Framework for a European Pool of Forced Return Monitors - EPFRM
Framework for a European Pool of Forced Return Monitors - EPFRM
Disclaimer: This Framework for a European Pool of Forced Return Monitors was designed under the EU funded Forced Return Monitoring (FReM) project. The document was continually updated, improved and partially tested during the project’s implementation. The Framework was designed in close co-operation with and approved by the FReM project/ associated Partner States and is supported by Frontex as well as the EU Agency for Fundamental Rights (FRA).

The document will have to be updated in the course of further developing the concept of an overall European Pool of Forced Return Monitoring (EPFRM). At present the Framework focuses on forced return by air and land. Nevertheless, forced returns by sea are not excluded and more specific information in this regard may be added in the future.

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Special thanks go to the project partners and associated partners, namely: Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland, as well as to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), and the European Union Agency for Fundamental Rights (FRA).

Likewise, special thanks go to those experts, forced return monitors, escorts and escort leaders that have shared their valuable practical experience with us.

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mitment to the management and implementation of the FReM project, the excellent project results would not have been possible.

Mr Martijn Pluim
Director, ICMPD
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3.4. Joining the European Pool of Forced Return Monitors
The Framework for a European Pool of Forced Return Monitors (EPFRM) was designed under the EU funded Forced Return Monitoring (FReM) project. The document was created with the aim to develop a concept for collaboration among EU Member States (EU MS), as well as those associated States\(^1\), bound by the Return Directive\(^2\) in implementing its Art 8 (6). The Framework aims at complementing national mechanisms for effective return monitoring and it is without prejudice the duty by Member States and associated States to implement Art 8 (6) of the Return Directive in national law.

It is important to mention that the Framework at hand is the first of its kind. The first draft of the document, which was drafted based on desk research and information gathered through a questionnaire sent to all EU MS, was presented and discussed with the FReM project/associated project Partner States (Austria, Bulgaria, Greece, Hungary, Luxembourg, Malta, Portugal and Switzerland), as well as Frontex and the European Union Agency for Fundamental Rights (FRA) during a workshop in Malta in March 2014. Following the workshop, the document was updated and further information gathered from forced return experts and experienced forced return monitors who provided valuable input to the Framework. The document was continually updated in line with the outcomes of

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\(^1\) Switzerland, Norway, Iceland and Liechtenstein

the FReM project’s activities and experiences as well as from the activities and lessons learnt from the implementation of the FReM project.

The Framework includes procedures related to forced return by air, land and sea (aircraft, bus, train, ship). As, however, the most common way of forced return, especially when conducted as Joint Return Operations, is by air, specific references made in the Framework tend to focus on air operations. Forced return procedures are mainly the same for air and land and the Framework covers both forms of forced return in detail, with specific information where procedures differ. Forced return by sea, however, includes some specific features which are not covered in detail in this Framework. Monitoring of forced return operations by sea/ship will therefore require further information than that provided in this Framework.

The Framework focuses on aspects related to the organisational structure and functioning of a European Pool of Forced Return Monitors, including monitoring principles and information on forced return monitoring missions. As the Framework is the first of its kind, it should be considered a living document and might thus be further elaborated upon over time to take into account emerging experiences from the operations of the European Pool of Forced Return Monitors.
Art 8 (6) of the Return Directive requires Member States and associated States to provide for an effective forced-return monitoring system. The Return Directive had to be transposed into national law and practice by 24 December 2010. Some Member States and associated States already had or established national monitoring systems, while others are still in the process of aligning their national return systems with the specific requirements set down in the Return Directive. Presently, States use a variety of systems. A number of countries set up national prevention mechanisms implementing the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), with monitoring of forced returns, whereas others involved NGOs, internal police monitoring systems or national ombudspersons.

In addition, at the European level, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)\(^3\), is mandated to visit all persons deprived of liberty, which also includes persons involved in return procedures.

One of the main objectives of this Framework is to establish a system to support monitoring of forced return operations, especially of Joint Return Operations (JROs), including those coordinated by Frontex. The following table\(^4\) shows the number of JROs coordinated by Frontex from 2011 to August 2015 and the corresponding numbers

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\(^3\) The CPT has elaborated relevant standards: http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf

\(^4\) Provided by Frontex
and percentage of JROs conducted with monitors on board.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total JROs</th>
<th>JROs with monitors on board (in %)</th>
<th>Total returnees</th>
<th>Member States and associated States providing monitors</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>39</td>
<td>23 (59%)</td>
<td>2059</td>
<td>AT: 15; NL: 7; UK: 4; LV: 3; BE: 2; DK: 1; FR: 1; LU: 1</td>
</tr>
<tr>
<td>2012</td>
<td>38</td>
<td>23 (60%)</td>
<td>2110</td>
<td>AT: 21; NL: 3; LV: 2; LU: 1; NO: 1</td>
</tr>
<tr>
<td>2013</td>
<td>39</td>
<td>20 (51%)</td>
<td>2152</td>
<td>AT: 10; DE: 3; NL: 3; IE: 1; UK: 1; CH: 1; BE:2; ES:1; IS: 1</td>
</tr>
<tr>
<td>2014</td>
<td>45</td>
<td>27 (60%)</td>
<td>2279</td>
<td>IS: 1; AT: 7; ES: 5; NL: 2; CH: 2; HU: 3; BE: 6; LU: 2; FI: 1; ALB: 1; GEO: 2</td>
</tr>
<tr>
<td>2015</td>
<td>37</td>
<td>29 (78%)</td>
<td>2184</td>
<td>AT: 11; ES: 2; ALB: 1; CZ: 1; FI: 3; LU: 3; DK: 1; MT: 3; HU: 6; CH: 3; PL: 1; NL: 2; BE: 1</td>
</tr>
</tbody>
</table>

National monitoring systems face some specific challenges when applied to JROs. In addition, forced return operations per se include very specific law enforcement tasks that require those in charge of monitoring to undertake thorough preparation before monitoring a forced return operation.

