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COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	FRONTEX's Reports on Return operations - 1st half 2020

Delegations will find attached reports on Return operations issued by FRONTEX¹.

¹ Reports have been distributed with the consent of FRONTEX.

LIMITED

FRONTX

FUNDAMENTAL RIGHTS OFFICER'S OBSERVATIONS

TO RETURN OPERATIONS
CONDUCTED
IN THE 1ST SEMESTER
OF 2020

1 JANUARY – 30 JUNE 2020

 **EUROPEAN BORDER AND COAST GUARD AGENCY**

Warsaw, 01.09.2020
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BACKGROUND AND OVERVIEW OF ACTIVITIES

In accordance with Article 50(7) of Regulation (EU) 2019/1896 on the European Border and Coast Guard (hereinafter "the Regulation") the Fundamental Rights Officer (hereinafter "the FRO") shall provide observations on fundamental rights covering all return operations. Her observations are attached to the Frontex Executive Director's semi-annual evaluation report. The reporting period is therefore adapted to the submission of the evaluation report by the Frontex Executive Director, covering the 1st semester of 2020. The FRO Observations from the second semester of 2019 (June – December 2019) were shared as well with the Member States' Direct Contact Points on Returns, Member States' return monitoring bodies and monitors from the pool of forced return monitors.

The pool, indicated in Article 51 of the Regulation, became fully operational on 7 January 2017. As set forth by Article 50(5) of the Regulation, the monitoring of forced-return operations shall be

carried out by a 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 country of return, with the aim of observing and reporting if the fundamental rights safeguards are in place. The mechanism acts *de facto* as a subsidiary guarantee to the Member States' obligation to provide an effective forced-return monitoring system, as per Article 8(6) of the Return Directive 2008/115/EC. Prior to the enactment of the Regulation, the European Border and Coast Guard Agency (hereinafter "Frontex") and the FRO have constantly encouraged Member States to enhance the systematic use of their national monitoring bodies in all return operations, as the strengthening of national monitoring mechanisms would have a positive direct impact on the overall capacity to monitor return operations, both at national and European level.

As foreseen in Article 62(5) of the Regulation, the forced-return monitors shall be provided with a specific training covering all the aspects regarding fundamental rights, especially concerning the use of force and means of restraint, and access to international protection.

Furthermore, under the Forced Return Monitoring Project currently implemented by ICMPD, and foreseen to be taken over by Frontex in summer 2021, a new reporting framework for the pool of Forced Return Monitors via an IT system is being developed. The reporting via an IT application by each monitor on a device as well as a web supported Platform for Communication, Coordination and Information sharing for monitors will facilitate networking, regular reporting by the FRO and follow up of monitors' reports, thus enhancing the overall coordination of the Frontex pool of forced-return monitors.

OBSERVATIONS OF THE FUNDAMENTAL RIGHTS OFFICER

In the present Return Observations the FRO provides an overview of the **findings and conclusions** from the 54 reports submitted in the reporting period by forced-return monitors activated from the pool as well as by national monitors. The FRO also highlights examples of **good practices** for the consideration of both the Frontex Management Board and the Executive Director as well as **recommendations** to act upon in order to ensure fundamental rights compliance during the Frontex' return activities. A considerable part of the monitoring reports findings identified the return operations to be undertaken in a proper manner and in respect for fundamental rights.

According to the information provided in the Frontex Evaluation Report on Return Operations in the 1st Semester of 2020 (hereinafter "the FER of the 1st half 2020"), due to the COVID-19 outbreak, in the reporting period Frontex coordinated 72 return operations by charter flights, which is significantly less than in the corresponding period of 2019².

Out of 72 return operations, 59 operations were physically monitored with at least one monitor on board. In comparison to the previous half-year (July – December 2019), the share of return operations with at least one monitor on board increased from 73% to 82%. During the 1st half of 2020, 52 monitors participated in return operations by charter flights coordinated by the Agency, of which 53

were deployed from the Frontex pool upon Member States' request. The engagement of forced return pool monitors was also affected by the COVID-19 pandemic in the reporting period.

Further, based on the information in the FER 1st of the half 2020, all of the collecting return operations supported by Frontex in the 1st half of 2020 had a forced-return monitor from the pool or from a national monitoring system of the participating Member States on board through the entire return operation, as required by Article 50(3) of the Regulation.

There were no Serious Incident Reports, relating to the return operations coordinated by Frontex, submitted during the

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² In the 1st half of 2019 there were altogether 163 return operations coordinated, in the 2nd half of 2019 there were altogether 167 return operations (NRO, IRO and CRO) coordinated.

reporting period. However, in the same period four complaints were submitted to Frontex regarding an alleged violation of fundamental rights of returnees in three readmission operations and one national return operation, although none of them was related to actions of staff involved in Frontex activity. The complainants alleged violations of the following rights and principles: protection in the event of removal, expulsion or extradition (Article 19 of the Charter of Fundamental Rights of the European Union (hereinafter "EU Charter"), right to effective remedy and to a fair trial (Article 47 of the EU Charter) and right to asylum (Article 18 of the EU Charter). In one readmission case, the relevant national authorities informed that the readmission of the complainant had been cancelled due to the interim measures issued by the European Court of Human Rights. In the other two readmission cases, the competent national authorities informed that the complainants had been removed from the return operations. In the case regarding the national return operation the complainant could not have been reached been reached.

1. PREPARATION OF RETURN OPERATIONS

As provided for by Article 4 of the Code of Conduct for Return Operations (ROs) and Return Interventions (RIs) coordinated or organised by Frontex (hereinafter "the Frontex CoC"), Frontex shall ensure that ROs and RIs are conducted in a humane manner and in compliance with fundamental rights. With a view to this, the provisions of sufficient and adequate safeguards need to be ensured already in the preparation phase of the RO and RI.

The FRO reiterates that the escort leaders should give detailed briefings in what concerns compliance with returnees' fundamental rights and inform the participants of return operations, in particular, about the list of returnees (data protection rules of Member States apply), seating plan, embarkation and in-flight procedures, movements on board, access to the toilets, hand-over of personal belongings, and the security, including the use of coercive measures. Furthermore, the FRO continues

recommending that the monitors are to be provided with an estimated time and location for the briefing as soon as contact is established, in order for them to arrive on time for the briefing and the rest of the pre-departure procedure.

Considering the recommendations and elements highlighted by the monitors in their reports, the FRO would further recommend the following:

- Increase the number of female forced-return escorts allocated by the Member States to accompany children and female returnees. This issue was already brought to light by monitors in previous reporting periods, thus the FRO reiterates that the presence of female officers should be ensured throughout all phases of the implementation of an operation involving women and children as to ensure the effective protection of the EU Charter, especially the rights to privacy, integrity and human dignity and to ensure that potential gender specific needs are identified and addressed. According to Frontex standards, a female returnee should be escorted by at least one female escort. In accordance with the Guideline 18 of the Twenty Guidelines of the Committee of Ministers of the Council of Europe on Forced Return, "Member States are encouraged to ensure that at least one escort should be of the same sex as the returnee" as this may, among others, facilitate the communication between the returnee and the escort and help preserve the dignity and intimacy of the returnee. The Frontex Implementation Plan also provides that "escorts of the same gender as the returnee are advised to jam the toilet door open and to observe the returnee". As provided in the Frontex Guide for Joint Return Operations by Air co-ordinated by Frontex, the gender and age of the returnees, as well as the experience and language skills of the forced-return escorts should be taken into account when assigning them to the return operation.
- Duly inform the escorts prior to return if there are possible threats imposed by returnees due to criminal records or history of violence, to prevent dangerous situations.

