

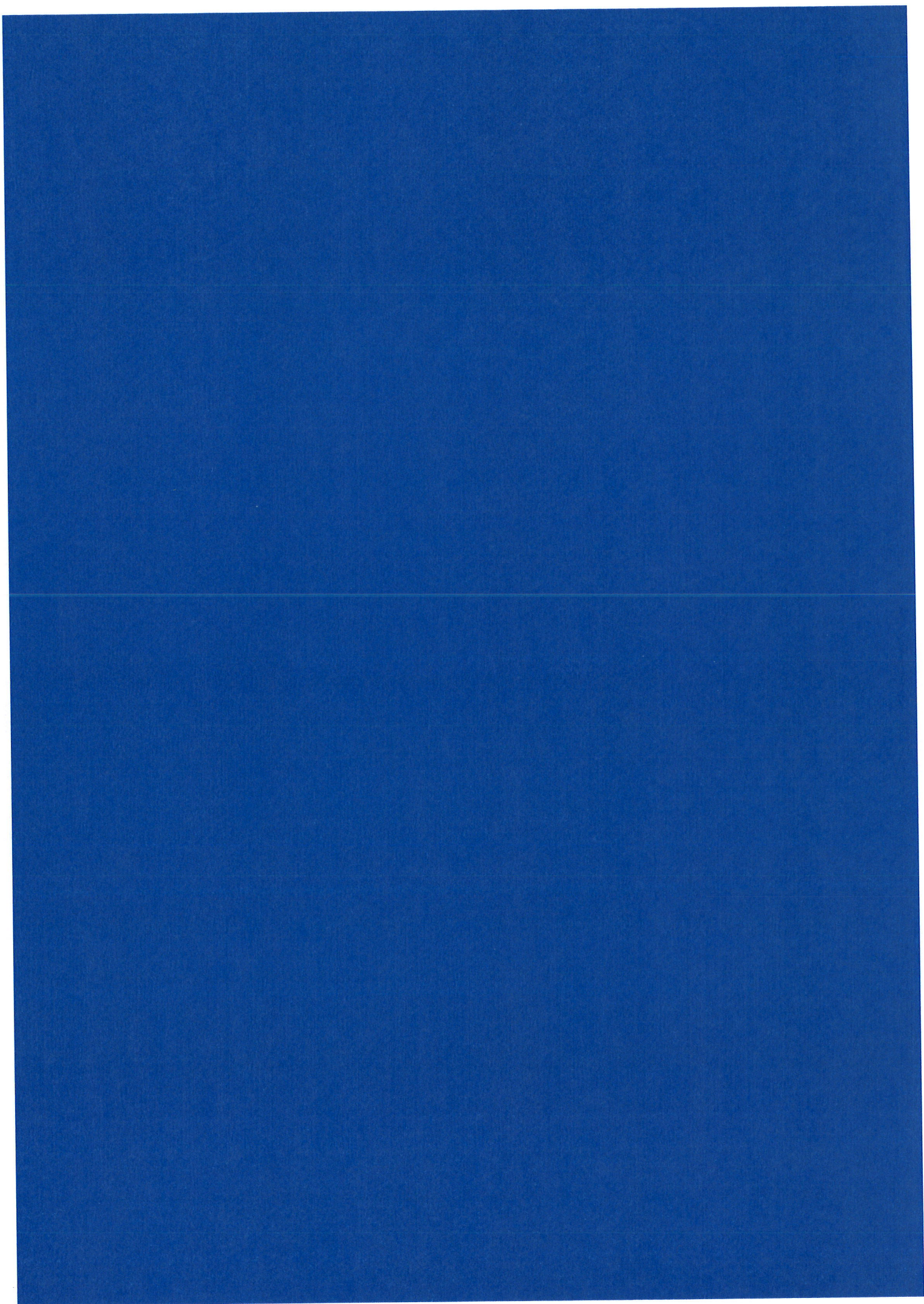
Forced-Return Monitoring

Background Reader

(Version September 2018)

Chapter 3

Forced-Return Monitoring



Chapter 3: Forced-Return Monitoring

Chapter 3 covers the roles and responsibilities of monitors, detailing what the monitor should specifically observe in each separate phase of a forced-return operation. It also covers the roles and responsibilities of escorts during forced-return operations and the use of force, and means of restraint. Finally, it deals with the possible impact of monitoring on the monitor and coping strategies.

3.1 Role of the forced-return monitors

The task of the forced-return monitor is to focus on **how** the return operation is conducted. The forced-return monitoring mandate **does not cover questioning the decision for, and the enforcement of, the forced-return**. Should the returnee(s) complain about the decision taken, such complaints should be impartially described in the report but can under no circumstances be used to influence the actual implementation of the return.¹¹⁵ It is important to note that transfers from one Member State to another, which are regulated under the Dublin Regulation, do not qualify as returns in the sense of the Return Directive. Therefore, the obligation of effective monitoring of forced-returns set out in the Return Directive does not cover these transfers.¹¹⁶

In line with the above, forced-return monitoring refers to the **observation of and reporting on** the execution of a forced-return operation **without powers of intervention**. Monitoring aims to establish whether fundamental rights and legal obligations are met and if returnees are treated in a humane manner, respectful of the dignity of the person, in line with national legislation and regional and international fundamental rights standards.

A forced-return monitor is consequently tasked with the observation of and reporting on the actual implementation of a forced-return operation. **Forced-return monitors shall be independent from the State and/or organisation enforcing the return**. Independence in this regard means that the forced-return monitor should not be bound by orders from members of the (joint) return operation carrying out the return procedure/operation and should preferably not be the same person who has provided services (legal advice, psycho-social counselling, etc.) to the returnee beforehand. This is in order to safeguard the objectivity and independence of the monitor. Thus, when States nominate a monitor, independence from

¹¹⁵ CPT good practice is to allow returnees to lodge last-minute applications for asylum. In some countries a responsible person from the national authorities participates in the return operations to allow taking up and communicating (including to judges) any last-minute (asylum) applications.

