


CODE OF CONDUCT

**FOR RETURN OPERATIONS
AND RETURN INTERVENTIONS
COORDINATED
OR ORGANISED
BY FRONTEX**



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Dear Colleagues,

Return activities are among the most challenging aspects of integrated border management. They require utmost professionalism and the highest standards of conduct.

All Frontex operations and activities represent key values of the European Union – the rule of law and full respect of fundamental rights. Raising and harmonising ethical standards is key to providing a coherent and comprehensive response to the challenges of modern border management.

As the Executive Director of Frontex, the European Border and Coast Guard Agency, I expect all participants in return operations and return interventions coordinated or organised by Frontex to comply with this Code of Conduct. It ensures that the Agency remains the custodian of best practices for border control in Europe.

The Code of Conduct now includes return interventions, which allow the Agency to provide the appropriate technical and operational assistance to a Member State facing challenges in returning third-country nationals.

This document, which reflects the growing importance of returns within Frontex, was prepared in cooperation with the Frontex Fundamental Rights Office and

Consultative Forum. It underlines our commitment to putting the respect of fundamental rights at the core of the Agency's activities.

I hope the *Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex* will provide a useful set of standards and I count on your personal commitment and your sense of individual responsibility.

Fabrice Leggeri
Frontex Executive Director

PART I

INTRODUCTION

Article 1

Scope and subject matter

1. This code sets out common standardised procedures and principles to be followed during all return operations (hereinafter 'RO') and return interventions (hereinafter 'RI') coordinated or organised by the European Border and Coast Guard Agency (Frontex).
2. This code is addressed to all participants as defined below.

Article 2

Relation with Frontex code of conduct, applicable to all persons participating in Frontex operational activities, and other relevant documents

1. This code complements the provisions of the code of conduct applicable to all persons participating in Frontex operational activities and is to be read and interpreted in line with the relevant international and EU law (see annex).
2. Technical and detailed instructions for the practical implementation of RO and RI coordinated or

- organised by Frontex are included in operational documents agreed between Frontex and the Member States (hereinafter 'MS') involved.
3. Other documents adopting guidelines or best practices for RO and RI, developed and updated by Frontex together with the authorities of Member States and the Frontex Consultative Forum, provide operational guidance for RO and RI coordinated or organised by Frontex in order to standardise procedures and to simplify their organisation.

Article 3

Definitions

1. For the purpose of this Code, the following definitions apply:
 - (a) The term 'MS' also includes the Schengen associated countries.
 - (b) The term 'participant' means any person, including escorts, monitors, interpreters and medical staff taking part in an RO or RI, other than the returnee.
 - (c) The term 'RO' means an operation that is coordinated by Frontex and involves technical and operational reinforcement being provided to one or more MS and under which returnees from one or more MS are returned either on a forced or a voluntary basis.
 - (d) The term 'RI' means a Frontex activity that provides MS with enhanced technical and operational assistance consisting of the deployment of European RI teams to MS and the organisation of RO.
 - (e) The term 'collecting RO' means an RO for which the means of transport and forced-return escorts are provided by a non-EU country of return.
 - (f) The term 'organising MS' (hereinafter 'OMS') means the MS which is responsible for the organisation of an RO.

- (g) The term 'participating MS' (hereinafter 'PMS') means an MS, other than the OMS, which participates in an RO or RI by providing technical equipment or staff.
- (h) The term 'escort leader' means the forced-return escort who, in accordance with the instructions given, is in charge of managing a national group of escorts during an RO. Each organising and participating MS appoints their escort leader.
- (i) The term 'forced-return escort' refers to the security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the MS.
- (j) The term 'head of RO' means the person appointed by the OMS as having the overall responsibility for an RO. Where no particular person is appointed, the escort leader of the OMS is to be considered the head of the RO.
- k) The term 'forced-return monitor' refers to the person who monitors the RO in accordance with the effective monitoring system established by MS pursuant to Article 8(6) of Directive 2008/115/EC¹ (hereinafter "Return Directive").
- (l) The term 'fit to travel' refers to a returnee's medical condition (both physical and mental) which allows the person to travel safely.
- (m) The term 'pre-departure phase' means the period starting with the transportation of the returnee(s) to the place of departure of the means of transportation used to implement the RO.
- (n) The term 'vulnerable person' may include minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of

¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, pp. 98–107)..

human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence.

