

Information Note on the Pool of Forced-Return Monitors

(Version February 2021)

Introduction

On 4 December 2019, Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard¹ (Regulation (EU) 2019/1896) entered into force. It requires in article 51(1) 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.”*

Furthermore, the 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.”*² 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 [...]”*³.

The pool of forced-return monitors was already set up by 7 January 2017, as required in Article 29 of Regulation (EU) 2016/1624 in force at that time⁴. 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, as well as the Fundamental Rights Office (FRO) that reports directly to the Management Board.

The “Information Note on the Pool of Forced-Return Monitors” at hand shall inform all forced-return monitors in Member States (MSs)⁵ on the current functioning of the Pool and shall facilitate the work of the monitors of the Pool and cooperation with relevant stakeholders.

1 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>).

2 Article 51(2).

3 Article 51(1).

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

5 The term Member State (MS) includes Member States of the European Union (EU MS) and countries associated with the implementation, application and development of the Schengen acquis (Schengen Associated Country/SAC).

Forced-Return Monitoring by Monitors from the Pool

Article 8(6) of Directive 2008/115/EC requires “*Member States [to] provide for an effective forced-return monitoring system.*” According to the Return Handbook⁶, Article 8(6) however does not imply an obligation to monitor each single removal operation. A monitoring system based on spot checks and monitoring of random samples may be considered sufficient as long as the monitoring intensity is sufficiently close to guarantee overall efficiency of monitoring.⁷ An exception are collecting return operations (CRO) – please see below.

In line with Article 51(1) of Regulation (EU) 2019/1896, the Pool consists of monitors who are members of the competent bodies in MSs which carry out forced-return monitoring activities in accordance with Article 8(6). The Pool is a subsidiary mechanism to the national monitoring mechanisms and is activated whenever a MS requests a monitor from the Pool, because either no monitor is available in the MS for a specific forced-return operation or the MS does not have (yet) an effective monitoring system in place.

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.*”

Article 51(4) of Regulation (EU) 2019/1896 states that “*[t]he Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operations and return interventions throughout their duration. [...] In line with current interpretation and practice, this means that the monitor from the Pool is responsible to monitor the contingent of the MS that requested the monitor, i.e. the activity of the forced-return monitor from the Pool is meant to support on demand the national monitoring system of the requesting MS. Article 16(4) of the Frontex “Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex” also 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].*”*

Collecting Return Operations (CRO)

According to Article 50(3) of Regulation (EU) 2019/1896, “*[t]he Agency may provide technical and operational assistance to the Member States and may also, either on its own initiative and with the agreement of the Member States concerned or at the request of the participating Member States ensure the coordination or the organisation of return operations for which the means of transport and return escorts are provided by a third country of return*”

6 ANNEX to the COMMISSION RECOMMENDATION establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks, Brussels, 27.9.2017 (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf).

7 Return Handbook p. 43.

(collecting return operations). [...]. In other words, a CRO is a return operation initiated by an Organising Member State (OMS), with aircraft, escort leader (EL) and escort officers (EO) provided by a country of return and returnees handed over to them by the OMS and, if applicable, by other Participating Member States (PMS) on the territory of a MS.

With regard to such operations, Article 50(3) specifies the obligatory monitoring by a forced-return monitor as follows: *"[...] The 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. 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."*

Whenever a monitor from the Pool participates in the entire forced-return operation, it is understood as sufficient to qualify as obligatory monitoring according to Article 50(3) of Regulation (EU) 2019/1896 and in this case, no additional national monitor is required for the in-flight phase.

As mentioned above, during a CRO the technical and administrative handover of returnees takes place on the territory of a MS before the departure of the flight and not as usual in the third country of return. During the in-flight phase and the disembarkation of the returnees upon arrival in the third country of return, the role and mandate of the monitor from the Pool is to continue to monitor the compliance with fundamental rights. The monitoring activity ends once the flight arrives in the country of return and the returnees have disembarked.

Third country monitors may also be on board of a CRO in line with their national mandate. However, as CROs are coordinated and financed by Frontex, Regulation (EU) 2019/1896 ensures monitoring from the Pool or from the national monitoring system of the MS in charge.

