

- **Positioning of the monitor**

When the returnees are handed over to the local officials inside the means of transportation, the monitor should be seated in one of the front rows/close to the entrance, where s/he has a good view and is within hearing range. Should the returnees disembark and be handed over to the national authorities at an arrival building, the monitor should preferably accompany the escorts and the returnees to the place where the returnees are handed over.

- **What to observe**

At this stage the monitor shall observe whether:

- ♦ Remaining hand-cuffs, body-cuffs or other restraints have been removed immediately after arrival, if possible;
- ♦ All personal belongings, which were taken away for security reasons have been handed over to the returnee(s) prior to disembarkation;
- ♦ The luggage of the returnee(s) is still in good condition and returned to the returnee(s) in an organised way; and
- ♦ The returnee(s) is handed over to the national authorities by the EL in a calm and professional way, especially where they have caused difficulty for the escorts during the return operation or have complained to the national authorities about the treatment received during the return.

In case of an operation by air, if the aircraft is returning immediately after the handover and the monitor remains on board, they should watch from a window seat, or if possible from a position on the gangway, how and if the luggage was delivered to the returnees. Also, they should observe how the returnees were treated by local policemen or border guards. Any incidents or mistreatment witnessed should be documented in the monitoring report. In preparing future return operations to this country of return, the authorities in the countries of departure could make use of this information to see how to safeguard the correct treatment of the returnees following arrival.

Step 3. Stopover – if applicable

It is rare that an overnight stay in the country of return is necessary, as the OMS will try to organise a return directly after arrival. However, if a forced-return covers long distances, or, for example, in cases of a return by air, an overnight stay might be required due to airport hours. Also, a technical problem of the transport vehicle might make an overnight stay necessary. In these cases, different procedures apply in different countries. In very rare cases, returnees are not accepted by national authorities in the country of return and have to be part of an overnight stay. The monitoring tasks related to this specific situation are not included in this Background Reader.



3.7 Monitoring the return-flight phase

During the return flight, returnees are normally not on board and the de-briefing of the operation usually takes place on board the means of transportation. Should, however, unaccepted returnees be on board, the monitor should stay close to these returnees throughout the whole return operation and all duties of the monitor continue to apply as described in the in-flight and arrival phases above.



Step 1. Return to the country of departure

- ◆ **Positioning of the monitor**

As the number of refused returnees, if any, on a forced-return operation is normally low, the monitor should remain close to those returnee(s) on the journey back.

- ◆ **What to observe**

- ◆ See *monitoring the in-flight and arrival phase* - all relevant steps apply; and
- ◆ Depending on national procedures, either the same escorts remain responsible for an unsuccessfully returned individual, or a back-up team of escorts, if available, may be responsible for the returnee on the flight back to the country of departure.

Step 2. Debriefing during the return leg (in case of unaccepted returnees, debriefing with the monitor may take place upon arrival in the country of departure)

Monitors shall participate in the debriefings of the EL, escorts and other participants, as applicable. They shall note who was present, when and where the debriefing was held, and provide a brief account of the main findings/observations to the EL, in particular when an incident is to be reported. The monitor shall inform the EL about any incidents that they will mention in the report. Feedback from the EL, if any, shall be mentioned objectively in the monitoring report. The de-briefing is normally conducted during the return leg on board of the means of transportation. The de-briefing may also take place following arrival in the country of departure.

Step 3. Handover of unaccepted returnees to the authorities back in the country of departure (JRO: hub) - if applicable

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

3.8 Collecting return operations (CROs)

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

3.9 Monitoring specific incidents

In relation to a specific incident, the following details should be taken note of;

- ♦ Description of facts e.g. what happened during the incident (including location and time);
- ♦ The role of each person in the incident;
- ♦ Whether the actions were proportional, necessary, and accountable and the basis for that assessment;
- ♦ What factors triggered the incident;
- ♦ What could be done to address concerns; and
- ♦ What activities were performed well and by whom, e.g. escort, EL, returnee, etc.

According to the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, individuals participating in Frontex coordinated activities are required to report any incidents involving suspected or alleged violations of fundamental rights or of the Frontex CoCs via the appropriate reporting channel, for example via the Frontex Serious Incident Reporting (SIR) system.¹⁴³ This system is usually used by escorts to report any incident of a sensitive or public interest nature, including any fundamental rights violations, as defined in the JRO Implementation Plan. It is crucial to ensure reporting of incidents, because the evaluation of such reports helps Frontex to adapt future JROs.¹⁴⁴

¹⁴³ Frontex Guide for JROs, p. 12.