Against this background, the partners/associated partners of the FReM project developed a model for a European Pool of Forced Return Monitors, which specifically aims to fill the identified gap of: (1) providing a solid basis for forced return monitoring by specially

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5 In some JROs more than one monitor on board.
trained forced return monitors, and (2) providing national return units with a possible backup for complying with the monitoring obligations deriving from the Return Directive. As a consequence, Partner States of the European Pool of Forced Return Monitors as well as Frontex shall be in the position to use monitors from the Pool to implement forced returns in line with Art 8 (6) of the Return Directive. The monitoring to be conducted by the European Pool of Forced Return Monitors starts with the pre-return phase and ends with the hand-over of the returnees to the national authorities in the country of return or (in case of unsuccessful return) the hand-over to the authorities back in the country of departure. The European Pool of Forced Return Monitors intends to cover the national obligations that arise with regard to monitoring of these phases according to Art 8 (6) of the Return Directive.

The model for the European Pool of Forced Return Monitors was developed in close co-operation with the FReM project/associated Partner States as well as Frontex and FRA. The Framework is based on the Council Decision 2004/573/EC, the Return Directive 2008/115/EC, the Frontex Code of Conduct for JROs coordinated by Frontex and identified good practices.

The Partner States and Frontex are invited to jointly use the service of the European Pool of Forced Return Monitors. The services can be used as a supplementary monitoring system to the national system for forced return operations, where either no national monitor can be identified or for specific Joint Return Operations that require a certain “international approach” to the monitoring set up, as further detailed in this Framework.
<table>
<thead>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>CoC</td>
<td>Code of Conduct</td>
</tr>
<tr>
<td>CPT</td>
<td>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>EPFRM</td>
<td>European Pool of Forced Return Monitors</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FRA</td>
<td>European Union Agency for Fundamental Rights</td>
</tr>
<tr>
<td>FRONTEX</td>
<td>European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union</td>
</tr>
<tr>
<td>ICMPD</td>
<td>International Centre for Migration Policy Development</td>
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<tr>
<td>JRO</td>
<td>Joint Return Operation</td>
</tr>
<tr>
<td>MS</td>
<td>Member State</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>OPCAT</td>
<td>Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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</tbody>
</table>
## Definitions

<table>
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<tr>
<th><strong>EPFRM Partner States</strong></th>
<th>Refers to Partner States of the European Pool of Forced Return Monitors and Frontex.</th>
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<tr>
<td><strong>Escort(s)</strong></td>
<td>The security personnel, including persons employed by private contractor, responsible for accompanying returnees, in particular during their transportation out of the Member State.</td>
</tr>
<tr>
<td><strong>Escort Leader</strong></td>
<td>The escorts who are, in accordance with instructions given, in charge of managing a national group of escorts during a JRO. Each organising and participating Member State appoints its escort leader.</td>
</tr>
<tr>
<td><strong>Forced return</strong></td>
<td>The compulsory return of an individual to the country of origin, transit or third country [i.e. country of return], on the basis of an administrative or judicial act.</td>
</tr>
<tr>
<td><strong>(Joint) Return Operation</strong></td>
<td>The transport of third country nationals who are subject to a return decision carried out by an air/ land/ sea carrier selected for that purpose; joint refers to those operations where there is participation of two or more Member States.</td>
</tr>
<tr>
<td><strong>Monitoring (of forced returns)</strong></td>
<td>The activity whereby it is established and reported whether the return is conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights. Monitoring involves observation of and reporting on forced return operations without powers of intervention.</td>
</tr>
</tbody>
</table>

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7  ibid

8  EMN Glossary 2.0 2012. The term is taken from the 2012 EMN Glossary as the version of 2014 refers to “compulsory return” used as a synonym for forced return. However, the definitions do in principle not differ.
<table>
<thead>
<tr>
<th><strong>Monitor (of forced returns)</strong></th>
<th>Persons responsible for the monitoring of return operations who are independent from the authority enforcing returns.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Member State</strong></td>
<td>Member State means a Member State of the European Union or a country associated with the implementation, application and development of the Schengen <em>acquis</em>.&lt;sup&gt;9&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Organising Member State</strong></td>
<td>A Member State of the European Pool of Forced Return Monitors, that is responsible for the organisation of the return operation.</td>
</tr>
<tr>
<td><strong>Participating Member State</strong></td>
<td>A Member State of the European Pool of Forced Return Monitors that participates in Joint Return Operations organised by an organising Member State.</td>
</tr>
<tr>
<td><strong>Removal</strong></td>
<td>The enforcement of the obligation to return, namely the physical transportation out of the Member State.&lt;sup&gt;10&lt;/sup&gt; The present Framework subsumes the pre-return, pre-departure, in-flight and the arrival phase under the “removal”.</td>
</tr>
<tr>
<td><strong>Returnee</strong></td>
<td>A person going from a host country back to a country of origin, country of nationality or habitual residence, usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.&lt;sup&gt;11&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Third-country national</strong></td>
<td>Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of the Treaty on the Functioning of the European Union (TFEU) and who is not a person enjoying the European Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.&lt;sup&gt;12&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

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<sup>9</sup> Frontex CoC for JROs coordinated by Frontex 2013  
<sup>11</sup> EMN Glossary 2014  
<sup>12</sup> ibid
This section aims at developing a common understanding of terms used in the context of the present Framework.

