances in which they are used; what is used; how it is used; where it is used; for how long; when it ceases, and whether there were any immediate visible injuries and where, in order to be able to make an objective judgement on the appropriateness of its use. They should make detailed notes and drawings, noting the time the coercive measures were used. This should all be reflected in their report. It is recommended that the monitor speaks to the escort leader after the incident to understand their reasons for using restraints or force. This should preferably be done in private and out of hearing of the returnees. Monitors should also check that steps were taken in an appropriate manner to move family members, and particularly minors, away from the incident.

The observations and information gathered by the monitor for their report can be used to determine whether under the circumstances, the use of coercive measures were justified and whether their use conformed with the principles of legality, proportionality and necessity. Therefore, a monitor has to know what coercive measures and materials are permitted and what the rules are for the use of force in each Member State and keep up-to-date with any changes. As indicated above, the Implementation Plan includes a list of the authorised restraints and equipment that are permitted for use during the forced-return operation as agreed by the OMS and Frontex in line with national legislation and international and EU law. However, no PMS is allowed to use restraints that are not permitted in their national legislation, even if those measures have been agreed in the implementation plan for that particular operation.

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<sup>61</sup> The administration of sedatives is only allowed by medical personnel with the consent of the returnee.

## 10. Note-taking

Monitors are advised to use a notebook with a hard protective cover (a hard cover also makes it easier to take notes) with pages that are sewn in, so that they do not fall out and cannot easily be removed. Ideally, the pages of the notebook should also be numbered. If the notebook does not have page numbers pre-printed, it is advisable to number them before the start of the forced-return operation.

As the notebook is a primary source of evidence and may be needed if there is an investigation, it is important to keep it somewhere secure.

The following advice is designed to make note-taking easier for monitors and to make the notes easier to use when the report is being drafted after the mission:

- ♦ Make sure you understand the reporting format.
- ♦ Start the notes for each operation you participate in on a new page and write the name and date of the operation at the top.
- ♦ Keep the first page to record the names of the officials involved in the operation. It is good practice to ask officials to write their names on this page, so that you have the correct spelling. Alongside each name, add their role, e.g. "doctor".<sup>62</sup>
- ♦ Keep the next page to record returnee numbers broken down by country.
- ♦ From the third page onwards, make timed notes, starting with the exact time on your wristwatch. This should remain set to the time zone where the operation started throughout the entire operation.
- ♦ Make your notes in the language you are most comfortable with; they do not have to be in English.
- ♦ For speed, use whatever abbreviations you would normally use when you make notes, provided that you can read and understand them afterwards when you are drafting your report.
- ♦ If you observe the use of force or restraints, you should make a quick sketch immediately after observing the incident, annotating the sketch to show the position/s of the returnee/s and the escort/s and what each/all of them were doing. This will make it easier for you to accurately describe the incident in your report.
- ♦ Even if the operation is going well and things are calm, you should continuously observe the returnees and everything that is happening around them.
- ♦ At intervals, you should note down examples of good practices, e.g. escorts answering returnees' questions. This is evidence of the overall conduct of the operation.
- ♦ After the operation is over, do not alter or erase any notes.

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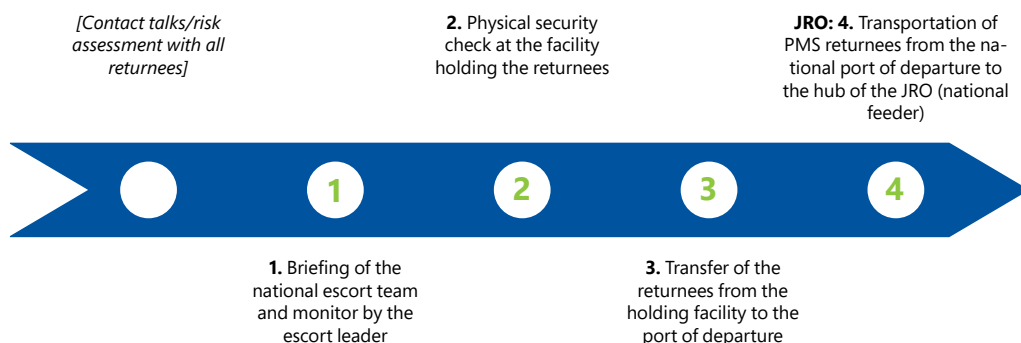
62 In the report, remember not to include personal data about any of the officials or returnees such as their names.

## 11. Monitoring

The forced-return monitor in the Pool monitors the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return.<sup>63</sup> They monitor pre-departure phase, the inflight phase, the arrival phase and return-flight phase.

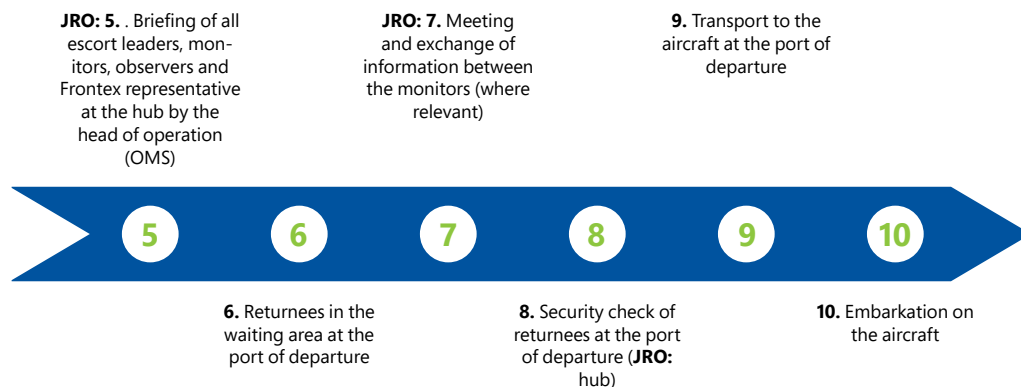
### 11.1 Monitoring the pre-departure phase

The pre-departure phase covers the period from leaving the (temporary) holding facility until embarkation on the aircraft. In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation. The pre-departure phase ends after embarkation on the aircraft.<sup>64</sup>



63 According to Article 50(5) of Regulation (EU) 2019/1896 "[e]very return operation organised or coordinated by the Agency shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. [...]".

64 With JROs, this phase begins at the hub, meaning that returnees escort teams and monitors from the PMS have already completed all phases of pre-departure, in-flight (or on board a bus/ train) up to the arrival at the hub of the JRO, where the procedures start anew when they join the JRO.



### Step 1. Briefing of the national escort team and monitor by the escort leader<sup>65</sup>

#### Positioning of the monitor

The monitor is not required to be in a specific position. The monitor should participate in the briefing where information about the upcoming return operation with the number of returnees, time of arrival, Implementation Plan, risk assessment, vulnerabilities, etc., is shared. They should introduce themselves to the escort leader, escorts, and other officials in the return operation.

#### What to observe

The monitor participates in the briefing of the escort leader and escorts prior to the return operation, in order to:

- ♦ Be introduced to the escort leader and the team by name and role;
- ♦ Be informed about the outcome of the risk assessment of the returnees and the operation itself. The monitor can request information about the returnees, especially regarding any hunger strikes, self-injury, medical conditions, threats against escorts, and/or aborted removals etc.;

<sup>65</sup> Some countries e.g. Austria, conduct what are known as contact talks prior to return which include a first risk assessment. As these contact talks are an exception to the rule, these guidelines begin with the briefing of the national escort team and the monitor by the escort leader. In those countries like Austria where the authorities hold an individual meeting with the returnee to tell them about the return procedure, the monitor should attend the meeting. If the monitor is not informed about these meetings, it should be noted in the report.