Nomination of Monitors to the Pool

MSs are responsible for nominating monitors to the Pool. Nominations are made by the national bodies that carry out, or that may carry out, forced-return monitoring in accordance with national legislation transposing Article 8(6) of Directive 2008/115/EC. In general, nominations to the Pool are communicated to the CAP via the respective National Frontex Point of Contacts (NFPOCs)⁸ in MSs. However, the monitoring institutions responsible can also send the nominations directly to the CAP.

⁸ The NFPOCs are appointed by the MSs based on Article 13 of Regulation (EU) 2019/1896: *"Each Member State shall appoint a national contact point for communication with the Agency on all matters pertaining to the activities of the Agency, without prejudice to the role of the national coordination centres. The national contact points shall be reachable at all times and shall ensure the timely dissemination of all information from the Agency to all the relevant authorities within the Member State concerned, in particular the members of the management board and the national coordination centre."*

Frontex holds annual bilateral negotiations (ABN) with all MSs during which they also negotiate, among others, the human resource contributions to the Pool:

1. The responsible monitoring body in each MS notifies the NFPOC about its contribution.
2. The NFPOC then informs Frontex about the country's nominations to the Pool for the upcoming year.
3. In addition to the ABNs, names and contacts of additional nominations may be communicated via the NFPOC to Frontex at any time in the course of a year.

There is no maximum number of monitors that may be nominated by a MS to the Pool. In general, the more monitors are available in the Pool, the better MSs can cover their needs. 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.

In order to be eligible for deployment from the Pool, monitors need to undergo training on forced-return monitoring organised by Frontex. Even if monitors have not yet received the training, they can still be nominated to the Pool. However, they can only be deployed once they have received this specific training which is currently offered once or twice a year.

All nominated monitors complete the same training, including elements on child protection and participate in various events that are organised for the Pool. This facilitates sharing of good practices among monitors and other participants in return operations and in turn contributes to harmonising standards in forced-return monitoring and implementation of forced-return operations all over Europe. By being part of the Pool, monitors increase their network not only with monitors, but also with ELs and EOs in other MSs as well as with other relevant stakeholders.

Nomination of Monitors for Deployment

Currently, monitors from the Pool can only be deployed based on a request by a MS. In this regard, Article 51(4) of Regulation (EU) 2019/1896 specifies that "[t]he Agency shall make the forced-return monitors available upon request to participating Member States to monitor, on their behalf, the correct implementation of the return operations and return interventions throughout their duration.[...]".

Furthermore, Article 50(2) of Regulation (EU) 2019/1896 stipulates that *“Member States shall provide operational data on returns necessary [...] and shall inform the Agency of their indicative planning as regards the number of returnees and the third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by the Agency.”* In line with this article:

1. The requesting MS – either the OMS or a PMS – indicates their need for a monitor in a specific forced-return operation via the Frontex Application for Returns (FAR)⁹.
2. The FAR system automatically sends notifications to the CAP regarding MSs’ requests for monitors. CAP collects the requests for monitors.
3. Once a month, usually by the 11th of each month, CAP prepares a monthly call (i.e. a letter) for monitors for operations taking place the following month which is sent to the NFPOCs of all the MSs who contribute monitors to the Pool with copies to the respective national monitoring bodies (NMBs). The call requests the NMBs to indicate which operations they would be available for and interested in nominating monitors to. It includes general information about the return operations, e.g. the type of operation, the destination, date, airport of departure (if known at the time of the call), etc. The NMBs can nominate monitors to specific operations listed in the call.
4. MSs then have one week to respond to the call, via the NFPOCs.
5. Subsequently, the NFPOCs coordinate with the respective monitoring bodies and communicate the availability of monitors to Frontex.
6. Soon after the one-week deadline, CAP gathers all the nominations, prepares an overview of the upcoming return operations that month and calls a meeting with the ECRet Division and FRO. The objective of the meeting is for staff from all three units to go through each request and nomination to decide which monitors to assign to which operation(s). CAP records these decisions¹⁰ and officially lets MSs know, via the NFPOCs, where each monitor has been assigned.
7. If NMBs have nominated several monitors to the same return operation and there are others taking place that month where no nomination has been made, CAP contacts the relevant NMBs to ask whether they can nominate monitors to those return operations instead.

⁹ 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).

¹⁰ CAP keeps a record of which monitor has been assigned to which RO, as well as records of the monitors that were nominated for the monthly call who were not assigned to a particular RO in that monthly call (based on the criteria mentioned above), if that is the case.