**Forced Return Operations Subject to Monitoring**

The present Framework covers exclusively the monitoring of:

a) **Forced return operations**: subject to monitoring are exclusively “forced return operations”. Other forms of return, such as voluntary returns, are not covered by the monitoring system according to Art 8 (6) of the Return Directive. The forced return operation may be executed by *air, land or sea*;

b) **Chartered forced return operations**: the monitoring is a general frame for all kinds of forced return operations. However, it mainly covers “chartered forced return operations” – i.e., operations where no other witnesses (e.g. other passengers) are present except the returnee(s), the escort team tasked with executing the forced return and other participants in the operation (e.g. crew, medical staff, interpreters etc.). Other types of forced returns, such as escorted forced return operations using commercial means of transportation, are however not excluded from the Framework of the European Pool of Forced Return Monitors (EPFRM);
c) **Joint forced return operations**: in accordance with Council Decision 2004/573/EC – bi/multilateral or coordinated by Frontex\(^{13}\) (including the national connection flights).

**Forced Return Phases Subject to Monitoring**

The present Framework divides the forced return process into the following phases\(^{14}\):

<table>
<thead>
<tr>
<th>Forced Return Phase</th>
<th>Description</th>
<th>Covered by EPFRM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention-Phase(^{15})</td>
<td>The detention for the purpose of removal is regulated by Articles 15-17 of the Return Directive. It may last for up to six months, exceptionally extendable to 18 months; the return decision/removal order has been issued; the person did not leave voluntarily; the return authority/authorities prepare(s) the forced return.</td>
<td>-</td>
</tr>
</tbody>
</table>

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\(^{13}\) See also the Frontex Code of Conduct for Joint Return Operations coordinated by Frontex (from 07.10.2013).

\(^{14}\) In the context of the current Framework all phases are listed here, indicating which phases are to be covered specifically by the forced return monitor and which phases are covered by other monitoring bodies. The FReM project nevertheless suggests that there might be the necessity to take (particularly in the pilot phase) a more pragmatic approach when deciding which phases should be monitored by the EPFRM.

\(^{15}\) This phase is considered outside the scope of return monitoring under the EPFRM. Basically all EU and associated countries have monitoring systems of long term detention in place, which are either covered by national NGOs or national prevention mechanisms. Additionally, the administrative deprivation of liberty is subject to control by international monitoring mechanisms.
### Pre-Return Phase

The pre-return phase may start a minimum of 24 hours prior to the departure during which the monitor will verify whether the prospective returnee has been informed, including the briefing by the escort leader of the national escort team.

### Pre-Departure Phase

Covers the period from leaving the (temporary) holding/detention facility until shortly before or just at the moment of embarkation. In this phase, the escort team is briefed at the hub (in case of a JRO) and the returnee may stay in a holding/waiting/detention facility at the place of embarkation. The pre-departure phase ends shortly before or just at the moment of entering the means of transportation for the forced return operation (aircraft/bus/train/ship).

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16 The pre-return phase is not covered by the monitoring according to the Frontex Code of Conduct for Joint Return Operations coordinated by Frontex. In the present Framework, nevertheless, the pre-return phase is considered an integral part of the removal operation.

17 In line with the FReM Guidelines, the monitoring starts a minimum of 24 hours or less prior to the actual departure. The reference of 24 hours is made to ensure the presence of a monitor during the "contact talks" when the returnee(s) is/are informed that they will be returned or, if participation in the contact talks is not possible, to have the possibility to check whether the returnee(s) has/have been informed about his/her removal. This phase also covers monitoring of those who are kept in (temporary) holding/detention facilities that are not located at the port of departure (e.g. airport) and therefore need to be transported, e.g., from a (longer-term) detention centre to the holding facilities at the port of departure.

The monitor assigned to a JRO coordinated by Frontex, starts monitoring on the day of the operation (see Article 9 (1b) of the Frontex Regulation). This, depending on the arrangements, can be either the return operation from a national port of departure (national feeder) to the hub of the JRO or start directly at the hub of the JRO.
In-Flight Phase\textsuperscript{18} \hspace{1cm} Starts with entering the means of transportation (e.g. aircraft, bus, train, ship) used for the removal and ends with the arrival at the final destination (country of return or, in case of an unsuccessful return, back to the country of departure – in case of JROs back to the hub), including the transit via another country.

Arrival \hspace{1cm} Covers the period starting from arrival at the country of return and ends when the returnee(s) are handed over to the national authorities in the country of return, or, in case of an unsuccessful return, the hand-over to authorities back at the country of departure.

Post-Arrival Phase\textsuperscript{19} \hspace{1cm} Covers the period after the returnee has been handed over in the country of return.

Forced return monitoring in the Framework of the European Pool of Forced Return Monitoring covers the pre-return phase, the pre-departure phase, the in-flight phase and the arrival phase, as described above.

**Common Understanding of Monitoring**

Monitoring as used in this Framework refers to the observation of a forced return operation. It does not monitor the legality of the return decision but is solely concerned with whether the forced

\textsuperscript{18} The rules/procedures mentioned need to be transposed/interpreted according to the concrete situation (return by land/sea run jointly or by an individual MS).

\textsuperscript{19} This phase is considered outside the scope of forced return monitoring under the EPFRM.
return operation, covering the phases described above, has been conducted in a humane and correct manner in line with the requirements of the EU Charter for Fundamental Rights.