- ♦ Gather information on any particular vulnerabilities or any vulnerable persons among the returnees and whether particular attention is being paid to their situation and concerns;
- ♦ Be informed about the list of restraints that are authorised and those that are forbidden (including certain materials that might be forbidden);
- ♦ Acquaint themselves with the Implementation Plan including information about the aircraft e.g. type of aircraft used, seating plan, final number of returnees, and PMS etc.

The individual risk assessments on the returnees, the list of restraints that are authorised and those that are not, and the Implementation Plan, which includes the plan for security and surveillance, are key tools for the monitor. These documents will help the monitor decide what the priorities are and determine which aspects of the return operation may require particular attention. The monitor should pay particular attention to those returnees who, based on the outcome of the risk assessment, are most likely to be uncooperative as these returnees are more likely than others to be restrained because of their behaviour. Therefore, these returnees should be closely monitored to see that whatever happens during the course of the return operation complies with the fundamental rights of all the returnees. Attention should also be paid to the treatment of any vulnerable persons (e.g. children, elderly people, pregnant women, people with disabilities, etc.).

## **Step 2. Physical security check at the facility holding the returnees**

Returnees undergo physical security checks to ascertain any risks to the return operation and to check that they do not have any objects that could be used to harm themselves or others. Wherever possible, the monitor should be present while the returnees are undergoing the physical security check, to gather information about any incidents, medical problems or issues involving self-harm, that may have occurred after the returnees were informed that they were being returned. They should also find out how any such medical issues have been treated.

### **Positioning of the monitor**

The monitor should be present during physical security checks, if possible. Where the monitor is not of the same gender as the returnee (and under certain circumstances), the monitor can monitor the situation from outside the room with the door kept ajar.

## What to observe

The monitor should observe that:

- ♦ The escorts clearly explain to the returnee that they are going to be carrying out a physical security check before they commence;
- ♦ The physical security check is conducted with appropriate regard to privacy, particularly if the returnee is asked to remove their clothing completely;
- ♦ The physical security check is carried out by officers of the same sex (i.e. a female officer conducts the physical security check on a female returnee and a male officer on a male returnee);
- ♦ The door to the room where the security check is being carried out is not closed completely but remains ajar so that a monitor is aware of any escalating situation such as a verbal dispute indicated by one or both parties screaming and/or shouting;
- ♦ If the monitor is not of the same sex as the returnee, they should at least be allowed to hear what is going on during a body search (e.g. with the door kept ajar) and note down in their report if this practice is not followed;
- ♦ In addition to any personal belongings that have to be taken away for security reasons (e.g. a belt), all valuable items such as money and jewellery are collected by the escorts and a protocol listing the items is prepared. The returnee should sign the list and the package containing their personal belongings should be marked with their name. The returnee should be informed about the procedure regarding their personal belongings, who will be in charge of keeping them safe during the flight and when they will be returned to the returnee. The escorts need to take these precautions to ensure that returnees' personal belongings are clearly marked so that they are not mixed up or get lost.

It is also very important that the monitor observes and takes notes to ensure that:

- ♦ The escorts carry out the physical security check calmly, professionally, and respectfully and that they do not allow spectators to gather. Any use of inappropriate language, or unprofessional or juvenile behaviour by the escort staff or any other officials at the holding facility should be immediately reported to the escort leader, and included in the final report;

- ♦ If coercive measures are used, the monitor makes notes and sketches of the techniques and restraints that were used, and whether they were legal, necessary and applied proportionally (i.e. the duration was kept as short and with as minimal an intensity as possible). This should also be included in the final report.

### **Step 3. Transfer of the returnees from the holding facility to the port of departure**

The monitor should be present when the escorts pick up the returnees from the holding/detention facility where they are temporarily being held.

With a JRO, this only applies to the returnees of the OMS at the JRO hub, as the PMS escorts usually arrive with the returnees and monitor/s at the port of departure for the JRO.

#### **Positioning of the monitor**

Wherever possible, the monitor should be in the same vehicle as the returnees. Different types of vehicles can be used to transfer returnees from a holding/detention facility to the port of departure. Depending on the outcome of the risk assessment, a returnee may be transferred in a regular vehicle, e.g. a coach or bus, or in police-secured transport, which may be a police car or van with a specially adapted cell. If more than one vehicle is used to transport the returnees, the monitor, following the instructions of the escort leader, should travel in the same vehicle as returnees evaluated to be at higher risk of resisting removal or with vulnerable returnees. The monitor should be seated in the best position to be able to clearly see and hear what is happening during the transfer. The escort leader will make the decision about where the monitor sits as they are in the best place to be able to make this assessment. It is important to note that it always remains at the discretion of the escort leader to decide which vehicle the monitor sits in and where they sit in that vehicle.

#### **What to observe**

At this stage, the monitor should observe that:

- ♦ The returnees are appropriately dressed. If a belt has had to be removed for security reasons it has to be guaranteed that a returnee's trousers stay up without them having to use their hands to hold them up. If shoelaces have had to be removed, the returnees should still be able to walk normally and not lose their shoes while they are walking;

- ♦ The personal belongings of the returnees are packed in proper bags and boxes and have a nametag, so the returnees can identify their luggage when they reach the country of return. Depending on the number of returnees, a large number of bags and boxes may have to be prepared for the transfer to the port of departure. The bags and boxes should be of sufficient quality to withstand the journey and be collected upon arrival in the country of return. If a returnee does not have appropriate bags or packaging for their belongings, these should be provided by the holding/detention or waiting facility;
- ♦ The vehicles for transportation of returnees are clean and well maintained;
- ♦ Depending on the season and weather conditions, any air-conditioning system is used appropriately. This should equally be applied in the seating area and holding cells;
- ♦ The time returnees have to spend in cells inside a police coach is limited to the minimum length possible;
- ♦ Cells inside a police coach are not used as waiting areas;
- ♦ The doors of the vehicle are kept open if there is a delay and a wait cannot be avoided, (provided it is in line with the risk assessment that has been carried out);
- ♦ Vulnerable persons among the returnees are treated appropriately. As stated above, In MSs where vulnerable groups are transported separately, the monitor should decide which group to accompany after consultation with the escort leader, who has the final say.<sup>66</sup>

In cases where a family member, such as a parent, resists removal and therefore has to be separated from the rest of family and transported separately to the airport or other port of departure, the monitor should pay attention and note that:

- ♦ The family is kept informed about the situation of the member of the family who is resisting removal and that the person resisting removal knows what is happening to the family;
- ♦ The length of separation is kept as short as possible.

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<sup>66</sup> There might be different practices amongst PMSs with regard to the transportation of vulnerable groups to the aircraft. In some countries, they may be brought in a separate vehicle, while in others they may be transported along with the rest of the returnees.

#### **Step 4. (For JROs) Transportation of PMS returnees from the national port of departure to the hub of the JRO (national feeder)**

In a JRO, the PMSs transport the people they are returning to the hub of the operation. In this specific step of the return operation, the PMS would follow the relevant steps of the pre-departure and in-flight phases that are described in detail further below until they arrive at the hub of the operation to join the JRO.

#### **Step 5. (For JROs) Briefing of escort leaders, escorts, monitors, observers, and Frontex representatives at the hub by the head of operation (OMS)**

The monitor should take part in the briefing for all escort leaders, escorts, monitors, observers, and Frontex representatives. This is conducted by the head of operation from the OMS and is where all the introductions are made. Medical personnel and/or interpreters may also present.

#### **Positioning of the monitor**

The monitor is not required to be in any particular position. They should introduce themselves and request information about the returnees, particularly any information about incidents that may have occurred on the way to the hub of the JRO as well as information regarding the use of coercive measures and any known vulnerabilities.