- Enable the monitors to perform the monitoring: ensure the presence of monitors at the contact talk, security checks or during transfer to airport; enable monitors to enter the plane before the embarkation of the returnees and their escorts.
- Provide to the monitors all relevant information in due time: one monitor reported that the relevant information was provided just before the operation. Another monitor highlighted that the Frontex Implementation Plan was not provided and another monitor reported that the Annexes 1 and 2 to the Frontex Implementation Plan should be made available by the Member States at the latest before the escorts are briefed. Further, it was reported that the list of authorized restraints was not provided to the monitor.
- Increase the number of monitors: the presence of a second monitor would be recommended to the national monitoring institutions, especially when there are families among returnees or significant medical cases or numerous security risks, being this procedure already possible as agreed by Frontex and the Member States.
- Improve the procedure at airports: one monitor reported that the airport procedure is improvable and that the facility is not really suitable for return operations as it is undersized. Further, one monitor reported that due to a spacious airport it was not possible to monitor the whole procedure.
- Ensure the proper luggage labelling: luggage should always be arranged according to the Frontex Implementation Plan and the luggage check be organised in the presence of a returnee.

2. COMMUNICATION AND RIGHT TO INFORMATION

In line with Article 6 of the Frontex CoC, the competent authorities of the Member States as well as the other participants shall seek cooperation with each person being returned, at all stages of the return operation.

Based on the following recommendations provided by the monitors, the FRO

concludes that communication between participants of return operation and returnees could be further improved:

- Many monitors recommended that interpreters should be present in a return operation starting with the briefing of the escorts. It was pointed out that the lack of understanding could present an even bigger problem if coercive measure were to be applied³. One monitor noticed that interpreters were present during the operation, but hardly used. Further, it was recommended that an interpreter should also be present during the handover of personal belongings to the returnees, to avoid any potential misunderstandings. Despite the fact that there is no legal obligation to deploy interpreters in return operations, it appears that the presence of interpreters, especially those who speak the native language of the returnees⁴, is crucial for a proper communication between returnees and escorts and may help preventing conflicts resulting from language misunderstandings between them (in line with Article 14 of the Frontex CoC). Frontex therefore encourages Member States to deploy interpreters. Moreover, Frontex supports and reimburses participation of such interpreters in return operations. As there were still no interpreters present during some return operations and as officials from the competent authorities (in line with Article 14 of the Frontex CoC) or monitors should not serve as interpreters, the FRO continues recommending deployment of suitable interpreters throughout the whole forced-return operation. The FRO reiterates the suggestion to the Frontex European Centre for Returns to take steps to gradually report about the exact number of interpreters in return operations in their bi-annual Evaluation Report and encourage their presence as a means for enhancing cooperation and communication during return operations.

- Some monitors advised to engage a second interpreter of a different gender, especially for strip-searches.
- A need of giving sufficient information to all returnees was highlighted in several reports, i.e. they should be appropriately and fully informed about the return procedure and particularities related to their individual cases.
- It was recommended that support officers involved in return or anyone performing security check should wear a recognizable uniform and an identification card at a visible place.
- In order to improve communication and recognition, some monitors noticed as good practice that vests of escorts were marked with numbers and that interpreters were wearing vests for better recognition; vests provided by Frontex should always be used in all return operations coordinated by the Agency.

As to the existence of good practices, the FRO highlights that many monitors pointed out that officers involved in return were respectfully communicating with returnees and showed interest in them and their complaints, reporting their needs to the medic or the interpreter; one monitor observed that the fact that the escorts and returnees sat down, talked and had a meal together contributed to the good atmosphere that lasted throughout the operation

3. MEDICAL ISSUES

The presence of medical staff (doctor, nurse or paramedic) should be ensured in all return operations coordinated or organised by Frontex (Article 14 of the Frontex CoC). Moreover, in a reasonable time prior to the return operation, the authorities of the Member State are required to provide for a medical examination of returnees, subject to their agreement, where they have a known medical condition or where medical treatment is required (Article 8 of the Frontex CoC). These medical procedures should be carried out in a manner that

respects returnees' dignity and the principle of medical confidentiality.

Taking into account the recommendations and aspects highlighted by the monitors in their reports, the FRO provides the following recommendations and observations:

- Ensure the presence of a medic (medical doctor and nurse) in the pre-departure phase of all return operations (some monitors reported about their absence in this phase).
- Ensure the constant presence of a medical doctor (in one case a doctor was present only part-time).
- Provide proper information from national authorities, in particular related to medical conditions of returnees.
- Share all relevant medical documentation with the medical team (a medical team involved in returns did not always have access to medical documentation, including medical history of returnees).
- Limit the access to medical data to escorts they should know only about medical risks and not health issues of returnees).
- Ensure an extra waiting room for those with worse medical conditions.
- Adequately furnish the place for medical examinations (in one return operation a table was missing in a room for medical exam of returnees by a doctor).

Based on information contained in the received monitoring reports, the FRO would like to point out that in some return operations there were some serious medical cases, but the medical staff was well prepared for them in advance. Furthermore, some monitors stressed that escorts paid attention to the mental and physical well-being of the returnees.

4. RIGHT TO RESPECT FOR PRIVATE LIFE

As regards the right to respect for returnees' private life, their dignity and their right to the protection of personal

³ It was reported by one monitor that one returnee responded with verbal attacks, which the monitor could not understand because of the language barrier and no interpreter present.

⁴ Some monitors pointed out that the available interpreters did not speak the native language of the returnees and the official language of the country of return, which presented a hurdle in a smooth communication.

data, the FRO recommends the following, in line with the monitors' observations and recommendations:

- Respect and protect dignity and privacy of returnees during the strip-search procedure (one returnee was waiting naked in front of officers while his clothes were x-rayed, without being offered a cover).
- Ensure that unclothed search is conducted when needed (one monitor reported that all male returnees were systematically subject to unclothed search).
- Monitors repeated the recommendation, brought up in previous reporting periods, as to the problem of wrongful disclosure of medical data to the escorts (the only information which is to be given to escorts regards potential risks resulting from a returnee's health, but does not provide details about diseases returnee suffers). Moreover, it should not be a deployed officer's task to carry out a risk-assessment on the basis of medical data.
- Protect the returnees' personal data (as highlighted in one monitoring report, lists containing names of returnees including their medical data were left on a desk to be visible to everyone).

5. RIGHT TO PROPERTY OF PERSONS RETURNED

As to the right to property of returnees, the FRO provides the below recommendations, based on the reported observations and recommendations of the monitors:

- Respect the rules as to the handling of personal valuables (some monitors reported that personal valuables were not handled as they should be. According to the Frontex Implementation Plan, personal belongings should not have been put in the luggage in the bulk of the plane. They should be stored in a sealed envelope or a plastic/transparent bag and marked with

the name of returnee, kept by the respective escort, and handed over to the returnee prior to disembarkation. Furthermore, personal valuables should be given back to returnees before and not after the handover, as it happened in some reported cases).

- The FRO recommends to strengthen luggage handling procedures in the upcoming revision of the Frontex Guide on Joint Return Operations currently ongoing within Frontex. This element has already been highlighted by the FRO in her observations covering the 1st and 2nd semesters of 2019.

6. TREATMENT OF VULNERABLE GROUPS

The FRO reiterates that in the preparation and throughout the implementation of return operations, special consideration should be given to vulnerable persons such as children, disabled persons, elderly people, pregnant women, etc.