¹¹⁶ The Dublin (III) Regulation (No 604/2013) of the European Parliament and the Council, applicable from 1 January 2014 and replacing the 2003 Dublin (II) Regulation (No 343/2003) lays down the criteria and mechanisms for determining which EU country is responsible for examining an asylum application. Article 3(1) of the Dublin Regulation No. 604/2013, requires that EU Member States examine any application for international protection lodged by a third-country national or a stateless person and that such application be examined by one single Member State. The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person. The criteria for establishing responsibility to examine an asylum application run, in hierarchical order, from family considerations, to recent possession of a visa or residence permit in a Member State, to whether the applicant has entered the EU irregularly, or regularly. Among the various criteria listed in the Dublin Regulation, the State responsible for allowing the applicant to enter the common area (specifically if entered irregularly, Article 15, Chapter III), is typically determined to be the State responsible for reviewing the application (Chapter III of the Dublin Regulation). (<http://eur-lex.europa.eu/legal-content/EN/TX-?uri=celex:32013R0604>)

the State should be guaranteed. Additionally, **under no circumstances does forced-return monitoring involve the examination of the legality of the return decision.**

In order to fulfil the expected professional standards, monitors need to apply **neutrality, confidentiality, ethical commitment** and have an **in-depth understanding of the importance of the monitor's report.** In order to be able to fulfil their role and tasks, the monitor has to be conversant with and accept **the overall mandate and responsibilities of the escorts.**

Monitoring the entire process of a forced-return operation is a tool to enforce the observance of fundamental rights. Monitors play a preventive role through their presence during forced-return operations. Furthermore, observing the operational procedure reinforces accountability.

The main task of monitors is to report their findings in relation to fundamental rights compliance in forced-return operations to the relevant authorities. Continuous evaluation and improvement of return operations based on monitors' reports ultimately improve and maintain fundamental rights standards. The use of force and means of restraint based on the proportionality principle and the conduct of personnel are the most critical elements in the procedure.

3.1.1 Role of the monitors within the pool of forced-return monitors

Article 8(6) of Directive 2008/115/EC (Return Directive) requires "*Member States [to] provide for an effective forced-return monitoring system.*" Hence, the pool of forced-return monitors consists of monitors who are members of competent bodies in Member States that carry out forced-return monitoring activities in accordance with this article. The pool is a **subsidiary mechanism of the national monitoring system** and is activated whenever a Member State requests a monitor from the pool, because either no monitor is available in the Member State for a specific forced-return operation or the Member State does not (yet) have an effective monitoring system in place. The monitors deployed from the pool **replace the national monitoring system** of the requesting Member State during a specific forced-return operation.

With the exception of collecting return operations (CRO), where the physical presence of a monitor is requested, the EBCG Regulation does not clearly specify the obligation to physically monitor all forced-return operations.¹¹⁷ However, Frontex advises physical monitoring of all forced-return operations by charter flights to safeguard their compliance with fundamental rights.

During JROs, the activity of the forced-return monitor from the pool is to provide support, on demand, for the national monitoring system of the requesting Member State. The Return Directive holds that there is a clear responsibility for the Member States to provide an effective monitoring system.

National monitoring bodies decide independently whether to physically monitor a forced-return operation or not. One exception to this includes **CROs that have to be monitored**

¹¹⁷ According to Article 28(6) of the EBCG Regulation "[e]very return operation shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return."

as specified in Article 28(3) of the EBCG Regulation.¹¹⁸ Whenever a monitor from the pool of forced-return monitors participates in the entire forced-return operation, it is sufficient to qualify as obligatory physical monitoring according to Article 28(3) of the EBCG Regulation, and in this case no additional national monitor is required for the in-flight phase.

Although during a CRO the technical and administrative handover of returnees as well as handover of the personal belongings and luggage takes place on the territory of a Member State before the departure of the flight, according to the EU legislator¹¹⁹ there is still a need to continue to monitor the forced-return operation during the flight until arrival in the third country of return¹²⁰. Therefore, the monitor has the mandate to observe whether the entire CRO is conducted in compliance with fundamental rights. During the in-flight phase and disembarkation of the returnees upon arrival in the third country of return, the role of the monitor is still to monitor the compliance with fundamental rights. The monitoring activity ends once the flight arrives in the country of return, as the handover of returnees to the national authorities already took place on EU territory.¹²¹

3.2 How does monitoring enforce the observance of fundamental rights?

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

“Monitoring of forced-return is 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 the EU Charter of Fundamental Rights. Monitoring involves observation, recording of, and reporting on return operations without powers of intervention”.¹²²

Forced-return monitors must be aware of their mandate during a forced-return operation and **always frame their actions within this mandate**. Monitors must possess knowledge on international human rights standards relevant to their role during the operation. This can be achieved by participating in training on fundamental rights, as well as through regular consultation with colleagues and/or supervisors on the various aspects of fundamental rights monitoring.¹²³ In this regard, all monitors of the Frontex pool of forced-return monitors complete the same training on forced-return monitoring and participate in other related events organised by Frontex for the pool.

¹¹⁸ “[t]he Agency may provide the necessary assistance and, either at the request of the participating Member States or on the basis of its own proposal, ensure the coordination or the organisation of return operations for which the means of transport and forced-return escorts are provided by a third country of return (collecting return operations). The participating Member States and the Agency shall ensure that the respect for fundamental rights, the principle of non-refoulement, and the proportionate use of means of constraints are guaranteed during the entire return operation. At least one Member State representative, and one forced-return monitor from the pool established under Article 29 or from the national monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.”

¹¹⁹ Article 28(3): “[...] At least one Member State representative, and one forced-return monitor from the pool established under Article 29 or from the national monitoring system of the participating Member State, shall be present throughout the entire return operation until arrival at the third country of return.”