#### **What to observe**

- ♦ The monitor participates in the briefing prior to the return operation, in order to be:
  - Introduced to the escort leaders and other participants by name and role;
  - Informed about the outcome of the risk assessment of the returnees and the operation itself. The monitor can request information about the returnees, especially regarding any hunger strikes, self-injury, medical conditions, threats against escorts, and/or aborted removals etc.;
  - Given the list of authorised/forbidden restraints (including certain materials that might be forbidden) agreed by those responsible for the JRO (if it has not been shared previously);

- Informed about the Implementation Plan and the other elements of the operation including security, surveillance plan, type of aircraft used, seating plan;
- Informed about any vulnerabilities or any vulnerable persons among the returnees and whether their specific needs have been considered and taken into account.

## Step 6. Returnees in the waiting area at the port of departure

During return operations, returnees wait with the escorts and the monitor(s) until the departure of the aircraft in an appropriate waiting or holding area that allows for supervision and security. The layout of the waiting area may vary, depending on the infrastructure of the waiting facility.

### Positioning of the monitor

The monitor should stay with the returnees if all the returnees have to wait in the same room. Otherwise, the monitor should divide their time between the different rooms/cells where the returnees are waiting. The monitor should position themselves strategically, to ensure that they are able to observe returnees who, following the risk assessment, are considered to be of higher risk. At this stage, the monitor should be able to move freely around the waiting area (in accordance with the outcome of the risk assessment).

### What to observe

At this stage, the monitor should observe that:

- ♦ Depending on the number of returnees and the risk assessment, an emergency doctor is present or on call and that during return operations coordinated by Frontex, appropriate medical staff are present throughout the return operation<sup>67</sup>;
- ♦ Medical staff have checked on returnees with medical problems or special needs;
- ♦ Agitated returnees are separated from other returnees to calm the situation and avoid tension;

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<sup>67</sup> Article 14 of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex specifies that:

*"1. During each [return operation] and [return intervention] at least one medical doctor provided by the OMS should be present.*

*2. The OMS provides appropriate medical staff and, depending on an assessment of the returnees' and escorts' needs and language skills, suitable interpreters during the [return operation] and [return intervention].*

*3. If necessary, the PMS may also provide its own medical staff in [a] [return operation] and [return intervention]."*

- ♦ Sufficient food, water, non-alcoholic drinks but no hot beverages is offered to the returnees, including during unexpected delays such as technical problems with the aircraft, bad weather conditions, etc. Due to the schedule of the return operation and the related transfer, returnees may have missed a meal in the holding/detention facility and this should be taken into consideration;
- ♦ Returnees are given the opportunity to use the toilet and that the visit to the toilet is carried out in line with the correct procedure for visits to the toilet;
- ♦ The needs of smokers to smoke are addressed as far as possible;
- ♦ Religious needs are addressed as far as possible;
- ♦ The waiting facility is properly equipped e.g. that there are sufficient number of chairs, a children's play area is set up, if required and possible, etc.

### **Step 7. (For JROs) Meeting and exchange of information between the monitors (where relevant)**

Monitors who were on a national feeder to the JRO might sometimes, though not necessarily, continue to monitor the return operation from the hub through to end of the operation in the country/countries of return. Whenever several monitors are involved, it is important that the monitor(s) from the Pool introduce(s) themselves to the national monitor(s). It is advisable that they:

- ♦ exchange information on the status of the return operation and challenges that have been encountered or that they may encounter;
- ♦ brief each other with relevant information about the returnees they have been monitoring during the operation from their respective countries (national feeder operations) to the hub of the JRO;
- ♦ exchange information about vulnerable persons.

### **Positioning of the monitor**

National monitors who have been observing the operation from their respective country to the JRO hub (the national feeder) will stay with the escorts and the returnees of their PMS in the waiting area at the port of departure at the hub. Therefore, in most cases, the national monitors and the monitors from the Pool exchange information in the waiting area at the port of departure.

## **Step 8. Security check of returnees at the port of departure (JRO: hub)**

As part of a forced-return operation by air, return operations might include an additional security check of the returnees and their luggage at the airport (hub), depending on the requirements of the airport authority and the regulations in the Member State. In most cases, this security check is carried out by the official airport security personnel.

### **Positioning of the monitor**

The monitor should position themselves in such a way as to be able to observe the screening of the returnees. The monitor must also go through the security check.

### **What to observe**

- ♦ The monitor must observe how the security check of each returnee is carried out and whether the usual security protocol is followed.

## **Step 9. Transport to the aircraft at the port of departure**

The escorts should accompany the returnees to the aircraft, remaining vigilant and taking precautions against returnees self-harming.

### **Positioning of the monitor**

On the transfer transport (coach, bus, car, etc.), to the aircraft, the monitor should ask to be assigned to a seat either in the middle of the vehicle or at the back, to be able to have a good view of the escorts and the returnees.

Arriving at the aircraft being used for the return operation, the monitor should be one of the first to exit and position themselves where they can observe how the returnees and escorts leave the vehicle. If a returnee refuses to disembark, the monitor should closely observe the situation, without hindering the escorts and make a note of the time and what happened.

### **What to observe**

At this stage, the monitor should observe that:

- ♦ The escorts are close to the returnees while guiding them from the coach or bus to the aircraft and should check the number and position of escorts accompanying the returnees up the gangway;



- ♦ Measures to prevent returnees from self-harming have been taken, as well as the related infrastructure such as, the use of a covered mobile gangway;
- ♦ The restraints and materials being used are the ones authorised for use during the transport and embarkation, and are only used if strictly necessary;
- ♦ 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.

## Step 10. Embarkation on the aircraft

### Positioning of the monitor

For the embarkation process, the monitor should position themselves at the entrance of the aircraft (at the lower end of the gangway) in order to be able to observe the procedure. Where a returnee refuses to embark, the monitor should closely observe the situation without hindering the escorts and make a brief note of the incident and timing.

### What to observe

At this stage, the monitor should observe that:

- ♦ The escorts accompany the returnees when they disembark from the coach or bus, walk to the aircraft, board the plane and walk to the seat they have been allocated without unnecessary use of force.

## 11.2 Monitoring the in-flight phase

The in-flight phase begins once every passenger has boarded the aircraft and the door of the plane door has been closed. It ends with the arrival at the final destination, i.e. the country of return or, in the case of an unsuccessful return, back to the country of departure, including transit via another country.

The monitor should pay special attention to the following;

- ♦ The seating positions, including the location of children in relation to other returnees and the adult(s) accompanying them;
- ♦ Any incident that takes place and the behaviour/response of escorts;

- ♦ Any means of restraint that were used; the mode of use and the duration (legality, necessity and proportionality);
- ♦ Medical incidents, the presence of a doctor or other medical personnel and what they did;
- ♦ The provision of food and drink;
- ♦ Lavatory procedures;
- ♦ Complaints made by returnees and the response to these.

1. Transportation of returnees on flight to the country of return



2. Stopover - if applicable, e.g. to collect other returnees (with their escorts) and/or in a country of return for some returnees (if the operation includes several countries of return). **In the case of a stopover, the in-flight phase applies again.**

## Step 1. Transportation of returnees on flight to the country of return

### Positioning of the monitor

Airplanes have different interiors. Some have one continuous cabin for passengers while others are divided into different compartments. In general, the monitor should be assigned to a seat in the middle or at the back of the cabin so that they can observe the escorts and the returnees. They should be close to the contingency of the Member State that they are monitoring. If a particular returnee needs to be observed more closely, where possible, the monitor should find a seat in one of the rows nearby.

