Forced return monitoring systems – 2023 update

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Introduction

Since 2014, FRA has been publishing an annual update of the forced return monitoring systems that EU Member States have set up under Article 8 (6) of the EU's Return Directive (2008/115/EC). These overviews describe different indicators for an effective forced return monitoring system. They include information about the organisation responsible for monitoring forced return, the number of operations monitored in the given year, the phases of monitored return operations, the number of staff trained and working as monitors, and whether the monitoring body issued public reports about the monitoring. The overviews do not cover monitoring by the European Border and Coast Guard Agency (Frontex) pool of forced return monitors.

1. Overview for 2022

All 27 European Union (EU) Member States except Ireland are bound by Article 8 (6) of the EU's Return Directive (2008/115/EC) to set up 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 practice, in 2022 FRA noted that in six EU Member States – Bulgaria, Spain, Croatia, Hungary, Latvia and Poland – no national forced return operation was monitored. In Croatia, the Croatian Law Centre – a civil society organisation – monitored forced returns until April 2021, when an EU-funded project came to an end.

Table 1 lists the forced return monitoring bodies in the EU Member States, flagging key concerns selected by FRA and identified based on available information. More information is available in the annex.

Table 1 – Forced return monitoring bodies, 27 EU Member States

EU Member State	Body responsible for monitoring ✔ = corresponds to the National Preventive Mechanism established under the Optional Protocol to the UN Convention Against Torture		Key concerns for 2022
AT	Federal Agency for Reception and Support Services		No public reporting
BE	General Inspectorate of the Federal Police and the Local Police		
BG	Ombudsmanof the Republic of Bulgaria	✔	No monitoring in 2022
CY	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	✔	Only pre-return phase monitored
CZ	PublicDefender of Rights (Ombudsman)	✔	Only pre-return phase monitored

EU Member State	Body responsible for monitoring ✔ = corresponds to the National Preventive Mechanism established under the Optional Protocol to the UN Convention Against Torture		Key concerns for 2022
DE	Federal Office for Migration and Refugees Fora at various airports • Berlin Brandenburg: Forum Abschiebungsbeobachtung Berlin-Brandenburg; • Frankfurt: Diakonie and Caritasverband für die Diözese Limburg e.V. • Hamburg: Diakonie • North Rhine Westphalia: Diakonie • Saxony Diakonie (as of 28 July 2022) National Agency for the Prevention of Torture	✔	Fragmented system Issues of independence: Federal Office monitors are not institutionally separate from the body responsible for returns
DK	Parliamentary Ombudsman	✔	
EE	Estonian Red Cross		
EL	Greek Ombudsman	✔	
ES	Ombudsman	✔	No monitoring in 2022
FI	Non-Discrimination Ombudsman		
FR	General Inspector of All Places of Deprivation of Liberty	✔	Only pre-return phase monitored
HR	None		No monitoring in 2022
HU	Prosecution Service of Hungary		No monitoring in 2022
IE	No monitoring system in law		
IT	National Guarantor for the Rights of Persons Deprived of Liberty	✔	
LT	Diversity Development Group (NGO)		
LU	Luxembourg Red Cross		No public report
LV	Ombudsman's Office	✔	No monitoring in 2022
MT	Monitoring Board for Detained Persons	✔	No public report
NL	Inspectorate of Justice and Security	✔	

EU Member State	Body responsible for monitoring ✓ = corresponds to the National Preventive Mechanism established under the Optional Protocol to the UN Convention Against Torture		Key concerns for 2022
PL	Various NGOs, e.g. Helsinki Foundation for Human Rights, Rule of Law Institute Foundation, Halina Nieć Legal Aid Centre, MultiOcalenie Foundation		No monitoring in 2022
PT	General Inspectorate of Home Affairs		
RO	Romanian National Council for Refugees (NGO)		No public report
SE	Swedish Migration Agency		Issues of independence (same entity is responsible for returns)
SI	Caritas Slovenia (NGO)		
SK	Slovenská humanitná rada (NGO)		

Note: NGO = Non-governmental organisation

Source: FRA (2023)

2. Main challenges for effective forced return monitoring

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. The monitors from the Federal Office for Migration and Refugees in Germany and those from the Swedish Migration Agency are part of the same entity that is responsible for parts of the return procedure. There is a lack of institutional separation.