Criteria for Assigning Monitors for Deployment

The following criteria are used for assigning monitors to specific operations:

- The operations to be covered are prioritised as follows:
 1. Collecting return operations (CROs), where at least one monitor should be present.
 2. Joint return operations (JROs).
 3. National return operations (NROs).
- The country of return is also a consideration in the process of assigning monitors. The experiences of representatives from Frontex, and those of OMSs and PMSs in relation to the country of return, as well past monitoring reports detailing issues that have arisen from previous return operations to specific countries of return are among factors that are taken into account in the decision-making process.
- The availability of the monitors nominated to return operations listed in the call.
- Other criteria also considered are that the:
 - Skills and specific experience of the available monitors should match the particular return operation.
 - Language(s) that the monitor speaks should ideally match the language(s) spoken by the returnees.
 - The “fairness” principle should be applied, according to which the planned return operations should be fairly distributed among the available monitors and all monitors should be assigned as equally as possible to operations.

Deployment of Monitors from the Pool

Communication

After the monitors have been assigned to the specific return operations and CAP has informed the NMBs, an automated email is sent to the respective monitors with the operational details of the mission that are at that time available in FAR. The email contains information on the flight schedule, the contact details of the main contact for the operation, financial rules etc. If monitors request additional support (e.g. visa support letter, information on vaccinations etc.), the ECRet Division usually refers them to the requesting MSs. If their specific request is not addressed by the requesting MS, the ECRet Division offers support. This is done on a case-by-case basis. If there are changes in the flight schedule, the ECRet Division contacts the monitors via an automated email generated by FAR.

If a monitor, other than the one who was assigned to a particular return operation is needed, the ECRet Division informs CAP who then contacts the NMBs for another nomination (outside of the monthly call). This can be the case if e.g. the monitor who has been assigned to

the return operation falls ill and cannot be deployed. As soon as new/additional operational information becomes known, the ECRet Division forwards this information to the respective monitors. The ECRet Division encourages the MSs to share the Implementation Plan as soon as possible with the monitor and emphasises the importance of sharing information as soon as possible with the monitor.

The monitor selected and deployed to a forced-return operation shall communicate and coordinate closely with the requesting MS at all times. The Direct Contact Point in Return Matters (DCP) and the NFPOC of the monitor's home country should always be copied in this communication.

Implementation Plan

In cooperation with the OMS, Frontex draws up an implementation plan and distributes it to the PMSs prior to the implementation of the forced-return operation. The OMS and all PMS ELs are responsible for informing all participants in their contingent (i.e. EOs, monitors, etc.) about the content of the implementation plan, sharing the annexes, and ensuring compliance with the plan. This obligation is specified in each implementation plan.

The implementation plan includes a list of authorised restraints and equipment permitted during the forced-return operation that was decided by the OMS together with Frontex in accordance with its national legislation, and in line with international and EU law. 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.

As regards CROs, the information on the restrains for specific operations is provided by the OMS in cooperation with the EL of the third country of return. They are responsible to inform the monitor about the level of restrains allowed on board at the latest during the briefing at the beginning of the CRO.

The implementation plan has the following annexes available to all participants in the forced-return operation:

- Serious incident report template;
- Code of conduct applicable to all persons 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; and
- List of potential fundamental rights violations during operations.

Reflective vests

Frontex provides reflective vests to all participants in forced-return operations coordinated by Frontex including to the NMBs that contribute to the Pool. These vests have to be used when monitoring in the framework of a Frontex coordinated return operation.

Accreditation cards

Article 83(1) of Regulation (EU) 2019/1896 provides that “[t]he Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the Union to the members of the teams for the purpose of identifying them [...]”. Paragraph 2 of the same Article specifies that “[t]he document shall be returned to the Agency at the end of each joint operation, migration management support team deployment, pilot project, rapid border intervention, return operation or return intervention.”

The ECRet Division emails the accreditation card for the specific monitoring mission to the monitor. In addition, the monitor(s) receive on the day of the operation the printed accreditation card in a plastic badge holder. When a Frontex representative participates in a forced-return operation, they will provide the monitor with the accreditation card. When no Frontex representative is present during the pre-departure or in-flight phase, the responsible person in the host MS prints out the accreditation card, puts it in a plastic badge holder, and hands it over to the deployed monitor¹¹. At the end of the operation the monitor needs to return the accreditation card to the OMS EL or another MS representative in charge.

