



European Commission  
Directorate-General Justice,  
Freedom and Security

Comparative Study on Best Practices in  
the Field of Forced Return Monitoring

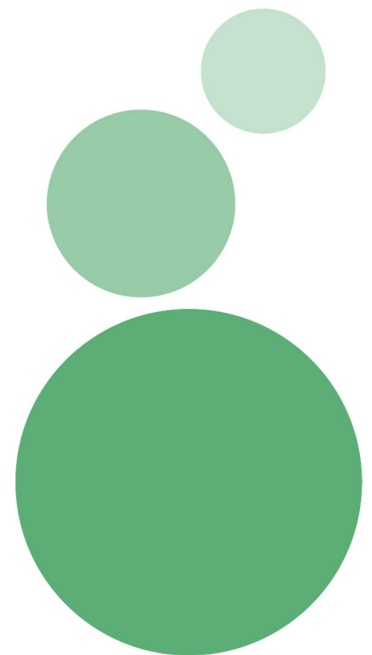
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10 November 2011

### Final Report

Matrix Insight Ltd

International Centre for Migration Policy  
Development (ICMPD)



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## Executive Summary

### Introduction

The overall purpose of the study was to **facilitate the transposition of Article 8(6) of the Return Directive**<sup>1</sup> by providing Member States<sup>2</sup> with information on best practice examples to support their efforts to develop an effective and transparent monitoring system of the forced-return of illegally staying third-country nationals.

**The study adopted a largely qualitative approach** - gathering documentation and feedback from key stakeholders and other sources around current monitoring practices. The information provided in this study significantly draws on **30 comparative country profiles**<sup>3</sup> and **nine best-practice case studies**. The purpose of the case studies was to better understand the organisational culture alongside processes of change in countries that have already implemented a monitoring system for forced returns or are in the process of implementing a forced returns monitoring system. The latter group has been included to gain an insight as to the difficulties which may occur in the process of setting up an effective and transparent monitoring system. Moreover, the case studies were used to provide illuminating examples of best practice.

### Main Findings

Figures on voluntary and forced return were collected for 2008 and 2009. In both years **forced returns outnumbered voluntary returns**. 17 Member States either already have a monitoring system in place or are about to put one into place. Another five Member States have initiated legislation with the aim of putting a monitoring system into place (see Table 13 on page 43).

- **The majority of countries that have a system in place involve civil society organisations.** Other organisations included are migration/law enforcement bodies and ombudspersons. In some countries more than one (type of) organisation is involved in monitoring forced returns.
- The **Pre-Return and Pre-Departure phases are most frequently covered** by forced return monitoring.
- **Being able to communicate with the returnee and reporting duties are more common** among monitors than intervention powers.

### Conclusion & Recommendations

<sup>1</sup> According to Article 8(6) of Directive 2008/115/EC (on returning illegally staying third-country nationals), EU Member States (MS) 'shall provide for an effective forced-return monitoring system. Transposition of the Directive is supposed to be completed by December 2010. To date, not all Member States have fully transposed the Directive.

<sup>2</sup> Throughout this study, the term 'Member States' denotes the 27 EU Member States and the 4 Schengen Associated States bound by the Directive (Switzerland, Iceland, Norway and Liechtenstein).

<sup>3</sup> Ireland did not partake in this study.

A forced return monitoring system can be considered effective and transparent if it fulfils the following conditions:

- Firstly, **the system in place must comply with the minimum requirements** (as per the Commission's Promemoria), referring to organisations involved and scope of monitoring forced returns, as well as tasks and competencies of the monitors.
- Secondly, **the system in place must be effective and transparent** in ensuring
  - that returnees are treated in manner compliant with national and international human rights standards (effective); and
  - the accountability of the process (transparent).

The comparative overview of forced return monitoring systems across the 30 Member States and the in-depth analysis of nine case study countries form the basis for a number of conclusions and recommendations with a view to helping Member States **develop an effective and transparent forced return monitoring system compliant with minimum requirements.**

**Recommendation 1: Organisations entrusted with monitoring forced returns should be different from the enforcement authorities. If observation duties extend beyond monitoring the interaction between officials and returnees to include additional tasks (see Recommendations 5 and 7), monitors may be required to have a relevant professional background (e.g. human rights related, medical).**

To ensure the transparency and effectiveness of the monitoring system, organisations entrusted with monitoring forced returns should be different from the authorities enforcing the return.<sup>4</sup> Beyond that, the case study evidence does not point towards a particular type of organisation (e.g. statutory institutions, civil society organisation) as comparatively more effective in performing the monitoring tasks. Financial independence from the State may signal transparency more clearly, but is not necessarily required as State funding (albeit partial) can be crucial in the implementation of the system overall.

If observation duties extend beyond monitoring the interaction between officials and returnees during the pre-return/pre-departure phase to cover additional phases (Recommendation 5) and tasks (Recommendation 7), monitors may be required to have a particular professional background.

**Recommendation 2: Monitors should automatically be informed of impending return operations.**

To ensure effective forced return monitoring, **it is essential that those organisations in charge of monitoring are duly and timely notified of impending operations.** This information could be provided by the authority in charge of making the return decision or by the authority in charge of enforcing the return decision.<sup>5</sup> In either case, it is recommended that monitoring organisations are provided with the relevant information on a regular basis and without any need to request it. As long as this information is

<sup>4</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>5</sup> In response to a concern raised during the Contact Committee Meeting on 24/6/2011 that there may be insufficient time to inform monitors of some impending return operations, we would suggest that in a short email or telephone call would be adequate.

made available upon request only, there is a risk of missing out on individual cases which would otherwise be monitored.

### Recommendation 3: Existing funding opportunities should be maximised.

Sufficient funding is imperative for forced return monitoring to ensure compliance with minimum standards and continuous improvement of outcomes. Considering the current economic climate and budgetary pressures, a concerted effort by all stakeholders groups should be undertaken to **identify and maximise existing funding opportunities** (e.g. national funds, EU Return Fund, private funds). With regards to the funding of statutory organisations, it is advisable **to ring-fence a certain amount** in their annual budget to be used exclusively for forced return monitoring (e.g. enough funding to monitor an agreed percentage of forced returns).

### Recommendation 4: Cooperation between all stakeholders should be facilitated and encouraged.

Considering that a variety of different stakeholder groups with potentially different viewpoints are involved in forced return policy (e.g. decision-making authority, executing authority, NGOs, Church), **close cooperation between all parties** has been seen as imperative to the success of the system. There is evidence that different perspectives in a difficult area ultimately lead to improved outcomes. Hence it is important to ensure that any barriers to effective and respectful **cooperation 'on the ground'** between monitors and executing authorities are removed and that feedback from all stakeholder groups can be disseminated and discussed by all involved (e.g. as part of an overall discussion forum). By institutionalising some form of feedback loop, the system can ensure that new staff are properly inducted and lessons learned are incorporated into practice.

### Recommendation 5: Comprehensive forced return monitoring should encompass all phases from pre-return to arrival/reception in the destination country.

In the countries examined in more detail, **forced return monitoring tends to centre on the pre-return and pre-departure phase**. These are undoubtedly critical phases, as highly emotional situations can easily get out of hand. As evidence from the German case study suggests, monitors tend to contribute to the de-escalation of potentially highly emotional situations. Funding permitting, however, a more comprehensive approach could be adopted to include **monitoring the return operation and arrival phase**, especially in conjunction with a broader remit of tasks included in monitoring forced returns (Recommendation 7).

### Recommendation 6: Monitors should be able to decide what cases to monitor on the basis of agreed criteria.

Monitoring each individual case of forced return is neither practical nor does it appear to be necessary. However, to ensure complete transparency, the **decision as to which cases to monitor should be allowed to be taken by the monitors based on their full knowledge** of all impending forced return operations. The decisions should be made based on a transparent list of pre-selected criteria which can be established together with the authorities beforehand.



**Recommendation 7: Observation duties may go beyond monitoring the interaction between officials and returnees (e.g. during the pre-departure phase or return operation) to include additional tasks.**

Starting from a minimalist version of monitoring that consists of observing the interaction between officials and returnees during the pre-departure phase, observation duties could be extended to cover additional phases (Recommendation 5) and tasks (e.g. review of returnee medical files). Access to returnee files, however, should only take place with the explicit consent of the returnee and depending on the nature of the files (e.g. legal, medical) may require the monitor to have a particular professional background (Recommendation 1).

**Recommendation 8: Team leaders of all stakeholder groups ‘on the ground’ should consistently liaise to identify, prevent and de-escalate problems, especially but not exclusively where monitors have no intervention powers.**

In most cases, monitors do not tend to have intervention powers. While intervention powers can be a useful tool for dealing with potential human rights abuses immediately when they occur, they may also lead to confusion regarding roles and competencies especially between the monitors and executing authorities on the ground. Evidence from the case studies shows that intervention powers are not necessarily needed to help de-escalate situations during the departure phase. Instead, **constructive work relationships between officials and monitors working on the ground can be used to manage critical situations.**

**Recommendation 9: Authorities should use monitoring reports as guidelines for systematic improvement.**

Monitors provide regular reports about their observations to relevant authorities. For these reports to be effective, they must lead to improvements as and when needed. To this end, **reports should be produced in a timely manner and used by authorities as guidelines for improving their work** in the area of forced returns.

**Recommendation 10: Responding to the increasing importance and complexity of return flights organised by Frontex:**

Given the increasing importance and complexity of joint return flights organised by Frontex (e.g. greater number of returnees from different European countries involving escorts teams from different countries with different return standards and measures), the following is recommended:

- **Number of Monitors:** The lead country (or those countries returning the biggest group of persons on the flight), should be responsible for nominating a monitor. Joint return operations that cover a big group of returnees should be monitored by several monitors.
- **Reporting and Guidelines:** Monitors should draft a common monitoring report (per return operation), addressed to Frontex, which should help the organisation to further develop guidelines and standards for implementing joint return operations against which future monitors should evaluate the return operation. In the interest of transparency Frontex should report

annually to the European Parliament on the findings of monitors and actions it has taken as a result of their findings.

- **Special Monitors:** In the longer term, a pool of monitors across EU Member States should be established, trained especially to monitor joint flights against the guidelines set up by Frontex and based on international human rights law, EU fundamental rights etc.

## 1.0 Introduction

This document contains the final report prepared by Matrix Insight, the International Centre for Migration Policy Development (ICMPD) and the associated experts for the assignment ‘**Comparative Study on Best Practices in the Field of Forced-Return Monitoring**’ under the tender JLS/2009/RFX/CA/1001. The project started in June 2010 and is due to be completed in June 2011. This section outlines the study objectives and provides an overview of the structure of the final report.

The overall purpose of the study was to **facilitate the transposition of Article 8(6) of the Return Directive**<sup>6</sup> by providing Member States<sup>7</sup> with information on best practice examples to support their efforts to develop an effective and transparent monitoring system of the forced-return of illegally staying third-country nationals. The report is structured as follows:

- **Section 2.0** presents an overview of the methodological approach used in this study.
- **Section 3.0** contains the conceptual framework underlying this study, in particular outlining the features of a standard forced return monitoring system. These results were used to inform the empirical findings in subsequent sections.
- **Section 4.0** provides a comparative overview of findings regarding the existing situation in return monitoring across the 30 countries bound by the Directive, including:
  - a) the way in which Member States have understood features of the forced return monitoring system in the sense of Article 8(6);
  - b) obstacles experienced in putting a monitoring system in place;
  - c) experience around the treatment of vulnerable persons.
- **Section 5.0** identifies and describes best practices in the field of forced-return monitoring by examining good practice examples from selected Member States.<sup>8</sup>
- **Section 6.0** provides conclusions and recommendations.

Supporting documents are provided in the appendices. In addition to questionnaire templates and contact logs, this includes 30 country profiles and 9 country case studies.

<sup>6</sup> According to Article 8(6) of Directive 2008/115/EC (on returning illegally staying third-country nationals), EU Member States (MS) ‘shall provide for an effective forced-return monitoring system. Transposition of the Directive is supposed to be completed by December 2010. To date, not all Member States have fully transposed the Directive.

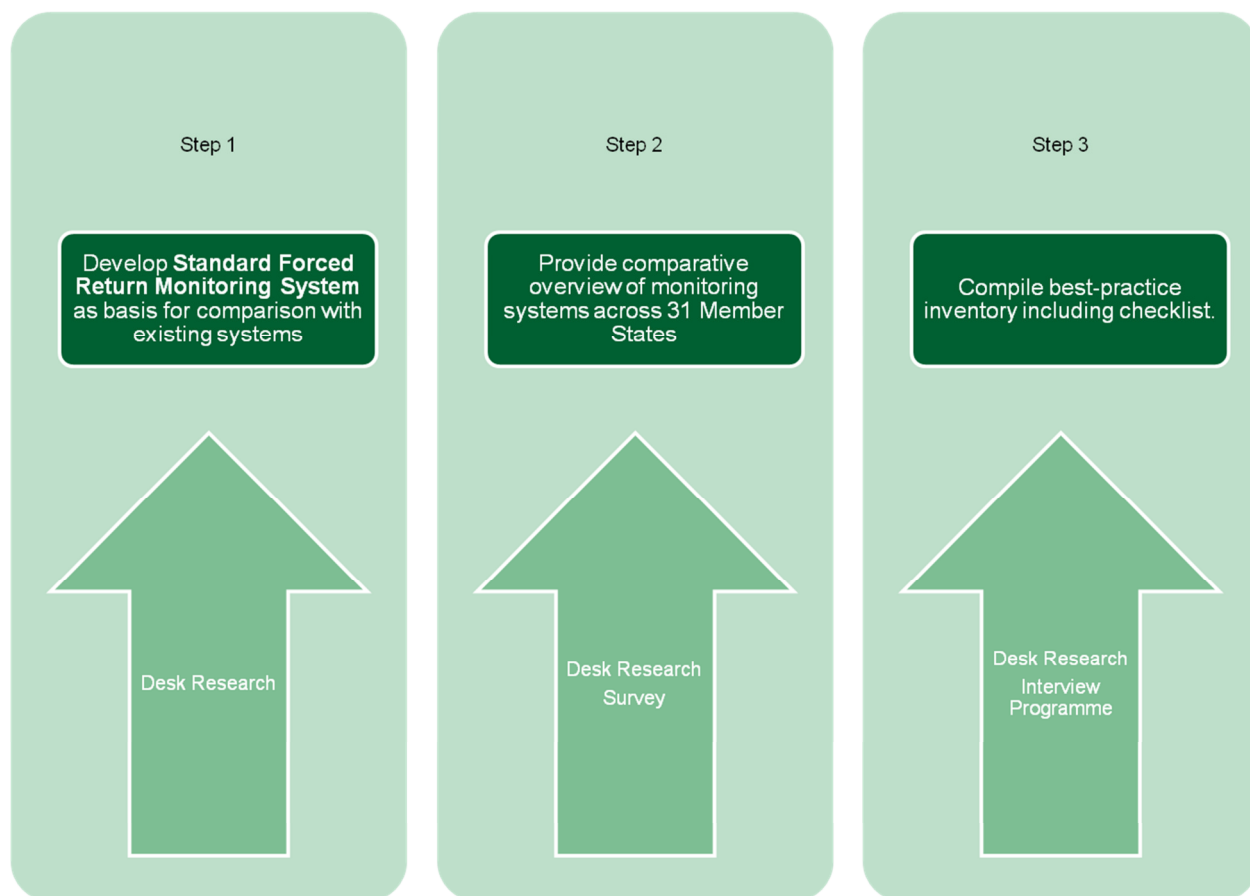
<sup>7</sup> Throughout this study, the term ‘Member States’ denotes the 27 EU Member States and the 4 Schengen Associated States bound by the Directive (Switzerland, Iceland, Norway and Liechtenstein).

<sup>8</sup> A benchmarking exercise had been envisaged to compare European and international practices. However, the evidence base around forced return monitoring systems is weak and numerous attempts of contacting relevant stakeholders in third countries proved futile.

## 2.0 Methodology

The study adopted a largely qualitative approach focussing on gathering documentation and feedback around practices from key stakeholders and other sources. The figure below provides an overview of the methodological tools used to answer the research questions.

**Figure 1: Overview of Methodology**



The project was divided into four distinct phases:

- **(I) Inception Phase:** including clarifying key objectives and finalising the methodological approach.
- **(II) Country Overview:** including compilation of country overviews.
- **(III) Case Studies:** including case study research and analysis.
- **(IV) Reporting:** including finalising outstanding research and analysis and preparing final deliverables.

Below we summarise the key activities that were carried out throughout this study.

## 2.1 Client Meetings and Key Deliverables

In addition to several informal meetings and phone conversations, a total of two formal client meetings were conducted (i.e. kick-off meeting, interim report review meeting). Moreover, members of the research consortium attended two Contact Committee meetings in Brussels (26 November 2010, 18 March 2011) to present the progress of the study.

A total of three reports were submitted, each followed by a review meeting:

- The **inception note** – an operational document – was primarily used by our in-house team to guide research and analysis activities.
- The **interim report** discussed the initial desk research and survey results with view to the comparative overview of forced return monitoring systems across the Member States.
- The **final report** provides an update of the comparative overview and examines the case study findings.

## 2.2 Stakeholder Consultations

A wide range of stakeholders across all Member States have been consulted as part of this study. Please see Appendix G for a contact log.

- **Initial interviews** with European level stakeholders were conducted between June and August 2010. The purpose of these interviews was to generate awareness and buy-in among stakeholders; obtain further information on the proposed methodological tools and other background material for the desk research/evidence review; as well as recommendations for additional persons to interview.
- Stakeholders were furthermore consulted as part of the **survey exercise** and the **case studies**. These are discussed in more detail in Sections 2.4 and 2.5.

## 2.3 Desk Research

Overall, the desk research of secondary data sources has generated information of limited relevance. While a plethora of information is available, for instance, on reintegration assistance, very little has been written specifically on the topic of forced return monitoring. For this reason, the study had to rely heavily on the primary research tools discussed in Sections 2.4 and 2.5.

Table 1 below summarises the specific objectives of the desk research and the respective outcomes. External benchmarking was originally envisaged as part of the methodology. The intent was to investigate success stories from other non-EU Member States active in the field of forced return monitoring. However, neither desk research nor expert consultation led to any fruitful results.

Table 1: Desk Research Objectives and Outcomes

Objectives	Outcomes
Helping to develop a comprehensive overview of the legal situation in each of the Member States and the practical application of forced returns across all 30 countries covered in the study.	<p>The information provided in the completed questionnaires has been very detailed and of high quality. Additional desk research has not been able to add much more value.</p> <p>Respondents provided the research team with contact information, enabling the team to carry out follow-up interviews for clarification.</p>
Where possible identifying best practices in forced return monitoring in third countries for the external benchmarking.	The team's search of existing literature has generated limited information on the situation in third countries. Exploring other routes through ICMPD networks have proved equally futile.
Where possible finding evidence for further developing the features of an emerging standard monitoring system as described in the analytical framework section.	Evidence has been drawn largely from relevant European level sources, most notably Council Directive 2008/115/EC, the Promemoria 'Obligation to Provide for an Effective Forced Return Monitoring System' and the Twenty Guidelines on Forced Returns (see Appendix B for the bibliography).
Enabling the research team, in agreement with the Commission to finalise the selection of case study countries and find more information for the case studies.	Because of the extraordinarily good response rate for the questionnaire, it was possible to select appropriate case studies based on the survey results alone. The country selection was modified and finalised following discussions with participants during the November 2010 Contact Committee Meeting in Brussels.

## 2.4 Comparative Country Overview: Survey

With the aim of providing an overview of existing and/or planned practices in the area of forced return monitoring, a **survey** was launched in September 2010 (see Appendix C for template of survey questionnaire).

Prior to sending out the questionnaire to all countries, it was **piloted during July and August 2010** with representatives of the following five countries: Austria, Malta, Poland, Sweden, and the United Kingdom. The Member States selected for piloting represent a cross-section of different sizes (by population), geographic locations and length of EU membership. They also represent a cross-section of different experiences with forced return monitoring. Piloting the questionnaire was useful in three ways:

- It enabled the research team to test the practicability of the questions and the template design with a small sample of respondents, making the necessary changes before launching the large-scale data collection exercise covering all Member States.
- It enabled the research team to obtain the views of these initial respondents on how much of the information they were able to provide and how much of the information should be collected by other means i.e. desk research.
- It provided a first impression of how easy or difficult it would be to collect relevant data/information, which allowed the research team to make mitigation plans for collecting data/information that was not easily available.

In response to the feedback received by the piloting countries, the questionnaire was modified, finalised and signed off by the Commission before it was **sent to the 31 national representatives of the Contact Committee in early September 2010**.<sup>9</sup> They were used as a first point of call, either to complete the questionnaire themselves, or to forward it to the relevant person(s) within their country. With the exception of Ireland, each Member State completed the questionnaire. The quality of the responses is generally very high, with respondents providing detailed information and valuable statistics on voluntary and forced returns. The completed questionnaires were subsequently turned into country profiles, which were sent back to the original recipients for validation. The **validated country profiles** can be found in Appendix D.

## 2.5 Best Practice: Case Studies

With the aim of providing a checklist for Member States to guide future activities in the area of forced returns monitoring, the purpose of the case studies was to better understand the organisational culture alongside processes of change in countries that have already implemented a monitoring system for forced returns. Moreover, the case studies were used to provide illuminating examples of best practice. Consequently, the idea was to select countries that have in place a relatively advanced monitoring system with regards to the following selection criteria:

- **Type of Organisation:** Various types of organisations are involved in forced return monitoring across the Member States. These include civil society organisations, migration/law enforcement authorities as well as ombudspersons. The case studies focus on experiences involving various organisations and also highlight cooperation/coordination efforts between them.
- **Scope of Monitoring:** This refers to the number of phases covered by the monitoring system. The countries included in the case study selection cover a range of phases in which monitoring takes place.
- **Task & Competencies:** These refer mainly to observation and reporting duties but may also refer to intervention powers, where applicable. With most monitors having observation and reporting duties, the case study selection presents an informative cross-section of different

<sup>9</sup> It was at this point that Ireland decided not to partake in the study.

applications. The case study selection moreover includes at least one example of monitors with intervention powers (e.g. Belgium).

In order to better understand some of the difficulties countries may face in implementing the system, we have also included a few countries currently in the process of setting up a monitoring system. The following nine countries were selected for case studies:

**Table 2: Case Study Selection**

Country	Selection Rationale
Austria	Example of NGO responsible for monitoring.
Norway	Example of ombudsman involvement in monitoring.
France	Example where monitoring is planned for many phases, including possible reintegration.
Switzerland	Example of state-controlled monitoring in addition to plans for setting up independent experts monitoring the return operation itself. Also good example for work in progress.
Belgium	Example of state body with strong intervention powers.
Latvia	Example of EU12 in the process of implementing Article 8(6).
Germany	Considered best practice by experts (Contact Committee Meeting, 11/10)
Poland	Example of EU12 with special treatment for vulnerable groups.
Luxembourg	Considered best practice by experts (Contact Committee Meeting, 11/10)

Source: Matrix Insight/ICMPD Research

Interviews were carried out across all case studies. In each country we undertook interviews with a wide range of **stakeholder groups** involved in voluntary and forced returns, including those involved in the design and formulation of the mandate for a monitoring system (e.g. national authorities), and representatives of organisations that carry out the monitoring (e.g. NGOs, human rights institutions). The corresponding contact log may be found in Appendix G. The respective question catalogues are contained in Appendix E and the **validated case studies may be found in Appendix F**.



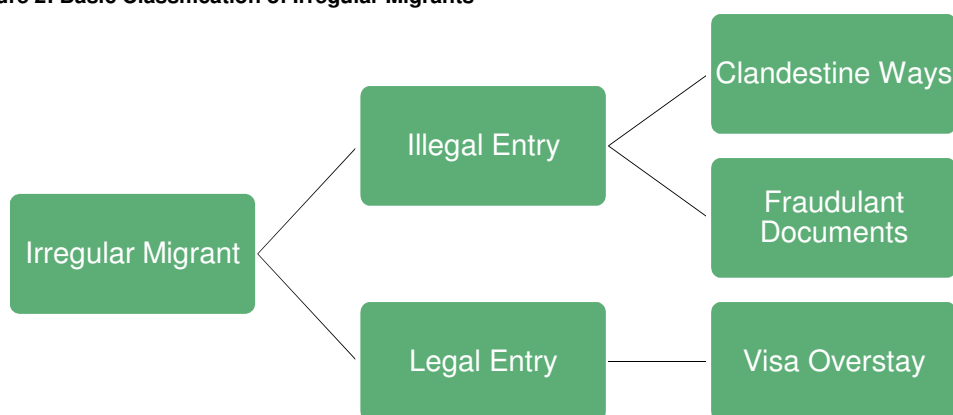
### 3.0 Conceptual Framework

**Irregular migration** is a top priority in the European Union and increasing amounts of resources are devoted to preventing people from entering without authorisation, and to **enforce the return of non-EU citizens who are not (or no longer) authorised to stay**. To this end, the corresponding Return Directive<sup>10</sup> sets out common standards of return across the Member States by providing for “clear, transparent and fair rules”<sup>11</sup> which take into account the respect for human rights and fundamental freedoms of persons concerned. This includes an **effective monitoring system** verifying mainly whether human rights standards are met during the deportation.<sup>12,13</sup> A conceptual framework was developed as part of the study to clearly outline definitions and concepts around “what” and “whom” would be affected by the Directive and against which to compare good practices<sup>14</sup>.

#### 3.1 Basic Classification of Irregular Migrants

An irregular migrant has no legal basis for staying in a host country. As is illustrated in the figure below, access to a host country may have been gained either legally or illegally. A migrant who initially entered a host country legally, e.g. with help of an appropriate Visa, would turn into an irregular migrant by overstaying the Visa or residence permit time limit. Illegal entry may be obtained either through the use of fraudulent travel documents or by using clandestine ways (e.g. people trafficking).

**Figure 2: Basic Classification of Irregular Migrants**



<sup>10</sup> Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals (further: EU Return Directive).

<sup>11</sup> EU Return Directive, p. 1.

<sup>12</sup> EKD, ProAsyl, Documentation of the European Conference “Monitoring forced returns/deportations in Europe”, 24/25. September 2007 in Frankfurt/Main.

<sup>13</sup> ECRE Information Note on the Returns Directive, 7 Jan 2009, Policy Paper 1296, p. 7.  
[http://www.ecre.org/resources/Policy\\_papers/1296](http://www.ecre.org/resources/Policy_papers/1296).

<sup>14</sup> The information in this section is primarily based on the preliminary conclusions of discussions held over the last year by the Contact Committee Return Directive. Their discussions, in turn, were informed by a number of different documents including the Council of Europe Guidelines on Forced Returns and the Common Guidelines for Joint Removal in Decision 2004/573/EC. The section also refers to clarifications made by the Commission during those discussions.

### 3.2 Voluntary and Forced Return

The term 'return migration' refers to the movement of emigrants from the host country, either to their homeland to re-establish themselves<sup>15</sup> or to a country of transit or another third country in which the individual will be accepted<sup>16</sup>. Principally speaking, the return process may be voluntary or forced. However, the way in which these terms are used varies widely among experts in the field.

#### Pre – Return Decision

Some experts believe that return can only truly be considered voluntary as long as the individual maintains a legal right to remain in the host country, and freely decides to return home.<sup>17,18</sup> This particular situation applies to Third Country Nationals (TCN) who are under no legal obligation to leave the host country but decide to leave of their own free will, for instance because they have changed (e.g. age, social relations)<sup>19</sup> or the conditions in either host country or the country of origin have changed.<sup>20</sup> The European Migration Network refers to this circumstance as '**voluntary return**'<sup>21</sup> and IOM as '**voluntary return without compulsion**'<sup>22</sup>.

#### Post – Return Decision

Once a Return Decision<sup>23</sup> has been taken, Article 7 of the European Return Directive<sup>24</sup> provides for an "appropriate period" in which the returnee may comply with the decision to leave the host country. IOM refers to return under this circumstance as '**voluntary under compulsion**' – when persons are at the end of their temporary protected status, rejected for asylum, or are unable to stay, and choose to return at their own volition.<sup>25</sup> The European Migration Network calls this situation '**voluntary departure**'<sup>26</sup>. However, the European Council on Refugees and Exiles (ECRE) calls it '**mandatory return**', highlighting that under the circumstances a person cannot be said to have chosen freely to leave their host country.<sup>27</sup>

If the returnee does not comply with the return decision, all necessary measures can be taken to enforce the return decision, including – as a last resort – coercive measures to carry out the removal of resisting third-country nationals (**Removal**).<sup>28</sup>

<sup>15</sup> Gmelch, George (1980), 'Returns Migration'. Annual Review of Anthropology. 9: 135-59, p.135.

<sup>16</sup> EU Return Directive, Article 3, para. 3.

<sup>17</sup> Noll, Gregor, (1999) 'Rejected Asylum Seekers: The Problem of Return'. International Migration, 37(1): 267-288. pp.9-10.

<sup>18</sup> Van Houte, Marieke and Mireille de Koning, 2008. 'Towards a better embeddedness? Monitoring assistance to involuntary returning migrants from Western countries'. Centre for International Development Issues Nijmegen (CIDIN), p.2.

<sup>19</sup> Black, Richard, Khalid Koser, and Karen Munk, 2004. 'Understanding Voluntary Return' in Home Office Online Reports. London: Home Office, p. 13.

<sup>20</sup> Dimitrijevic, M. Z. Todorovic, N. Grkovic. 2004. 'The experience of decision-making and repatriation process. Return of Serbian Refugees to Croatia'. Belgrade: Danish Refugee Council, p. 29

<sup>21</sup> European Migration Network, Glossary, Available at: <http://emn.intrasoft-intl.com/Glossary/index.do>

<sup>22</sup> IOM, 2004. Return Migration. Policies and Practices in Europe. Geneva.

<sup>23</sup> Return Decision administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to Return.

<sup>24</sup> EU Return Directive, Articles 6-8.

<sup>25</sup> International Organisation of Migration. 2010

<sup>26</sup> European Migration Network, Glossary, Available at: <http://emn.intrasoft-intl.com/Glossary/index.do>

<sup>27</sup> ECRE, 2005. 'The Return of Asylum Seekers who's Applications have been Rejected in Europe', p. 4.

<sup>28</sup> European Council and European Parliament, 2008, Articles 6-8.

### 3.3 Features of a Standard Forced Returns Monitoring System

The importance of outlining the features of a standard forced return monitoring system, as described in the discussions between the Contact Committee Return Directive and the Commission, is to ensure that the best practice examples and recommendations in the checklist can be measured against acceptable Commission standards with regards to Member State obligations to provide for an 'effective forced-return monitoring system' under Article 8(6) of the Return Directive. The purpose here is to ensure the practical relevance and acceptability of the system and to flag potentially sensitive points early on; the purpose is not to devise a highly idealistic and unworkable system.

In describing the features of the standard forced return monitoring system, the central questions revolve around:

- **the types of organisations involved in the monitoring system** (e.g. Which organisations are responsible for carrying out the monitoring and how is the monitoring funded?)
- **the scope of the monitoring system** (e.g. Which phases of the return procedure are being monitored?)
- **the tasks and competencies** of the monitors, including, **intervention powers** and **reporting duties**.

In the following paragraphs we summarise the minimum requirements set out in the Returns Directive, as interpreted by the Contact Committee Return Directive chaired by the European Commission<sup>29</sup>, against which the empirical evidence and the 'best practice' examples will be compared.

#### Organisations Involved in Monitoring Forced Returns

To ensure the transparency and effectiveness of the monitoring system (see Section 5.0), they should include **third-party participation** and involve monitoring by organisations/bodies **different from the authorities that enforce the return**.<sup>30</sup> As such, a public body (e.g. national ombudsman) would qualify as monitor in the sense of Article 8(6).<sup>31</sup> There is **no automatic obligation for States to finance all costs incurred by the monitor** (such as staff costs). Some costs related to forced-return monitoring might qualify for **co-financing under the Return Fund**, but the existence of monitoring cannot be wholly dependent on support under the Return Fund.<sup>32</sup> Since the State may cover some or all of the costs incurred by the monitor, financial independence from the State is not necessarily required, as long as there are other safeguards in place which allow the monitor to perform the monitoring tasks in an independent way (e.g.: establishment of the monitoring body by law or longer term contracts). While it is not a precondition, a **particular background** in human rights, migration or medicine is considered as an

<sup>29</sup> Conclusions from meetings of 8 May 2009, 18 September 2009, 20 November 2009, and 11 February 2010.

<sup>30</sup> European Commission (2009/2010).Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, page 2.

<sup>31</sup> European Commission (2009/2010).Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, page 2.

<sup>32</sup> European Commission (2009/2010).Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, page 2.

advantage when performing the monitoring tasks. Ideally the monitoring body is composed of a multidisciplinary team.

### Scope of Monitoring System

Forced return monitoring should be understood as covering **all activities undertaken by Member States with respect to removal**; including the pre-return phase, the pre-departure phase, the in-flight (or in operation) phase, a possible transit phase and the arrival and reception of the returnee in the country of return.<sup>33</sup> The scope could furthermore extend to a possible reintegration phase, although the Commission clarifies that **post-return monitoring (the period following the reception of the returnee in a third country) is not covered by Article 8(6)**. Moreover, **third country nationals do not have a subjective right to be monitored**.<sup>34</sup> The mere existence of judicial remedies in individual cases as well as the existence of **national systems of the supervision of the efficiency of national return policies** is not considered as transposition of Article 8(6).<sup>35</sup>

### Tasks and Competencies of Monitors

**Monitors must have advance knowledge about impending return operations.** This information may be sent to monitors automatically beforehand by the appropriate agency, or monitors may be required to obtain this information on their own (e.g. reviewing publicised lists, contacting officials).

**At a minimum, monitoring tasks must include observation duties**, for instance observing the interaction between officials and returnees (e.g. the escort team and returnees immediately prior to the departure at the airport). Observation duties could cover any time period starting from the return decision to the arrival in the country of origin/third country. Depending on the system in place, observation duties could be extended to allow monitors:

- a) to communicate with returnees;
- b) to check condition of detention/waiting areas; and
- c) to review returnee files: (e.g. medical files) to establish whether complications during the removal are to be expected. This would require returnee consent.

In the event of a monitor observing the use of unjustified force or maltreatment of the returnees, monitor should be permitted at the very least to approach the escort leader to flag the occurrence so that immediate action may be taken.

Monitors may furthermore be **required to report their findings**. According to Council of Europe guidelines, monitors should fully document forced returns, in particular with respect to any significant incidents that occur or any means of restraint used in course of the operation.<sup>36</sup> Reporting practices may

<sup>33</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>34</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>35</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>36</sup> Council of Europe (2005) Twenty Guidelines on Forced Returns, Strasbourg, p. 56.

vary from **internal reports solely addressed to the national authorities** involved in the return operation to **annual public reports**.<sup>37</sup>

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<sup>37</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 3

## 4.0 Comparative Country Overview

In order to understand good practice in returns monitoring, it is first necessary to understand the comparative magnitude of returns between affected Member States and the extent to which these are currently being monitored. Hence this section of the report summarises findings around numbers of returns, organisations involved, scope of return monitoring, as well as task and competencies of monitors.<sup>38</sup>

### 4.1 Overview of Voluntary and Forced Returns

With the exception of Greece and Lichtenstein, all countries were able to report figures on voluntary and forced return for 2008 and 2009. In both years more than twice as many forced returns were carried out compared to voluntary returns. Over the same time period, however, the number of voluntary returns increased, while the number of forced returns decreased (discounting Greece, which only provided figures for forced returns for 2009). Return is carried out by migration and/or law enforcement authorities (border guards, police).<sup>39</sup>

**Table 3: Summary of Voluntary and Forced Returns for 2008 and 2009**

	2008		2009	
	Voluntary Return	Forced Return	Voluntary Return	Forced Return
Austria	2,741	2,026	3,428	2,481
Belgium	2,669	3,744	2,659	3,443
Bulgaria	0	275	44	283
Cyprus	2,118	3,231	2,917	3,673
Czech Republic	96	291	110	631
Denmark	1,170	543	251	148
Estonia	-	125	42	103
Finland	37	785**	228	1,812
France	10,072	19,724	8,286	21,020
Germany	2,799	14,139	3,107	17,612
Greece	-	-	-	60,041
Hungary	188	1,485	293	1,186
Iceland	5	44	10	34
Italy	144	24,234	241	18,361
Latvia	241	663	68	145
Lichtenstein	-	-	37*	61*
Lithuania	759	133	1,035	164
Luxembourg	129	104	107	100
Malta	51	261	143	382
Netherlands	13,280***	6,870	14,770***	7,270
Norway	565	2,326	1,019	3,343
Poland	137	5,779	510	2,165
Portugal	347	785	381	779
Romania	20	395	73	392
Slovakia	96	1,311	139	890

<sup>38</sup> The information provided in this section is based on the answers to the questionnaire that were given by the 30 Member States as well as the case studies of the 9 selected countries. Not all Member States have responded to all questions, but all the answers provided have undergone a validity check.