The monitor should avoid being seated in a place where their view or ability to move is restricted. The escort leader should inform the monitor about the seating arrangements during the briefing, and should address any questions or concerns the monitor may have. Where more than one lavatory is available, the monitor should use the lavatory the escorts have been told to use.

Monitors should not remain seated throughout the entire journey, but should move around from time to time in order to observe what is going on.

If two monitors are monitoring this phase of the forced-return operation, ideally, one should be seated at the back of the cabin and the other should be seated in the middle or at the front of the cabin in order to be able to see what is going on throughout the cabin.

Monitors should stay awake for the entire return operation.

### **What to observe**

At this stage, the monitor should observe that:

- ♦ The chartered aircraft meets the requirements of the return operation as well as the needs of returnees, including vulnerable groups, and escorts (regarding availability of seats, lavatories, temperature, etc.);
- ♦ Lavatory visits take place regularly, in line with the needs of returnees, and are conducted in line with the lavatory procedure;
- ♦ Sufficient food, water, non-alcoholic beverages, including for those with specific health and religious requirements, is offered to returnees. Escorts and returnees should be offered the same kind of food and drinks. Hot liquids, e.g. coffee, tea should be avoided as should cutlery;<sup>68</sup>
- ♦ The catering for returnees is adequate. In order to evaluate whether it is or not, the monitor should consume the same food and/or drinks the airline provides to the returnees;
- ♦ Where a means of restraint is used, the escorts check the returnee regularly. The monitor should observe means of restraint being used for as long as they are in place and document their use, making a quick sketch immediately after observing the incident, annotating the sketch to show the position/s of the returnee/s and the escort(s) and what each/all of them were doing. It should also include the exact duration, as accurately as possible. If the monitor has reason to believe that a means of restraint is no longer appropriate, or that the intensity could be reduced, they can communicate this to the escort leader and/or head of operation of the JRO;<sup>69</sup>

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68 Ideal catering would include finger food such as sandwiches. Cutlery (knives, spoons and forks) should always be avoided.

69 The decision regarding the use or termination of the use of means of restraint, however, remains strictly with the escort leader and the head of operation, in the case of a JRO.

- ♦ In cases of perceived imminent danger, the monitor should inform the escort leader (JRO: head of operation) immediately;
- ♦ Access to medical care is guaranteed, as required. If the monitor has any questions about a particular returnee they should ask the doctor/paramedic on board for clarification. The role of the monitor is not to double-check the medical care provided by the doctor, but to report whether care was provided and what type of care was provided;
- ♦ Sedatives to facilitate removal are not used as they are forbidden without prejudice to emergency measures under medical supervision to ensure flight security.<sup>70</sup>

## Step 2. Stopover – if applicable

If, apart from re-fuelling, a stopover is also used to pick up more escorts and returnees, the monitor should observe their embarkation. Where a stopover involves a new group of returnees boarding the plane, the seating arrangements should already have been planned in advance so that this new group of returnees does not walk past returnees who are already seated.

Ideally, the monitor(s) already on board and any newly-arrived monitor(s), should brief each other about the situation. If the monitor in charge of the new group of returnees joining the operation does not board the plane, the monitor/s already on the plane should speak to the escort leader in charge of the new group of returnees, to gather information regarding possible risks, use of restraints, vulnerable groups, medical conditions etc.

During a long stopover (e.g. overnight) after returnees have been handed over to the national authorities in the country of return, the monitor is advised to stay in the same accommodation as the escorts.

It is important to mention, that there is a chain of command on board an aircraft. Everyone on board a forced-return operation, including the head of the operation, escort leaders, escorts, Frontex personnel, doctors, interpreters, and monitors have to follow the orders of the pilot, who has the ultimate say on situations that might endanger the flight.

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<sup>70</sup> Article 7(4) of the Code of Conduct for Return Operations and Return Interventions Coordinated and Organised by Frontex.

### 11.3 Monitoring the arrival phase

The arrival phase covers the period starting from arrival at the country of return, and ends when the returnees are handed over to the national authorities in the country of return, or in the case of an unsuccessful return, with the handover to the authorities back at the country of departure.

National authorities in the country of return can refuse the readmission of a returnee. 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 number of refusals for the reasons given here is usually low, especially in JROs.

The monitoring responsibility ends the moment the escorts hand the returnees over to the national authorities in the country of return (or in the case of an unsuccessful return, back to the country of departure). Monitoring the treatment of the returnees by the national authorities on arrival is not within the forced-return monitor's remit. However, if the monitor witnesses any mistreatment, they should include details in the monitoring report and gather as much information as possible from the escort leader/head of operation (JRO).



#### Step 1. Arrival by aircraft in the country of return

##### Positioning of the monitor

Upon arrival in the country of return, the monitor should stay close to the group of returnees as the escorts prepare to hand them over to the national authorities. In a JRO, normally preparations for the handover is done by one country, followed by another and so on.

## What to observe

At this stage the monitor should observe that:

- ♦ Any remaining hand-cuffs, body-cuffs or other restraints are removed following arrival, if possible;
- ♦ All the personal belongings, which were taken away for security reasons, are given back to the right person prior to the handover to the national authorities in the country of return;
- ♦ Legitimate complaints by returnees that e.g. luggage, money or documents have been lost or damaged are handled efficiently by the escorts;
- ♦ Any other complaints by returnees related e.g. to their treatment by the escorts or other participants are received and/or the escort leader informs returnees about the complaints mechanism and hands them a copy of the complaint form for potential violations of fundamental rights annexed to the Implementation Plan. The monitor should include details of the complaints made by the returnees e.g. against escorts, in their monitoring report.

## Step 2. Handover of returnees to the authorities in the country of return

The OMS is responsible for contacting the authorities of the country of return prior to the operation. This takes place well in advance of the operation itself. In the case of a JRO, the PMS are usually involved in this process. Once the return operation has been conducted and the aircraft has arrived in the country of return, the escort leader/head of operation establishes first contact with the national authorities. The escort leader of the OMS and, in the case of a JRO each PMS, hand the returnees over to the authorities of the country of return, with their luggage and any other items.

Where appropriate and feasible, the OMS and PMS invite consular staff, immigration liaison officers, or advance parties of the Member States concerned, to facilitate the handover of the returnees to the local authorities, insofar as this is consistent with national practices and procedure.

## Positioning of the monitor

When the returnees are handed over to the local officials inside the aircraft, the monitor should be seated in one of the front rows close to the entrance, where they have a good

view of what is going on and are within hearing range. If the returnees disembark and are handed over to the authorities outside the aircraft (e.g. the arrival building), the monitor should closely follow any instructions given by the escort leader and if possible, accompany the escorts and the returnees to the place where the returnees are handed over.

### **What to observe**

At this stage the monitor should observe that:

- ♦ Any remaining hand-cuffs, body-cuffs or other restraints have been removed immediately after arrival, if possible;
- ♦ All personal belongings, which were taken away for security reasons have been handed back to the returnees prior to disembarkation and prior to the handover to the authorities in the country of return;
- ♦ The luggage of the returnees is still in good condition and returned to the returnees in an organised way, if it is possible to monitor this procedure;
- ♦ The returnees are handed over to the national authorities by the escort leader.

If the aircraft is returning immediately after the handover and the monitor remains on board, they should watch from a window seat, or if possible, from a position on the gangway, how the luggage was delivered to the returnees, and if it was. They should also observe how the returnees were treated by local policemen or border guards. Any incidents or mistreatment by local policemen or border guards witnessed by the monitor should be documented in the monitoring report. In preparing future return operations to this country of return, the authorities in the OMS/PMS can make use of this information to put in place measures that may help to ensure the correct treatment of returnees when they arrive.