¹²⁰ Third country monitors on board a CRO coordinated by Frontex are an additional safeguard for fundamental rights compliance and for follow-up on possible incidents involving third country of return escorts in the flight. However, their mandate is entirely national and therefore it is not sufficient to have only a third country monitor on board the CRO. Therefore, monitoring from the pool or the national monitoring system must be ensured. Monitors shall exchange with the third country monitor, in particular if specific returnees have special needs in terms of vulnerabilities or security.

¹²¹ The EL and escorts of the third country of return are trained by Frontex and are aware of the monitor’s presence and mandate. The monitor report of a CRO shall cover the relevant phases of a forced-return operation including the in-flight and disembarkation phases in the third country of return.

¹²² FReM Framework 2015 (ICMPD 2015a).

¹²³ Training Manual of Human Rights Monitoring (OHCHR).

It is important to note that during JROs coordinated by Frontex, the Frontex Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, which complements the provisions of the Frontex CoC for all persons participating in Frontex activities also applies to the monitors. Monitors thus have to be conversant with the content of the Code of Conducts.

Monitoring creates transparency as an inbuilt control mechanism for return practices. Consequently, through the presence of independent monitor(s), monitoring results in an increased awareness of the need to comply with human rights law and to adhere to the set rules and standards. The transparency created through unbiased and neutral reporting by an independent monitor **serves the interest of both the returnees and the enforcing authorities**:

- ♦ For the returnee, as it can support, for example, possible claims of mistreatment and excessive use of force¹²⁴ against them; and
- ♦ For the escorts and the EL, as it enables them to clear themselves from possible unfounded allegations.¹²⁵

Reporting is the final step in the process, allowing monitoring to achieve its ultimate goal of safeguarding fundamental rights. Therefore, monitoring reports must be **precise and accurate** to indicate clearly all incidents during the forced-return operation that could have potentially lead to fundamental rights violations and other observations that could lift protection standards.¹²⁶

Monitors must be **objective in their judgements**, so it is indispensable for them to gather as much information as possible, especially through dialogue with the participants of the operation, throughout all phases. Forced-return monitors should also include all their observations and recommendations on steps that could be taken to improve the conduct of a forced-return operation in the monitoring reports, in a constructive manner.

Monitoring reports **may be used** in investigations jointly with reports submitted by the OMS and/or Frontex, following claims or accusations against an individual. Similarly, monitoring reports provide an important tool to **continuously evaluate** and **revise** future return operations by taking corrective measures, where required.

Monitoring must cover the whole process of a forced-return operation. In accordance with Article 28(6) of the EBCG Regulation *"The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation **from the pre-departure phase until the hand-over of the returnees in the third country of return.**"*

More specific information on reporting is covered in Chapter 4.

¹²⁴ The term 'use of force' means any type of physical intervention used on another person.

¹²⁵ A report submitted by independent personnel from the law enforcement (or private security personnel used in the UK) implementing the return operation is considered relevant as it circumvents the possibility of the application of the so called "blue code", an allegedly unwritten rule amongst law enforcement personnel that might impede officers from reporting the misconduct of fellow officers.

¹²⁶ Training Manual of Human Rights Monitoring (OHCHR).

3.3 Key tasks and responsibilities of a forced-return monitor

A forced-return monitor has a number of **specific tasks and responsibilities** within the various phases of a forced-return operation, which are dealt with in detail below. The following lists the key tasks and responsibilities:

- ♦ Impartially observe whether returnees are treated respectfully and in compliance with fundamental rights. In particular, where applied, that the use of force and means of restraint is proportionate, not exceeding reasonable force and that it is strictly necessary;
- ♦ Impartially observe the returnees' behaviour vis-à-vis the escorts and include related facts in the monitoring report, especially in cases of incident or misbehaviour;
- ♦ Observe and take detailed notes of the processes and/or incidents at all times during the forced-return operation without intervening;
- ♦ Maintain oneself in a position where visibility of the returnee and circumstances are unobstructed during all phases of the return operation, e.g. waiting area, security screening. The free movement of the monitor has to be facilitated by those responsible for the return operation, but may in no way hamper the effectiveness, security, or safety of the operation;
- ♦ Establish through observation and the monitoring report, whether the forced-return operation was conducted in a humane manner and in compliance with fundamental rights;
- ♦ Support the observance of fundamental rights through the presence of an independent monitor;
- ♦ Collect all relevant facts for the whole forced-return operation in line with the relevant phases;
- ♦ Draft and hand in a detailed monitoring report, outlining all relevant information as well as detailing relevant observations, including good and bad practices.¹²⁷

3.3.1 Practicalities to which a monitor must adhere

A monitor should focus on:

- ♦ What do I see?
- ♦ What does it mean?
- ♦ What needs to be improved or be multiplied?

¹²⁷ Adapted from ICMPD 2015.



A monitor needs to:

- ♦ Have the necessary qualifications, including a proven record of initial, regular, and specialised training on forced-return monitoring;
- ♦ Be physically, medically and psychologically fit to perform the duties of a monitor;
- ♦ Demonstrate the maturity and emotional stability to be able to perform their tasks as a forced-return monitor;
- ♦ Have good knowledge of procedures and of the duties and rights of all participants involved;
- ♦ Carry out their attributed tasks in a dutiful, timely, and accurate manner throughout the forced-return operation (e.g. it is critical for the successful implementation of a monitoring mission to be on time; the EL has no obligation to wait for the monitor);
- ♦ Have knowledge of permitted coercive measures;
- ♦ Have access to the necessary information prior to and during the return operation;
- ♦ Keep calm in all situations;
- ♦ Maintain a distant demeanour throughout;
- ♦ Be impartial and objective towards all parties involved in a forced-return operation through their behaviour and observations;
- ♦ Distance themselves emotionally;
- ♦ Respect confidentiality and not disclose any information gained while fulfilling their monitoring obligations to any other parties besides those clearly stated in the reporting criteria;
- ♦ Have the necessary equipment (e.g. pens, notebook); and
- ♦ Have the necessary sustenance (e.g. water, food).

Monitors need to wear comfortable clothing and ensure their hands are free to take notes in any weather conditions, including rain or snow.

For monitors, it is an advantage to have some knowledge of the cultural and social context of the returnees.

