

REPORT

Forced-Return Monitoring Systems in the European Union

Comparison of Legal Systems, Actors, and Procedures

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Background

Forced-return operations must be conducted in a humane manner, respect the dignity of the persons being returned and comply fully with human rights. States are the main entities responsible to ensure that public authorities respect and guarantee human rights. They have the duty to set up mechanisms for the prevention of human rights violations and to ensure proactively their protection. Within the framework of forced-returns, the escort officers that accompany the returnees have to ensure their safe return, with due respect to their dignity and in accordance with the relevant legal framework. In support of effective human rights compliance, independent forced-return monitors shall closely observe and subsequently report whether the return was enforced in compliance with human rights.

The objective of forced-return monitoring is to document human rights compliance during the removal with a view to increasing transparency and accountability in the removal process, where the fundamental rights of returnees and principles could be at stake. Forced-return monitoring creates an evidence base for any alleged violations. It is not, however, a replacement for an individual's right to an effective remedy. Rather, it can be used as a corrective mechanism for systemic flaws. Against this background, it is crucial that forced-return monitoring systems are independent and impartial.¹

Since 2013, the International Centre for Migration Policy Development (ICMPD) has built up the technical expertise and a multi-stakeholder network across Europe in the field of forced-return monitoring. Within the so-called Forced-Return Monitoring (FReM) projects² it has not only developed a comprehensive training concept for forced-return monitoring, but also elaborated European guidelines for forced-return monitoring that outline the role and responsibilities of forced-return monitors and the principles and rules that monitors have to comply with during their monitoring duties. It has also supported numerous European Union Member States in strengthening their monitoring systems.

¹ For further information on the role of forced-return monitoring see: Frontex/FRA/ICMPD, Forced-Return Monitoring, Background Reader, 2018.

² FReM I (2013-2015) was implemented in partnership with Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland as well as the European Border and Coast Guard Agency (Frontex) and the European Union Agency for Fundamental Rights (FRA). The project was co-funded by the EU under the European Return Fund – Community Actions 2012.

FReM II (2016-2018) was implemented in partnership with Austria, Bulgaria, the Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Romania, Sweden and Switzerland as well as Frontex and FRA. The project was co-funded by the Asylum, Migration and Integration Fund (AMIF) of the European Union.

FReM III (2018-2021) is being implemented 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 well as Frontex and FRA. The project is co-funded by the Asylum, Migration and Integration Fund (AMIF) of the European Union and the 22 partner countries.

With the accumulated know-how and multi-stakeholder network, ICMPD is now supporting the relevant institutions in the Republic of Moldova to build up a solid basis for sustainable and effective forced-return monitoring. The project “Development of a Forced-Return Monitoring System in the Republic of Moldova” (FReMM) addresses also the specific objectives and actions which derive from the National Strategy in the field of migration and asylum (2011-2020)³ and the National Action Plan⁴ for the implementation of the Strategy.

The overall objective of the project is to contribute to a functioning return system in the Republic of Moldova in compliance with human rights as enshrined in relevant international, regional and national legislation and protecting the human rights of returnees through independent and transparent forced-return monitoring. The specific objectives are to:

- 1) Strengthen the legal and institutional framework relevant to forced-return monitoring.
- 2) Increase the capacities of the relevant institutions to monitor forced-return operations.
- 3) Contribute to effective communication and cooperation between the return enforcing institutions and the monitoring bodies.

The Good Practice Report at hand shall contribute to the first specific objective. It is based on the outcomes of a gaps and needs analysis, looking into the national forced-return monitoring systems in twenty-two EU MSs and Schengen Associated Countries that ICMPD conducted within the Forced-Return Monitoring III (FReM III) project⁵. It provides an overview and comparison of national forced-return monitoring systems in selected European Union and Schengen Associated countries including their institutional; legislative; and procedural frameworks.⁶ The report also summarises the main findings and lessons learned from those countries with the aim to facilitate legislative and procedural

³ In the Republic of Moldova, the National Strategy in the field of migration and asylum (2011-2020) approved through the Government Decision No. 655 of September 8th, 2011 provides the basis for a comprehensive regulation of migration and asylum management and the harmonisation of the national legal framework with international and EU law. Specifically, it says that “*The main objective of the Strategy is to ensure a comprehensive regulation of the management of migration and asylum processes, harmonization of the national legal framework with the provisions of international law and European Union legislation [...] ensuring respect for human rights and humanitarian obligations assumed by the country, to achieve the objectives of European integration*” (National Strategy in the field of migration and asylum 2011-2020 – Chapter II- *Analysis of the situation* – para. (18) – *Justification of the elaboration of a complex strategy in the field of migration and asylum management.*)

⁴ Through the Government Decision No. 736 of June 10th 2016 the National Action Plan for implementation of the National Strategy in the field of migration and asylum for 2016-2020 was approved. Among the objectives set in the Action Plan are:

- capacity building for the personnel active in the field of migration and asylum through continuous training activities (p.11, para. 13 (2)); and
- ensuring the respect of the rights of irregular migrants (p.27, para. 31).

⁵ ICMPD (December, 2020): Gaps and Needs Analysis of the National Monitoring Systems in Twenty-Two European Union Member States and Schengen Associated Countries.

⁶ For Austria, the Report presents for most of its part the experience until 31.12.2020, when the Federal Agency for Reception and Support Services took over the monitoring function from the NGO Verein Menschenrechte Österreich.

amendments in the Republic of Moldova to enable the country to establish the legal, institutional and procedural framework for forced-return monitoring.

Overall framework in the Republic of Moldova

Legal framework

The main regulatory framework that regulates the implementation of return operations in the Republic of Moldova includes, but is not limited to the:

- Law No.200/2010 on Foreigners in the Republic of Moldova;
- Government Decision No. 492 of July 7th, 2011 for the Approval of the Regulations regarding the Procedures of Foreigners' Return and Expulsion from and Readmission to the Territory of the Republic of Moldova; and
- Ministry of Internal Affairs Order No. 102 of March 27th, 2014 regarding the approval of the instructions concerning the procedure for the removal of foreign nationals from the territory of the Republic of Moldova.

There is no specific provision in the legislation regarding the monitoring of return operations, which either permit or prohibit the participation of human rights monitors in forced-return operations.⁷

Institutional framework

The Bureau of Migration and Asylum in the Ministry of Internal Affairs is the state authority in charge of return operations and their technical implementation. The BMA is responsible for promoting and implementing state policies related to the immigration of foreign nationals to Moldova, granting protection to foreign nationals, and ensuring the coordination of measures for the social and cultural integration of migrants. The Bureau is also responsible for combating the irregular residence of aliens on the territory of Moldova, which includes identification, detection and removal (forced or voluntary). Escort officers are being deployed by the BMA, both for national return operations (NRO) from Moldova to other third-countries and collecting return operations (CRO) from European Union Member States to Moldova. As yet, Moldova has not organised any CROs.

The People's Advocate Office has a mandate to ensure the protection of all human rights and freedoms by public authorities, organisations and companies, no matter the type of property and the legal organisational form, by non-commercial organisations and decisions-makers at all levels.⁸ It

⁷ The Bureau for Migration and Asylum emphasised their readiness for cooperation and support participation of monitors in return operations, as they have outlined during one of the meetings held remotely with the FReM III project team in October 2020.

⁸ See: <http://ennhri.org/our-members/moldova/>.



contributes to the protection of human rights and freedoms by preventing their violation, and by monitoring and reporting on the mode of protection of fundamental human rights and freedoms at the national level.⁹ The People's Advocate Office also does this by making recommendations to improve legislation related to human rights and freedoms, through international collaboration in this area, through the promotion of human rights and freedoms and their protection mechanisms, and the overall application of the procedures provided by the Law on the People's Advocate (Ombudsman).¹⁰

The Law Centre of Advocates is a public association that was established in 1997. The mission of the Law Centre of Advocates is to implement projects and programmes aimed at: promoting the rule of law, human rights and institutional development; commenting on draft legislation; developing training programmes; and delivering legal assistance to all refugees, asylum seekers, beneficiaries of humanitarian protection and stateless persons. The Law Centre of Advocates has worked in partnership with the United Nations High Commissioner for Refugees (UNHCR) since 1998. With UNHCR's support, the Law Centre of Advocates runs legal assistance projects ensuring that the rights and the well-being of people in need of international protection are in line with international and European standards.