<sup>39</sup> In the UK, the escort of the return procedure is outsourced to a security company.

	2008		2009	
	Voluntary Return	Forced Return	Voluntary Return	Forced Return
Slovenia	384	4	255	8
Spain	178	11,847	269	7,710
Sweden	5,978	3,010	6,379	3,785
Switzerland	1,366	3,562	1,793	5,421
United Kingdom	14,305	20,650	18,470	18,785
<b>Total</b>	<b>59,875</b>	<b>128,346</b>	<b>67,064</b>	<b>182,228</b>

Source: Matrix Insight/ICMPD Research; (\*) Only accompanied transfers to Member State./No return to state of origin; (\*\*)The figure provided by Finland does not match the sum of the figure of forced return *with* accompanying security personnel and the figure of forced return *without* accompanying security personnel as presented in the country profile (Appendix D); (\*\*\*) 13,280= 2,330 supervised returns + 10,950 unsupervised returns & 14,770= 3,090 supervised returns + 11,680 unsupervised returns

Table 4 illustrates the five countries that have consistently been included in the list of top return destinations across Member States. Since not all countries were able to provide return figures disaggregated by return destination, it is not possible to make a statement as to the volume of returnees by country.

**Table 4: Top Five Return Destinations**

Voluntary Returns		Forced Returns	
2008	2009	2008	2009
Russia	Russia	Ukraine	Kosovo
Iraq	Iraq	Serbia	Russia
Kosovo	Serbia	Moldova	Ukraine
Serbia	Kosovo	Iraq	Iraq
Mongolia	Ukraine	Turkey	Serbia

Source: Matrix Insight/ICMPD Research

## 4.2 Forced Returns Monitoring Systems

As Table 5 below illustrates, of the Member States which provided relevant information, 61% report that they either already have a monitoring system in place or are about to put one into place. A further 18%\* indicate that they have initiated legislation with the aim of putting a monitoring system in place. Appendix A summarises the situation across the Member States.

**Table 5: Status Quo of Monitoring Systems in Place/Planned (March 2011)\***

<b>No system in place/planned</b>	21%
<b>Legislation initiated</b>	18%
<b>System in place/planned</b>	61%

(\*) Source: Matrix Insight/ICMPD Research; (\*) Of the 30 countries questioned, 28 countries provided an answer for this question

Many of the forced return monitoring systems which are in place (or planned) at Member State level contain elements that compare well to the standards outlined in the previous section. Table 14 on page 44 provides an overview of how individual countries compare against that list and the following table summarises these findings. Of the Member States who provided direct answers, 67% interpreted an 'effective forced return monitoring system' as including all or most phases of the return process.

**Table 6: National Interpretation of an 'Effective Forced Return Monitoring System'**\*

<b>Scope</b>	All or most phases of the return process	67%
<b>Organisation involved</b>	Migration/law enforcement authorities	50%
	Civil society organisations	56%
	Ombudsman or similar	44%
<b>Tasks and competencies</b>	Reporting	61%
	Intervention powers	17%
	Provide information and advice about their rights	56%

Source: Matrix Insight/ICMPD Research; (\*) Of the 30 countries questioned, 18 countries provided a direct answer for this question

### 4.3 Organisations in Charge of Monitoring Forced Return

As illustrated in the table above, the organisations in charge of monitoring forced returns can be divided into migration/law enforcement bodies (9 countries), civil society organisations (10 countries) and ombudsman involvement (8 countries). The majority of countries involve civil society organisations. In some countries more than one (type of) organisation is involved. The case study results provide more detail:

- **In Austria**, two main actors are involved in monitoring forced return operations. These are the Human Rights Advisory Board (HRAB) including its six Commissions, and the human rights monitor NGO *Verein Menschenrechte Österreich* (VMÖ<sup>40</sup>). Governmental bodies (of the Ministry of Interior, Chancellory, and Ministry of Justice) and non-governmental organisation (SOS Menschenrechte, VMÖ, Caritas, Diakonie and Volkshilfe Österreich) are equally represented on the Human Rights Advisory Board (HRAB)<sup>41, 42</sup>.
- **In Belgium**, the 'General Inspectorate of the General Federal Police and the Local Police' monitors forced returns operations. The General Inspectorate (GI) acts upon instruction of the Ministry of Justice and Ministry of Interior. In terms of monitoring at detention centres, various NGOs have been involved, including the 'Centre for Equal Opportunity and the Fight against Racism' (the Centre) which has visited detainees since its establishment in 1993.<sup>43</sup>
- The basis of forced return monitoring in Frankfurt airport (**Germany**) is the *Forum Abschiebungsbeobachtung am Frankfurt Flughafen* (FAFF). FAFF members include at least one representative of the following institutions/initiatives: the Church (e.g. Evangelische Kirche in Hessen und Nassau, Bistum Limburg), human rights organisations (e.g. UNHCR, Pro Asyl, Amnesty International) and the police (e.g. Bundespolizeidirektion Flughafen Frankfurt am Main).<sup>44, 45</sup>

<sup>40</sup> For more details visit the homepage of the NGO *Verein Menschenrechte Österreich* at <http://www.verein-menschenrechte.at/>

<sup>41</sup> For more details visit the homepage of the Human Rights Advisory Board's and the Commission home page at <http://www.menschenrechtsbeirat.at/cms15/>

<sup>42</sup> See Austrian case study.

<sup>43</sup> See Belgian case study.

<sup>44</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.3.

<sup>45</sup> See German case study.



- **In Luxembourg**, the organisations involved include the Ministry of Foreign Affairs, the Luxembourg Police, the Detention Centre and RCL. During charter flights, a ministry representative, an escort leader as well as a number of escorts accompany returnees on board.<sup>46</sup>
- Forced return monitoring **in France** is dominated by NGOs.<sup>47</sup>
- **In Latvia**, monitoring will be conducted by the national Ombudsman who will coordinate one or more NGOs (probably three). It was not possible under Latvian law for the government to contract out responsibility for monitoring returns directly to NGOs. However, taking into account the limited funding available it is anticipated that the Ombudsman will eventually wholly contract out what is seen as the 'supervisory function' to NGOs.<sup>48</sup>
- **In Norway**, the main organisations are the Ombudsmen (Public administration, Equalities, Children), the bodies that supervise the activities of police officers (the Department for Police and the Bureau for Investigation of Police Affairs) and the independent Supervisory Board for Trandum detention centre. NGOs are currently not formally involved in the monitoring process.<sup>49</sup>
- **In Poland**, the main non-governmental organizations dealing with the subject are the Helsinki Foundation for Human Rights (HFHR), the Halina Nieć Legal Aid Centre (HNLAC, *Centrum Pomocy Prawnej im. Haliny Nieć*) and the Association of Legal Intervention (*Stowarzyszenie Interwencji Prawnej*). The ombudsman is more involved when it comes to monitoring in the context of Polish law while NGOs monitor the activities being implemented and support individuals who request monitoring. Suggestions raised by the ombudsman are more binding than those raised by NGOs.<sup>50</sup>
- **In Switzerland**, According to Article 15g of the *Regulation on the Implementation of the Deportation of Foreign Nationals* (VVWA<sup>51</sup>, SR 142 281), monitoring will be carried out by third parties – contracted by FOM – that are independent from foreigners or asylum related procedures or related to the execution of removal and deportation.<sup>52</sup> So as to guarantee transparency, the SRC would welcome a central role for civil society. This could include NGOs in the field of migration and asylum and UNHCR involved in the advisory board.<sup>53</sup>

Table 7 illustrates at what point in time the monitoring organisations are informed of an impending return procedure, ranging from the moment a return decision has been made (e.g. Hungary) to just a few days prior to the actual departure (e.g. Austria, Luxembourg). Moreover, the case studies highlight considerable variation among the Member States in terms of how this information is being passed on to the monitors. While the Luxembourgian Ministry of Foreign Affairs notifies the relevant organisation at least 72 hours before a departure<sup>54</sup>, monitors at Frankfurt airport in Germany are not automatically

<sup>46</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>47</sup> See French case study.

<sup>48</sup> See Latvian case study.

<sup>49</sup> See Norwegian case study.

<sup>50</sup> See Polish case study.

<sup>51</sup> Verordnung vom 11. August 1999 über den Vollzug der Weg- und Ausweisung von ausländischen Personen

<sup>52</sup> Legal base: Art 15f of the by law on the Execution of the removal of foreigners VVWA, SR 142.281 - (Art. 71a Abs. 1 AuG)

<sup>53</sup> Written interview response from Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011

<sup>54</sup> See Luxembourgian case study.

notified of impending return operations. Rather, once or twice a week they go to the appropriate authority, where a list of upcoming return operations to be executed at Frankfurt airport is published.<sup>55</sup>

**Table 7: Monitoring Organisations are Informed of Impending Return Procedures**

Country*	Organisation is informed of forced return operation
Austria	A few days before the travel date/at least 24 hours before deportation <sup>56</sup>
Belgium	Pre-return
Czech Republic	Sufficiently in advance
France	At every stage
Germany	Pre-return
Hungary	From the adoption of the expulsion resolution or the enforcement of the expulsion resolution ordered by court
Latvia	From the moment when the decision of forced return is taken
Luxembourg	72 hours before departure
Netherlands	Three days before return flight
Norway	Upon complaints or upon receiving information from the enforcing body.
Poland	Pre-return
Switzerland	As soon as the FOM decides on a special flight/all organisational matters are settled <sup>57</sup>

Source: Matrix Insight/ICMPD Research; (\*) Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Italy, Lichtenstein, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom did not provide direct answers for this question

The majority of countries draw on state funds for the monitoring budget, with about a quarter of countries also using the Return Fund.

#### 4.4 Scope of the Monitoring System

The forced return process can be divided into five phases. These are:

- **The pre-return phase:** the removal decision has been made;
- **The pre-departure phase:** preparing for the actual departure and may possibly involve detention;
- **Return Operation:** involving embarkation and possible requirements for escorts;
- **Arrival:** involving disembarkation and reception;
- **Reintegration:** involving the provision of reintegration assistance.

Of the countries which have provided relevant information, **the pre-return phase and the pre-departure phase is covered by more than two-thirds of the Member States with a system in place.** Monitoring during the return operation is possible as well, but may depend on funding possibilities. Belgium monitors (AIG) monitor both commercial and special flights<sup>58</sup> through to the end destination. In the case of Austria,

<sup>55</sup> See German case study.

<sup>56</sup> See Austrian case study.

<sup>57</sup> See Swiss case study.

<sup>58</sup> Special flights with or without FRONTEX cooperation are those involving groups of returnees or involving multiple repatriations. Correspondence with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 28 March 2011.

for instance, monitors are funded up to the door of the aircraft. In principle they are allowed on the flight as well, but would have to pay for their own ticket.<sup>59</sup>

Less than half cover the arrival phase and very few monitor aspects beyond that. Table 14 on page 44 provides an overview of the situation across the Member States and the following table summarises the findings. Whilst 67% and 80% of Member States (who provided information on the phases covered) covered the pre-return and pre-departure respectively, only 13% covered reintegration.

**Table 8: Overview of Phases covered by (Planned) Monitoring System\***

<b>Pre-Return</b>	67%
<b>Pre-Departure</b>	80%
<b>Return Operation</b>	53%
<b>Arrival</b>	47%
<b>Reintegration</b>	13%

Source: Matrix Insight/ICMPD Research; (\*) Of the 30 countries questioned, 15 countries provided an answer for this question

## 4.5 Tasks & Competencies of the Monitors

The table below presents an overview of the key tasks to be carried out by the monitors. Reporting is carried out in the vast majority of countries. In only very few countries are monitors able to intervene. An example of the latter is Belgium, where the AIG is able to intervene if a Federal Police escort use illegal force against an alien.

**Table 9: Overview of Tasks and Competencies**

<b>Tasks &amp; Competencies</b>	<b>%</b>
Reporting	85%
Intervention Powers	23%
Communication with Returnees	77%

Source: Matrix Insight/ICMPD Research; (\*) Of the 30 countries questioned, 13 countries provided an answer for this question

Accordingly, greatest importance is placed on checking that the deportee is treated in a humane way. Appendix A summarises the situation across the Member States.

**Table 10: Overview of Issues that are (will be) checked by Monitors\***

<b>Does the monitor check the following?</b>	
Deportee has been properly informed	73%
Deportee has received necessary medical check-ups and/or financial aid	73%
Travel arrangements were made in dignified manner	55%
Deportee is treated in a humane way	82%

Source: Matrix Insight/ICMPD Research; (\*) Of the 30 countries questioned, 11 countries provided an answer for this question

With the exception of the Czech Republic and Luxembourg, monitors in all countries that have a monitoring system in place are **allowed to engage with the deportee**. The system implemented in

<sup>59</sup> Austrian representative during Contact Committee Group 24/6/2011

Luxembourg, similar to the one which will be implemented in the Czech Republic, stipulates that the monitor cannot communicate with the deportee during the removal process itself but can do this when the deportee is detained in a detention centre prior to the return operation.<sup>60</sup> Monitors in Luxembourg, Poland and Germany do not have **access to the deportee's file**; monitors in the Czech Republic must have the deportee's permission to access his/her file. Access is granted to monitors in all other countries that have a monitoring system in place.<sup>61</sup>

Most of the countries require monitors to write up a report on their activities and findings. These reports tend to be addressed to the national ministries. It is not always clear whether there is an obligation for the state to consider the information provided. Monitors in Belgium, France, and Hungary have intervention powers.

**Table 11: Monitoring Duties and Intervention Powers**

Country	Monitor has reporting duties.	Monitor has intervention powers.
Austria	Report for the Ministry of the Interior about the whole procedure	No, only observation
Belgium	Ministry of Home Affairs and Ministry of Justice	Yes
Czech Republic	Write a report to the Directorate of the Aliens Police Service	No, only observation
France	Writing a report about the operation	Yes, powers to intervene depending on competences
Germany	Writing a report about the operation	No, only observation
Hungary	No reporting duties	Yes
Latvia	Report for the Ministry of the Interior about the whole procedure	Monitor is not allowed to intervene
Luxembourg	Report to the Minister	No, only observation
Netherlands	Yes	No, only observation
Norway	Depending on the body they have reporting duties	
Switzerland	Writing a report about the operation	No, only observation

Source: Matrix Insight/ICMPD Research; (\*) Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Italy, Lichtenstein, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom did not provide direct answers to this question.

### Treatment of Vulnerable Groups

On the basis that being subject to a return decision and ultimately forced return makes any returnee 'vulnerable', a number of countries do not distinguish between groups. Several countries, however, do make particular provision for vulnerable groups:

- **Selecting relevant cases for monitoring:** Short of monitoring all forced returns, monitors in a number of countries frequently choose to monitor deportations involving vulnerable groups, such as single women and children (e.g. Germany, Austria, Belgium)

<sup>60</sup> Luxembourg and Czech responses to questionnaires.

<sup>61</sup> The Netherlands, might be an exception. While it is a Member State with a monitoring system in force, it did not reply to this question.

- **Reminding the authorities of their obligations to a particular group:** The ombudsman for children in Norway has on at least one occasion asked the police questions regarding their choice of methods in forced returns involving children and stressed the importance of the best interest of the child as a primary consideration when carrying out forced returns.

## 5.0 An Inventory of Best Practices

The key objective of this study was **to provide Member States<sup>62</sup> with information on best practice examples to support the development of effective and transparent monitoring systems** for the forced return of illegally staying third-country nationals in line with Article 8(6) of the Return Directive<sup>63</sup>. To this end, this section of the report focuses on outlining best practices uncovered as part of the research. The following elements are important for a monitoring system to be considered 'best practice':

- **Firstly, the system in place must comply with the minimum requirements** set out in Section 3.3, referring to organisations involved and scope of monitoring forced returns, as well as tasks and competencies of the monitors.
- **Secondly, the system in place must be effective** and ensure that returnees are treated in a manner compliant with national and international human rights standards<sup>64</sup>; where procedures fall short of these standards, prompt corrective action must be taken.
- **Thirdly, the system in place must be transparent and accountable** ensuring that monitoring reports (in some form) are made available to the public and that recommendations made are taken into consideration by those carrying out forced returns.

The following table provides a list of key questions important for determining the effectiveness of the forced return monitoring system.

**Table 12: Determining the Effectiveness of the Forced Return Monitoring System**

Structure	Characteristics
Organisations involved in monitoring forced returns	1. How and when do monitoring organisations find out about impending return operations?
	2. Which of the organisations involved in the forced return process decides which cases to monitor?
	3. How does funding impact on the effectiveness of forced return monitoring?
	4. How can successful collaboration between enforcing authorities and monitors best be ensured?
Scope of Monitoring	5. At which point during the procedure is monitoring most crucial as

<sup>62</sup> Throughout this study, the term 'Member States' denotes the 27 EU Member States and the 4 Schengen Associated States bound by the Directive (Switzerland, Iceland, Norway and Liechtenstein).

<sup>63</sup> According to Article 8(6) of Directive 2008/115/EC (on returning illegally staying third-country nationals), EU Member States (MS) 'shall provide for an effective forced-return monitoring system. Transposition of the Directive is supposed to be completed by December 2010. To date, not all Member States have fully transposed the Directive.

<sup>64</sup> See Amnesty International (POL 30/004/1998) 10 Basic Human Rights Standards for Law Enforcement Officials. This document is based on United Nations law enforcement, criminal justice and human rights standards and makes reference to standards that are highly relevant to return operations, such as:

- The prohibition on any act of torture, cruel, inhuman or degrading treatment
- The requirement on law enforcement officials to use non-violent means as far as possible before the use of force
- The need for special attention to be protection of human rights of members of vulnerable groups
- The obligation to offer medical assistance to any injured or affected persons as soon as possible
- The need for all instances of the use of force and any breaches of human rights by law enforcement personnel to be reported and investigated.

Structure	Characteristics
Forced Returns	regards human rights standards?
Tasks and Competencies	6. What are the appropriate observation powers to ensure the transparency and effectiveness of the monitoring system?
	7. What are the appropriate reporting duties to ensure the transparency and effectiveness of the monitoring system?
	8. What are the appropriate intervention powers to ensure the effectiveness of the system?

## 5.1 Organisations Involved in Monitoring Forced Returns

The minimum requirements, as per Commission's Promemoria<sup>65</sup>, outlined in Section 3.3 are the following:

- Third-party participation; monitoring carried out by organisations/bodies that are different from the authorities enforcing the return process.

Each of the nine monitoring systems examined in more detail comply (plans to comply) with the abovementioned minimum requirements. However, as outlined in the previous section, **a considerable degree of variation exists between the Member States** with regards to the types of organisations tasked with monitoring forced returns. They may include statutory organisations (e.g. Norway, Latvia<sup>66</sup> or Belgium, where the 'General Inspectorate'<sup>67</sup> is responsible for monitoring forced return operations<sup>68</sup>). On the other hand, they may include civil society organisations, such as NGOs (e.g. Germany, Austria).

### How and when do monitoring organisations find out about impending return operations?

It is imperative for monitoring organisations to have **sufficient knowledge of impending return operations** in order to undertake effective forced return monitoring (e.g. by ensuring that they are present at the right place at the right time). Both decision-making and executing authorities hold the relevant information which must be passed on to monitors. In many of the case study countries, **monitors are automatically informed of impending return operations**, either by the relevant ministry taking the decision or by the executing authority (e.g. Austria, Belgium, Luxembourg, Poland).

Third party monitors at Frankfurt airport in Germany and the ombudsman in Norway **are not automatically informed of upcoming return operations**. However, in Germany, monitors are still, in principle, able to obtain this information beforehand by regularly going to the relevant authority to check the notice board for upcoming return operations. More significantly, in Norway, the ombudsman becomes involved only afterwards, and only to investigate cases where a complaint was received or it was

<sup>65</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>66</sup> According to the Latvian case study, it is not possible under Latvian law for the government to contract out forced return monitoring to the NGOs directly. Consequently, the national Ombudsman will be in charge of the monitoring process and will be entitled to involve NGOs.

<sup>67</sup> 'General Inspectorate' of the General Federal Police and the Local Police

<sup>68</sup> NGOs and international organisations, however, offer some form of monitoring at detentions centres.



mentioned in the media. The shortcomings of systems such as those Germany and Norway are explained below:

- Leaving it up to the monitoring organisations to find out about upcoming return operations (as in Germany), there is a real risk that **cases worth monitoring might be missed**. Moreover, because monitors tend to work within very **limited budgets**, it would seem counterproductive for them to have to spend scarce resources on finding out about impending forced return operations rather than deploying all resources to the actual monitoring. Hence timely advance information allows for better resource use.
- The Norwegian system is **reactive**. The Ombudsman becomes involved **only after an incident has happened** and in most cases **only if a complaint is made**. Although the case study report emphasises that in fact, very few returnees ever complain, it may nevertheless conceal issues which may have been acted upon in other systems, but were not seen as sufficiently grave as to warrant a complaint.

In Austria, returnees are informed about the flight date and modalities as soon as this is known to the Ministry of Interior, **enabling the returnee to better deal with the first shock** and prepare for the approaching deportation. In Poland **returnees are encouraged to inform NGOs** directly of their upcoming return operation. Although this is can be considered a very good example of keeping the system transparent, there is also a risk that this imposes a **self-selection bias** putting those returnees which fully understand the implication of informing NGOs of their return proceedings and making use of it, at an advantage. As a consequence, such a system could equally produce **a bias against the most vulnerable**, who are either unaware or unable to take advantage.

### Which of the organisations involved in the forced return process decides which cases to monitor?

Short of monitoring each forced return operation – which is neither practical due to budgetary constraints, nor does it seem to be necessary as monitors generally emphasise that the police tends to handle deportations in an appropriate manner (e.g. Germany) – **decisions must be made as to which cases should be monitored**. Questions revolve around **who should make this decision** and which **selection criteria** to apply.

To ensure complete transparency, this **decision should be taken by the monitors based on full knowledge** of all impending forced return operations. The HRAB Commissions in Austria are able to decide which deportations they would like to monitor. While monitors at Frankfurt airport in Germany are also able to select the cases they would like to monitor, the fact that they are not automatically informed of all impending forced return proceedings means that they may have missed a case they otherwise would have selected.

**Selection criteria** vary and include on the one hand, **human rights related aspects** (e.g. medical conditions, family situation, known ‘difficult destinations’) and on the other hand, **practical considerations** (e.g. staff availability, monitoring limited to certain types of flights only). Practical considerations are important and should not be disregarded; nevertheless, human rights must be respected.



### How does funding impact on the effectiveness of forced return monitoring?

The effectiveness of **forced return monitoring may be undermined through insufficient financial and human resources**. Staff availability plays a role in selecting cases to monitor. At Frankfurt airport, for instance, monitors have sufficient funds to observe less than 10% of all forced returns per year. Monitors mentioned that improved funding would be welcome and enable them to monitor more cases.

While States are not automatically obliged to finance all costs incurred by the monitor, **in some countries, the State does provide (partial funding) for third party monitors**. This is the case in Poland as well as Switzerland, where the Federal Office of Migration will compensate the service provider at a flat rate. Evidence from the case studies suggests that **organisations closer to the State can rely on (state) funding more consistently compared to civil society organisations**. The General Inspectorate in Belgium as well as the ombudspersons in Poland and Norway are funded by the State. **However, funds for forced return monitoring are usually not ring-fenced** with the budget covering all tasks of which forced return monitoring may only be one of many. In this sense, it is difficult to say how much of the money is actually used for forced return monitoring and how much of it is used for other purposes or indeed whether the amount allocated fluctuates over time.

Moreover, the possibility of **co-financing monitoring activities under the EU Return Fund** seems not to be used very frequently. Although the possibility exists (at least for the EU27), **comparatively few countries appear to make use of it**. Evidence from the Polish case study suggests that authorities there plan to take advantage of this opportunity, as do those in Latvia where monitoring seems to be dependent on securing financing under the Return Fund. The German case study interviews revealed considerable obstacles for monitoring organisations to tap into EU Funds.

### How can successful cooperation between all stakeholders be ensured?

Considering that a variety of different stakeholder groups with potentially different viewpoints are involved in forced return policy (e.g. decision-making authority, executing authority, NGOs, Church), the evidence from the case studies overall points to **close cooperation between all parties** as being vital to the success of any system. The case studies provide testimony to the assumption that different perspectives in a difficult area ultimately lead to improved outcomes. For instance, in the case of Germany, close **cooperation ‘on the ground’** between monitors and executing authorities in combination with an overall **discussion forum** involving all stakeholder groups, was reported as leading to better outcomes:

- **Cooperation ‘on the Ground’**: Positive and trusting work relationships between the monitors and the executing authorities during the departure phase are absolutely essential to ensure the effectiveness and transparency of the monitoring system. As evidence from the German case study suggests, good cooperation on the ground tends to contribute to the de-escalation of potentially highly emotional situations. As the cooperation between monitors and police at Frankfurt airport is voluntary, the involvement of ‘neutral persons’ interested and engaged in the educative process is helpful. Evidence from the Austrian case study furthermore highlights the usefulness of human rights training for escort staff, which is partly carried out by the monitors.

- **Discussion Forum:** The discussion forum building the back bone of forced return monitoring at Frankfurt airport includes members of the Church, human rights organisations as well as the decision-making and executing authorities. The monitoring takes place on behalf of the forum with the monitors having to regularly report their observations. Each of the cases presented during these meetings is discussed in great detail, with each stakeholder group held accountable for their actions.

## 5.2 Scope of Monitoring System

As outlined previously, the forced return process can be divided into five phases. These are:

- **The pre-return phase:** the removal decision has been made;
- **The pre-departure phase:** preparing for the actual departure and may possibly involve detention;
- **Return Operation:** involving embarkation and possible requirements for escorts;
- **Arrival:** involving disembarkation and reception;
- **Reintegration:** involving the provision of reintegration assistance.

The minimum requirements, as per the Promemoria<sup>69</sup>, outlined in Section 3.3 are the following:

- Forced return monitoring may cover the following phases: pre-return, pre-departure, operation, arrival and reception. The period following the reception of the returnee in third countries is not covered by Article 8(6).
- Returnees have no subjective right to be monitored.
- Mere existence of judicial remedies and national system of supervision of the efficiency of national return policies is not considered a transposition of Article 8(6).

The scope of the monitoring system may be narrow (i.e. encompass one or few phases) or broad (i.e. encompass many or all phases). Each of the nine monitoring systems examined in more detail comply with the first of the above mentioned minimum requirements. **In the vast majority of the case study countries, monitoring is carried out during the pre-departure phase** and in some countries monitoring may also include the **pre-return phase** such as in Austria and Latvia or the **arrival phase** such as in Switzerland and Luxembourg).<sup>70</sup> Although, according to the minimum requirements, returnees generally have no subjective right to be monitored, in Poland, when served the return decision, individuals are also informed of their right to contact NGO representatives and to request monitoring.

**At which point during the procedure is monitoring most crucial as regards human rights standards?**

<sup>69</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced – Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>70</sup> As a reminder, the pre-return phase refers to when a removal decision has been made; the pre-departure phase refers to the time when preparations for the actual departure are made and may possibly involve detention. Arrival refers to disembarkation and reception in the country of return.

In the countries examined in more detail, **forced return monitoring tends to centre on the pre-departure phase and the actual return operation.** This is undoubtedly a critical phase, as they create highly emotional situations that can easily get out of hand. As evidence from the German case study suggests, monitors tend to contribute to the de-escalation of potentially highly emotional situations. Funding permitting, **monitoring should be extended to the pre-return and arrival phase (and possibly reintegration phase).**

- **Pre-Return Phase:** Criticisms have been levelled by some interviewees against the system leading up to the return decision, where deportations had to be aborted because the lawfulness of the return decision could not be sufficiently established or returnees were found not to be fit for travel.
- **Arrival Phase (Reintegration Phase):** The Austrian Ministry of Interior reported that, although the reintegration phase is not monitored systematically, on occasion returnees call and provide feedback (e.g. they might have unexpectedly had to pay money upon return to the local authorities to enter the country). There was near-universal agreement among interviewees in Norway that the absence of post-return monitoring represented a serious weakness of the system, where little or no effort was made to monitor what happened to people on or after arrival in the destination country, except when UNHCR had monitored returns to Iraq and Afghanistan.

### 5.3 Tasks and Competencies of Monitors

The minimum requirements, as per Promemoria<sup>71</sup>, outlined in Section 3.3 are the following:

- All activities undertaken by Member States with respect to removal may be subject to monitoring.
- Reporting practice may range from periodic internal reports solely addressed to the authorities involved in forced returns to public annual reports.

Each of the nine monitoring systems examined in more detail comply with the above mentioned minimum requirements concerning observation and reporting duties. Considerable variation exists as regards intervention rights.

#### What are the appropriate observation duties to ensure the effectiveness of the monitoring system?

**Observing the interaction between officials and returnees** tends to be standard practice across all the countries examined in more detail as part of this study. Additionally, monitors in a number of countries also engage in the following activities, ensuring a more comprehensive approach to forced return monitoring:

- **Interaction with Returnee:** NGOs in France help with access to lawyers for returnees who believe they have been treated in a way that is not consistent with human rights standards.

<sup>71</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

- **Review of Returnee Files:** Austria's HRAB's Commissions have access to returnee files; so do monitors in Luxembourg. Swiss monitors may partake in meetings for the preparation of a deportation via air.
- **Access to Returnee Rooms:** Monitors in Austria and Germany have unimpeded access to the rooms in which returnees await their deportation.

### What are the appropriate intervention powers to ensure the effectiveness of the system?

Of the case study countries, the General Inspectorate in Belgium holds the strongest **intervention powers**. In addition to ensuring that returnees obtain the necessary medical assistance they are able – in exceptional cases – to suspend an ongoing return operation. Monitors in Germany may act as reference points to liaise between all involved in the deportation process (e.g. police, returnees, medics, airline personnel). Because of a good working relationship between the different parties at Frankfurt Airport, it is possible for the monitors to raise points of concern with the lead officer of the enforcement team on the spot.

While intervention powers are a useful tool for dealing with potential human rights abuses immediately when they occur, they may also lead to confusion between roles and competencies especially between the monitors and executing authorities on the ground. Therefore **a constructive work relationship between all stakeholders on the ground** could be considered more useful in this regard. In Germany and Switzerland, for instance, some sort of middle ground has been developed, whereby monitors may inform responsible team leaders within the executing authority about potential concerns. By building a constructive work relationship between the partners, potential problems can easily be de-escalated.

### What are the appropriate reporting duties to ensure the effectiveness of the monitoring system?

Monitors tend to **regularly provide oral and written accounts of their observations** to the relevant authorities on an ad hoc basis. Moreover, **annual activity reports** are prepared in Germany, Luxembourg and are expected to be prepared in Latvia. These are generally publicly available, thereby contributing to the transparency of the system. However, based on analysis of the case studies, the effectiveness of the system may suffer if:

- Reports are not delivered in a timely manner, thereby missing the point in time to deal with individual problems;
- Reports are not detailed enough regarding possible issues (e.g. use of force) to warrant further investigation into the matter.
- Where authorities are not required to do anything with the information they receive, very little can be done to contribute to improved effectiveness of the system.

## 5.4 Frontex Flights<sup>72</sup>

Recent years have seen an increase in joint return flights organised by Frontex. Considering the complexity of joint return operations (e.g. bigger number of returnees from different European countries involving escorts teams from different countries with different return standards and measures) makes the task of monitoring also more complicated.

- Currently, monitors on flights only supervise their national contingent, without carrying out any monitoring or reporting duties for contingents of other countries on the same flights. **This practice means higher numbers of monitors on board occupying space which could otherwise be used for returnees.**
- Forced Return and Forced Return Monitoring is subject to varying practices across the EU. This may potentially lead to **confusion on joint flights** as to what may or may not be considered acceptable behaviour.
- **Monitors report back only to their Member States.**

According to Frontex, organisations such as the Fundamental Rights Agency, the European Committee for the Prevention of Torture (CPT) and the UNHCR would be ideally take charge of monitoring joint flights, drafting one single report and reporting both at the EU and the Member State levels.<sup>73</sup> Concerns over insufficient resources, however, impose limitations to this proposition in practice.

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<sup>72</sup> Interview with Claus Dechert, expert on Joint Return Operations Unit of Frontex, 30/06/2011

<sup>73</sup> Interview with Claus Dechert, expert on Joint Return Operations Unit of Frontex, 30/06/2011



## 6.0 Conclusions & Recommendations (Checklist)

The comparative overview of forced return monitoring systems across the 30 Member States and the in-depth analysis of nine case study countries form the basis for a number of conclusions and recommendations with a view to helping Member States **develop an effective and transparent forced return monitoring system compliant with minimum requirements**.

**Recommendation 1: Organisations entrusted with monitoring forced returns should be different from the enforcement authorities. If observation duties extend beyond monitoring the interaction between officials and returnees to include additional tasks (see Recommendations 5 and 7), monitors may be required to have a relevant professional background (e.g. human rights related, medical).**

To ensure the transparency and effectiveness of the monitoring system, organisations entrusted with monitoring forced returns should be different from the authorities enforcing the return.<sup>74</sup> Beyond that, the case study evidence does not point towards a particular type of organisation (e.g. statutory institutions, civil society organisation) as comparatively more effective in performing the monitoring tasks. Financial independence from the State may signal transparency more clearly, but is not necessarily required as State funding (albeit partial) can be crucial in the implementation of the system overall.

If observation duties extend beyond monitoring the interaction between officials and returnees during the pre-return/pre-departure phase to cover additional phases (Recommendation 5) and tasks (Recommendation 7), monitors may be required to have a particular professional background.

**Recommendation 2: Monitors should automatically be informed of impending return operations.**

To ensure effective forced return monitoring, **it is essential that those organisations in charge of monitoring are duly and timely notified of impending operations**. This information could be provided by the authority in charge of making the return decision or by the authority in charge of enforcing the return decision.<sup>75</sup> In either case, it is recommended that monitoring organisations are provided with the relevant information on a regular basis and without any need to request it. As long as this information is made available upon request only, there is a risk of missing out on individual cases which would otherwise be monitored.

**Recommendation 3: Existing funding opportunities should be maximised.**

Sufficient funding is imperative for forced return monitoring to ensure compliance with minimum standards and continuous improvement of outcomes. Considering the current economic climate and budgetary pressures, a concerted effort by all stakeholders groups should be undertaken to **identify and maximise existing funding opportunities** (e.g. national funds, EU Return Fund, private funds). With regards to the funding of statutory organisations, it is advisable **to ring-fence a certain amount** in their annual budget

<sup>74</sup> European Commission (2009/2010). Promemoria 'Obligation to Provide for an 'Effective Forced –Return Monitoring System' under Article 8(6) of the Return Directive, p. 2.

<sup>75</sup> In response to a concern raised during the Contact Committee Meeting on 24/6/2011 that there may be insufficient time to inform monitors of some impending return operations, we would suggest that in a short email or telephone call would be adequate.

to be used exclusively for forced return monitoring (e.g. enough funding to monitor an agreed percentage of forced returns).

#### Recommendation 4: Cooperation between all stakeholders should be facilitated and encouraged.

Considering that a variety of different stakeholder groups with potentially different viewpoints are involved in forced return policy (e.g. decision-making authority, executing authority, NGOs, Church), **close cooperation between all parties** has been seen as imperative to the success of the system. There is evidence that different perspectives in a difficult area ultimately lead to improved outcomes. Hence it is important to ensure that any barriers to effective and respectful **cooperation ‘on the ground’** between monitors and executing authorities are removed and that feedback from all stakeholder groups can be disseminated and discussed by all involved (e.g. as part of an overall discussion forum). By institutionalising some form of feedback loop, the system can ensure that new staff are properly inducted and lessons learned are incorporated into practice.