3.3.2 Profile of the forced-return monitors of the Frontex pool of forced-return monitors¹²⁸

Definition:

A Forced Return Monitor is a member of a competent body of a Member State that carries out independent monitoring of return operations¹²⁹ in accordance with relevant EU or national law.

A person employed by, or in the service of, an authority involved in the execution of forced returns of any kind may not be a Forced Return Monitor.

Tasks and functions

- ♦ To monitor fundamental rights compliance in return operations, in accordance with EU law where relevant from the pre-departure phase¹³⁰ until the hand-over of the returnee to the authorities of the third country of return, or the hand-over to the authorities of the sending country in case the individual's return is suspended or cancelled; and
- ♦ To submit copies of monitoring reports to the Executive Director of Frontex, to the Frontex Fundamental Rights Officer and to the competent national authorities of all the Member States involved in that return operation.

Required job competences

A Forced Return Monitor has a knowledge or understanding of:

- ♦ Fundamental rights, in particular fundamental rights protection in the context of return operations such as the human dignity, principle of non-refoulement, the necessity and proportionality principles in the context of use of force and measures of restraint;
- ♦ The principle of non-discrimination and the right to complain to the competent authorities;
- ♦ A broad range of procedures and legislation related to return operations;
- ♦ International and European standards on child protection¹³¹ and other vulnerable persons, and gender issues, including those reflected in the Frontex Guide for Joint Return Operations by Air and/or further guidelines on this matter; and
- ♦ The EU legal framework on protection of personal data.

¹²⁸ Adopted by the Frontex Management Board, Decision 41/2016 of 6 December 2016.

¹²⁹ For the purpose of Frontex activities, 'return operation' means an operation that is coordinated by the European Border and Coast Guard Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis (Article 2 (14) EBCG Regulation). The term return operation includes removal and readmission operations in line with the definition of the Return Handbook C (2015) 6250, published on 1.10.2015.

¹³⁰ For the purpose of Frontex activities, 'pre-departure phase' is understood as the physical transfer of a returnee from the place where s/he is staying or held in view of removal.

¹³¹ This criteria is not mandatory and will only be required for a limited number of monitors.

A Forced Return Monitor is able to:

- ♦ Monitor the fundamental rights compliance of return operations; and
- ♦ Produce a comprehensive, motivated, balanced, and fair monitoring report in accordance with agreed standards, including recommendations on how to improve fundamental rights compliance in return operations.

A Forced Return Monitor also:

- ♦ Exercises the appropriate level of autonomy and discernment in the process of monitoring return operations.

Eligibility criteria

To be eligible to become a Forced Return Monitor in the Forced Return Monitors Pool, a candidate shall:

- ♦ Be a member of a competent body of a Member State that carries out or may carry out independent forced return monitoring in accordance with relevant EU and national law;
- ♦ Possess knowledge, skills, and competences as described in the “Required job competences” section;
- ♦ Have received advanced training relevant to the tasks and powers of a Forced Return Monitor. In particular, this training should cover relevant Union and international law, including on fundamental rights, access to international protection, protection of children and other persons in a vulnerable situation;
- ♦ Have experience in monitoring return operations, readmissions and/or places of detention or deprivation of liberty or other similar situations, preferably in a migration context;
- ♦ Have no personal bias in favour or against returnees and/ or return operations per se;
- ♦ Have adequate knowledge of the English language (equivalent to CEFR level B2); and
- ♦ Be able to physically and psychologically cope with the tasks, including the ability to remain calm in stressful environments.

In addition, the following would be advantageous;

- ♦ Experience in cooperation or work with Frontex, relevant national authorities and/or with international or non-governmental organisations;
- ♦ Knowledge of languages spoken in countries of destination of return operations;
- ♦ Knowledge and/or experience in de-escalation and/or mediation techniques and methodologies;

- ♦ Knowledge of basic medical issues;
- ♦ Training on emergency procedures on board aircrafts.

Monitors need to bring:

During a forced-return operation it is recommended to use a backpack for belongings to facilitate movement and to keep both hands free. Furthermore, monitors must carry:

- ♦ A valid passport;
- ♦ A valid visa, if required¹³²;
- ♦ A valid vaccination certificate, if required;
- ♦ An accreditation card by Frontex;
- ♦ A reflective vest that identifies them as monitors¹³³;
- ♦ Travel and health insurance information;
- ♦ Cash in relevant currency;
- ♦ Extra passport photos, just in case a last-minute visa is required;
- ♦ An extra set of clothes, just in case;
- ♦ Waterproof clothing with a headpiece or cap. An umbrella is not to be used, as it impedes movement and observation and could be used as a hazardous object and create unnecessary difficult situations;
- ♦ Mosquito repellent;
- ♦ Any medication they may require.

