

FRONTEX EVALUATION REPORT

Return Operations 1st Semester 2018

Approved in Warsaw

[signed]

Berndt Körner
Deputy Executive Director

Contents

1. General Information	2
2. Achievement of objectives	4
3. Assessment of operational activities	5
Return operations by charter flights	5
Pilot Project on returns by scheduled flights	7

1. General Information

According to Article 28(1) of the European Border and Coast Guard (EBCG) Regulation¹, the Agency, without entering into the merits of return decisions and in accordance with Directive 2008/115/EC, provides the necessary assistance and, at the request of one or several participating Member States² or on its own initiative, ensures the support, coordination or organisation of the following types of operations:

- a) **Joint return operations (JRO)** - return operations in which two or more Member States jointly return non-EU country nationals by using the same means of transportation or providing technical support;
- b) **National return operations (NRO)** - return operations carried out by one single Member State;
- c) **Collecting return operations (CRO)** - return operations in which means of transport and/or escorts are provided by the destination country. CROs can be implemented as joint or national return operations.

All return operations coordinated or organised and co-financed by Frontex during the first semester of 2018 are evaluated in this report in accordance with Article 28(8) of the EBCG Regulation, which requires a comprehensive comparative analysis of the results, with a view to enhancing the quality, coherence and effectiveness of future return operations.

Implementation Plans

The Implementation Plans set the rules and procedures to conduct all types of Frontex-supported return operations and aim at ensuring the respect and promotion of fundamental rights. Specifically, they provide a brief description of roles and responsibilities, information on operational procedures such as provision of medical assistance, transport of returnees, boarding and arrival at destination, among others. Given the high number and broad range of activities, the Agency frequently **updates the Implementation Plans for JROs, CROs and NROs in order to include the newest developments.**

New Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex

During the first semester of 2018, the Agency completed the revision of the “Code of Conduct for Joint Return Operations coordinated by Frontex” in cooperation with the Frontex Consultative Forum and Member States. The

¹ 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) 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, p. 1).

² For the purposes of the present document, the term “Member State” includes also the States participating in the relevant development of the Schengen acquis in the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, that is, Norway, Iceland, Liechtenstein, and Switzerland.

new “Code of Conduct for Return Operations and Return Interventions coordinated and organised by Frontex” is available on the Agency’s website: https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf

Complaints Mechanism and Serious Incident Reporting system

The Agency has developed a standard operating procedure for the **complaints mechanism** as required by Article 72(1) of the ECBG Regulation which is used during the implementation of return operations coordinated or organised by Frontex, providing further safeguards to the returnees. The process of reporting serious incidents was also updated and is used in all return operations supported by the Agency.

Frontex return pools

Member States continued to use **forced-return monitors and forced-return escorts from the Frontex pool(s)**. On request of Member States, the Agency regularly deployed **forced-return monitors** to Frontex coordinated or organised return operations. During the evaluated period the Agency received only one request (from Belgium) to deploy **forced-return escorts**, while **forced-return escorts** were used on a permanent basis in Greece to support readmission operations to Turkey under the EU-Turkey statement. Around 25 to 30 **forced-return escorts** are permanently hosted on a rotation scheme agreed with the home Member States.

All experts from the **Frontex return pools** receive appropriate **training** prior to their deployment in operations/activities according to Article 36 (4) of the EBCG Regulation.

Return specialists were deployed to the Return Coordination Office in Athens to support the Hellenic Police in preparatory phases of return operations, and to the Migration Directorate in Sofia, Bulgaria.

Chartering of aircraft by Frontex

In December 2017 Frontex signed a Framework Contract in order to be able to charter aircraft for return operations of Member States. After the initial technical arrangements during the first semester of 2018, the contract is now fully in place. In parallel, the Agency also coordinates the chartering of aircraft by other Member States to support the organisation of return and readmission operations by other Member States.

New Financing Scheme and role of coordination of Frontex

In the beginning of 2018, the Agency introduced a new financing scheme for the reimbursement of costs borne by Member States to carry out return operations, based on Grant Agreements instead of Specific Financing Decisions as in the past³. As per the EBCG Regulation, Frontex assumes the role of coordinator, managing and accepting Member States’ needs to organise return operations, releasing this information to other Member States and receiving the needs of those which take part as “participating Member State”.