### **Step 3. Overnight stay – if applicable**

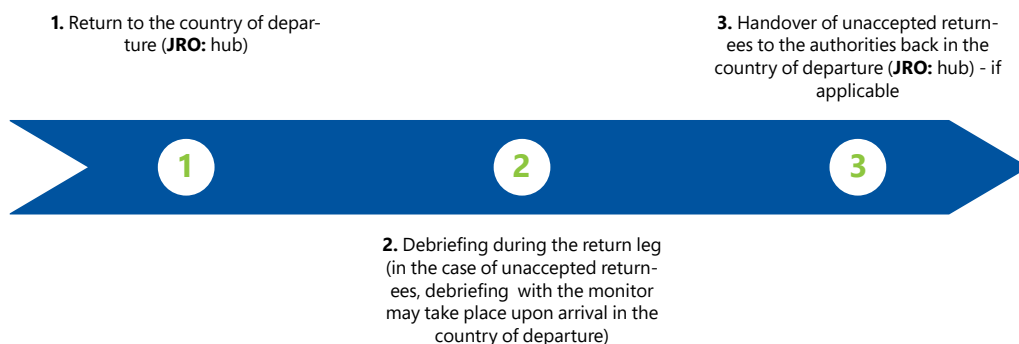
It is rare that an overnight stay in the country of return is necessary, as the OMS will try to organise a return directly after arrival. However, an overnight stay might be necessary if a forced-return operation has covered a long distance, if airport opening-hours make permission for take-off and landing a problem, or if there is a technical problem with the plane. If this happens, different countries have different procedures. It may also be that returnees are not accepted by the authorities in the country of return and have to stay overnight before the return journey back to the country of departure. The monitor should

closely follow any instructions given by the escort leader. However, monitoring tasks related to this specific situation are not included in these guidelines.

## 11.4 Monitoring the return-flight phase

The return-flight phase covers the period starting after the handover procedure in the country of return until arrival at the airport of departure (hub in the case of JROs).

Returnees are not normally on the return flight, so the debriefing of the operation usually takes place then. However, if there are unaccepted returnees on the flight, the monitor should stay close to them throughout the return flight and all the duties that a monitor carries out continue to apply as described in the in-flight and arrival phases above. Nevertheless, in such circumstances the monitor should attend the debriefing, which may also take place when the flight arrives back at the country of departure.



### Step 1. Return to the country of departure

#### Positioning of the monitor (in the case of unaccepted returnees)

In the case of unaccepted returnees, the monitor should remain close to them on the journey back.

**What to observe** (see *in-flight and arrival phase* where the same steps apply).

Depending on national procedures, either the same escorts remain responsible for an unaccepted returnee, or a back-up team of escorts, if available, may be responsible for the returnee on the flight back to the country of departure.



Where all the returnees were accepted by the country of return, the monitoring duty only includes the following step.

### **Step 2. Debriefing during the return leg<sup>71</sup>**

Monitors should participate in the debriefing with the Frontex representative, escort leader, and other participants, as applicable. They should note who was present at the debriefing, what time it was held and where, and provide a brief account to the escort leader and other participants of their main findings and observations, in particular any incidents that occurred during the operation. The monitor should inform the escort leader about any incidents that they will mention in their report and that need to be followed up by the authorities. Feedback provided by the escort leader, if any, should be mentioned objectively in the monitor's monitoring report. The debriefing is normally conducted on the aircraft during the return leg. The debriefing may also take place following arrival in the country of departure.

### **Step 3. Handover of unaccepted returnees (JRO: hub) – if applicable**

In cases where handover of unaccepted returnees back in the country of departure occurs, the monitor should observe this phase as described in detail in Step 2 of the arrival phase further above (handover to the authorities in the country of return).

## **11.5 Monitoring collecting return operations (CROs)**

As mentioned above, CROs include only a pre-departure phase and one or several in-flight phases. The handover of the returnees to the authorities of the country of return is already done during the pre-departure phase. During a CRO the debriefing takes place after the arrival in the country of return either at the airport or in a designated area. In case of several countries of return, there are several in-flight phases. The monitoring tasks as described in the steps above in the pre-departure and in-flight phases are also applicable for CROs.

## **11.6 Monitoring specific incidents**

If a particular incident occurs during the course of the forced-return operation, monitors should take note of the following details:

- ♦ Description of facts e.g. what happened during the incident (including location and time);

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<sup>71</sup> In the case of unaccepted returnees, debriefing with the monitor may also take place when the flight arrives back in the country of departure.

- ♦ The role of each person in the incident;
- ♦ Whether the actions were legal, necessary and proportional and the basis for that assessment;
- ♦ What factors triggered the incident;
- ♦ What activities were performed well and by whom, e.g. escort, escort leader, returnee, etc.

According to the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, individuals participating in Frontex-coordinated activities are required to report any incidents involving suspected or alleged violations of fundamental rights or of the Frontex Codes of Conduct via the appropriate reporting channel, for example via the Frontex Serious Incident Reporting (SIR) system.<sup>72</sup> This system is usually used by escorts to report any incident of a sensitive or public interest nature, including any fundamental rights violations, as defined in the Implementation Plan. It is crucial for monitors to include any incidents in their reports, because the evaluation of such reports helps Frontex to adapt future return operations.<sup>73</sup> Including these incidents in the monitoring reports can also alert the authorities, such as the ministries in the Member States who are responsible for forced returns and in some cases, the investigating authorities, to a particular or systemic issue that they need to address.<sup>74</sup>

Even though the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex obliges any participant to report violations of the code of conduct and/or of fundamental rights via the appropriate channels, such as the SIR, forced-return monitors report any violations of the code of conduct and/or fundamental rights via their monitoring report and not via the SIR to avoid double reporting. Both the monitoring reports and SIRs reach the FRO directly.

### **11.7 Monitoring the use of force and means of restraint**

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 sketches to include in their monitoring report.

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<sup>72</sup> Frontex Guide for JROs, p. 12.

<sup>73</sup> Frontex Guide for JROs, p. 17.

<sup>74</sup> In line with regional and international human rights standards they have ratified.

Any use of force should be based on an individual risk assessment that escorts should be constantly evaluating throughout the forced-return operation based on a dynamic risk assessment. The monitor should observe the use of force and should note the context in which the restraints are used, the time, what type of restraints were used and for how long. The monitor should also note: the 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 present who witnessed the use of force?); if there were threats to other returnees or escorts.

It is important that the monitor reports each instance of the use of force and means of restraint in the monitoring report they submit. The monitor should request information including details about the measures applied, from the escort leader at an appropriate time, e.g. after the situation has been brought under control. The monitor should also take notes of any good practice in handling situations such as this and include it in their final report. Including examples of good practice in the reports that go to Frontex and the relevant authorities in the Member States involved in the operation can help to spread good practice in other forced-return operations.

In order for the monitor to be able to assess the legality of the use of force, they need to know about the different types of restraint measures allowed under the national legal framework of the country monitored. Most importantly, and as mentioned above, the Implementation Plan includes the list of authorised restraints and equipment permitted during the return operation that the OMS together with Frontex decided in accordance with the national legislation of the OMS, international law and EU law, in particular the Charter of Fundamental Rights. However, no PMS should use coercive measures that its legislation does not allow, even if those measures are allowed by the OMS for that particular operation.<sup>75</sup>

Ideally, monitors should experience during respective training what it is like to use restraints on someone or have them used on them as part of their training in order to be knowledgeable about the various techniques and their application.

For the note-taking and subsequent reporting, it is important to keep in mind the following questions in relation to the use of coercive measures:

- ♦ Did the relevant authorities carry out an individual risk assessment before the forced-return operation and did it take into account any vulnerabilities?