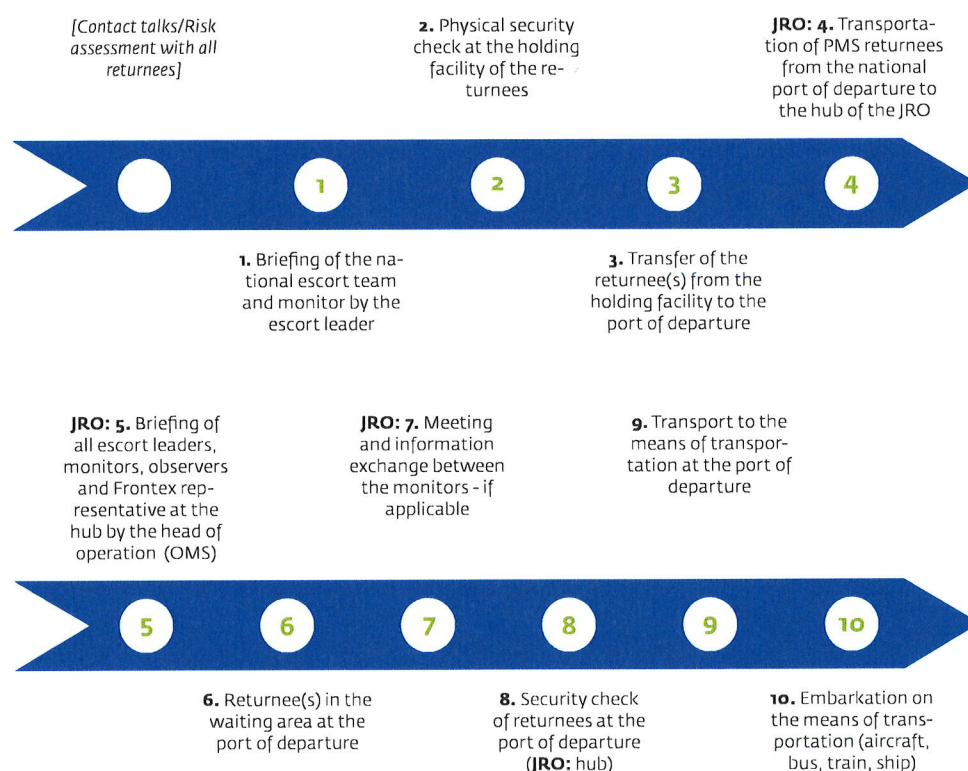
As a general rule, the monitor should try to be where things happen throughout a forced-return operation. This means, that if something happens they can be present immediately. However, if, for example the pilot has put on the seat-belt sign on the aircraft, the monitor is not allowed to move. The monitor must always bear in mind that they **may not hinder escorts or doctors in their duties or risk being hurt themselves**.

¹³² The monitors are responsible to ensure a visa for their monitoring missions. However, the RSU usually supports the monitors with a letter to the Embassy to facilitate the issuing of a visa. The visa costs are reimbursed to the monitors.

¹³³ Frontex provides all MS with the respective vests.

3-4 Monitoring the pre-departure phase

The pre-departure phase covers the period from leaving the (temporary) holding facility until shortly before or at the moment of embarkation. In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation. The pre-departure phase ends after embarkation on the means of transportation for the return (aircraft/bus/train/ship), or for a JRO, the charter at the hub of the JRO.¹³⁴



¹³⁴ During JROs, this phase starts at the hub, meaning that returnee(s) from the participating Member States (and their escort teams and monitors) have already completed all phases of pre-departure, in-flight (or on board a bus/train) up to the arrival at the hub of the JRO, where for them the procedures start anew in joining the JRO.

Step 1. Briefing of the national escort team and monitor by the escort leader¹³⁵

♦ Positioning of the monitor

No specific position of the monitor is required. The monitor should participate in the briefing where information about the upcoming return operation (destination, time of arrival, Implementation Plan, risk assessment, etc.) is shared. The monitor should introduce themselves to the EL, escorts, and other participants in the return operation.

♦ What to observe

The monitor shall participate in the briefing of the EL and escorts prior to the return operation, in order to:

- ♦ Be introduced to the EL and the team by name and role;
- ♦ Be informed about the outcome of the risk-assessment of the returnees and the operation itself. The monitor shall request information on the returnees, especially regarding alleged hunger strikes, self-injury, threats against escorts, and/or aborted removals;
- ♦ Be informed about the list of authorised and forbidden restraints (including certain materials that might be forbidden);
- ♦ Gather information on whether particular attention has been given to the concerns of vulnerable persons among the returnees; and
- ♦ Acquaint themselves with the Implementation Plan and to receive sufficient information regarding the means of transportation (e.g. type of aircraft used, seating plan, final number of returnees, and PMSs, etc.).

The risk assessment of returnees, the list of authorised (and forbidden) restraints, and the Implementation Plan (security and surveillance plan) are key tools that allow the monitor to decide on priorities and determine which aspects of the return operation may require particular attention. The monitor should pay particular attention to those returnees who are most likely to show uncooperative behaviour based on the outcome of the risk assessment, as these returnees are more likely than others to be restrained as a consequence of their behaviour. Therefore, the monitor should pay particular attention to these returnees in order to observe compliance with fundamental rights.

¹³⁵ In some countries, contact talks are conducted prior to return (e.g. Austria), these contact talks include a first risk assessment. As the contact talks are an exception to the rule, this Background Reader starts with the first step being the briefing of the national escort team and the monitor by the escort leader. In case an individual meeting (contact talk/risk assessment) is held by the authorities with the concerned returnee to inform him/her about the return procedure the monitor should attend such a meeting. If the monitor is not informed about these meetings it should be noted in the report.

Step 2. Physical security check at the holding facility of the returnees

The physical security check takes place to ascertain any risks and to ensure whether the returnee(s) holds any objects that could be used to harm themselves or others. The monitor should, if possible, be present while the returnees are undergoing a physical security check, so as to gather information about incidents e.g. medical problems or self-harm, that may have occurred since the returnees were informed about the return procedure and how they have been treated.¹³⁶

♦ Positioning of the monitor

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

♦ What to observe

The monitor should observe whether:

- ♦ The physical security checks were explained to the returnee by the escorts before they commenced;
- ♦ The security check of a returnee is conducted with appropriate regard to privacy – especially if the returnee is requested to remove their clothing completely;
- ♦ Physical security checks are to be carried out by officers of the same sex (i.e. female returnee – female officer; male returnee – male officer);
- ♦ As a potentially escalating situation is often indicated by a verbal dispute, i.e. shouting and screaming, the door to the room where the security check takes place should not be closed completely but remain ajar;
- ♦ If the monitor is of a different sex than the returnee, they should at least be allowed to hear what is going on during a body search (e.g. with the door kept ajar) and note down in their report if this practice is not followed; and
- ♦ In addition to personal belongings that have to be taken away for security reasons (e.g. a belt), all valuable items such as money and jewellery are collected by the escorts and a protocol listing the items is prepared. The returnee should sign the list and the package containing their personal belongings should be marked with their name. The returnee should be informed about the procedure with regard to their personal belongings - who will keep it during the flight and when will they be returned to the returnee. Precautions have to be taken so as to ensure that personal belongings of different returnees are clearly marked to avoid being mixed up or lost.