The following are recommendations given by the monitors as regards the treatment of vulnerable groups, to which the FRO fully subscribes:

- As to the protection of the rights of the child, one monitor pointed out a failure to separate a six year old child from the mother as soon as her behaviour became a threat to the child's well-being and before the mother was body-cuffed⁵. It was recommended that criteria to be established for separation of children from parents or guardians when this is in the best interests of the child, as there is a risk of psychological trauma.
- It was further recommended that, whenever infants and younger children are to be returned and behaviour of the parents during the return may be seen as emotionally abusive to the children, a notification is sent to social welfare service or child protection organisation in the country of return regarding the behaviour of the parent, so that needed

measures for protection of children are provided.

- Keep minors separated from cuffed returnees, in line with the principle of the best interests of the child.
- The need for baby food and diapers should be recognized in advance and a request be forwarded in due time to the charter airline⁶.
- Ensure child friendly premises at the airport and provide for toys and games, for both girl and boy returnees; the lack of toys at the airport was reported by several monitors. A mobile playroom should be arranged for returnees children in the return terminal of the airport, in particular in returns with a high number of children, in line with the right to play (Article 31 of the International Convention on the Rights of the Child), to contribute to the child's proper development.
- Arrange airplane seating in a way that families sit together.
- Keep families together during the handover procedure.
- As remarked by one monitor, the allocation of families with children to specific escorts was not clear or it did not exist.

The FRO continues recommending that an adequate special care for families and breastfeeding mothers be provided, including baby food, diapers, toys, prior to embarkation as well as during the flight, which is a good practice to be followed. As to good practices, the FRO noticed from one report that each family was transported separately from the terminal to the plane by bus

7. USE OF FORCE AND MEANS OF RESTRAINT

Article 7 of the Frontex CoC reflects the international and European standards on the use of force and means of restraint, which can be applied only in accordance with the principles of necessity, legality and proportionality, and in response to an immediate and serious risk. Any decision to use coercive mea-

⁵ According to the monitor the mother was screaming, yelling, falling on the floor, taking off clothes, repeating in front of children "really bad things will happen to my children in Ghana" and the child was visibly terrified witnessing the disturbed mother and her body-cuffing.

⁶ It was reported in this case that a female escort later on bought diapers and baby food, which was however not completely appropriate.

asures has to be based on an individual risk assessment. The use of force requires the application of specific techniques employed by trained staff, who are also submitted to periodical refresher training sessions, otherwise, although the mission of carrying out a forced repatriation is accomplished, potential risks to the physical safety and dignity of returnees might exist.

For each return operation a list of authorised restraints and equipment permitted during that operation is to be provided. The list is to be decided by the organising Member State together with Frontex, in accordance with its national legislation, international law and EU law, in particular the EU Charter. However, no participating Member State should use coercive measures that its legislation does not allow, even if those measures are accepted by the organising Member State for that particular return operation.

The following are the observations and recommendations given by the forced-return monitors in the 1st half of 2020, wholly endorsed by the FRO:

- When coercive measures were used on one female returnee, the monitor observed that the female police officer, applying the measure, used disrespectful communication towards the returnee, which further upset the returnee.
- In one return operation, the list of authorised restraints was not provided to the monitor.
- A few monitors found that unauthorised coercive measures were used (steel shoes, helmets).
- Some monitors questioned the necessity and proportionality of the applied coercive measures and their duration and were uncertain whether an individual risk assessment had been carried out in line with the provisions of the Frontex CoC⁷. The FRO strongly recommends that monitors raise these observations also during the de-briefings to obtain from the escorts explanation whether the use

of restraints was indeed based on a solid individual risk assessment.

- It was recommended that hard helmets be replaced by soft-shell helmets.
- It was further recommended that ground airport staff refrain from carrying any weapons while being involved in any return activities.

8. BASIC NEEDS

- Based on the report of one monitor, there was no water available for returnees, while they were transported to airport.
- Some monitors made observations as to the catering in some airports, which should improve, and suggested bigger quantity and variety of food on long flights.
- In the course of one return operation it was observed that there was no food, water and baby food made available to returnees at the airport terminal. According to the escort leader returnees were given packed lunches, however the monitor could not see any food or water at the terminal. The FRO underlines the importance to guarantee a sufficient amount of food, in particular for vulnerable persons and in the course of long return operations.
- One monitor further noticed that the waiting areas were not adequately heated, with no blankets available, and that only the staff room was heated.
- Another monitor reported that a female returnee was not offered access to a police phone, although she was asking to make a call many times.
- Another monitor suggested that promises to returnees to take a shower during the contact meeting should be respected. A shower prior to removal should not be avoided due to staff shortages.
- It was mentioned in several reports that there was no smoking area in the waiting area of some airports.

9. HAND-OVER PROCEDURE

- In several monitoring reports it was recommended that an interpreter or escort speaking the relevant language would facilitate avoiding misunderstandings during the hand-over of the personal belongings to returnees. The FRO thus reiterates the recommendation, which was already brought in some monitoring reports submitted in previous reporting periods.
- One monitor recommended that efforts be made at different levels to ensure that sufficient number of police officers of the countries of return are actually present on the aircraft during the hand-over of the returnees, to support an orderly takeover of the returnees and their luggage⁸.

10. COMPLAINTS MECHANISM

Article 11 of the Regulation establishes a complaints mechanism to monitor and ensure the respect for fundamental rights in all Frontex activities. Any person who is directly affected by alleged fundamental rights violations during operational activities by staff involved in Frontex activities may submit a complaint in writing to Frontex. The FRO is responsible for handling complaints received by Frontex in accordance with the right to good administration.

It is important for forced return monitors to note whether complaint forms and information material are available during the return operation coordinated or financed by Frontex and that in case of any complaint arising during the operation, the Frontex representative or the escort leader should provide relevant information as to the mechanism, the complaint form and leaflets.

In this regard, the FRO recommends to ensure the availability of complaint forms and information leaflets in operational areas, if available in the language spoken by returnees. Furthermore, the

⁷ For example, in one case the monitor could not understand why a few of returnees were body or hand cuffed, as they were calm and cooperative. It was thus recommended that the cuffing be properly evaluated.

⁸ In this case the monitor noticed that only one policeman of the country of return was present at the aircraft in order to secure the takeover of 35 returnees.

FRO points out the importance of the duty to inform, imposed on escort leaders and Frontex staff, about the right to submit a complaint.

Other relevant observations and recommendations identified in the context of implementation of the Frontex complaints mechanism:

- The FRO observed that generally the monitors did not include in their reports the information as to whether the complaint forms were made available. The FRO recommends that such information be added in the monitoring reports.
- One monitor wrote that returnees were not informed about the complaints procedure.
- As to the question, whether returnees received information about the right to complain during the return operation, one monitor replied only that complaint forms were available from the escort leader, which is sufficient; yet another monitor wrote that the escort leader had complaint forms available and informed about that at the briefing but that no information was given directly to the returnees. The FRO recommends that information as to the right to complaint is given in accordance with Article 6 (3) of the Frontex CoC.
- In the course of one return operation, the monitor noticed that the escort leader did not have leaflets available for distribution, only complaint forms.
- As reported by one monitor, there was no waiting room in one detention centre, so no complaint forms could be made available there; they were available only by the PCE representative.
- As a good and recommended practice, one monitor observed that the complaint leaflets were available also in other languages.