<sup>75</sup> Prior to a return operation, monitors should consult the respective National Country Factsheet of the requesting Member State. The Factsheet contains information regarding the national forced return procedures, the authorities responsible for forced returns, risk assessment carried out prior to the operation, coercive measures and means of restraint permitted by law, relevant information on the national monitoring mechanism, as well as complaint mechanisms. The factsheets are available on the communication platform for the pool of forced-return monitors on the Frontex One-Stop-Shop (FOSS).

- ♦ Did the returnee have any medical conditions that were taken into account?
- ♦ Did the escort leader/escorts inform the returnee that it was in their interest to co-operate, and that uncooperative behaviour would not stop the return operation? When was the returnee informed and in what context?
- ♦ Did the escorts make use of de-escalation and communication skills prior to using force or restraints?
- ♦ What was the specific situation that required the use of force by the escorts?
- ♦ If family members were also present, did they move them away? If not, was it because e.g. it was not possible under the circumstances?
- ♦ Did the use of restraint measures comply with legal provisions set out in national laws (see National Country Factsheets and Implementation Plan)?
- ♦ In addition to the legal provisions for restraint measures, were they necessary and proportional?
- ♦ For how long were restraint measures used? Was the length reasonable or excessive?
- ♦ Did the returnee show signs of injury?
- ♦ Positional asphyxia: Were returnees restrained in a way that prevented or impeded the mechanism of normal breathing? What led to the returnee being restrained? Was it to limit a potentially dangerous situation? Was the returnee closely monitored by the escorts and medical personnel whilst restrained?<sup>76</sup>
- ♦ Did the escorts comply with their legal obligation to report incidents in relation to the use of force?
- ♦ Did the returnee say they wanted to file a complaint?
- ♦ Was the returnee informed that they could lodge a complaint and how to do it? Were they given the complaint form that is annexed to the Implementation Plan?

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<sup>76</sup> Officials should recognise the heightened risk of positional asphyxia during restraint; they must take steps to avoid it, should be able to recognise the heightened risk factors, recognise the warning signs of positional asphyxia, reduce the risk of it happening and take immediate emergency action in the event that positional asphyxia is suspected.

## 12. Reporting

### 12.1 General principles of reporting

The report should reflect the facts and details of the observations the monitor made and the notes they took from the pre-departure phase of the operation until returnees were handed over to the authorities in the country of return or, in the case of unaccepted returnees, when they were handed back to the authorities in the country of departure. It should also include any noteworthy details from the debriefing.

It should follow a presentation of facts that covers:

- a) What the monitor observed
- b) What it means, and
- c) Recommendations - what needs to change.

The monitoring reports must, therefore, be objective, precise and accurate to clearly document possible violations of fundamental rights during the forced-return operation. The reports should also include other observations and recommendations on steps to improve the way a forced-return operation is conducted and raise standards of protection.

The monitor must be as objective, precise, and concise as possible whilst always ensuring that all the relevant details are included.

When drafting the report, monitors should:

- ♦ Include the same findings/observations in the report as addressed during the debriefing;
- ♦ Only include facts. If the information is not first-hand, they should state the source of the information;
- ♦ Use appropriate language i.e. language that is neutral and impartial;
- ♦ Avoid reporting in the first person "I" and instead write in the third person since the returnees and escorts should be the focus of the report at all times;

- ♦ Verify the information included in the report, even if this takes time after the forced-return operation, particularly if there are details you are not sure of or need to check with others involved in the return operation such as an official or a fellow monitor;
- ♦ Indicate whether the preparation of the mission was sufficient or if any challenges were encountered during the preparation, what the challenges were and how the escorts dealt with them;
- ♦ If means of restraint were used during the operation, describe the context and circumstances leading up to restraints being used, the type of restraints used and duration, attitude and behaviour of those responsible for using the restraints, any injuries to either returnee or escort, and what happened afterwards;
- ♦ If any force was used, describe the context and circumstances, the duration, attitude and behaviour of the escorts, any injuries to either returnee or escort and what happened afterwards;
- ♦ Include any complaint made by a returnee against any alleged ill-treatment by an official that took place during the operation;
- ♦ Include any actions that proved to be particularly helpful and/or positive (to spread good practice and include in lessons learned);
- ♦ Reflect in the summary of the report, your main findings, using precise terminology. Make sure your information is factually correct and highlight any incidents or particular problems;
- ♦ Provide recommendations drawn from the operation that are backed up the details (evidence) of the incident or problem you observed, including examples of both good practices to be shared and bad practices that need to be addressed. Always indicate who these recommendations, or a particular recommendation, are addressed to where relevant.

In view of the strong focus on the fundamental rights of those being returned, it is easy to forget that the monitor also has the duty to report on any misbehaviour on the part of a returnee towards an escort. Positive comments and good practices identified, as well as any differences in the procedures used in the return operations organised by the various Member States should be included so that Member States can benefit and learn from each other's practices. Experienced monitors should also mention any particular patterns

they observe, e.g negative ones such as where legal standards including the fundamental rights of those being returned are contravened, or alternatively, those that have a positive outcome and that should be replicated elsewhere.

Monitors should respect the principles of accuracy, confidentiality, impartiality, and non-discrimination at all times before, during, and after the forced-return operation.

**Accuracy:**

Make a clear distinction between facts and allegations by either cross-checking the information provided or ensuring the full factual account of the different parties within the report. In the reports, be as precise and concise as possible, while at the same time ensuring that all the relevant details have been included to establish whether or not fundamental rights and/or procedures have been observed or violated.

***How might accuracy be compromised?***

This could be as a result of:

- ♦ Unconscious bias of the monitor in favour of or against someone in the return operation, be it escorts or returnees;
- ♦ Receiving contradictory information and not taking the time to double check it;
- ♦ Lack of access to information;
- ♦ Reproducing allegations as facts;
- ♦ Not taking notes while observing or shortly after observing a situation.

**Confidentiality:**

Not to disclose to any other party any information gained in the course of fulfilling monitoring obligations other than those clearly stated in Article 50(5) of Regulation (EU) 2019/1896, that is: the Executive Director of Frontex; the Fundamental Rights Officer of Frontex; and the competent national authorities of the Member States involved in the return operation. The latter is done automatically via the FAR.

***How might confidentiality be compromised?***

This could be as a result of:

- ♦ Careless handling of notes e.g. losing them;
- ♦ Believing that the other person is so far removed from your work that it does not matter if you disclose information;
- ♦ Stress and the need to unburden oneself by telling someone else e.g. a partner, family member or friend.

**Impartiality and non-discrimination:**

It is not appropriate to include personal opinions in the report about the general conduct and implementation of a forced return or return decisions. All data should be properly documented and all accounts should be stated without prejudice and/or discrimination towards anyone based on their sex, nationality, religion, and/or role within the forced-return operation.

***How might impartiality and non-discrimination be compromised?***

This could be as a result of:

- ♦ Holding strong views on migration or on law enforcement agencies;
- ♦ Personal or family life experiences of migration or encounters with migrants, refugees, or security services;
- ♦ Personal or family life experiences of people from different ethnicities, different colour of skin, a different religion, sexual orientation, age etc.;
- ♦ Allowing those in the hierarchy, who you believe to be better informed or superior to you, to influence what you put in the report or allowing them to put pressure on you.