Following the definition of forced return monitoring, the monitoring tasks are to be understood as observation duties only and include the submission of a detailed monitoring report based on a template provided by the Secretariat. The monitor is to observe the interaction between officials and returnees throughout the whole return operation. If approached by the returnee with questions or requests, the monitor can inform the escort leader. The monitor can also inform the escort leader about any irregularities perceived or requests voiced by the returnee. The Framework of the European Pool of Forced Return Monitors particularly refers to Art 14 of the Code of Conduct for JROs coordinated by Frontex with regard to the monitoring duties (see also Part 1, Point 4.2.1).

As a rule, forced return operations should be observed by the number of monitors considered necessary in order to allow for comprehensive and effective monitoring. The following criteria should guide the decision on the number of monitors to be involved in a forced return operation:

- The means of transportation (aircraft/ship/bus/train) used and their specific interior (e.g., in case of an aircraft, does the plane have one/two aisles, different sections divided by galleys, etc.);
- The duration of the operation until arrival at the final destination in the country of return;
- The number of returnees as well as escorts;
- The number of states involved;
- If more than one monitor is requested, whenever possible, a male and female monitor should be provided.

While the European Pool of Forced Return Monitors at the initial phase will focus on providing effective monitoring for JROs, it is possible to include the monitoring of the national forced return operation acting as a feeder to the hub of the JRO. If these are covered by two different monitors, an organised handover from the monitor of the national feeder to the monitor of the JRO is required. Depending on the national legal framework of the participating Member State(s), the JRO may alternatively also be monitored by both a national monitor and the monitor(s) of the European Pool of Forced Return Monitors. Additionally, the pool is also foreseen to function as a backup system for national monitoring systems for forced return monitoring.
Part 1. Organisational Structure

This part describes the organisational structure of the European Pool of Forced Return Monitors and describes the main tasks of the different levels involved. The structure considers the inclusion of the main stakeholders, while at the same time keeping the overall administration as streamlined as possible.

In order to achieve a high degree of transparency, trust and legitimacy, the structure is chosen to represent a broad variety of actors at different levels to support a system of checks and balances, which allows for a solid implementation of the sensitive task of monitoring forced return operations.

The European Pool of Forced Return Monitors (EPFRM) foresees the following structure and composition:

Main Actors

- A **Steering Group** advising the Secretariat of the European Pool of Forced Return Monitors;
- An organisation/agency acting as the Secretariat of the European Pool of Forced Return Monitors (further on referred to as the **Secretariat**);
- States participating in the European Pool of Forced Return Monitors (further on referred to as the **Partner States**);
Monitors registered in the European Pool of Forced Return Monitors (further on referred to as “monitors”).

*Figure 1: Overview of the main actors of the European Pool of Forced Return Monitors (EPFRM) and their interrelation*
1.1 The Steering Group of the European Pool of Forced Return Monitors

A Steering Group shall oversee the management and administration of the implementation of activities of the European Pool of Forced Return Monitors. The Steering Group is of strategic importance and aims at increasing the quality and effectiveness of the pool.

1.1.1. Composition of the Steering Group

The composition of the Steering Group of the European Pool of Forced Return Monitors should reflect the different stakeholders involved in forced return monitoring. To keep the Steering Group operational, its structure should remain streamlined. It is suggested that the main partners involved have expertise on fundamental rights.

The Steering Group shall thus consist of:

- Three Partner States participating in the pool representing the Partner States’ interests within the Steering Group on an annual rotational basis;
- A representative of the European Commission;
- A representative of the EU Agency Frontex;
- A representative of the EU Agency for Fundamental Rights (FRA).
1.1.2. **Tasks of the Steering Group**

The Steering Group’s tasks are:

- Policy guidance for the European Pool of Forced Return Monitors;
- Quality control of the European Pool of Forced Return Monitors;
- Final approval of the selected monitors;
- Receive reports by the Secretariat regularly;
- Meet at least twice a year to discuss the reports of the Secretariat. Additional meetings shall be scheduled upon agreement and need;
- Receive and discuss the financial reports by the Secretariat.

The rules of procedure and the specific tasks of the Steering Group shall be agreed upon in its constituent meeting, where it also selects a Chair and Deputy Chair.

To allow the Steering Group to concentrate its work on policy decision concerning the European Pool of Forced Return Monitors, the Secretariat will provide information and logistical support to the Steering Group.
1.2 The Secretariat of the European Pool of Forced Return Monitors

One organisation will act as the Secretariat of the European Pool of Forced Return Monitors. The Secretariat will be responsible for managing, organising and maintaining the pool on a daily basis including the organisation of training and meetings for monitors.

1.2.1. Confidentiality

The Secretariat shall be bound to confidentiality regarding all information received on forced return operations monitored by monitors of the pool. The information to which the Secretariat has access shall be used only for the purpose of internal evaluation and improvement of the services.

Any communication towards third parties shall strictly follow the rules as described in the Communication Strategy (see Part 3 point 1).

1.2.2. Profile of the Secretariat

The Secretariat shall be a neutral organisation providing Europe-wide migration related services. The organisation should have a sound understanding of return, received training on monitoring the situation of persons deprived of liberty and should be free from any conflict of interest that would contradict the purposes of managing the European Pool of Forced Return Monitors. It must further be committed to act in accordance with fundamental rights.
1.2.3. **Tasks of the Secretariat**

The Secretariat shall support the management and organisation of the European Pool of Forced Return Monitors. In particular the Secretariat shall be responsible for:

1.2.3.1. **Development of Tools for the European Pool of Forced Return Monitors (EPFRM)**

a) **Database**: The Secretariat shall set up a database as the central tool for the administration of the pool of monitors (see Part 2 point 4.1 below).

