



**FRONTEX**



# **CODE OF CONDUCT**

**FOR JOINT RETURN  
OPERATIONS  
COORDINATED  
BY FRONTEX**





# **CODE OF CONDUCT**

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COORDINATED BY FRONTEX**



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# PART I



## CHAPTER I

# INTRODUCTION

### Article 1

#### **Scope and subject matter**

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This Code sets out common principles and main procedures to be observed in the joint return operations of Member States coordinated by Frontex (hereinafter “JRO”).

### Article 2

#### **Relation with Frontex Code of Conduct and other relevant texts**

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1. This Code complements the provisions of the Code of Conduct for all persons participating in Frontex activities<sup>1</sup> and builds upon the Common Guidelines on security provisions by air annexed to Decision 2004/573/EC<sup>2</sup> (hereinafter “Annex of Decision 2004/573/EC”) which shall – in accordance with Article 8(5) of the Return Directive 2008/115/EC<sup>3</sup>

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1 Decision of the Frontex Executive Director No 24/2011 of 21 March 2011.

2 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 of 6.8.2004.

3 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 of 24.12.2008.

(hereinafter “Return Directive”) – be taken into account in each case of removal by air.

2. Technical and detailed instructions for the practical implementation of Frontex coordinated JROs are included in separate and relevant Best Practices for operations developed and updated by Frontex together with the authorities of Member States.

## Article 3

### **Definitions**

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For the purpose of this Code, the following definitions apply:

- a) The term “Member State” (hereinafter “MS”) means a Member State of the European Union or a Country associated with the implementation, application and development of the Schengen *acquis*.
- b) The term “Organising Member State” (hereinafter “OMS”) means the MS which is responsible for the organisation of a JRO.
- c) The term “Participating Member State” (hereinafter “PMS”) refers to the MS which participates in a JRO organised by the Organising Member State.
- d) The term “returnee” means a third-country national who is subject to a return decision.
- e) The term “participant” means any person, including escorts, monitors, interpreters and medical staff, taking part in a JRO, other than the returnee.
- f) The term “escort(s)” refers to the security personnel, including persons employed by private contractor, responsible for accompanying the returnees, in particular during their transportation out of the Member State.
- g) The term “escort leader” means the escorts who are, in accordance with the instructions given, in charge of managing a national group of escorts

during a JRO. Each organising and participating MS appoints its escort leader.

- h) The term “head of operation” means the person appointed by the OMS as having the overall responsibility for a JRO. Where no particular person is appointed, the escort leader of the OMS is to be considered as the head of the JRO.
- i) The term “back-up team” means a group of escorts – usually provided by the OMS – acting as support to the escorts of both OMS and PMSs.
- j) The term “monitors” refers to persons who monitor the JRO in accordance with the effective monitoring system established by MSs pursuant to Article 8(6) of the Return Directive.
- k) The term “fit-to-travel” refers to a returnee’s medical condition<sup>4</sup>, which allows the person to travel safely.
- l) The term “pre-departure phase” means, according to the Annex of Decision 2004/573/EC, the period starting with transportation to the airport.

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4 Both physical and mental.

## GENERAL PRINCIPLES

### Article 4

#### **Respect for Fundamental Rights**

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1. JROs are to be conducted in a humane manner and in compliance with fundamental rights as enshrined in the EU Charter of Fundamental Rights and in other relevant international instruments, in particular the principles of 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 rights to the protection of personal data and non-discrimination, and the right to respect for private and family life.
2. JROs are to be conducted without discrimination on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
3. While respecting the dignity of the returnees, their safety as well as the safety of the other participants and of the crew members are paramount during the JRO. The JRO must be interrupted or terminated in case:
  - a. its continuation would be considered unsafe by the flight captain, the Head of Operation

- or Frontex, in close liaison, in accordance with point 3.1.d of the Annex of Decision 2004/573/EC and Article 3(1a) of the Frontex Regulation;
- b. of violations of fundamental rights of a serious or persistent nature in accordance with Article 3(1a) of the Frontex Regulation<sup>5</sup>.

## Article 5

### **Cooperation with returnees**

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1. The competent authorities of the MSs as well as the other participants, taking into account individual risk assessments, shall seek cooperation with each returnee at all stages of the JRO in order to avoid, or limit to the minimum extent necessary, the use of force.
2. The competent authorities of the MSs are expected to give sufficient and clear information to the returnees about the JRO, including the possibility to lodge a complaint concerning alleged ill-treatment during the operation.

## Article 6

### **Use of Coercive measures**

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1. 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 herself/himself or to a third party, or causing damage to property.

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5 Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as amended by Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011, OJ L 304 of 22.11.2011.