## 12.2 “Dos” and “don’ts” when drafting the report

When drafting the report, the monitor needs to:

- ♦ Understand the reporting format in order to take the necessary notes during the operation;
- ♦ Besides documenting what you see and hear, focus on the exceptions to highlight good and bad practices rather than confirming the standards;
- ♦ Use appropriate language;
- ♦ Always keep in mind the core principles of monitoring: accuracy; confidentiality; impartiality, and non-discrimination;
- ♦ Reflect the facts by following the guiding questions: a) what did I observe, b) what does it mean, and c) recommendations - what needs to change or what should be maintained (good practice);
- ♦ Be as precise, concise, and as brief as possible while ensuring that all the relevant details are included;
- ♦ Clearly differentiate between your own observations (making sure to use the third person) and information obtained from secondary sources;
- ♦ Report every instance of the use of force and means of restraint;
- ♦ Remember that the monitor also has a duty to include in the report any incidence of misbehaviour on the part of a returnee towards an escort.

In relation to a specific incident, the report should include in detail the following points they noted down during the return operation:

- ♦ Description of the facts e.g. the factors that lead up to the incident and what happened during the incident (include location and time);
- ♦ The role of each person in the incident;
- ♦ Whether the actions were legal, proportional and necessary, and what the basis was for this assessment (based on the monitor’s own observations but also any information you gather during the debriefing or while talking to the escort leader);

- ♦ Whether there were any injuries to the returnee or escort (including sketches of the injury?);
- ♦ Who else witnessed the incident e.g. family members, other returnees;
- ♦ What can be done to address any concerns;
- ♦ What activities were performed well and by whom, e.g. escort, EL, returnee, etc.

As highlighted previously, the monitor should:

- ♦ Address the same findings/observations in the report, as addressed during the debriefing;
- ♦ Not include personal data about any of the officials or returnees such as their names;
- ♦ Discern between facts they observed and hearsay or interpretation, and include only the former;
- ♦ State the source of the information, if it is not first-hand;
- ♦ Always verify the information included in the report, even if this takes time after the forced-return operation (e.g. contact the escort leader, Frontex representative, etc.);
- ♦ Use quotation marks when quoting someone and indicate whether it is e.g. the escort leader, medical doctor, etc. you are quoting without including their personal data (i.e. their name).

As emphasised above, the monitor should be as precise and concise as possible whilst ensuring that all the relevant details are included. As well as including all the relevant information about the forced-return operation, including the number of returnees, the report should contain the following information:

- ♦ Any significant incidents that occurred;
- ♦ Any means of restraint (type and duration) used in the course of the operation as well as the circumstances leading to it;
- ♦ Any force applied;

- ♦ Any complaint regarding any alleged ill-treatment, incident, or other situation, including alleged violations of fundamental rights that took place during the operation; and
- ♦ Any actions that proved to be particularly helpful and/or positive (to provide lessons learned).

### 12.3 Formulation of recommendations

Recommendations should be drawn from the operation and should be supported by the facts (evidence) about the incident that occurred or the problem that was observed. When making recommendations, the monitor must explain why they are making the recommendation and what it relates to. Wherever relevant, these recommendations should indicate the relevant stakeholders, they are addressed to e.g. recommendations for the return enforcing authority; recommendations for the escort leader (for the escorts, medical staff, interpreter, etc.).

Recommendations should seek to propose specific solutions. They should follow on logically from the monitoring report and should be specific, measurable, and achievable. They should propose how a given situation/problem could be improved by suggesting an alternative action that could be taken. If the monitor identifies actions/procedures that are not currently being followed or permitted in a particular country, laws or policies that might need amending or where a country is not abiding by regional or international laws it has ratified, they should point these out. Similarly, they should put forward any recommendations regarding additional or new practices or safeguards that could improve fundamental rights protection.

### 12.4 Submission of monitoring reports

Monitoring reports are submitted via the Fundamental Rights Monitoring System (FRMS). This is an IT system designed to support the monitors of the Pool in their monitoring and reporting. It also supports the FRO in analysing the monitoring reports, thereby monitoring fundamental rights compliance in Frontex-coordinated operations.

FRMS is specifically designed to support the monitoring of forced-return operations. Monitors of the Pool submit their reports through a web-based application which is part of FRMS. Monitors working as national monitors that monitor during Frontex-coordinated operations submit their reports by e-mail to the FRO that uploads them into the FRMS IT system.

The FRMS IT system has two major components:

- a) a central system with a database, which is part of the IT infrastructure of Frontex and is used by the FRO;
- b) a progressive web application (PWA) that can run in the browsers on the desktop and mobile devices used by the monitors.

On desktop computers, the PWA runs under both Microsoft Windows and Apple MacOS, and on tablets and smartphones, under both Android and Apple iOS. All of the FRMS services available to the monitors and their national monitoring bodies are provided through the PWA.

The PWA is accessible via the browser and there is no third-party software to be downloaded. It is very secure and monitors can use it when connected on-line to a central server at Frontex and off-line when travelling without an on-line connection. This enables them to work on their reports during the return flights from missions. The reports are submitted when connected on-line to a central server at Frontex. The FRO is able to see what reports are due, review these when they come in and follow up, as necessary.

Depending on the nature of the operation, data fields that are not relevant do not appear. Monitors are able to navigate the PWA easily and certain operational data is pre-filled by the FAR. The screen layouts allow monitors to move easily around their report in any order and to review its contents before submission. Screens allow monitors to click on "information buttons" that contain checklists to get specific guidance about each field.

Below are the main steps:

- ♦ Prior to the monitoring mission, the monitor logs on to the reporting system and uses their mission ID to access the report file and to review the Operation Identity, Monitors and Planned Itinerary sections of the Overview. If monitor plans to use a tablet off-line during the mission to complete their report, the monitor logs in using their tablet and uses their mission ID to access the draft report and downloads it onto the mobile application.<sup>77</sup>
- ♦ After the mission, there are two ways to submit the report:

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<sup>77</sup> Where there is co-monitoring, just one monitor logs in. The monitors share the same report file. Both can draft it on-line to compose the draft report, but not simultaneously.

1. Monitor who has not started a draft report in the PWA on a tablet logs in to the central reporting system and completes their draft report.
  2. Monitor who has started a draft report in the reporting application connects the application to the central reporting system and uploads their draft. They then complete their draft by logging in to the central system through a browser on their desktop computer.
- ♦ Monitors submit their monitoring report via the PWA within 14 days of the end of the operation (or as quickly as possible if monitor(s) grade(s) their reports as URGENT<sup>78</sup> or within 48 hrs where the FRO requests an urgent report – see further below).
  - ♦ The report enters the reporting system (case management application of the FRO) which produces a basic output report<sup>79</sup> in the form of a locked Word document. The basic output report is then sent by the system as an attachment via e-mail to an initial distribution list. The list includes the FRO, the Frontex Executive Director and the ECRet Division (Frontex Joint Return Coordination Centre – FJRCC) in line with Article 50(5) of Regulation (EU) 2019/1896. The basic output report is also sent to the monitor(s) who submitted the report as well as the National Preventive Mechanism(s) and national monitoring body/ies of the Member State(s) monitored.
  - ♦ The report is automatically uploaded in the FAR system, to enable access by the competent national authorities of all the Member States involved in a particular operation.
  - ♦ The FRO uses their case management application (central system with a database) to monitor submissions of reports.

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78 Any serious incident caused by an action or failure to act by a person, or by force of nature, which directly or indirectly involves Frontex participants that occur during the course of a Frontex-coordinated return operation, are to be reported. The monitor reports through their monitoring report; any other participants via other appropriate channels such as the Frontex Serious Incident Report (SIR) system.

79 This is to contain all of the information submitted by the monitor(s), in a compact, readable format.

- ♦ If the FRO receives a Serious Incident Report (SIR)<sup>80</sup> or complaint regarding a return operation, it contacts the monitor and can ask them to submit their report within 48<sup>81</sup> hours.