#### Recommendation 5: Comprehensive forced return monitoring should encompass all phases from pre-return to arrival/reception in the destination country.

In the countries examined in more detail, **forced return monitoring tends to centre on the pre-return and pre-departure phase**. These are undoubtedly critical phases, as highly emotional situations can easily get out of hand. As evidence from the German case study suggests, monitors tend to contribute to the de-escalation of potentially highly emotional situations. Funding permitting, however, a more comprehensive approach could be adopted to include **monitoring the return operation and arrival phase**, especially in conjunction with a broader remit of tasks included in monitoring forced returns (Recommendation 7).

#### Recommendation 6: Monitors should be able to decide what cases to monitor on the basis of agreed criteria.

Monitoring each individual case of forced return is neither practical nor does it appear to be necessary. However, to ensure complete transparency, the **decision as to which cases to monitor should be allowed to be taken by the monitors based on their full knowledge** of all impending forced return operations. The decisions should be made based on a transparent list of pre-selected criteria which can be established together with the authorities beforehand.

#### Recommendation 7: Observation duties may go beyond monitoring the interaction between officials and returnees (e.g. during the pre-departure phase or return operation) to include additional tasks.

Starting from a minimalist version of monitoring that consists of observing the interaction between officials and returnees during the pre-departure phase, observation duties could be extended to cover additional phases (Recommendation 5) and tasks (e.g. review of returnee medical files). Access to returnee files, however, should only take place with the explicit consent of the returnee and depending on the nature of the files (e.g. legal, medical) may require the monitor to have a particular professional background (Recommendation 1).



**Recommendation 8: Team leaders of all stakeholder groups ‘on the ground’ should consistently liaise to identify, prevent and de-escalate problems, especially but not exclusively where monitors have no intervention powers.**

In most cases, monitors do not tend to have intervention powers. While intervention powers can be a useful tool for dealing with potential human rights abuses immediately when they occur, they may also lead to confusion regarding roles and competencies especially between the monitors and executing authorities on the ground. Evidence from the case studies shows that intervention powers are not necessarily needed to help de-escalate situations during the departure phase. Instead, **constructive work relationships between officials and monitors working on the ground can be used to manage critical situations.**

**Recommendation 9: Authorities should use monitoring reports as guidelines for systematic improvement.**

Monitors provide regular reports about their observations to relevant authorities. For these reports to be effective, they must lead to improvements as and when needed. To this end, **reports should be produced in a timely manner and used by authorities as guidelines for improving their work** in the area of forced returns.

**Recommendation 10: Responding to the increasing importance and complexity of return flights organised by Frontex:**

Given the increasing importance and complexity of joint return flights organised by Frontex (e.g. greater number of returnees from different European countries involving escorts teams from different countries with different return standards and measures), the following is recommended:

- a) **Number of Monitors:** The lead country (or those countries returning the biggest group of persons on the flight), should be responsible for nominating a monitor. Joint return operations that cover a big group of returnees should be monitored by several monitors.
- b) **Reporting and Guidelines:** Monitors should draft a common monitoring report (per return operation), addressed to Frontex, which should help the organisation to further develop guidelines and standards for implementing joint return operations against which future monitors should evaluate the return operation. In the interest of transparency Frontex should report annually to the European Parliament on the findings of monitors and actions it has taken as a result of their findings.
- c) **Special Monitors:** In the longer term, a pool of monitors across EU Member States should be established, trained especially to monitor joint flights against the guidelines set up by Frontex and based on international human rights law, EU fundamental rights etc.<sup>76</sup>

<sup>76</sup> Given Frontex experience in return operations the chosen lead monitors could be trained along with Frontex Staff. This is a opinion shared by Frontex. Interview with Claus Dechert, expert on Joint Return Operations Unit of Frontex, 30/06/2011

## APPENDICES

## Appendix A: Detailed Situation Across Member States

The information in Appendix A is based on survey responses received from the Member States, which were subsequently turned into country profiles (see Appendix D) and have been submitted again to the Member States for validation. Although the research team led by Matrix has made reasonable efforts to correctly interpret the information received, we cannot guarantee absolute accuracy or completeness of information/data submitted. Moreover, the field of 'forced return monitoring' is fast-paced and the situation in individual Member States may have changed from the time of collecting the information (2010/2011).

**Table 13: Status Quo of Monitoring Systems in Place/Planned (March 2011)**

Country*	No System in place/planned	No System in place but legislation Initiated	System in place/planned
Austria			✓
Belgium			✓
Bulgaria	✓		
Cyprus		✓	
Czech Republic			✓
Denmark			✓
Estonia			✓
Finland			✓
France			✓
Germany			✓
Greece	✓		
Hungary		✓	
Iceland	✓		
Italy	✓		
Latvia		✓	
Lichtenstein		✓	
Lithuania		✓	
Luxembourg			✓
Malta	✓		
Netherlands			✓
Norway			✓
Poland			✓
Portugal			✓
Romania			✓

Country*	No System in place/planned	No System in place but legislation Initiated	System in place/planned
Slovenia			✓
Spain			✓
Switzerland			✓
United Kingdom	✓		
<b>Total</b>	<b>5</b>	<b>5</b>	<b>17</b>

Source: Matrix Insight/ICMPD Research; (\*) Malta, Slovakia and Sweden did not provide a direct answer to this question

**Table 14: National Interpretation of an 'Effective Forced Return Monitoring System'**

Country*	SCOPE	ORGANISATION INVOLVED			ACTIVITIES		
	All or most phases of the return process	Migration/Law Enforcement Authorities	Civil Society Organisation	Ombudsman or similar	Reporting	Intervention Powers	Provide information and advice about their rights
Austria	✓	✓	✓		✓		✓
Belgium	✓	✓			✓	✓	✓
Cyprus							
Czech Republic	✓			✓	✓		
Finland		✓		✓			
France	✓	✓ <sup>77</sup>	✓		✓	✓	✓
Germany			✓		✓		✓
Hungary	✓	✓ <sup>78</sup>		✓		✓	✓
Latvia	✓		✓	✓	✓		✓
Luxembourg	✓		✓	✓	✓		✓
Netherlands	✓			✓	✓		
Norway	✓	✓		✓	✓		✓
Poland	✓		✓				✓
Slovakia		✓ <sup>79</sup>	✓				
Slovenia			✓	✓			
Spain	✓	✓ <sup>80</sup>					

<sup>77</sup> 'Administrative judges and judicial authorities'

<sup>78</sup> 'Prosecution service'

<sup>79</sup> Internal Control of the Ministry of Interior

	SCOPE	ORGANISATION INVOLVED			ACTIVITIES		
Country*	All or most phases of the return process	Migration/Law Enforcement Authorities	Civil Society Organisation	Ombudsman or similar	Reporting	Intervention Powers	Provide information and advice about their rights
Switzerland	✓	✓	✓		✓		✓
United Kingdom			✓		✓		
<b>Total</b>	<b>12</b>	<b>9</b>	<b>10</b>	<b>8</b>	<b>11</b>	<b>3</b>	<b>10</b>

Source: Matrix Insight/ICMPD Research; (\*) Bulgaria, Denmark, Estonia, Greece, Iceland, Italy, Lichtenstein, Lithuania, Malta, Portugal, Romania and Sweden did not provide a direct answer for this question.

**Table 15: Overview of Phases covered by (Planned) Monitoring System**

Country*	Pre-Return	Pre-Departure	Return Operation	Arrival	Reintegration
Austria	✓	✓	✓	✓	
Belgium		✓	✓	✓	
Czech Republic	✓	✓			
France	✓	Planned	Planned	Planned	Planned
Germany		✓			
Hungary	Planned	Planned	Planned	Planned	Not planned
Latvia	Planned	Planned	Planned	Planned	Not planned
Luxembourg	✓	✓	✓	✓	✓
Netherlands	✓	✓	✓	✓	
Norway	✓	✓	✓	✓	
Poland	✓	✓			
Slovenia	Planned	Planned			
Spain	✓	✓	✓		
Switzerland	✓	✓	✓	✓	
United Kingdom	✓**	✓**			
<b>Total</b>	<b>10</b>	<b>12</b>	<b>8</b>	<b>7</b>	<b>2</b>

<sup>80</sup> Judicial authorities

Source: Matrix Insight/ICMPD Research; (\*) Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Italy, Lichtenstein, Lithuania, Malta, Portugal, Romania, Slovakia and Sweden did not provide answers for this question; (\*\*) While the UK is not party to the EU Returns Directive, the UK has in place Independent Monitoring Boards (IMB) whose broad remit is to monitor conditions in Immigration Removal Centres and other short-term holding facilities by agreement with the Secretary of State.<sup>81</sup>

**Table 16: Overview of Issues that are (will be) checked by Monitors**

Does the monitor check the following?				
Country*	Deportee has been properly informed	Deportee has received necessary medical check-ups and/or financial aid.	Travel arrangements were made in dignified manner	Deportee is treated in a human way
Austria	✓	✓	✓	✓
Belgium	✓	✓	✓	✓
Czech Republic	Not decided	Not decided	Planned	Planned
France	✓	✓	✓	✓
Germany	x	x	x	✓
Hungary	✓	✓	✓	✓
Latvia	Planned	Planned	Planned	Planned
Luxembourg	✓	✓	✓	✓
Netherlands	✓	✓		✓
Poland	✓	✓	x	✓
Switzerland	✓	✓	✓	✓
<b>Total</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>9</b>

Source: Matrix Insight/ICMPD Research(\*) Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Italy, Lichtenstein, Lithuania, Malta, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom did not provide answers for this question.

<sup>81</sup> In addition, the Chief Inspector of Prisons has a “statutory responsibility to inspect all immigration removal centres and holding facilities” see <http://www.justice.gov.uk/inspectors/hmi-prisons/aboutus.htm> . It is worth noting that the Chief Inspector’s produces reports of 90+ pages, compared to the reports of the Supervisory Board of Norway’s Trandum Detention centre, which are between 4 and 8 pages long.

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### National Legal Documents

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- Criminal Procedure Code of the Kingdom of Norway, Act of 22 May 1981 No. 25, section 67 subsection 6.
- German Parliament, 2007, Humanitäre Standards bei Rückführungen achten, Drucksache 16/4851
- Norwegian Act No. 5 of March 6. 1981 Relating To The Ombudsman For Children.
- The Parliamentary Ombudsman for Public Administration, Special Report on the Ombudsman's Investigation of the Police Immigration Detention Centre at Trandum, 15 February 2007

### Internet Resources

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<http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=23AF15E4C25CCC516E7C9A73C28B07CA?directoryID=125>  
<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722>  
<http://www.admin.ch/ch/f/rs/1/150.1.fr.pdf>  
[http://www.assembly.coe.int/CommitteeDocs/2011/ajdoc08\\_2011.pdf](http://www.assembly.coe.int/CommitteeDocs/2011/ajdoc08_2011.pdf)  
<http://www.bbc.co.uk/news/world-europe-12309321>  
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<http://www.diakonie-hessen-nassau.de/arbeitsfelder/migration-fluechtlinge-und-interkulturelle-arbeit/abschiebungsbeobachtung.html>  
[http://www.ecre.org/resources/Policy\\_papers/1296](http://www.ecre.org/resources/Policy_papers/1296)  
<http://www.lovdata.no/all/hl-20080515-035.html>  
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[http://www.menschenrechtsbeirat.at/cms15/mrb\\_pdf/thematische\\_berichte/1999\\_problemabschiebungen\\_vt.PDF](http://www.menschenrechtsbeirat.at/cms15/mrb_pdf/thematische_berichte/1999_problemabschiebungen_vt.PDF)  
<http://www.nrk.no/nyheter/norge/1.7471556>  
<http://www.peoplepeace.org/web/index.php?section=article&subsection=45>  
[http://www.sivilombudsmannen.no/kontor/lover\\_2/](http://www.sivilombudsmannen.no/kontor/lover_2/)  
<http://www.sivilombudsmannen.no/uttalelser/besok-til-politiets-utlendingsinternat-hoesten-2008-article1502-114.html>  
<http://www.sos-rasisme.no/start/print/13961>  
<http://www.sos-rasisme.no/start/print/14060>  
<http://www.sos-rasisme.no/start/print/14149>  
<http://www.unhcr.org/430afab82.html>  
<http://www.verein-menschenrechte.at/>  
[www.opsi.gov.uk/acts/acts2002/ukpga\\_20020041\\_en\\_5#pt3-l1g58](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020041_en_5#pt3-l1g58)



## Appendix C: Survey Questionnaire

### Forced Return Monitoring System according to Directive 2008/115/EC

#### Questionnaire

Matrix Insight Limited in partnership with the International Centre for Migration Policy Development (ICMPD) are carrying out a study on behalf of the European Commission with the aim of gaining a comprehensive understanding of Forced Return policy, practice and monitoring in all Member States bound by Directive 2008/115/EC (the Return Directive).

The overall purpose of the study is to **facilitate the transposition of Article 8(6) of the Return Directive**<sup>82</sup> by providing Member States bound by the Directive with information on best practice examples to support their efforts to develop an effective monitoring system of Forced Return of illegally staying third-country nationals. To this end, the study describes the legal approach and practical application of Forced Return monitoring in each of the Member States.

As part of the study, **detailed country profiles** are being developed. The information in this questionnaire will help to populate the country profiles, give some insight on how Member States interpret Article 8(6) in their national law and outline the extent to which Member States have provided or intend to provide for an effective Forced Return monitoring system.

To ensure transparency of the information provided and comparability between individual country profiles we would like to ask you:

1. to answer the questions as precisely as possible;
2. to provide citations in the footnotes, where applicable;
3. to include statistics, tables and figures where available;
4. to attach any publications, articles, yearly reports, legal documents, etc. that can further sustain your answers.

To facilitate your work, we have already populated the questionnaire as far as possible through our own desk research. You are kindly requested to review and up-date this information if applicable. Please skip questions, for which no information is available.

We look forward to receiving the completed questionnaire by **20 September 2010**. Please send it to Gabriele Birnberg at Matrix Insight ([gabriele.birnberg@matrixknowledge.com](mailto:gabriele.birnberg@matrixknowledge.com)). For questions, please get in touch with Gabriele Birnberg at 0044 20 7614 0569 or 0044 75 4072 115.

**Thank you in advance for your cooperation!**

<sup>82</sup> According to Article 8(6) of Directive 2008/115/EC (on returning illegally staying third-country nationals), EU Member States (MS) 'shall provide for an effective forced-return monitoring system. Transposition of the Directive is supposed to be completed by December 2010. To date, not all Member States have fully transposed the Directive.

## Section I: Background Information

### 1. Please provide some background information.

On behalf of which country are you completing this questionnaire?	
What is the name of your organisation?	
Could you please provide your contact details (e.g. email, phone) in case we have follow-up questions?	

## Section II: Information about Forced and Voluntary Returns

### 1. (a) What does the term 'voluntary return' mean in your national context? If there are different types/levels of voluntary return, please describe.

(b) What is the legal basis for Voluntary Returns policy in your country? Please describe and attach (preferably in English).

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### 2. (a) What does the term 'forced return' mean in your national context? If there are different types/levels of forced return (e.g. forced return with/without escort, charter), please describe.

(b) What is the legal basis for Forced Returns policy in your country? Please describe and attach (preferably in English).

(c) What organisation(s) is/are responsible for carrying out forced return operations?

--

### 3. Please indicate the total number of Forced and Voluntary Returns. If possible, please provide disaggregate figures for Forced Returns (in numbers or estimates as a percentage of the total figure).

	2008	2009
Voluntary Returns		
Forced Returns		
• <i>with</i> accompanying security personnel/escorted enforcement		
• <i>without</i> accompanying security personnel/unescorted enforcement		
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)		

### 4. In no particular order, please indicate the top 5 receiving countries of Voluntary and Forced Returns. If possible, please provide disaggregate figures for Forced Returns.

Destination Ranking			Overall Voluntary Return	Overall Forced Return	Forced Return		
					with accompanying security personnel/escorted enforcement	without accompanying security personnel/unescorted enforcement	Other types of Forced Return (e.g. a combination of the above-mentioned forms)
2008							
1							
2							
3							
4							
5							
2009							
1							
2							
3							
4							
5							

### Section III: Existing/Intended Practices for Forced Return Monitoring

5. With regards to your country, which of the following statements do you agree with most? If you would like to elaborate on your answer, please use the space below.

	Yes
(a) There are currently no arrangements in place in our country for monitoring Forced Returns and no legislation has been initiated.	
(b) There are currently no arrangements in place in our country for monitoring Forced Returns but legislation has been initiated.	
(c) Arrangements for monitoring Forced Returns are currently in place in our country/are planned to be in place in the near future. These arrangements are in place/planned, irrespective of Article 8(6) of the Return Directive.	
(d) Arrangements for monitoring Forced Returns are currently in place in our country/are planned to be in place in the near future. These arrangements are in place/planned in accordance with Article 8(6) of the	

Return Directive.	
<i>Please elaborate:</i>	

- 6. Please describe the national interpretation of an 'effective Forced Return monitoring system'.**

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- 7. What is the legal basis for the existing/planned Forced Return monitoring system?<sup>83</sup> If it is planned, when is it coming into effect?**

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- 8. How many cases of Forced Returns are monitored annually?**

	2008	2009
Monitored Forced Returns		

- 9. On what grounds is the decision made, whether or not to monitor Forced Return procedures? Who is responsible for making this decision?**

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- 10. Please indicate which phases of the Forced Return procedure are currently monitored/will be monitored? Please name and describe the nature (e.g. NGO, state body) of the organization(s) that are/will be in charge of monitoring Forced Returns?**

Phase	Is a monitoring system in place/planned?	Organisation(s) Responsible for Monitoring?
Pre-Return		
Pre-Departure		
Return Operation		
Arrival		
Re-Integration		

- 11. How are the Forced Return monitoring system(s) of these organization(s) financed? What is their approximate annual budget?**

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<sup>83</sup> If the legal basis exists in English please annex it, if not please describe the provisions.

**12. Please describe the overall tasks and competencies of existing/planned monitoring organisation(s), if possible by phase. Some of the questions we are interested in are:**

- a. *At what point (during which phase) is the responsible organisation informed of a forced return operation?*
- b. *Is it possible for the monitor to engage with the deportee?*
- c. *Does the monitor have access to the file of the deportee?*
- d. *Does the monitor check whether ...*
  - *the deportee is being/has been properly informed of the return operation?*
  - *the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)?*
  - *travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)?*
  - *the deportee is being treated in a human way?*
- e. *What reporting duties does the monitor have and to whom?*
- f. *Does the monitor have powers to intervene?*

Phase	
Overall Tasks/Competencies	
Pre-Return	
Pre-Departure	
Return Operation	Land
	Air
	Sea
Arrival	
Re-Integration	

**13. For the system that is, or will be in place, is the return process of vulnerable groups as mentioned in Article 3(9) of the Return Directive monitored in a special way? If yes, which groups are covered and what are the differences compared to the regular forced return monitoring?** <sup>84</sup>

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## Section V: Statistics on Forced Return Monitoring

<sup>84</sup> According to Article 3 (9) of the Directive: 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

14. Please provide statistics for individual return operations by air, land and sea (if applicable) for 2008, 2009 and 2010.<sup>85</sup>

Accompanied Forced Return						
By Air	Individual Return Operation	Destination Country	Level of Risk/Vulnerability (low risk/high risk etc)	# of Deportees	# of Escorts	# of Monitoring Staff
	2008					
	1					
	2					
	3					
	4					
	5					
	6					
	2009					
	1					
	2					
	3					
	4					
	5					
	6					
	2010					
	1					
	2					
	3					
	4					
	5					
	6					
By Land	2008					
	1					
	2					
	3					
	4					
	5					
	6					
	2009					
	1					
	2					
	3					
	4					
	5					
	6					
	2010					
	1					
	2					
	3					
	4					
	5					
	6					

<sup>85</sup> Please add rows if necessary.

Accompanied Forced Return						
By Sea	2008					
	1					
	2					
	3					
	4					
	5					
	6					
	2009					
	1					
	2					
	3					
	4					
	5					
	6					
	2010					
	1					
	2					
	3					
	4					
	5					
	6					

## Appendix D: Country Profiles

### Austria

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and civil society organisations
- **Phases monitored:** Pre-return, pre-deportation, return operation and arrival
- **Activities:** Reporting and provide information and advice about their rights

#### Section I: Returns Statistics

	2008	2009
Voluntary Returns	2741	3428
Forced Returns	2026	2481
• <i>with</i> accompanying security personnel/escorted enforcement		
• <i>without</i> accompanying security personnel/unescorted enforcement		
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)		
Number of cases of forced returns monitored	Ind HRM <sup>86</sup> : 17 HRAB <sup>87</sup> : 10	Ind HRM: 15 HRAB: 24

#### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The term “voluntary return” is generally used both for assisted voluntary return (travel costs and reintegration aid) and a return, where the trip is organized and paid by the person concerned through their own means.	Forced return is a return organized by the alien's police authority. The level of forced return depends on the security assessment done beforehand and foresees: <ul style="list-style-type: none"> <li>• an unaccompanied return, which was simply organized by the alien's police authority (Level 1);</li> <li>• escort of the returnee to the doors of the plane by a police officer (Level 2);</li> <li>• Escort of the returnee by police officers to the country of origin (escort, Level 3) an escorted return is accompanied by 1 - 3 police</li> </ul>	Monitoring should include all phases of the return operation, starting with the “contact talk” between the escort leader and the returnee the day before the operation till the handing over of the returnee in the country of destination.  The current system has been operational for nearly 10 years (irrespective of the Return Directive).

<sup>86</sup> Ind HRM = Independent Human Rights Monitor

<sup>87</sup> HRAB = Human Rights Advisory Board



	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
		officers; return operation carried out by charter plane or bus (Level 4).	
<b>Legal Basis</b>	No legal definition but § 67 Aliens Police Act provides that an Alien, who has been expelled or against whom a residence prohibition has been issued, has to leave the country without delay. If he does not do so his deportation (forced return) can be ordered (see below). The term “without delay” includes no time limitation, which will be soon amended by a time limit of 7-30 days (in line with the Return Directive).	Based on § 46 Aliens Police Act the legal basis for forced returns is an enforceable order (expulsion or residence prohibition order). Additionally the forced return must be necessary to control the departure; or the person failed (or is expected to fail) to comply in due time with the obligation to depart (§ 67 Aliens Police Act, § 10 Asylum Act); or the person returned to Austria in violation of a residence prohibition.	The legal basis for HRAB (and their monitoring activities) is to be found in §§15a – 15c Security Police Act, and the Ordinance II 1999/395 (MRB-V) on the implementation of the Human Rights Advisory Board contain provisions on its organisation and tasks. The HRM is contracted on a case to case basis by the Ministry of Interior for the monitoring of a return operation.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	All forced returns (pre-departure till the boarding of the mode of transport) can be monitored by the HRAB which is being informed per email before the deportation. In case of charter flights or returns via land organized by the Ministry of the Interior it does not fall to the choice of the executing organisational department whether or not a Human Rights Observer is present. It is a general standard that in any case of the mentioned returns such an observer needs to be called in.
Organisations in Charge of Monitoring Forced Returns	The <b>HRAB</b> encompasses independent civilian experts (nominated by NGOS) and representatives of different Ministries. <sup>88</sup> The HRAB is an independent institution introduced and financed by the Federal Ministry of Interior 10 years ago to monitor all activities of the security services (among them also detention and return of foreigners). <b>The HRM</b> is an individual with an NGO background ( <i>Verein Menschenrechte</i> ), which is also represented in the HRAB and financed

<sup>88</sup> For further information see [www.menschenrechtsbeirat.at](http://www.menschenrechtsbeirat.at)

Practice	Description
	by the Ministry of Interior for a range of activities (among other detention care of foreigners and monitoring of (mainly) deportation via chartered flights).
Annual Budget	Financed by the Ministry of Interior.
Phases Monitored	Pre-return, pre-deportation, return operation, arrival.
Monitor Informed	A few days before travel date.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Engages with deportee</li> <li>• Has access to the file</li> <li>• Checking whether the deportee is being/has been properly informed of the return operation</li> <li>• Checking whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)</li> <li>• Checking whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)</li> <li>• Checking whether the deportee is being treated in a human way</li> </ul>
Treatment of Vulnerable Groups	In accordance with the Return Directive vulnerable groups are - according to their needs - treated and supported in a special way. If necessary not only all medical remedy, but also a steady monitoring through a doctor is consistently assured. Moreover a separate, excellently equipped accommodation has been adapted paying attention to the specific needs of returnees as well as families or weak persons.

## Belgium

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities
- **Phases monitored:** Pre-departure, return operation and arrival
- **Activities:** Reporting, intervention powers, provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	2669 <sup>89</sup>	2659
Forced Returns	3744	3443
• <i>with</i> accompanying security personnel/escorted enforcement	619	637
• <i>without</i> accompanying security personnel/unescorted enforcement	3125	2806
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	18	17

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The Belgian humanitarian programme (Return and Emigration of Asylum-Seekers Ex Belgium -REAB) assists migrants in need, wishing to voluntarily return from Belgium to their country of origin or to emigrate to another country and do not have the necessary means.	Those who have not obeyed an expulsion order are kept in a closed centre. Of these, who agree to leave without an escort will be granted a small premium. Those who refuse to leave are brought back with an escort, but if they show no resistance they are awarded a limited grant upon arrival. In some situations where the Alien shows a non cooperative behaviour he will be escorted under constraints, or with a securized flight (in extreme cases).	Belgium has partially transposed the Directive 2008/115 in Belgian law, and is planning to appoint the General inspection as the authority charged to ensure the control of the forced returns.
<b>Legal Basis</b>	<ul style="list-style-type: none"> <li>• On the basis of an agreement with the Belgian SPF for Social Integration</li> <li>• The circular letter of</li> </ul>	<ul style="list-style-type: none"> <li>• Article 27 of the law of December 15th, 1980</li> <li>• Art 1, 37 and 38 of the law on the police function.</li> </ul>	Article 9,1°, of the Royal decree of July 20th, 2001.

<sup>89</sup> European Migration Network, 2008.

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	November 17th, 2006 relating to the voluntary return of foreigners with the assistance of the International Organization for Migration (Belgian Statute Book Dec. 19th, 2006).		

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The decision is based on several criteria: <ol style="list-style-type: none"> <li>1) The type of forced return</li> <li>2) The subject who needs to be repatriated</li> <li>3) The level of risk of the return destination</li> <li>4) Public sensitivity and interest</li> <li>5) Availability of staff.</li> </ol>
Organisations in Charge of Monitoring Forced Returns	The General Inspectorate of the federal police and of the local police.
Annual Budget	Financed by Ministry of Justice and home Affairs.
Phases Monitored	Pre-Departure, Return, Arrival.
Monitor Informed	In the Pre-Return Phase.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Engages with deportee</li> <li>• Has access to the file</li> <li>• Checking whether the deportee is being/has been properly informed of the return operation</li> <li>• Checking whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)</li> <li>• Checking whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)</li> <li>• Checking whether the deportee is being treated in a human way</li> </ul> <p>Writing a report about the operation</p>
Treatment of Vulnerable Groups	No specific vulnerable groups are monitored

## Bulgaria

- **Monitoring system:** No system in place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	0	44
Forced Returns	275	283
• <i>with</i> accompanying security personnel/escorted enforcement	5	4
• <i>without</i> accompanying security personnel/unescorted enforcement	270	279
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	307	292
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The foreigner fulfils the obligation to return within the time limits before a compulsory administrative measure is issued.	Forced Return involves taking the foreigner, whether illegal or if his permit has expired, out of the borders of the country in a short term if he breached the law or he lacks any grounds for staying.	/
<b>Legal Basis</b>	Law for Foreigners, Chapter five Art. 39b. The draft Law for amendment and supplement (LAS) of the LFRB foresees that Art. 39b, Paragraph 2 shall be amended.	The Law for the Foreigners in the Republic of Bulgaria, Chapter 5.	/

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/

Practice	Description
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	Vulnerable groups shall not be <b>expulsed</b> to a country where their life and freedom are endangered and he is subjected to a danger of prosecution, torture or inhuman or humiliating treatment.

## Cyprus

- **Monitoring system:** Legislation initiated
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	2118	2917
Forced Returns	3231	3673
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	‘Voluntary return’ refers to the compliance with an obligation to return within the time-limit fixed for this purpose. Once a return decision is issued the third country national is informed in writing that he/she has to depart from the Republic within specified amount of time, which is usually 15 days	‘Forced return’ refers to the enforcement of the obligation to return, namely the physical transportation out of the Republic on the basis of an expulsion order. Escorting returns are only exercised if this is considered necessary.  Forced return decisions are issued by the Director of the Civil Registry and Migration Department and they are carried out by the Aliens and Immigration Unit Police.	There are currently no arrangements in place for monitoring Forced Returns but legislation has been initiated for the transposition of Directive 2008/115/EC.
<b>Legal Basis</b>	Aliens and Immigration Law	Aliens and Immigration Law	n/a

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	n/a
Organisations in Charge of Monitoring Forced	n/a

Practice	Description
Returns	
Annual Budget	n/a
Phases Monitored	The exact context of the monitoring system has not yet been established
Monitor Informed	n/a
Tasks & Competencies of Monitor	n/a
Treatment of Vulnerable Groups	n/a



## Czech Republic

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Ombudsman or similar
- **Phases monitored:** Pre-return and pre-departure
- **Activities:** Reporting

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	96	110
Forced Returns	291	631
• <i>with</i> accompanying security personnel/escorted enforcement	119	294
• <i>without</i> accompanying security personnel/unescorted enforcement	172	337
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	There are two types of voluntary return targeted at different categories of people – ‘voluntary return’ under the Aliens Act (for foreign nationals in general) and ‘voluntary repatriation’ under the Asylum Act (for asylum seekers).	Although there is no precise legal definition, the term ‘forced return’ refers to the activities of the Alien Police Service (APS) when executing return decisions. A decision on an administrative expulsion may be issued according to two possibilities: firstly, a citizen receives a decision on administrative expulsion and the person returns to the country of origin without assistance of the police on his/her own expenses; or secondly, a citizen is placed in a detention centre and the costs of return are paid by the Czech Republic – in this case, the return is realized with or without escort of police officers (by land or by air) and in the framework of readmission agreements or without	The Czech interpretation of an ‘effective forced return monitoring system’ is based on the outcome of the Contact Committee on the Returns Directive organized by the European Commission. Therefore, the Czech Republic will adhere to the following principles: <ul style="list-style-type: none"> <li>• monitoring shall be made by the body independent of the body that carries out the return process; it does not necessarily have to be a non-governmental body</li> <li>• monitoring should cover the</li> </ul>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
		them, eventually by charter flights.	<p>preparatory phase (i.e. the detention of the person concerned) and the realization phase (i.e. the expulsion itself)</p> <ul style="list-style-type: none"> <li>• monitoring can end at the moment the person is handed over to the authorities of his country of origin – i.e. post-return monitoring is not required</li> <li>• although the monitoring body does not have any power to intervene, it can make recommendations after the process is finished</li> </ul>
<b>Legal Basis</b>	Section 123a of the Aliens Act (Act No. 326/1999 Coll. on the Residence of Foreign Nationals in the Territory of the Czech Republic) regulates 'voluntary return', and Section 54a of the Asylum Act (Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic) 'voluntary repatriation'.	The execution of forced return decisions may occur only in cases of detained foreign nationals. The reasons for detention are also defined by the Aliens Act (in particular Section 119 and 124). Decision 2004/573/EC is applied.	The current system is regulated by Article No 349/1999 Coll., within the paragraphs on the public defence of rights. The new, more complex system entered into force on 1 January 2011 by amending the Aliens Act and, to some extent, also Article No 349/1999 Coll.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The monitoring system suggests that the office of the Ombudsman will receive all decisions on administrative expulsion and detention. It is in the responsibility of the monitor to choose appropriate cases for monitoring, as the legal system does not lay out any criteria in this respect.
Organisations in Charge of Monitoring Forced Returns	The Czech Ombudsman

Practice	Description
Annual Budget	Approximately € 63.400 annually.
Phases Monitored	Pre-return and Pre-departure.
Monitor Informed	Sufficiently in advance
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Can engage with the deportee only during detention in the centre</li> <li>• Access to the file only after approval from the detainee</li> <li>• Planned to check whether travel arrangements have been made in a dignified manner</li> <li>• Planned to check whether the deportee is treated in a human way</li> <li>• Produce a report and send it to the Directorate of the Aliens Police Service for comments.</li> </ul>
Treatment of Vulnerable Groups	No special vulnerable groups monitored

## Denmark

- **Monitoring system:** In place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	1170	251
Forced Returns	543	148
• <i>with</i> accompanying security personnel/escorted enforcement	143	59
• <i>without</i> accompanying security personnel/unescorted enforcement	400	89
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	n/a	n/a

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Voluntary Return Policy covers cases of 'departure on own initiative' in which definitive information about the fact that the alien has left the country have been provided; and cases of 'deemed departure' in which the police is unable to locate the alien at the immigration removal centre, or the alien is reported missing by the immigration removal centre so that the authorities are unaware of the alien's place of residence. In the latter cases, the alien is entered in the Central Criminal Register as a wanted person	Forced Return Policy covers cases of 'escorted departure' in which the police escorts the alien out of Denmark – typically by air – either all the way to the country of origin or to a transit destination; and cases of 'observed departure' in which police officers observe the departure from Denmark, such as embarkation on an aircraft or a ship.  The Commissioner of the Danish National Police is responsible for carrying out forced return operations.	The bill transposing the Return Directive into Danish legislation has been presented to the Danish Parliament on 12 January 2011. The Forced Return Monitoring System is foreseen to come into effect on 1 April 2011.
<b>Legal Basis</b>	The Aliens (Consolidation) Act, Art. 30(1)	The Aliens (Consolidation) Act, Art. 30(2)	The legal basis for the Forced Return monitoring system

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
			has not yet been decided upon

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	To be decided
Organisations in Charge of Monitoring Forced Returns	To be decided
Annual Budget	To be decided
Phases Monitored	To be decided
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Estonia

- **Monitoring system:** In place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	/	42
Forced Returns	125	103
• <i>with</i> accompanying security personnel/escorted enforcement	/	97
• <i>without</i> accompanying security personnel/unescorted enforcement	/	6
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	There is no clear definition of the Voluntary Returns Policy	Forced return is, according to law and legal proceeding, enforcing somebody's obligation to leave the country. This means that, after the time allowed for voluntary return, the subject will be deported.  Forced return is carried out by the Police and Border Guard or by the Estonian Security Police	Arrangements for monitoring Forced Returns are in place in accordance with Article 8(6) of the Return Directive, but have not been used in practise since the legal regulation is very recent. Forced Returns Monitoring Policy is still evolving.
<b>Legal Basis</b>	Legal Obligations for Exit and Refusal of entry Act	Legal Obligations for Exit and Refusal of entry Act § 5	Arrangements on Forced Returns Monitoring Policy are included in the Legal Obligations for Exit and Refusal of Entry Act.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The Ministry of Interior is responsible for this

Practice	Description
Organisations in Charge of Monitoring Forced Returns	NCO
Annual Budget	To be decided
Phases Monitored	To be decided
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Finland

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and ombudsman or similar
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	37	228
Forced Returns	785	1812
• <i>with</i> accompanying security personnel/escorted enforcement	235	355
• <i>without</i> accompanying security personnel/unescorted enforcement	763	1457
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The term "voluntary return" is not defined in current legislation and is very flexible in practice. Government's proposal 208/2010 on amending Aliens Act and implementing Return directive is currently under discussion in Parliament.	There is not a legal definition on forced return. It can be anything from return with an obligation to report on the border to return with escort and charter flights.	Arrangements for monitoring Forced Returns are currently in place in our country. These arrangements are in accordance with Article 8(6) of the Return Directive.
<b>Legal Basis</b>	The legal bases on voluntary return will be in a new section 147a in Aliens Act. (Translation is not available yet)	Forced Return is based on Aliens Act, section 151. Details are defined by the Implementing Instructions of the Police Department of the Ministry of the Interior and the National Police Board.	The Constitution of Finland is the legal basis for the forced return monitoring systems. Role of the Ombudsman for minorities in return issues is defined in Aliens Act Section 208.



### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The Ombudsman can carry out monitoring on his/her own initiative or based on complaint. Each individual process is not monitored. The Ombudsman also carry out periodical surveys on return procedures regularly.
Organisations in Charge of Monitoring Forced Returns	There are three relevant monitoring bodies. The Parliamentary Ombudsman, The Chancellor of Justice and The Ombudsman for Minorities.
Annual Budget	Cost fall under the annual budget of the Ombudsman
Phases Monitored	/
Monitor Informed	<p>The Ombudsman for Minorities should be</p> <ul style="list-style-type: none"> <li>• Notified without delays of any decision to refuse an alien entry or deporting an alien</li> <li>• Notified without delays of any decision to place an alien in detention</li> </ul>
Tasks & Competencies of Monitor	<p>The <b>Ombudsman for Minorities</b> monitors and promotes the status and rights of foreigners in Finland and provides information about the related legislation. In practice, the Ombudsman can take a stand by providing guidance, instructions and statements in cases where foreigners feel that they have been treated unfavourably or put in an unfavourable position in comparison with others or that their integrity has been violated. The Ombudsman can also take initiatives related to the status of foreigners.</p> <p><b>The Police</b> has its own monitoring bodies in the Ministry of Interior.<sup>90</sup> Escorting officer must provide a detailed report on each escort mission.</p>
Treatment of Vulnerable Groups	/

<sup>90</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

## France

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and civil society organisations
- **Phases monitored:** Pre-return. Plans for monitoring pre-departure, return operation, arrival and reintegration
- **Activities:** Reporting, intervention powers, provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	10072	8286
Forced Returns	19724	21020
• <i>with</i> accompanying security personnel/escorted enforcement	4573	3625
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Voluntary returnees have access to financial assistance by the French Office of Immigration and Integration.	It involves physically accompanying forced returnees, by the competent authorities, to the boarding/expatriation facilities. In needed situations, particular measures are put in place like police escorting through national borders until the final destination.	<p>The legal dimension covers the entire removal process. An administrative judge can intervene to assess, for example, the legality of a decision of administrative detention or to identify any breach by the public service. Judicial authorities have access to places of detention and they have the authority to validate an extension of administrative detention.</p> <p>There is a further extra-judicial dimension, which allows the intervention of other actors: such as NGOs which signed a convention with the Ministry of immigration related to their mission, MPs and MEPs, independent administrative authorities (such as general</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
			supervisors of places of detention, the National Commission for Security Ethics, Human rights advocates and children's rights advocates).
<b>Legal Basis</b>	On the basis of article L511-1, I, 3 of the code on the entering and stay of foreigners and on the right to asylum.  A law proposal on immigration, integration and nationality currently subject to Parliament's examination seeks to guarantee the transposition of Directive 2008/115 CE.	On the basis of article L 511-1, I, 3.  On the basis of article L513-1.	The constitution.  The code on entry and stay of foreigners and on the right to asylum.  Administrative Justice Code.  Code of penal procedure. Legislative texts which established the different independent administrative authorities above mentioned.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The initiative of monitoring conditions of deportees belongs to both the returnee and to the several actors indicated above.
Organisations in Charge of Monitoring Forced Returns	NGOs, administrative judges, and judicial authorities.
Annual Budget	/
Phases Monitored	Pre-return, pre-departure, return operation and reintegration.
Monitor Informed	At every stage.
Tasks & Competencies of Monitor	Administrative judges control the legality of the decision of detention, and the judicial authority can validate the extension of the period of detention.  Monitor that the deportee is being treated in a human way and the proper aid made available.  Judicial authorities can punish the infringements of the right of the person during deportation processes.  Reporting duties.

Practice	Description
	Powers to intervene depending on their competencies.
Treatment of Vulnerable Groups	No special monitoring is available for vulnerable groups. Each case is assessed individually on a case-by-case basis.

## Germany

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations
- **Phases monitored:** Pre-departure
- **Activities:** Reporting and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns <sup>91</sup>	2799	3107
Forced Returns	14139	17612
• <i>with</i> accompanying security personnel/escorted enforcement	3261	2870
• <i>without</i> accompanying security personnel/unescorted enforcement	10878	14742
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The term 'voluntary return' refers to TCNs in Germany who are subject to a return decision and have decided to abide voluntarily by this decision.	The term 'forced return' refers to the forceful removal of TCNs in Germany who are subject to a return decision but are not abiding by this decision.	/
<b>Legal Basis</b>	Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act - Residence) <sup>92</sup>	Article 58(1) of the Residence Act	/

<sup>91</sup> These figures only refer to voluntary returns supported by REAG/GARP programmes. No statistical data available on voluntary returns not supported by REAG/GARP.

<sup>92</sup> Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (**Aufenthaltsgesetz - AufenthG**)

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	Monitors are free to make decisions which procedure they want to monitor. At Frankfurt airport for instance, monitors make decisions based on the returnee's gender, whether they have been returned previously, if a family separation is anticipated etc.
Organisations in Charge of Monitoring Forced Returns	In Germany a forum of different stakeholders (e.g. Church, police, NGOs, regional government) meets regularly to discuss forced return monitoring. They invite the actual monitors to these meetings to discuss problematic cases.
Annual Budget	The monitoring systems in Germany (Düsseldorf, Frankfurt, Hamburg) are funded by Church and in the case of Düsseldorf, also in part by the regional government.
Phases Monitored	<ul style="list-style-type: none"> <li>• Pre-Departure phase (monitoring refers exclusively to the enforcement of the return decision, not to its preparation)</li> </ul>
Monitor Informed	In general, monitors receive information on upcoming procedures a few days in advance.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Monitors are able to talk to returnees.</li> <li>• Monitors do not have access to returnee files.</li> <li>• Monitors are able to observe whether the returnees are treated in a humane manner.</li> <li>• Monitors (in Frankfurt airport) report their observations to the appropriate forum (FAFF) quarterly.</li> <li>• In case of concerns throughout the procedure, monitors are able to engage with the federal police at the airport.</li> <li>• Monitors have no intervention powers.</li> </ul>
Treatment of Vulnerable Groups	No differences are made between the monitoring of vulnerable/non-vulnerable returnees. Monitors are free to make decisions which procedure they want to monitor.

## Greece

- **Monitoring system:** Monitoring system: No system in place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	/	/
Forced Returns	/	60041
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	There is still no definition of voluntary returns.	Forced return is understood as deportation.	/
<b>Legal Basis</b>	In the existing legal regime there is no clear provision for voluntary returns. Expected to change following the EC Directive 115/08.	The administrative expulsion under Article 76 of Law 3386/2005 and the judicial deportation under Article 99 of the Criminal Code.	/

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Hungary

- **Monitoring system:** In place/planned. There are no arrangements in place for monitoring forced returns but legislation has been initiated.
- **Types of organisation involved:** Migration/law enforcement authorities and ombudsman or similar
- **Phases monitored:** Pre-return, pre-departure, return operation and arrival
- **Activities:** Intervention powers and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	188	293
Forced Returns	1485	1186
• <i>with</i> accompanying security personnel/escorted enforcement	1332	1030
• <i>without</i> accompanying security personnel/unescorted enforcement		
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	153	156
Number of cases of forced returns monitored	188	293

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	In the national context a person can “voluntary return” to a third country when he/she is subject to an obligation to leave because he/she: Fails to comply with the requirements set out in the <b>Act II of 2007</b> for the <i>Admission and Right of Residence of Third-Country Nationals</i> . In practice, the relevant Hungarian authorities define two different types of voluntary return: assisted voluntary return (if a person who is subject to an obligation to leave participates in the assistant program of the IOM and the Hungarian Immigration and Nationality Office)	In Hungary “forced return” means if a return or expulsion measure ordered by the court or the immigration authority is enforced by transporting the third-country under official escort.	The Republic of Hungary is responsible – inter alia – for the protection of legality in the procedures of aliens policing regulations, such as forced return. Because the Prosecution Service has the adequate resources and experience the amendments of the <b>Act II of 2007</b> <b>dedicated the</b> Prosecution Service for monitoring the whole procedure of forced Return.



	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	and voluntary return.		
<b>Legal Basis</b>	<p>According to the prevailing law (<b>Section 42 of Act II of 2007</b>) an order to leave the territory of the Republic of Hungary means that the immigration authority, if it finds that a third-country national who has lawfully resided in the territory of the Republic of Hungary no longer has the right of residence, adopts a resolution to withdraw the document evidencing right of residence of the third-country national in question. It shall also order him/her to leave the territory of the Republic of Hungary. A deadline of maximum thirty days for leaving the country shall be prescribed to comply with the aforesaid obligation. There is a legal remedy against the decision on the obligation to leave the territory of the European Union.</p> <p>The <b>Act II of 2007 contains provisions on</b> expulsion ordered under immigration laws and on expulsion by the Court.</p>	<p>The legal basis are Act II of 2007,, Government Decree No 114/2007. and Decree of the Minister of Justice and law Enforcement No 26/2007.</p>	<p>The amendments of the <b>Act II of 2007 came into effect on the 24<sup>th</sup> of December 2010.</b></p>

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The Prosecution Service decides which forced return procedure to monitor
Organisations in Charge of Monitoring Forced Returns	The Prosecution Service
Annual Budget	Approximately € 105.555.000
Phases Monitored	Planned: Pre-return, pre-departure, return operation, arrival
Monitor Informed	From the adoption of the resolution ordering

Practice	Description
	expulsion under immigration laws or from the adoption of the resolution for the enforcement of expulsion
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Engage with deportees</li> <li>• Has access to the file of the deportee</li> <li>• Check whether the deportee has been properly informed of the return operation</li> <li>• Check whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)</li> <li>• Check whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)</li> <li>• Check whether the deportee has been treated in a human way</li> <li>• Has powers to intervene in the pre-return, pre-departure, return operation and arrival phase</li> </ul>
Treatment of Vulnerable Groups	The return process of vulnerable groups as mentioned in Article 3(9) of the Return Directive is monitored but not in a special way.

## Iceland

- **Monitoring system:** No system in place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	5	10
Forced Returns	44	34
• <i>with</i> accompanying security personnel/escorted enforcement	44	34
• <i>without</i> accompanying security personnel/unescorted enforcement	10	10
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	0	0
Number of cases of forced returns monitored	5	10

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	In Iceland voluntary return means that a person is being returned without any force from Icelandic authorities and therefore is willing to travel to his destination by himself without a police escort.	In Iceland there is only one kind of forced return, that is when a person is being, forced to leave the country with police escort.	/
<b>Legal Basis</b>	The legal basis for voluntary returns is based on procedures issued by the National Commissioner of The Icelandic Police with quote in the act on foreigners no. 96/2002.	The current legal basis for forced and voluntary returns is Art. 33 of the Act on Foreigners No. 96/2002, and on grounds of that provision, the National Commissioner of the Icelandic Police has issued procedural rules (internal) as guidance for the police that carries out a decision, whether the return is forced or voluntary.	/

**Section III: Overview of Existing/Intended Practices for Forced Return Monitoring**

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Italy

- **Monitoring system:** No system in place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	144	241
Forced Returns	24234	18361
• <i>with</i> accompanying security personnel/escorted enforcement	2372	2380
• <i>without</i> accompanying security personnel/unescorted enforcement	6373	4825
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	15489	11156
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context (q1/2, 6, 7)

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	The Ministry of Internal Affairs implements programmes for voluntary and assisted returns to help 'regular' immigrant from vulnerable groups or those in need of special assistance to reintegrate in their country of origin.	<ul style="list-style-type: none"> <li>• The execution of an expulsion order implies immediately accompanying the returnee to the border of the state of origin by the Italian public authorities.</li> <li>• National authorities implement the expulsion order by the means they deem suitable.</li> <li>• The forced return could take place to the final destination with or without the intervention of special escort bodies depending on a case-by-case risk-assessment. The ratio between the number of escort forces and returnees is usually 2:1 (by plane). The escorting staff is specifically trained.</li> </ul>	/

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
		<ul style="list-style-type: none"> <li>In the case whereby there is an elevated number of citizens of the same nationality, Italy can, alone or in cooperation with other Member States, organize special charter flights for the returning process.</li> <li>When the competent authorities are unable to immediately accompany the returnee to his country of origin, he will stay in a Centre for Identification and Expulsion (CIE). This requires authorisation from the competent Judicial Authorities.</li> </ul>	
<b>Legal Basis</b>	<ul style="list-style-type: none"> <li>Decision 575/2007/CE</li> <li>Article 1-sexies of the law Decree 30 December 1989, n.416 turned into law 28th February 1989.</li> <li>Article 30 of the Legislative Decree 19 November 2007, n. 251 implementing Directive 2004/83/CE</li> <li>Article 8 of the additional protocol of the United Nations Convention against transnational organised crime to prevent, fight and punish human trafficking ratified through the law of 16 March 2006, n. 146 on the repatriation of victims of human trafficking.</li> </ul>	<ul style="list-style-type: none"> <li>Articles 13-16 of the Legislative Decree 25 July 1998, n.286 and subsequent modifications.</li> <li><b>Administrative expulsion</b> is implemented by: <ul style="list-style-type: none"> <li>A decree of the Interior Minister (article 13, 1), with immediate execution.</li> <li>By a Prefect's Decree on the basis of Article 13, 2a; Article 13, 2b and 13, 2c, with immediate execution.</li> <li>By a Prefect's Decree allowing the illegal immigrant 15 days after the expulsion order is issued, after the permit to stay has expired for more than 60days and a new one has no be requested (Article 13, 2b).</li> </ul> </li> </ul>	/

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
		<ul style="list-style-type: none"> <li>• <b>Judicial expulsion</b> is implemented by: <ul style="list-style-type: none"> <li>◦ Judge order on the basis of Article 15 and 16 of penal code.</li> <li>◦ Magistrate Decree, Article 13, 2 and 16, 6-7.</li> </ul> </li> </ul>	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Latvia

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations and ombudsman or similar
- **Phases monitored:** Pre-return, pre-departure, return operation and arrival
- **Activities:** Reporting and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	241	68
Forced Returns	663	145
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>In the concept of the legislation of the Republic of Latvia “voluntary return” is departure of an alien, who is voluntarily executing the voluntary return decision.</p> <p>There are two types of return decisions: (a) determining obligation for the alien to return; (b) stating the obligation to return (when the alien is leaving the country).</p> <p>The alien is eligible to apply for voluntary return assistance provided by international organizations; the government of Latvia does not have a national programme to support voluntary returnees.</p>	<p>The term “forced return” in the context of the Latvian legislation is return of the alien carrying out a removal order.</p> <p>Forced return is carried out by the State Border Guard. Under forced return, the aliens are always escorted to the state border of the Republic of Latvia. Escorting of an alien to the transit country or country of his/her origin always takes place upon assessment of particular circumstances.</p>	<p>According to draft legislation, monitoring policy includes: visiting the detained aliens, survey the aliens, participation in the process of forced return and involve the Ombudsman and other associations or foundations.</p>



	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Legal Basis</b>	Immigration Law	Immigration Law, Regulation of the Cabinet of Ministers	Amendments to Immigration Law are considered by the Parliament in the second reading.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The decision to monitor the forced return process will be taken by the Ombudsman
Organisations in Charge of Monitoring Forced Returns	Ombudsman with the involvement of NGOs (pre-return, pre-departure, return operation, arrival)
Annual Budget	State Budget and also eligible for European Return Fund; budget of the Ombudsman for 2010 was €796,155
Phases Monitored	Planned in pre-return, pre-departure, return operation, arrival
Monitor Informed	From the moment when the decision on forced return is taken
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>to monitor the realization of the return process. The monitor will take part in the actual implementation of the forced return process in order to assess whether the human rights were ensured for the returnee</li> <li>to obtain information from the state institutions that are involved into the process of forced return of the aliens, about organization of the return process and the measures taken</li> <li>to visit the detained aliens in the accommodation centres supposed for forced return in order to assess the housing conditions</li> <li>to questionnaire the returnee, in order to clarify whether he/she is being/has been properly informed about the process of their forced return, his/her rights and possibilities to use these rights</li> <li>to provide for the returnees who are subjects of the forced return the</li> </ul>

Practice	Description
	<p>legal advice, as well as to provide necessary medical and other assistance to improve living conditions</p> <ul style="list-style-type: none"> <li>• to make a recommendations to the officers of the State Border Guard during the realization of the process of forced return</li> <li>• to invite specialists (lawyers, health professionals, interpreters), for the returnees who are subjects of the forced return in order to provide necessary advice</li> <li>• to check whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)</li> <li>• to check whether the deportee is being treated in a human way during the whole forced return process               <ul style="list-style-type: none"> <li>• to submit to the Ministry of Interior a report that includes the identified weaknesses and recommendations for improvement of the forced return process</li> </ul> </li> <li>• During the forced return monitoring process the monitor is not allowed to interfere or to effect the forced return procedure</li> </ul>
Treatment of Vulnerable Groups	The interests of the unaccompanied alien (minor), is represented by the Orphan's Court

## Liechtenstein

- **Monitoring system:** Legislation initiated.
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	n/a	n/a
Forced Returns	0 (37*)	0 (61*)
• <i>with</i> accompanying security personnel/escorted enforcement	0 (37*)	0 (61*)
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	0	0

\*Only accompanied transfer to a Member State. / No returns to a state of origin.

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Voluntary Return Policy distinguishes between cases in which the person has a residence permit and cases in which the person doesn't. In the first case, the concerned person gets a deadline for departure. In the latter case, the person has to leave the country immediately.	<p>"Forced return" means that the concerned person has to leave Liechtenstein under compulsion.</p> <p>The national police is responsible for carrying out forced return operations.</p>	There are currently no arrangements in place in our country for monitoring Forced Returns but legislation has been initiated. The revision of the Aliens Act which entails the implementation of monitoring Forced Returns is in progress. The modifications should be coming into force with the Schengen accession of Liechtenstein (probably: autumn 2011).
<b>Legal Basis</b>	Ausländergesetz (Aliens Act), LR 152.20, Art. 50 and 52	Ausländergesetz (Aliens Act), LR 152.20, Art. 55	Planned: Art. 56a of the Aliens Act

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	To be decided
Organisations in Charge of Monitoring Forced Returns	To be decided
Annual Budget	To be decided
Phases Monitored	To be decided
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Lithuania

- **Monitoring system:** Legislation initiated.
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	759	1035
Forced Returns	133	164
• <i>with</i> accompanying security personnel/escorted enforcement	133	164
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Obliging to depart from the Republic of Lithuania involves a decision obliging an alien to depart voluntarily within the specified time period from the territory of the Republic of Lithuania	Return to a foreign country means transfer of an alien to his country of origin or a foreign country to which he has the right to depart, according to the decision agreed with that country according to the procedure established by legal acts. Expulsion from the Republic of Lithuania means a compulsory transportation or removal of an alien from the territory of the Republic of Lithuania in accordance with the procedure established by legal acts.	Under a new provision, the representatives of the foreign person and NGO's may watch the implementation of the decision of removal of an alien from the territory of the Republic of Lithuania.
<b>Legal Basis</b>	Law on the Legal Status of Aliens, Art. 125	Law on the Legal Status of Aliens, Art. 129,126	A new project of the Law on the Legal Status of Aliens, Art. 132, Part 3

**Section III: Overview of Existing/Intended Practices for Forced Return Monitoring**

Practice	Description
Decisions about when to monitor	To be decided
Organisations in Charge of Monitoring Forced Returns	To be decided
Annual Budget	To be decided
Phases Monitored	To be decided
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Luxembourg

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations and ombudsman or similar
- **Phases monitored:** Pre-return, pre-departure, return operation, arrival and reintegration
- **Activities:** Reporting and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	129 <sup>93</sup>	107 <sup>94</sup>
Forced Returns	104 <sup>95</sup>	100 <sup>96</sup>
• <i>with</i> accompanying security personnel/escorted enforcement	/	52
• <i>without</i> accompanying security personnel/unescorted enforcement	/	48 <sup>97</sup>
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<ul style="list-style-type: none"> <li>• Voluntary return means the compliance with an obligation to return within the time-limit of 30 days.</li> <li>• The new bill which will transpose directive 2008/115/CE into national law adds that the person is entitled to ask for assistance to return.</li> </ul>	If the person doesn't comply with the obligation to return voluntarily the decision of return will be executed by force. The police usually carries out the return operations via commercial flights and in a worst-case scenario after a few failed attempts via national charter flights as well as depending on the number of returnees via joint return operations under the umbrella of	Monitoring is foreseen by law. If the return operation is carried out with a charter flight the escort must systematically include a representative of the minister and a medical assistant. An independent observer is allowed to assist the return operation.

<sup>93</sup> RC presentation 2010: Luxembourgish Red Cross (2010), 'The experience in Luxembourg on Return Monitoring', presentation at Frontex, Warsaw, 26 May 2010

<sup>94</sup> RC presentation 2010: Luxembourgish Red Cross (2010), 'The experience in Luxembourg on Return Monitoring', presentation at Frontex, Warsaw, 26 May 2010

<sup>95</sup> RC presentation 2010: Luxembourgish Red Cross (2010), 'The experience in Luxembourg on Return Monitoring', presentation at Frontex, Warsaw, 26 May 2010

<sup>96</sup> RC presentation 2010: Luxembourgish Red Cross (2010), 'The experience in Luxembourg on Return Monitoring', presentation at Frontex, Warsaw, 26 May 2010

<sup>97</sup> EMN 2009: Annual policy report 2009 (DE, EE, EL, LT, LU)  
<http://emn.sarenet.es/Downloads/prepareShowFiles.do?sessionId=23AF15E4C25CCC516E7C9A73C28B07CA?directoryID=125>.

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	The period of voluntary departure might be extended by the minister. Different levels of assistance can be allowed according to IOM rulings.	Frontex.	
<b>Legal Basis</b>	Art. 111 of the law of 29 August 2008.	Art. 124 of the law of 29 August 2008	<i>Règlement grand-ducal du 26 septembre 2008 établissant des règles de bonne conduite à appliquer par les agents chargés de l'exécution d'une mesure d'éloignement.</i>

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	Parliamentary Ombudsman, Red Cross
Annual Budget	/
Phases Monitored	All phases: pre-return, pre-departure, return operation, arrival and re-integration.
Monitor Informed	Responsible organisations are informed at least 72 hours before departure.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Monitor checks whether the deportee is being/has been properly informed of the return operation.</li> <li>• Monitor checks whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests).</li> <li>• Monitor checks whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport).</li> <li>• Monitor checks whether the deportee is being treated in a human way.</li> <li>• Reporting duties to the minister.</li> </ul>
Treatment of Vulnerable Groups	Vulnerable groups are monitored in a special



	way.
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## Malta

- **Monitoring system:** No system in place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	51 <sup>98</sup>	143 <sup>99</sup>
Forced Returns		
• <i>with</i> accompanying security personnel/escorted enforcement	38	187
• <i>without</i> accompanying security personnel/unescorted enforcement	223	195
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	A voluntary return refers to the situation where a migrant opts to take up one of the schemes offered by the Government through various NGO's in order to return to his country. This procedure does not usually involve the police authorities at any stage. The migrant may be living in the community and not necessarily be in detention. <sup>100</sup>	This refers to the repatriation of migrants who would be in police custody. This however does not necessarily entail that the migrant is in fact escorted. In the vast majority of cases, the police only accompany the deportees to the aircraft. The necessity of providing police escorts is the result of an individual assessment of each and every case. <sup>101</sup>	/
<b>Legal Basis</b>	/	The legal basis of Forced Return is found in the	/

<sup>98</sup> EMN Report 2009 – EU Programmes and Strategies fostering Assisted Return and Reintegration in Third Countries

<sup>99</sup> EMN Report 2009 – EU Programmes and Strategies fostering Assisted Return and Reintegration in Third Countries

<sup>100</sup> Immigration Police Malta, 2010

<sup>101</sup> Immigration Police Malta, 2010

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
		Immigration Act, Chapter 217 of the Laws of Malta. <sup>102</sup>	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

<sup>102</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722>

## The Netherlands

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Ombudsman or similar
- **Phases monitored:** Pre-return, pre-departure, return operation and arrival
- **Activities:** Reporting

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	Supervised: 2330 unsupervised: 10950	Supervised: 3090 Unsupervised: 11680
Forced Returns	6870	7270
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Voluntary return is not – as such - described in the Dutch law.	Forced return or deportation is any return in which return is at least partially achieved irrelevant of the will of the alien. This can be forced return with or without supervision on the flight.	The Supervisory Committee on Repatriation (CITT) is an effective forced return monitoring system. This authority has the possibility to inspect, accompany individual and collective return operations or the return process as a whole. It is independent. It reports annually in a report that is part of the public record.
<b>Legal Basis</b>	In article 61 of the Dutch	The legal basis for the	Decree of the

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	Aliens Act 2000, a description is given on the period during which voluntary return will be granted.	forced return article 63 of the aliens act.	Secretary of State of 22 June 2007.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The CITT is independent in choosing when and how often removals are being monitored. In this regard are of interest the removals of vulnerable groups, but also removals that attract public interest (as for example, removals of groups in organized charters) and cases in which it is foreseeable that it may be necessary to apply means of coercion (for example in the case of the removal of aliens with a criminal and/or violent history).
Organisations in Charge of Monitoring Forced Returns	The <b>Pre-Return</b> is monitored by 'The Supervision Committee on Repatriation Chamber Return Locations, Chamber Return Facilities'. <sup>103</sup> The <b>Pre-Departure</b> is monitored by 'The Supervision Committee on Repatriation, Chamber Return Locations'. <sup>104</sup> The <b>Return Operation</b> and <b>Arrival</b> are monitored by 'The Supervision Committee on Repatriation, Chamber Expulsion'. <sup>105</sup>
Annual Budget	They are financed in full by the ministry of justice, and the annual budget is around € 500.000.
Phases Monitored	Pre-Return, Pre-departure, Return and Arrival.
Monitor Informed	Three days before return operations.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>• Supervision of reception/detention and removal centres.</li> <li>• Reporting duties.</li> </ul>

<sup>103</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

<sup>104</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

<sup>105</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

Practice	Description
	<ul style="list-style-type: none"> <li>Observe everything, talk to escorts, talk to deportee, crew, medical etc</li> </ul>
Treatment of Vulnerable Groups	<p>As the process is more complex, the CITT is free to monitor these return operations more often. The state cannot predict which choices the CITT will make in this regard. There is no obligation to monitor these operations more vigorously than other.</p> <p>The CITT has a physician and a psychologist amongst its members, who can be deployed to survey removals of minors or in which medical aspects play a part.</p>

## Norway

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and ombudsman or similar
- **Phases monitored:** Pre-return, pre-departure, return operation and arrival
- **Activities:** Reporting and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	565	1019
Forced Returns	2326	3343
• <i>with</i> accompanying security personnel/escorted enforcement	621	1080
• <i>without</i> accompanying security personnel/unescorted enforcement	1283	1842
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	422	421
Number of cases of forced returns monitored	2326	3343

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>The term 'voluntary return' means that the alien leaves the Schengen-area voluntarily. This return is often facilitated by a civilian organization (IOM). In addition there are cases in which a foreign national requests the police for assistance regarding the voluntary return.</p> <p>The alien can be ordered to leave the country at once or within a certain time limit (usually three weeks after notification)</p>	<p>The term 'forced return' means any deportation from the country, i.e. any return that is initiated and carried out by the police without the consent of the returnee. Forced returns may be carried out with or without an escort, and also by charter.</p> <p>If the order to leave the country within the specified time limit is not respected, or if it is most probable that the foreign national will not leave the realm by the expiry of the time limit, the police may escort the alien out.</p> <p>The National Police Immigration Service carries out forced returns</p>	<p>The internal supervision of the National Police Immigration Service, the supervision of the Parliamentary Ombudsman, possible investigation of the Norwegian Bureau for the Investigation of Police Affairs, the supervision of the Police Directorate, and the supervision of the courts is the national interpretation of an effective forced return monitoring system.</p> <p>Norwegian authorities consider that the already existing control mechanisms of the Norwegian legislation meet the</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
			requirements of the directive.
<b>Legal Basis</b>	Immigration Act, Section 90, Subsection 6	Immigration Act, Section 90, Subsection 6	<p>Act concerning the Parliamentary Ombudsman for Public Administration</p> <p>Criminal Procedures Act section 65, fifth paragraph</p> <p>Public Administration Act's general complaint procedures in public administration</p> <p>Act relating to the Courts of Justice</p>

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	The monitoring body decides whether to monitor the entire operation or only certain phases. Monitoring decision might also be based on the complaint filed by the deportee or his/her attorney
Organisations in Charge of Monitoring Forced Returns	National Police Immigration Service (internal monitoring), Parliamentary Ombudsman, Norwegian Bureau for the Investigation of Police Affairs, Police Directorate
Annual Budget	Each of the mentioned bodies has an independent budget
Phases Monitored	Pre-return, pre-departure, return operation, arrival
Monitor Informed	Upon complaints or upon receiving information from the enforcing body.
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>Engage with the deportee</li> <li>Has access to the file of the deportee</li> <li>Writing a report about the operation</li> </ul>
Treatment of Vulnerable Groups	A variety of appeal and complaint organs are set up for vulnerable groups such as the Ombudsman for Gender Equality, the Ombudsman for Children, the Ombudsman for Discrimination, etc.



## Poland

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations
- **Phases monitored:** Pre-return and pre-departure
- **Activities:** Provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	137	510
Forced Returns	5779	2165
• with accompanying security personnel/escorted enforcement	5312	1636
• without accompanying security personnel/unescorted enforcement	290	242
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>Voluntary Returns Policy involves cases in which the alien's decision to return is based upon freedom of choice, meaning the absence of any physical, psychological or material pressure, and upon an informed decision, which requires having sufficiently accurate and objective information about the conditions of return and the situation in the country that the alien returns to.</p> <p>Thus, voluntary return refers to an informed decision freely taken by the individual and includes organizational and financial assistance for the</p>	<p>Forced return refers to the act of returning to the country of origin after a final decision stating the illegality of the stay was issued; it is a return that is not undertaken by the individual voluntarily. Forced return are generally carried out if an alien receives a decision of expulsion, with immediate enforceability, or if the alien did not leave Poland voluntarily, or if the alien was detained in an arrest for expulsion</p> <p>The Commander-in-Chief of Border Guard Headquarters is responsible for enforcing a removal order of illegal aliens by air and sea</p>	<p>The objective of the new effective forced returns monitoring systems, under development, is to draw up a Regulation which shall define the scope, participation and the way of financing by "Monitors".</p> <p>Also, NGOs' representative shall participate in activities on enforcing a removal order which shall not define/specify a date for leaving the country.</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	return and where possible, reintegration measures offered to the individual		
<b>Legal Basis</b>	Agreement between the Minister of Internal Affairs and Administration of the Republic of Poland and the International Organization for Migration of 12 July 2005 on the co-operation in the field of voluntary returns of aliens leaving the territory of the Republic of Poland	Act on aliens of 13 June 2003 (Journal of Laws of 2003, No 128, it. 1175) Art. 88 and Art. 95  Act on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176) Art. 41	The final definition on the scope of “effective Forced Return monitoring” mentioned in the Directive 2008/115/EC Art.8 (6), is in a preparation phase

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	Based on alien's request in individual cases and on NGO decision (with alien's consent)
Organisations in Charge of Monitoring Forced Returns	NGO (e.g. Helsinki Foundation for Human Rights, Halina Nieć Legal Aid Center, and Association of Legal Intervention)
Annual Budget	Monitoring NGO's budget
Phases Monitored	Pre-return, pre-departure
Monitor Informed	Pre-return
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>Engage with the deportee</li> <li>Check whether the deportee is being/has been properly informed of the return operation</li> <li>Check whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)</li> <li>Check whether the deportee has been treated in a human way</li> </ul>
Treatment of Vulnerable Groups	Children return accompanied by parents or legal guardian; disabled and elderly persons, pregnant women are provided with medical care if necessary

## Portugal

- **Monitoring system:** In place/planned
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	347	381
Forced Returns	785	779
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context (q1/2, 6, 7)

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p><b>Voluntary Return</b> has two different meanings in the Portuguese legal context:</p> <p>a) The illegal third-country national leaves the country, at his/her own expense, complying with a notification to leave the country voluntarily within 10 to 20 days (according to article 138 of the Law 23/2007, of 4<sup>th</sup> of July) – in this case, no entry ban is issued – or;</p> <p>b) The third-country national (in a legal or illegal situation) that leaves the country voluntarily, but with the financial support of the IOM office in Portugal (funds of IOM and the Portuguese Immigration Service), in which case a three (3) years entry ban</p>	<p><b>Forced Return</b> is understood as the compliance with a return decision, issued by administrative or judicial authority, following an administrative or judicial procedure and in accordance with Chapter VIII of Law 23/2007 of 04<sup>th</sup> July, article 134 and following. A decision on forced return may also be taken after the foreigner has served some time in jail for a main crime (Art. 151). Forced returns are carried out with or without escort, depending on the profile of the person being expelled. Portugal does not organize charter flights nor return operations, although it takes part in such operations whenever it is considered necessary. Usually, Portugal uses</p>	<p>No definition exists. However the legislation (Law 23/2007 of 4<sup>th</sup> July) provides for the adoption of various restraint entry measures adapted according to the type of return, see articles 33 (alerts to purposes of refusing the entry) and 167 (entry ban). These measures are entered electronically on the common list or, exceptionally, in the national list where such removal is carried out for the Schengen area. The national legislation also provides for rules on penalties applicable in case of disobedience with a return decision or</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	is imposed on the returnee.	commercial flights.	violation of a prohibition on entry (see respectively articles 161 and 187).
<b>Legal Basis</b>	<ul style="list-style-type: none"> <li>• Law 23/2007 of 4th July (articles 138, 139, and n. 2 of 213).</li> <li>• Regulatory Decree 84/2007 of 5th November (article 80)</li> <li>• Law No. 27/2008, of 30 June (article 81).</li> </ul>	Law N.º 23/2007 of 4 <sup>th</sup> July	/

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	Although still in experimental stage Portugal implemented the SMILE system (Mobile System for supporting the documentary check and Biometric data collection) that enables the collection of biometric data of persons subject to an expulsion measure in order to prevent them to return the country using a false identity.
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Romania

- **Monitoring system:** In place/planned.
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	20	73
Forced Returns	395	392
• <i>with</i> accompanying security personnel/escorted enforcement	11	38
• <i>without</i> accompanying security personnel/unescorted enforcement	384	341
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	13
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Third-country nationals, who are legally or illegally on Romanian territory and want to return voluntary to their country of origin, are required to submit a written request to the Romanian Immigration Office or non-governmental organizations active in this field.	Third-country nationals who illegally entered Romania and did not voluntary leave Romania when a deportation order was issued or have been declared unwanted in Romania.	/
<b>Legal Basis</b>	Government Emergency Ordinance no194/2002- concerning the legal status of foreigners in Romania	Government Emergency Ordinance no194/2002- concerning the legal status of foreigners in Romania.	/

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	To be decided
Organisations in Charge of Monitoring Forced	To be decided

Practice	Description
Returns	
Annual Budget	Will be financed from European Return Funds
Phases Monitored	To be decided
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Slovakia

- **Monitoring system:** No system in place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and civil society organisations
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	96	139
Forced Returns	1311	890
• <i>with</i> accompanying security personnel/escorted enforcement	3	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context (q1/2, 6, 7)

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>“Voluntary return” means safe, humane and dignified return for migrants who wish to return back to their country of origin. Voluntary return is based on a decision freely taken by the individual. A voluntary decision encompasses two elements: (a) freedom of choice, which is defined by the absence of any physical or psychological pressure; and (b) an informed decision which requires the availability of enough accurate and objective information upon which to base the decision.</p> <p>Assisted voluntary return and reintegration includes organizational</p>	<p>The term expulsion can be defined as an involuntary departure of the person from the country. There are two types of expulsion: administrative expulsion and the judicial expulsion.</p> <p>The administrative expulsion can be defined as an administrative body decision, on which basis the third-country national is ordered out from the territory.</p> <p>The judicial expulsion is a punishment ordered by the court pursuant to the Article 65 of the Act no. 300/2005 Coll. Criminal Code. According to the Article 65, the court can award expulsion from the territory and entry ban for 1 to 15 years to the third-country</p>	<p>The forced returns monitoring is pursued in the following forms: (a) internal control of the Ministry of Interior, (b) monitoring by independent institutions (international organization, non-governmental organization, civil society, etc.)</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	and financial assistance for the return and, where possible, reintegration measures offered to the individual returning voluntarily. Reintegration assistance is provided to help individuals returning to their country of origin to re-establish themselves.	national, except one recognized as having refugee status, provided that this is necessary due to the security of persons or possession or other public interests.	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/



## Slovenia

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations and ombudsman or similar
- **Phases monitored:** Pre-return and pre-departure
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	384	255
Forced Returns		
• <i>with</i> accompanying security personnel/escorted enforcement	4	8
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>The voluntary removal shall mean removal whereby the alien cooperates with the police. The police may also cooperate with other national or international bodies or non-governmental organizations in the voluntary removal of an alien. Voluntary removal shall not be possible in the case of an alien against whom the additional sentence or the ancillary sanction of expulsion from the country has been imposed.</p> <p>The Slovenian Legislation does not</p>	<p>An alien on whom the additional sentence or the ancillary sanction of expulsion from the country has been imposed and an alien who does not leave the country voluntarily shall be deported from the country.</p> <p>The forced return of an alien is done by the Slovenian Police. Within the Police there is a specialised unite (Aliens centre) that deals with that issue.</p>	<p>A monitoring system for the detention conditions for third country nationals awaiting removal is implemented by national and international independent bodies as well as NGOs.<sup>106</sup></p> <p>The monitoring is done within the monitoring activities of the Police. The Aliens centre, where the aliens are accommodated while they wait for their removal, cooperates closely with the nongovernmental organization PIC (Legal Informational</p>

<sup>106</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	distinguish different types of voluntary return.		Centre for NGO's), which offers all aliens legal advice. They (PIC) are available to all aliens any time.
<b>Legal Basis</b>	Aliens Act, article 50, paragraph 2.	Aliens Act, article 50, paragraph 3	The new forced returns monitoring system will be defined in the new Aliens Act, which is expected to come into force in 2011.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	Human Rights Ombudsman and NGO (e.g. <i>Slovenska Filantropija</i> , JRS, PIC etc.)
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Spain

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities
- **Phases monitored:** Pre-return, pre-departure and return operation
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	178	269
Forced Returns		
• <i>with</i> accompanying security personnel/escorted enforcement	948	1374
• <i>without</i> accompanying security personnel/unescorted enforcement	5406	3925
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	5493	2411
Number of cases of forced returns monitored	Nigeria: 7 flights and 7 monitors. Ecuador/Colombia: 3 flights and 1 monitor.	Nigeria: 21 flights and 8 monitors. Ecuador/Colombia: 2 flights and 1 monitor.