¹⁴⁴ Frontex Guide for JROs, p. 17.

3.10 Monitoring the use of force and means of restraint

The monitor must take particularly careful notes each time force or means of restraint are applied on a returnee. This concerns both when means of restraint or force are applied for the first time, or needs to be applied additionally during the operation, following a previous incident; or an additional means of restraints is applied following one already applied, or, the same means of restraint is re-applied to the same returnee. Each and every time force or a means of restraint is used this should be documented.

Any use of force should be based on an individual risk assessment and should be re-evaluated by the escorts throughout the forced-return operation based on a dynamic risk assessment. The monitor should observe this and should note when and what type of restraint was used and for how long. The monitor should also note information on the effects of the method used on the returnee.

This is important as the monitor will have to fill in a separate form for each instance in the monitoring report (for more specific information please refer to Chapter 4 covering reporting). The monitor should request information, including details about the measures applied, from the escort at an appropriate time. The monitor should also take notes of any positive handling of a situation, which might help to establish good practices.

To properly assess the legality of the use of force, it is necessary that the monitor is conversant with the different types of restraint measures allowed by the national legal framework¹⁴⁵. Monitors should ideally experience their practical application/implementation as part of their training in order to be knowledgeable on various techniques and their application. The monitor's role is to check the use of a given restraint, their impact, applied duration, whether or not it is based on a risk-assessment or a situation arising in accordance with, or in excess of, what is prescribed.

3.11 Role of escorts, escort leaders, back-up team and Frontex representative

Escorts are the law enforcement officers/security personnel responsible for accompanying third-country nationals being forcibly returned. Escorts execute a return decision taken by the competent state authorities. Each (national) group of escorts has an EL in charge of managing the (respective national) group of escorts.¹⁴⁶ The role of an escort is to ensure and enforce the return of the respective returnees in a safe and humane manner and according to the relevant national legal framework and where operations are coordinated by Frontex, according to both Frontex CoCs.

Escorts are usually provided by the OMS and the PMS, but there is also the possibility that a MS request escorts from the Pool of Forced-Return Escorts, created by the EBCG Regulation and approved by Frontex Management Board Decision, where a profile is defined.

¹⁴⁵ Prior to a return operation, the respective National Country Factsheet of the requesting Member State shall be consulted. This Factsheet contains information regarding the national return procedures, permitted means of restraint, and relevant information on the national monitoring, as well as complaint mechanisms.

¹⁴⁶ The allocation of the role of ELs and the ratio of escorts per escort leader differs amongst Member States. For example, it might be one EL per five returnees or one escort leader per group of escorts for a returnee/family, etc. During a JRO, each national team (even though it might have more than one EL present) appoints one EL with the function of a "contact point" for the head of operation.

The back-up team is a group of escorts not assigned to a specific returnee/family, but acting as support to the escorts of both OMS and PMS(s) (i.e. assisting if necessary during violent incidents, or during lavatory procedures, etc.). The employment of a back-up team and their number of escorts during NROs differs among Member States. In practice numbers are considered based on various factors, such as the information from the risk assessment, the number of returnees on board, the travel time, and any other possible difficulties that might be encountered. During a JRO, the OMS is responsible for providing an appropriate escort back-up team. The PMSs may also provide their own back-up team, if necessary.

It is important that escorts are respectful of the returnees at all times. It is their responsibility to apply necessary safety measures, when required, to enable the removal and, at the same time, to ensure that the returnees poses no danger to themselves or other participants of the return operation.

3.11.1 Main tasks of escorts

The main tasks of escorts include;

- ♦ Implementing/enforcing the return operation in line with the respective national legislation, applicable fundamental rights and codes of conduct in place;
- ♦ Guaranteeing the safety of their assigned returnees and participants of the forced-return operation, including the (proportional) use of force as a last resort;
- ♦ The provision of all relevant information on the planned removal of the returnees prior to their return, including the information that the return operation will run smoother if the returnee co-operates, and that if they do not co-operate, their removal will be enforced;
- ♦ Conducting risk assessments on the co-operation of returnees and sharing of that information/assessment with relevant participants of the forced-return operation during the briefing;
- ♦ Following and implementing the security and surveillance plan on board the aircraft defined by the head of operation of the OMS (movements within the cabin, meals, etc.);¹⁴⁷
- ♦ The provision of all relevant information (technicalities, procedures, Implementation Plan, seating plan, etc.) to all participants of a return operation during the briefing; and
- ♦ In co-operation with the EL, ensure the handover of the returnees to the respective national authorities in the country of return.