Visa

The monitors are responsible to ensure a visa for their monitoring missions, if required. They should address the requesting MSs for a visa support letter. If their specific request is not addressed by the requesting MS, they can turn to the ECRet Division for support. The visa costs are reimbursed to the monitors.

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, visa costs, vaccination costs and any other related costs are always reimbursed on individual basis/agreement between the requesting MS and the monitoring body according to the national rules of the monitoring body in the respective MS. 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.¹²

11 Frontex uploads the accreditation cards in PDF for the MSs in the FAR.

12 Due to the current pandemic, MSs are taking special measures to prevent the spread of COVID-19 during their operational activities, such as providing sanitary personal protection equipment, reducing the maximum capacity of the planes, temperature screenings of participants during the pre-departure phase, epidemiological surveys of the participants, etc.

Before starting their mission, monitors need to make sure to comply with the measures imposed by their country for travelling abroad, as well as with the measures imposed by the airline companies and the entry requirements in another MSs. If a negative COVID-19 test has to be taken before their departure, monitors are required to inform the requesting MS in advance, in order to reimburse the cost of the test afterwards. The same applies with the PPE (personal protection equipment), monitors need to make sure that they comply with the regulations at any moment. Moreover, if monitors need any kind of certificate (declaring that they are participating in a Frontex activity) to exempt them from the quarantine period upon their arrival, the requesting MS or Frontex may issue one for the monitors. This depends on the requirement imposed by their country and whether this measure is accepted by their authorities.

Once the monitor has been selected for an operation, the monitor or the responsible monitoring body needs to submit the estimated costs of their participation to the requesting MS. This needs to be done prior to the return operation. In order to ensure that both the amount and nature of the costs sent to the MS/Frontex are in line with the national rules of the monitor's home country, all related information also needs to be copied to its DCP and the NFPOC.

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 MS reimburses the monitoring body's costs. Frontex then reimburses the MS.

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 MS and Frontex reimburses the MS after the return operation. The requesting MS 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 MS 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 MS. 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 the costs are submitted to the MS for reimbursement. The estimated costs have to be submitted to the requesting MS prior to the forced-return operation.

Frontex Complaints Mechanism

Article 111 of Regulation (EU) 2019/1896 establishes a complaints mechanism to monitor and ensure the respect for fundamental rights in all Frontex activities. Any person who is directly affected by alleged fundamental rights violations during operational activities by staff involved in Frontex activities may submit a complaint in writing to Frontex. The Fundamental Rights Officer is responsible for handling complaints received by Frontex in accordance with the right to good administration¹³.

When a Frontex representative participates in a forced-return operation, they should carry the complaints forms. When no Frontex representative is present, the OMS representative has to carry copies of the complaints form. The complaints form is also annexed to the implementation plan. Furthermore, a booklet informing about the complaints mechanism is available in different languages online and in hard copy.¹⁴

¹³ Any further information on the complaints mechanism is available at: <https://frontex.europa.eu/accountability/complaints-mechanism/>

¹⁴ Albanian, Arabic, English, Farsi, French, Georgian, German, Pashtu, Russian, Serbian, Spanish, Tigrinya, Urdu and Kurdish.

Reporting by Monitors of the Pool

Article 50(5) of Regulation (EU) 2019/1896 states that “[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”. In line with this article, monitors’ reports from ROs coordinated or organised by Frontex are submitted to the Frontex Executive Director, the Fundamental Rights Officer and the relevant national authorities of all the MSs involved in that particular operation (institutions enforcing the return decision).

The Fundamental Rights Officer communicates with the monitors and discusses any issues and requests that need further attention. The Fundamental Rights Officer analyses the submitted monitoring reports, compiles the trends, the good and bad practices and puts forward recommendations. The Fundamental Rights Officer’s report is not public. However, it is shared with the monitoring bodies under good governance principle. Twice a year, the Fundamental Rights Officer presents the findings of the monitors’ reports to the Frontex Executive Director and the Frontex Management Board. In line with Article 50(7) of Regulation (EU) 2019/1896, the Frontex Executive Director “[...] shall transmit every six months a detailed evaluation report to the European Parliament, to the Council, to the Commission and to the management board covering all return operations conducted in the previous semester, together with the observations of the fundamental rights officer. [...]”.

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