11. COLLECTING RETURN OPERATIONS (CRO)

The FRO continues to encourage the presence of non-EU country monitors together with the Member State or

forced return monitors from the pool, as an additional safeguard to ensure the follow-up of possible incidents with the non-EU country authorities.

12. FURTHER OBSERVATIONS FROM MONITORS AND THE FRO

According to the FER of the 1st half 2020, not all return operations by charter flights organised or coordinated by Frontex in the reported period were monitored. The FRO strongly recommends that each such return operation be monitored, in line with the obligation stemming from Article 50(5) of the Regulation.

Moreover, the FRO reiterates the recommendation that the number of monitors be adapted to each return operation, taking into account e.g. their duration, complexity, number of returnees and the risk profile of the returnees⁹. It is already an existing Frontex rule and practice agreed with Member States to authorize the presence of more than one monitor when requested by national monitoring institutions. Further discussion is also advisable concerning the obligation to notify the date of the expected operation to returnees in due time. It should be ensured that all returnees are aware of the circumstance in advance, so that they have sufficient time to take necessary steps, collect their belongings, and alert their relatives in the country of destination of their return and the expected date of return and arrival at their destination.

During one return operation the monitor observed that in the pre-return phase some returnees stated that they had registered for voluntary departure and none of them had been informed about the changes in the procedure regarding a character of the return operation, which had been very stressful for them. The FRO restates the recommendation that all returnees be informed of all relevant aspects of the return operations.

The FRO further recommends that the Organising Member States ensure that the number of doctors and interpreters be proportionate to the number and possible conditions of returnees.

The FRO would also like to indicate that based on some monitoring reports it is to be observed that more detailed information would be needed for monitors (e.g. number of female escorts; number of available interpreters; information as to whether interpreters speak the native language of returnees; more information as to the proportionality of applied coercive measures; potential agreement with a non-EU country on specific conditions of returnees' acceptance).

In conclusion, the FRO will follow up on the observations and address raised concerns, in particular, in the following ways:

- Informing about the relevant issues and present recommendations to the European Centre for Returns/ participants during return operations and also provide regular feedback to the national monitoring institutions.
- Delivering dedicated fundamental rights sessions in the course of trainings for forced-return monitors, escort leaders and other participants of return operations.
- Collecting the observations in order to discuss main conclusions in different fora, including in the course of trainings for escort leaders and forced-return monitors.
- Systematically gathering information and identify challenges regarding particular areas of return operations for discussions with relevant Member States.

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⁹ In one report the monitor observed that a security check of one family to be returned was carried out at the same time as a contact interview of another family and could therefore not be monitored. It appears that more than one monitor would be needed in such operations.

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INTRODUCTION

In accordance with Article 50(7) of the new European Border and Coast Guard regulation¹, the purpose of this document is to provide a comprehensive comparative analysis of the results of the return operations organised or co-ordinated by Frontex between 1 January and 30 June 2020 (hereinafter: the 1st half of 2020), with a view to enhancing the quality, coherence and effectiveness of future return operations².

Frontex, the European Border and Coast Guard Agency, organises and coordinates Member States' return operations by charter and scheduled flights and supports Greece in the implementation of readmission operations within the EU-Turkey Statement. Return operations by charter flights are carried out by airplanes chartered by either Member States or Frontex, while return operations by scheduled flights are carried out on regular, commercial flights. Readmission operations take place only from the Greek hotspots to Turkey, either by sea or by air. As of the beginning of 2020, following the new mandate, the Agency also included voluntary return into the scope of provided support.

The Agency does not enter into the merits of return decisions issued by the authorities of Member States. Its role is to provide technical assistance and operational coordination, which may consist of the following:

- Optimising resources at the European level by matching needs and requests provided by different Member States with the aim of organising joint return operations with the participation of two or more Member States; this solution provides an alternative to separate national initiatives and fosters stronger cooperation;
- Providing an Implementation Plan that sets the rules and details regulating the operation in line with the Frontex Regulation, EU standards defined by the Guide for Joint Operations by Air, the Code of Conduct for return operations and return interventions coordinated or organised by Frontex and other relevant provisions at the EU level, safeguarding among others the fundamental rights of returnees and the principle of non-refoulement;
- Organising, promoting and coordinating activities encouraging/enabling the exchange of information and the identification and pooling of best practices in return matters between Member States;
- Supporting the monitoring of fundamental rights through the use of the pool of forced-return monitors;
- Providing logistical support by chartering aircraft, organising support by forced returned-escorts from the Frontex pool upon request and the presence of a Frontex representative on board;
- Providing assistance in various fields of pre-return activities to remove obstacles related to the implementation of returns;
- Generally, fostering communication and a joint approach to return across the EU;
- Financing or co-financing all types of return operations.



¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

² The report does not present a general overview of all returns in the EU, as it does not cover return operations carried out by Member States at the national level without the support of the Agency.

1. OPERATIONAL ACTIVITIES IN THE FIELD OF RETURN

During the first six months of 2020, 4 299 non-EU nationals were returned by Member States with the support of Frontex. The majority, 58%, were returned using charter flights, while almost 39% were returned in the course of Frontex-supported scheduled flights. An additional 139 non-EU nationals (over 3% of the total) were readmitted to Turkey from Greece.

No Serious Incident Reports were submitted in the half-year.

The overall number of non-EU nationals returned in the course of all three operational areas decreased compared to previous half-years due to the consequences of the COVID-19 outbreak in March.

1.1. RETURNS UNDER COVID-19 RESTRICTIONS

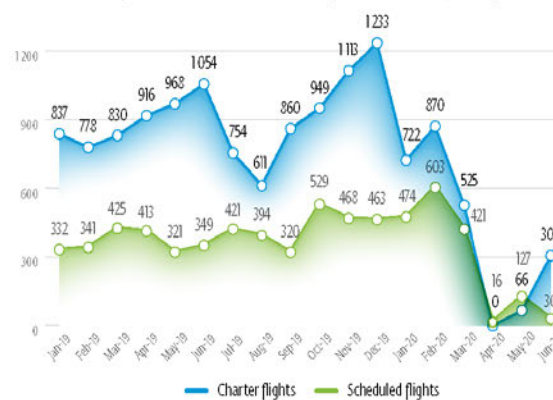
The impact of measures introduced by Member States and non-EU countries in response to the COVID-19 pandemic, as well as the limited availability of commercial flights, was severe in the area of return.

The chart shows the number of non-EU nationals returned by charter and scheduled flights on a monthly basis in the last three half-years. In the 1st half of 2020 the monthly average number of non-EU nationals returned with Frontex support was 717, 22% lower than in the previous half.

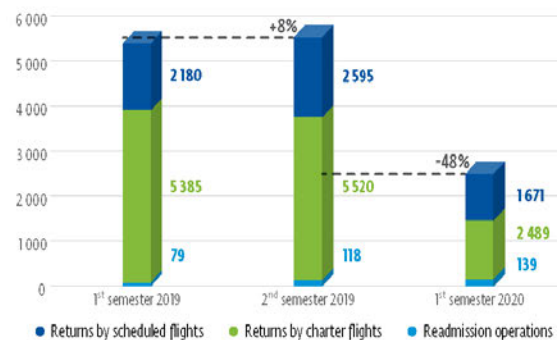
While significant growth in the number of all types of return operations and readmissions was registered until March 2020, since 12 March, due to the COVID-19 outbreak, all return-related activities have progressively reduced almost to zero, showing a gradual yet very slow recovery as of the beginning of June. As a result, the total number of non-EU nationals returned with the support of the Agency in the 1st half of 2020 was significantly lower than in the corresponding period of 2019 (-48% decrease).