During the return operation, the escorts have to ensure the returnees' safety as well as the safety of the other participants. If necessary, they are authorised to apply force to carry out the return, but the desired strategy is one of de-escalation and calming of any situation. Escorts are specifically trained for such scenarios. It is the duty of escorts to communicate important facts (i.e. self-harm, obstructive behaviour, etc.) to the EL (JRO: head of operation). In addition, escorts should assist the returnees where necessary.

¹⁴⁷ Common Guidelines, Annex of the 2004 Council decision on joint removal: 3.1. (Council of Europe 2004: 6).

The number of escorts accompanying the return will depend on the risk assessment conducted. The practice differs amongst Member States. If a female is to be returned, it is recommended that at least one woman should be part of the escort team. The same applies in the case of minors (especially if no guardian accompanies the minor) or families to be returned.

It is important to note that while escorts are allowed to use force and necessary means of restraint (proportionally and not exceeding reasonable force), “returnees should be briefed regarding the enforcement of their removal and advised that it is in their interest to cooperate fully with the escorts. It should be made clear that any disruptive behaviour will not be tolerated and will not lead to the aborting of the removal operation”.¹⁴⁸

3.11.2 Special tasks of the escort leader

The term “escort leader” (EL) refers to the escorts who are, in accordance with the instructions given, in charge of managing a national group of escorts during a JRO. Each OMS and PMS appoints its own EL.¹⁴⁹ Each PMS appoints one EL who as head of their national delegation is also the main contact person for the head of the whole operation. The national EL is also the one that shares information, participates in briefings, etc.

One EL is always the head of operation. The term “head of operation” refers to the person appointed by the OMS as having the overall responsibility for the JRO. Where no particular person is appointed, the EL of the OMS is to be considered as the head of the JRO.¹⁵⁰ The head of operation (or OMS EL) may decide upon the necessary termination of a forced-return operation.

After the return operation, the **EL is to provide a written report** to the authority that ordered the return. It must include information on the use of force (reason, techniques applied, and duration) as well as any other incidents that occurred. In case of an investigation and/or any findings of wrongdoing, the usual disciplinary procedures as for other law enforcement officers apply to escorts.

3.11.3 Skills required by escorts

In the majority of Member States, escorts are law enforcement officers who have been subject to standard law enforcement training. Escorts then receive additional, specialised training to fulfil their specific duties. In some countries, they form part of a special unit. In other countries, however, the escorts are from private security companies, which the State engages for these specific tasks.¹⁵¹ There is no unified approach to the selection and training of escorts across the Member States. However, Frontex provides uniform EL training and escort training to both Member States and third-countries (for CROs). In most countries escorts receive specific training aimed at meeting the requirements of escorting individuals during forced-returns and often benefit from on-going training.

¹⁴⁸ 2.1(b) of the Annex of the 2004 Council decision on joint removal. (Council of Europe 2004: 5)

¹⁴⁹ Article 3(h) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

¹⁵⁰ Article 3(j) of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

¹⁵¹ In the UK, escorts come from private security companies and are not law enforcement officers. They are, however, specifically trained and authorised to use force, and are accompanied by one law enforcement officer in charge.

Overall, escorts should receive relevant training, amongst others things, related to:

- ♦ Regular practical exercise on the use of force and means of restraint, including mitigation of risks related to this (e.g. positional asphyxia syndrome¹⁵²);
- ♦ Legal training including on fundamental rights;
- ♦ De-escalation strategies;
- ♦ Emergency procedures on board an aircraft (and/or other means of transport); and
- ♦ First-aid training.

In relation to "soft-skills" required by escorts, their behaviour should be calm, patient, polite, non-discriminatory, and respectful. Knowledge of foreign languages is not a must but always considered an asset among escorts. During JROs coordinated by Frontex, ELs should at least possess sufficient knowledge of English, as briefings are usually held in English. Article 14 of the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex further establishes the obligation that the OMS provides suitable interpreters during the JRO based on an assessment of the returnees' needs and escorts' language skills.

3.12 Pre-departure phase

During the pre-departure phase the escort team is briefed while the returnee(s) may stay in a holding/waiting/detention facility at the place of embarkation. Respective national escorts will search each returnee thoroughly (in accordance with the national law) before leaving the Member State of first departure and before boarding.