In 2009, the Law Centre of Advocates agreed with the Temporary Migrant Accommodation Centre that was opened that year, to carry out monitoring visits to the Centre. During these visits, the Law Centre of Advocates monitored the rights of asylum seekers, refugees and stateless persons, while another NGO monitored the rights of other foreign nationals. Since 2013, the Law Centre of Advocates has been monitoring the rights of all foreign nationals. In 2018, the Law Centre of Advocates began working with the People's Advocate Office and often accompany the People's Advocate Office representatives on monitoring visits to the Temporary Migrant Accommodation Centre. Two or three people from the Law Centre of Advocates are allocated to these visits.

The BMA has a cooperation agreement with the Law Centre of Advocates, according to which a lawyer from the Law Centre of Advocates provides legal counselling (covering not only aspects related to asylum claims but also regarding return and/or custody) to the returnees held in custody/taken into custody when needed. This practice provides an example of monitoring fundamental rights compliance at the pre-return stage.

⁹ See: <http://ennhri.org/our-members/moldova/>.

¹⁰ Ibid.

Gaps and Needs in Forced-Return Monitoring in the Republic of Moldova

In the second half of 2021, ICMPD conducted remotely a series of meetings with key national stakeholders in the Republic of Moldova such as the Bureau for Migration and Asylum (BMA), the People's Advocate Office (PAO) and the Law Centre of Advocates (LCA). Based on these meetings, a "Report on the State of Play on Forced Returns in the Republic of Moldova" (February 2021) was drafted that concluded with the following main findings:

- The legislative framework regulating the monitoring of the forced-return operations to and from Moldova is not in place. In order to strengthen the return mechanism in Moldova, it is recommended that relevant legislative amendments are made to regulate human rights monitoring during the forced-return operations.
- The People's Advocate Office is neither monitoring CROs, nor return operations from Moldova to third countries. In order to establish a forced-return monitoring system, it is recommended that:
 - The legal framework reinforces the mandate of the People's Advocate Office in this field.
 - The necessary human and financial resources and the necessary training framework be made available.
 - The state authorities who organise and carry out the return operations should have the legal grounds and procedural mechanisms to notify the People's Advocate Office well in advance of the operations to enable the People's Advocate Office to properly engage in the forced-return monitoring process.
 - The division of responsibilities between the Law Centre of Advocates and civil society organisations, if they are involved in the monitoring process, should be clear.
- Capacity development activities on human rights issues, especially those relating to the protection of human rights of persons deprived of their liberty, are highly recommended for the staff of the BMA, escort teams and the staff of the Temporary Migrant Accommodation Centre.

Overall framework in the European Union

Introduction

The effectiveness of the European Union return system is a cornerstone of the European Union overall migration policy. Directive 2008/115/EC (Return Directive or RD)¹¹ is the main piece of European Union legislation governing the procedures and criteria to be applied by European Union Member States when returning irregularly staying third-country nationals. The Return Directive obliges MSs to issue return decisions to any illegally staying third-country national (Art. 6(1) RD); and take all necessary measures to enforce that decision (Art. 8(1) RD) in cases where the third-country national concerned does not voluntarily depart from the territory of the Member States. When enforcing return decisions, Art. 8(4) RD states that: “where Member States use — as a last resort — coercive measures to carry out the removal of” a third-country national, they “shall be proportionate”, “shall not exceed reasonable force” and “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”. Furthermore, Article 8(6) states that “Member States shall provide for an effective forced-return monitoring system”.

The Return Directive’s deadline for transposition into national law and practice was 24 December 2010. Some European Union Member States and Schengen Associated Countries¹² 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. States currently use a variety of systems. In a number of countries, the duty to monitor forced-return operations lies with the National Preventive Mechanisms (NPMs) 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 are involved in monitoring forced-return operations¹³.

In September 2018, the European Commission proposed a targeted recasting of the Return Directive aiming to “notably reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding” (EC, 2018).

¹¹ 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.

¹² Countries associated with the implementation, application and development of the Schengen acquis (Schengen Associated Countries).

¹³ See Section 4.1 *National institutions mandated to monitor forced-return* for more on national monitoring mandates.



In line with Regulation (EU) 2016/1624 on the European Border and Coast Guard¹⁴ that entered into force on 6 October 2016, the European Border and Coast Guard Agency (Frontex) established a pool of forced-return monitors on 7 January 2017. The pool brings together forced-return monitors from Member States, who are nominated (via the National Frontex Point of Contacts) by the national bodies responsible for carrying out forced-return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC. At the request of Member States, these monitors are deployed to Frontex-coordinated return operations. Where Frontex is not involved, the monitoring of national returns is governed by the legislation of each Member State.

Currently, Frontex is governed by Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard. This regulation reinforces the agency's mandate and increases its capabilities compared to Regulation (EU) 2016/1624 and the European Border and Coast Guard Standing Corps (the European Union's first uniformed service).

The role of Frontex in monitoring returns, "is helping EU member states meet the requirement for all return flights to be monitored to make sure that all returnees are treated with dignity and that their rights are respected. [Frontex provides] monitors from [its] pool of experts and cover[s] the cost of participation of national monitors". In 2019, 272 flights had monitors on board, including 199 experts provided by Frontex (Frontex, 2020: 14).

Institutional framework

There is no harmonised institutional approach for monitoring forced returns in the countries covered by this report. In almost half of the countries, forced-return monitoring is being conducted by the Ombudsperson, as per its legal mandate, or an NGO, following agreement with the institution mandated to make the decision on this issue. In other countries surveyed, the monitoring mandate is assigned to the country's National Preventive Mechanism (NPM) in line with the Optional Protocol to the Convention against Torture (OPCAT). Finally, there are MSs where the monitoring falls under the mandate of the executive branch of government or the office of the prosecutor (see details in Table below).

¹⁴ It is worth mentioning that Regulation 2019/1896 did not greatly alter the monitoring-related mandate of Frontex.



	Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
AT	✓*		✓	✓		<p>Since 1.1.2021, the <i>Federal Agency for Reception and Support Services</i> monitors all chartered return operations (all chartered ROs have to be monitored – obligatory)</p> <p><i>Volksanwaltschaft</i> (Ombudsman): can monitor all kinds of return operations (by choice)</p>	<p><i>Federal Agency for Reception and Support Services</i>: reporting to the MOI/BFA.</p> <p><i>Volksanwaltschaft</i> (Ombudsman) acting also as a National Preventive Mechanism (OPCAT), reporting to national parliament.</p>
BE				✓		The General Inspectorate of the federal and local police (AIG – <i>Algemene Inspectie-Inspection Générale</i>)	N/A
BG	✓					Ombudsman of the Republic of Bulgaria	Ombudsman of the Republic of Bulgaria is an independent national body
CH			✓			The National Commission for the Prevention of Torture (NCPT) monitors all forced return operations on charter flights. Since 2019, in certain cases, the NCPT also observes the pre-departure phase in the framework of return operations by commercial flights.	The NCPT is an independent Swiss national commission set up to ensure that the rights of persons deprived of their liberty are respected. The NCPT is the National Preventive Mechanism (NPM) of Switzerland, according to the Optional Protocol to the Convention Against Torture (OPCAT), set up to ensure, through regular visits and ongoing dialogue with the authorities, that the rights of persons deprived of their liberty are respected



	Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
CY	✓					The Cypriot Ombudsman	The Cypriot Ombudsman is an Independent Official of the Republic appointed by the President after a simple majority approval from the Parliament. The person appointed serves for a six-year term that can be renewed The Forced-Return Monitoring Mechanism was set up on June 1st 2018 and became operational on January 1st, 2019.
CZ	✓					Public Defender of Rights (and the employees of the Office of Public Defender of Rights)	N/A
DE ¹⁵						National Agency for the Prevention of Torture (Wiesbaden only) Monitors at the airport are individuals paid by the church charity	N/A
EL	✓					The Greek Ombudsman is mandated as the national mechanism for monitoring the return of third country nationals.	The Greek Ombudsman is an Independent Authority sanctioned by the Constitution of Greece of 6 April 2001 (Article 101A). It has been in operation since October 1, 1998 and provides its services free of charge
FI	✓					Non-Discrimination Ombudsman	The Non-Discrimination Ombudsman is an autonomous and independent authority, administratively connected to the Ministry of Justice

¹⁵ The German NPM is not formally assigned with the mandate from the Directive 2008/115/EC. Therefore, all monitoring activities are legally based on the OPCAT-mandate.



	Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
HR	✓**	✓	✓			<p>The official mandate to monitor forced returns resides with the Ombudsman office (as National Preventive Mechanism) and with the Ombudsman for Children, for monitoring return involving children. In practice, these two institutions monitor reception centres and pre-return phase.</p> <p>Croatian Legal Centre (HPC) is monitoring ROs in the in-flight phase and at the borders based on a 2-year agreement between the HPC and the MoI. HPC is the only institution monitoring flights; However, most of the monitoring done by HPC is also only during the pre-return phase as, they have very few flights to monitor.</p>	<p>General Ombudsman is the National Preventive Mechanism</p> <p>HPC is the NGO mandated to monitor forced return based on an agreement with MoI. It is the NGO that usually deals with issues regarding migrants and that provides legal help/advice to asylum seekers and aliens.</p>
HU					✓	<p>Office of the Prosecutor General.</p> <p>Office of the Prosecutor General is an independent body, supervising the legality of the execution of punishments and measures, and makes an annual report to the Parliament every year. It has a controlling function, and is an independent body from the government. The Office oversees the deportation procedure and supervises the legality of the execution of the forced return operation. The institution has a legal protection function.</p>	<p>It should be explained here what the place of PG in the overall system is; i.e. to whom it reports, etc.</p>
IT			✓			National Guarantor for the rights of persons detained or deprived of liberty	N/A
LU				✓		Ministry of Foreign Affairs – Immigration Department	<p>The Department of Integration of the Ministry of Foreign Affairs is the authority for all questions related to immigration, free circulation within the EU and also deals with applications for asylum. It is also responsible for organising the voluntary</p>



Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
						and forced returns of migrants. Since October 2019 it is also responsible for the reception centre facilities
LV	✓	✓***			Primarily, the Ombudsman of the Republic of Latvia, as well as associations or foundations if they are entitled by Ombudsman. Until now, the Ombudsman has not delegated and engaged any non-governmental organisation in the observation of forced expulsions	Ombudsman of the Republic of Latvia is independent in his or her activities and is governed exclusively by the law. No one has the right to influence the Ombudsman in the performance of his or her functions and tasks. The Ombudsman shall monitor closed-type institution, such as prisons, detention centres, psycho-neurological hospitals and other
MT		✓			Monitoring Board for Detained Persons	Monitoring Board for Detained Persons is bound by law to submit an annual report to the minister responsible for Home Affairs, which is laid down in parliament render such document public
NL		✓	✓****		Inspectorate of Justice and Security The Inspectorate of Justice and Security (Inspectie Justitie en Veiligheid, hereinafter IJenV) of the Dutch Ministry of Justice and Security (Ministerie van Justitie en Veiligheid, hereinafter JenV) monitors the situation of third-country nationals. Part of this is the supervision of the return of third-country nationals to their country of origin or another country where entry is guaranteed. This also includes the enforced repatriation and the return operation which is carried out in terms of that framework. This review framework contains the standards which the Inspectorate reviews in respect of this return operation in which departing third-country nationals are escorted by the Royal Military Constabulary (Koninklijke Marechaussee,	The Inspectorate of Justice and Security (Inspectie Justitie en Veiligheid, hereinafter IJenV) of the Dutch Ministry of Justice and Security (Ministerie van Justitie en Veiligheid, hereinafter JenV) reports to the Secretary of State (of Justice and Security).



Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
					<p>hereinafter KMar) to their destination country.</p> <p>The mandate of the Inspectorate covers all types and phases of the return operation and there are no particularities in this respect. Where the monitor detects a situation in which the safety of the returnee, the staff, or possibly other passengers is seriously compromised, the monitor will inform the escort leader.</p>	
NO					No mandate defined so far	
PL	✓				Various NGOs: The Rule of Law Institute, Fundacja Multiocalenie, Helsińska Fundacja Praw Człowieka, and the Centrum Pomocy Prawnej im. Haliny Nieć	All of the monitoring institutions are independent NGO's.
PT			✓		<p>General Inspectorate of Home Affairs – IGAI (Inspeção-Geral da Administração Interna)</p> <p>General mandate of IGAI is to ensure high level functions of audit, inspection and oversight regarding all entities, services and bodies which answer to, or whose activity is legally supervised or regulated by the member of the Government responsible for the area of home affairs, in particular to investigate all accounts of serious violations of citizens' fundamental rights.</p>	IGAI is a State-directed administration service of selective control, characterised as an external and independent body, in a context of technical and operational autonomy, regarding the security forces and services comprised within the Ministry of Home Affairs.
RO	✓				Since 2011, the Romanian National Council for Refugees (CNRR), a non-governmental organisation and public utility foundation with over 20 years of expertise in the field of migration and asylum has been implementing projects aimed at monitoring the forced-return operations organised by Romanian authorities	Romanian National Council for Refugees (CNRR), a non-governmental organisation and public utility foundation.



Ombudsperson	NGO	NPM	Executive branch of government	Office of the Prosecutor	Institution(s) officially mandated to monitor forced returns	Place and general role in the national institutional context
SE			✓ *****		Swedish Migration Agency (official mandate).	The Swedish Migration Agency is governed by the Swedish Ministry of Justice.
SK	✓		✓		Ministry of Interior of SR in cooperation with NGOs or UNHCR	Ministry of Interior of the Slovak Republic is a central body of state administration

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project. 1.

NOTES:

* In Austria, the Volksanwaltschaft (Ombudsman) also acts as a National Preventive Mechanism. The private NGO Verein Menschenrechte Österreich was operative as monitoring body until 31.12.2020 when it was nationalised by a federal agency called *Bundesagentur für Betreuungs- und Unterstützungsleistungen* (BBU), reporting to Ministry of Interior.

** The General Ombudsman is the National Preventive Mechanism. The General Ombudsman is the National Preventive Mechanism and the Ombudsman for Children has the mandate to monitor forced returns.

*** Primarily the Ombudsperson, as well as associations or foundations, if mandated.

**** In the Netherlands, the inspectorate also acts as NPM.

***** The Swedish Migration Agency has the official mandate for the forced return monitoring

The number of monitors working for national monitoring bodies varies between the countries. There is no necessarily any correlation between the size or population of the country in determining the number of monitors. On the lower side, with as few as 2-3 monitors, are such countries like Germany, Sweden, Hungary, Bulgaria, Czech Republic and Slovakia. Countries with largest number of monitors include Italy (25), Switzerland (15), Greece (14), and Luxemburg (12). Most other countries have around 5-7 monitors.

In addition, whether the contracted monitors work on a full-time or a part-time basis, as well as how much time they can allocate to forced-return operations, differs from one Member State to another. In most cases, monitors work part-time, with only Netherlands and Poland reported to have monitors working on full-time basis. Some Member States allow for voluntary monitoring (e.g. Luxemburg, Germany, Poland), which is either complimentary to the contracted monitors or the only option available. In such cases, the monitoring is mostly carried out part-time.

Legislative framework

Country	Summary of the national legal provisions governing the forced-return monitoring mandate of relevant institutions
AT	<p>According to § 10 of the Implementing Ordinance of Aliens Police Act (Fremdenpolizeigesetz-Durchführungsverordnung), tasks of the human rights monitor during removals are as follows:</p> <p>(1) In the case of deportations which the Federal Ministry of the Interior has organised or co-organised or in the case of return operations pursuant to Article 28 of Regulation (EU) No 1624/2016 on the European Border and Coast Guard, OJ L 251, 16.9.2016 p. 1, as amended, a human rights observer must be present starting with the contact talk. The human rights observer shall be responsible for monitoring the return operation until the arrival of the alien in the state of origin, unless the flight is scheduled.</p> <p>(2) The human rights observer shall, within one week, draw up a report on the course of the return operation and submit it to the Federal Minister of the Interior. The Federal Minister of the Interior shall forward the report in anonymised form to the Ombudsman within three weeks of receipt.</p> <p>(3) The Federal Minister of the Interior shall be responsible for selecting the human rights observers. Legal persons may also be entrusted with the tasks under paras. 1 and 2.</p>
BE	<p>(1) According to the Royal Decree of 20/07/2001 on the working and personnel of the AIG, in the frame of forced returns monitoring, the AIG has a general mission of control and monitoring on all Belgian police services, hence including the work of the Airport Federal Police service that conducts forced return operations.</p> <p>(2) The Royal Decree of 19/06/2012 on access to the territory, stay, establishment and forced return of foreigners, reminds that the control and monitoring of forced returns is executed by the AIG exclusively, as an independent control organ.</p>
BG	<p>Foreigners in the Republic of Bulgaria Act, Art. 39a (New, SG 42/01; prev. text of Art. 39a – SG 23/13) (*) The compulsory administrative measures imposed to the foreigners according to this Act are:</p> <ol style="list-style-type: none"> 1. revoking the right of stay in the Republic of Bulgaria; 2. (amend. – SG 97/16) return to country of origin, country of transit crossing or a third country; 3. expulsion; 4. (amend. – SG 23/13); (*), suppl. – SG 70/13 (*)) prohibition to enter and reside on the territory of Member States of the European Union;