Between 12 March (COVID-19 outbreak) and 30 June, 71 return operations by

Number of non-EU nationals returned per month since January 2019



Non-EU nationals returned with Frontex support



charter flights and 309 by scheduled flights were cancelled. Only the following operations were carried out:

- 12 return operations by charter flights (422 non-EU nationals returned);
- 140 returns by scheduled flights (321 non-EU nationals returned);
- 0 readmission operations between Greece and Turkey.

Throughout the pandemic, Frontex has shown flexibility when confronted with the restrictions imposed by Member States, non-EU countries and airlines. The reshaped support provided by the Agency included:

- cancelling and rebooking return operations by scheduled flights;
- re-scheduling charter flights affected by COVID-19;
- replacing collecting return operations with other types of return operations (joint or national) taking advantage of repatriation flights organised by non-EU countries;
- reimbursement of eligible cancellation costs;
- reimbursement of COVID-19 tests for returnees, Member States officials and all participants of Frontex-supported return operations;
- adaptation and tailoring of safety measures to each return operation.

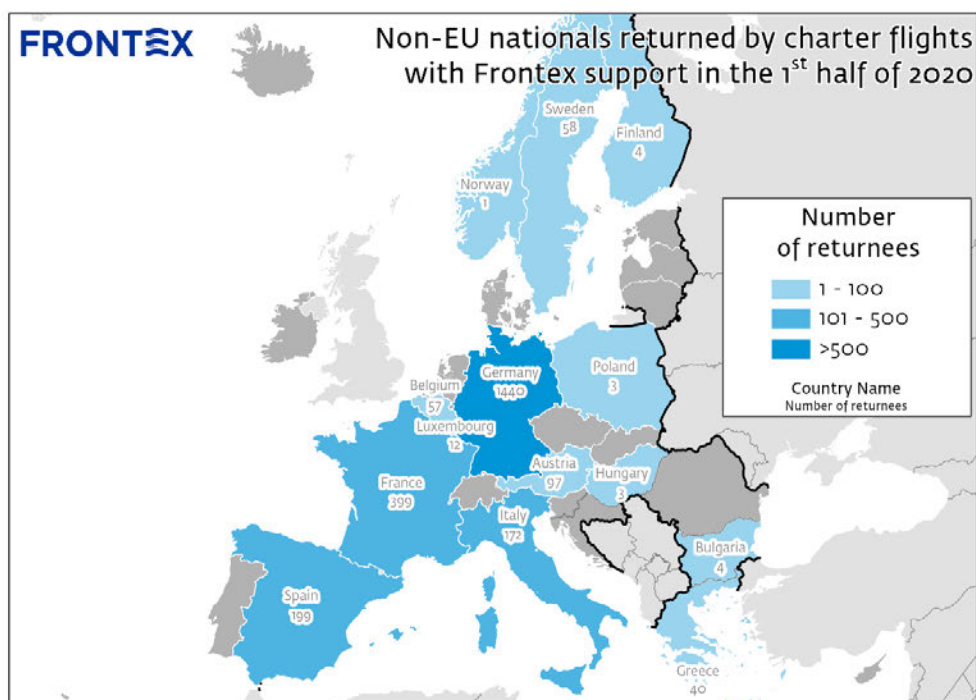


1.2. RETURN OPERATIONS BY CHARTER FLIGHTS

In the 1st half of 2020, Frontex coordinated 72 return operations by charter flights organised by Member States to 19 non-EU countries, returning 2 489 non-EU nationals.

The map below shows the number of returnees on charter flights by Member State. The vast majority of them were returned by Germany (almost 58%).

Seven Member States acted as organising Member States. When compared with the 1st half of 2019, the overall number of organising Member States decreased by 30%. The top three Member States were Germany, France and Italy, which organised over 80% of all return operations by charter flights coordinated by the Agency. One return operation was organised directly by the Agency in cooperation with Hungary, which acted as the leading Member State.³



³ Member State with a leading role in return operation organised by the Agency, to ensure full alignment with Council Decision 2004/527/EC on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders.

Thirteen Member States participated in 25 return operations. The number of participating states decreased significantly in comparison with the previous half-year due to COVID-19 restrictions (only Greece slightly increased its participation). The most active participants were Belgium, Sweden, Bulgaria, Austria and Greece.

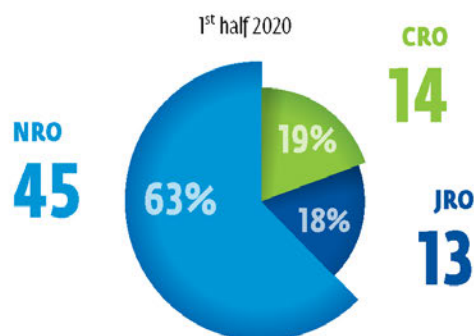
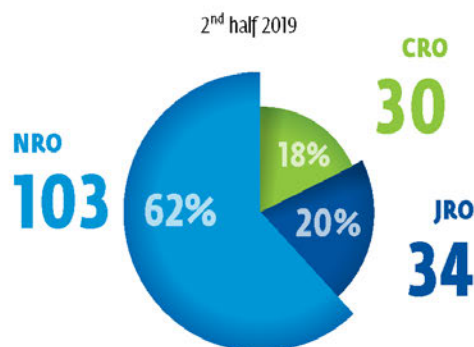
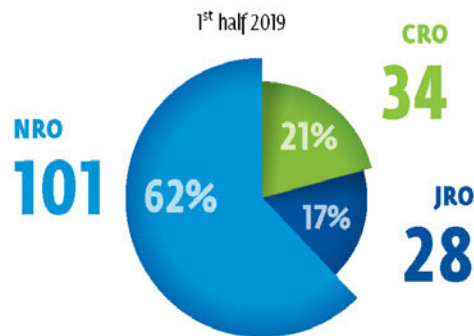
As a general rule Member States that organise return operations are not very active in operations organised by other Member States. Similarly, those Member States that often participate in return operations organised by others very rarely organise their own.

Frontex supports the following types of return operation by charter flights:

- Joint return operations (JRO), where returnees from two or more Member States are returned on the same aircraft;
- National return operations (NRO) where returnees are from a single Member State; also when technical support is provided using other Member States' resources (e.g. monitors, forced-return escorts or aircraft provided by another Member State);
- Collecting return operations (CRO) where aircraft and escorts are provided by the countries of return.

The charts on the right present an overview of the types of operation carried out in the last three half-years.

Aside from the significant drop in numbers due to the pandemic, the share of return operations has not changed from previous reporting periods. National return operations are by far the preferred option for Member States in comparison to joint and collecting return operations, each of which represents approximately 1/5 of the total.