Before the embarkation of the joint flight, the PMS EL and other relevant JRO participants will attend an operational briefing organised by the OMS EL. The briefing point and time will be determined by the OMS's EL in due time. The OMS EL discusses the latest updates including the passenger lists, seating plan, boarding and in-flight procedures, arrival phase and the security, including the use of coercive measures. Each PMS EL provides the OMS EL with the information on the current mental and physical state of the returnees. The PMS ELs should subsequently brief their escorts with this latest information. A separate briefing is conducted by the organiser of the JRO with the cockpit and the cabin crew.

During the pre-departure phase, special attention should also be paid to valuable personal belongings and baggage of the returnees.

¹⁵² This is a form of asphyxia which occurs when someone's position prevents him/her from breathing adequately. A small but significant number of people die suddenly and without apparent reason during restraint by police, prison (corrections) officers, and health care staff. Positional asphyxia may be factor in some of these deaths.

Embarkation

- ♦ The cabin of the aircraft is thoroughly searched by the back-up team for any dangerous items prior to embarkation;
- ♦ Boarding takes place in a secure area. Escorts and returnees are seated as directed by the OMS escorts. Pregnant women (single or with families) and families with children are enabled to board the aircraft separately and are seated separately from other returnees. The seating plan is distributed during the operational briefing before the departure;
- ♦ Emergency exit rows are not to be utilised for seating of returnees; and
- ♦ Once on board, all passengers take their seats and remain seated.

3.13 The in-flight phase

The in-flight phase starts with the closure of the doors of the means of transportation (e.g. aircraft, bus, train, ship) used for the removal and ends with the arrival at the final destination, including the transit via another country.

All escorts (including ELs and head of operation) ensure the safety of their returnees and that of other participants of the forced-return operation. During the in-flight phase:

- ♦ No member leaves their designated returnee unless relieved by another escort or by a back-up team member;
- ♦ Any movement of a returnee from a seat is granted according to the rules set during the operational briefing; and
- ♦ Toilet(s) for the sole use of returnees are designated and clearly labelled. Only one escorted returnee at the time is permitted to move on board in order to access the toilet. Escorts are advised to block the toilet door open (i.e. keep it ajar) in order to observe so that the returnee does not inflict any self-harm.

During this phase a security back-up team may operate in the aircraft. This team isolates and deals with any issues/incidents as instructed by the Escort Leader, as well as securing the exit doors. All relevant incidents during this phase have to be brought to the attention of the OMS EL.

3.14 Stopover

After arrival of the aircraft at the stopover airport, the OMS EL meets with a representative of the stopover Member State.

- ♦ The OMS EL and the PMS ELs embark at the stopover. The OMS EL leads an operational briefing with the same participants as during the one organised before departure. The PMS ELs should subsequently brief their escorts with this latest information;
- ♦ As the power is exercised by the authorities of the Member State where the stopover takes place, the boarding procedure and the use of force are under the responsibility of the stopover Member State, who assists other PMSs in embarking, if needed; and

- Other participants remain on board the main aircraft.

3.15 Arrival phase

The arrival phase covers the period starting from arrival at the country of return and ending after the returnee(s) have been handed over to the national authorities in the country of return.

- When the aircraft comes to a stop and a complete standstill at the final parking position any restraint should be removed from the returnees;
- At this point, they are handed back their personal belongings, which were transported in the cabin;
- The OMS EL makes the first contact with the representative of the country of return in order to prepare the hand-over;
- The OMS EL and the EL of each PMS meet relevant representatives of the country of return and hand over the travel documents and other relevant documentation, while presenting the returnees;
- Baggage in the hold is offloaded; and
- The OMS EL informs the PMS ELs about the necessity to disembark the aircraft or not, either for a planned overnight stay or for administrative or technical reasons.

3.16 Return phase

In the case any returnee is refused readmission to the country of return, the escort team escorts the returnees back until the place of departure. As mentioned above, this phase is then also monitored. The debriefing is normally conducted during the return phase, with all the relevant JRO participants, in particular the ELs, the back-up team leader, the monitor and the Frontex representative. The debriefing can also take place back at the hub/country of departure. All PMS ELs and the OMS EL are respectfully asked to complete a "JRO Debriefing Form". The feedback provided in the forms is utilised during the debriefing and by Frontex for the Final Return Operation Report.

For CROs, the pre-departure and the hand-over, and in-flight phases are applicable.