- (o) The term '*non-refoulement*' means a legal principle in accordance with which no persons should be returned to a country where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their life or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion.
2. Other definitions provided for in the European Border and Coast Guard Regulation² (hereinafter "regulation") apply.

2 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) No 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, pp. 1–76).

GENERAL PRINCIPLES

Article 4

Respect for Fundamental Rights

RO and RI are to be conducted in a humane manner and in compliance with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union and in other relevant international instruments, in particular human dignity, the right to life, the principle of *non-refoulement*, the right to asylum, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security, the rights of the child, the best interests of the child, the rights to the protection of personal data and non-discrimination, and the right to respect for private and family life.

2. RO and RI are to be conducted without discrimination on any grounds such as gender, racial or ethnic origin, genetic features, language, religion or belief, nationality, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation or other status.
3. RO or RI must be suspended or terminated in whole or in part if the executive director considers that there are violations of fundamental rights or of international protection obligations that are of a serious nature or are likely to persist in accordance with Article 25(4) of the regulation.

4. In accordance with Article 27(4) of the regulation, Frontex's financial support to MS for the RO is conditional upon the full respect of the Charter of Fundamental Rights of the EU.

Article 5

Safety in return operations and return interventions

Returnees' safety, as well as that of participants and crew members, is paramount during RO and RI. The captain of the aircraft/vessel or the head of RO/the competent authorities of the MS hosting an RI or Frontex, depending on the phase of the RO or RI, must suspend or terminate the RO or RI if they consider its continuation unsafe.

Article 6

Cooperation with returnees and duty to inform

1. The competent authorities of the OMS and of the PMS as well as participants, taking into account individual risk assessments, shall seek cooperation with each returnee at all stages of the RO or RI in order to avoid or limit the use of force to the minimum extent necessary.
2. The competent authorities of the OMS and of the PMS are expected to give sufficient and clear information to the returnees about the RO or RI.
3. The head of RO or the competent authorities of the MS hosting an RI, as applicable, ensure that information is provided about the possibilities to lodge a complaint concerning an alleged fundamental rights violation during the RO or RI, for example via the

Frontex complaints mechanism in compliance with the applicable rules.

Article 7

Use of coercive measures

11. 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 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. Based on a dynamic risk assessment, 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.
4. The OMS and Frontex provide 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 PMS 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.
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 by Frontex for that particular RO or RI.

6. Returnees must not be threatened in order for them to board a means of transport. They must not be punished for not having done so without prejudice to sanctions provided for by applicable legislation.

ORGANISATION OF THE REMOVAL

Article 8

Fitness to travel and medical examination

1. Returnees are to be removed only as long as they are 'fit to travel' at the time of the RO or RI. The OMS must refuse the participation of a returnee who is not fit to travel.
2. In a reasonable time prior to the RO or RI, the authorities of the MS are required to provide for the medical examination of a returnee, subject to their agreement, where they have a known medical condition or where medical treatment is required. Medical procedures should be carried out in a manner that observes the principles of medical confidentiality and dignity.
3. Relevant PMS must inform the OMS in advance about any medical condition of a returnee which would need special care and attention.
4. The processing of medical information must be carried out in line with applicable EU or national data protection legislation. The medical data may only be exchanged among doctors to the minimum extent necessary. Where medical information cannot be exchanged amongst doctors, escort leaders will enable the exchange of this data with due confidentiality.

Article 9

Selection and training

MS and, where applicable, Frontex carefully select participants taking into account their particular functions in RO and RI, and ensure that, prior to their participation, they receive appropriate training in relevant EU and international law, including on the protection of fundamental rights and access to international protection.

Article 10

Referrals

Participants must refer persons seeking international protection and vulnerable persons without delay to the competent authorities of the relevant MS that are responsible for considering their requests.