Independence issues may also arise in those EU Member States where the monitoring is carried out by national oversight bodies other than human rights institutions, if sufficient safeguards are not in place. Similar risks may emerge where monitoring tasks are set out in contracts with civil society organisations, should these regulate monitoring tasks in a too prescriptive manner or have non-sustainable funding. In these situations, the specific safeguards for independence need to be carefully examined.

Those EU Member States which appointed National Preventive Mechanisms as the body in charge of forced return monitoring offer the strongest guarantees of independence.

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. The Czech Public Defender of Rights and the Portuguese General Inspectorate of Home Affairs also publish an individual monitoring report after each operation.

In some Member States (Austria, Cyprus, Hungary, Luxembourg, Malta and Romania), there are no recent public reports on the findings of forced return monitoring activities. In Germany, the Federal Office for Migration and Refugees does not publish the findings of its monitoring activities. In Sweden and Slovenia, forced return monitoring bodies informed FRA that reports can be requested.

As a promising practice, the Greek Ombudsman and the National Guarantor for the Rights of Persons Deprived of Liberty in Italy as well as the Diversity Development Group in Lithuania publish regular thematic reports on the return monitoring activities. Where relevant, they also include information on the follow up measures of past recommendations.

2.3 Phases of removal monitored

In six EU Member States – Bulgaria, Spain, Croatia, Hungary, Latvia and Poland – the forced return monitoring entity did not monitor any national return operation in 2022, according to the information they provided to FRA. In some other EU Member States, only very few return operations were monitored in 2022, compared to the overall number of forced return operations carried out.

In several EU Member States, based on risk analysis, priority has been given to monitoring the pre-return phase (i.e. the pick-up of returnees, their transfer to the airport, and procedures before and during embarkation). In Cyprus, Czechia and France, the monitoring covered only the pre-return phase, and not the in-flight phase itself, nor the handover of the returnees to their home country authorities. The prioritisation of monitoring the pre-return phase is linked to human and financial resources issues as well as the fact that the pre-departure phase is typically considered one where multiple fundamental rights issues can arise.

Whereas FRA supports a risk analysis-based prioritisation of the monitoring activities, it also considers that at regular intervals all phases of the removal process should be monitored. Otherwise, this may impact on the effectiveness of the forced return monitoring system.

2.4 Types of return operations monitored

Most forced return operations are carried out by air, either through commercial flights or by charter flights. Flights may be organised and funded fully by the national authorities, or they may be coordinated, organised or co-funded by Frontex. National forced return monitoring entities may not always be aware whether a flight which carries returnees only from their own Member State is co-funded by Frontex or not.

For the monitoring of 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. An overview of their work is available in section 1.4 of the Frontex Fundamental Rights Officer's annual report for 2022. In addition to the Frontex pool of forced return monitors, national monitoring bodies are entitled to monitor their national contingent of returnees on a Frontex flight.

In the first years of their operation, national monitoring bodies focused primarily on monitoring charter flights, where the risk of fundamental rights violations was assessed to be higher, compared to commercial flights. Meanwhile, returns by domestic flights are also monitored.

Similarly to 2021, over half of the EU Member States also monitored forced return operations carried out through commercial flights. Although risks during the inflight phase of returns through

commercial flights may be lower compared to returns by charter flights, specific issues may emerge in the pre-return phase, particularly when it concerns removals of families or persons with vulnerabilities.

In one out of three EU Member States, return operations by land were monitored in 2022. No return by sea was monitored.

2.5 Funding

Developments over the years show that available funding impacts significantly on the implementation of national monitoring systems. Particularly where it is project-based – as is the case for some EU-funded national monitoring activities – or based on a temporary agreement between the authority and the monitoring entity, an adequate forced return monitoring system may be in place but gaps re-emerge when the funding ends. The duration of contracts with the monitoring body should therefore not be too short and there must be alternative sources for financing forced return monitoring to avoid gaps.