Frontex Application for Return

Frontex implements the “Rolling Operational Plan” on return-related activities through the web-based **Frontex Application for Return (FAR)**. Two updates of the FAR module for charter flights were released in the reporting period including the following features:

- A dedicated area on **financing** supporting the **management of Grant Agreements**;
- Enhanced **viewer rights**;

³ See Management Board Decision 33/2017 of 22 November 2017, entered into force on 1st February 2018.

- The possibility to download accreditation cards for forced-return monitors from the Frontex pool in a printable version;
- Introduction of a disclaimer ensuring that all returnees have been addressed by individual return decisions that can be legally enforced;
- Introduction of a privacy statement containing a reference to the processing regulation of personal data for Return Operations in FAR in each FAR page footer.

Meetings and training

Frontex regularly meets the Member States **Direct Contact Points in return matters** in order to better plan return operations and discuss related achievements and challenges. In the 1st semester of 2018 two meetings were organised.

Frontex also organised and participated in a wide variety of trainings, e.g. readmission training, training for monitors, return specialists, escort leaders and forced-return escorts, as well as training on FAR.

Furthermore, within the IPA II technical assistance project “Regional support to protection-sensitive migration management in the Western Balkans and Turkey”, a range of national training activities were provided to non-EU countries’ escorts: Albania (March 2018), Kosovo* (April 2018), FYROM (May 2018) and Bosnia-Herzegovina (June 2018). These training activities provided an added value in ensuring efficiency and security in CROs through sharing best practices developed by the Agency in cooperation with Member States.

2. Achievement of objectives

The main objectives achieved during the reporting period were:

- a) Promoting security throughout return operations thanks to the harmonisation of procedures and clear distribution of roles and responsibilities;
- b) Ensuring that the procedures are up to date by upgrading the Code of Conduct for JROs into the new Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex;
- c) Respecting human dignity and conducting operations in full compliance with the Charter of Fundamental Rights through persistent encouragement of Member States to provide monitors on board during all return operations resulting in an increased number of operations with a monitor on board compared with the second semester of 2017. In addition, monitoring reports are constantly followed up together with the Frontex Fundamental Rights Officer and human rights-related training is provided to staff participating in the implementation of return operations;
- d) Sharing best practices between Member States and Frontex in order to achieve an integrated return management system, thanks to the well-established network of Direct Contact Points in return matters in Member States and the High Level Round Table on Return, a dedicated forum where twice a year the key decision makers of Member States’ national return services, the European Commission, EASO and Frontex meet to discuss the developments and needs for enhancing the effective returns;

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo* declaration of Independence

- e) Using the existing cooperation between some Member States and the Agency with destination countries for the benefit of other Member States as grounds for successful advance parties and other relevant contacts in the non-EU countries of interest;
- f) Ensuring the correct implementation of the Standard Operating Procedures in place with destination countries;
- g) Implementing the enhanced role of the Agency in organising return operations by charter flights, among others through initiation of the second Frontex organised JRO to Afghanistan;
- h) Broadening the number of destination countries;
- i) Introducing the CRO concept to more destination countries, as well as involving more Member States in the organisation of such type of operations;
- j) Increased use of the Frontex return pools to better support Member States achieved by fine-tuning the processes and providing tailor-made training for forced-return monitors and forced-return escorts;
- k) Enhancing transparency and ensuring full respect of fundamental rights in return operations achieved by increasing the number of return operations with a monitor on board, among others through constant and effective use of the pool of forced-return monitors, as well as visits and participation of the members of the Frontex Consultative Forum, representatives of the Frontex Fundamental Rights Office, and non-EU country observers in return operations;
- l) Enhancing technical support to Member States in terms of chartering aircraft;
- m) Making FAR more user-friendly through regular updates and releases of new versions of the application;
- n) Boosting cost effectiveness through coordinated use of charter flights among Member States allowing for best possible use of available capacity;
- o) Further development of the Pilot Project on returns by scheduled flights as a valuable tool to increase effectiveness of the Member States' return systems.