¹³⁶ During a JRO, the physical security check applies to returnees of the OMS, as the participating Member State returnees will already have arrived at the JRO port of departure at the hub.

A high level of security needs to be ensured by the escorts for the operation. Thus, returnees undergo a body search to look for objects that could potentially be used for self-harm or for harming others. The following is therefore important to take into account and observe:

- ♦ The monitor should take note whether the escorts deal with such a situation calmly, professionally, and respectfully. Gathering of spectators, use of inappropriate language, or unprofessional (juvenile) behaviour by staff should be reported, and the ELs should be informed; and
- ♦ In case coercive measures are used, the monitor has to report on the techniques used, if they were conducted professionally and to a high standard, and applied proportionally (i.e. if the duration was kept as short and with as minimal an intensity as possible).

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

The monitor shall be present when returnees are picked up by escorts from the (temporary) holding/detention facility.

During a JRO this applies to the returnees of the OMS at the JRO hub, as the PMS escorts usually arrive with their returnees (and monitor(s)) at the port of departure for the JRO.

♦ Positioning of the monitor

Wherever possible, the monitor should be in the same vehicle as the returnees. If more than one vehicle is used to transport the returnees, the monitor, following the instructions of the EL, shall ride with those returnees evaluated to be of a higher risk of resistance or with vulnerable returnees. The monitor shall be seated in the best position to be able to see and hear adequately during the transfer. The decision on where to sit will be taken by the EL, who is best suited to assess the situation. It is important to note that it always remains at the discretion of the EL to decide in which vehicle and where within that vehicle the monitor is to be seated.

♦ What to observe

At this stage, the monitor shall observe whether:

- ♦ The returnees are appropriately dressed. In cases where a belt has to be removed for security reasons it has to be guaranteed that trousers will stay up without having to be held by hands. If shoelaces have to be removed, the returnees should still be able to walk normally and not lose their shoes while walking;
- ♦ The personal belongings of the returnees are packed in proper bags and boxes and have a nametag, so the returnees can identify their luggage when they reach the country of return. Depending on the number of returnees, a high number of bags and boxes may have to be prepared for the transfer to the port of departure. The bags and boxes should be of sufficient quality to withstand the journey and be collected upon arrival in the country of return. If a returnee does not have appropriate bags or packaging for their belongings, these should be provided by the holding/detention or waiting facility;



- ♦ Different types of vehicles can be used to transfer returnees from a holding/detention facility to the port of departure. Depending on the outcome of the risk assessment, a returnee may be transferred in a civil vehicle, e.g. a coach or bus, or police-secured transport which may be a police car or van with a specially adapted cell;
- ♦ The vehicles for transportation of returnees are clean and well maintained;
- ♦ Depending on the season and weather conditions, the air-conditioning system, if one exists, should be used appropriately. This should equally be applied in the seating area and holding cells;
- ♦ The time returnees have to spend in cells inside a police coach is limited to the minimum possible;
- ♦ Cells inside a police coach are not used as waiting areas;
- ♦ If waiting time cannot be avoided, the doors should stay open, if reconcilable with the risk assessment, and guarded by an escort; and
- ♦ If vulnerable persons are among the returnees, the monitor should observe how they are handled and treated and whether different procedures are used for this specific group.¹³⁷ In cases of a separate transfer, the monitor needs to decide which group s/he will accompany after consultation with the EL, who has the final say.

In cases where a family member, such as a parent, resists removal and therefore has to be separated from the family while transferred to the airport or any other port of departure, the monitor should pay attention to whether:

- ♦ The family is kept informed of the situation regarding the resisting family member and vice versa; and
- ♦ The length of separation is kept as short as possible.

Step 4. (JRO) Transportation of PMS returnees from the national port of departure to the hub of the JRO

In cases of a JRO, the PMS has to transport their returnees to the hub of the operation. This specific step "transportation of PMS returnees from the national port of departure to the hub of the JRO" includes some of the steps that are described in detail below:

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

Step 9. Transport to the means of transportation at the port of departure;

Step 10. Embarkation on the means of transportation (aircraft, bus, train, ship);

and the in-flight phase.

¹³⁷ There might be different practices amongst participating States with regard to the transportation of vulnerable groups to the final means of transportation – they may be brought in a separate vehicle or they may be transported jointly with the whole group of returnees etc.

Step 5. (JRO) Briefing of all escort leaders, monitors, observers, and Frontex representatives at the hub by the head of operation (OMS)

The monitor shall take part in the briefing for all ELs, monitors, observers, and Frontex representatives. This is conducted by the head of operation from the OMS and is where all introductions are made.

♦ Positioning of the monitor

No specific position of the monitor is required. The monitor shall introduce themselves and request information on the returnees, especially relating to incidents on the way to the hub of the JRO as well as information regarding the use of coercive measures.

♦ What to observe

The monitor shall participate in the briefing of ELs of PMSs prior to the return operation, in order to:

- ♦ Be introduced to the ELs by name and role;
- ♦ Be informed about the risk-assessment of the returnees, the agreed JRO list of authorised/forbidden restraints (if it has not been shared previously), and the operation itself including security, surveillance plan, seating plan, etc.; and
- ♦ Monitor whether specific needs of vulnerable persons among the returnees have been considered and taken into account.

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

During both NROs and JROs, returnees wait with their escorts (and the monitor(s)) until the departure of the means of transportation in an adequate waiting or holding area that allows for supervision and security. The layout of the waiting area may vary, depending on the infrastructure of the waiting facility.

♦ Positioning of the monitor

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

♦ What to observe

At this stage the monitor shall observe whether:

- ♦ Depending on the number of returnees and the risk-assessment, an emergency doctor is present or on call. During JROs coordinated by Frontex, the presence of appropriate medical staff during the entire duration is required¹³⁸;

¹³⁸ Article 14 of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.



