EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

FORCED RETURN MONITORING SYSTEMS

2024 UPDATE

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Introduction

Under the EU's return directive (Directive 2008/115/EC), Member States must issue a return decision to third-country nationals who do not have the right to stay in their territory. Member States must take the necessary measures to enforce the return decision. When voluntary departure fails, the authorities may remove the third-country nationals by force. Such forced returns entail actions that are sensitive from a fundamental rights point of view. Monitoring helps ensure that forced returns are carried out in a way that respects people's fundamental rights.

This report sets out the findings of the European Union Agency for Fundamental Rights (FRA) from a review of forced return monitoring activities carried out in 2023 at the national level in Member States.

In 2008, Article 8(6) of the return directive introduced a duty for Member States to provide an effective forced return monitoring system. This was the first EU law provision about monitoring fundamental rights in the area of freedom, security and justice.

In 2024, the EU pact on migration and asylum introduced a new obligation: by mid 2026, Member States must have independent national mechanisms to monitor fundamental rights compliance during the screening of new arrivals and asylum procedures at borders. Member States' experience in monitoring forced returns will be helpful to design effective national independent monitoring mechanisms under the pact on migration and asylum.

Since 2014, FRA has been publishing an annual update of the forced return monitoring systems in EU Member States based on information it collects from the national monitoring entities. These updates provide an overview of developments and progress in addressing identified fundamental rights issues. Such updates are for the benefit of national authorities in charge of returns and for the entities in charge of monitoring.

Table 1 in the annex provides an overview of forced return monitoring in 2023.

Most forced returns are by air, on commercial or charter flights. The national authorities may organise and fund flights, or the European Border and Coast Guard Agency (Frontex) may coordinate, organise, co-fund or fully fund them. This FRA report focuses on forced returns at the national level and how they are monitored pursuant to Article 8(6) of the return directive.

To monitor return operations supported by Frontex, a dedicated pool of forced return monitors has been set up within Frontex pursuant to Article 51 of Regulation (EU) 2019/1896. Although in practice the Frontex pool of forced return monitors has operational autonomy, FRA suggested that it should be managed by an independent body outside Frontex.

An overview of the work of the pool is available in Section 1.8 of the Frontex Fundamental Rights Officer's 2023 annual report. It contains information on the number of monitors in the pool, their monitoring activities by type of Frontex forced return operations and overall statistics of

monitored Frontex operations. The Frontex report also contains monitoring findings and recommendations. Whereas some of them are Frontex-specific, those that concern monitoring in general broadly match the findings that emerged from national monitoring, which this report describes. They concern, for example, excessive use of restraint measures, the need for better information provision and the importance of monitoring all phases of returns, not only the pre-return phase.

1. Overview of 2023

All 27 Member States except Ireland are bound by the EU's return directive (Directive 2008/115/EC) to have effective forced return monitoring mechanisms.

The 26 EU countries bound by the return directive have all adopted a legal basis for national forced return monitoring systems. In addition, national preventive mechanisms established under the 2002 Optional Protocol to the United Nations (UN) Convention against Torture have a mandate, under international law, to monitor all places where individuals are deprived of their liberty, which includes forced returns.

In six Member States, none of their forced return operations was monitored in 2022, FRA reported. In 2023, at least some were monitored in all the 26 Member States bound by the return directive except Croatia.

In 2023, across the EU there were 164 staff trained to be national monitors, and 139 monitors were operational.

Some of them were also part of the Frontex pool of forced return monitors. In 2023, the Frontex pool monitored 178 return operations, as the Frontex Fundamental Rights Officer reported in his annual report.

2. Main challenges for effective monitoring of forced return

2.1. Independence

To be effective, monitoring should be carried out by an entity that is sufficiently independent from the authority in charge of returns. In Germany and Sweden, monitors are part of the same entity that is responsible for parts of the return procedure, namely the Federal Office for Migration and Refugees in Germany and the Swedish Migration Agency. There is a lack of institutional separation, and thereby independence.

Following a visit to Germany on 4–7 September 2023, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended that the German government designate 'a national forced return monitoring system that is both independent and effective'.

Those Member States that appointed national preventive mechanisms as the bodies in charge of forced return monitoring offer the strongest guarantees of independence but may face other challenges, such as limited resources. For more information, see FRA's 2020 report Strong and Effective National Human Rights Institutions – Challenges, promising practices and opportunities.

2.2. Transparency

An important aspect of effective monitoring is the publication of key findings from the monitoring activities. Most monitoring bodies publish at least a summary of their observations and of their recommendations in regular (usually annual) reports. In Czechia, Portugal and Slovakia, there are also public reports of individual operations that are monitored.

In Austria, Estonia, Germany (at the federal level), Hungary, Luxembourg, Poland and Romania, there are no recent public reports on the findings of forced return monitoring activities. In Malta, Slovenia and Sweden, reports are only available upon request.

2.3. Phases of removal monitored

In Croatia, no monitoring took place in 2023. According to Eurostat data on third-country nationals returned following an order to leave, some 5 800 people were forcibly returned from Croatia.