3. Assessment of operational activities

Return operations by charter flights

From 1 January until 30 June 2018, Frontex coordinated and co-financed **165 return operations (6 142 persons returned)** as follows:

- **67 joint return operations;**
- **36 collecting return operations;**
- **62 national return operations.**

Frontex support to Member States mainly consisted of the following:

- a) Coordination and/or direct organisation of operations, based on the Article 28 (1) EBCG Regulation;
- b) Management of all return operations and related communication with Member States through FAR;
- c) Technical support through the chartering of aircraft via other Member States and its own dedicated Framework Contract, as well as through deployments of experts from the forced-return monitors' and forced-return escorts' pools, on request of Member States;

- d) Co-financing of the operations according to the new financing scheme;
- e) On request of Member States, operational and practical advice on the implementation of return procedures, in compliance with Directive 2008/115/EC and Article 27 EBCG Regulation;
- f) Coordination and assistance in harmonising procedures on board through the presence of Frontex representatives in some return operations.

All return operations were carried out in full compliance with EU law including the Charter of Fundamental Rights, and international law, namely the Convention Relating to the Status of Refugees of 1951, access to international protection and in respect of the principle of non-refoulement.

The risk of a possible violation of fundamental rights during Frontex coordinated return operations is low, due to constantly maintained security procedures, compliance with the Implementation Plans and the Frontex Code of Conduct for Return Operations and Return Interventions, the provided training, applied updated best practices and the considerable number of operations monitored by Frontex staff and/or independent monitors.

The Implementation Plans and their annexes were prepared and distributed to Member States in time, together with the Code of Conduct, the Agency's Rules on the Complaints Mechanism and the Serious Incident Report procedure for return operations. All return operations were conducted in compliance with dedicated Implementation Plans and no serious incidents regarding the respect of fundamental rights were reported.

Compared with the first semester of 2017, 128% more returnees were returned by CROs. The main organisers remained France and Germany and in March 2018, the first CRO to Montenegro was carried out.

In total, 32 destination countries were reached by Member States during the reporting period - 3 more than in the previous semester. The main destination countries were Tunisia, Albania, Kosovo*, Serbia and Georgia. Three new destinations were reached for the first time in the reporting period: Senegal, Burkina Faso and Belarus.

In May 2018, Frontex organised directly its second return charter flight to Afghanistan.

In the reporting period, there was only one Serious Incident Report registered in a JRO to Nigeria and Gambia organised by Austria. Belgium, Bulgaria, Switzerland, France, Luxembourg, Hungary, Germany and Sweden participated in the operation. Two Escort Officers were injured by a Gambian returnee.

During the evaluated period, there was at least one monitor on board of 112 return operations, which constitutes an increase of 104% compared to the same period of 2017.

By type of operation, the percentage of returned operations with a monitor present on board remains stable: 100% of CROs, 99% of JROs and 16% of NRO were physically monitored. In this regard, it has to be highlighted that the number of NROs physically monitored referred only to operations where a national monitor was also on board. The other 24 return operations in which only one Member State returned non-EU country nationals are considered joint operations because of the presence of a monitor from the Frontex pool, provided by another Member State.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo* declaration of Independence

Pilot project on returns by scheduled flights

In the renewed Action Plan⁴ on return published on 2 March 2017, the Commission requested Frontex to “*put in place a mechanism for assisting the Member States in carrying out returns by commercial flights to finance voluntary [departures] as well as forced returns of the Member States organised through this means*”. In response to the request of the European Commission, the Agency developed a pilot project on returns by scheduled flights as well as a corresponding FAR module, with both being officially launched on 8 December 2017.

In the first half of 2018, a total of 290 returnees were returned to Algeria, Morocco, Bosnia and Herzegovina, FYROM, Kosovo*, Serbia and Albania with the use of Frontex-supported scheduled flights. Belgium and Germany were the most active Member States in the Pilot Project.

⁴ Communication from the Commission to the European Parliament and the Council, On a more effective return policy in the European Union - a renewed action plan (COM(2017) 200 final), 2 March 2017, p. 10-11.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo* declaration of Independence