

FRONT**X**



EUROPEAN BORDER AND
COAST GUARD AGENCY

FUNDAMENTAL RIGHTS OFFICER'S OBSERVATIONS

TO RETURN OPERATIONS (RO)
CONDUCTED
IN THE 1ST HALF OF 2022

1 JANUARY – 30 JUNE 2022

1. INTRODUCTION

In accordance with Article 50(7) of the European Border and Coast Guard Regulation, 2019/1896 ('the Regulation'), the Fundamental Rights Officer ('the FRO') of the European Border and Coast Guard Agency ('Frontex') shall provide observations to return operations on fundamental rights, – i.e., Fundamental Rights Officer's Observation to Return Operations, covering all return operations. The FRO Observations are attached to the Frontex Evaluation Report – Returns in the first half of 2022 (FER).

In the FRO Observations, the Fundamental Rights Officer provides an overview of the findings and conclusions from the forced-return monitors' reports. They also include recommendations to be followed to ensure the compliance of fundamental rights during Frontex return operations as well as examples of good practices for the consideration of the Frontex Management Board and the Executive Director.

The FRO Observations are based on 82 monitoring reports submitted by forced-return monitors in the reporting period, 1 January to 30 June 2022. The Fundamental Rights Office analysed all reports and presented its findings, based on facts that took place and/or were ob-

served, if relevant in terms of fundamental rights – both one-off incidents taking place in return operations and repetitive actions/practices.

Beside submission of the observations to the European Parliament, the Council, the European Commission, and the Management Board, the FRO Observations are also shared with the Member States' Direct Contact Points in Return Matters, Member States' return monitoring bodies and monitors from the pool of forced-return monitors ('the pool').

As set forth by Article 50(5) of the Regulation, the monitoring of forced-return operations shall be carried out by the forced-return monitor based on 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. Every return operation organised or coordinated by the Agency shall be monitored in accordance with Article 8(6) of the Return Directive (2008/115/EC).

The mechanism *de facto* acts as a subsidiary guarantee to the Member States' obligation to provide an effective

forced-return monitoring system, as per the above-mentioned Article 8(6) of the Return Directive.

Prior to the enactment of the Regulation, Frontex and the FRO continuously encouraged Member States to enhance the systematic use of their national monitoring bodies in all return operations, as the strengthening of national monitoring mechanisms had a direct positive impact on the overall capacity to monitor and impact return operations, both at the national and European level.

In the first half of 2022, 62 forced-return monitors were nominated to the pool by the Member States. Three fundamental rights monitors ('FROMs') are acting as forced-return monitors in the pool and are engaged in return monitoring activities, while an additional two were recently nominated and will be ready to fully take up their duties beginning September 2022. Likewise, three additional FROMs are undergoing training for forced-return monitors at the end of August 2022 and will be ready to support the Fundamental Rights Office in its return operations monitoring activities.

2. GENERAL INFORMATION ON RETURN MONITORING

In the first half of 2022, Frontex supported 136 forced-return operations by charter flights¹ to 25 non-EU countries. Out of these, 104 were monitored by monitors present on board.

82 reports on Frontex-supported return operations were submitted in the reporting period by forced-return monitors from the pool as well as by national monitors. It is of concern that the Agency and FRO do not receive reports from all monitors taking part in Frontex return operations even though Article 50 of the Regulation requires this (21% of the reports were missing for the reporting period, mostly relating to National Return Operations).² Furthermore, requests for

Public Access to Documents³ are increasingly addressed to ECRET and FRO with regards to monitoring reports of return operations.

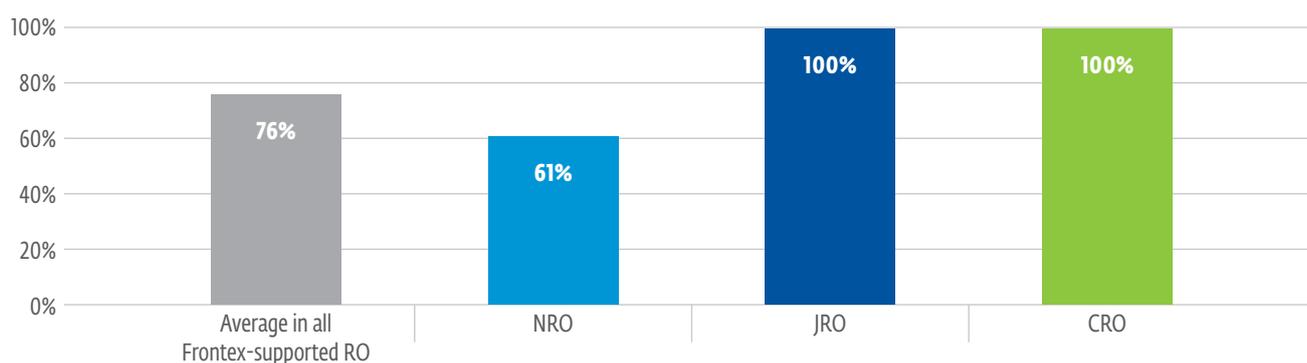
The FROMs participated in all three types of operations: Joint Return Operations (JRO), National Return Operations (NRO) and Collecting Return Operations (CRO). In the first half of 2022, the monitors from the Fundamental Rights Office took part in 19 return operations (a 20% increase compared to the second half of 2021).