The Secretariat shall update and regularly maintain the database.

b) The Secretariat will develop the following **tools for the selection of monitors**:

- Terms of reference (ToR) for monitors of the European Pool of Forced Return Monitors (based on the results of the FReM project);
- A transparent template for the pre-selection of monitors for the European Pool of Forced Return Monitors;
- Guidelines for the Selection Committee (comprised of the Steering Group or persons appointed by the Steering Group), which conducts the final approval of monitors; and
- A transparent selection mechanism.
c) The Secretariat will develop **tools for forced return monitoring** for the European Pool of Forced Return Monitors:

- An information template by which Partner States inform the Secretariat about planned return operations;
- Report template for the monitors (based on the results of the FReM project);
- Templates for quarterly progress reports on the European Pool of Forced Return Monitors.

1.2.3.2. **Training of Monitors**

a) Each monitor shall undergo a compulsory preparatory training based on a tailor-made curriculum. The curriculum and the training manual developed under the FReM project serve as the primary reference documents for conducting the training of monitors;

b) The trainers should have multi-disciplinary backgrounds, thus including professions such as fundamental rights specialists, forced return monitors, pilots, escorts, psychologists etc.. The Secretariat will organise and coordinate the input by external partners, both in the development as well as the delivery of the training;

c) The Secretariat will collect country-level information on the use of coercive measures, including legislation, relevant case law and publicly available operational guidance from Partner States and other available sources. These materials will be put at the disposal of monitors of the European Pool of Forced Return Monitors;
d) The Secretariat will also provide monitors with other available resources relating to forced return monitoring, such as reports published by the CPT, the UN Subcommittee on Prevention of Torture (SPT), and by national monitoring bodies, including National Preventive Mechanisms established by Article 3 of the Optional Protocol to the UN Convention against Torture (OPCAT).

1.2.3.3. Administration and Coordination of the Pool of Monitors

a) Selection of monitors. The Secretariat will actively search for potential monitors. For this purpose it publicly advertises the search for monitors and selects the candidates based on transparent procedures and criteria (terms of reference – ToR);

b) Management of monitors. The Secretariat will be in regular contact with the monitors, to regularly update the data in the database and to regularly update the availability of the monitors;

c) Calendar. The Secretariat will administer a calendar for the availability of monitors.

1.2.3.4. Assigning Monitors to specific Forced Return Operations

The Secretariat’s tasks with respect to the assignment of monitors are initiated by a request from a Partner State to monitor (a) specific return operation(s).

Upon information of an upcoming forced return operation, the Secretariat shall select one (or more monitors) from the European Pool of Forced Return Monitors.
The assignment of a monitor to a specific forced return operation shall be conducted according to the following criteria:

a) Language skills:
   - Barrier-free communication between the escort leader of the organising Member State and the monitor(s) should be ensured;
   - Ability to speak the concerned returnees’ language may be regarded as an asset;
   - If more than one monitor is requested, whenever possible one monitor with language-skills to communicate with the returnees should be provided;

b) Knowledge of the national rules on the use of force and coercive measures;

c) When selecting the monitors, a balanced frequency of assignments will be taken into account to allow all monitors from the pool to gain the necessary practice of conducting monitoring missions.

Transparent selection criteria shall be developed and adopted by the partners and the Steering Group of the European Pool of Forced Return Monitoring. Following these criteria the Secretariat selects and assigns the monitors to the forced return operation.

Upon assignment of the monitor for a monitoring mission, the Secretariat provides him/her with the administrative documentation necessary.
1.2.3.5. Reporting

a) Forced return monitoring report. The Secretariat controls the timely delivery of the forced return monitoring reports by the monitors and conducts a quality check of the reports regarding language, completeness and comprehensiveness. The monitoring reports are then forwarded to the organising Member State of the forced return operation (according to their internal procedure) and the Steering Group;

b) Progress reports. The Secretariat further produces publicly available, quarterly progress reports of the monitoring activities, providing a quantitative overview of the activities undertaken and flagging the main recurrent issues – both deficiencies and positive trends – which were observed. In addition, the Secretariat elaborates one annual report on its activities;

c) Financial report. The Secretariat administers the financial roll-out of the European Pool of Forced Return Monitors and reports quarterly to the donors (Partner States) and the Steering Group;

d) Policy reports. The Secretariat strives to further develop the European Pool of Forced Return Monitors, taking into account the lessons learnt during the implementation, and reports any suggestions for improvement in the form of a Policy Report to the Steering Group.
1.2.4. **Liaison**

The Secretariat regularly liaises with the Partner States of the European Pool of Forced Return Monitors and the Steering Group. It further strives to promote the EPFRM to increase the number of Partner States.

1.2.5. **Terms of Reference**

The exact tasks of the Secretariat will be further elaborated in the terms of reference (ToRs) for the Secretariat.

1.3 **Partner States and Frontex**

The Partner States and Frontex are the main beneficiaries of the services of the European Pool of Forced Return Monitors. Within the described scope, Partner States and Frontex can thus rely on a pool of properly selected and trained European forced return monitors.

While primarily intended for monitoring JROs, the services of the European Pool of Forced Return Monitors may also be used for national forced return operations of the Partner States.

1.4 **The Forced Return Monitors**

1.4.1. **Profile of the Forced Return Monitors**

Only natural persons are eligible for selection as monitors for the European Pool of Forced Return Monitors (thus, organisations or institutions are not eligible).
At a minimum, monitors must fulfil the following criteria:

- Free from any conflict of interest;
- Independent from the organisation and the escort personnel responsible for the return operation;
- Knowledge of fundamental rights, particularly with regard to Forced Return;
- Professional experience in return and related migration issues;
- Physical and psychological capability to cope with the tasks;
- Willingness to monitor irrespective of which Partner State of the pool organises the forced return operation.