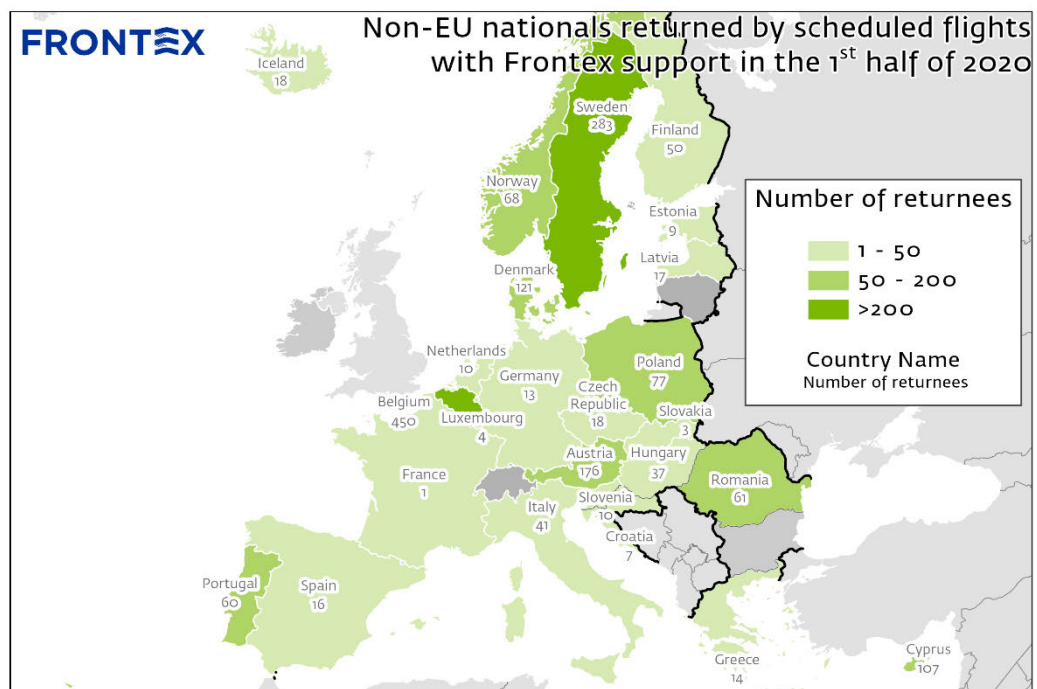
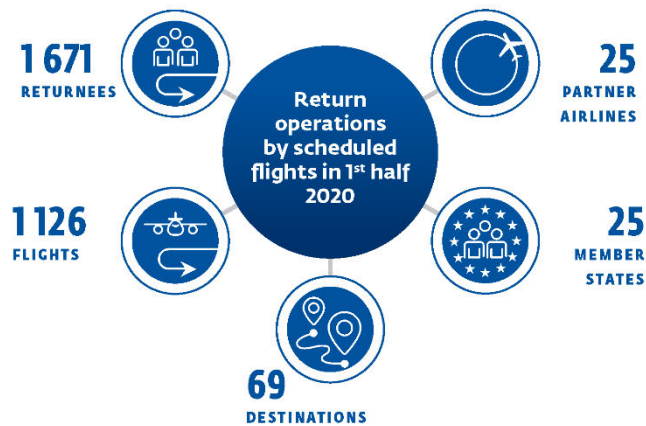
1.3. RETURN OPERATIONS BY SCHEDULED FLIGHTS

In the 1st half of 2020, 1 671 non-EU nationals were returned by 25 Member States to 69 non-EU countries, three of which were reached for the first time. The Netherlands and Cyprus started to use the Frontex scheduled flights mechanism.

In February, for the first time Frontex provided assistance to a voluntary return by scheduled flights.

The map below shows the number of people returned by Member State. In comparison with the previous half-year, Sweden significantly increased the number of returns carried out with Frontex assistance.

The top five Member States in the reporting period were Belgium, Sweden, Austria, Denmark and Cyprus, which organised over 68% of the total number of return operations: 734 scheduled flights with 1 137 non-EU nationals returned.



Member States mostly returned unescorted low-risk individuals. Over 86% of all returnees travelled unescorted, including 9% of voluntary departures and 8% of voluntary returns. Only 14% of returnees were actually escorted, in line with individual risk assessments.

Additionally, between 12 March (COVID-19 outbreak) and 30 June, due to travel restrictions adopted by non-EU countries and airlines, as well as measures in Member States to ensure staff safety, the percentage of unescorted returnees rose to 97% while the number of escorted returnees decreased almost to zero.

In the 1st half of 2020, the percentage of both voluntary departures and voluntary returns rose to 17% of the total (in 2019 voluntary departures constituted only 3%). Five Member States (Belgium,

Cyprus, Greece, Romania and Slovenia) carried out voluntary returns and voluntary departures with the technical assistance of the Agency returning 135 non-EU nationals.

The figures regarding voluntary cases are expected to grow further in the future, based on the large need for assistance expressed by Member States.

Number of returnees in the 1st half of 2020 by type of return



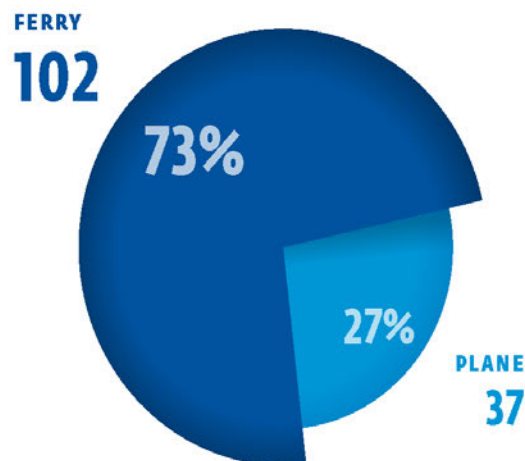
1.4. READMISSION OPERATIONS ⁴

Since 2016, the Agency has been supporting readmission operations from Greece to Turkey within the EU-Turkey Statement, by deploying human resources and providing technical assistance by chartering ferries, aircraft and buses.

At the end of 2019, Greece adopted a new asylum law that came into force on 1 January 2020. As a consequence, 139 non-EU nationals were readmitted through 5 March, more than in the whole previous half-year (118). Out of 14 readmissions operations carried out, nine were by sea and five by air.

The increasing rate of readmissions was interrupted by the COVID-19 outbreak. In early March, the Turkish authorities suspended the activities. The last readmission operation from Greece was carried out on 5 March.

Third country nationals readmitted in the 1st half of 2020



⁴ The activity is further evaluated in the Frontex Evaluation Report 2019 of the Joint Operation (JO) Poseidon.

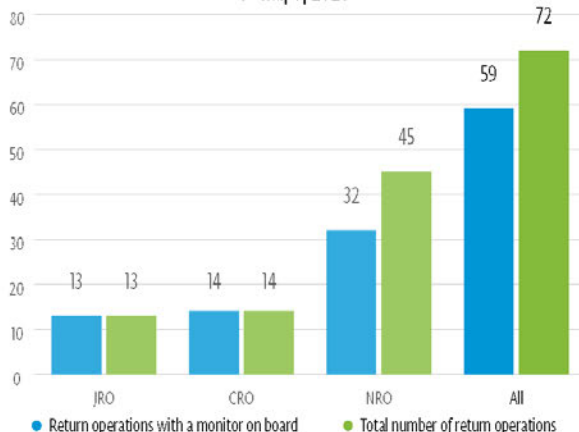
1.5. MONITORING OF RETURN OPERATIONS

During the 1st half of 2020, 92 monitors participated in return operations by charter flights coordinated by the Agency, of which 53 were deployed from the Frontex pool upon Member States' request. At least one monitor was present on board in 82% of all Frontex-coordinated return operations (100% of collecting return operations, 100% of joint return operations and 71% of national return operations). In comparison with the previous half-year, the share of return operations with at least one monitor on board increased from 73% to 82% (+9%).

1.6. DEPLOYMENT OF FORCED-RETURN ESCORTS FROM THE FRONTEx POOL

During the reporting period, no forced-return escorts from the pool were deployed in Frontex supported return operations on Member States' request.