2. The use of coercive measures must be proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and his/her physical integrity.
3. Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally, must not be used.
4. The OMS and Frontex decide on a list of authorised restraints in advance of the JRO. This list must be distributed to the relevant PMSs prior to the JRO. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security.
5. No PMS is required to use coercive measures not allowed under its national legislation even if those measures are accepted by the OMS and Frontex for that particular JRO.

## ORGANISATION OF THE REMOVAL

### Article 7

#### **Fitness to travel and medical examination**

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1. The returnees are to be removed only as long as they are “fit-to-travel” at the time of the JRO. The OMS must refuse the participation in a JRO of a returnee who is not fit-to-travel.
2. In a reasonable time prior to the JRO, the authorities of the MSs are required to provide a medical examination of a returnee, subject to his/her agreement, when he/she has a known medical condition or where medical treatment is required.
3. Relevant PMSs 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 and relevant personal data protection legislation.

### Article 8

#### **Escorts**

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1. While escorts are primarily and individually responsible for their actions in their work, the authorities of the MSs have the overall responsibility in accordance with general principles of state responsibility (e.g. for damages or for investigating and

sanctioning actions of escorts acting under their instructions, according to Article 17 of this Code), irrespective of whether the escorts are State employees or employed by a private contractor.

2. The number of escorts is determined in accordance with an appropriate risk assessment by each MS taking part in a JRO, and in consultation, if necessary, with Frontex, OMS and the relevant PMS.
3. Escorts are carefully selected and trained taking into account their particular functions in the JRO.
4. The appropriate back-up team of escorts is provided by the OMS in order to give assistance to escorts (both OMS and PMSs) during the JRO. PMSs may also provide their own back-up team if deemed necessary.

## Article 9

### **Identification**

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

## Article 10

### **Recording**

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1. Photographing, filming or any other form of recording during a JRO is possible only when specifically agreed between the OMS, PMSs, Frontex and the company operating the means of transport, and in compliance with applicable data protection legislation.
2. The JRO should be fully documented by the OMS and the PMS(s) according to their national requirements, in particular with respect to any significant

incidents that occur or any coercive measures used in the course of the operation.

#### Article 11

### **Medical staff and interpreters**

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1. During a JRO, at least one medical doctor should be present.
2. The OMS provides *appropriate* medical staff and, depending on an assessment of the returnees' needs and escorts' language skills, suitable interpreters during the JRO.
3. If necessary, the PMS(s) may also provide its own medical staff for the JRO.

#### Article 12

### **Presence of external representatives during the Joint Return Operation**

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1. The OMS informs the PMS(s) when external representatives (e.g. Embassies/Ministries/International Organisations/NGOs) are intending to be present during a JRO.
2. When external representatives from the PMS(s) intend to be present during a JRO, the PMS(s) should obtain agreement in advance from the OMS.

## MONITORING SYSTEM

### Article 13

#### Scope and Nature

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1. The monitoring of JROs aims to gather information and ensure they are conducted in a humane manner and in compliance with fundamental rights as stated in Article 4 of this Code.
2. The monitoring system established in accordance with Article 8(6) of the Return Directive must be effective and involve monitoring by organisations/bodies independent from the authorities enforcing return. Pursuant to the principle set forth in the Frontex Fundamental Rights Strategy<sup>6</sup>, MSs taking part in a JRO are required to ensure that they have in place an effective forced return monitoring system. Failing to meet this condition could ultimately lead to postponement or cancellation of the participation of the respective MS.
3. The monitoring of JROs, in accordance with Article 9(1b) of the Frontex Regulation, should be carried out on the basis of objective and transparent criteria and cover the whole JRO, from the pre-departure phase until the hand-over of the returnees in the country of return or back to the country of departure.

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6 Frontex Fundamental Rights Strategy, endorsed by the Frontex Management Board on 31 March 2011.

## Article 14

### Monitors

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1. The assigned monitors are responsible according to their applicable obligations.
2. In order to ensure an effective monitoring system, monitors must have access to all relevant information concerning the JRO, including:
  - a. timely communication of the date and time of the JRO, the country(ies) of return and necessary travel documents, the number and origin of returnees particularly including any forms of vulnerability, e.g. pregnant women, families with children, elderly people, persons with disabilities or with a medical condition;
  - b. access to returnees, unless prevailing risk assessment prescribes otherwise;
  - c. unimpeded access to all areas used for the JRO.
3. Monitors may observe the briefings prior to the JRO as well as participate in the debriefings where they may provide a brief account of the main findings.
4. Monitors may inform the head of operation and/or the escort leader(s) of any perceived irregularities but may not interfere with the planned execution of the JRO.
5. When feasible and subject to prior agreement between the MSs concerned, monitors may also monitor on behalf of other MSs taking part in the JRO.
6. Unless contrary to national rules and procedures, the report(s) of the monitors is (are) sent to Frontex in a timely manner after the end of a JRO and their observations are included in the Final Return Operation Report to be delivered to Frontex.