Country	Summary of the national legal provisions governing the forced-return monitoring mandate of relevant institutions
	<p>5. prohibition to leave the Republic of Bulgaria.</p> <p>(2) (new – SG 23/13) In the implementation of administrative coercive measures under para 1, items 1 and 2 shall be monitored by the Ombudsman of the Republic of Bulgaria or by authorized officials from its administration as well as by representatives of national or international non-governmental organizations.</p>
CH	<p>Art. 71a bis of the Federal Act on Foreign Nationals and Integration:</p> <p>(1) The Federal Council shall regulate the procedure and the responsibilities for supervising deportation procedures and international return interventions.</p> <p>(2) It may delegate tasks relating to the supervision of deportation procedures and international return interventions to third parties.</p>
CY	<p>Alien and Immigration Law.</p> <p>Under Decision no 74.333, dated 4 December 2012 of the Council of Ministers, the Commissioner for Administration and the Protection of Human Rights (Ombudsman) has been entrusted to establish and operate an effective mechanism to monitor the returns of irregular staying third-country nationals.</p>
CZ	Legislation transposing the Return Directive
DE	<p>Administrative Order of the Federal Ministry of Justice (Federal Bulletin, No. 182, p. 4277) Germany signed the Optional Protocol on 20 September 2002 and implemented it in domestic law with the acceptance statute dated 26 August 2008 (BGBl. II 2008, No. 23). The Federal Agency for the Prevention of Torture was established on 20 November 2008 by an Administrative Order of the Federal Ministry of Justice (Federal Bulletin, No. 182, p. 4277) and took up office on 1 May 2009.</p>
EL	<p>Law 3907/2011 transposing the Return Directive: Article 23 paragraph 6 of Law 3907/2011 appointed the Greek Ombudsman as the external monitoring mechanism for forced returns, and the Independent Authority carries out random checks at all levels of the process that follow the issuing of a decision for the return of a third-country national.</p> <p>The competence of the Ombudsman was fully activated with the issue of Joint Ministerial Decision 4000/4/57-xi (Government Gazette B 2870/24.10.2014) whereby the arrangements are specified for external monitoring of returns. The JMD provides for a stable flow of data from all competent services for forced re-returns and readmissions.</p>
FI	<p>Aliens Act 152b, Section 152b (1341/2014) Overseeing the enforcement of removals from the country: It is the duty of the Non-Discrimination Ombudsman to oversee the enforcement of removals from the country at all their stages.</p>
HR	<p>The Aliens Act stipulates that the Ministry of Interior will ensure monitoring of forced returns for which purpose it can make agreements with state bodies, international organisations or NGOs.</p> <p>Ombudsman Act: The general Ombudsman may at any time, without prior notice, inspect places where persons deprived of their liberty are located, places where persons with restricted freedom of movement are located and places where certain groups whose rights and freedoms the Ombudsman protects are located or reside</p> <p>Law on National Preventive Mechanism: According to this law general Ombudsman is authorised to perform unannounced visits to bodies or institutions and inspections of premises where persons deprived of their liberty are held</p> <p>Ombudsman for Children Act: The Ombudsman for Children has the right to access all the premises (institutions) and inspect the manner of caring for children who reside or are temporarily or permanently placed with natural and legal persons and other legal entities.</p>
HU	Act II of 2007 on the Admission and Rights of Third-Country Nationals Art. 65 (9)



Country	Summary of the national legal provisions governing the forced-return monitoring mandate of relevant institutions
IT	National legislation transposing the Return Directive
LU	National legislation transposing the Return Directive
LV	<p>1) Section 50.7 of the Immigration Law;</p> <p>2) Guidelines of forced return monitoring (issued by Ombudsman of the Republic of Latvia);</p> <p>3) Agreement between the Ombudsman of the Republic of Latvia and the State Border Guard regarding cooperation in forced removal.</p> <p>The removal process shall be observed by the Ombudsman. The Ombudsman is entitled to involve associations or foundations in the observation of removal process, the purpose of operation of which is related to the observation of the process. Upon involving associations or foundations in the observation of the removal process, the Ombudsman shall evaluate the competence of the association or foundation for performing the relevant activity and shall agree on the stage of the removal process referred to in Paragraph two of Section 50.7 Immigration Law, which the association or foundation shall be authorised to observe. The Ombudsman may involve one association or foundation in the observation of each stage of the removal process referred to in Paragraph two of Section 50.7. The Ombudsman may not involve an association or foundation in the observation of the removal process, which has violated the condition referred to in Paragraph four of this Section 50.7. The Ombudsman shall inform the State Border Guard regarding associations and foundations, which are authorised to observe the relevant stage of the removal process.</p>
MT	<p>The Monitoring Board for Detained Persons ("MBDP" or "the Board") was established in 2007, "to act as the body of persons responsible for a National Preventive Mechanism for the prevention of torture, as provided for in the Optional Protocol to the United Nations Convention" (Legal Notice 266 of 2007). The Regulations provide further that the Board shall "satisfy itself as to the treatment of detainees, the state of detention centres premises and the administration of the detention centres".</p> <p>In 2012, the Regulations establishing the Board were revised to include the monitoring of "proceedings relating to the involuntary return of illegally staying third country nationals in accordance with the provisions of the Immigration Act and of the Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations.</p>
NL	The mandate is arranged by the "legal regulation regarding the monitoring of forced return" (regeling van de staatssecretaris van Veiligheid en Justitie van 13 december 2013 / regeling toezicht terugkeer vreemdelingen)
NO	-
PL	<p>Art. 333. 7. Law on Foreigners of 12 December 2013 authorises the Minister of Interior Affairs to issue a regulation on informing NGO's about the return operations and the way of reporting on the conducted operations.</p> <p>REGULATION OF THE MINISTER OF INTERNAL AFFAIRS of 18 April 2014 ON THE PRESENCE OF REPRESENTATIVES OF NON-GOVERNMENTAL ORGANIZATIONS IN THE CONDUCT OF ACTIONS CONNECTED WITH THE LEADING OF A FOREIGNER TO THE BORDER OR TO THE AIRPORT OR SEASTATE OF THE COUNTRY OF COUNTRY specifies the details of the statutory right of NGO's.</p> <p>On the basis of this Regulation four organisations have applied to participate in the monitoring missions. Their representatives have been invited to the trainings of the monitors.</p> <p>Monitors are following Guidelines concerning presence of the representatives of Non-Governmental Organisations participating in the return operations</p>
PT	Decree-Law 58/2012, of March 14th, amended by Decree-Law 146/2012, of July 12 th



Country	Summary of the national legal provisions governing the forced-return monitoring mandate of relevant institutions
	<p>Art. 180.⁹-A, par. (4), subpar. (c) of Act 23/2007, of July 4th, as amended by Act 29/2012, of August 9th</p> <p>Ministerial Order (MO) 11102/2014, of August 25th, (Official Gazette, Series II, of September 2nd)</p> <p>MO 10728/2015, of September 16th (Official Gazette, Series II, of September 28th)</p>
RO	<p>The general legal aspects related to monitoring of forced-returns are stipulated in the Government's Emergency Ordinance nr. 194/20011. It specifies that monitoring of forced-returns may be conducted by national or international organisations, or non-governmental organisations which carry out activities in the field of migration.</p> <p>-The national legislation specifically stipulates the fact that the reports which follow a monitoring mission shall be sent to the Romanian Ombudsman Institution.</p> <p>-The forced return monitoring activities are carried out within the framework of a "common procedure" agreed upon by all parties directly involved namely the General Inspectorate for Immigration, the General Inspectorate of Romanian Border Police and the Romanian National Council for Refugees (as monitoring body)</p>
SE	<p>The Swedish Migration Agency's mandate is specified in the agency's appropriation directions (and spending authorisation) stated by the Ministry of Justice (Förordning (2019:502) med instruktion för Migrationsverket).</p> <p>The directions stipulates that the Swedish Migration Agency is responsible for coordinating and implementation of monitoring of forced return operations according to Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and Regulation (EU) 2016/1624 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.</p>
SK	<p>Legislation transposing the Return Directive and Act no. 404/2011 Coll. of 21 October 2011 on the Residence of Aliens and on Amendments to Certain Acts, as amended</p>

Source: Own compilation, based on replies to the Gaps and Needs survey developed in the framework of FReM III project.