- ♦ Medical staff have checked on returnees with medical problems or special needs;
- ♦ Agitated returnees are separated from other returnees to calm the situation and avoid tension;
- ♦ Sufficient catering (food, water, non-alcoholic beverages) is offered to the returnee(s), even in cases of unexpected delays (technical problems with the means of transportation, bad weather conditions, etc.). It should be considered that due to the schedule of the return operation and the related transfer, returnees may have missed a meal in the holding/detention facility;
- ♦ Returnees should be offered the opportunity to use the toilet;
- ♦ The needs of smokers are addressed as far as possible;
- ♦ Religious needs are addressed as far as possible; and
- ♦ The waiting facility is equipped properly (e.g. sufficient number of chairs, surveillance camera, etc.).

Step 7. (JRO) Meeting and information exchange between the monitors - if applicable

Monitors that were on a national feeder to the JRO may, though not necessarily, continue monitoring whilst on the route from the hub to the country/countries of return of the JRO. Whenever there are several monitors involved, it is advisable to exchange relevant information on the returnees and the previous national feeder operations between the different monitors.

- ♦ **Positioning of the monitor**

National monitors that observe a national feeder to the JRO hub will stay with the escorts and the returnees of their PMS in the waiting area at the port of departure at the hub. Therefore, in most cases the national monitors and the monitors from the Pool exchange information in the waiting area at the port of departure.

- ♦ **What to observe**

The monitor from the Pool shall introduce themselves to the national monitor(s) present. The monitors shall exchange information on the status of the return operation, challenges they may encounter or that are foreseen, and information on vulnerable groups.

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

As part of a forced-return operation by air, both an NRO and a JRO might include an additional security check of the returnees and their luggage at the airport, depending on the requirements of the airport authority and the regulations in the Member State. This security check is in most cases undertaken by the official airport security personnel.

- ♦ **Positioning of the monitor**

The monitor should suitably position themselves in order to observe the screening of the returnees. The monitor must also undergo the security check.

- ♦ **What to observe**

The monitor must observe the individual conducting of the security check and whether the usual security protocol is followed.

Step 9. Transport to the means of transportation at the port of departure

The escorts should accompany the returnees, remaining vigilant and taking precautions against possible self-inflicted injuries.

- ♦ **Positioning of the monitor**

On the transfer transport (coach, bus, car, etc.), to the means for final removal (aircraft, bus, train, ship), the monitor should, if possible, be assigned a seat either in the middle or at the back so as to have a good overview of the escorts and the returnees.

Arriving at the aircraft, bus, train, or ship to be used for the removal, the monitor should be one of the first to exit and position themselves in order to observe how the returnees and escorts leave the coach or bus. In case a returnee refuses to disembark, the monitor should closely observe the situation, without hindering the escorts.

- ♦ **What to observe**

At this stage the monitor shall observe whether:

- ♦ The escorts are close to the returnees while guiding them from the coach or bus to the means of transportation for removal;
- ♦ Provisions against self-inflicted injuries by the returnees are taken into account, as well as the related infrastructure. At the airport, the use of a covered mobile gangway; number and position of escorts accompanying the returnees up the gangway; and the approach to the bus and trains on the respective platform;
- ♦ The restraints and materials are authorised for use during the transport and embarkation, and are only used if strictly necessary; and
- ♦ If vulnerable persons are among the returnees, the monitor may observe how they are attended to, and whether different and adequate ways for embarkation are used for this specific group (i.e. families with small children, individuals with disabilities, etc.).



Step 10. Embarkation on the means of transportation (aircraft, bus, train, ship)

- ◆ **Positioning of the monitor**

For the embarkation process, the monitor has to position themselves at the entrance of the means of transportation (in the case of an aircraft, at the lower end of the gangway), or the respective door of the bus, train or ship in order to be able to observe the procedure. Where a returnee refuses to embark, the monitor should closely observe the situation without hindering the escorts.

- ◆ **What to observe**

At this stage the monitor shall observe whether:

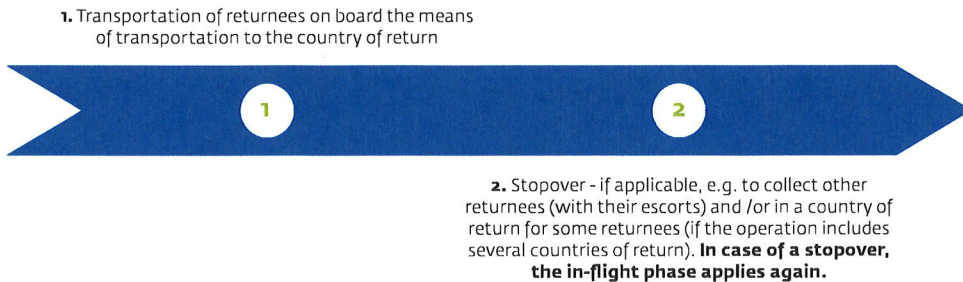
- ◆ The escorts accompany those returnees that have demonstrated agitation or increasing uncooperative behaviour (or resistance) when disembarking the coach or bus, while escorting them to the means of transportation for removal and further onto the seat on board the aircraft, bus, train or ship without unnecessary use of force.

3.5 Monitoring the in-flight phase

The in-flight phase begins once all passengers have embarked on the means of transportation (e.g. aircraft, bus, train, ship) used for the removal and the airplane door is closed. It ends with the arrival at the final destination, i.e. the country of return or, in case of an unsuccessful return, back to the country of departure, including transit via another country.

The monitor should pay special attention to the following;

- ◆ The seating positions, including the location of children in relation to other returnees and the adult(s) accompanying them;
- ◆ Any incident that takes place and the behaviour/response of escorts;
- ◆ Any means of restraint that were used; the mode of use and the duration of the application in terms of necessity, proportionality and accountability;
- ◆ Medical incidents, and the presence of a doctor or other medical personnel;
- ◆ The provision of food and drink;
- ◆ Lavatory procedures; and
- ◆ Complaints made by returnees and the response to these.