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	When an illegal foreigner living in Spain wants to leave the country, national police starts the expulsion procedure. Voluntary returnees have to pay the expenses (including flight ticket) by themselves. The returnee has between 7 and 30 days to leave voluntarily.	After the voluntary period expires the procedure depends on the offense committed by the immigrant. The national police will proceed to the arrest and escort the returnee to the point of exit from Spain. If the expulsion could not be implemented within 72 hours, the immigrant may be arrested and taken to a detention centre for a maximum period of 60 days.	The control of the return process must be subject to judicial and fiscal organization. Since the notification of expulsion, the immigrant must enjoy full legal rights. Judges responsible for monitoring the process should be available in detention centres.
<b>Legal Basis</b>	Organic Law 2/2009 of December 11, amending the Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and	Organic Law 2/2009 of December 11, amending the Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social	/

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	their social integration.	integration.	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	Judicial authorities
Annual Budget	To be decided
Phases Monitored	Pre-return, pre-departure and return operation.
Monitor Informed	To be decided
Tasks & Competencies of Monitor	To be decided
Treatment of Vulnerable Groups	To be decided

## Sweden

- **Monitoring system:** No system in place/planned.
- **Types of organisation involved:** -
- **Phases monitored:** -
- **Activities:** -

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	5978	6379
Forced Returns	3010	3785
• <i>with</i> accompanying security personnel/escorted enforcement	1884	2103
• <i>without</i> accompanying security personnel/unescorted enforcement	897	1360
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	<p>If an alien has received a decision on deportation, which has entered into force in accordance with the law (legally binding decision), the alien is required to leave Sweden. The alien is expected to abide by the decision and, preferably, to try to organize the return journey him/herself by ensuring that he or she has valid ID and travel documents. If the alien needs help in preparing for and organising the travel, the Migration Board will assist in this matter.</p> <p>Thus, returning voluntarily either means that the alien has chosen to return on his</p>	<p>If an alien does not leave the country voluntarily after his or her application is rejected, the Migration Board transfers the case to a Police Authority for enforcement of the order. Enforcement is performed under the responsibility of the Police in cooperation with the Prison and Probations Service (Transport Service. The Transport Service makes, at the request of the Police, preparations for the removal (booking flights and hotel rooms etc). Escorts are normally provided by the Transport Service but the need of escorts is decided by the Police.</p>	<p>The notion "effective forced return monitoring system" is currently subject to interpretation as part of the work on implementing the Return Directive. We are therefore, at the moment, unable to provide answers to the above questions.</p>

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	or her own initiative, or that the alien at least accept that he or she is not permitted to remain in Sweden and is prepared to comply with this, and actively participate in making it possible to return.		
<b>Legal Basis</b>	Chapter 12, section 15, of the Aliens Act.	Chapter 12, section 14 of the Aliens Act.	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	/
Monitor Informed	/
Tasks & Competencies of Monitor	/
Treatment of Vulnerable Groups	/

## Switzerland

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Migration/law enforcement authorities and civil society organisations
- **Phases monitored:** Pre-return, pre-departure, return operation and arrival
- **Activities:** Reporting and provide information and advice about their rights

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	1366	1793
Forced Returns	3562	5421
• <i>with</i> accompanying security personnel/escorted enforcement	288	453
• <i>without</i> accompanying security personnel/unescorted enforcement	3274	4986
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context (q1/2, 6, 7)

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	Swiss legislation on asylum and foreign nationals rights uses the expressions "independent and proper exit" and "independent and proper return." A person is considered to have exited Switzerland properly and independently and returned if that person leaves Switzerland on her own initiative or after having been issued a decree, ordering her to leave by a deadline, after which she returns to her country of origin or travels to a third country. The Confederation may facilitate the independent and proper exit of foreign nationals by providing return and	Under Swiss law, forced return (deportation) consists in a cantonal authority's taking statutory coercive measure for enforcing deportation. The competent cantonal authorities proceed to expulsion of foreign nationals if they have overstayed the deadline for leaving the country; if an order issued for their removal or expulsion may be enforced immediately; or if they are being held in detention in preparation for departure, in detention pending deportation, or in coercive detention, and if a removal or expulsion order has been issued having the force of res judicata.  The competent Federal Office for Migration is	Under current law, the Swiss forced return monitoring system comprises several control and supervision measures. Underlying the system is the "Expert Committee on Return and Removal," set up by the Ministry of Justice and Police and by the "Conference of the Cantonal Justice and Police Directors" in February 2004. The mandate of the expert committee is to make recommendations of an institutional and/or organizational nature in order to improve the quality of return operations.

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	reintegration assistance.	responsible for asylum decisions and removal orders, coordination and organization of return. The 26 cantons are responsible for all police matters before (including detention) and during a forced return operation.	
<b>Legal Basis</b>	Art. 93 Asylum Act ( SR 142.31) (see annex) in conjunction with Art. 62 seq. Asylum Regulation 2 on Financing (SR 142.312); and Art. 60 Foreign Nationals Act (SR 142.20) (see annex) in conjunction with Art. 78 Admission, Residence and Employment Regulation (SR 142.201).	Art. 69 seq. of the Foreign Nationals Act	The Foreign Nationals Act, which is currently under revision. The revised act is scheduled to become effective on January 1, 2011.

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	n/a
Organisations in Charge of Monitoring Forced Returns	Federal Office for Migration and independent monitoring parties (observer)
Annual Budget	Lump sum remuneration. No figures available yet.
Phases Monitored	Pre-return, pre-departure, return operation, arrival
Monitor Informed	In due notice
Tasks & Competencies of Monitor	<ul style="list-style-type: none"> <li>Engages with deportee</li> <li>Has access to the file</li> <li>Checking whether the deportee is being/has been properly informed of the return operation</li> <li>Checking whether the deportee has received financial aid if needed, and that all medical check-ups have been done (e.g. fit-for-flight tests)</li> <li>Checking whether travel arrangements have been made in a dignified manner (e.g. deportee is not using bin bags as luggage, no unnecessary delays at the airport)</li> <li>Checking whether the deportee is being treated in a human way</li> </ul>



Practice	Description
	<ul style="list-style-type: none"> <li>Writing a report about the operation</li> </ul>
Treatment of Vulnerable Groups	No special vulnerable groups monitored

## United Kingdom

- **Monitoring system:** In place/planned
- **Types of organisation involved:** Civil society organisations
- **Phases monitored:** Pre-return, pre-departure
- **Activities:** Reporting

### Section I: Returns Statistics

	2008	2009
Voluntary Returns	14305	18470
Forced Returns	20650	18785
• <i>with</i> accompanying security personnel/escorted enforcement	/	/
• <i>without</i> accompanying security personnel/unescorted enforcement	/	/
• Other types of Forced Return (e.g. a combination of the above-mentioned forms)	/	/
Number of cases of forced returns monitored	/	/

### Section II: Overview of Returns Policy in the National Context

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
<b>Summary</b>	For the purposes of UK law and policy-making, an individual qualifies for assistance as a voluntary leaver if, he/she is not a British Citizen or EEA national, he/she wishes to leave, the Secretary of State considers it is in the person's best interest for him/her to do so and he/she leaves the UK for a place where he/she hopes to take up permanent residence.	Enforced return: removal of illegal entrants and those refused to leave to enter; administrative removal and deportation.	There is no obligation to monitor forced returns policy in the UK. The UK has not opted into the Returns Directive and therefore we do not have provision for monitoring the returns process in our legislation.
<b>Legal Basis</b>	The legal basis for voluntary return <sup>107</sup> (or voluntary departure, as it is termed in this	<ul style="list-style-type: none"> <li>• Section 10 of the Immigration and Asylum Act 1999</li> <li>• Section 3(5) or 3(6) of</li> </ul>	/

<sup>107</sup> Frontex Questionnaire about Forced Return Monitoring System According to Directive 2008/115/EC', sent to the Direct Contact Points in 2009.

	Voluntary Returns Policy	Forced Returns Policy	Forced Returns Monitoring Policy
	legislation) are Section 58 and 59 of the Nationality, Immigration and Asylum Act 2002. <sup>108</sup>	<p>the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999).</p> <ul style="list-style-type: none"> <li>The Immigration Act 1971 (Schedule 2, paragraphs 8, 9 and 10)</li> </ul>	

### Section III: Overview of Existing/Intended Practices for Forced Return Monitoring

Practice	Description
Decisions about when to monitor	/
Organisations in Charge of Monitoring Forced Returns	/
Annual Budget	/
Phases Monitored	Pre- return phase and the pre departure
Monitor Informed	/
Tasks & Competencies of Monitor	<p>While the UK is not party to the EU Returns Directive, the UK has in place, Independent Monitoring Boards (IMB) whose broad remit is to monitor conditions in Immigration Removal Centres and other short-term holding facilities by agreement with the Secretary of State<sup>109</sup>. The IMB report on conditions in which immigration detainees are held, and how detainees are treated.</p> <p>The IMB also monitors the pre return phase and the pre departure phase of individuals being returned by EU charter flights, that is, phases 1 and 2 of the scope of monitoring stipulated by the Returns Directive in connection with joint EU charter flights. The IMB will shortly be conducting a pilot monitoring exercise on a joint EU charter flight on 2 March 2011. However it is not confirmed that they will be taking this additional role on a permanent basis.</p>
Treatment of Vulnerable Groups	/

<sup>108</sup> Nationality, Immigration and Asylum Act 2002.

[http://www.opsi.gov.uk/acts/acts2002/ukpga\\_20020041\\_en\\_5#pt3-l1g58](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020041_en_5#pt3-l1g58)

<sup>109</sup> Independent Monitoring Boards currently have no statutory basis to monitor short-term holding facilities but do so in some cases by appointment of the Secretary of State.

## Appendix E: Interview Question Catalogue

### Forced Return Monitoring System according to Directive 2008/115/EC

#### Interview Question Catalogue

Matrix Insight Limited in partnership with the International Centre for Migration Policy Development (ICMPD) are carrying out a study on behalf of the European Commission with the aim of gaining a comprehensive understanding of Forced Return policy, practice and monitoring in all Member States bound by Directive 2008/115/EC.

The overall objective of the study is to **facilitate the transposition of Article 8(6) of the Return Directive**<sup>110</sup> by providing Member States bound by the Directive with information on best practice examples to support their efforts to develop an effective monitoring system of Forced Return of illegally staying third-country nationals. To this end, the study describes the legal approach and practical application of Forced Return monitoring in each of the Member States.

As part of the study, **nine country cases studies are carried out**. The purpose of the case studies is to better understand processes of change and organisational culture with regards to forced return monitoring, as well as providing illuminating examples of best practice. For each of the countries, interviews are conducted with representatives of the Contact Committee, officials of national authorities, NGOs and Human Rights bodies as well as returnees in countries of their return.

The questions in this interview catalogue are for guiding purposes and are in addition to any questions you may want to raise. We expect the interview to last approximately 1 hour.

**Your cooperation is greatly appreciated.**

#### Introduction and Background

1. In which year did your country implement the forced return monitoring system?
2. What were the reasons for your country to implement a forced return monitoring system? If it was in response to any particular problem, what was the problem and did the forced return monitoring system improve the situation? Was it in response to the Returns Directive?

<sup>110</sup> According to Article 8(6) of Directive 2008/115/EC (on returning illegally staying third-country nationals), EU Member States (MS) 'shall provide for an effective forced-return monitoring system. Transposition of the Directive is supposed to be completed by December 2010. To date, not all Member States have fully transposed the Directive.

3. What is the objective of your forced return monitoring system? Has the objective changed over time?
4. What are the demonstrable benefits? Have there been unexpected benefits? What difficulties, if any, did you encounter in implementing a forced return monitoring system? How did you solve them?

### Overview of Actors, Information Systems, Monitoring Tools, Methods

5. Can you describe the features of your forced return monitoring system?
  - a. **How many organisations are involved?** How many monitors are involved per organisation?
  - b. **What types of organisations are involved** (e.g. NGOs, Ombudsperson, independent government agencies)? In your opinion what are the advantages/disadvantages of the types of organisations involved? How do their roles differ (if at all)? Would you consider including other types of organisations?
  - c. **In which phase of the forced return do the organisations get involved?** Does this differ by type of organisation? In your opinion, should they be involved in more/fewer phases of the forced return procedure?
  - d. **How do the organisations find out when a return operation is planned?** Do you consider the current system of finding out when a return operation is planned satisfactory? If any, what changes would you suggest?
  - e. **How do the organisations decide whether or not to monitor a specific case?** How many cases are monitored approximately per year (in percentages of all forced return cases)? Do you think that more/less cases should be monitored per year?
  - f. **What are the specific tasks of the monitors** during the forced return procedure?
    - i. Do they have **intervention powers**? If yes, please describe. In your opinion, should they have/not have intervention powers?
    - ii. Do they have **reporting duties**? If yes, to whom and how frequently? What happens with the information? Do you have an example of when a report has influenced the policy formulation in your country? Please provide details.
  - g. **How is the system financed?** What costs (direct financial costs, human resources, equipment) are required and how are they best deployed throughout the procedure?

6. Which aspects of your forced return monitoring system work particularly well? Which aspects do not work as well/have not worked well in the past and needed to be modified?
7. What the main drivers are for and obstacles to successful forced returns monitoring (e.g. political will, financial/HR resourcing, public opinion)? Please describe.

### Observance of Human Rights & Treatment of Vulnerable Persons

8. How exactly is the compliance of with human rights standard monitored within each phase? Which are the indicators/benchmarks used?
9. Do you also monitor the access to remedies of returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase?
10. What special provision is there for monitoring the return of vulnerable persons within each phase (e.g. institutions, ombudsman)?

### Recommendations & Conclusions

11. For the future, where do you see potential for further development, in terms of organisational set-up, effects on policy development, independency of the monitoring body, financial arrangements, and treatment of vulnerable groups?
12. Is there anything else you would like to add?
13. Is there anyone else you think we should talk to?

## Appendix F: Case Studies

### Austria

#### 1.0 Introduction and Background

##### Introduction of Forced Return Monitoring System

**In Austria, forced return is organised by the alien's police authority.** Return operations are generally carried out by charter plane or bus. As is outlined in the paragraphs below, forced return monitoring in Austria developed in several steps starting in the early 1990s.

In accordance with Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a delegation of the CPT carried out a periodic visit to Austria in 1990 and 1994. The subsequent reports<sup>111</sup> included recommendations to the Austrian authorities **to create an independent body entrusted with the regular inspection of the conditions of detention in all police detention centres.** In response, the Austrian Federal Government drafted the necessary legal foundation for the **implementation of such an independent body in June 1996.**

Separately, the death of Marcus Omofuma, a Nigerian national, during his deportation to Bulgaria in May 1999, led to an intensification of efforts to **create a body safeguarding human rights.** Accordingly, the Federal Minister of Interior set up an advisory board. A few days after the establishment of the Advisory Board on July 5<sup>th</sup> 1999, the *Nationalrat* adopted the "1999 Amendment of the Security Police Act", which *inter alia* contains provisions on the **Human Rights Advisory Board (HRAB).** The provisions entered into force on September 1<sup>st</sup> 1999.<sup>112</sup> The functions of the HRAB were to go beyond monitoring detention to include the monitoring of **all activities of the security authorities from the perspective of human rights with follow-up proposals for improvement to the Federal Minister of the Interior.**

The HRAB immediately published a report on "**problematic deportations**"<sup>113</sup>, in which it recommended inviting an independent human rights expert to accompany charter deportations and to draft a written report based on observations during flight deportations.

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<sup>111</sup> The report on the visit from 20/05/1990 - 27/05/1990 was published on 03/10/1991.; see: <http://www.cpt.coe.int/documents/aut/1991-10-inf-eng.htm#III.B.b>, para 87. The report on the visit from 26/09/1994 - 07/10/1994 was published on 31/10/1996; see <http://www.cpt.coe.int/en/states/aut.htm>, para 100. Accessed on 03.03.2011

<sup>112</sup> See the homepage of the Human Rights Advisory Board under: [http://www.menschenrechtsbeirat.at/cms15/index.php?option=com\\_content&view=article&id=37:historical-background&catid=81:english&Itemid=35](http://www.menschenrechtsbeirat.at/cms15/index.php?option=com_content&view=article&id=37:historical-background&catid=81:english&Itemid=35), accessed on 04.03.2011

<sup>113</sup> The report defines a "problematic deportation" as a deportation where, due to several reasons, it is to be expected that the concerned person will resist her/his deportation. These deportations are thus being observed by the executive and could be implemented by force. See page 5 of the "Report on Problematic Deportations", available at: [http://www.menschenrechtsbeirat.at/cms15/mrb\\_pdf/thematische\\_berichte/1999\\_problemabschiebungen\\_vt.PDF](http://www.menschenrechtsbeirat.at/cms15/mrb_pdf/thematische_berichte/1999_problemabschiebungen_vt.PDF) (accessed on 03.03.2011)

Subsequently, on October 27<sup>th</sup> 2001, a deportation of three Nigerian citizens to Lagos via Lear Jet charter took place for the first time with the supervision of an independent human rights monitor from the NGO **Verein Menschenrechte Österreich (VMÖ)**. The VMÖ subsequently monitored flights based on a verbal agreement with the Ministry of the Interior to accompany problematic deportations. As flights became more frequent, this agreement was included in the return-preparation-counselling-contract (*Rückkehrberatung*) with the Ministry of Interior (2010).<sup>114</sup>

Moreover, in 2003 the VMÖ started a short-term-monitoring project concentrating on the post arrival phase in the country of return. VMÖ asked returnees about the modalities of the flights, the border control upon arrival at the airport of destination, the trip from the airport to the place of residence of the returnee, the first days/weeks of reintegration and future perspectives of the returnee. This short-term-monitoring project was partly supported by local NGOs. The experience from the monitoring was used for the pre-deportation-counselling project.<sup>115</sup>

### Objectives/Benefits of the Forced Return Monitoring System

Many demonstrable benefits developed over the past years.

- **Mutual trust between stakeholder groups:** All interviewees agreed that a lot has changed since the establishment of the monitoring system. Initially the monitoring was not well accepted by the escorting officers; however, over the years the attitude towards monitoring has improved.<sup>116</sup>
- **Constructive collaboration between stakeholder groups:** For example, the report by the HRAB on problematic deportations has been jointly drafted by members of the HRAB and its Commissions, human rights experts and representatives of the Ministry of the Interior.
- **Improved practices to ensure the adherence to human rights standards:** The monitoring brought about improvements in terms of the respect of human rights. For example, prior to Marcus Omofuma's death, deportees were taken to the airplane to be deported in the early morning without any "warning". This practice changed and a first "contact talk" (*Kontaktgespräch*) between the deportee and the escort leader was introduced, where the Commissions and the monitor may also be present. Since 2010, the returnee must additionally be informed about the flight dates and modalities as soon as this is known to the Ministry of Interior. With the establishment of the contact talk and the immediate information about the details of the return flight, the first shock of the

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<sup>114</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>115</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>116</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011; interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011



approaching deportation can be better dealt with and the deportee can be better prepared for deportation.<sup>117</sup>

## Actors, Information Systems, Monitoring Tools, Methods

### Features of the Forced Return Monitoring System

#### Number and Types of Organisations and Monitors Involved

Two main actors are involved in monitoring forced return operations in Austria:

- **HRAB with its six Commissions**, and
- **NGO Verein Menschenrechte Österreich (VMÖ<sup>118</sup>)**.

The Human Rights Advisory Board (HRAB)<sup>119</sup> is equally represented by governmental organisations (of the Ministry of Interior, Chancellory, and Ministry of Justice) and non-governmental ones (SOS Menschenrechte, VMÖ, Caritas, Diakonie and Volkshilfe Österreich). The Chair is proposed by the Austrian Constitutional Court.<sup>120</sup> On the one hand this setting allows for a high level of acceptance of the recommendations given by this body. On the other hand, the board needs to reach compromises and agreements between the governmental and non-governmental representatives. The HRAB consists of 11 members, 11 deputies, and four administrative staff. With regard to the set up of the HRAB, its independency is secured as their tasks and mandate are given by law (Art 15a-c of the Security Police Act as well as the Ordinance II 1999/395 (MRB-V)).

The focus of the six Commissions is on identifying possible **structural deficiencies**, observed during individual cases. The six Commissions of the HRAB consist of between five and eight members each. The Chair of each Commission is appointed by the HRAB from individuals who are actively engaged in the field of human rights. The other members are appointed by the HRAB on the proposal of the Chair. In the composition of the Commissions, explicit attention is given to equal representation of both sexes and of all relevant professions. Experts who are members of the security services have been excluded from the Commissions. **The multidisciplinary composition of the Commission staff is understood as a clear benefit.**<sup>121</sup>

The **human rights monitor** (VMÖ) is an NGO strongly involved in the care of detained foreigners. The NGO is responsible for counselling in pre-deportation detention facilities in six

<sup>117</sup> See also the report of the HRAB on "Problematic Deportations" under [http://www.menschenrechtsbeirat.at/cms15/mrb\\_pdf/thematische\\_berichte/1999\\_problemabschiebungen\\_vt.PDF](http://www.menschenrechtsbeirat.at/cms15/mrb_pdf/thematische_berichte/1999_problemabschiebungen_vt.PDF) (accessed 04.03.2011) and the respective recommendations by the HRAB.

<sup>118</sup> For more details visit the homepage of the NGO *Verein Menschenrechte Österreich* at <http://www.verein-menschenrechte.at/>

<sup>119</sup> For more details visit the homepage of the Human Rights Advisory Board's and the Commission home page at <http://www.menschenrechtsbeirat.at/cms15/>

<sup>120</sup> See Art 15b Security Police Act at [http://www.menschenrechtsbeirat.at/cms15/mrb\\_pdf/rechtsgrundlagen/spg\\_neu.pdf](http://www.menschenrechtsbeirat.at/cms15/mrb_pdf/rechtsgrundlagen/spg_neu.pdf) (accessed on 03.03.2011)

<sup>121</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011

out of nine Austrian *Bundesländer*. The Head of the VMÖ is also Member of the HRAB and is mainly tasked with being the human rights monitor during deportation flights. So far there have been five different monitors from VMÖ involved. Among its tasks **VMÖ** monitors “problematic flights”, provides counselling in preparation of return in pre-deportation detention facilities, and provides language expertise when needed.<sup>122</sup>

Some criticism has been raised that the VMÖ combines overlapping competencies leading to confusion and a lack of transparency in terms of its role in different situations.<sup>123</sup> Both the Ministry of Interior and the VMÖ emphasise that the different tasks do not lead to unclear competencies or misunderstandings.<sup>124</sup>

### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure

**Both organisations tend to be involved in different phases, with competencies overlapping slightly during the pre-departure phase.** While the HRAB Commissions monitor the pre-return phase and the pre-departure phase, the VMÖ monitors the pre-departure phase, the deportation and parts of the arrival phase.

The post arrival phase is not monitored. To a certain extent the Ministry of Interior reported that they get occasionally feedback (including complaints) by the deportees directly (for example in case they had to pay money upon return to the local authorities to enter the country).<sup>125</sup> Some years ago the VMÖ started to call up deportees by phone upon return and also cooperated with local NGOs for the post-arrival monitoring. While the monitoring by phone is still being conducted, the cooperation with local NGOs ceased in 2008.<sup>126</sup>

### Notification of Return Operations

The HRAB Commissions are **contacted directly by the escort leader about a planned deportation** (at least 24 hours before the deportation). The system was described by Members of the Commissions as working well, although sometimes the information about a removal comes quite late.<sup>127</sup>

The VMÖ receives an invitation from the Ministry of Interior to accompany a flight deportation (only chartered deportation - the monitor is not involved during deportation via regular flights). **The monitor accompanies all charter deportations that are conducted by Austria alone or as the leading country of Joint Return Operations.** At joint Frontex deportation flights, the VMÖ is only involved if the organising country agrees to have a monitor on board. The VMÖ is of the opinion that the system functions well like this. During regular flights, the VMÖ is of the opinion that other passengers - in a way - take over the monitoring tasks by their pure presence

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<sup>122</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>123</sup> Christoph Riedl, protestant church, via email on 14.03.2011.

<sup>124</sup> Interview with Eva Caroline Pfleger, Federal Ministry of Austria and Isabella Gruber, Federal Ministry of Austria on 16.03.2011; Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>125</sup> Interview with Eva Caroline Pfleger, Federal Ministry of Austria and Isabella Gruber, Federal Ministry of Austria on 16.03.2011

<sup>126</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>127</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011

and witness position. This neutral observing mechanism by a third party is missing in charter flights where the function of an independent monitor is thus necessary.<sup>128</sup>

### Monitoring of Individual Cases

The **Commissions of the HRAB** decide which deportations to monitor. The decision is usually based on the expected human rights relevance and the availability of the members of the Commission.

**VMÖ** receives an invitation by the Ministry of Interior to accompany chartered flight deportations. In the past all charter deportation flights conducted by Austria alone or by Austria as a leading country for the Joint Return Operation were monitored. The Ministry is of the opinion that monitoring all deportations would require a too large number of monitors and too high costs. This was in principle also the position of the representatives of the Commissions.

### Specific Tasks, Intervention Powers and Reporting Duties

Monitors exercise a number of rights and duties:

- **Reporting Duties:** Since the Commissions regularly meet the police officers responsible for the implementation of the removals, they provide feedback to the police officers about their work during the preparation and the first step of the forced removal. The system of ad hoc feedback is well established and welcomed by the police officers. The Commissions additionally submit a written report to the HRAB on every visit to detention facilities or returns monitored. The HRAB then decides how to proceed with the report by the Commissions. In case of identified (structural) problems, the HRAB may forward the report to the Ministry of Interior for clarification. The HRAB may also come to the conclusion that structural problems need to be addressed with specific recommendations to the Minister of the Interior.
- **Intervention Powers:** The members of the Commissions do not have any intervention powers. The only exception would be in case an intervention was medically indicated and necessary.<sup>129,130</sup>
- **Other Rights/Duties:** The HRAB's Commissions have access to the file and may visit all places where returnees are being accommodated before their forced removal.<sup>131,132</sup>

### Finance

The **HRAB** and its **Commissions** are financed by the Ministry of Interior. According to Art 15c paragraph 5 of the Security Police Act, the Federal Minister of Interior needs to provide the

<sup>128</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011.

<sup>129</sup> See [http://www.menschenrechtsbeirat.at/cms15/index.php?option=com\\_content&view=article&id=41:commissions-&catid=81:english&Itemid=35](http://www.menschenrechtsbeirat.at/cms15/index.php?option=com_content&view=article&id=41:commissions-&catid=81:english&Itemid=35), accessed 04.03.2011

<sup>130</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011.

<sup>131</sup> See [http://www.menschenrechtsbeirat.at/cms15/index.php?option=com\\_content&view=article&id=41:commissions-&catid=81:english&Itemid=35](http://www.menschenrechtsbeirat.at/cms15/index.php?option=com_content&view=article&id=41:commissions-&catid=81:english&Itemid=35), accessed 04.03.2011

<sup>132</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011.

HRAB with the necessary financial means to fulfil all tasks vested in the HRAB. Return monitoring constitutes only one part of the overall competencies of this body. The **Commissions** of the **HRAB** receive an expense allowance on a half day or full day basis.<sup>133</sup>

The **VMÖ** started the monitoring of flights at the beginning without a formal written contract, consequently until 2009 this task has been carried out unpaid. Since the demand of flight monitoring increased, this task has been included in the contract for counselling in preparation of return in pre-deportation detention facilities between the Ministry of Interior and the VMÖ. The reimbursement follows the system for the Commission expense allowance (half day/full day reimbursement).<sup>134</sup>

## 2.0 Human Rights & Treatment of Vulnerable Persons

### Monitoring of Compliance with Human Rights Standards

There are no distinct standards or indicators that the monitor has to use for fulfilling their tasks. Nevertheless, the legal basis for the use of force as well as the constitutionally guaranteed rights of the individuals (the European Convention on Human Rights is part of the Austrian Constitution) are the basic benchmarks along with international recommendations, e.g. by the CPT. According to the Ministry of Interior, the Commissions and the VMÖ use benchmarks that mostly go beyond these standards, which are welcomed by the Ministry.<sup>135</sup>

### Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase

The Commissions' representatives stressed that they have no mandate for individual cases. If they witness human rights violations they would write an "urgent report" (*Dringlichkeitsbericht*) and submit this to the HRAB, which would immediately forward the report to the Ministry of Interior.<sup>136</sup>

### Special Provisions for Monitoring the Return of Vulnerable Individuals

Whilst there are no special provisions foreseen regarding the monitoring of removals of vulnerable persons, some Commissions of the HRAB set priorities in their monitoring. For example, the Commission responsible for upper Austria decided to put a special focus on deportations of families or women with children. Upon agreement with the Ministry of the Interior they are specially informed in case of a deportation of such vulnerable groups.<sup>137</sup>

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<sup>133</sup> Interview with Walter Witzersdorfer, Office of the Human Rights Advisory Body, on 14.03.2011.

<sup>134</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

<sup>135</sup> Interview with Eva Caroline Pfleger, Federal Ministry of Austria and Isabella Gruber, Federal Ministry of Austria on 16.03.2011

<sup>136</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011.

<sup>137</sup> Interview with Walter Witzersdorfer, Office of the Human Rights Advisory Body, on 14.03.2011.

### 3.0 Conclusion and Recommendations

- **Collaborative Working Relationships:** The success of the monitoring, according to the Ministry of Interior, heavily depends on the monitor. The more the monitor understands the tasks of the enforcement agency, the higher the acceptance and the better the ultimate result.<sup>138</sup> The cooperation with the police escort officers has been improving over the years
- **Human Rights Training for Escort Staff:** seen as a useful complement leading to valuable results.
- **Delays in Reporting System:** Reports from the Commissions are occasionally being submitted only after some time has passed (in part due to the reporting structure). The delay complicates direct and immediate responses to observed deficiencies as the involved police staff will hardly remember every detail of the forced return operation after some time.<sup>139</sup>
- **Collaborative Work Relationships: Cutting Out Bureaucracy:** The system of ad hoc feedback between the monitor and the escort teams serves well to immediately tackle irregularities in a more efficient and non-bureaucratic way.
- **Joint Deportation Flights:** Joint deportation flights, supported by Frontex are particularly difficult to monitor. The standards for forced return in European countries differ. It is thus questionable, what and against which benchmark the actions of the escort teams of different countries may be monitored and by whom.<sup>140</sup>

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<sup>138</sup> Interview with Marijana Grandits, Member of the Commission Vienna 2 and Daniela Karimian-Teherani, Member of the Commission Vienna 1 on 23.03.2011.

<sup>139</sup> Interview with Eva Caroline Pfleger, Federal Ministry of Austria and Isabella Gruber, Federal Ministry of Austria on 16.03.2011

<sup>140</sup> Interview with Guenter Ecker, Verein Menschenrechte Austria, on 11.03.2011

## Belgium

### 1.0 Introduction and Background

#### 1.1 Introduction of Forced Return Monitoring System

In Belgium, only the 'General Inspectorate of the Federal Police and the Local Police (AIG)<sup>141</sup> is responsible for monitoring forced returns operations<sup>142</sup>. The AIG is an independent oversight body acting for the government upon instructions of the Ministry of Justice, the Ministry of Interior, the Ministry of Immigration, or the judicial and administrative authorities. Currently no relevant legislation underpins the monitoring of forced returns, and only a notification from the Ministry is available.<sup>143</sup>

NGOs, independent public bodies and international organisations take part in the monitoring process but only at detention centres.<sup>144</sup> Despite not being involved in removal operations, NGOs such as Amnesty International (AI) were involved in the initial discussions of the late 90's around setting up a system of forced return monitoring.<sup>145</sup>

#### 1.2 Reasons for Implementing a Forced Return Monitoring System

Discussions on the establishment of a monitoring system were triggered by the death of a Nigerian woman (Semira Adam) on a flight from Belgium in 1998. The victim suffocated during the return flight where the alleged use of force by police was reported. The incident provoked media and public attention after images were broadcasted on TV.<sup>146</sup>

After these events, the Government set up a Commission to discuss the matter, issued a statement and developed recommendations on monitoring forced returns.

#### 1.3 Objective/Benefits of the Forced Return Monitoring System

The monitoring process seeks to guarantee that return operations take place in accordance with Art. 1 and 37 of the Police Function Law, regulating the use of force, as well as with the deontological code applicable to the Belgian Police Forces. It also ensures that the use of force complies with the following principles: respect of the law, proportionality, gradualism and opportunity. Monitors, in fact, need to take into account the following issues:<sup>147</sup>

- are operations taking place in accordance to police principles and prerogatives?

<sup>141</sup> L'Inspection Générale de la Police Fédérale.

<sup>142</sup> Belgian Country Profile, conducted as part of this study. The Country Profile was compiled by the Ministry of Interior and the General Inspectorate of the Federal Police.

<sup>143</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>144</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>145</sup> Interview with Carmen Dupont, Amnesty International Flanders, 11 February 2011.

<sup>146</sup> Interview with Carmen Dupont, Amnesty International Flanders, 11 February 2011.

<sup>147</sup> Correspondence with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 28 March 2011.

- could the same result be reached without the use of force or with the use of a lower level of force?
- are the coercive methods, if any, reasonable and in proportion to the goal pursued, taking into account all circumstances?

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### 2.1 Features of the Forced Return Monitoring System

#### Number and Types of Organisations and Monitors Involved

The Belgian monitoring system is placed under the responsibility of three ministries: the Ministry of Justice, the Ministry of Interior and the Ministry of Immigration. While the AIG is in charge of the monitoring, representatives from the Ministry of Interior are present on specific flights. Since January 2011 the AIG has been operating full-time monitoring with 2 staff members.<sup>148</sup>

In terms of monitoring the pre-departure phase, International Organisations such as the Red Cross play a role at airport waiting zones.<sup>149</sup> NGOs and other independent public bodies are active in monitoring at detention centres, these include:<sup>150</sup>

- the Centre for Equal Opportunity and the Fight against Racism (the Centre)<sup>151</sup>
- the Jesuit Refugee Service
- CIRE - *Coordination et Initiatives pour et avec les Réfugiés et Étrangers*
- *Vluchtelingenwerk Vlaanderen*
- *Solidarité socialiste*: social service
- Centre Social Protestant
- Caritas international
- *Comité Belge d'Aide aux Réfugiés*
- *Ligue des droits de l'homme*
- Médecins du Monde, which provides special assistance (such as psychological assistance).

#### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure

The AIG monitors both commercial and special flights<sup>152</sup> through to the end destination. In the event of a joint return operation the AIG is also present at detention centres.<sup>153</sup> One staff member from the Ministry of Interior is present on special flights. NGOs and independent public

<sup>148</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>149</sup> European Red Cross Return Initiative, *A study on how to support sustainable return in safety and dignity*, 2006

<sup>150</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>151</sup> The Centre is not an NGO nor a GO. It is a *sui generis* independent public body whose missions are stated by an act of Parliament.

<sup>152</sup> Special flights with or without FRONTEX cooperation are those involving groups of returnees or involving multiple repatriations. Correspondence with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 28 March 2011.

<sup>153</sup> Correspondence with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 28 March 2011.

bodies (such as the Centre) are usually active at detention centres. Finally, International Organisations such as the 'Belgian Red Cross-Flemish' and the 'Belgian French Red Cross' monitor treatment at airport waiting zones.<sup>154</sup>

### Notification of Return Operations

The federal police have daily and weekly contacts with the AIG and provide them with the lists of returnees to be deported.<sup>155</sup>

### Monitoring of Individual Cases

In 2008 3,744 individuals in total were subject to forced returns from Belgium compared to 3,443 in 2009.

**Table 17: Forced Returns Procedures and Forced Returns Monitored in Belgium**<sup>156</sup>

	2008	2009
Forced Returns	3,744	3,443

The AIG monitors both commercial and special flights. Monitoring of commercial flights takes place unannounced and returnees are only monitored until take-off or through to the end destination. In the latter case AIG members monitor the procedure up until the debriefing of the Belgian representative with local authority staff to discuss the repatriation. The monitoring of special flights on the other hand, is only applicable for group or multiple repatriations on planes of the Belgian Air Force or with FRONTEX. These flights also include a member of staff from the Ministry of the Interior, one from the Repatriation Desk, as well as a social worker or psychologist, a doctor and a report-team. Details of the operation are logged into an official protocol.<sup>157</sup> The AIG monitors difficult destinations like Congo and Morocco as well as new ones which have not been monitored before.

NGOs, International Organisations and independent public bodies play a role during pre-departure and seek to have a presence at all existing detention centres. Bodies such as 'the Centre' draft a plan every three years based on priorities.<sup>158</sup> Currently, 'the Centre' is focussing on detention centres known as the 'inadmissible'. These include one at the national airport and one at each of the five regional airports. NGOs in general have no visit rights to these centres. Only 'the Centre' and lawyers who have a client are authorised to visit them. There is, overall, a lack of monitoring of the inadmissible centres.<sup>159</sup>

<sup>154</sup> European Red Cross Return Initiative, *A study on how to support sustainable return in safety and dignity*, 2006

<sup>155</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>156</sup> Belgian Country Profile, conducted as part of this study. The Country Profile was compiled by the Ministry of Interior and the General Inspectorate of the Federal Police.

<sup>157</sup> Correspondence with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 28 March 2011.

<sup>158</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>159</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.



### Specific Tasks, Intervention Powers and Reporting Duties

The AIG holds intervention powers. For example, if a Federal Police escort use illegal force against an alien, it is first the duty of his supervising officer to immediately intervene and stop him. Should the escort refuse to stop the AIG can thus intervene to stop and override him.

The AIG is present at the airport where returnees are detained and it observes how the federal police use their power. It then accompanies the returnees to the plane and during flights to difficult destinations (e.g. Kinshasa). The AIG also ensures that returnees obtain the necessary medical assistance.<sup>160</sup>

NGOs have the legal mission of monitoring the respect of human rights inside detention centres and carry out evaluations of the system and of conditions of detention.<sup>161</sup>

### Finance

The AIG draws its budget from the Ministry of Interior, and extra funding is being sought for two additional monitoring staff.<sup>162</sup> As 'the Centre' is an independent public body, its monitoring activities are partly funded by the Ministry of Migration.<sup>163</sup>

## 2.2 Successes & Weaknesses of the Monitoring System

Reported successes of monitoring at detention centres include:

- NGOs publish regular reports which are sent to and discussed with public authorities and political actors. These reports promote a **stable and direct dialogue between the different actors**. As a result of these discussions, the NGOs have changed and improved their activities.<sup>164</sup>
- the successful promotion of **lawyers' admission** into detention centres, including those who are not hired by a returnee, and who simply wish to help or give advice.<sup>165</sup>

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<sup>160</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>161</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>162</sup> Belgian Country Profile, conducted as part of this study. The Country Profile was compiled by the Ministry of Interior and the General Inspectorate of the Federal Police.

<sup>163</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>164</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>165</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

## 3.0 Human Rights & Treatment of Vulnerable Persons

### 3.1 Monitoring of Compliance with Human Rights Standards

#### **Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase**

'The Centre' has a legal mission to monitor the respect of human rights inside detention centres, and carry out an evaluation of the system and the conditions of detention. In particular, when detainees receive bad or inadequate support by the lawyers responsible for their case, 'the Centre' helps them get access to better ones.<sup>166</sup>

#### **Special Provisions for Monitoring the Return of Vulnerable Individuals**

The AIG pays special attention to the situation of families with minors and to the respect of human rights in this group. Children who are alone are not returned, but are directed to foster families rather than detention centres where they are assigned a psychologist or a social worker.<sup>167</sup> In particular, 'the Centre' is currently investigating alternative forms of detention for this category. It also gives special attention to victims of human trafficking.<sup>168</sup>

## 4.0 Recommendations & Conclusions

### 4.1 Potential for Further Development of the Monitoring Model

The AIG suggests a number of improvements including:<sup>169</sup>

- to increase the number of existing monitors;
- to increase the frequency of inspections;
- to monitor the post arrival phase.

NGO, International Organisations and the independent public bodies suggest the following areas for development:

- the participation of non-state monitors during return operations and not only at the detention centres;<sup>170</sup>
- the formal incorporation of the right of NGOs to visit detention centres within the legal framework of monitoring forced returns. In fact, while a number of NGOs have access to these centres, admittance is at the sole discretion of the centres' directors.<sup>171</sup>

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<sup>166</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>167</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>168</sup> Interview with Gérald Gaspart and Julie Lejeune, Centre pour l'égalité des chances et la lutte contre le racisme, 23 March 2011.

<sup>169</sup> Interview with Patrick Biegel, L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie, 6 January, 2011.

<sup>170</sup> Interview with Carmen Dupont, Amnesty International Flanders, 11 February 2011.

## France<sup>172</sup>

### 1.0 Introduction and Background

#### 1.1 Introduction of Forced Return Monitoring System

In France, after the decision of a forced return is taken, the returnee is placed in an Administrative Detention Centre (ADC). The return operation might then take place by land, air or sea. Currently only the pre-return phase is monitored. There are plans to extend monitoring to all phases of the forced return.

#### 1.2 Reasons for Implementing a Forced Return Monitoring System

Following a 1980s scandal related to the illegal detention of migrants **near Marseille, the government** decided to monitor the treatment of refugees and returnees.<sup>173</sup> The monitoring system at the ADC was formally set up in 1989 after the publication of the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, which allows the Committee for the Prevention of Torture to access all places of detention and to travel "without hindrance".<sup>174</sup> The system was strengthened in 1999 by a Resolution of the Council of Europe stating that the Commissioner for Human Rights may visit establishments where issues of human rights may arise.<sup>175</sup>

In 2000 the National Commission on Security Ethics (NCSE) and the Ombudsman for Children were established. The former was created to monitor police activities while the latter was charged with defending and promoting children's rights. The system has been further strengthened in 2007 with the creation of the "*Contrôleur général des lieux de privation de liberté*",<sup>176</sup> an official charged with monitoring places such as detention centres, where liberties may be at risk. Since 1 May 2011 the NCSE and the Ombudsman for Children, together with the French Ombudsman and the High Authority for the Fight against Discrimination, have come together under one umbrella called the "Defender of Rights".<sup>177</sup>

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<sup>171</sup> Interview with G rald Gaspart and Julie Lejeune, Centre pour l' galit  des chances et la lutte contre le racisme, 23 March 2011.

<sup>172</sup> This case study is not yet complete. It is based only on the information obtained during an interview with a member of the NGO La Cimade. We are still waiting for the relevant information from the French Permanent Representation to the European Union.

<sup>173</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>174</sup> Written material received from Massias David, Secr tariat G n ral des Affaires Europ ennes, 12 May 2011.

<sup>175</sup> Written material received from Massias David, Secr tariat G n ral des Affaires Europ ennes, 12 May 2011.

<sup>176</sup> Written material received from Massias David, Secr tariat G n ral des Affaires Europ ennes, 12 May 2011.

<sup>177</sup> In French known as the *D fenseur des droits*. Written material received from Massias David, Secr tariat G n ral des Affaires Europ ennes, 12 May 2011.

### 1.3 Objective/Benefits of the Forced Return Monitoring System

Monitoring bodies at detention centres seek to protect the human rights of detainees awaiting removal. In particular they aim to guarantee that Articles 8 and 3 of the European Human Rights Convention are applied.<sup>178</sup> The judicial authorities monitoring the return operations seek to ensure that the rights of the returnees are respected during removal.

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### 2.1 Features of the Forced Return Monitoring System

The draft law on immigration, integration and citizenship transposing the Directive 2008/115/EC is still under discussion in Parliament.

#### Number and Types of Organisations and Monitors Involved

Currently, French legislation<sup>179</sup> accounts for the participation of seven types of actors in monitoring operations:<sup>180</sup>

- independent administrative authorities (such as the *Contrôleur général des lieux de privation de liberté*);
- parliamentarians;
- legal persons (associations) which have signed with the Ministry of Immigration conventions or agreements to provide information and legal assistance to aliens in detention centres;
- the administrative judge;
- judicial authorities;
- administrative bodies under the Ministry of Interior;
- territorial and immigration authorities (e.g. the French Office for Immigration and Integration).

Furthermore, the Commissioner for Human Rights of the Council of Europe and members of the European Committee for the Prevention of Torture have a right to access detention centres.<sup>181</sup> Although not yet formally designated, according to the draft law on immigration, integration and nationality, humanitarian organisations will be charged to monitor the respect of human rights during air removal operations.<sup>182</sup>

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<sup>178</sup> Interview with David Rohi, la Cimade, 22 February 2011 and written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>179</sup> The French Country Profile carried out as part of this study indicates that the legal basis for Forced Return Monitoring includes the Constitution, the code of the entry and stay of foreigners, the code of asylum, the Administrative Justice Code and the Code of Criminal Procedure.

<sup>180</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>181</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>182</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

Currently NGOs monitor treatment only at ADTs.<sup>183</sup> In addition to La Cimade, the following four NGOs became involved in January 2010: the Refugee Forum, France Haven (FTDA), Association Service Social Familial Migrants (ASSFAM), and the *Ordre de Malte*. Consequently, there is currently at least an NGO staff member in each of the 25 detention centres in France.

### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure Notification of Return Operations

With the exception of the administrative judge, who plays a role both in the pre-return and departure phase, the above-mentioned actors are involved in the pre-return phases at the ADC only.

#### Notification of Return Operations

There is currently no formal system in place to notify about return operations. It is each actor's responsibility to seek information on existing operations.<sup>184</sup>

#### Specific Tasks, Intervention Powers and Reporting Duties

The main role of the independent administrative authorities, parliamentarians and legal persons is to ensure the respect of detained returnees. To this end, the **administrative judge** oversees the legality of detention and the decision of forced return. The **judicial authority** punishes the infringement of rights at the ADC and during the return operations. It is, furthermore, the body validating the decision to extend detention.<sup>185</sup> The **Contrôleur General** regularly issues reports published in the Official Journal of the French Republic. The reports address how to improve procedures followed by police in charge of detention (such as handcuffing, solitary confinement etc) and comment on the compliance with legal standards of detention.<sup>186</sup>

**NGOs** work with lawyers and judges, if necessary, to contest return decisions or asylum applications. Furthermore, they help with the access to lawyers of returnees who believe they have been treated in a way that is not consistent with international human rights standards.<sup>187</sup>

NGOs submit their reports to the government every three months. The reports include an analysis of the number of individuals who have received help, the main activities carried out and the obstacles they encountered.<sup>188</sup> NGOs moreover provide information to the French media and society with regards to what is happening in the detention centres.<sup>189</sup>

### Finance

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<sup>183</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>184</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>185</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>186</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>187</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>188</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>189</sup> Interview with David Rohi, la Cimade, 22 February 2011.

Given the lack of a unified system and the numerous activities carried out by the different actors it is difficult to isolate the budget each devotes to monitoring activities.<sup>190</sup> Currently, provision of services for activities related to return operations are awarded by means of public bids or call for tenders, which different private or non governmental agencies can apply for. NGOs are lobbying for changing this system especially given the degree of specialisation these services require.<sup>191</sup>

## 2.2 Successes & Weaknesses of the Monitoring System

NGOs in detention centres help returnees receive advice with regards to their rights. This is of particular importance given the high number of returnees each year.<sup>192</sup> Non profit actors believe that more resources are needed to examine each case separately. In fact, detention centres record high rates of administrative mistakes. After adequate revisions about 30% of the returnees detained are released.<sup>193</sup>

Official responses reflect optimism about the progress of the monitoring system and indicate that the reports drafted by the different actors involved will help to improve the conditions of detainees and harmonise detention practices.<sup>194</sup>

## 3.0 Human Rights & Treatment of Vulnerable Persons

### 3.1 Monitoring of Compliance with Human Rights Standards

NGOs, such as la Cimade, collaborate with a network of lawyers and help returnees find suitable legal representation should they want to contest the return decision.<sup>195</sup>

### Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase

Returnees in detention centres have the right to ask for legal advice and can communicate with whomever they need to get in contact with.<sup>196</sup> NGOs are very active in helping detainees accessing legal assistance.<sup>197</sup>

### Special Provisions for Monitoring the Return of Vulnerable Individuals

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<sup>190</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>191</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>192</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>193</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>194</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>195</sup> Interview with David Rohi, la Cimade, 22 February 2011.

<sup>196</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>197</sup> Interview with David Rohi, la Cimade, 22 February 2011.

There are several provisions regarding the protection of vulnerable persons. For example, unaccompanied minors cannot be expelled or detained. With few exceptions, sick aliens cannot be subject to removal decision. Families in detention centres have access to special facilities particularly for children. Finally, victims of human trafficking are issued a residence permit.<sup>198</sup> NGOs, however, make no distinction between categories of returnees. They are all considered as 'vulnerable' due to their status.<sup>199</sup>

## 4.0 Recommendations & Conclusions

### 4.1 Potential for Further Development of the Monitoring Model

Official responses indicate that the entry into force of the forthcoming law on immigration, integration and citizenship and the transposition of the Return Directive will strengthen the monitoring system of forced returns, and make it more visible.<sup>200</sup> However, respondents from the not-for-profit sector advocate for changes at the detention centre level.<sup>201</sup> The jailing of illegal returnees is not viewed by NGOs as a viable solution. NGOs advocate that French immigration policies in general should be revisited.<sup>202</sup>

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<sup>198</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>199</sup> Interview with David Rohi, *la Cimade*, 22 February 2011.

<sup>200</sup> Interview with David Rohi, *la Cimade*, 22 February 2011.

<sup>200</sup> Written material received from Massias David, Secrétariat Général des Affaires Européennes, 12 May 2011.

<sup>201</sup> Interview with David Rohi, *la Cimade*, 22 February 2011.

<sup>202</sup> Interview with David Rohi, *la Cimade*, 22 February 2011.

## Germany

### 1.0 Introduction and Background

#### Introduction of Forced Return Monitoring System

In Germany, the responsibility for deportations lies with the *Länder*. Deportations are executed by the German Federal Police on behalf of the responsible migration authorities.<sup>203</sup> The first monitoring system was put in place in 2001 at Düsseldorf airport, followed by Frankfurt airport in 2006.<sup>204</sup> A monitoring system has been in place in Hamburg since 2010 and there are plans to start another system at the BBI Berlin airport from 2012 onwards. Currently, the Jesuit Refugee Service (JRS) in cooperation with the Protestant Church is carrying out talks with the Ministry of Interior Brandenburg, the Senat of Interior Berlin, and the German Federal Police to establish and implement a monitoring system once the new airport opens.<sup>205</sup>

The individual *Länder* together with the Church play an important role in the area of forced return monitoring.<sup>206</sup> The system is based on two essential components: In addition to the monitors present during the departure phase at the airport, an accompanying discussion forum has been put in place. The forum includes members of the Church, human rights organisations and the police. The monitoring takes place on behalf of the forum with the monitors having to regularly report their observations.<sup>207</sup>

#### Reasons for Implementing a Forced Return Monitoring System

Following the death of a Sudanese national (Ageeb) during his deportation from Germany in May 1999<sup>208</sup> the Ministry of Interior put in place internal police guidelines ('Best-Rück Luft').<sup>209</sup> (The case was tried in court where the judge decided that **severe** punishment of the members of the *Bundesgrenzschutz*<sup>210</sup> (border agency) was not justified since they had not undergone specific training to help them handle forced return situations.) Subsequently, the Protestant and

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<sup>203</sup> Interview with Andreas Lipsch, Forum Abschiebungsbeobachtung at Flughafen Frankfurt, 8 April 2011.

<sup>204</sup> EKD and Kommissariat der Deutschen Bischöfe, 2010. 'Abschiebungsbeobachtung. Ein Modell zur Umsetzung von Art 8 Abs 6 der EU-Rückführungslinie'. Available at: [http://www.diakonie-hessen-nassau.de/fileadmin/Dateien/Migration\\_und\\_Flüchtlinge/Abschiebungsbeobachtung/Positionspapier\\_der\\_Kirchen\\_zur\\_Abschiebungsbeobachtung.pdf](http://www.diakonie-hessen-nassau.de/fileadmin/Dateien/Migration_und_Flüchtlinge/Abschiebungsbeobachtung/Positionspapier_der_Kirchen_zur_Abschiebungsbeobachtung.pdf)

<sup>205</sup> Interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2001

<sup>206</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011, and interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2001

<sup>207</sup> EKD and Kommissariat der Deutschen Bischöfe, 2010. 'Abschiebungsbeobachtung. Ein Modell zur Umsetzung von Art 8 Abs 6 der EU-Rückführungslinie'. Available at: [http://www.diakonie-hessen-nassau.de/fileadmin/Dateien/Migration\\_und\\_Flüchtlinge/Abschiebungsbeobachtung/Positionspapier\\_der\\_Kirchen\\_zur\\_Abschiebungsbeobachtung.pdf](http://www.diakonie-hessen-nassau.de/fileadmin/Dateien/Migration_und_Flüchtlinge/Abschiebungsbeobachtung/Positionspapier_der_Kirchen_zur_Abschiebungsbeobachtung.pdf)

<sup>208</sup> Deutscher Bundestag, 2007. 'Humanitäre Standards bei Rückführungen achten, Drucksache 16/4851', page 7.

<sup>209</sup> Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg (Best-Rück Luft)

<sup>210</sup> The "Bundesgrenzschutz" is nowadays called "Bundespolizei" (German Federal Police)



Catholic Church took the initiative and started discussions with politicians in order to install a forced return monitoring system.<sup>211</sup>

## Objective/Benefits of the Forced Return Monitoring System

The purpose of forced return monitoring is, first and foremost, to ensure transparency and accountability in relation to the process.<sup>212</sup> Another aim is to secure the human rights of the deportees and to prevent the agents of the Bundespolizei from false accusations.

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### Features of the Forced Return Monitoring System

The information in this case study is based mainly on the monitoring system in place at Frankfurt airport in addition to some notes on the monitoring system planned for Berlin's new BBI airport.

### Number and Types of Organisations and Monitors Involved

The basis of forced return monitoring in Frankfurt airport is the *Forum Abschiebungsbeobachtung am Frankfurt Flughafen* (FAFF). FAFF members include at least one representative of the following institutions/initiatives: the Church (Evangelische Kirche in Hessen und Nassau, Bistum Limburg), human rights organisations (e.g. UNHCR, Pro Asyl, Amnesty International) and the police (Bundespolizeidirektion Flughafen Frankfurt am Main).<sup>213</sup>

The Forum originated in connection with forced return monitoring at Düsseldorf airport.<sup>214</sup> The monitoring system which is advocated for Berlin airport is expected to have a similar structure and thus will include a Forum.<sup>215</sup>

Since 2006, FAFF employs **two forced return monitors (1.0 FTE)**. The monitors are not members of FAFF, but act as permanent guests.<sup>216</sup> During the closed quarterly FAFF meetings, the monitors report about problematic forced return procedures. These may relate to return decisions taken in Hesse or in another *Bundesland* but executed at Frankfurt airport in Hesse. The forum may decide to follow up on individual cases by contacting the responsible authorities at *Länder* level and asking for clarification (representatives of the Hesse authorities take part in the FAFF).<sup>217</sup>

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<sup>211</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

<sup>212</sup> FAFF, 2009. Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.12.

<sup>213</sup> FAFF, 2009. Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.3.

<sup>214</sup> Interview with Andreas Lipsch, Forum Abschiebungsbeobachtung am Flughafen Frankfurt, 8 April 2011.

<sup>215</sup> Interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2001

<sup>216</sup> FAFF, 2009. Jahresbericht 2008/2009. FAFF: Frankfurt am Main, pp.3 -4.

<sup>217</sup> Interview with Andreas Lipsch, Forum Abschiebungsbeobachtung am Flughafen Frankfurt, 8 April 2011.

### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure

The monitors at Frankfurt airport are involved during the departure phase at the airport.<sup>218</sup> The future monitoring system in Berlin is also expected to be involved at the airport. If returnees come from detention centres then monitoring would also include the transport from the centres to the airport. The JRS is already present in detention centres, providing pastoral and legal counselling.

### Notification of Return Operations

Monitors are not automatically notified of impending return operations. Rather, once or twice a week they go to the appropriate authority, where a list of upcoming return operations to be executed at Frankfurt airport is published. This includes details on a range of criteria including gender, whether the returned is accompanied/unaccompanied, health status, destination country etc.<sup>219</sup>

The issue of notification has been part of the talks between JRS and the Ministry of Interior with regards to the system planned for Berlin. Systematic involvement is not likely to take place, as the authorities maintain that return process involves sensitive information which cannot always be shared with third parties such as the JRS. The system might mirror the one currently existent at Frankfurt airport.<sup>220</sup>

### Monitoring of Individual Cases

In 2009, a total of 7,289 individuals were subject to forced returns from Germany (by air).<sup>221</sup> The figures in the table below apply to Frankfurt airport. Compared to 2008, the number of forced returns has decreased.

Table 18: Forced Return Procedures at Airport Frankfurt (2009)<sup>222</sup>

<b>Total</b>		3720
<b>Ratio Unaccompanied/Accompanied</b>		2061/1209
<b>Dublin II Cases</b>		500 <sup>223</sup>
<b>Forced Return Procedures Aborted</b>	<b>Anticipated returnee resistance in case of unaccompanied returns</b>	52
	<b>Returnee resistance</b>	18
	<b>Medical reasons</b>	16
	<b>Pilot refusal to take returnee onboard</b>	21

Between 1 July 2008 and 30 June 2009, the **monitors at Frankfurt airport have monitored approximately 300 procedures**. The monitors at Frankfurt airport deal with a lot more individual deportations, where they are allowed to speak with every returnee, than collective

<sup>218</sup> Interview with Sabine Mock, Monitor at Frankfurt airport , 2 February 2011

<sup>219</sup> Interview with Sabine Mock, Monitor at Frankfurt airport , 2 February 2011

<sup>220</sup> Interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2001

<sup>221</sup> FAFF, 2010. Jahresbericht 2009/2010. FAFF: Frankfurt am Main, pp.5-6.

<sup>222</sup> Deutscher Bundestag, 2008. Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Sevim Dagdelen, Jan Korte, Petra Pau und der Fraktion "Die Linke". – **Drucksache 16/12397**.

<sup>223</sup> Überstellungen in den Mitgliedsstaat der EU, der für das Asylverfahren des Betroffenen gemäß Verordnung (EG) Nr. 343/2003 vom 18. 2. 2003 (ABl. Nr. L 50 S.1) zuständig ist.

deportations (50+).<sup>224</sup> The monitors select their own cases. The following constitute the main selection criteria<sup>225</sup>:

- Existence of medical conditions
- Families/single women/unaccompanied minors
- Individuals which have been subject to numerous procedures already
- Dublin II cases
- Returnees from countries/ethnic backgrounds like: e.g. Syria, Roma.

Of the monitored forced returns, a total of 27 deportations were aborted. The table below provides more detailed information.

**Table 19: Details on Monitored Aborted Deportations at Frankfurt/Main Airport**<sup>226</sup>

<b>Total aborted</b>	27
<b>Unfitness to travel</b>	6
<b>Returnee resistance for various reasons</b>	13
<b>Other</b>	8

### Specific Tasks, Intervention Powers and Reporting Duties

The monitors are present during selected forced return procedures at the airport.<sup>227</sup>

**Cooperation between monitors and the police is voluntary** and the importance of a constructive work relationship cannot be overestimated.<sup>228</sup> Following an initial phase of distrust, the relationship between the monitors and the police at the airport can generally be considered as positive.

Based on an agreement with the federal police, the monitors have **unimpeded access** to the rooms in which the returnees are waiting for their deportation.<sup>229</sup> Monitors may act as **reference points to liaise between all involved** in the deportation process (e.g. police, returnees, medics, airline personnel). If needed, they may furthermore facilitate contact to lawyers or authorities. If possible, they might be able to facilitate contacts in the destination country.<sup>230</sup>

The monitors write down information about every case even if they do not actually speak with the returnee.<sup>231</sup> Translators are engaged by the police when serious problems emerge. The cost of providing translators is carried by the police<sup>232</sup>. The monitors will **report their observations to the members of FAFF at quarterly meetings with the FAFF. A detailed written report is**

<sup>224</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

<sup>225</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011; and FAFF, 2010. Jahresbericht 2009/2010. FAFF: Frankfurt am Main, pp.5-6.

<sup>226</sup> FAFF, 2010. Jahresbericht 2009/2010. FAFF: Frankfurt am Main, pp.5-6.

<sup>227</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

<sup>228</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

<sup>229</sup> Diakonie in Hessen und Nassau, 2011. Abschiebungsbeobachtung. Available at: <http://www.diakonie-hessen-nassau.de/arbeitsfelder/migration-fluechtlinge-und-interkulturelle-arbeit/abschiebungsbeobachtung.html>

<sup>230</sup> Diakonie in Hessen und Nassau, 2011. Abschiebungsbeobachtung. Available at: <http://www.diakonie-hessen-nassau.de/arbeitsfelder/migration-fluechtlinge-und-interkulturelle-arbeit/abschiebungsbeobachtung.html>

<sup>231</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

<sup>232</sup> Interview with Sabine Mock, Monitor at Frankfurt airport, 2 February 2011

**provided by the monitors annually to the FAFF.**<sup>233</sup> This report is used as a basis for the report of the FAFF which is published. Intervention powers and reporting duties for the monitor at Berlin airport are expected to be similar to those at Frankfurt airport.<sup>234</sup>

### Finance

The monitors at Frankfurt airport are financed mainly by the Church (e.g. Bistum Limburg, Evangelische Kirche in Hessen and Nassau) and the Deutsche Stiftung für UNO Flüchtlingshilfe e.V.)<sup>235</sup> Several unsuccessful applications to the Return Fund have been made.

Regarding the monitoring system to be implemented at Berlin airport, funding is expected to be provided by the regional government.<sup>236</sup>

## 3.0 Human Rights & Treatment of Vulnerable Person

### Monitoring of Compliance with Human Rights Standards

Monitoring during the departure phase at Frankfurt airport has consistently demonstrated that the police do not use excessive violence throughout the operation.<sup>237</sup>

### Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase

The monitors at Frankfurt airport have no knowledge of such cases and consider it unlikely, especially as an individual may harbour plans to return to Germany at some point.<sup>238</sup>

### Special Provisions for Monitoring the Return of Vulnerable Individuals

The monitors are able to select which cases they want to observe. Once or twice a week they go to the appropriate authority, where a list of upcoming return operations to be executed at Frankfurt airport is given to them for copying by hand. This includes details on a range of criteria including, gender, whether the returned is accompanied/unaccompanied, health status, destination country etc.<sup>239</sup> The following constitute the main selection criteria<sup>240</sup>:

- Existence of medical conditions
- Families/single women/unaccompanied minors
- Individuals which have been subject to numerous procedures already
- Dublin II cases
- Returnees from the following countries/ethnic backgrounds: Syria, Roma.

<sup>233</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.4.

<sup>234</sup> Interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2011

<sup>235</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.4.

<sup>236</sup> Interview with Father Martin Stark, Jesuiten Flüchtlingsdienst, 1 April 2011

<sup>237</sup> Kalinock, S & S. Schicke (2008). Abschiebungsbeobachtung am Flughafen Frankfurt am Main. Conference: „Zwei Jahre Abschiebungsbeobachtung am Flughafen Frankfurt, 29 February 2008, Frankfurt.

<sup>238</sup> Email Correspondence between Gabriele Birnberg (Matrix) and Sabine Mock (FAFF), 1 April 2011

<sup>239</sup> Interview with Sabine Mock, Monitor at Frankfurt airport , 2 February 2011

<sup>240</sup> Interview with Sabine Mock, Monitor at Frankfurt airport , 2 February 2011; and FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.4.

## 4.0 Conclusions & Recommendations

- **Validation:** The monitoring system at Frankfurt Airport has shown that the police generally handles deportations appropriately and treats returnees in a fair manner.<sup>241</sup>
- **Collaborative Working Relationships:** Voluntary cooperation between police and monitors relies on good and trusting working relationship. Important drivers of good collaboration are the involvement of 'neutral persons' interested and engaged in an educative process.<sup>242</sup>
- **Human Resources:** The two monitors (at 1.25 FTE) currently monitor less than 10% of all deportations going through Frankfurt airport. Additional resources would mean additional monitoring capacity. Since the monitors at Frankfurt airport not only observe the process but are able to act as liaison between all involved, this would be considered a positive development.
- **System Structure:** While both the Immigration Office (*Ausländerbehörde*) and Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) are competent to make return decisions, the former is the competent authority to organise the transportation. The federal police (*Bundespolizei*) receive returnees at the airport and execute the actual deportation.<sup>243</sup>
- Still too many deportations must be aborted because the relevant immigration authorities are failing in their duty of care and official duty of investigation to ensure that a deportation is in fact lawful. It would be desirable in the future to **provide law enforcement officers with more extensive documentation** on individual cases in order to increase transparency in conflict situations.<sup>244</sup>
- **Regular participation of the Hessian Ministry of Interior to the FAFF sessions is encouraged.** The states are responsible for enforcing the deportation. It is within their competence to make the decision whether and how to deport individuals. A purposeful discussion on the enforcement of deportation can therefore only succeed if all the institutions involved are sitting at a table.<sup>245</sup>
- With regard to the deportation of destitute individuals, the **provision of on the spot pocket money** is recommended. This is currently already the case in North Rhine-Westphalia, Rhineland-Palatinate and Saarland.<sup>246</sup> If certain preconditions are fulfilled, the money in Hesse is provided by the churches.

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<sup>241</sup> Interview with Sabine Mock, Monitor at Frankfurt airport Frankfurt, 2 February 2011

<sup>242</sup> Interview with Sabine Mock, Monitor at Frankfurt airport , 2 February 2011

<sup>243</sup> Email Correspondence between Gabriele Birnberg (Matrix) and Sabine Mock (FAFF), 1 April 2011

<sup>244</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.12.

<sup>245</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.13.

<sup>246</sup> FAFF(2009). Jahresbericht 2008/2009. FAFF: Frankfurt am Main, p.12.

## Latvia

### 1.0 Introduction and Background

#### Introduction of Forced Return Monitoring System

At the time of writing (March 2011) Latvia did not yet have a forced return monitoring system. Legislation implementing the Returns Directive (amendments to the Immigration Law) was still progressing through parliament. For this reason, the practical details of the system have yet to be defined. The draft legislation envisages the Ombudsman leading the monitoring process and coordinating activities of contracted NGOs. Latvia is implementing a forced return monitoring system in order to comply with the Returns Directive.

#### Objective/Benefits of the Forced Return Monitoring System

From the draft legislation, it appears that the objectives of the system are to:

- assess conditions in detention centres;
- assess whether returnees are provided with information about the process of their forced return, their rights and how to make use of those rights
- assess whether the human rights of returnees are respected during the forced return process.

NGOs expect a written framework to emerge of rights to be monitored, but remain concerned that some refused asylum seekers will face ill treatment after return.

Latvia is a party to the Convention Against Torture (OPCAT) but has not signed the Optional Protocol which provides for a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment<sup>247</sup>. NGOs therefore look forward to more independent oversight of immigration detention facilities and hope to be furnished with more systematic information about the conditions and access to rights of detainees. They hope that perceived gaps in the law may be filled, such as around the provision of information to detainees, rights to interpretation and legal assistance. A report by the Latvian Centre for Human Rights in 2006 found:

*Although the Law on Immigration and the Law on Asylum provide for a range of rights to illegal migrants and asylum seekers, it is often impossible to exercise them in practise. These include the right to legal assistance, the right to a representative, the right to get acquainted with case materials related to an individual's detention, etc. Due to lack of a Latvian language proficiency and absence of interpreters the detainees are often prevented from exercising their rights in appealing court decisions and decisions of other institutions. There is inadequate*

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<sup>247</sup> Latvia See Parliamentary Committee on Legal Affairs and Human Rights, [Strengthening torture prevention mechanisms in Europe](#), 7 March 2011

*independent oversight of immigration detention facilities as no visits are conducted by prosecutors and other oversight bodies.<sup>248</sup>*

These findings were similar to those of the European Committee for the Prevention of Torture following its most recent visit (in 2002) to immigration detainees in Latvia<sup>249</sup>.

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### Features of the Forced Return Monitoring System

The State Border Guard took features of the proposed system from guidance provided by the European Commission at meetings of the Contact Committee on the Returns Directive, together with the best practices presented by those Member States that already had monitoring systems in place.

It became apparent to those involved that approaches to supervision of the return procedure differ across Europe. It was not clear to them whether those with supervisory responsibilities did the same work in all countries (e.g. visit detention centres, interview the persons to be returned, arrange the formalities of the return process), whether the scope of their duties was broader or narrower, or how they were funded.

### Number and Types of Organisations and Monitors Involved

Monitoring will be conducted by the national Ombudsman who will coordinate one or more NGOs (probably three). It was not possible under Latvian law for the government to contract out responsibility for monitoring returns directly to NGOs. However, taking into account the limited funding available it is anticipated that the Ombudsman will eventually wholly contract out what is seen as the 'supervisory function' to NGOs.

There was some sensitivity within the State Border Guard service about the Ombudsman taking the lead role, as it was felt that monitoring implied some sort of control. This was resolved when it was clarified that monitors would be observers and would not have the right to interfere with any return operation while it was underway.

The Ombudsman will be responsible for monitoring the forced return process, but will be entitled to involve NGOs.

As it was not possible for the government to assign the supervisory function directly to an NGO, it was left with two options: either to establish a new institution, with all the costs of setting up a new administrative structure, or to entrust the role to an existing institution i.e. the Ombudsman. Given that NGOs have full responsibility for monitoring in some EU Member States, and in light of the strong desire of NGOs in Latvia to be engaged in the process, a compromise was agreed:

<sup>248</sup> Latvian Centre for Human Rights, [Monitoring Report on Closed Institutions in Latvia](#), Riga, 2006

<sup>249</sup> [Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 25 September to 4 October 2002](#), CPT/Inf (2005) 8, Strasbourg, 2005

NGOs could be involved by entering into a contract with the Ombudsman to carry out specific assignments, such as conducting interviews with the persons to be returned or visiting a detention centre to verify that detainees were provided with appropriate food etc.