Elements of a standard profile of a forced-return monitor

Country	Previous work experience	University degree	Foreign languages at a working level	Communication skills	Resilience	Self-control	Other	Comments
AT	Social work in detention centres, voluntary return counselling, legal counselling of migrants & asylum seekers		✓		✓	✓		
BE								So far, this service is the only one in BE that has, by law, accreditation to monitor FRO's.
BG								
CH	Migration, Justice, Health, Police, Social field	✓	✓		✓	✓		
CY	Officers of the Ombudsman Office with human rights and human rights related experience.	At least a Bachelor's degree in Law or Social Sciences.	✓	✓	✓	✓	Professionalism, reliability, sensitivity	
CZ								
DE								



Country	Previous work experience	University degree	Foreign languages at a working level	Communication skills	Resilience	Self-control	Other	Comments
EL	Human Rights	✓	✓	✓				Monitors are Ombudsman permanent staff, at the level of senior investigator; special courses are provided to all monitors regarding forced returns
FI								
HR								
HU	Monitoring experience of deprivation of liberty in prisons, in jails	✓	✓	✓	✓	✓		
IT	Monitoring areas of deprivation of liberty from a specialised and independent public body at national or regional level			✓	✓	✓		
LU								
LV		✓	✓				Specially skills, e.g. worked with children	
MT			✓	✓		✓		



Country	Previous work experience	University degree	Foreign languages at a working level	Communication skills	Resilience	Self-control	Other	Comments
NL	Different work experience, e.g. as a policeman, Royal Marechaussee, but also a medical, psychological background.		✓	✓			Reporting skills	
NO								
PL	At least one year of experience of work with migrants.	Law/European Studies/EU Law	✓	✓	✓	✓	Completed a training organised by the Border Guard Headquarters	All of the RLI monitors fulfil this standard but this is just internal practical understanding of the qualities that the monitor should have.
PT								
RO	Migration/asylum/fundamental rights	Law/equivalent experience in the field of migration				✓		Out of the 5 monitors – 2 have been trained within the framework of FReM projects and have been nominated to the pool, while the other 3 monitors exclusively monitor national return operations/activities
SE								



Country	Previous work experience	University degree	Foreign languages at a working level	Communication skills	Resilience	Self-control	Other	Comments
SK	More than 10 years social work in detention centres, voluntary return counselling, assistance after release	✓	✓	✓	✓		Many years of experience, experience of integration	2 monitors have been trained within the framework of FReM projects and have been nominated to the pool and at the same time they are also national return monitors

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

NOTES: multiple choice from a predefined list of options, with the possibility to insert text under: *Previous work experience*, *University degree* and *Other*. No respondent selected the option *Post-graduate degree* and therefore, it is not included in the table.

Funding framework

In the EU, national forced-return monitoring is funded by a range of diverse sources, including EU-funding. In most countries, the main source of funding for their institution's monitoring activities comes from national budget funds specifically allocated for their institutions. In fewer countries, the main source of funding comes from an EU fund.

For nearly all of the countries surveyed, personnel costs were included in the institution's yearly budget for forced-return monitoring. Only three MSs indicated that the yearly budget does not include this cost. Furthermore, with one exception, every country budgets for travel expenses. In addition, in 15 of the 21 MSs who answered this question, visa costs were also included in the institutional budgets. Vaccinations were less frequently accounted for with only half of the MSs' institutions including it in their budget. Other costs budgeted for included:

- Technical and electronic equipment, infrastructure;
- Interpreters;
- Diplomatic passports and access pass to airports;
- Flexible use of funds, i.e. a global budget with the national monitoring body deciding how to use it;
- Travel insurance;
- Annual training or meeting for sharing experiences;
- Accommodation.

The mechanisms for payment of monitoring activities works roughly at two levels. The first is at the individual level, with reimbursement for costs being given directly to monitors or employees. The other is at the institutional level and the framework of national rules and legislation governing payment mechanisms in each country. In the former, it became evident that in all cases, costs are either covered upfront or monitors are reimbursed after a particular return operation. Commonly and more specifically, these costs were associated with travel activities, i.e. flight or tickets, accommodation, visa, meals. In most cases, travel costs and associated expenses were either covered by the ministry responsible or by the monitoring institution directly.

Training framework

In a majority of countries, training is provided to forced-return monitors; in most cases, this includes both theoretical and practical training.

Monitors in EU MSs receive training on some or all of the following topics:

- Introduction to return operations, including types and phases of return operations;
- Fundamental rights applicable in return operations;
- Specific rights and needs of vulnerable persons;
- The role, mandate and responsibilities of monitors;

- Theoretical and practical introduction to the use of force and means of restraint, including the principle of proportionality;
- Techniques and tools of monitoring;
- Training on drafting and submitting monitoring reports;
- Follow-up on monitoring reports;
- Training on simulation of real situations;
- Training on national complaint mechanisms; and
- Psychological preparedness.

Only in some countries it is required for a monitor to be trained in forced-return monitoring before being deployed to a return operation. Apart from training on forced-return monitoring other types of training are available in some countries, such as:

- Escort officer training;
- Security training;
- Peer-to-peer exchange; and
- Legal training.

Deployment of monitors

Regarding the deployment of monitors, one can distinguish between legal provisions (mandates) and established practices. In more than half of the countries surveyed (15 out of the 22), there is no legal provision stipulating that all return operations have to be monitored. In only three of the countries (Bulgaria, Hungary and the Netherlands) there is such a legal provision. However, in four other countries, there are legal provisions stipulating that monitoring particular types of return operations is mandatory (Austria, Belgium, Luxemburg and Norway).

In some of the countries (eight out of the 14 for which a specific answer was provided), the national return enforcing institution informs the national monitoring body about an upcoming return operation one to four days in advance (Bulgaria, Cyprus, Czech Republic, Hungary, Luxembourg, Malta, Portugal and Slovakia). In two countries this information can be communicated a week in advance, while in another five countries, the information is shared between two and four weeks in advance (Austria, Belgium, Germany, Switzerland and Latvia) (see details in Table below).

How much time in advance of a forced-return operation does the national return enforcing institution inform the Forced-Return Monitoring body about the upcoming return operation?

Country	Calendar days	Comments
AT	10-15 days	For planned ROs
BE	3-4 weeks	3-4 weeks schedule received every day



BG	2 or 3	
CH	3-4 weeks	Usually 3-4 weeks in advance, but as early as possible. The NCPT is directly informed via SwissRepat of upcoming return operations. The NCPT Secretariat then informs the monitors
CY	1-2 days	For escorted forced-return operations the Ombudsman requested at least 10 days prior notice from the Police
CZ	2-3 days	Usually 2-3 days in advance. For ROs where more preparation is needed (e.g. visa, scheduled flights etc.), the office is notified approximately 2-3 weeks in advance. This practice has been arranged on an informal level, as it is not specified in the law
DE	1-2 weeks	
EL	-	It varies: there are NROs planned annually, re-admission operations planned weekly and bus operations planned weekly
FI	-	Not specified in the legislation; it can be weeks in advance, the day before or not at all (very rarely)
HR	-	Few days
HU	1-2 days or 8 days	It depends on the case: 1 or 2 days before or 8 days before the operation
IT		2 days on average for commercial flights, a week or less for charter flights
LU	3 days	
LV	1-2 weeks	The regulatory framework does not set a time limit for informing, but in practice the State border guard informs the Office 1-2 weeks in advance.
MT	2 days	
NL	7 days	-
NO	-	-
PL	-	<p>According to the legislation, information should be shared no later than:</p> <ul style="list-style-type: none"> - 7 days before the operation - 24 hours before the operation that is being scheduled within the next 48 hours <p>This information should be sent by e-mail to all 4 NGO's that are trained in monitoring return operations.</p>
PT	1 or 2 days	

RO	-	The national legislation specifies that the General Inspectorate for Immigration shall provide information related to return operations and ensure that the representatives of the monitoring organisation are able to observe how these activities are carried out. The Common Procedure states that the General Inspectorate for Immigration shall notify the CNRR with regard to all return operations organised on the territory of Romania. There is a specific form agreed upon, which includes the following information: date of departure, route, flight number, country of destination, citizenship of the returnee, if the person is an adult or an unaccompanied minor, gender, if the person is assessed as being vulnerable and/ or with known health problems
SE	-	General information is provided well in advance of the return operation. The more detailed information, including information about preparatory talks, is provided directly to the monitor only a couple of days in advance.
SK	3-4 days	

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

The main way of communicating information about upcoming forced-return operations between the national return enforcing institution and the national monitoring body is by email (Austria, Belgium, Romania, Portugal, Bulgaria, Finland, Poland, Sweden, Germany, Greece, Slovakia, Latvia, Malta, Cyprus, Czech Republic, Croatia, Luxembourg, Italy). In some cases, information is also communicated by telephone (Belgium, Romania, Sweden, Germany, Malta, Czech Republic, Luxembourg) or (tele)fax (Romania, Greece and Cyprus).