3.17 Use of force and means of restraints¹⁵³

The Twenty Guidelines on forced-returns recommends that in order to limit the use of force, all individuals involved as well as the competent authorities should seek the cooperation of returnees at all stages of the return process.¹⁵⁴ This principle is also included in Article 6 of the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex. Information about possible hunger strikes, self-injurious behaviour, threats against escorts, or actions taken to abort a forced-return operation must be taken into account, even though this information does not automatically justify using force or means of restraint in a preventive manner.

¹⁵³ Compare with Common Guidelines in the Annex of the 2004 Council decision on joint removal (Council of Europe 2004: 4ff).

¹⁵⁴ Twenty Guidelines on Forced-Returns, Council of Europe, 2005, Guideline 15.

Means of restraint can thus be applied to safeguard the health and safety of the returnee, of escorts, other participants (including monitors, crew and support staff, or other passengers), and property. However, in the case of the use of force, all reasonable efforts must first be made to manage violent,¹⁵⁵ recalcitrant,¹⁵⁶ or disturbed behaviour by persuasion or other means that do not entail the use of restraint. The use of a restraint technique should only be considered when all other practical means of managing the situation, such as de-escalation, verbal persuasion, and voluntary 'time out', have failed or are judged by the escort to be likely to fail in the circumstances.

When restraint is necessary, only authorised restraining techniques and material are to be employed. Nonetheless, in these situations, proportionality, necessity, and accountability are paramount to make the use of force justifiable. Additionally, the dignity, privacy, cultural values, and any special needs of the person being returned should always be considered as far as possible. Sometimes force may be necessary in order to apply the authorised means of restraint. The restrictive space of a carrier (aircraft, ship, train, bus) may restrict the range of alternatives available to escorts. The monitor must observe carefully and be able to make an objective judgement to be reflected in their report. It is highly recommended that the monitors, when in doubt, talk to the EL to understand the escorts account for the use of force and the measures applied after the incident is over.

Article 7 of the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, covers the use of coercive measures, establishing the following standards to be applied during a JRO:

1. The use of coercive measures must be legal, necessary and proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and their physical integrity. The use of coercive measures takes appropriate account of the individual circumstances of each person, such as their vulnerable condition;
2. Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property;
3. Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited. The relevant escort leader periodically reviews the continuing necessity and proportionality of deploying coercive measures, and particularly of applying means of restraint, when these are used for prolonged periods, based on a dynamic risk assessment;
4. The OMS and Frontex provide for a list of authorised restraints in the operational documents in advance of the RO or RI. Where applicable, this list must be distributed to the relevant PMSs prior to the RO or RI. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures under medical supervision to ensure flight security;

¹⁵⁵ Violent/violence is understood as 'Any incident in which a person is abused, threatened, or assaulted. This includes an explicit or implicit challenge to their safety, well-being, or health. The resulting harm may be physical, emotional or psychological.' (HM Prison Service Prison Service Order 2750, London: NOMS, 2007).

¹⁵⁶ Obstinate and uncooperative attitude towards authority or discipline.

5. 5. No PMS participants are required to use coercive measures not allowed under their national legislation even if those measures are accepted by the OMS and Frontex for that particular RO or RI.¹⁵⁷

3.17.1 Use of means of restraint

Means of restraint should only be used:

- ♦ When strictly necessary. For instance, in cases of resistance of the returnee, or when they are threatening to use violence or self-harm;
- ♦ In line with the individual risk assessment, when established that a returnee is likely to try to resist the return and might resort to violence and/or self-harm in order to prevent it;
- ♦ According to the approved list of authorised and forbidden means of restraints; and/or
- ♦ In accordance with the national law detailing the requirements and limits for the use of restraints as part of a forced-return operation.¹⁵⁸

The means of restraint that might be used during a forced-return operation, depending on the specific national legislation from the different Member States, may include the following:

- ♦ Hand Cuffs (steel, plastic, Velcro, textile);
- ♦ Body Cuffs;
- ♦ Head Protections (helmet, spit mask).

3.17.2 Restraining techniques to be avoided and the risk of positional asphyxia syndrome

Degrading and potentially harmful, even life-threatening techniques are to be avoided. These include:

- ♦ Restraining persons on the floor. For example, techniques such as the 'prone restraint' involves forcing a person face down onto the floor, placing their hands behind their back and putting pressure on their torso, shoulders and neck. This can cause disproportionate discomfort and put the life of the individual in jeopardy when too much force (pressure) is used. If the floor is used as a last resort, then this should be for the shortest period of time and only for the purpose of gaining reasonable control;¹⁵⁹

¹⁵⁷ Article 7 of the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex (2018).