The European Pool of Forced Return Monitors will be further composed according to the following criteria:

- A mix of disciplines such as fundamental rights experts, psychologists, medical doctors, migration experts etc.;
- Mix of skills including languages, specific communication skills, professional experience with monitoring etc.;
- Mix of backgrounds including different nationalities and genders;
- Good command of English (written and spoken);
- Excellent communication skills.
Terms of references (ToRs) for the forced return monitors have been developed in the course of the implementation of the FReM project and will serve as a basis for the possible further development of the ToRs.

1.4.2. **Tasks of the Forced Return Monitors**

The monitor will be tasked to observe the forced return operation from the pre-return phase until the hand-over of the returnees to the national authorities in the country of return or (in case of an unsuccessful return) the hand-over to the authorities back in the country of departure.

1.4.3. **Rights and Duties**

During assignments the forced return monitors shall, in compliance with Art 14 of the Code of Conduct for Joint Operations coordinated by Frontex have the following rights and duties (rights and duties taken from Art. 14 are marked below in *italics*):

a) The assigned monitor(s) is/are responsible for observing whether the forced return operation is conducted in a humane manner and in compliance with fundamental rights;

b) *In order to ensure an effective monitoring system, monitors must have access to all relevant information concerning the JRO, including:*

   - *timely communication of the date and time of the JRO, the country(ies) of return and necessary travel documents, the number and origin of returnees particularly including*
any forms of vulnerability, e.g. pregnant women, families with children, elderly people, persons with disabilities or with a medical condition;

- access to returnees;
- unimpeded access to all areas used for the JRO.

c) Monitors may observe the briefings prior to the JRO as well as participate in the debriefings where they have to provide a brief account of the main findings;

d) Monitors may inform the head of operation and/or the escort leader(s) of any perceived irregularities but may not interfere with the planned execution of the JRO;

e) Should a returnee express the wish to complain, the monitor should inform the (respective national) escort leader, who is the one responsible for informing the returnee on the applicable procedure under the respective national law. The monitor is to report impartially (in the report) about the complaint and whether the escort leader informed the returnee accordingly;

f) Monitors of the European Pool may also monitor on behalf of other MSs taking part in the JRO, unless prohibited by the country’s national legislation. Thus a mapping of legal provisions is necessary;

g) The monitors draft the monitoring report and submit the report to the Secretariat within seven working days; in case of serious incidents (that may have happened), a prior oral debriefing with the Secretariat is conducted;
h) The monitors provide the Secretariat with any documentary evidence of financial obligations that arose while participating in a forced return operation as a monitor;

i) The monitors shall be bound by confidentiality as part of their contract. Monitors shall not disclose any information gained by fulfilling their monitoring obligations;

j) The monitors shall be available to travel upon short notice;

k) The monitors are obliged to undergo initial and annual training.

1.4.4. Financial Compensation

Upon the timely delivery of the monitoring report and the submission of all financial obligations, the monitor receives expenses and financial compensation for his/her time spent monitoring the forced return operation. The financial compensation is a fixed amount applicable to all monitors and determined in the service contract of the monitor with the Secretariat.

1.5 Terms of the Forced Return Monitors

Monitors shall be contracted for a specific term of three years with the possibility of prolongation and following a probation period of six months during which they are part of the pool of monitors. After the contract ends, a review shall take into account the overall performance of the monitor to decide upon a prolongation of the engagement of the monitor. Performance criteria shall be developed by the Secretariat and may form an integral part of the contract with the monitors.
The contract shall include a possibility to terminate the assignment of the monitor in case of misconduct or in case of any private reasons on the side of the monitor him/herself. As part of the quality control of the European Pool of Forced Return Monitors, the performance of the monitors should be assessed annually against the developed selection criteria adopted by the Steering Group.

1.6 Size of the European Pool of Forced Return Monitors

It is desired that the pool of monitors includes monitors from each of the Partner States. To provide a solid backup, the pool should aim at having two to three monitors per Partner State (*optional*).
Part 2. Functioning of the European Pool of Forced Return Monitors

2.1 The Offer for the Partner States

a) Partner States may rely on monitors from the European Pool of Forced Return Monitors for forced return operations;

b) While monitoring in the framework of the European Pool of Forced Return Monitors implements the obligation to set an “effective monitoring” in line with Art 8 (6) of the Return Directive, it is narrowed down to the removal operation (covering the pre-return until the arrival phase). The offer of the European Pool of Forced Return Monitors is thus without prejudice for a Member States’ duty to ensure that all phases and all types of forced return are monitored;

c) The forced return operation will be observed by monitors, specifically trained in the monitoring of forced return operations;

d) The Partner States may decide on the reporting lines in accordance with their national systems in place (see below at Part 3, point 2).

2.2 Eligibility for the Services of the European Pool of Forced Return Monitors

a) The services of the European Pool of Forced Return Monitors are open for forced return operations conducted by:
- Units/Agencies in the Partner States responsible for forced returns, and/or;
- Frontex.

All EU Member States and associated States that apply Article 8 (6) of the Return Directive as well as those States that want to implement an effective monitoring in line with the principles of the European Pool of Forced Return Monitors, are eligible for the services of the pool (see also Part 3, point 4).

b) The services are gradually being developed and tested:

- In a first step the main service tools will be developed (partly under the FReM project, i.e. development of guidelines for monitors, development of monitoring tools, drafting of the ToR for monitors, conducting a first training for monitors);
- The developed service tools will be “tested” during Frontex coordinated Joint Return Operations (a first pilot monitoring is part of the FReM project). The experience gained will then be fed into the further development of the return monitoring system;
- Once the pilot phase of the development of the European Pool of Forced Return Monitors has been successfully implemented and evaluated, the services of the European pool of Forced Return Monitors may also be used by Partner States for national forced return operations.
2.3 Training for the Monitors

2.3.1 Types of Training

Monitors receive the following types of training:

- An initial, basic and obligatory preparatory training;
- Annual training based on lessons learnt between monitors (regularly updated by the Secretariat in line with lessons learnt during the implementation of forced return monitoring services);
- During the pilot phase, additional meetings at least once every six months, will be envisaged to further sharpen a common understanding of the monitoring among the monitors of the pool and to exchange existing good practices among them or with other monitoring systems.