Return operations with monitors on board
1st half of 2020



Thirty-four forced-return escorts were deployed in Greece to support readmission operations to Turkey within the EU-Turkey Statement; all were multi-profiled, supporting other activities, such as fingerprinting, when no readmission operations were planned.

Due to the COVID-19 pandemic and the temporary interruption of the activities from Turkish side, the number of escorts in Lesvos was decreased, while maintaining the basic readiness of the Agency in case activities would be resumed.

2. EVALUATION OF RETURN-RELATED ACTIVITIES

2.1 MAIN CHALLENGES

a. Challenges related to COVID-19 restrictions

In the second quarter of the year, the COVID-19 related restrictive measures implemented in Member States and non-EU countries, including the closure of borders and the suspension of air traffic, heavily affected all Frontex-coordinated operational activities in the field of return.

From March onwards, the implementation rate of return operations drastically dropped. Member States had to cancel the majority of planned returns by charter and scheduled flights. The Turkish authorities suspended the readmission activities within the EU-Turkey statement which resulted in no operations carried out after 5 March.

When some return operations became technically possible again, especially towards the end of the half-year, their organisation had to take into account a number of new limitations imposed by the authorities of the countries of return, including possible quarantine for passengers. In addition, some operational procedures had to be adapted in order to ensure the safety of both staff and returnees. The risk of cancellations and/or postponements of operations was still very high due to the unstable situation in many Member States and non-EU countries.

In order to minimise the risks associated with the COVID-19 pandemic, it became essential to apply certain safety measures. Among the new practices were i.a. the following: a possibility to perform COVID-19 tests for all participants in operations, scanning of all passengers with thermal devices for COVID-19 symptoms (fever) before boarding, disinfecting of aircraft, maintaining social

distancing also on board, obligation to wear masks throughout the operation, providing hand sanitiser throughout the flight. Moreover, some passengers had to be quarantined in the destination country after arrival.

The Agency had to adjust its financial and logistical support in order to adequately support Member States when adapting to the changes.

b. Ensuring the full occupancy of aircraft and cost-efficiency of return operations by charter flights

As already highlighted in previous reports, Member States regularly face challenges to ensure the full occupancy of seats available in return operations by charter flights, mainly due to last minute reductions in the number of returnees because of asylum requests, absconding, administrative or judicial decisions, or medical reasons.



Due to the COVID-19 restrictions it was even more challenging to ensure an adequate number of returnees on board the operations carried out in the second quarter. The numbers decreased mostly because of the safety restrictions imposed by Member States (social distancing) and COVID-19-related cancellations.

In order to face further limitations caused by COVID-19, the Agency has been continuing to encourage Member States to find operational solutions to prevent absconding of returnees as well as to open return operations to the participation of other Member States, when feasible, considering that in joint return operations last minute replacements can also be managed by other participating Member States.

c. High share of national return operations vs. joint return operations

Almost two-thirds of the charter flights coordinated by the Agency were national operations (with returnees only from a single Member State).

Despite the fact that joint return operations can generally ensure a higher number of returnees in a lower number of flights (e.g. one joint flight instead of two national operations), the graph above clearly shows the tendency of Member States to mainly carry out na-

tional return operations (marked by the blue line). This trend has been further reinforced since the COVID-19 outbreak, when, in the majority of cases, organising returns with more than one Member State was very difficult or impossible due to safety and travel restrictions.

Member States are constantly encouraged:

- to open operations to participation of other Member States, when allowed by the countries of return, as well as to participate in operations organised by others instead of organising their own;
- to organise operations with multiple destinations in order to widen the offer to other Member States and optimise the use of available seats and frequency of flights towards the same geographical area.

In some cases, the option to carry out joint return operations is excluded by bilateral agreements between organising or participating Member States and non-EU countries of destination. Nevertheless, especially when EU agreements or arrangements allow EU joint return operations, the coordinating role of the Agency would certainly benefit from a more coherent EU approach by Member States side within the international co-operation dimension.

d. Insufficient information exchange with Member States

Frontex needs to get a constantly updated overview of Member States' return related needs and future plans, in order to better coordinate activities, ensure effectiveness of return operations and more efficiently manage human resources and technical equipment. This principle has become especially important since the COVID-19 outbreak, when planning return operations became particularly challenging and time-consuming.

Sometimes Member States informed Frontex about their needs and/or plans only on short notice or did not provide sufficient information on return operations organised at national level. This considerably hampered the operational capacity of the Agency to efficiently plan its activities and led in some cases to operations carried out to the same destinations in the same periods, which may have potential prejudicial effects in relationships with certain non-EU countries also with regards to existing EU arrangements.

In addition, the untimely communication of Member States to Frontex limited the possibility of the Agency to provide its assistance, for instance due to contractual deadlines foreseen by the framework contract to charter aircraft.

Last but not least, it is crucial that Member States regularly and timely inform Frontex about indicative planning of their return operations by charter flights, especially to non-EU countries with which EU agreements are in place.

e. Under-utilisation of the Frontex return pools (monitors and escorts)

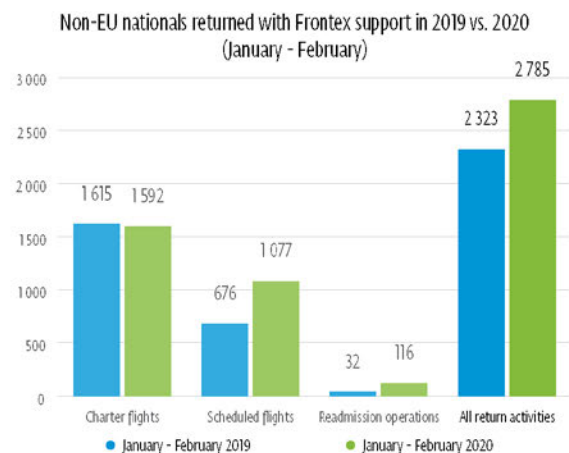
In the last part of the half-year, the possibility to deploy Member States experts from return pools in return operations was greatly limited or even impossible due to the COVID-19 limitations (also related to the lack of flight connections and the adoption of severe travel restrictions by most Member States). Taking into account the small number of operations, and in order to avoid unnecessary exposure of staff to the risk of contracting COVID-19, the activity was essentially de-prioritized.

Member States are, however, still encouraged to continue to make full use of the Frontex pool of forced-return monitors to always have at least one monitor physically present in return operations coordinated by the Agency (Frontex cannot deploy on its own initiative). In addition, the 21 working-days' notice set by the Regulation to get resources from this pool was still a big limitation on effective deployment of monitors, especially under COVID-19 circumstances.

No forced-return escorts from the pool were deployed in return operations coordinated by the Agency in the 1st half of 2020 (only 2 Member States had requested forced-return escorts in charter flights operations which took place before the COVID-19 outbreak). Member States seem sceptical on the concrete possibilities to ensure their national security standards when using escorts from other Member States.

2.2. MAIN ACHIEVEMENTS

Notwithstanding the COVID-19-related challenges and limitations, two main positive developments were observed within the reporting period:



2.2.1 Increased Frontex support in operational activities before the COVID-19 outbreak

The total number of non-EU nationals returned with the support of the Agency in the first two months of 2020 (before the COVID-19 outbreak) increased by 20% compared to the corresponding period of 2019. The increase was mostly possible due to the growing support to returns by scheduled flights. In January and February 2020, Member States returned almost 60% more non-EU nationals by scheduled flights with Frontex support than in the corresponding period of 2019.