In 5 of these cases, FROMs acted based on the broader mandate of the Fundamental Rights Officer (Article 110 (3) of the Regulation) to monitor all opera-

tional activities; in the remaining 14 cases, FROMs were acting as forced-return monitors from the pool within the scope of Article 51(2) of the Regulation.

At least one monitor was present on board of 76% of all Frontex-coordinated return operations (an increase of 8% in comparison to the previous reporting period), 100% of JRO, and 61% of NRO (increase of 8% in comparison to the previous reporting period). All CROs supported by Frontex in the first half of 2022 had on board a forced-return monitor from the pool during the entire return operation, as required by Article 50(3) of the Regulation.

Percentage of return operations with at least one monitor on board in the first half of 2022 divided by type



Number of Return Operations with and without the presence of forced-return monitors (from the pool and additional national monitors) on board in the first half of 2022

Monitor on board?	JRO		NRO		CRO		Total Number of ROs	Total Number of monitors
	Number of ROs	Number of monitors	Number of ROs	Number of monitors	Number of ROs	Number of monitors		
No	0		32		0		32	
Yes	19	44	51	68	34	34	104	146
Grand Total	19		83		34		136	

Joint Return Operation (JRO), National Return Operation (NRO) and Collecting Return Operation (CRO)

1 While in the 2nd half of 2021 there were altogether 167 return operations (NRO, JRO and CRO)

2 Art 50 (5) of the Regulations states: "Every return operation organised or coordinated by the Agency shall be monitored (...) The forced-return monitor shall submit a report on each forced-return operation to the executive director, the fundamental rights officer and to the competent national authorities of all the Member States involved in the given operation. If necessary, appropriate follow-up shall be ensured by the executive director and competent national authorities respectively."

3 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

3. FRO OBSERVATIONS

As in the previous reporting period, based on the reports received and assessed, return operations were generally performed in full compliance with fundamental rights and with respect to returnees' dignity. A few cases of concern were however reported. Concerns exist, in particular, with regards to the use of restraints as a preventive measure in some Member States. The recommendations given to stakeholders involved in the return operations (Member States/ Frontex) include changes to be implemented based on issues reported by the forced-return monitors.

a) Serious Incident Report (SIR)

A Serious Incident (SI) is an event, caused by an action or failure to act by a person or by the force of nature, that directly or indirectly involves Frontex participants or assets and that entails a potential violation of EU or international law related to fundamental rights and international protection obligations (SIR category 1). There was 1 SIR, Category 1, issued in connection with a return operation during the reported period, which is currently under assessment with the respective Member States.

b) Complaints Mechanism (CM)

Article 111 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.

The FRO reiterates the importance for forced-return monitors to report on the availability of complaint forms and information materials about the complaints mechanism procedure during the Frontex-supported return operations. Complaints mechanism forms as well as leaflets are prepared in 14 languages and should be made available in common areas at the airports (as also recommended

by the European Ombudsman). Member States are also encouraged to place complaints mechanism posters (more than one piece) and leaflets in the languages relevant for the specific return operation in a clearly visible place.

During the reporting period, no complaints relating to the Frontex-supported return operations were submitted; however, an issue of lacking information/insufficient information (e.g. poster/leaflet in a language not understood by returnees) or a lack of complaint forms was identified by a few monitors and needs to be further addressed by Frontex and the Member States.

Member States are encouraged to inform returnees about the complaints mechanism more actively and to provide information and relevant forms in the language they understand.

c) Pre-departure phase

Based on Article 4 of the Code of Conduct for return operations and return interventions coordinated or organised by Frontex ('the Frontex CoC'), Frontex shall ensure that return operations are conducted in a humane manner and in compliance with fundamental rights. It concerns every single phase of a return operation, including the pre-departure phase.