Article 11

Responsibility

Without prejudice to individual responsibility pursuant to Article 7 of the code of conduct applicable to all persons participating in Frontex operational activities, the competent authorities of the MS have the overall responsibility in accordance with general principles of state responsibility (e.g. for investigating and sanctioning actions of their staff), and according to Article 20 of this code as well as to Articles 29(5), 30(5) and 31(5) of the regulation, irrespective of whether the participants are state employees or are employed by a private contractor.

Article 12

Identification

All participants should be identifiable and fully distinguishable from returnees. For this purpose, official vests, armbands, badges or other distinguishing signs are required to be worn while on duty.

Article 13

Recording

Any form of recording during an RO or RI is possible only when specifically agreed between the relevant MS, Frontex and/or the company operating the means of transport and when in compliance with applicable legislation on the protection of personal data. Recording for private use is prohibited.

Article 14

Medical staff and interpreters

1. During each RO and RI at least one medical doctor provided by the OMS should be present.
2. The OMS provides appropriate medical staff and, depending on an assessment of the returnees' and escorts' needs and language skills, suitable interpreters during the RO or RI.
3. If necessary, the PMS may also provide its own medical staff in an RO or an RI.

MONITORING SYSTEM FOR FORCED-RETURN OPERATIONS

Article 15

Scope and nature

1. The monitoring of forced RO aims at gathering information on and reporting of fundamental rights compliance and, where appropriate, at making recommendations for the strengthening of the protection of returnees.
2. The monitoring system established in accordance with Article 8(6) of the return directive must be effective and must involve monitoring by organisations/bodies that are independent from the authorities enforcing return. MS taking part in a forced RO are required to ensure that they have an effective forced-return monitoring system in place.
3. The monitoring of forced RO should be carried out on the basis of objective and transparent criteria and should cover the whole forced RO, from the pre-departure phase until the hand-over of the returnees in the country of return or back to the country of departure.

Forced-return monitors

1. In order to ensure an effective monitoring system, forced-return monitors must have access to all relevant information concerning the RO, including:
 - a. timely communication of the date and time of the RO, the country(ies) of return and necessary travel documents, the number and origin of returnees, particularly including any forms of vulnerability, e.g. pregnant women, families with children, elderly people or persons with disabilities or medical conditions;
 - b. access to returnees, unless prevailing individual or collective risk assessment prescribes otherwise;
 - c. unimpeded access to all areas used for the RO.
2. Forced-return monitors have the right to attend the briefings prior to the RO as well as to participate in the debriefings where they may provide an account of the main findings.
3. Forced-return monitors may inform the head of RO and/or the escort leader(s) of any perceived irregularities but may not interfere with the planned execution of the RO.
4. When feasible and subject to prior agreement between the MS concerned, forced-return monitors may also monitor on behalf of other MS taking part in an RO.
5. Forced-return monitors may use the services of participating interpreters in order to communicate with the returnees.

FINAL PROVISIONS

Article 17

Data protection

The processing of personal data by participants must comply with the applicable EU and/or national data protection law.

Article 18

Awareness

1. MS ensure that participants are:
 - (a) acquainted with the content of this code prior to their deployment in the RO or RI;
 - (b) informed about the most up-to-date Frontex objectives, best practices and policies;
 - (c) acquainted with relevant referral mechanisms according to Article 10.
2. Frontex ensures that the content of this code is communicated to the national authorities of the countries of return.

Article 19

Reporting

Any participant in the RO or RI who has reasons to believe that a violation of this code or of fundamental rights

has occurred is required to report it to Frontex via the appropriate channels, such as the Frontex serious incident report system.

Article 20

Investigation procedure and right to be informed

1. If the violation was committed by a person assigned by an MS, Frontex must communicate the facts to the competent national authority concerned that provides for an effective and independent investigation.
2. The competent authorities of the MS are expected to inform Frontex of the conduct and results of such an investigation.
3. The executive director may request information on the conduct and results of the investigation and may decide to inform the management board accordingly.
4. The returnee may request information from the competent authority and should be informed of the measures taken and of possible remedies.