3. Main findings from the monitoring activities

Overall, escort officers have demonstrated professionalism, effective use of de-escalation techniques and made less use of coercive measures. For example, in the Netherlands, the national monitoring body found that the use of handcuffs during return transfers was significantly reduced in 2022.

Positive developments also concerned improved waiting premises in airports (for example as observed at the Berlin, Dusseldorf, Frankfurt, Leipzig and Munich airports in Germany) with separate areas, adapted to the needs of families and children.

National monitoring bodies also continue to highlight in their reports several deficiencies, as observed during on-site monitoring activities in 2022.

A recurrent issue is the lack of capacity of national monitors in terms of human resources and funding. This is also showcased by the low number of monitored operations in 2022, particularly during the in-flight and hand-over phase.

Shortages in interpretation services are also repeatedly pinpointed. In this context, for Frontex-supported operations, the Frontex Fundamental Rights Officer stressed the need to introduce a requirement to have at least one interpreter on each return operation. A persisting issue in Czechia concerns the obstacles monitors encounter in entering police escort vehicles during the transfer of returnees.

Despite positive developments, issues concerning the identification of vulnerabilities continued to be reported. Monitoring bodies have recorded instances where escort officers were not informed on the specific needs of persons with health problems, disabilities, or pregnancy. The Greek Ombudsman noted inefficient “fit-to-fly” medical pre-screenings, in the form of a last-minute interview or an assessment conducted without interpreters.

Concerning the return of families with children, several monitoring entities, including the National Preventive Mechanism in Germany, raised concerns about the negative effects on children’s well-being resulting from family separation, unannounced nighttime pickups, witnessing of stressful or violent scenes and the use of children as de facto interpreters.

As regards the use of coercive measures against returnees, these can be used only as a measure of last resort, in line with the principles of necessity and proportionality. However, handcuffing is applied preventively to all returnees in France, while the use of wrist restraints is general practice in Italy. In Munich (Germany), the complete documentation of coercive measures used provides for increased transparency, as the German National Preventive Mechanism noted.

Concerns regarding the provision of adequate and necessary information to returnees is also mentioned in national monitoring reports. In Lithuania, for example, returnees were not informed in a timely manner about the flight details, and thus could not prepare accordingly. In addition, the

Belgian General Inspectorate of the Federal Police and the Local Police raised concerns about the lack of information provided to returnees on their right to complain. Language barriers significantly impeding the right to information were also reported by the Czech Ombudsperson.

Following the Council of Europe's Twenty guidelines on forced returns, EU Member States should involve more same-sex employees, including interpreters, to provide a gender-sensitive handling of returns. However, the policy of using same-sex officers and medical staff has not been followed in many EU Member States yet.

Lastly, as regards material support, several monitoring bodies mentioned that returnees in need were not provided with petty cash for necessary purchases during the forced return operation. The Lithuanian monitoring entity has suggested giving returnees pocket money and a travel allowance to enable the safe return from the airport of destination to their place of residence.

In 2022, the European Committee for the Prevention of Torture (CPT) published two reports on the monitoring of preparations and conduct of a joint return operation by air organised by the Belgian and Cypriot authorities and coordinated by Frontex. In its report on the visit to Belgium, the CPT mentions that it did not receive allegations of ill-treatment but that there is a need to strengthen the procedural safeguards against non-refoulement, including by implementing a "last call procedure" before handover. As regards Cyprus, the CPT noted that returnees were treated respectfully but that it received allegations of ill-treatment occurring after past aborted removal attempts. Therefore, the CPT recommended that the authorities take the necessary steps to ensure that medical evidence of ill-treatment is collected by carrying out a medical examination before departure and on return to the detention centre after aborted removals. It also made specific recommendations on the need for timely notification of removal, access to legal aid and medical examination including the issuance of a "fit-to-fly" certificate.

Annex: Operation of forced return monitoring in 2022 in 27 EU Member States

O tej publikacji

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