### **Involvement of Monitoring Organisations by Phase of the Forced Return Procedure**

The Ombudsman will be able to monitor all phases of the forced return process starting from the moment when the decision on forced return is taken and until the individual travels to the country of return. The Ombudsman will be entitled to monitor return flights, but whether monitors are actually present on flights will be at the Ombudsman's discretion and may depend on factors such as the availability of funding.

The scope of the proposed forced return monitoring system does not include post-return reintegration.

Initially, the Ombudsman's office is expected to carry out all monitoring duties itself. In the longer run, duties may be contracted out to one or more NGOs, particularly if the number of persons to be returned increases. Having worked with a range of NGOs in parliamentary working groups, seminars and debates, the Ombudsman has identified three potential partners (the International Organisation for Migration (IOM), the Red Cross and the Human Rights Centre of Latvia).<sup>250</sup> One option will be to delegate one phase of the return process to each organisation.

### **Notification of Return Operations**

As soon as a decision on forced return has been taken, the Ombudsman and relevant NGOs will be informed. From that moment monitors will be able to visit the returnee, start the monitoring process and offer assistance.

### **Monitoring of Individual Cases**

The Ombudsman and partner NGOs will have the right to join return operations, in order to assess whether an individual returnee's human rights are respected.

### **Specific Tasks, Intervention Powers and Reporting Duties**

The most hotly debated aspect of the system as it evolved was the precise role of monitors. According to the draft legislation, they will have the right:

- to obtain information from state institutions that are involved in the process of forced return of the aliens, about organization of the return process and the measures taken;
- to invite specialists (lawyers, health professionals, interpreters), for the aliens who are subject to forced return in order to provide necessary advice;
- to provide assistance to improve living conditions, as well as other assistance.

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<sup>250</sup> IOM reports that it has rejected this request for cooperation. Communication from IOM Headquarters on 4 November 2011.



Monitors will be obliged to notify the State Border Guard of any of the above activities. The monitor will be permitted explicitly to invite specialists to provide medical assistance. However, proposals were rejected during the legislative process that would have allowed monitors to make recommendations to State Border Guard officers during the return operation or to provide legal advice to returnees.

Following a forced return operation, the Ombudsman will prepare a report on any identified weaknesses, which will include recommendations for improvement of the forced return process itself. The report will be submitted to the Ministry of Interior for consideration and a decision on action to be taken. The Ombudsman reports annually to Parliament.

### Finance

The Ombudsman is funded by the State budget. No additional funds are currently planned for the proposed forced return monitoring function.

There is an expectation, partly based on information from the European Commission that the Ombudsman and the participating NGOs will secure funding from the European Return Fund. One respondent argued that, “if the EU imposes a duty on a member state to establish such specific supervision, it also has to provide funding, especially in view of the strained economic situation of this member state.”

The State Border Guard report that the European Commission’s guidance was that monitors could not be funded from State budgets, lest their independence be compromised, hence the proposed reliance on the Return Fund. There is some concern, however, that effectiveness of monitoring will be undermined by lack of resources.

## 3.0 Human Rights and Treatment of Vulnerable Persons

### Monitoring of Compliance with Human Rights Standards

There is no written framework of rights to be monitored.

#### **Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase**

No information available. NGOs do not currently have access to comprehensive information about the conditions in detention centres and detainees’ opportunities to access their rights.

#### **Special Provisions for Monitoring the Return of Vulnerable Individuals**

It is recognised that particular care will need to be taken to monitor the treatment of vulnerable groups, but how this will be done has not yet been agreed. NGOs are seen as having expertise in this area.

The State Border Guard reports that the interests of separated children in the return procedure are represented by the 'Orphans' Court'. No separated children have been forcibly returned to date as the law provides that minors are transferred to family members or specialized institutions in the country of return, but not removed by force. Children under the age of 14 may not be detained.

Returnees who have any health problems and who need medical monitoring during the removal process will be accompanied by medical personnel. If necessary, they will be taken to a hospital or other specialised institution or place of residence in the country of return.

## 4.0 Conclusions & Recommendations

Stakeholders were pleased to have been invited by the State Border Guard to a meeting in the autumn of 2010. Representatives of the Ombudsman and IOM attended, together with six NGOs that work with undocumented migrants. While several organisations were keen to be involved it was clear that one organisation needed to coordinate monitoring. It was agreed that the Ombudsman would lead the monitoring process. Other issues discussed included funding of monitors, the function of the monitoring mechanism, the rights and duties of monitors and the funding of monitors.

Stakeholders felt that the meeting was indicative of an inclusive approach by the State authorities to developing a monitoring system. For the State Border Guard, the meeting clarified that monitoring would be a cooperative process. A further meeting will be convened once the legislation has been adopted.

The State Border Guard was responsible for transposing the Return Directive and saw the proposed system as the most efficient, given the country's economic situation. It is also seen as consistent and sustainable and free of the legal impediment to directly assigning supervisory functions to NGOs.

The Ombudsman saw monitoring of returns as a natural extension of his duty to monitor migrants, which he currently carries out at least once every six months. He already has responsibility for supervising observance of human rights as an independent public organization.

The Border Guard is keen that the approach of monitors should be constructive and aimed at making their job better and improving the effective return process and promoting the cooperation between the NGOs and state authorities.

Given that the monitoring system remains a legislative proposal and has not yet been implemented, it is premature to identify weaknesses in the system. The proposed amendments to the Immigration law simply establish a legal basis for monitoring of forced returns, identify a coordinator for the monitoring process and define the main tasks and obligations of monitors.

While the details of the system have yet to be agreed, stakeholders are concerned that the process for remedying flaws in the system is unclear, particularly in urgent cases, and that cuts to the Ombudsman's funding may affect his ability to carry out monitoring effectively.

## Luxembourg

### 1.0 Introduction and Background

#### 1.1 Introduction of Forced Return Monitoring System

In Luxembourg the responsibility of carrying out forced return operations lies with the police. Returns taking place via Charter flights are monitored by representatives of the Ministry of Foreign Affairs as well as by an independent monitoring body, namely the Red Cross Luxembourg (RCL). Their key role consists of “watching, listening and giving feedback”.<sup>251</sup>

The development of the legal basis underpinning monitoring of forced returns is characterised by four main stages: the Parliamentary motion (July 2007), the immigration law (August 2008), the Grand Ducal Order<sup>252</sup> (September 2008), and the Framework Agreement between the Ministry of Foreign Affairs and Immigration and LRC (February 2009).<sup>253</sup> This came after nearly two years of discussions and negotiations with the Government to define and clarify monitors’ role.<sup>254</sup>

#### 1.2 Reasons for Implementing a Forced Return Monitoring System

The Forced Return Monitoring System was triggered by political and public demands to overcome the lack of transparency<sup>255</sup> and unlawful administering of medication during removal operations.<sup>256</sup> The RCL, which played a central role in advocating for the system and is highly involved in the monitoring process,<sup>257</sup> is motivated by its mandate to help the most vulnerable people and provide humanitarian added value. Throughout its activities the RCL seeks to guarantee the wellbeing and dignity of the returnees, as well as their legal and procedural rights, by ensuring that all avenues of appeal rights have been respected.<sup>258</sup>

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<sup>251</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>252</sup> The Grand Ducal order is the *Code de Bonne Conduite*.

<sup>253</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>254</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>255</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>256</sup> Documentation of the European Conference *Monitoring Forced Returns/ deportations in Europe*, 24/25 September 2007, Frankfurt/Main. Available at: [http://www.ccme.be/fileadmin/filer/ccme/20\\_Areas\\_of\\_Work/01\\_Refugee\\_Protection/2007-09-30\\_Monitoring\\_Forced\\_Returns.pdf](http://www.ccme.be/fileadmin/filer/ccme/20_Areas_of_Work/01_Refugee_Protection/2007-09-30_Monitoring_Forced_Returns.pdf)

<sup>257</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

<sup>258</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

### 1.3 Objective/Benefits of the Forced Return Monitoring System

The objective of forced return monitoring is to ensure the efficiency and transparency of the process for all stakeholders. Furthermore, it seeks to guarantee the coherence of the forced return operation assessments realised by independent monitoring bodies.<sup>259</sup>

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### 2.1 Features of the Forced Return Monitoring System

#### Number and Types of Organisations and Monitors Involved

A number of organisations are involved in return decisions and operations including the Ministry of Foreign Affairs, the Luxembourg Police, the Detention Centre and the RCL. During Charter flights, a ministry representative, a medical assistant and an independent observer are allowed on board to accompany the returnees and monitor the escorts and the process of return.<sup>260</sup>

#### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure

In Luxembourg **all the phases of the Forced Return procedure are monitored.**<sup>261</sup> During pre-return and pre-departure the RCL visits detention centres to meet with returnees and explain the organisations' role. The RCL also monitors the wellbeing and dignity of the concerned person and the validity of the legal and procedural rights (ensuring that all avenues of appeal rights of the migrant have been fully respected). A member of the RCL and a representative of the Foreign Affairs Ministry are present on the return flight to monitor the removal. Other actors present on board include a doctor, an escort leader and general escorts.<sup>262</sup> To guarantee transparency, different RCL monitors accompany returnees during the flight than those present during the pre-departure phase.

#### Notification of Return Operations

The Ministry of Foreign Affairs is responsible for notifying the RCL of the return operation at least 72 hours before departure.<sup>263</sup>

#### Monitoring of Individual Cases

Luxembourg started deportations only in 2001.<sup>264</sup> Between 2001 and 2009, a total of 825 people were deported mainly to ex-Yugoslavia and Eastern Europe. A few return operations involved

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<sup>259</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>260</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>261</sup> Luxembourg Country Profile conducted as part of the research.

<sup>262</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>263</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

Africa and the Former Soviet Union.<sup>265</sup> The table below shows that forced return operations increased overall with a peak in 2006. The figures dropped in 2007 and while raising again, they remained at a rate lower than 2005 and 2006.

**Table 20: Forced Return Operation in Luxembourg (1999-2009)**<sup>266</sup>

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Forced return	40	44	98	56	144	170	69	104	100

In general all Chartered flights and joint return operations are subject to monitoring while commercial flight returns are not.<sup>267</sup> Since August 2007, the RCL monitored a total of 12 charter flights and 96 assisted persons (including three FRONTEX coordinated flights, one Benelux flight and eight national charters).<sup>268</sup> Countries of destination include Nigeria, Guinea, Kosovo, Macedonia, Montenegro, Bosnia Herzegovina and Albania.<sup>269</sup>

### Specific Tasks, Intervention Powers and Reporting Duties

There is no systematic approach to forced return monitoring and thus RCL, the Foreign Ministry and the Police may have differing interpretations of the tasks involved.<sup>270</sup> However, monitors are generally limited to observing, listening and reporting.<sup>271</sup>

On the one hand, monitors from the Ministry of Foreign Affairs are designated by the Minister and have an authorised presence on charter flights. They accompany returnees from airports of departure to those of destination.

On the other hand, an ad hoc agreement has to be signed separately for each mission between the Minister and the RCL monitors.<sup>272</sup> General monitoring tasks performed by the RCL during the pre-departure phase include visits to the detention centres, informing returnees about the role RCL can play, and providing necessary logistic help during the days prior to their return.<sup>273</sup> A different monitor is available on board and upon arrival to the destination country. Upon arrival to the destination the RCL staff establishes contact with local Red Cross staff to obtain information on the post-arrival phases.<sup>274</sup>

### Finance

<sup>264</sup> Documentation of the European Conference *Monitoring Forced Returns/ deportations in Europe*, 24/25 September 2007.

<sup>265</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>266</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>267</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>268</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

<sup>269</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>270</sup> Documentation of the European Conference *Monitoring Forced Returns/ deportations in Europe*, 24/25 September 2007.

<sup>271</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>272</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>273</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>274</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

The Ministry of Foreign Affairs is in charge of financing operations. Furthermore, RCL activities rely on the involvement of volunteers and thus do not incur in staff costs.<sup>275</sup>

## 2.2 Successes & Weaknesses of the Monitoring System

The system suffered from initial 'teething problems', such as:

- The role of the observer was not always clear;
- Complicated information flow between relevant actors (e.g. migrant, police, medical staff)<sup>276</sup>
- Too short a notice period prior to removal, which prevented the migrants from meeting with the NGOs prior to the removal<sup>277</sup>

The system has improved over the years and has since been praised by the Ministry of Foreign Affairs for the following<sup>278</sup>:

- the accessibility of monitors to all charter flights;
- independence, transparency and neutrality of monitors;
- an efficient reporting system;
- the humanitarian added value;<sup>279</sup>
- a good level of training of the police in charge of missions.

## 3.0 Human Rights & Treatment of Vulnerable Persons

### 3.1 Monitoring of Compliance with Human Rights Standards

#### **Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase**

It is the monitors' responsibility to ensure that human rights are respected throughout the return operations. While no case of appeal has been mentioned during the interviews with the Ministry of Foreign Affairs or with the RCL, it was highlighted that in such a scenario the monitor is not authorised to gain access to the administrative file of the returnee until the return operation is complete. Early access to the file is only possible for lawyers.<sup>280</sup>

#### **Special Provisions for Monitoring the Return of Vulnerable Individuals**

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<sup>275</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>276</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

<sup>277</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

<sup>278</sup> Interview with Nadine Conrardy, Red Cross, 7 February 2011.

<sup>279</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>280</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

The RCL considers every returnee as a vulnerable person; consequently it is part of its mandate to help every individual subject to forced return equally.<sup>281</sup> However, despite there being no special provision, medical care and other useful support is prearranged for 'vulnerable' individuals on a case by case basis.<sup>282</sup>

## 4.0 Recommendations & Conclusions

### 4.1 Potential for Further Development of the Monitoring Model

Moving forward, the RCL would like to see monitoring extended to regular flights and would prefer access to returnees as they are transported from the detention centres to the airport.<sup>283</sup>

Moreover, a better definition of characteristics and skills required by a monitor, the specifications of his/her role as well as the provision of specialised training would be helpful in ensuring that the tasks are carried out by suitable candidates.<sup>284</sup>

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<sup>281</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>282</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.

<sup>283</sup> Red Cross Luxembourg Power Point Presentation, Warsaw 26<sup>th</sup> May 2010.

<sup>284</sup> Written material received from Pascal Signore, Contact Committee of the Ministry of Foreign Affairs, 25 February 2011.



## Norway

### 1.0 Introduction and Background

#### Introduction of Forced Return Monitoring System

Norway does not have a discrete forced return monitoring system. A group of bodies is seen as providing a comprehensive net of safeguards. The government considers that this satisfies the requirement of the Returns Directive for an “effective monitoring system” of forced returns. Nevertheless, legislation was passed at the end of 2010<sup>285</sup> to transpose the Directive, which included an enabling provision that created the power to introduce regulations with respect to a forced return monitoring system. This does not necessarily signal an intention to make changes, but rather gives the government the power to introduce secondary legislation in the future, should it be deemed necessary or desirable.

The institutions that have a supervisory or monitoring role in the returns procedure include:

- the Parliamentary Ombudsman (*Sivilombudsmannen*), established in June 1962 by the *Act Concerning the Storting's Ombudsman for Public Administration*<sup>286</sup> to supervise all public bodies, either on his own initiative, or on the basis of complaints from citizens concerning any maladministration or injustice on the part of a public agency;
- the Ombudsman for Children, established in 1981 by Act No 5<sup>287</sup> to protect children and their rights;
- the Gender Equality Ombud (*Likestillingsombudet*), established in 1978 and merged into the Equality and Anti-Discrimination Ombud (*Likestillings- og diskrimineringsombudet*) in 2006;
- the Police Directorate is responsible for supervising the activities of the National Immigration Police Service. (Norway's police services were restructured and the National Immigration Police Service formed in 2004). Complaints would be investigated by the Directorate under the general complaint procedures for public bodies provided for in the Public Administration Act;
- the Norwegian Bureau for the Investigation of Police Affairs, established on 1 January 2005 under the 1981 Criminal Procedures Act<sup>288</sup>, investigates allegations of criminal behavior by a police officer.
- the Courts.

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<sup>285</sup> 17.12.2010-88

<sup>286</sup> *Act concerning the Storting's Ombudsman for Public Administration*, 22 June 1962, [http://www.sivilombudsmannen.no/kontor/lover\\_2/](http://www.sivilombudsmannen.no/kontor/lover_2/)

<sup>287</sup> *Act No. 5 of March 6. 1981 Relating To The Ombudsman For Children*

<sup>288</sup> *Criminal Procedure Code of the Kingdom of Norway*, Act of 22 May 1981 No. 25, section 67 subsection

In addition to these national institutions, in September 2008, the Justice Department established an independent supervisory board for the Trandum Alien Holding Centre, Norway's only immigration detention centre.<sup>289</sup>

Furthermore, a representative of the Ombudsman noted that the system is also scrutinised by international bodies, such as the European Committee for the Prevention of Torture (CPT). Norway is also a signatory (but has not yet ratified) to the Optional Protocol to the Convention Against Torture (OPCAT), which concerns places of detention.

### Reasons for Implementing a Forced Return Monitoring System

Norway's national monitoring bodies were not established in response to any migration related problem. The genesis of the supervisory board (sometimes translated as supervisory council) of the Trandum detention centre, however, lies in critical reports by the European Committee for the Prevention of Torture (CPT) in 2006 and the Parliamentary Ombudsman in 2007, following their visits to the centre, as well as pressure from the media. The centre had been in operation since 2004.

CPT criticisms<sup>290</sup> included:

- the use of isolation cells, that were "unsuitable for detention of any kind";
- the high number of beds per room in men's accommodation;
- a lack of suitable furniture including lockable lockers;
- limited opportunity for outdoor exercise;
- insufficient activities for long-term detainees (some individuals were held for 12 weeks or more);
- inadequate arrangements for mental health care;
- inadequate instructions on the use of isolation cells.
- In a special report to Parliament in 2007 the Ombudsman reiterated many of the CPT's points, but also raised concerns about:
- the lack of explicit regulation of the operation of the centre, particularly with regard to 'comprehensive enforcement measures', such as the use of the security cells;
- the unauthorised use of restraint techniques by non-police security staff;
- a poor standard of catering;

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<sup>289</sup> While some Norwegian authorities use the term 'Aliens Holding Centre', others, including the Ombudsman, use 'immigration detention centre'. The latter will be used in this study as it is more easily understood internationally.

<sup>290</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). 2006. *Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 10 October 2005*. Strasbourg. 11 April 2006. <http://www.cpt.coe.int/documents/nor/2006-14-inf-eng.htm>

- security checks on detainees every 30 minutes, day and night and inspections of toilets and bathrooms, which may interfere with right to private life<sup>291</sup>.

The Ombudsman's report refers to a legislative proposal to Parliament for an 'external supervisory council to be established for the supervision of the operation of the Immigration Centre and the treatment of the foreign nationals who are staying there'. The background to this was a long campaign by the Ombudsman for similar supervisory council to be established for police cells as were in use for prisons. The report quotes the Ombudsman's Annual Report for 2001, which gives a useful explanation of the role of the Ombudsman and of the need for additional, local supervision:

"It is important that those who are deprived of their liberty in locked institutions have access to an independent body they can speak to in confidence. Such a scheme would help to strengthen their lawful protection and would also contribute towards maintaining public confidence in public authorities when they can see that the actions of public agencies are subject to independent control. The office of the Ombudsman cannot undertake such a function alone. Day-to-day supervision must take place locally."

Two key developments followed these interventions: operational regulations were drawn up for the detention centre and a supervisory board established. Laid down by Royal Decree of 11 April 2008<sup>292</sup>, the Regulations ("Instruction") set out a number of rights for detainees, including to health care, and limited control measures and the use of force to situations where it would not be disproportionate. The Regulations also set out how the centre would be supervised: firstly by the head of the National Police Immigration Service, who would report to the Police Directorate. The regulations envisaged the establishment of an external supervisory board, to be chaired by a judge, "so as to ensure that the rights of persons held at the Centre are respected at all times". An amendment to the Immigration Act of June 2007, established a legal base for the Supervisory Board<sup>293</sup>

The Regulations seem to be particularly welcomed by stakeholders in that they provide a useful tool to ensure accountability and the enforcement of standards.

Some respondents took the view that the government inserted the enabling provision on forced monitoring into the Immigration Act when it transposed the Returns Directive in December 2010

<sup>291</sup> The Parliamentary Ombudsman for Public Administration, *Special Report on the Ombudsman's Investigation of the Police Immigration Detention Centre at Trandum*, 15 February 2007

<sup>292</sup> *Regulations regarding Police Holding Centres for Foreign Nationals* (the Foreign National Holding Centre Regulations) Passed by Royal Decree on 11 April 2008, pursuant to section 37 d, final subsection, of Act no. 64 of 24 June 1988 concerning the entry of foreign nationals into the Kingdom and their presence in the realm. The current version of the Regulations is of 23 December 2009 (<http://www.lovdata.no/cgi-wift/lides?doc=/sf/sf-20091223-1890.html>).

<sup>293</sup> *Act relating to amendments to the Immigration Act (Holding Centres for Foreign Nationals)*, LOV-2007-06-29-41. This corresponds to section 107 of the new Immigration Act, 15 May 2008 (<http://www.lovdata.no/all/hl-20080515-035.html>).

in case it transpires through jurisprudence that the Norwegian monitoring system does not meet the requirements of the Directive.

## Objective/Benefits of the Forced Return Monitoring System

Some interviewees had difficulty in answering this question. One respondent felt that the objective had not changed over time, but it had become more focused.

The Supervisory Board of Trandum is clear about its objective: to see that detainees' human rights, and their rights as set out in the instruction, are respected. Those rights include having sufficient food and access to a telephone. At first the Board focussed on health and privacy, and the cleanliness of the detention centre. Later they have focussed more on detainees having the opportunity to read or otherwise occupy themselves, including by working.

For the government, the benefit is that there is a good legal written base of rights and that they are monitored by mainstream institutions. The National Police Immigration Service is keen to be seen to be transparent. The Parliamentary Ombudsman plays an important role in Norway: people are proud that they have the right to complain about their treatment by any public body in the knowledge that their complaint will be properly considered.

The Trandum Supervisory Board considers that it has improved conditions for detainees: a maximum number of detainees has been set and there is ongoing work on improving conditions for women and children. There are plans to refurbish the centre, replacing four-bed dormitories with double or single rooms.

While not mentioned by respondents, the absence of a separate infrastructure specifically to monitor forced returns is likely to be cost-efficient.

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### 2.1 Features of the Forced Return Monitoring System

#### Number and Types of Organisations and Monitors Involved

At least five organisations are involved in monitoring of returns, together with the courts. Division 2 of the Office of the Parliamentary Ombudsman handles immigration cases. It should be noted, however, that as with the other organisations involved, the Division has a broader remit than returns: the seven members of staff handle any cases relating to health services, prisoners, the police and the prosecuting authorities. The Trandum detention centre's supervisory board has three members led by a judge, who carry out their duties as board members alongside full time jobs.

The main organisations are the Ombudsmen (Public administration, Equalities, Children), the bodies that supervise the activities of police officers (the Department for Police and the Bureau

for Investigation of Police Affairs) and the independent Supervisory Board for Trandum detention centre. UNHCR has interviewed some returnees on arrival in Afghanistan and Iraq. NGOs are currently not formally involved in the monitoring process.

While NGOs are not formally involved in return monitoring, the Norwegian Red Cross has a presence in the Trandum holding centre. They provide a pastoral service, visiting detainees, and have no formal role in monitoring (although this was not well understood by several interviewees). If, however, they become aware of a trend in complaints made informally by returnees to Red Cross volunteers, they will raise concerns with centre management, which usually responds constructively. Those complaints are similar to the issues highlighted by the Supervisory Board, such as the quality of catering and access to outdoor areas, but the Red Cross has little contact with the Board. Prior to the establishment of the Board, the Red Cross requested a formal monitoring role. There was some dialogue, but the request was declined when the Board was set up.

A new NGO, Peoplepeace, established in September 2010, wishes to monitor return operations and the situation of returnees after they have arrived in the country to which they are being returned. They argue that an independent presence is needed on board flights in order to ensure that returnees' are being properly treated.

#### **Involvement of Monitoring Organisations by Phase of the Forced Return Procedure**

Returnees have the right to submit complaints to the Ombudsmen or the police authorities about any stage of the returns procedure. In practice, very few complaints are received.

Of the few complaints received by the Ombudsman in this area, the majority have related to the detention centre at Trandum. People are held there usually for 3-4 days immediately prior to boarding flights, although in some cases detainees have been held for much longer periods. The Supervisory Board monitors the treatment of detainees in the detention centre. The Chair of the board is responsible for legal/judicial matters, while the two deputies look at health and welfare issues. The Ombudsman noted some debate in the media regarding return operations in 2010 when Kosovan and Serb families were arrested in the middle of the night, but only received complaints about the immigration cases, rather than the conduct of the return operations.

UNHCR has met some joint charter flights in Iraq and Afghanistan because of concerns about the safety of particular groups of refuse asylum seekers. In UNHCR's view some asylum seekers refused protection in Norway would qualify for protection under UNHCR's mandate, such as those from Central and Southern Iraq. In the case of joint charter flights to Afghanistan, UNHCR found that Sweden (but not Norway) and returned individuals against the advice contained in UNHCR's eligibility guidelines.

UNHCR staff who interviewed returnees on arrival in Iraq received few complaints about the return operation itself. When staff noticed that returnees were waiting for long periods at the airport, they asked the Norwegian authorities to provide families with sufficient milk and nappies for infants.

IOM was reported to be running orphanages in Afghanistan to which children will be returned. It is expected that Norway will monitor the standards of care in those orphanages.<sup>294</sup>

### Notification of Return Operations

The monitoring bodies are not generally informed of return operations in advance: they investigate when they receive complaints or become aware of a problem via other channels, such as media reports.

UNHCR, however, requested to be informed about joint charter flights to Iraq. Norway was reluctant to provide any information in advance of flights, but a compromise was reached where UNHCR was informed after flights had taken off.

### Monitoring of Individual Cases

Individual cases are not monitored as a general rule. The Trandum Supervisory Board, however, looks into individual complaints. If a detainee claims that they have not been treated in accordance with human rights standards, the Board will talk to the detainee and centre managers and, when appropriate will ask the managers to remedy the situation. The matter will be reported. A dedicated post box is available detainees so that they can write to the Board and there are posters in several languages giving information about it. In practice very few detainees make use of this facility.

### Specific Tasks, Intervention Powers and Reporting Duties

The Ombudsman produces a general report to Parliament annually. He issued a special report following a visit to the Trandum detention centre in 2006 and a second visit in 2008 was featured in regular report<sup>295</sup>. The 2006 visit was initiated on the basis of a visit to the Immigration Police Service in November 2005 and media attention.

The Trandum detention centre's supervisory board is required to visit the centre at least twice a year. After each visit a report is submitted to centre management, making observations and recommendations. Centre management responds in writing, reporting on any action that has been taken as a result of the Board's report.

The Board is only concerned with how a detainee is treated in the centre; they do not discuss his/her immigration/asylum case.

The Board visits at the discretion of the Chair, which is as often as the Board members' are able to fit in with their other commitments. They expect to be notified by centre management if a special situation arises or if persons in need of particular monitoring are present in the centre.

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<sup>294</sup> IOM has been consulted by Norway and other EU countries to this regards, however, the organisation is not involved with forced return of this group and no reception centre has been established by IOM.

Letter from IOM, 4 November 2011

<sup>295</sup> [Dokument nr. 4:1 \(2006-2007\)](#), Sivilombudsmannen, 15.02.2007 and [Besøk til Politiets utlendingsinternat høsten 2008](#), Sivilombudsmannen 29.04.2010 (sak 2008/1966)

Centre management reports monthly to the Board on incidents where force has been used and the use of security cells. Visits may be unannounced.

In 2010 the board visited Trandum nine times, mainly because they had learned that the centre was very full and that some of the detainees were there for a long time.

The Board produces an annual report for the Chief of the Immigration Police Service, which is published on the Justice Department's web site.

Police escorts on flights have to produce a report afterwards. If no concerns have been noted, the report will be placed in the returnees' file. If an incident has taken place, the matter will be investigated.

### **Finance**

All the bodies that have a role in monitoring, except UNHCR, are directly and fully funded by the State. The Trandum supervisory board is funded by the Immigration Police Service. Respondents were unable to provide data on financial costs, as the cost of monitoring of returns could not be disaggregated from the cost of the institution as a whole. UNHCR has ceased its monitoring of returns to Afghanistan because of lack of resources.

## **3.0 Human Rights & Treatment of Vulnerable Persons**

### **Monitoring of Compliance with Human Rights Standards**

For the Ombudsman, national law is the starting point i.e. the Constitution and Human Rights Act, which transposes the most important international human rights instruments into national law. The guidance of the European Committee for the Prevention of Torture (CPT) is seen to be particularly valuable, but Ombudsman is also guided by European prison rules, the European Convention on Human Rights (ECHR) and, since its transposition in December, the Returns Directive.

Trandum Detention Centre staff report studying the practice and standards operated by other European countries.

Escorts on aircraft have to include at least one police officer in charge, who will submit a report after the flight. When incidents of concern are reported, they are followed up by the police service.

### **Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase**

The National Police Immigration Service had one complaint in 2010.

### **Special Provisions for Monitoring the Return of Vulnerable Individuals**

The Ombudsman for Children and the Equalities Ombudsman are responsible for safeguarding the rights of children and groups who may be vulnerable, such as single women and disabled

people. The Ombudsman for Children, for example, has on at least one occasion asked the police questions regarding their choice of methods in forced returns involving children, and stressed the importance of the best interest of the child as a primary consideration when carrying out forced returns.

The Child Welfare Service is responsible for the care of unaccompanied asylum seeking children under the age of 15, while the Immigration Department has care responsibility for those aged 15-18. A provisional guardian or guardian is appointed for unaccompanied minor asylum seekers by the Office of the Public Guardian in the municipality in which he/she is staying. The level of expertise, willingness to intervene and availability of provisional guardians varies greatly from municipality to municipality.

If a child is detained at Trandum, the National Police Immigration Service will inform the Child Welfare Service, if they deem it necessary.

A Green Paper on children fleeing their country will be published in the summer of 2011.

## 4.0 Conclusions and Recommendations

The advantages of a monitoring system largely centred on the role of Ombudsmen include:

- a high level of public confidence;
- a record of demonstrable influence;
- Ombudsmen have the power to launch an investigation following individual complaints or at their own initiative;
- costs of establishing and running a discrete system are avoided.

The main disadvantages are that returnees may be unaware of their right to contact the Ombudsmen, may have practical difficulties in doing so, or may not be convinced of the benefits of doing so after having left Norway. The Ombudsmen have limited resources and a broad remit, so investigations are infrequent.

The Police bodies also have the advantage of being mainstream organisations, so do not carry additional costs. As with Ombudsmen, returnees may be unaware of their right to lodge a complaint about police officers' behaviour, or there may be practical impediments to doing so, particularly if their complaint concerns treatment on board an aircraft, or after arrival in the country to which they are being returned. They may fear making a complaint about the police. The Immigration Police Service report receiving very few complaints: less than 10 a year.

The establishment of the Supervisory Board of the Trandum Detention Centre can be seen as a result of a successful intervention by the Ombudsman, alongside a critical report of the CPT, and interventions by the Board have led to improvement in conditions in the detention centre. The Supervisory Board has closer contact with staff and detainees than can be maintained by



the Ombudsman. The Board reports having made two inspections in 2008, five in 2009 and nine in 2010, compare to two visits by the Ombudsman in 2006 and 2008.

Nevertheless NGOs argue that a permanent presence or more frequent visits by monitors are needed. Moreover, some interviewees, have noted that the Trandum Detention Centre was closed for refurbishment in early 2010 only after the intervention of the Norwegian Labour Inspection Authority (NLIA), following incidents of arson. The NLIA, which is concerned with working conditions, also found the high proportion of detainees to staff to be unsafe. Those interviewees considered that a more effective supervisory board would have averted this situation. The Board argues, however, that it did report on the high detainee/staff ratio on numerous occasions, expressing its concern that this impinged on detainees' rights, but that it has no power to enforce its recommendations.

Some interviewees felt that the board was overly concerned with monitoring the quality of food and cleanliness of sanitary facilities and paid insufficient attention to more serious issues, such as the rising number of incidents involving the use of force by staff, despite a drop in the number of detainees. The Board maintains that it has been concerned with the quality of food and hygiene because they affect the health and welfare of detainees: the prevention of sickness is a key concern when so many people are held in one place. It receives monthly reports on the use of force and noted an increased use of force and of isolation cells when the number of detainees was high. This was usually shortly before the detainees' date of departure and particularly before return charter flights. The use of force has since diminished.

Several interviewees expressed concern that the system relies on returnees making complaints: the organisations responsible for monitoring are largely reactive. Despite efforts by the authorities to inform them of their right to complain (e.g. on arrival at the Trandum detention centre), it was thought that returnees in detention or on board return flights would often be unaware of their right to lodge a complaint or might face practical or other obstacles. Those who had already been returned may well fail to see the utility of making a complaint.

Some detainees may be in a position to lodge a complaint through a lawyer, however, legal aid ends with the final negative decision. As detention at Trandum has to be ordered by a Court (within a maximum of three days, but usually 24 hours), detainees are provided with a lawyer. The legal assistance is for the detention issue, however, and lawyers may not have the capacity to support complaints.

A representative of UNHCR saw Norway's monitoring system as part of a broader picture in which Norway takes a holistic approach to return, going to considerable efforts to encourage voluntary return and avoid the need for enforcement. She felt that the Tripartite Agreement on Returns to Afghanistan<sup>296</sup> provided a good model, in that it ensured that the Agency was informed of flights in advance. The structure of Norway's reintegration programmes benefit those whose return is forced as well as those who return voluntarily.

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<sup>296</sup> See Tripartite Memorandum of Understanding (the MoU) between the Government of Norway, the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR), <http://www.unhcr.org/430afab82.html>

Several interviewees acknowledged that the monitoring system was weak when it came to return flights, but there was almost universal awareness that the more significant gap was at the end of the process: little effort or no effort was made to monitor what happened to people on or after arrival in the destination country.

Some interviewees, including the representative of the Ombudsman, felt that the success of the Norwegian model was largely due to the high standards of conduct of police officers and other officials involved in the returns process. He felt that if there was a major problem, the Ombudsman would hear about it and take appropriate action. Others felt that returnees would have numerous problems to cope with after being returned and would be unlikely to make complaints to the Ombudsman.

A sharp rise in asylum applications (up 19% in 2009, though they dropped off somewhat in 2010) has been matched by an increase in forced returns, from 2,326 in 2008 to 3,343 in 2009 and 4,615 in 2010, a rise of 38% from 2009<sup>297</sup>. Increasingly hostile public attitudes have pushed the issue high up the political agenda. Some interviewees felt that this meant that financial resources were not an obstacle in this area.

A Norwegian government white paper<sup>298</sup> on the implementation of the Return Directive published in 2010 alludes to the possibility of extending the scope of the Trandum holding centre's Supervisory Board such that it would monitor the return process in general and not just the conditions in the centre. The Board itself, however, does not consider it has the capacity to extend the scope of its work: its members are all in full time work and have difficulty in finding time to monitor the Trandum centre.

In the autumn of 2010 the NGO Peoplepeace asked the Department of Justice if they could send monitors on return charter flights. On 31 March it wrote to the Department on behalf of a range of NGOs<sup>299</sup> requesting a dialogue on how best to implement article 8 (6) of the Return Directive. All support the idea of independent monitoring before, during and after return operations.

While the Ministry of Justice is considering its position on monitors on board return flights, the respondent from the police service was confident in the standards of conduct of officers escorting returnees and was open to the idea. A representative of the Ombudsman could see merit in having observers present on charter flights, but felt that it would not be practical for them to be present on board commercial flights carrying, for example, a single returnee with two escorts.

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<sup>297</sup> NRK, Norge har en streng asylopolitikk sammenlignet med andre land, 20.01.2011 <http://www.nrk.no/nyheter/norge/1.7471556>

<sup>298</sup> Prop.3 L (2010-2011) 7.1.5

<sup>299</sup> Norwegian Red Cross, Amnesty International, Save the Children, Norwegian Peoples Aid, the Norwegian Helsinki Committee, The Norwegian Church (Mellomkirkelig råd), Norwegian Organisation for Asylum Seekers (NOAS), Self Help for Refugees and Asylum Seekers (SEIF) and others.