In all the countries surveyed, the national return enforcing institution provides the *date and time of the return operation*. In the vast majority of MSs, the monitors also receive information about *the country(ies) of return* (19 countries), *the ports of departure* (18 countries), *returnees' country of origin* (17 countries) and *the number of returnees* (17 countries).

Fewer national return enforcing institutions communicate *stopover information* (14 countries). By comparison, information about the *necessary travel documents* (9 countries) and *any forms of vulnerabilities of the returnee(s)* (7 countries) is rarely provided (see details in Figure below).

For 12 countries in the survey, there is no set time-frame for the national monitoring body to respond to the return enforcing institution (Belgium, Portugal, Bulgaria, Finland, the Netherlands, Sweden, Switzerland, Germany, Latvia, Norway, Czech Republic and Italy). However, eight countries (Austria, Cyprus, Greece, Hungary, Luxembourg, Malta, Poland and Slovakia) indicated having a set time frame. The time frames specified for responding are listed below (see details in Table below):

Time frame for the response of the Forced-Return Monitoring body to the return institution

Country	
AT	Within one week
CY	Normally 24-48 hrs
EL	From 5 to 20 days depending on the means of transportation involved
HU	usually 2-3 days
LU	as fast as possible (within 72 hours)
MT	As early as possible
PL	If the notice has been sent 7 days before the operation, the response of the monitoring institution should be sent at least 5 days before the scheduled operation. If the notice has been sent 48 hours before the operation, then the monitoring institution has 12 hours to respond.
SK	Usually 1 day

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

NOTE: simple choice from a predefined list of options, with the possibility of inserting text if the option “*Certain types only*” was selected.

Decision-making authority on the deployment of monitors

The decision-making authority on the deployment of monitors varies from country to country (see details in Table below). Whereas in some countries only one decision-making authority exists (13 of the MSs), in others, authority can be shared across two (ten of the MSs) different types of institutions. As such, in ten countries, the *Head of Unit* constitutes the decision-making authority (Cyprus, Czech Republic, Hungary, Italy, Luxembourg, Latvia, Malta, the Netherlands, Portugal and Sweden). The *Ombudsperson* makes the decision regarding the deployment of monitors in five countries (Bulgaria, Cyprus, Greece, Italy and Latvia). In Belgium, Croatia, Czech Republic, Finland, Germany, and Slovakia the monitor has the power to make the decision on their own deployment. Other relevant parties that were mentioned by the country representatives surveyed were: the coordinator (Austria, the Netherlands and Romania); the President or a Director of the Foundation (Poland); the Ministry of Justice (Germany); or staff in charge at the Secretariat and the Head of Unit (Switzerland).

Who within the Forced-Return Monitoring body has the authority to make the decision to deploy monitors?

Decision-making authority in the deployment of monitors?

Country	Type of national monitoring body	Monitor him/herself	Ombuds-person	Head of Unit	Other
AT	NGO				✓
BE	Executive branch of government	✓			✓
BG	Ombudsperson		✓		
CH	NPM				✓
CY	Ombudsperson		✓	✓	
CZ	Ombudsperson	✓		✓	
DE	NPM	✓			✓
EL	Ombudsperson		✓		
FI	Ombudsperson	✓			✓
HR	Ombudsperson, NGO, NPM	✓			✓
HU	Office of the Prosecutor			✓	
IT	NPM		✓	✓	
LU	Executive branch of government			✓	
LV	Ombudsperson		✓	✓	
MT	NPM			✓	
NL	Executive branch of government			✓	✓
NO					✓
PL	NGO				✓
PT	Executive branch of government			✓	
RO	NGO				✓
SE	Executive branch of government			✓	✓
SK	NGO, Executive branch of government	✓			

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

NOTES: Data on the decision-making authority received through a multiple-choice question (from 4 predefined options, with the possibility to include text under *Other*).



Criteria for decisions on monitoring specific operations

The decision on whether to monitor a specific operation takes account of a number of factors. In the vast majority of monitoring decisions are based on the vulnerabilities of returnees.

Country	Country of return	Vulnerability of returnees (e.g. medical conditions)	Other	Information on returnees' vulnerability shared by enforcing institution when notifying national monitoring body about upcoming returns*
AT	✓		<ul style="list-style-type: none"> • Language skills 	No
BE	✓	✓	<ul style="list-style-type: none"> • Previous return attempts • Criminal background of the returnee • Behaviour of returnee in detention centre 	No
BG		✓		No
CH	✓	✓	<ul style="list-style-type: none"> • Generally all forced return operations by charter flights are monitored 	Yes
CY	✓	✓	<ul style="list-style-type: none"> • Availability of resources (monitors) 	No
CZ	✓	✓	<ul style="list-style-type: none"> • Availability of resources (time, finances) 	Yes
DE	✓	✓	<ul style="list-style-type: none"> • Availability of time (dates of RO) 	Yes
EL	✓	✓		No
FI	✓	✓	<ul style="list-style-type: none"> • Expected resistance to removal • History of interrupted removal(s) (due to resistance) 	No



Country	Country of return	Vulnerability of returnees (e.g. medical conditions)	Other	Information on returnees' vulnerability shared by enforcing institution when notifying national monitoring body about upcoming returns*
HR				No
HU	✓		<ul style="list-style-type: none"> Time-limit of the request itself (due to permission of the Prosecutor General of Hungary, which is needed) 	No
IT	✓	✓		Yes
LU	✓		<ul style="list-style-type: none"> Means of return 	No
LV		✓	<ul style="list-style-type: none"> Willingness of returnee to return Cooperation of the returnee with the representatives of the State Border Guard 	Yes
MT			<ul style="list-style-type: none"> Availability of resources 	No
NL		✓	<ul style="list-style-type: none"> Risk assessment 	No
NO			<i>Not decided on</i>	<i>No info provided</i>
PL			<ul style="list-style-type: none"> Availability of resources (time) Willingness of the monitor 	No
PT		✓		No
RO	✓	✓	<ul style="list-style-type: none"> Means of return 	Yes
SE	✓	✓	<ul style="list-style-type: none"> Children Previous failed returns Numbers of returnees in the operation 	No

Country	Country of return	Vulnerability of returnees (e.g. medical conditions)	Other	Information on returnees' vulnerability shared by enforcing institution when notifying national monitoring body about upcoming returns*
SK		✓		Yes
Total	13 countries	15 countries		In 7 countries information on returnees is shared by enforcing institution when notifying national monitoring body

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

NOTES: Data is drawn from: 1) a multiple-choice question with a predefined list of 3 options – *Country of return*, *Vulnerability of returnees* and *Other*, with the option to add text under *Other*; 2) the data from figure to fill in the column about returnees' vulnerabilities.

*This refers to the first communication on an upcoming RO shared by the return enforcing institution with the national monitoring body.

In most countries, there are no specific criteria regarding the number of monitors assigned to a return operation. Seven respondents mentioned that one monitor is usually assigned to a return operation, although in theory there can be several monitors.