The following shortcomings were observed during the monitoring of pre-departure:

- Some airport waiting areas were reported to be inadequately adapted for specific groups of returnees (e.g. no areas dedicated to families with children or/and to agitated returnees, no smoking areas, no dedicated areas for children);
- Cash carried by returnees was counted out loud and in front of others;
- Insufficient number of female escorts to provide assistance to female returnees and children;
- Interpreter of the opposite sex to returnees, which can create tensions and confusions, e.g., during unclothed security checks and medical examinations.

FRO recommendations addressed to Member States

- Facilities to be adapted to the extent possible for the time of the operation (or permanently) with separate area for families, child-friendly sections, smoking areas for adults;
- Smokers to be allowed to smoke to minimise tension, whenever possible;
- Returnees' cash to be counted discreetly;
- Number of female escorts to be increased, especially if families are taking part in a return operation;
- Male and female interpreters who speak the language of the returnees are to be provided.

d) 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 the means of restraint, which can be applied only in accordance with the principles of necessity, legality, proportionality and in response to an immediate and serious risk. Any decision to use coercive measures is to be based on an individual risk assessment. The use of force may be necessary in any phase of the return operation. It affects returnees directly, limits the freedom of movement, and can cause pain or even harm a person. Hence, it is always thoroughly monitored during the whole operation.

The observed shortcomings include:

- Restraints (hand ties) were applied to every returnee as a preventive measure on the way to the plane, without considering the potential risk posed by the returnees and without conducting a dynamic risk assessment – a practice observed and confirmed by representatives of at least two Organising/Participating Member States.

FRO recommendations addressed to Member States:

- The use of force must always be the last resort and cannot be applied by default as a preventive measure;
- The use of coercive measures should be limited to the necessary minimum;

- The use of force should be based on a dynamic risk assessment and not to be applied for the whole operation;
- A mattress (e.g. judo mat) should be available for use when returnees resist and 'flooring' is required, for the returnees' but also the escorts' safety.
- Enabling a specific waiting area and lavatory for families with children, kept separate from other returnees, especially those with restrictive measures;
- Offering more suitable food for children whenever possible.

e) 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, persons with disabilities, elderly people, and pregnant women. Children's wellbeing is particularly important considering the stress involved in return operations.

The forced-return monitors reported shortcomings such as:

- Children seated in the same area as an aggressive adult male (reported in a few instances);
- Toys (or cartoons or such) not provided during the pre-departure and in-flight phases (reported in several cases);
- No special food provided for children during pre-departure and in-flight phases.

FRO recommendations addressed to Member States:

- Providing Frontex-supported refresher training sessions on child protection and communication with children to officers assigned to the operations; providing regular training on child protection to all forced-return monitors from the pool;
- Providing a separate space for families in the waiting area (with toys/cartoons);
- Providing 'Children's corners' with toys and cartoons at airports and during flights; better child-friendly waiting area conditions (especially when ROs are organised at night, on long flights or long waiting hours before departure);
- In addition to the abovementioned recommendations, other observations are provided to promote an effective forced-return monitoring system.
- Member States are encouraged to provide national monitors in their operations, to submit monitoring reports, and, whenever needed, to continue to make full use of the Frontex pool of forced-return monitors;
- Solutions to fill gaps in situations when the deployment of monitors from the Frontex pool of forced-return monitors is not possible to be identified, including by envisaging an increased deployment of fundamental rights monitors from the Fundamental Rights Office as per Article 110 of the Regulation;
- Two monitors should be engaged for longer return operations as well as adequate rest time for escorts and other Frontex operation participants should be provided;
- Nominated monitors to be encouraged by monitoring bodies in Member States (such as National Preventive Mechanisms) to submit reports to the Fundamental Rights Office on time and after every Frontex-supported return operation;
- Increasing cultural awareness sessions for participants to facilitate communication and improve the safety of all participants in the operation;
- Based on one JRO, monitors raised a security issue. In missions where overstay in hardship locations is required, security measures for the participants need to be in place in order to guarantee the safety and security of all participants – safe hotels and secure transportation.

g) Good practices

This section highlights good practices identified in forced-return monitoring reports.

On the use of force and means of restraint

- The use of force was exercised following the principles of necessity, proportionality, and precaution, respecting legislation, operational plans, and fundamental rights;
- In general terms, it was observed that, in situations where returnees were in restraints, following proper communication with escorts and based on individual dynamic risk assessments (when reasons were justified and it was safe), restraints were removed;
- No cases of handing over returnees in restraints during CROs were observed.