2.2.2. Adaptation to the new circumstances under COVID-19

After the COVID-19 outbreak, despite many challenges and limitations, the Agency proved able to rapidly adapt to the new circumstances and to continue providing effective support to Member States by putting emphasis on certain operational activities and establishing new tools and solutions:

a. New ways of supporting Member States

The Agency proved to stand ready to provide solid support in the organisation of return operations by charter and scheduled flights, whenever such operations were technically possible. This

included assessing each request for support on an individual basis, considering all complex variables, and tailoring operational solutions based on applicable requirements. The use of "repatriation flights" aimed at repatriating stranded nationals, was for instance exploited in order to (voluntarily) return migrants in coordination with some non-EU countries and air carriers.

Frontex assisted in cancelling and re-booking return operations by scheduled flights as well as in rescheduling charter flights. The support included financial support for postponements and cancellations alleviating Member States' burden. Frontex's financial scheme was expanded to support the refund of COVID-19 testing for returnees, Member States officials and all other participants in Frontex-supported return operations. Reimbursement of tests was broadly advertised among Member States and was met with appreciation.

Finally, the Agency adapted Implementation Plans drafted for each operation in order to reflect the necessary safety measures to be respected depending on the situation in relevant Member States and/or the possible requirements/prescriptions set by non-EU countries. Especially in the case of return operations by charter flights, it allowed the staff of participating Member States to be fully aware and prepared to implement necessary measures.

b. Tailoring activities

To allow more flexibility after the COVID-19 outbreak, Member States were encouraged to use scheduled flights, whenever available, as these operations could be cancelled or modified without major costs based on existing Frontex arrangements.

In cases, when scheduled flights were not available, charter flights were suggested instead, including to destinations to which scheduled flights are generally used for returns. This included the further promotion of joint return operations, to optimise Member States' efforts and more easily receive approvals of flights from non-EU countries, and replacing collecting return operations with other types of charter (joint or national), when no commercial flights could guarantee the return of Member States' representatives taking part in operations.⁵

Due to the high unavailability of staff and escorts in times of pandemic, priority was given to unescorted migrants (between 12 March and 30 June over 97% returns by scheduled flights were unescorted).

c. Promotion of voluntary returns and voluntary departures

As of January 2020, the Agency broadened the spectrum of its return-related services to support voluntary returns in addition to voluntary departures. This proved to be of great importance for Member States especially in COVID-19 times since voluntary returns and voluntary departures do not require large involvement of staff, which greatly simplified the implementation of new safety measures.

Overall, through the half-year, the percentage of voluntary departures and voluntary returns constituted 17% of the total. As already mentioned, five Member States implemented voluntary returns and voluntary departures with the support of the Agency (Belgium, Cyprus, Greece, Romania and Slovenia), returning 135 non-EU nationals. The figures regarding voluntary cases are expected

to grow further, in accordance with the large interest expressed by Member States. Implementation of voluntary return/departure activities also by charter flights is already planned for the 2nd half of the year.

The Agency upgraded in the Integrated Return Management Application managed by the Agency (IRMA) the Frontex Application for Return (FAR) to be able to support also the organisation of voluntary returns by scheduled flights through its web-based platform. A similar update will be implemented soon also for charter flights.

Voluntary returns/departures have great potential and can result in new actors becoming particularly active in the organisation of returns. They can also facilitate field cooperation with key stakeholders, providing strong incentives for non-EU country cooperation.

d. Information sharing

Since the COVID-19 outbreak, Frontex has been closely monitoring COVID-19-related developments in the countries of return as well as operation of air carriers. In order to support Member States in organising and carrying out returns, daily updates were regularly published in IRMA.

Member States were also encouraged to exchange best practices, share information and future plans aimed at better coordination of return operations and identify durable solutions. The Agency maintained increased contacts with representations of non-EU countries in order to ensure continuous cooperation, and actively exchanged information with relevant stakeholders (e.g. ministries, consulates, airports, airlines, European Return Liaison Officers based in non-EU countries).

e. Enhancing (virtual) communication

In order to have near-real-time monitoring of all return operations, even when the participation of Frontex staff on board was not possible due to COVID-19 restrictions, the Agency

launched the use of new tools to enable better communication in returns by charter flights: a "flash report tool" and a "recommendations tool". The flash report tool allows the Escort Leader to send information about the state of play of a return operation at departure and on arrival. The recommendations tool allows Frontex representatives to address Member States counterparts with recommendations about specific technical aspects of a return operation, with the aim of improvement in collaboration with the Agency.

To prevent unnecessary exposure of staff to COVID-19, various meetings were organised with use of videoconference or other remote solutions. In June, the European Centre for Returns organised a videoconference on "Return under COVID-19 circumstances" with all Member States Direct Contact Points in Return Matters and other practitioners experienced in return area. The discussions focused on exchanging main updates related to returns in the times of pandemic and sharing experiences, best practices and needs in the light of COVID-19.

Additionally, a series of on-line training sessions dedicated to the Frontex Application for Return (FAR) were delivered to Member States.

f. More flexible Framework Contract for chartering aircraft

The Agency launched a new tender procedure for a Framework Contract (FWC) for short notice chartering of aircrafts for Frontex operational activities. This Framework Contract allows the Agency to charter aircraft within one week, not only for all types of return and readmission operations, but also for transferring Frontex and Member States staff to the areas of deployment.

In the 1st half of 2020, the Agency used the Contract to charter aircraft for one joint return operation, one connecting flight and two readmission operations.

⁵ In collecting return operations aircraft and escorts are provided directly by the countries of return

3. CONCLUSIONS

COVID-19-related measures and the closure of the EU's external borders greatly affected operational activities in the reporting period in the area of return. The implementation rate of return operations was significantly down-scaled due to air travel restrictions, as well as to measures in place to ensure safety of both operational staff and returnees. The vast majority of activities in the first months of the pandemic was cancelled and, as a result, the total number of non-EU nationals returned with the support of the Agency in the 1st half of 2020 was almost 50% lower than in the corresponding period of 2019.

Some of the typical challenges experienced in carrying out return operations, such as ensuring the full occupancy of seats on charter flights, the high share of national return operations vs. joint return operations, insufficient information exchange with Member State or under-utilisation of Frontex return pools, were further negatively impacted by the pandemic and resulted e.g. in an even higher share of national return op-

erations and shortage of personnel taking part in return operations.

Towards the end of the reporting period, due to the relaxation of some COVID-19-related measures, the Agency managed to partially resume its operational activity in the area of return. The possibility to organise returns under these challenging circumstances has been assessed on a case-by-case basis, taking into account the situation in Member States and non-EU countries of interest. Operational procedures had to be adjusted to restrictions in place, considering aspects such as the availability of space on the aircraft, number of returnees and escorts, bearing in mind various requirements, including the obligation for escorts and returnees to wear masks, social distancing, etc.

Two main goals were achieved in the half-year: a significant increase in the number of Frontex supported operations in the first two months of the year (before the COVID-19 outbreak) compared to the previous half-year; and

high flexibility shown by the Agency and Member States during the COVID-19 pandemic, while adapting to the rapidly changing circumstances. Despite many challenges, Frontex provided Member States with new, flexible operational solutions, financial support and tools, in order to continue to facilitate the organisation and implementation of returns and maintain operational activities carried out at the EU level.

Most probably some travel restrictions and precautionary safety measures will remain in place for some time. This is expected to result in a low number of both operations and returnees also in the 2nd half of the year. The Agency will continue to identify new operational solutions and develop good practices when slowly returning to a "new normal" and ensure a timely exchange of information with Member states and other actors to continue effectively responding to the many challenges posed by the pandemic.

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