2.3.2 Basic Training

The basic training for monitors may consist of a mix of content related lectures, group work, practical demonstrations and peer to peer learning from experienced monitors. While concerns of fundamental rights shall govern all training sessions, the following specific topics should be part of the training (non-exhaustive):

- Technicalities of forced return operations;
- Fundamental rights training;
- Practicalities of the use of coercive measures by escorts;
Roles and mandates of escorts and monitors;
- Monitoring methodology;
- Communication skills (towards returnees and escorts);
- Gender and cultural sensitivities;
- Report writing.

2.3.3. Annual Training

The training will have the main purpose of streamlining and correcting the monitoring of forced return operations based on the lessons learnt. The training will be built upon the reports drafted by the monitors, which will be collected, reviewed and prepared for training purposes by the Secretariat.

2.3.4. Training Manual

A training curriculum with a corresponding training manual was developed in the FReM project, which will further serve as a basis for the training material for the pool of monitors. The Secretariat will maintain and regularly update the training material by compiling all material from the training, regularly updated by the annual training sessions on lessons learnt. The training manual will be designed as a guiding handbook for the work of the monitors.
2.3.5. **Training Cycle**

2.4 **The Forced Return Monitoring Mission (Work Flow)**

The forced return monitoring mission may consist of the following three steps:

- Step 1: Preparation of the monitoring mission;
- Step 2: Monitoring mission;
- Step 3: Follow up and reporting of the monitoring mission.

See Part 2, point 6 for a detailed figure of the work flow of the monitoring mission.
2.4.1. **Step 1: Preparation**

1. The preparation starts with the information from the Partner State about (a) planned forced return operation(s), for which the Partner State requests a monitor. The information is to be sent as soon as the Partner State is aware of the planned operation. The Partner State uses a prepared template outlining the main elements (time, destination country and duration of the forced return operation, and any special requirement for the monitor (e.g. language skills)). The information is submitted to the Secretariat (online or via email/fax) in accordance with the agreed structure;

2. The Secretariat checks the database and identifies potential monitors, and;

3. Contacts the potential monitor via email;

4. The selected monitor checks his/her availability, and;
   4a. accepts the mission and informs the Secretariat via email, or;
   4b. declines the mission and informs the Secretariat via email;

5. The Secretariat, as a rule, proposes two monitors, depending on the number of returnees, and informs the Partner State that the forced return operation will be monitored and requests further travel details;

6. The Partner State informs the Secretariat about the details of the forced return operation and sends back the information to the Secretariat;
(7) The Secretariat prepares the necessary administrative documents and a monitoring mission plan with all available information for the monitoring mission;

(8) The monitor reviews the mission plan and the submitted information and prepares for the mission.

2.4.2. Step 2: Monitoring Mission

(9) The monitor starts monitoring the forced return operation;

9a. The monitor participates in the briefing of the escort leader(s)/team for a briefing;

9b. The last step of the monitoring mission is the debriefing with the escort team and/or the escort leader.

2.4.3. Step 3: Follow up of the Monitoring Mission

(10) Upon return, the monitor contacts the Secretariat and, in case of any serious incidents, provides an oral debriefing;

(11) The monitor drafts a monitoring report according to the developed template and submits the report to the Secretariat within seven working days;

(12) The Secretariat conducts a quality check regarding comprehensiveness, completeness, language and overall quality of the report, approves and distributes it;

12a. The monitor revises the report, if required;

12b. The Secretariat submits the approved report to the
organising Member State of the forced return operation and the participating Member States in case of a JRO and to Frontex in case of a JRO coordinated by Frontex;

12c. The Secretariat may, upon request, submit the individual monitoring reports to the Steering Group;

(13) The Secretariat collects the reports from the escort leaders and documents lessons learnt to be further included in the training manual.

### 2.5 Tools of the European Pool of Forced Return Monitors

#### 2.5.1. The Database

The database shall include the details of all monitors of the European Pool of Forced Return Monitors and shall be set up according to criteria that allow for a fast selection of appropriate monitors upon need.

The EU data protection rules and the data protection rules of the Partner States involved have to be respected. A yearly independent audit will review compliance with these rules.

#### 2.5.2. Templates

A number of templates shall form the basis for the European Pool of Forced Return Monitors. Many templates have been developed in the FReM project, where some of the tools have also been tested. The Secretariat shall use and further develop these tools:

a) Terms of reference for forced return monitors (based on the
results of the FReM project);

b) Guidelines for monitors (based on the results of the FReM project);

c) Monitoring report template for the monitors (based on the results of the FReM project);

2.6 Overview of the Workflow of the Monitoring Mission

Step 1: Preparation of Monitoring Mission
1. Information on forced return operation
2. Check database
3. Contact monitor
4a. No
4b. Available
4b. Yes
5. Informs partner(s) & requests return details
6. Forced return operation details
7. Monitoring mission plan and administrative preparation
8. Review of monitoring mission plan
9. Monitoring of the phases applicable
9a. Briefing escort leader(s)/team
9b. De-briefing escort leader(s)/escorts & monitor
10. De-briefing by telephone (in case of serious incidents)
11. Report drafting and submission
12. Quality check of report, approval, distribution
12a. Receive approved monitoring report
12b. Collection of report from escort leader/head of operation (JRO) + documentation of lessons learnt
12c. Receives approved monitoring report

Step 2: Monitoring Mission

Step 3: Post-Monitoring Mission
Part 3. Organisational Aspects

3.1 Communication Strategy

Monitoring of forced return operations requires transparency, while at the same time acknowledging its sensitivity and duty to respect data protection obligations. A professional communication strategy is thus key for acceptance of the European Pool of Forced Return Monitors.