Step 1. Transportation of returnees on board the means of transportation to the country of return

♦ **Positioning of the monitor**

Different means of transportation come with different interior designs varying from one continuous cabin for passengers to numerous segregated compartments. In general, the monitor should be assigned to a seat in the middle or at the back of the transport vehicle or cabin (aircraft, train, ship) to observe the escorts and the returnees. If a specific returnee has to be observed more closely, the monitor should take a seat in one of the rows close to this returnee, where possible.

The monitor should avoid being seated in a place where their view or ability to move is restricted. The EL should inform the monitor during the briefing about the seating arrangement, and shall address any questions or concerns. When more than one toilet is available, the monitor shall use the toilet designated for the escorts.

Monitors should not remain seated throughout the whole trip. It is advised to move around from time to time in order to observe the situation.¹³⁹

Should two monitors be observing this phase, ideally one monitor should be seated at the back and the other in the middle or at the front in order to obtain a strategic overview.

Monitors shall stay awake for the duration of the entire operation/transportation. During the journey, the returnees might become emotional. They might start crying, screaming or singing loudly, insult or misbehave towards the escorts, and even become violent. This situation may last for several hours. If the escorts have to use coercive measures, the space available on board the transport vehicle is very limited. Other returnees may be in close proximity and could therefore act in solidarity with the returnees concerned. This could escalate tension and make the operation more complex.

¹³⁹ In the case of a land operation this does not apply. Monitors shall decide whether to sit at the back or in the middle of a bus or comply with the seating plan and/or the instructions of the EL/head of operation and shall not move around.



♦ **What to observe**

At this stage the monitor shall observe whether:

- ♦ The chartered aircraft or bus, or booked cabin on a train or ship meets the requirements of the return operation as well as the needs of returnees, including vulnerable groups, and escorts (relating to availability of seats, toilets, temperature, etc.);
- ♦ Toilet visits take place regularly, in line with the needs of returnees, and are properly conducted;
- ♦ Sufficient catering (food, water, non-alcoholic beverages, including specific health and religious requirements) is offered to returnees. Escorts and returnees should be offered the same kind of food and drinks. Hot liquids, e.g. coffee, tea and cutlery, should be avoided.¹⁴⁰ In order to evaluate whether the catering for returnees during the return operation is adequate or not, the monitor should, in case of an operation by air, consume the food and/or drinks provided by the airline. The provision of food during an operation by land differs, and might not be provided to all participants. Thus, the monitor, e.g. for operations by bus, might be asked to take food and water for themselves;
- ♦ In cases where a means of restraint is used, the escorts check the returnee regularly. The monitor should observe means of restraint for as long as they are in place and document their use, including the exact duration, as accurately as possible. If the monitor has reason to believe that a means of restraint is no longer appropriate, or that the intensity could be reduced, they could communicate this to the EL and/or head of operation of the JRO;¹⁴¹
- ♦ In cases of perceived imminent danger, the monitor has to inform the EL (JRO: head of operation) immediately;
- ♦ Access to medical care during the transportation is guaranteed. Should the monitor have any questions, they should ask the doctor/paramedic on board for clarification. The role of the monitor is not to double-check the medical care provided by the doctor, but to report what type of care was provided; and
- ♦ Where a returnee was cleared as "fit-to-travel" to a limited extent, if the condition of the return operation complies with the medical restrictions throughout the whole period of transportation. *The use of sedatives to facilitate removal is forbidden without prejudice to emergency measures under medical supervision to ensure flight security.*¹⁴²

¹⁴⁰ Ideal catering would include sandwiches and should only require the use of spoons. Cutlery (knives and forks) should always be avoided.

¹⁴¹ The decision regarding the use or termination of means of restraint, however, remains strictly with the escort leader and the head of operation, in case of a JRO.

¹⁴² Article 7(4) of the Code of Conduct for Return Operations and Return Interventions Coordinated and Organised by Frontex.

Step 2. Stopover – if applicable

If a stopover is not only used for re-fuelling but also to pick up further escorts and returnees, the monitor should observe their embarkation. Where agitated returnees have to be carried onto the transport vehicle and fully fixed to the seat, a calm situation can quickly deteriorate.

In case of a stopover involving the embarkation of a new group of returnees, seating arrangements should be planned in advance so that the new group will not pass in front of already seated passengers while boarding the means of transportation. If any of the returnees that are embarking at this time are agitated and have to be carried onto the means of transportation and fully fixed to their seat, an existing calm situation could deteriorate.

Ideally, the monitor(s) already on board and any newly arrived monitor(s), should have time to brief each other. If the monitor in charge of the new group of returnees joining the operation does not come on board, the monitor should speak with the EL in charge of the new group of returnees, to gain information related to risks and the use of restraints; any vulnerable groups, etc. Exchange of information should take place verbally, thus reducing the possibility of misunderstandings and misinterpretation of written information.

During a long stopover (overnight), following the handover of the returnees to the country of return, the monitor is advised to stay in the same accommodation as the escorts. Information about the costs covered will be provided prior to the return operation.

3.6 Monitoring the arrival phase

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

The readmission of a returnee can be refused by the national authorities of the country of return. This may be the case when documents are not accepted, if there are doubts with regard to the nationality of the returnee, or the returnee is in need of specific medical care and the country of return does not want to provide it or is not in a position to provide such care. The number of such refusals is usually low, especially in JROs.

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





Step 1. Arrival by the means of transportation in the country of return

- **Positioning of the monitor**

Upon arrival in the country of return, the monitor should stay close to the group of returnees that are being prepared for the hand-over to the national authorities. Normally one country after another prepares themselves for the actual hand-over.

- **What to observe**

At this stage the monitor shall observe whether:

- ♦ Remaining hand-cuffs, body-cuffs or other restraints are removed following arrival, if possible;
- ♦ All personal belongings, which were held for security reasons, are given back to the right returnees; and
- ♦ Validated complaints of returnees, e.g. concerning lost or damaged luggage, money or documents, are handled efficiently by the escorts. The monitor should include details of other complaints, e.g. against escorts, in the report.

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

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

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