As stated previously, the first notification to the forced-return monitoring body about a return operation includes several different types of information. The survey data shows that across the different countries, the type of information monitors receive about the returnees *before* a particular return operation is very similar. In most countries (15 out of 20 MSs), monitors receive the following information: (1) the number of returnees, (2) the countries of return, (3) the countries of origin of the returnees, and (4) any form of vulnerabilities of the returnees. In addition to these details, in Sweden monitors also receive information about returns that have previously failed. In Latvia and Hungary, monitors receive information about returnees' health condition and in Latvia¹⁶ monitors are also informed whether the returnee agrees to the removal or not.

With the exception of two countries, assigning monitors to specific forced return operations takes into account monitors' availability to participate. Knowledge of the relevant language/s is a requirement

¹⁶ Besides information about returnees' health monitors are also informed whether the person is cooperating with State Border Guard and if they are willing to return to their country of origin (i.e. if they have explicitly stated that they do not wish to cooperate and will resist or if they have said that they are willing to return (this might be applicable in cases when for some reason voluntary return is not possible, but the person is willing to return))

for particular return operations in Austria, Cyprus, Hungary, the Netherlands, Poland and Portugal. The returnee's gender is another factor that is taken into account in Cyprus, Italy, Latvia Luxembourg, Portugal and Switzerland. The vulnerability of returnees is mentioned by respondents from the Czech Republic, Latvia and Portugal. Other relevant criteria for assigning monitors to a particular operation are: the "level of security training in relation to country of return" (Sweden); "the proximity of their home to the departure place" (Switzerland); the "complexity of operation" i.e. the number of returnees (Luxembourg).

The time monitors have to complete the administrative tasks required for their participation in an operation varies between one day and a month. This depends on the type of operation, as well as on the country of origin or country of return. Some of the preparation can be done well in advance and does not have to be repeated for every operation (e.g. vaccinations, multi-entry visas, etc.). Respondents were asked to give details of any additional support that the national return enforcing institutions provide to the national monitoring bodies to facilitate their participation in return operations. They responded as follows:

- List of participants (other than the returnees) in the respective operation;
- Information on travel plans, including exact schedules, meeting points, costs, if applicable visa information, vaccinations;
- Technical equipment, i.e. tablet(s) and mobile phone(s)¹⁷.

Monitoring process

In nearly all countries, the legal mandate of the national monitoring body states that both pre-departure, in-flight and arrival phases can be monitored. In a few countries also the pre-return phase is monitored which includes the contact talk of escort leader with returnees in the detention centre, hand-over of returnees from the detention centre to the escorts including a body search, and transfer from the detention centre to the airport.

In practice, in ten countries, the means of transportation is designed in a way that allows for monitors to be present (Belgium, Bulgaria, Greece, Hungary, Latvia, Luxemburg, Malta, the Netherlands, Slovakia and Sweden). Respondents from five countries (Austria, Finland, Italy, Portugal and Switzerland) reported that the transport used does not always allow for monitors to be present, while respondents from six countries (Cyprus, Czech Republic, Germany, Norway, Poland and Romania) reported that the transport used does not allow for the presence of monitors at all. A few respondents from countries where the means of transportation do not always accommodate the presence of monitors also mentioned the following:

¹⁷ In one instance.



- There is not always space in the particular mode of transportation used (i.e. police car or bus);
- The monitor is required to give prior notice of their presence in the transportation that will be used during the operation.

Monitors' access to returnees

In practice, monitors in nearly all countries have access to returnees throughout the forced-return operation. However, monitors are not always present for the transfer. In a majority of countries monitors may accompany the returnees in the transport used for the operation the whole time (e.g. during land operations or during transfer). In a few countries monitors may not accompany the returnees at every stage. Whether, in practice, monitors always have access to returnees, i.e. including during transfer, depends on a series of factors, including:

- Free seating/space available in the transport being used; this is facilitated by timely communication regarding an upcoming forced-return operation;
- Whether monitors travel in the police escort car (particularly for the pre-departure phase).

In some countries, where the return is by charter flight, the organising institution ensures that seats are reserved for monitors even if the national monitoring body has not yet decided whether to participate in the mission. In other countries this is not automatically the case.

Monitoring guidelines

In a majority of countries monitors follow specific guidelines when monitoring. The Figure below displays the rights and issues monitors pay specific attention to during the monitoring operation, per country. It is worth mentioning that in most countries (20) monitors pay specific attention to respect for *human dignity* and *proportional use of force and restraint* measures. In 19 of the countries, specific attention is paid to the *prohibition of torture and inhuman or degrading treatment or punishment*, the *right to the integrity of the person*, the *rights of the child*, *health care* and *access to food and water*. Attention is paid to the *right to non-discrimination*, the *right to property*, *access to information* and the *rights of vulnerable groups* in 18 countries, while the *right to good administration* is observed by monitors in 12 countries.

Access to food and water as basic needs	AT	BE	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK	
Rights of vulnerable groups	BE	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK		
Health care	AT	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	NL	PL	PT	RO	SE	SK	
Right to an effective remedy (complaint)	BE	CY	CZ	EL	FI	HU	IT	LU	LV	MT	NL	PT	RO	SE	SK					
Right to good administration	BE	CY	CZ	EL	FI	IT	LU	LV	MT	NL	PT	RO								
Freedom of expression and information (access to information)	BE	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK		
Protection of personal data (and privacy)	BE	BG	CY	CZ	FI	IT	LU	LV	MT	NL	PL	PT	RO	SE						
Right to property	BE	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK			
Freedom of thought, conscience and religion	BE	CY	CZ	FI	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK						
Rights of the child (best interest of the child)	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK	
Respect for private and family life	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	PL	PT	RO	SE	SK		
Right to liberty and security	BE	BG	CY	CZ	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK				
Non-discrimination	BE	BG	CH	CY	CZ	DE	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK		
Right to the integrity of the person	AT	BE	BG	CH	CY	CZ	DE	EL	FI	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK	
Prohibition of torture and inhuman or degrading treatment or punishment	AT	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	PL	PT	RO	SE	SK	
Right to life	AT	BE	BG	CH	CY	CZ	DE	EL	FI	IT	LU	LV	MT	PL	PT	RO	SE	SK		
Human dignity	AT	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK
Proportional use of force and restraints	AT	BE	BG	CH	CY	CZ	DE	EL	FI	HU	IT	LU	LV	MT	NL	PL	PT	RO	SE	SK
Other	AT	PL																		

(NOTES: Multiple choice from 19 predefined options, with the possibility to include text under Other.)

Presence of interpreters

In some return operations, there is a need for interpreters. The stage at which they are deployed in the return operation varies across countries. In five MSs (Bulgaria, Cyprus, Finland, Latvia and Portugal), the services of interpreters are solely used during the pre-departure phase, whereas in Austria, Hungary, Italy and the Netherlands interpreters are also used during the in-flight phase. Four out of the 20 countries that provided an answer rely on interpreters being present during all three stages of the return operation: pre-departure, in-flight, and arrival phase.

Writing and submitting monitoring reports

A mandatory reporting template is used by monitors in a majority of countries; in a few countries, monitors do not use a mandatory reporting template. In countries where monitors do not use a mandatory reporting template, reports are submitted in various formats. This is in whichever structure/format the monitors wish, using a Word document and (often) submitting it via email.

In countries where a mandatory template is used, there are specific sections for:

- Administrative information on the return operation (e.g. date, destination, the organising institution, number of returnees, escort leader, etc.);
- Describing the return process and each of the phases monitored;
- Conclusions;
- Recommendations.

Some templates include sections for debriefing and reporting and some include a standardised questionnaire which the monitor has to fill in with the issues they have observed. In most of the countries, the monitoring report includes recommendations; only in a few the monitoring report does not include recommendations.

In practice, roughly half of the countries, the forced-return monitor is solely responsible for writing the recommendation/s after an operation. In two other countries, this responsibility lies with the national monitoring body. In six countries, this task is split. Under *Other*, respondents provided additional information to the effect that: in the Czech Republic recommendations are formulated by the forced-return monitor but need to be approved by several people in the office, including the Ombudsman and his secretarial team; in Germany, the associates formulate a proposal, while the forced-return monitor writes the final recommendation(s). In Austria, Greece, Italy and Latvia the recommendations are written by both the forced-return monitor and the national monitoring body responsible.

Not only the procedures for report writing, but also who they are submitted to varies across the different countries. The following table provides an overview of who the reports are submitted to in the respective national monitoring bodies. In most countries (see details in Table below), the national

monitoring body reports to the Parliament and/or the Ministry of Interior, with fewer reporting to the Ministry of Justice.