On communication

- In many cases, police officers/escorts took good care of the physical and mental condition of the returnees, taking a proactive approach to the well-being of the returnees;
- Escort leaders provided information to returnees regarding the procedures to be followed;
- Social workers at the airport provided detailed information and contact details to returnees about assisting organisations in the returnee's country of origin;
- One male and one female monitor were engaged in return operations with both male and female returnees;
- Good cooperation and mutual trust between organising Member States and monitors;
- Escort leaders and other participants were very open towards the role of the monitors and provided all the necessary information regarding return operations;
- Escorts were highly trained in applying appropriate communication skills and de-escalation techniques;
- At least two interpreters (along with minimum two medics) took turns and complemented each other during different activities – practice already in place in long return operations or when numerous returnees on board.

On families and children

- ♦ Baby food and accessories for changing diapers were available at waiting areas;
- ♦ Two doctors were available during the return operations;
- ♦ A corner/room for children with soft carpets was accessible, with toys and cartoons available, in line with previous suggestions aimed to improve conditions for children at the airport's waiting area;
- ♦ Separate space for families in waiting areas was available at some airports;
- ♦ Children were given special attention by escorts, for instance by playing with them in order to create a more relaxed atmosphere.

On facilities for returnees

- ♦ A phone (in some cases in a separate room) was available for returnees to call their lawyer or relatives;
- ♦ Separate areas/tents for violent returnees were prepared at some airports;
- ♦ Soft mats on the floor and walls were used in rooms where body searches were conducted;
- ♦ Smoking outside the waiting area was allowed when there was no smoking area inside the building, even when returnees were in restraints;
- ♦ An airport's waiting area was well equipped, clean, and spacious. In particular, the following were available and accessible: a well-equipped room for children/families, a prayer room, and a smoking area. In addition, tables for both returnees and

escorts helped to de-escalate potential tensions, as the returnees could talk freely with each other and communication between the escorts was easier.

On food items

- ♦ Food for diabetics and children was provided.

On the Complaints Mechanism

- ♦ Posters on the complaints mechanism in languages understood by returnees were displayed in the waiting areas, at some airports;
- ♦ Returnees were informed verbally by escort leaders of their right to complain;
- ♦ Posters on the complaints mechanism were visible onboard, – e.g., at the doors of the restrooms.

4. FRO OVERALL ENGAGEMENT IN RETURN MONITORING MATTERS

The Fundamental Rights Office is increasingly engaged in monitoring and supporting return related activities, in particular:

- ♦ 19 return operations – acting as monitors from the Pool of forced-return monitors according to Article 51(2) as well as based on Article 110(3) of the Regulation;
 - ♦ A monitoring tool for return operations has been developed to ensure a more integrated reporting system, including a web-supported communication platform for monitors. This tool, to be launched in September 2022, will facilitate regular reporting and more systematic follow-up on monitors' reports, thus enhancing the overall coordination of the Frontex Pool of forced-return monitors;
 - ♦ FRO contributed to the revised Code of Conduct for return operations and return interventions coordinated or organised by Frontex;
 - ♦ FRO provided input to the Operational Workplan on Return and Re-integration Counselling;
 - ♦ FRO contributed to the Implementation Plan for FRESO deployments in Member States;
 - ♦ A newsletter was issued to the pool monitors, providing information and an overview of ongoing activities.
- In terms of next steps, the Fundamental Rights Office plans to:
- ♦ Continue to actively monitor return operations based on Article 110 (3) of the Regulation as well as being available as a monitor in the pool of forced-return monitors in accordance with Article 51, upon request by Member States;
 - ♦ Increase the number of FROMs for forced-return monitoring activities to enhance monitoring capabilities to meet operational needs;
 - ♦ Roll out the new IT reporting tool to be applied consistently by the pool monitors for reporting on Frontex return operations;
 - ♦ Provide regular feedback to the Member States as well as their respective monitoring institutions and share relevant information concerning return and monitoring activities, also in view of harmonizing standards and procedures;
 - ♦ Organise a joint network meeting for the monitoring institutions and the pool of monitors during the first half of 2023;
 - ♦ Deliver dedicated fundamental rights sessions in the course of trainings for forced-return monitors, escort leaders, and other participants of return operations in Member States;
 - ♦ Systematically gather information and identify challenges regarding particular areas of return operations for discussions with relevant Member States.

**The Fundamental
Rights Officer**

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