Across the EU, FRA counted some 200 national monitoring operations of charter flights in 2023, compared with some 230 in 2022. As in Germany two monitoring entities have in some cases monitored the same charter flights, the total number of monitored flights is lower.

In 10 Member States – Austria, Belgium, Cyprus, Czechia, Germany (federal and regional levels), Greece, Italy, Slovakia, Slovenia and Sweden – there was a decrease in the monitoring of national forced return operations compared with the previous year.

An increase in the monitoring of national forced return operations could be observed in Bulgaria, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania and Spain. In France, Luxembourg and Malta, figures remained at the same level.

Three Member States – Bulgaria, Cyprus and Czechia – monitored only the pre-return phase, in other words the pick-up of returnees, their transfer to the airport, and procedures before and during embarkation. Monitors were not present during the return trip itself and did not observe the handover to the country of return. In the Netherlands, Portugal and Slovenia, monitoring focused primarily on the pre-return phase.

Giving priority to monitoring the pre-return phase is linked to human and financial resources as well as the fact that the pre-departure phase is typically considered one where multiple fundamental rights issues can arise. FRA supports prioritising the monitoring activities based on a risk analysis, but also considers that at regular intervals all phases of the removal process should be monitored. Otherwise, this may affect the effectiveness of the forced return monitoring system.

2.4. Types of return operations monitored

In the first years of their operation, national monitoring bodies focused primarily on monitoring charter flights. The risk of fundamental rights violations was assessed to be higher on them than on commercial flights.

More recently, returns on commercial flights have been increasingly monitored. Like in 2022, some 600 commercial flights were monitored. In 2023, 20 Member States monitored forced return operations on commercial flights. Although risks during the in-flight phase of returns on commercial flights may be lower than during returns on charter flights, specific issues may emerge in the pre-return phase, particularly when it concerns removals of families or persons with medical issues.

In Bulgaria, Estonia, Greece, Latvia, Lithuania, Luxembourg, Poland, Romania and Slovenia, return operations by land were monitored. They increased from 25 land operations monitored in 2022 to 36 operations monitored in 2023. France indicated having monitored one return operation by sea.

2.5. Funding

A recurrent issue is that national monitors lack staff and funding. In some Member States, this is also showcased by the low number of operations monitored during the in-flight and handover phases.

Monitoring gaps may occur particularly where the EU Asylum, Migration and Integration Fund (AMIF) pays for the monitoring. For example, in Belgium, due to the phasing out of an AMIF funded project and the lengthy procedure of re-submission and granting of the new funds a monitoring gap emerged in 2022 and continued in 2023. A similar monitoring gap occurred in Romania for the same reason.

Comparable obstacles might occur in other countries, where the monitoring is regulated through contracts concluded with the state. In Poland, the state gave four civil society organisations the authority to monitor returns, but there was no adequate funding.

To ensure sustainability in monitoring, mandated bodies should have sufficient financial and human resources.

3. Main findings from monitoring

In some Member States, for example Austria, Cyprus, Germany and Malta, monitoring findings are discussed with the return-enforcing authorities. In other countries – such as Latvia, Luxembourg, the Netherlands, Spain and Sweden – exchange on the findings is limited to correspondence in writing.

The main findings by monitoring bodies concern the use of coercive measures, which should be based on individual risk assessments and not be an arbitrary preventive measure. Cyprus, France, Greece and Portugal reported positive developments on the use of restraints following monitoring reports and recommendations to the authorities. The CPT, in its report on a return flight from Germany to Pakistan, recommended that the German authorities refrain from systematically applying means of restraint.

While the information provided by the authorities to the monitoring body ahead of the return is increasingly considered adequate, monitoring bodies in Cyprus, Finland and Italy reported to FRA that timeliness could be further improved.

Gaps in the notification of return decisions emerged in Lithuania. In Greece, the Ombudsman highlighted the need to inform foreigners promptly about the removal. After monitoring a Frontex-coordinated charter flight from Germany to Pakistan, the CPT recommended that the authorities inform the returnees about the Frontex complaints mechanism.

FRA asked if any forced returns of unaccompanied children were monitored in 2023. Only France monitored the return of unaccompanied children by boat from Mayotte to the Comoros. Latvia indicated having monitored forced returns of children to Vietnam in the past but not in 2023.

Follow-up to the monitoring entities' recommendations remains mixed. Progress occurred in Lithuania, concerning the proposal to issue fit-to-fly certificates prior to return operations, and in Slovakia, where there has been an overall improvement of the conditions during return operations. Hungary reported no follow-up to its recommendations on coercive measures. Italy reported that the authorities acknowledged the need for language mediators but made no follow-up or change in practice.

Following the Council of Europe's Twenty guidelines on forced returns, Member States should ensure that at least one escort is of the same sex as that of the returnee, to provide a gender-sensitive handling of returns. However, this policy is not yet fully implemented in practice, when selecting escort officers and medical staff accompanying the returnee.

Annex

Table 1: Operation of forced return monitoring in 2023, 27 Member States

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