Institutions to which the National Monitoring Body reports, by country

	National Parliament	Ministry of Interior	Ministry of Justice	National Ombudsperson	Other	Total no. of reporting lines
AT	✓	✓				2
BE		✓				1
BG				✓		1
CH			✓		✓	2
CY	✓			✓		2
CZ	✓					1
DE	✓	✓	✓			3
EL	✓					1
FI	✓				✓	2
HR		✓				1
HU					✓	1
IT	✓	✓				2
LU					✓	1
LV		✓			✓	2
MT		✓				1
NL			✓		✓	2
NO					✓	1
PL					✓	1
PT		✓				1
RO		✓		✓		2
SE			✓			1
SK		✓				1



	National Parliament	Ministry of Interior	Ministry of Justice	National Ombudsperson	Other	Total no. of reporting lines
Total	7	10	4	3	8	

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

Country	Who are the reports submitted to in the monitoring body?
AT	To the coordinator of forced return monitors
BE	Reports are kept in an internal database, available to everyone. The reports are reviewed by the forced return coordinator within AIG. All reports are then sent to the Ministry of Interior once a month (initial reports+ an anonymized version for the press)
BG	<i>No answer provided</i>
CH	To the secretariat of the NCPT within 7 days after the forced return operation
CY	To the Head of the Unit who then passes it on to the Ombudsman
CZ	The head of the Unit, then the secretarial staff and then the Ombudsman
DE	To every member of the body
EL	To the Head of the Monitoring Body, i.e. the Ombudsman
FI	To the monitoring team
HR	To the Ministry of Interior
HU	To the monitoring institution and to the National police
IT	To the Head of Unit and to the Board of the National Guarantor
LU	Ministry
LV	To the State Border Guard (interim reports) To the Ministry of Interior (annual reports)
MT	National: <ul style="list-style-type: none"> To the Chairman & Secretary of the Board To the Ministry



	National Parliament	Ministry of Interior	Ministry of Justice	National Ombudsperson	Other	Total no. of reporting lines
	<ul style="list-style-type: none"> To the Assistant Commission responsible to Police immigration <p>Pool and JRO reports are copied as per FRONTEX requirements.</p>					
NL	To the coordinator					
NO	<i>No answer provided</i>					
PL	The Director of the Board for Foreigners in the Border Guard Headquarters (this is the institution organising returns)					
PT	To the Sub Inspector General of IGAI					
RO	To the project manager and the president of the organisation					
SE	<p>First, to the back-office of the Swedish Migration Agency (submitted by the monitor for editing)</p> <p>Second, to the Swedish Police Authority and the Swedish Prison and Probation Service (submitted by the back-office of the Swedish Migration Agency)</p> <p>Third, if Frontex funded the operation, to Frontex (submitted by the back-office of the Swedish Migration Agency)</p> <p>Fourth, to the Advisory Group (submitted by the back-office of the Swedish Migration Agency)</p>					
SK	To the Ministry of Interior					

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

In the majority of cases the recipient of the monitoring report is the national return enforcing authority.

Follow-up of monitoring reports

Specific follow-up procedures regarding monitoring reports are in place only in a few countries. Also, follow-up procedures vary between countries. One notable procedure concerns the follow-up of serious incidents. In Austria, findings from the missions are discussed in the training of new escort officers, as well as in annual training sessions targeted at experienced escorts. In the Netherlands, the repatriation and departure service receive a letter containing all recommendations after each return operation. In Italy and Latvia, the monitoring of subsequent operations takes into account recommendations from previous monitoring reports, to see whether the recommendations have been implemented. In Romania, the NPM follows up the monitoring reports and can ask the national monitoring body for clarifications on the reports.

Country	Specific procedures in place to follow up monitoring reports	All monitored ROs followed-up	Serious incidents during ROs followed up	Systematic follow-up, i.e. reviews of individual monitoring reports written periodically	Individual monitoring reports are public	Regular (e.g. annual) reports of the FRM body are made public
AT	Yes	No	Yes	No	No	No
BE	Yes	Yes	Yes	Yes	Yes	No
BG	No	No	Yes	No	No	No
CH	Yes	Yes	Yes	No	No	Yes
CY	No	No	Yes	Yes	No	Yes
CZ	No	No	Yes	Yes	Yes	Yes
DE	No	Yes	Yes	Yes	Yes	Yes
EL	No	No	Yes	Yes	No	Yes
FI	No	No	No	No	Yes	Yes
HR	No answer	No answer	No answer	No answer	No	No
HU	No	No	Yes	No	No	No

Country	Specific procedures in place to follow up monitoring reports	All monitored ROs followed-up	Serious incidents during ROs followed up	Systematic follow-up, i.e. reviews of individual monitoring reports written periodically	Individual monitoring reports are public	Regular (e.g. annual) reports of the FRM body are made public
IT	Yes	No	Yes	No	Yes	Yes
LU	No	No	No	No	No	Yes
LV	Yes	Yes	Yes	Yes	No	Yes
MT	Yes	Yes	Yes	Yes	No	Yes
NL	Yes	Yes	Yes	Yes	No	Yes
NO	No	No	No	No	No	No
PL	No	No	<i>No answer</i>	No	No	No
PT	No	No	No	No	No	No
RO	<i>No answer</i>	No	Yes	Yes	No	Yes
SE	Yes	Yes	Yes	Yes	Yes	Yes
SK	No	No	No	No	No	No

Source: own compilation; data collected from MSs that participated in the Gaps and Needs survey developed in the framework of the FReM III project.

In the countries where reviews of individual monitoring reports are written periodically, they are submitted to a number of institutions. Below are some examples:

- To the Minister of Justice, Minister of Interior, State Secretary in charge of Immigration, Parliament's Police Control Office, Federal Police (Bulgaria);
- To the President of Cyprus and Council of Ministers as well as to the Chairman and the members of Parliament (Cyprus);
- To the public, to the returning authorities, to the detention centres/prisons (Czech Republic);
- The monitors' observations can be included in the annual report of the Non-Discrimination Ombudsman which is submitted to the government and every fourth year, to the parliament (Finland);
- To the National Parliament (Greece and Malta);

- To the Ministry of interior in the form of annual reviews (Latvia);
- To the Ombudsperson (Romania).

Main Findings from the European Union

Based on the gaps and needs analysis, examining the national forced-return monitoring systems in twenty-two EU MSs and Schengen Associated Countries that ICMPD conducted within the Forced-Return Monitoring III (FReM III) project, the following main findings and lessons learned were identified that shall be considered when setting up the forced-return monitoring system in the Republic of Moldova:

- As regards the **general monitoring mandate**, the monitoring body should be allowed to observe all stages of a return operation. A sound monitoring mandate is also contingent upon sufficient institutional funding. Similarly, it is critical to institutionalise an adequate standardised profile of a forced-return monitor.
- With regard to the **institutional capacity** to monitor forced-return, national monitoring bodies should be restricted as little as possible, and the communication between institutions, particularly between the return enforcing institution and the national monitoring body, should be allowed maximum width. In this regard, there is need for formalised institutional cooperation, as well as having a stable source of funding to also enable training activities.
- In terms of the **preparedness of monitors**, it is critical to allow sufficient time to prepare for a monitoring mission after receiving first information about an upcoming return operation. Similarly, sufficient information sharing regarding upcoming returns further enables the preparedness of monitors.
- Similar to monitors' preparedness, the effective **deployment of monitors** is largely determined, among others, by inter-institutional communication between the return enforcing institution and the national monitoring bodies and here too, a proper communication (also in terms of the content communicated to national monitoring bodies) is key.
- With regard to the **monitoring process**, some important considerations are: availability of an interpreter, specific monitoring guidelines in place, and timely receipt of information about the returnees.
- As regards the process of **writing and submitting a monitoring report**, it is important to have a reporting template, recommendations from monitoring reports, and clear and unrestricted use of and follow-up to monitoring reports by return enforcing institutions. For this, there is a



need for standard operation procedures for information sharing and improved collaboration and communication between the monitoring institution and the return enforcing institution. In addition, monitors need to have access to previous monitoring reports, and there is also a need for genuine institutional discussion and reflection on the recommendations from monitors' reports.

- Finally, there is need for a process of **following-up on monitoring reports**. Here again, it is essential to have an adequate collaboration and information-sharing between the institutions conducting the monitoring, but also between return enforcing institutions and national monitoring bodies. One solution is to establish a formal follow-up procedure, particularly with regard to the recommendations from the monitoring reports.