¹⁵⁸ National legislation in some instances "prescribes" the use of certain restraints on returnees as a precautionary measure from the outset during a forced-return operation. Should the restraints be used in accordance with the national legal framework, their legality cannot be questioned by a forced-return monitor. Nevertheless, its use could be assessed in the light of the principles of necessity and proportionality and related recommendations by the monitor could be brought forward.

¹⁵⁹ Nottingham University Hospital NHS, Restraint Policy, 2009.

- ♦ Pregnant women should never be placed in a face down position; and
- ♦ Pressure should not be placed on the neck, especially not around the angle of the jaw or the windpipe. Pressure on the neck, particularly in the region below the angle of the jaw (the carotid sinus) can disturb the nervous control of the heart and lead to a sudden slowing or even stoppage of the heart.

A degree of **positional asphyxia** can result from any restraint position where restriction of the neck, chest wall or diaphragm occurs. See the following illustrative pictures for dangerous positions¹⁶⁰:



Diaphragmatic blockage



Airway plugging

Positional asphyxia (or postural asphyxia) is a form of asphyxia, which occurs when someone's position prevents him/her from breathing adequately. A small but significant number of people die suddenly and without apparent reason during restraint by police, prison (corrections) officers, and healthcare staff. Positional asphyxia is thought to be a factor in some of these deaths. If left in a prone position, even without weight being applied to the back, the person's own body weight can restrict breathing and cause death.¹⁶¹

This **risk increases when**:

- ♦ The head is forced downwards towards the knees;
- ♦ The person is immobilised when seated;
- ♦ The person is on the floor face down;
- ♦ The torso is compressed against or towards the thighs (restricts the diaphragm and compromises lung inflation);
- ♦ The body position of a person results in a partial or complete obstruction of the airway and the subject is unable to escape from that position;

¹⁶⁰ Frontex Guide for JROs, p. 39 (from a Frontex PPT on medical precautionary measures for escort officers developed within a Frontex project by medical doctors for the Medical Doctors' Handbook on Medical Precautionary Measures for Escort Officers).

¹⁶¹ Frontex Guide for JROs, p. 40.

- ♦ Pressure is applied to the back of the neck, torso, or abdomen of a person held in the prone position;
- ♦ Pressure is applied which restricts the shoulder girdle or accessory muscles of respiration while the person is lying down in any position;
- ♦ The person is obese (particularly those with large stomachs and abdomens);
- ♦ The person is a child or small adult;
- ♦ The person has a heightened level of stress (agitated and thus increased heart rate);
- ♦ The person may be suffering respiratory muscle failure related to earlier violent muscle activity (such as a struggle/previous resistance);¹⁶²
- ♦ The person is intoxicated with alcohol or drugs, or has a known history of substance abuse, particularly cocaine; and/or
- ♦ The person is unconscious.¹⁶³

Warning signs of positional asphyxia include:

- ♦ Verbal complaints of being unable to breathe properly together with increased effort;
- ♦ A violent and noisy person suddenly becomes passive, quiet, and tranquil;
- ♦ Blue discolouration to facial skin (this is difficult or impossible to see with very pigmented skin); and/or
- ♦ Gurgling/gasping sounds/foam or mucus coming from the nose or mouth.¹⁶⁴

3.17.3 Specific tasks for escorts in the event restraining techniques are applied

Should restraining techniques be used, the escorts should monitor the health of the person being restrained and actively control how the restraints are being applied.

Escorts always need to ensure that any restraint used is in line with the national legal framework. During JROs co-ordinated by Frontex they have to be in line with the approved list according to the Implementation Plan. They should also ensure that any restraints used are proportionate and necessary, including the validity of the duration of its application.

The escorts should specifically ensure measures to reduce the risk of asphyxia, which include:

- ♦ Once handcuffed, persons should be raised to their feet, placed on a seat or, if violence continues, restrained in the recovery position;
- ♦ Taking care not to put pressure on the person's back as breathing can be restricted, even if the person is placed in the recovery position;

¹⁶² Nottingham University Hospital NHS, Restraint Policy, 2015

¹⁶³ Frontex Guide for JROs, p. 41.

¹⁶⁴ Frontex Guide for JROs, p. 41.