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80 A Serious Incident (SI) is an event, caused by an action or failure to act by a person, or by force of nature, which directly or indirectly involves Frontex participants or assets and which:

- Entails a potential violation of EU or international law, in particular related to Fundamental Rights and international protection obligations, and/or
- Involves a potential violation of the Frontex Codes of Conduct (CoCs), and/or
- Has serious actual or potential negative implications on Frontex's tasks or activities and/or
- Has a serious potential life-changing impact on a participant's health.

In the event of a serious incident, the OMS escort leader reports it to the national Crisis Focal Point which activates the Serious Incident Reporting (SIR) procedure by informing the Frontex Situation Centre (FSC) and the Frontex Operational Team. A call is made to the Senior Duty Officer of the FCS within 2 hours of knowing about the incident and in writing within 48 hours using the SIR template which is sent to the FSC [fsc@frontex.europa.eu](mailto:fsc@frontex.europa.eu) copied to [FJRCC@frontex.europa.eu](mailto:FJRCC@frontex.europa.eu).

Fundamental rights violations are reported as category 1 (situations of potential violations of fundamental rights or international protection obligations) and are directly submitted to the FRO (direct reporting channel to the FRO). This means that the FRO is the main responsible to handle such SIRs. When the FRO starts their investigation they identify the responsible actor(s) and gather all the facts. To close the SIR, the FRO produces a final report and introduces recommendations.

81 Same time limit as for Serious Incident Reports.

## 13. Annex

### The rights of children returned with their family during forced-return operations coordinated by Frontex – a draft checklist for forced-return monitors

#### Background

A child is any person below the age of 18.

Article 3(1) of the UN Convention on the Rights of the Child ratified by all EU Member States, states that *“In all actions concerning children, whether undertaken 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.”*<sup>82</sup>

In line with this principle, Article 24(2) of the EU Charter of Fundamental Rights establishes that *“ [i]n all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”*<sup>83</sup>

Article 80(3) of the European Border and Coast Guard Regulation requires that the Agency *“shall in all its activities pay particular attention to children’s rights and ensure that the best interests of the child are respected.”*<sup>84</sup>

In any return operation coordinated by Frontex, children are accompanied by their parent/s or by a primary caregiver.

#### Checklist

##### 1. Information gathering

Prior to the forced-return operation, the monitor should gather relevant information about the operation from:

- The Implementation Plan (IP);

<sup>82</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>83</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

<sup>84</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1573722151667&uri=CELEX:32019R1896>.

- The national factsheets on forced-returns and forced-return monitoring available to the Pool of forced-return monitors via the communication platform on the FrontexOne-Stop-Shop(FOSS);<sup>85</sup>
- The list of passengers (PAX), where available.

## **2. Briefing before the forced-return operation**

During the briefing, the monitor should check that:

- Escort officers have carried out the necessary risk and vulnerability assessments;
- Officers assigned to the return operation have been trained in child protection and communication with children;
- The escort leader has organised the seating-plan and embarkation procedure in a way that ensures families are separate from other returnees;
- The time of day that families with children were picked up by the authorities was taken into account, avoiding the middle of the night or early morning;
- Other specific needs, such as school terms, conclusion of exams etc., are respected in accordance with the best interests of the child;
- The children and their parents have all the documents, including birth certificates, health records and school certificates they will need for their return;
- Whether there were any incidents when families were initially picked up that could negatively affect the children's well-being, requiring extra care and attention.

## **3. Participants involved in the forced-return operation<sup>86</sup>**

The monitor should observe that throughout the entire return operation:

- Escort officers wear civilian clothing, and are easily identifiable;

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<sup>85</sup> The Agency's platform for sharing information with Member States, Schengen-associated countries and other designated parties.

<sup>86</sup> The term 'participant' means any person, including escorts, monitors, interpreters and medical staff taking part in a return operation or return intervention, other than the returnee (see Article 3(b) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex (2018).



- Escort officers include specialists trained in children's rights and child protection;
- There is a balance of male and female escort officers;
- A social worker or psychologist is present as required, who interacts with the children and their families;
- A continuum of care is maintained the entire return operation.

#### **4. Communication and the right to information**

The monitor should observe that throughout the entire return operation, escort officers ensure that parents and children understand what is going on, and that the whole process runs as intended and in keeping with the best interests of the child. Specifically, monitors should verify that:

- All participants communicate clearly and in a manner that is culturally appropriate, informal, and suitable to the level of maturity of the child;
- Children receive comprehensive information about what is happening and what is going to happen next in a way they are able to understand;
- Escort officers and other participants are friendly, polite, attentive to the needs of the child and contribute to creating a relaxed atmosphere;
- Children are allowed to ask questions and clarify the information that has been given to them;
- Escort officers, social workers and other participants provide information in a language that the children understand and check that the children have accurately understood the information that has been given to them;
- Escort officers and other participants do not use the children as interpreters to facilitate communication with parents or other returnees;
- The parents' wish to inform the children themselves is respected while ensuring that escort officers check that parents are passing on the necessary information and support them in sharing information with their children;

- Complaint forms about the return process itself are accessible to both parents and children; that they are adapted into a format and language that is child-friendly and explain what the complaints mechanism is and how to present and submit a complaint.

## **5. General conditions**

The monitor should establish that:

- Escort officers and other participants assess the particular needs of each child on an individual basis, including possibilities for them to play or ask questions;
- Escort officers make adequate food and water available at frequent intervals throughout the return operation;
- Children are allowed to keep their own belongings, such as their bottles, small toys or mementos;
- Breastfeeding is allowed and that the opportunity to breastfeed in private is offered whenever possible;
- Adequate special care for families with smaller children and babies is provided, including diapers, baby food, and heating for bottles.

## **6. Waiting area**

The monitor should verify that:

- The security check is carried out in a culturally-, gender-, and age-sensitive manner and as far as possible, with the cooperation of the parents;
- A separate waiting area and lavatory is designated for families with children whenever possible;
- Children are allowed to play, and if possible, a children's play area is set up with a sufficient number of toys that are culturally appropriate and suitable for both boys and girls.

## 7. Incidents, use of force and means of restraint

The monitor should observe that:

- Children are not separated from their family unless it is in their best interest;
- Escort officers assisted by a social worker or psychologist, as agreed, intervene to take care of children in cases where parents are unable to do so;
- When separation from the parents is deemed to be in the best interests of the child, it is carried out in a manner that minimises the child's stress, is done for as short a time as possible and the reasons are explained to the child in a child-sensitive way by the escort officers assisted by a social worker or psychologist, as agreed;
- The necessity of continuing to separate the children from their family is constantly reviewed on the basis of an ongoing risk assessment carried out by the escort leader;
- Children do not witness the use of force or situations where means of restraint are used against parents, family members or other adults, unless it is unavoidable. In such case, the escort officers assisted by a social worker or psychologist, as agreed, explain the reasons in a child-sensitive way;
- Children are kept at a distance from aggressive returnees;
- Escort officers employ all possible de-escalation techniques to avoid any use of force or means of restraint against children. The use of force or means of restraint against children is prohibited other than in highly exceptional cases and only to prevent the child from harming themselves or another person;
- The principles of legality, necessity and proportionality are respected.





# The Pool of Forced-Return Monitors: Guidelines for Monitors

**September 2021**

The guidelines for monitors in the pool of forced-return monitors were drafted within the framework of the EU-funded “Forced-Return Monitoring III” project.

This document aims to promote professional monitoring within the framework of the pool of forced-return monitors (Pool) based on the principle that people who are forcibly returned should be treated in a manner that complies with international human rights standards, EU and national legal obligations, in particular the principles governing the legality, necessity and proportionality of the use of force and means of restraint.

The guidelines outline the principles and rules that a forced-return monitor is expected to comply with while monitoring forced-return operations within the framework of the Pool. They include procedures related to forced returns by air and follow the different phases of forced-return operations.