The communication strategy will be developed and approved by all partners of the European Pool of Forced Return Monitors and will be the key reference document for the Secretariat. The communication strategy will entail internal and external reporting lines, decide on the scope of publicity and external visibility and will set clear responsibilities for the communication to the outside. It will further determine the responsibilities and allowances for how the European Pool of Forced Return Monitors is represented in public and towards donors.

The communication strategy will be adopted by the Partner States and the Steering Group.

3.2 Reporting Lines

There are different reporting lines foreseen within the European Pool of Forced Return Monitors.
The monitor reports to the Secretariat:

- Monitoring report submitted within seven days after completion of the mission (including the substantial report on the monitoring and claim for financial compensation).

The Secretariat reports to the EPFRM Partner States (and Frontex, if applicable):

- After a quality check, the monitoring report is submitted by the Secretariat to the Partner States. It remains within the discretion of the Partner States to determine with which national organisations the monitoring reports should be shared (e.g. the head of the national authority in charge of (forced) returns, escort leader and its unit, a unit further up in the hierarchy, the National Prevention Mechanism, etc.).

The Secretariat reports to the Steering Group:

- Quarterly Progress Reports encompassing financial aspects of the management of the pool as well as quantitative and qualitative reviews of forced return operations. Following the approval of the Steering Group, the quarterly reports should be made available for the Partner States (e.g. via a restricted website);

- Upon request, the Steering Committee should have access to the individual monitoring reports.
The **Secretariat** may be further tasked with producing:

- Publicly available **policy reports** based on an agreed template, including parts for the public and certain parts for internal use only. The policy report should be sent to the Steering Group for approval of the parts that will be made publically available.

The reports shall be developed in compliance with the communication strategy.

Reports submitted in the context of the European Pool of Forced Return Monitors are written in **English**.

### 3.3 Financial Aspects

In relation to financial aspects of the European Pool of Forced Return Monitors (EPFRM), several options may be taken into account. It can be anticipated that during the pilot phase a number of “preparatory costs” will need to be covered. Once the EPFRM is set up, the running costs may be kept lower.

The following table outlines a non-exhaustive list of tasks with an expected financial impact. The financial impact may include two different aspects: costs that are necessary during the start-up/pilot phase and costs that are necessary to achieve a sustainable structure which operates on a long term perspective:
<table>
<thead>
<tr>
<th>Description</th>
<th>Initial costs (pilot phase)</th>
<th>Running costs (EPFRM-Impl.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set up of the Database (software/hardware/designing the Database)</td>
<td>●</td>
<td>-</td>
</tr>
<tr>
<td>Regular maintenance of the Database</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Development and translation of all tools</td>
<td>●</td>
<td>○</td>
</tr>
<tr>
<td>Development and translation of training manual</td>
<td>●</td>
<td>○</td>
</tr>
<tr>
<td>Development and translation of Guidelines for Monitors</td>
<td>●</td>
<td>-</td>
</tr>
<tr>
<td>(Initial training of monitors)</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Annual training of monitors</td>
<td>-</td>
<td>●</td>
</tr>
<tr>
<td>Regular meetings of Steering Group</td>
<td>-</td>
<td>●</td>
</tr>
<tr>
<td>Fee for monitor</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Daily allowance for monitor</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Travel costs of monitors&lt;sup&gt;20&lt;/sup&gt;</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>50% Coordinator of the EPFRM (Secretariat)</td>
<td>○</td>
<td>●</td>
</tr>
<tr>
<td>100% Officer for implementation of the EPFRM</td>
<td>○</td>
<td>●</td>
</tr>
<tr>
<td>50% Assistant to the coordinator of the EPFRM (Secretariat)</td>
<td>○</td>
<td>●</td>
</tr>
<tr>
<td>Backstopping (financial control) 10%</td>
<td>○</td>
<td>●</td>
</tr>
<tr>
<td>Regular translation costs of reports</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Costs for external advice on data protection rules</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Yearly external audit costs</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

*Codes used in this table:*
● Refers to full costs
○ Refers to limited costs (e.g. update of manuals or guidelines; not fully operational staff)
- Refers to “no costs expected”

<sup>20</sup> Travel of monitors to the place where the forced return operation starts.
3.3.1. Start-up/Pilot Phase

The start-up/pilot phase is expected to be more cost-intensive because of the need to develop the tools, the database and to provide initial training for the monitors covered by the EPFRM.

As a consequence it is proposed to seek external funding for this phase.

3.3.2. Running of the European Pool of Forced Return Monitors

Once the pilot phase is finalised, the EPFRM should seek a long term funding solution based on contributions from Partner States. For reasons of ownership and sustainability, this (running) phase should ideally not depend on external funding and should not be a project type of activity, but should be part of the Partner States’ monitoring system and thus also part of national funding.

3.4 Joining the European Pool of Forced Return Monitors

The European Pool of Forced Return Monitoring remains open to new Partner States, who may wish to join. New partners may join the pool at any given time. Preconditions for joining the pool are the full acceptance of its principles and a financial contribution to the pool as agreed upon by the Partner States.