- ♦ Observing the person's condition (e.g. vital signs) continually whilst being restrained, as death can occur suddenly and develop beyond the point of viable resuscitation within seconds rather than minutes;
- ♦ Getting medical assistance immediately if there is any reason for concern regarding the person's condition;¹⁶⁵
- ♦ Supporting and protecting the restrained person's head and neck appropriately;
- ♦ Not compromising the restrained person's airways and breathing;¹⁶⁶
- ♦ Making every effort to use techniques that do not use the deliberate application of pain; and
- ♦ The level of force applied is reasonable and necessary and proportionate to a specific situation, and is applied only for the minimum amount of time necessary.

Where warning signs of pain or risk of loss of life are present, the restrained person must immediately be released or the restraint modified as far as practicable to reduce restriction, and medical personnel must be summoned.

An individual dying from positional asphyxia may not be able to speak or shout prior to collapse. Warning signs related to positional asphyxia include:

- ♦ An individual struggling to breathe;
- ♦ Complaining of being unable to breathe;
- ♦ Evidence or report of an individual feeling sick or vomiting;
- ♦ Swelling, redness, or bloodspots to the face or neck;
- ♦ Marked expansion of the veins in the neck;
- ♦ Individual becoming limp or unresponsive;
- ♦ Sudden changes in behaviour (either escalating or de-escalating);
- ♦ Loss of, or reduced levels of, consciousness; and/or
- ♦ Respiratory or cardiac arrest.¹⁶⁷

¹⁶⁵ Frontex Guide for JROs, p. 42.

¹⁶⁶ Nottingham University Hospitals, 2015.

¹⁶⁷ Nottingham University Hospitals, 2015.

3.18 Reporting on the use of force – a quick check-list

Below is an indicative list and more information on reporting is covered in Chapter 4:

- ✓ Was an individual risk assessment conducted for the returnee?
- ✓ Did the EL/escorts inform the returnee that it is in their interest to co-operate, and that uncooperative behaviour will not stop the return operation?
- ✓ Did the escorts make use of de-escalation and communication skills prior to the use of force?
- ✓ What was the specific situation that required the use of force by the escorts?
- ✓ Was the use of restraint measures in accordance with applicable national law (see National Country Factsheets and Implementation Plan)?
- ✓ In addition to the legal provisions for restraint measures, were they necessary and proportional?
- ✓ How long were restraint measures used for? Was the length reasonable or excessive?
- ✓ Positions that may cause asphyxia are to be avoided. Were such positions applied and were they necessary to control the returnee and limit potentially dangerous situations? Was the returnee closely monitored by the escorts and medical personnel whilst restrained?
- ✓ Was the returnee informed about the possibility to lodge a complaint, and if so how and was there an attempt by the returnee to complain about restraint measures and/or the use of force?
- ✓ Did the escorts follow their obligation to report incidents in relation to the use of force?

3.19 Possible impact of forced-return monitoring and coping strategies for the monitors

It is the task of the monitor during a forced-return operation **to observe and report but never interfere**. The fact that a monitor has no mandate to intervene can, especially in the case of incidents, be very challenging and requires a high level of emotional control during the return operation. There are also effects that a monitor might experience after a return operation.

3.19.1 Impacts during the monitoring mission - how to handle your emotions?

The intuitive reaction of most individuals, when something is perceived as wrong, is to intervene. Indeed, society teaches people to do so. The actual strength of this feeling differs between individuals and might also be related to whether the individual concerned has an extroverted or introverted personality. Nonetheless, observing a situation which goes against an intuitive feeling and refraining from acting upon that feeling is challenging.

The monitor in these situations must remain calm, controlled, and cannot show agitation, or display visible or audible reactions, and under no circumstances can they walk away from the situation.

Also, when approaching the EL with observations, for example, if the monitor feels that in a certain case means of restraint could be loosened or removed, the monitor has to stay calm, controlled and provide suggestions only. **It is always at the discretion of the EL and escorts whether to respond to the observations and suggestions made or not, based on their risk assessment.**

In order to be able to perform the tasks as a monitor, it is paramount that the individual:

- a) Realises that emotions may impede the monitoring task, even to the point of endangering objectivity in reporting; and
- b) Develops and applies strategies to handle these emotions and remains calm and controlled in order to discharge the duties of a monitor.