## FINAL PROVISIONS

### Article 15

#### **Information on this Code**

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1. All participants in the JRO, prior to their engagement in the operation, are required to get acquainted with the content of this Code and fundamental rights through appropriate training.
2. Frontex will ensure that the content of this Code is communicated to the national authorities of the countries of return.

### Article 16

#### **Reporting**

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Any participant in the JRO 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, for example via Frontex Serious Incident Reporting system.

### Article 17

#### **Investigation procedure and Right to be informed**

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1. If the violation was committed by a person assigned by a MS, the facts must be communicated

to the competent national authority concerned that provides for an effective and independent investigation.

2. The authorities of the MS are expected to inform Frontex of the conduct and results of the investigation.
3. The Frontex 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 and should be informed of the measures taken and his/her possible right to compensation.

## Article 18

### **Sanctions**

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1. In accordance with Article 9 of the Frontex Regulation, Frontex' financial support to MSs for the JRO is conditional upon full respect of the EU Charter of Fundamental Rights.
2. In the case of violation of this Code by a Frontex staff member, the Frontex Executive Director takes appropriate measures in accordance with the relevant applicable rules.



## PART II



Decision of the Executive Director  
No 2013/67 on

## **CODE OF CONDUCT FOR JOINT RETURN OPERATIONS COORDINATED BY FRONTEX**

THE EXECUTIVE DIRECTOR,  
Having regard to the Frontex Regulation<sup>1</sup>, in particular Article 25(3), read together with Article 9(1a) thereof,

WHEREAS:

- (1) Pursuant to Article 9(1a) of the Frontex Regulation, Frontex has developed a Code of Conduct for the return of illegally present third-country nationals which applies during all joint return operations coordinated by Frontex (hereinafter "the Code").
- (2) The Code aims at describing common standardised procedures regarding the organisation of joint return operations, and assures return in a humane manner and with full respect for fundamental rights. The Code is applicable to all participants taking part in joint return operations coordinated by Frontex and must be respected by them. Any financial support from Frontex for a joint return operation is conditional upon the full respect of the Charter of Fundamental Rights of the European Union<sup>2</sup>.

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1 Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349, 25.11.2004), as last amended.

2 Charter of Fundamental Rights of the European Union, 2000/C 364/01.

(3) The provisions of the Code of Conduct for joint return operations coordinated by Frontex reflect the principles contained in the Charter of Fundamental Rights, Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>3</sup>, Council Decision 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<sup>4</sup>, Council of Europe's Twenty guidelines on forced return<sup>5</sup>, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>6</sup>, United Nations Code of Conduct for Law Enforcement Officials<sup>7</sup>, Frontex Fundamental Rights Strategy and its Action Plan<sup>8</sup> and Frontex Code of Conduct for all persons participating in Frontex activities<sup>9</sup>, 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.

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3 Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

4 Council Decision 2004/573 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.

5 Twenty Guidelines on forced return of the Council of Europe, September 2005.

6 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

7 United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.

8 Endorsed by the Management Board on 31 March 2011 and 21 September 2011 respectively.

9 Decision of the Frontex Executive Director No 24/2011 of 21 March 2011.

- (4) Frontex mandate includes the responsibility for providing the necessary assistance and, at the request of the participating Member States, ensuring the coordination or the organisation of joint return operations of Member States.
- (5) In accordance with Article 9(1) of the Frontex Regulation, Frontex is not empowered to enter into the merits of return decisions taken by the Member States. Therefore, it is up to the Member States concerned to ensure that the legal situation of each of the returnees for which they are responsible allows for the return.
- (6) Pursuant to Article 26a of the Frontex Regulation the content of the Code was consulted with the Frontex Consultative Forum.

## **HAS DECIDED AS FOLLOWS:**

### Article 1

The Code contained in the Annex to this Decision is hereby adopted.

### Article 2

A copy of the Code is annexed to all plans referring to the joint return operations coordinated by Frontex. A copy of the Code is delivered to all participants taking part in the joint return operations coordinated by Frontex prior to the operation.

### Article 3

The Code is regularly reviewed on the basis of experience gained through its operational application, and further developed where necessary.

Article 4

This Decision and its Annex enter into force on the day following its signature.

Done at Warsaw, 07.10.2013

*[signed]*

Ilkka Laitinen  
Executive Director





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