Article 21

Sanctions

1. In the case of a violation of this code by a member of Frontex staff, the executive director must take adequate measures in accordance with the relevant applicable rules³.
2. If the violation was committed by a person deployed by an MS, the executive director must communicate

3 Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, pp. 1–7) and Frontex management board Decision No 23/2012 of 27 September 2012 adopting Frontex disciplinary procedure.

the incident to the responsible MS. The executive director expects the relevant authority of the MS to use its powers regarding the necessary disciplinary measures and, if applicable, to suspend or remove the person concerned from the respective pool for a defined period. Nevertheless, if the continued engagement of this person jeopardises the Frontex RO or RI in question, the executive director may decide to suspend or remove them from that activity.

ANNEX

INDICATIVE LIST OF APPLICABLE INTERNATIONAL AND EU LAW, INCLUDING RELEVANT STANDARDS AND GUIDELINES⁴

- Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, pp. 391–407)
- Regulation (EU) 2016/1624 of the European Parliament and of the Council 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, pp. 1–76), in particular Articles 27–35
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, pp. 98–107), in particular Article 8(4) and (6)
- Council of Europe, European Convention on Human Rights, Strasbourg
- Council of Europe, Twenty guidelines on forced return, 2005

4 To facilitate reference, an electronic version of this code, available on the Frontex website, provides direct access to these documents. The online annex will be kept updated and users of the code are encouraged to visit the site for the most up-to-date version.

- Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment — Standards and tools
- Council of Europe, Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European code of police ethics
- Code of conduct applicable to all persons participating in Frontex operational activities
- Frontex fundamental rights strategy and its action plan (see <https://bit.ly/2JTxqAo>)
- United Nations, International Covenant on Civil and Political Rights
- United Nations, Convention relating to the Status of Refugees
- United Nations, Convention on the Rights of the Child
- United Nations, Basic principles on the use of force and firearms by law-enforcement officials
- United Nations, Code of Conduct for Law Enforcement Officials
- Council Decision 2004/573/EC of 29 April 2004 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 (OJ L 261, 6.8.2004, pp. 28–35)
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2006, pp. 26–31)
- European Border and Coast Guard Agency, Guide for joint return operations by air coordinated by Frontex, Warsaw, 2016
- Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'return handbook' to be used by Member States' competent authorities when carrying out return-related tasks (OJ L 339, 19.12.2017, pp. 83–159)

PART II

Decision of the Executive Director
No R-ED-2018-40

**ADOPTING THE CODE OF CONDUCT
FOR RETURN OPERATIONS
AND RETURN INTERVENTIONS
COORDINATED OR ORGANISED BY FRONTEX**
of 26/04/2018

THE EXECUTIVE DIRECTOR,
Having regard to the European Border and Coast Guard Regulation¹, and in particular Articles 35(2) and 68(3) thereof,

WHEREAS:

- (1) Frontex should draw up and further develop a Code of Conduct to be applicable during all return operations and return interventions coordinated or organised by Frontex.
- (2) The above-mentioned Code of Conduct should describe common standardised procedures to simplify the organisation of return operations and return interventions, and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.

¹ Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (O) L 251, 16.9.2016, p. 1).

- (3) Frontex should develop and regularly update the above-mentioned Code of Conduct in cooperation with the Frontex Consultative Forum on Fundamental Rights.
- (4) The Frontex Consultative Forum on Fundamental Rights and the Member States were consulted in writing on 29 September 2017 and at a meeting held on 9 November 2017 at Frontex's premises.

HAS DECIDED AS FOLLOWS:

Article 1

The Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex, as Annexed to this Decision, is hereby adopted.

Article 2

This Decision enters into force on the day following its signature and replaces and repeals ED Decision No 2013/67 of 7 October 2013 on Code of Conduct for Joint Return Operations Coordinated by Frontex.

Done in Warsaw, on 26/04/2018

Fabrice Leggeri
Executive Director

Annex: Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex.



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