Individual strategies can be applied, and over time each person may realise what works best for them. However, some **general strategies** that are considered helpful in order to maintain control under stressful and emotional circumstances and in order to be able to continue monitoring, include:

- ♦ To breathe actively and consciously in and out – counting up to 5 and down to 0;
- ♦ To remind yourself of your task as the monitor; if necessary say to yourself in your head (repeating it as often as necessary) that "you cannot intervene, you are not allowed to intervene, focus on what happens"; and
- ♦ To concentrate on taking notes. In all situations, this is the monitor's main task; remind yourself while taking notes, to be as objective as possible.

While observing, monitors can experience a variety of emotions, ranging from compassion, the urge to intervene, frustration at not being able to intervene, indifference (based on the fact that one cannot intervene, or that one has already seen such a situation several times before), to rejection of the individuals they deal with, which can apply to the returnee(s) as well as to the escorts.

3.19.2 Impacts following an actual monitoring mission

Forced-return operations, especially those involving incidents, can have an impact on the monitor even after the operation.

On the one hand, this relates to the fact that the range of emotions described can impact the ability of monitors to report objectively, and thus can negatively impact the performance of the monitor. Therefore, while writing the report, the monitor has to continuously control themselves and check whether what is written is objective and factual.

On the other hand, situations witnessed during a forced-return operation, and the feeling of not having been able to intervene, may impact the wellbeing of the monitor even long after the operation. Since the monitor will most likely not be observing a forced-return operation

every day or several times a week, secondary trauma (also called vicarious trauma) might not necessarily apply.¹⁶⁸ Nonetheless, being subjected to stressful and difficult situations, as well as not being able to intervene, can have a lasting impact. The first step is realising that this has happened, which is closely related to careful self-observation.

Some symptoms that are related to secondary trauma include:¹⁶⁹

- ♦ Intrusive thoughts;
- ♦ Chronic fatigue;
- ♦ Sadness;
- ♦ Anger;
- ♦ Poor concentration;
- ♦ Detachment;
- ♦ Emotional exhaustion;
- ♦ Fearfulness;
- ♦ Shame;
- ♦ Absenteeism; and/or
- ♦ Alcohol or drug abuse.

3.19.3 Coping strategies

If a monitor experiences any of the above symptoms or has concerns, they should not hesitate to act.

- ♦ Talk to somebody. Talking about it helps. It may be a friend or even a fellow monitor (see below). However, be sure to observe the required confidentiality and do not reveal any names or details of the return operation. Instead, focus on describing your own emotions and the difficulties you are experiencing;
- ♦ Seek professional help, e.g. counselling. Depending on the organisation you work for, supervision sessions might also be a possibility, so inform yourself; and
- ♦ In many professions, peer support has proved to be of great help, especially in relation to dealing with difficult situations. Talking to colleagues (e.g. other monitors) might provide the opportunity to share any kind of related emotions or frustrations, as well

¹⁶⁸ Professionals who work with victims of trauma or human rights violations, as well as more generally with people in need on a regular basis, experience psychological strain. The demanding complexity of the work and frequent encounters with people who are traumatised or afraid, or who exhibit mental or physical distress, as well as hearing their stories, can lead to these professionals developing vicarious or secondary trauma, which has to be identified and acted upon.

¹⁶⁹ Frontex, Fundamental Rights Manual for Border Guard Trainers, 2012.

as to discuss possible coping strategies. If not offered as a regular and institutional approach (which might be externally moderated and/or be provided to all monitors once or twice a year), monitors can discuss the possibility of establishing peer support groups involving different set-ups and/or exchanges via established platforms.

3.19.4 Key points to remember

- ♦ The monitor must respect the principles of accuracy, confidentiality, impartiality, and non-discrimination at all times;
- ♦ The report must state the facts. This includes observations of things that happened and that did not happen;
- ♦ Where appropriate, factual observations (including the what, when, by whom, and why, where applicable) must be included in the report;
- ♦ The monitor must not voice opinions about the general system of returns or question the legality of the return decision/removal order;
- ♦ The report must also include observations of situations or issues that were handled well so as to facilitate the documentation of good practices and learning;
- ♦ The monitor must be aware of the fact that observation of return operations can have impacts on his/her ability to discharge the task and also on his/her well-being after the event;
- ♦ Strategies relating to how to deal with rising emotions, include focusing on techniques to manage breathing, reminders of the required tasks and mandate, and comprehensive and thorough note-taking;
- ♦ While writing the report, and when reporting on incidents, the monitor must constantly review the information provided, to guarantee objectivity in the reports; and
- ♦ Should the monitor, at any time, experience symptoms related to being overwhelmed by what has been witnessed, they should seek supervision (if accessible) and/or professional help.