There was near universal agreement amongst interviewees that the most serious gap in Norway's monitoring system is the absence of monitoring on arrival in the destination country and afterwards. Two recent case high profile removal cases have drawn media attention: one, a young of woman from North Ossetia<sup>300</sup>, the other a Kurd who was reported to have been tortured after being returned to Syria<sup>301</sup>. The young woman moved to Poland within a few weeks of being removed to Moscow, and is awaiting implementation of new regulations that might give her the possibility to move back to Norway. A third case resulted in a refused asylum seeker being interrogated and imprisoned after being returned to Iran<sup>302</sup>. One respondent, an asylum lawyer, reported a case of a young Chechen being arrested and tortured after being returned.

While the Government of Norway has concerns about infringing the sovereignty of the destination state, UNHCR's activities in Iraq and Afghanistan are an indication of the possibilities for constructive engagement in this area. Plans by the NGO Peoplepeace to expand its monitoring of individuals post-return, subject to finding funding, appear to be broadly welcomed.

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<sup>300</sup> BBC, *Why Norway deported its 'Norwegian of the year'*, <http://www.bbc.co.uk/news/world-europe-12309321>

<sup>301</sup> See Amnesty International om Abdulkarim Hossain, <http://www.sos-rasisme.no/start/print/13961>, Nærmere løsning for Abdulkarim Hossain?, <http://www.sos-rasisme.no/start/print/14060> and *Abdulkarim Hossain was tortured in Syrian captivity*, <http://www.sos-rasisme.no/start/print/14149>

<sup>302</sup> Nytid, *Teenager imprisoned after being deported to Iran*, 23.03.10  
<http://www.peoplepeace.org/web/index.php?section=article&subsection=45>

## Poland

### 1.0 Introduction and Background

#### Introduction of Forced Return Monitoring System

The forced monitoring system has not been yet implemented in Poland. According to Article 20 of the Returns Directive 2008/115/EC, the provisions of the directive were to be implemented into Member States law by 24 December 2010. Currently it is difficult to assume when provisions of directive will be implemented into internal law. The process of implementation of the directive is connected with preparation of completely new draft act on foreigners.

#### Reasons for Implementing a Forced Return Monitoring System

In 2004/2005 a need was felt to have monitors present in the pre-departure and pre-return phase. The cooperation between NGOs was very strong and thus it was decided that NGOs would monitor in these.

#### Objective/Benefits of the Forced Return Monitoring System

The HNLAC in cooperation with the UNHCR National Office has been realizing the Access Management and Support Program (AMAS) programme since 2003. The main objectives in have been the monitoring of Guarded Centres and Eastern Polish border, securing the realization of the non-refoulement principle, improving the access to territory of Poland and implementing the Refugee Status Determination (RSD) procedure for persons seeking protection. HNLAC also monitors individual cases of asylum seekers which are supported by monitoring reports and conducts trainings for Border Guards aimed to support accessibility to the refugee status procedure.<sup>303</sup>

The implementation of the program reduced the number of potential cases of breaches of the non-refoulement principle as well as increased the accessibility to the refugee status procedure thus raising legal awareness of foreigners. Trainings for the Border Guards have been organized within the framework of the program and the standard of application of the provisions of law improved.<sup>304</sup>

Moreover HNLAC has been encouraging the foreigners to inform the Centre about the cases of potential breaches of the non-refoulement principle.

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<sup>303</sup> Written replies to questionnaire, Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011

The Access Management and Support Program has been conducted by The Halina Nigec Legal Aid Centre independently of the Returns Directive 2008/115/EC.

<sup>304</sup> Written interview response from Andrzej Jakubaszek, Polish Border Guards HQ, 16<sup>th</sup> December 2010

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### Features of the Forced Return Monitoring System

#### Number and Types of Organisations and Monitors Involved

The main non-governmental organizations dealing with the subject are the Helsinki Foundation for Human Rights (HFHR), the Halina Nieć Legal Aid Centre (HNLAC, Centrum Pomocy Prawnej im. Haliny Nieć) and the Association of Legal Intervention (Stowarzyszenie Interwencji Prawnej).

The ombudsman is more involved when it comes to monitoring in the context of Polish law while NGOs monitor the activities being implemented and support individuals who request monitoring. Suggestions raised by the ombudsman are more binding than those raised by NGOs.

#### Involvement of Monitoring Organisations by Phase of the Forced Return Procedure

When an alien is instructed by the authority responsible for issuing a decision on expulsion, he/she is informed about the right to contact NGOs representatives. This information is also available on notice-boards in expulsion or detention centres. The individual concerned can then request the monitoring of the forced return procedure by NGO representatives. With the consent of the deportee, NGO representative may also take the initiative and visit one of the detention centres during the pre-return and pre-departure phases. With the consent of the individual NGO representative may visit the detention centre during the pre-return and pre-departure phase. Monitors advise on ways how to ensure optimal conditions during the return process. The NGOs prepare reports from their monitoring service inside the detention centres which are submitted to the Border Guard for their consideration. The monitor has the possibility to engage with the deportee during this procedure, e.g. by providing legal assistance.<sup>305</sup>

The role of ombudsman is to monitor the implementation of the monitoring system into Polish law. Exceptionally upon the request of third country national or non-governmental organisation ombudsman may monitor practical activities by obliging executing institution to report on a/m activities.<sup>306</sup>

The HNLAC is involved in the first phase of forced return. The HNLAC at the request of the asylum seeker monitors if the decision was issued in accordance with Polish law. If there are any doubts the HNLAC lawyers help the asylum seeker to write an appeal to the court in order to verify the administrative proceedings. The role of the HNLAC is also to monitor the potential cases of denying entry into to Poland to persons who are planning to seek asylum. They conduct their work by visiting detentions and accepting requests made by others on particular cases of migrants.

HFHR monitors on a voluntary basis and is involved in the pre-departure phase. HFHR conduct their work by visiting detentions and accepting requests made by others on particular cases of

<sup>305</sup> Written replies to written questionnaire from Mariola Slomian, Polish Border Guards HQ, 20<sup>th</sup> September 2010

<sup>306</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

migrants. They provide legal assistance as well as help relatives by trying to procure the documents which could help the migrants' case.<sup>307</sup>

### Notification of Return Operations

The Ombudsman is informed about the expulsion date directly by executing institution upon his request. Alternatively the information on this issue may be passed by third country national or NGOs being engaged.<sup>308</sup>

The Border Guards do not inform the HNLAC about time and date of the return operations. The HNLAC receives information about time and date of the return operation from its clients. HNLAC has been encouraging the foreigners to inform the Centre about the cases of potential breaches of the non-refoulement principle by all possible means of communications including a fax and a telephone.<sup>309</sup>

HFRH has good relations with the Polish Border Guards who would contact them in case they are aware of a person who would need legal aid. The asylum seekers can contact with them by phone, fax and e-mail. They do not often get requests to visit detention.<sup>310</sup>

### Monitoring of Individual Cases

The Ombudsman exceptionally and upon the request of third country national or NGO being engaged would monitor individual cases.<sup>311</sup>

The HNLAC monitors the specific cases at the request of the asylum seeker or its partner – UNHCR National Office. The monitoring of a specific case is undertaken also if a potential breach of non-refoulement principle is noticed by the Centre. The HNLAC monitors approximately 250 forced return cases per year.

HFHR provides legal assistance monitors the return and deportation decisions asylum seekers and immigrants.

### Specific Tasks, Intervention Powers and Reporting Duties

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<sup>307</sup> HFRH is also involved in the legal phase of forced return. They haven't accompanied the migrants on the planes. They conduct their work by visiting detentions, providing legal assistance and accepting requests made by others on particular cases of foreigners. HFHR work includes drafting appeals and other official letters, legal representation in the administrative stages of asylum procedure, interventions in individual cases HFRF goes to detention promoting their work and inviting migrants to come forward with their problems and HFRH sees in which way they can assist them. HFRH mainly provides legal assistance as well as helping relatives in trying to procure the documents which could help the migrants' case.

<sup>308</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

<sup>309</sup> Written response to questionnaire from Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011

<sup>310</sup> Written interview response from Ewa Ostaszewska, Helsinki Foundation for Human Rights, 31<sup>st</sup> March 2011

<sup>311</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

The ombudsman may be one of the actors in the process of monitoring of forced return. However if the ombudsman monitors the law or action undertaken in this field, the power of his report may be stronger thus influencing the implementation of his recommendation.<sup>312</sup>

The task of the HNLAC's team employed in the AMAS Programme is to monitor the situation of asylum seekers who have potential difficulties in accessing the RSD procedure in Poland. If such persons request the HNLAC's assistance they are provided with legal aid and information relevant to their case. The cases of breaches of non-refoulement principle as well as difficulties in accessing the RSD procedure identified by monitors are a subject of interventions adequate to the case. The interventions consist in presenting the problem to the relevant authorities, such as The Office for Foreigners, Border Guards, UNHCR, Polish Ombudsperson as well as in legal interventions which include preparation of claims, motions, appeals, motions as to evidence, complaints to Administrative Court.

The cases of breaches of non-refoulement principle as well as difficulties in accessing the RSD procedure identified by monitors are a subject of interventions adequate to the case. The interventions consist in presenting the problem to the relevant authorities, such as The Office for Foreigners, Border Guards, UNHCR, Polish Ombudsperson as well as in legal interventions which include preparation of claims, motions, appeals, motions as to evidence, complaints to Administrative Court. All the relevant data gathered through monitoring of the Guarded Centres is documented by the monitors. Also each visit at entry point is supported by a monitoring report. Each year this information is summarised in the final reports on conditions of access of the asylum seekers to the RSD procedure in Poland. Such reports are presented to the UNHCR Regional Representation for Central Europe in Budapest. The HNLAC monitors also prepare situation reports for each specific case. These reports are sent to the UNHCR National Office in Warsaw.<sup>313</sup>

## Finance

The Ombudsman is financed by the Polish authorities and NGOs are subsidized by the Polish authorities and they also make use of the main EU funds dealing with return together with their own resources.<sup>314</sup>

## 3.0 Human Rights & Treatment of Vulnerable Persons

### 3.1 Monitoring of Compliance with Human Rights Standards

These indicators/benchmarks used in order to make sure that monitoring is in line with the human rights are the following:

- access to the territory of Poland,

<sup>312</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

<sup>313</sup> Written response to questionnaire from Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011

<sup>314</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 16<sup>th</sup> December 2010

- access to legal information,
- access to legal remedies,
- access to assistance provided by different NGOs,
- conditions in Guarded Centres and at entry points,
- situation of vulnerable groups (especially children).<sup>315</sup>

The Ombudsman uses the same indicators.<sup>316</sup>

### Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase

The HNLAC not only monitors the situation of asylum seekers in Guarded Centres and at entry points, including forced monitoring cases, but also provides legal aid and information during each monitoring visit and in the office for all asylum seekers who contact the HNLAC and ask for help.<sup>317</sup>

## 4.0 Recommendations & Conclusions

The main focus of the AMAS Programme is to strive for a better mutual cooperation with the Border Guards aiming at improving the access to territory of Poland, improving access to RSD procedure and establishing respect for the non-refoulement principle. The Border Guards officers are by large the first contact law enforcement agency that confronts aliens and asylum seekers upon their arrival to Poland. The knowledge and competence of the Border Guards determines therefore the shape and direction of proceeding on further levels sometimes also influencing the final decision. Therefore each year the HNLAC organises 3 trainings for 20-25 Border Guards involving protection issues, legal standards and human rights notions, along with special components devoted to vulnerable groups and special proceedings in sensitive case. The Border Guard officers value these trainings and admit that they are very helpful in their contacts with asylum seekers.

Moreover, to increase the number of monitoring visits in the Guarded Centres and on the border which would allow real assessment of realization of the non-refoulement principle and better monitoring of forced return, the HNLAC needs more financial resources to maintain bigger monitoring team.

Polish authorities consider present cooperation with non-governmental partners in the field of monitoring of forced return activities as an essential element in the return procedure. One should assume that current cooperation should be extended to other phases of the return process. Such cooperation should be also strengthened by implementation of practical solutions

<sup>315</sup> Written response to questionnaire from Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011

<sup>316</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

<sup>317</sup> Written response to questionnaire from Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011



into legal system. Thus currently this issue is one of the elements being processed in shaping the new law on foreigners.<sup>318</sup>

The HNLAC can provide their knowledge and expertise with regards to monitoring the situation of asylum seekers. They HNLAC see also potential in its links and good co-operation with UNHCR, Border Guards, Police and other NGOs such as IOM and La Strada Foundation.<sup>319</sup>

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<sup>318</sup> Written interview response from Andrzej Jakubaszek, Border Guards HQ, 8<sup>th</sup> April 2011

<sup>319</sup> Written response to questionnaire from Katarzyna Przybyslawska, Halina Nieć Legal Aid Centre, 8<sup>th</sup> March 2011

## Switzerland

### 1.0 Introduction and Background

#### Introduction of Forced Return Monitoring System

In 2004, the '**Expert Committee on Return and Removal**' was set up jointly by the Conference on the Cantonal Justice and Police Directors (CCJPD) and the Federal Department of Justice and Police (FDJP)<sup>320</sup>. The Expert Committee is led jointly by the Vice-Director of the Division Asylum and Return in the Federal Office for Migration (FOM), and the Head of the Association of the Cantonal Migration offices (ACM). There are 8 members, four representing the cantons and four the Confederation. The secretariat is located in the FOM. The mandate of the Committee is to make recommendations of an institutional and/or organizational nature in order to improve the quality of return operations. Specific objectives include:

- Analysing developments in the field of return and removal;
- Ascertaining the necessity for actions/optimisations; and if deemed necessary
- Developing removal instruments (e.g. laws, by-laws, manuals).<sup>321</sup>

The **legal basis for the supervision of deportations by air took effect on 1 January 2011**. It is foreseen that by the middle of the year, the majority of special charter flights are observed by independent monitors.<sup>322</sup>

**Table 21: Overview Flights – Level 1 to Level 4**

Flights	Description	Percentage of Returnees	Monitoring
Level 1	The deportee is accompanied by police members to the aircraft (commercial flight), but then travels alone.	<b>Percentage 2010:</b> (total returns; 8'059 people) Deportee Level 1: 67% (Level 1-4 concern forced repatriations. 2010 = 71%. 29% concern people who return voluntary)	Possible, but only randomly
Level 2	The deportee is accompanied by	2010: 2%	Possible, but only

<sup>320</sup> The Political Affairs Division IV (PD IV), Human Security, of the Federal Department of Foreign Affairs (FDFA) is dealing with peace, human rights, migration and humanitarian policy issues. PD IV is a member of the Expert Committee in the discussions about the Swiss forced return monitoring system.

<sup>321</sup> Von Arb, Urs (2005). Development of Common Return Best Practice Handbook for Selected Countries of the Enlarged EU and Romania, Conference, 9-10 June 2005, Vienna

<sup>322</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

Flights	Description	Percentage of Returnees	Monitoring
	police members till arrival at the final destination. They travel on a commercial flight.		randomly
Level 3	The deportee is accompanied by police members on a commercial flight. As against Level-2-repatriations, the deportee can be handcuffed and shackled.	For the time being, this kind of deportation is not practised anymore	
Level 4	This level is called for when a person is likely to offer a high degree of resistance and thus cannot be transported on a scheduled flight. The deportee is accompanied by police members on a specifically for this purpose chartered aircraft. Handcuffs and shackles are used during some or all stages, depending also on the behaviour of the deportee(s).	2010: 2%	Yes

In the meantime, **random checks will be carried out by the members of the National Commission for the Prevention of Torture**<sup>323</sup> (NCPT). A first joint flight was accompanied by the NCPT shortly after its initiation in 2010.<sup>324</sup> This step was taken by the NCPT not with the Return Directive in mind, but with their conferred role according to Article 2 of the *Federal Law on the Commission for the Prevention of Torture*<sup>325</sup> based on which the NCPT has the authority to examine the situation of a person who is deprived of liberty.<sup>326</sup>

<sup>323</sup> In order to implement the optional protocol to the UN Convention against Torture in Switzerland, on 1 January 2010 the Federal Council appointed a National Commission for the Prevention of Torture composed of experts in the fields of medicine, law, criminal prosecution and punishment and measure enforcement.

Based on article 2 of the Federal Law on the Commission for the Prevention of Torture, the NCPT reserves its right to carry out random checks in any kind of institutions where a person is deprived of liberty and may be at risk of any inhuman or degrading treatment. In the same way as the Commission independently decides to visit a prison or medical institution, members of the Commission have accompanied a small number of forced return flights in the past.

Email correspondence with Ms Talia Sheikh, National Commission for the Prevention of Torture, 22<sup>nd</sup> March 2011.

<sup>324</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

<sup>325</sup> Loi fédérale sur la Commission de nationale prévention de la torture du 20 mars 2009 <http://www.admin.ch/ch/f/rs/1/150.1.fr.pdf>

<sup>326</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

## Reasons for Implementing a Forced Return Monitoring System

The forced return monitoring system was introduced in Switzerland **in response to the adoption and implementation of the Return Directive**.<sup>327</sup> The implementation of such a system has been welcomed by the Swiss Refugee Council (SRC).<sup>328</sup> During 2010 several adjustments had been made to the operational handling of the technical procedures as well as in other domains. The death of a detainee from Nigeria on 17 March 2010, shortly before he was to board a chartered flight, led to further adjustments. Among others it was decided that a doctor has to be on board of *every* special flight, instead of only *selected* flights.<sup>329</sup>

## Objective/Benefits of the Forced Return Monitoring System

The primary purpose of a monitoring system is to **ensure compliance with the national and international human rights** during all stages of the return procedure. The conclusions drawn from these observations are expected to help optimise deportation procedures and make them more transparent. This in turn is expected to lead to greater acceptance of the removal procedure by the public.<sup>330</sup>

## 2.0 Actors, Information Systems, Monitoring Tools, Methods

### 2.1 Features of the Forced return Monitoring System

#### Number and Types of Organisations and Monitors Involved

According to Article 15g of the *Regulation on the Implementation of the Deportation of Foreign Nationals* (VVWA<sup>331</sup>, SR 142 281), monitoring will be carried out by **third parties** – contracted by FOM – that are **independent** from foreigners or asylum related procedures or related to the execution of removal and deportation.<sup>332</sup> So as to guarantee transparency, the SRC would welcome a central role for civil society. This could include NGOs in the field of migration and asylum and UNHCR involved in the advisory board.<sup>333</sup>

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<sup>327</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

<sup>328</sup> Written interview response from Ms Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011

<sup>329</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

<sup>330</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

<sup>331</sup> Verordnung vom 11. August 1999 über den Vollzug der Weg- und Ausweisung von ausländischen Personen

<sup>332</sup> Legal base: Art 15f of the by law on the Execution of the removal of foreigners VVWA, SR 142.281 - (Art. 71a Abs. 1 AuG)

<sup>333</sup> Written interview response from Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011

A tendering process was initiated in November 2010 by the FOM.<sup>334</sup> The evaluation process took longer than expected and is not finished; consequently, a service provider has not been appointed yet.

**Requirements of the Service Provider:**

- The service provider may be an individual person, a group of people or a legal entity,
- The service provider shall be particularly competent to monitor the police return process by air, particularly in relation to the legal conformity of the state procedures, proportionality and overall evaluation of the behaviour of the authorities and the people being returned,
- The service provider shall have the necessary professional, social and psycho-social abilities to fulfill the mandate. He or she commits to continuously promoting these competences and to further developing them in a sustainable way,
- The service provider shall be able to communicate perfectly in the languages German, French and English at a professional and factual level,
- The service provider shall be independent and shall not carry out any further mandates for Federal or canton authorities in the area of migration,
- The service provider is obliged to respect confidentiality and is subject to the Official Secrets Clause (Art. 321 Swiss Penal Code; SR 311) in the context of his/her work on implementation monitoring. He/she is externally defined as an objectively independent professional of the Federation.<sup>335</sup>

**Involvement of Monitoring Organisations by Phase of the Forced Return Procedure**

According to Article 15f of the VVWA the monitoring of deportations by air encompasses the following phases:

- Transfer to the airport;
- Organization on ground at the airport;
- In-flight;
- Arrival and hand-over to relevant office in destination country. If the concerned persons cannot be handed over in the country of Destination in this case the monitoring also encompasses the flight back to CH, the arrival at the airport and the handover to the responsible cantonal office.<sup>336</sup>

**Notification of Return Operations**

<sup>334</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Department of Justice and Police, 21 December 2010

<sup>335</sup> Confedrate Justice and Police Department (EJPD)\_invitation for tenders - the publication of the monitoring mandate in 3 Swiss Newspapers (NZZ, Tagesanzeiger and Le Temps) in December 2010 (Ausschreibung des Mandats zum ausländerrechtlichen Vollzugsmonitoring im Rahmen der Richtlinie 2008/115/EG des Europäischen Parlaments und Rates vom 16. Dezember 2008 über gemeinsame Normen und Verfahren in den Mitgliedstaaten zur Rückführung illegal aufhältiger Drittstaatsangehöriger (EU RF-RL))

<sup>336</sup> Legal base: Art 15f of the by law on the Execution of the removal of foreigners VVWA, SR 142.281 - (Art. 71a Abs. 1 AuG)

In the present situation the FOM informs the NCPT about planned forced return flights.<sup>337</sup> As soon as the FOM has decided on a special flight and all organizational matters are settled, the NCPT is informed. Information consists of Date/time/destination/flight time, number and nationality of detainees as well as special information on individual cases if deemed necessary. This information may be adjusted during the interval between the announcement of the flight and the actual flight date, due to changes which can always occur in the meantime (annulment of deportation for individual cases, change in flight route etc.) The organisation in charge with the task of monitoring special charter flights will be given due notice of all planned and scheduled special charter flights and will be informed if vulnerable persons are involved. Observer's participation is discretionary.<sup>338</sup>

### Monitoring of Individual Cases

The invitation for tender foresees at least 25 joint flights per year. This is according to SRC, about half of the yearly removals.<sup>339</sup>

### Specific Tasks, Intervention Powers and Reporting Duties

According to Article 15h of VVWA, the monitoring may involve the following tasks:

- **Reporting Duties:** In addition to providing **regular reports** to the FOM about all accompanied deportations, the monitor will **create annual activity reports** for the Federal Department of Justice and the Police (FDJP) as well as the Conference on the on the Cantonal Justice and Police Directors. The FOM is responsible for making this information publicly available.<sup>340</sup>
- **Intervention Powers:** Monitors may inform the responsible escort leader during deportations about concerns and remarks. Following consultations with the team leader, the monitor will be able to talk with the deportee.<sup>341</sup>
- **Involvement in Preparation:** Monitors may partake in meetings for the preparation of a deportation via air.

### Finance

The monitor will be commissioned by the federal government on the basis of agreements for the job and will be compensated a flat rate.<sup>342,343</sup> The service provider is administratively under the FOM, but works independently.

<sup>337</sup> Email correspondence with Talia Sheikh, National Commission for the Prevention of Torture, 22<sup>nd</sup> March 2011

<sup>338</sup> Written replies to the questionnaire from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 18 February 2011

<sup>339</sup> Written interview response from Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011

<sup>340</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

<sup>341</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

<sup>342</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

## 3.0 Human Rights & Treatment of Vulnerable Persons

### Monitoring of Compliance with Human Rights Standards

The expectation is that human rights standards and human dignity are respected during all stages of forced repatriation by air. At the time of writing this report, the specific indicators and benchmarks to assess whether the return meets the international human rights standards were yet to be determined by the FOM.<sup>344</sup>

#### Monitoring Access to Remedies of Returnees who believe they have been treated in a way that is not consistent with international human rights standards, within each phase

The competencies of monitors are limited to observation and reporting. If the monitors have complaints, they can address those during the actual repatriation phase to the team leader. They can also voice their dissatisfaction with possible points in their reporting.

#### Special Provisions for Monitoring the Return of Vulnerable Individuals

Vulnerable returnees (Families, women travelling alone with children, elderly people, handicapped or people with diseases) are generally deported via scheduled flights, as opposed to special flights. They are usually accompanied to the aircraft and their needs are fully taken into consideration.<sup>345</sup>

## 4.0 Conclusions and Recommendations

- Based on their legal mandate<sup>346</sup>, the **NCPT continues to be entitled to participate on every flight**, even once a definitive monitoring solution is in place.<sup>347</sup> Nevertheless, capacity constraints may prevent the NCPT from dispatching monitors at high volumes.<sup>348</sup>
- The FOM emphasises that monitoring is a demanding and politically important subject. As such, a solution has to be found that will optimally work for all concerned, most of all for the cantonal offices, which are responsible for the return measures.<sup>349</sup> In particular,

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<sup>343</sup> Art. 15i VVWA, Kostenabgeltung (this is the text of the cost provision: mainly it says that the FOM pays and that the costs are paid in a lump sum) (Art. 71a AuG)

<sup>344</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

<sup>345</sup> Written interview response from Hans-Peter Blum, Federal Office of Migration and Federal Justice and Police Department, 21 December 2010

<sup>346</sup> Art. 2 Federal Law on the Commission for the Prevention of Torture

<sup>347</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

<sup>348</sup> Email correspondence with Talia Sheikh, National Commission for the Prevention of Torture, 22 March 2011

<sup>349</sup> Email Correspondence between Martha Simon Delicata (ICMPD) and Rolf Götschmann (Federal Office of Migration and Federal Justice and Police Department), 30 March 2011

the cantons emphasize that the monitoring should not complicate or impede the often already difficult operational processes regarding forceful deportation.

- **Regular Exchange between Relevant Stakeholders:** SRC encourages a regular exchange in form of a specialized expert panel, consisting of all parties involved in the forced return (monitoring) procedure, so as to ensure transparency and a full understanding of everyone's role in the procedure.<sup>350</sup>
- **Reporting Duties:** SRC encourages sharing the findings of the observation reports as widely as possible between the relevant actors involved in forced return (monitoring).<sup>351</sup>

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<sup>350</sup> Written interview response from Ms Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011

<sup>351</sup> Written interview response from Ms Susanne Bolz Swiss Refugee Council (SRC), 28 March 2011



## Appendix G: Contact Log

Country	Name	Organisation	Research Tool
Austria	Christoph Riedl	Diakonie (protestant church)	Case Study
Austria	Eva Caroline Pflieger	Federal Ministry of Interior of Austria	Case Study
Austria	Isabella Gruber	Federal Ministry of Interior of Austria	Case Study
Austria	Walter Witzersdorfer	Office of the Human Rights Advisory Board	Case Study
Austria	Günter Ecker	Verein Menschenrechte Austria	Case Study
Belgium	Carmen Dupont	Amnesty International Flanders	Case Study
Belgium	Gérald Gaspart and Julie Lejeune	Centre pour l'égalité des chances et la lutte contre le racisme	Case Study
Belgium	Patrick Biegel	L'inspection générale de la police fédérale (AIG) - Directie Audit en Inspectie	Case Study
Belgium	Vanlul Colette and Brenda Melis	Ministry of Interior	Case Study
France	David Rohi	La Cimade	Case Study
France	General address	IOM	Case Study (unavailable)
Germany	Lydia Schauer	IOM	Case Study (unavailable)
Germany	Martin Stark	Die Gesellschaft Jesu	Case Study
Germany	Sabine Mock	DIAKONIE- Frankfurt Main	Case Study
Germany	Andreas Lipsch	Forum Abschiebungsbeobachtung Flughafen Frankfurt	Case Study
Germany	Wolfgang Wurm	Bundespolizeidirektion Flughafen Frankfurt am Main	Case Study
Latvia	Anzelika Alika	Latvian State Border Guard	Case Study
Latvia	Natalija Zaiceva	Latvian State Border Guard	Case Study
Latvia	Santa Tivanenkova	Office of the Ombudsman	Case Study
Latvia	Svetlana Djackova	Latvian Centre for Human Rights	Case Study
Luxembourg	Marc Fischbach	Ombudsman	Case Study
Luxembourg	Pascal Signore	Ministry of Foreign Affairs, Immigration Directorate	Case Study (unavailable)
Norway	Aksel Sorby	Contact Committee	Case Study
Norway	Anne Brodtkorb	Ministry of Justice and the Police	Case Study
Norway	Axel Withers	Trandum Aliens Holding Centre	Case Study
Norway	Eivind Sveum Brattegard	Office of the Parliamentary Ombudsman	Case Study

Country	Name	Organisation	Research Tool
Norway	Helge Lyberg	National Police Immigration Service	Case Study
Norway	Ingrid Lombnæs Lenborg	Legal Department, National Immigration Police Service	Case Study
Norway	Judge Randi Carlstedt	Trandum Detention Centre Supervisory Board	Case Study
Norway	Karin Afeef and Marie Stenstadvold	Norwegian Red Cross	Case Study
Norway	Knut Haanes and Anders Cameron	Children's Ombudsman	Case Study
Norway	Sylo Taraku	Norwegian Organisation for Asylum Seekers (NOAS)	Case Study
Norway	Tormod Bakke	Peoplepeace	Case Study
Norway	Vigdis Vevstad	Norwegian Institute for Social Research	Case Study
Poland	Andrzej Jakubaszek	Border Guards HQ	Case Study
Poland	Ewa Ostaszewska	Helsinki Foundation for Human Rights	Case Study
Poland	Katarzyna Przbyslawska	Halina Nieć Legal Aid Centre	Case Study
Poland	Radoslaw Stryjewski	Ministry of Interior and Administration (Migration Policy Department)	Case Study (unavailable)
Switzerland	Hanspeter Blum	Federal Justice and Police Department and Federal Justice and Police Department	Case Study
Switzerland	Jolanda Pfister	Ministry of Foreign Affairs	Case Study
Switzerland	Rolf Götschmann	Federal Office of Migration and Federal Justice and Police Department	Case Study
Switzerland	Susanne Bolz	Swiss Refugee Council	Case Study
Switzerland	Talia Sheikh	National Commission for the Prevention of Torture	Case Study
Switzerland	Chantal Delli	Contact Committee	Case Study
France	Jacques de Granrut	French Permanent Representation to the European Union	Case Study
Austria	Stephan Wiener	Contact Committee	Country Profile/Validation
Austria	Nadja Hasan	Ministry of Interior	Country Profile/Validation
Belgium	Colette Vanlul	Contact Committee	Country Profile/Validation
Belgium	J Vanleeuw	Contact Committee	Country Profile/Validation
Belgium	Jean Francois Caumiant	Contact Committee	Country Profile/Validation

Country	Name	Organisation	Research Tool
Bulgaria	Plamen Angelov	Contact Committee	Country Profile/Validation
Bulgaria	Nadya Dimitrova	European Institute OBO Ministry of Interior	Country Profile/Validation
Cyprus	Andreas Constantinou	Contact Committee	Country Profile/Validation
Czech Republic	Chmelickov	Contact Committee	Country Profile/Validation
Czech Republic	Daniela Munzbergova	Contact Committee	Country Profile/Validation
Czech Republic	Natasa Chmelickova	Ministry of Interior	Country Profile/Validation
Denmark	General address	Contact Committee	Country Profile/Validation
Denmark	Peter Bartholin	Ministry of Refugee, Immigration and Integration Affairs	Country Profile/Validation
Estonia	Karola Tonov	Contact Committee	Country Profile/Validation
Estonia	Viktor Kaljukivi	Police and Border Guard Board	Country Profile/Validation
Finland	Harri Sivula	Contact Committee	Country Profile/Validation
France	Ziad Khoury	Contact Committee	Country Profile/Validation
France	Annick Anniel	Ministry of Immigration, Integration, National Identity and Cooperative Development	Country Profile/Validation
France	Marie Bouriche	Ministry of Interior	Country Profile/Validation
Germany	Holger Sperlich	Contact Committee	Country Profile/Validation
Germany	Kristin Vogel	Ministry of Interior	Country Profile/Validation
Greece	Balkiza	Contact Committee	Country Profile/Validation
Greece	General email address	Ministry of Citizen Protection	Country Profile/Validation
Hungary	Tibor Istvan Tawacs	Contact Committee	Country Profile/Validation
Hungary	Vivian Vadasi	Contact Committee	Country Profile/Validation
Hungary	Takács István Tibor	Ministry of Interior	Country Profile/Validation
Iceland	General address	Contact Committee	Country Profile/Validation
Iceland	Valgerður María Sigurðardóttir	Icelandic Ministry of Interior	Country Profile/Validation
Ireland	Dan Kelleher	Contact Committee	Country Profile/Validation
Italy	Gennaro Capo	Contact Committee	Country Profile/Validation
Italy	Raffaella Vano	Ministry of Interior	Country Profile/Validation
Latvia	Andrejs Rogozins	Contact Committee	Country Profile/Validation

Country	Name	Organisation	Research Tool
Lichtenstein	Martina Braendle-Nipp	Contact Committee	Country Profile/Validation
Lithuania	Irina Šinderienė	Ministry of Interior	Country Profile/Validation
Lithuania	Agne Putelyte	Contact Committee	Country Profile/Validation
Malta	Andrew Seychell	Assistant Commissioner to the Police (Immigration)	Country Profile/Validation
Malta	Olav Attard	Contact Committee	Country Profile/Validation
Netherlands	Maykel Bouma	Ministerie van Binnenlandse Zaken en Koninkrijksrelaties	Country Profile/Validation
Netherlands	M Bouma	Contact Committee	Country Profile/Validation
Norway	Vigdis Vevstad	Norwegian Institute for Social Research	Country Profile/Validation
Norway	Halvor Frihagen	NGO	Country Profile/Validation
Poland	Witold Klaus	Stowarzyszenie Interwencji Prawnej	Country Profile/Validation
Portugal	Jorge Portas	Portuguese Permanent Representation	Country Profile/Validation
Romania	Alin Vicoleanu	Immigration Office	Country Profile/Validation
Slovak Republic	Ivana Potočková	Contact Committee	Country Profile/Validation
Slovakia	Iveta Zrakova	Contact Committee	Country Profile/Validation
Slovenia	Helena Tomaževič	Ministry of the interior, Police, General Police Directorate, Uniformed Police Directorate, Aliens centre	Country Profile/Validation
Slovenia	Petra Marosa	Contact Committee	Country Profile/Validation
Spain	Emorenot	Contact Committee	Country Profile/Validation
Sweden	Leila el-Fahimi	Contact Committee	Country Profile/Validation
Sweden	Hans Rosenqvist and Per Lovenberg	Swedish National Police Board	Country Profile/Validation
Sweden	Lars-Johan Ionnback	Contact Committee	Country Profile/Validation
Sweden	Liv Feijen	UNHCR Regional Office for the Baltic and Nordic countries, Stockholm	Country Profile/Validation
Switzerland	Chantal Delli	Contact Committee	Country Profile/Validation
United Kingdom	Heather Drysdale	UK Border Agency Returns Liaison Unit, Country Analysis and Returns Strategy Team, DG Central Operations and Performance, Immigration Group	Country Profile/Validation

Country	Name	Organisation	Research Tool
United Kingdom	Heike Nihoul	Contact Committee	Country Profile/Validation
Austria	Elisabeth Wenger	Federal Ministry of Interior	Country Profiles Questionnaire (Pilot)
Luxembourg	Nadine Conrardy	Luxembourg Red Cross	Country Profiles Questionnaire (Pilot)
Poland	Mariola Slomian	Polish Border Guards HQ	Country Profiles Questionnaire (Pilot)
Spain	O. Rivadulla	Spanish National Police	Country Profiles Questionnaire (Pilot)
Switzerland	Vladimir Novotny	Cantonal Police	Country Profiles Questionnaire (Pilot)
Austria	Klaus Krainz	Deputy Head of the Austrian Federal Asylum Office; expert to the Committee of Experts on Legal Aspects of Asylum, Refugees and Stateless Persons (CAHAR) – Council of Europe	Initial Interviews
Austria	Günter Ecker	Verein Menschenrechte Austria	Initial Interviews
Belgium	Doris Peschke	Churches' Commission for Migrants in Europe (CCME)	Initial Interviews
Belgium	Olivier E. de Schutter	Professor at the University of Louvain (Belgium) and at the College of Europe (Natolin).	Initial Interviews
Belgium	Kris Pollett	ECRE	Initial Interviews
Belgium	Pascal Reyntjens	IOM	Initial Interviews
EU	Adriano Silvestri	EU Fundamental Rights Agency, Equality Rights & Citizens' Rights Department	Initial Interviews
EU	Ana Gomes	European Parliament, AFET's DROI sub-committee	Initial Interviews
EU	Claude Moraes	European Parliament, LIBE committee	Initial Interviews
EU	Claus Dechert	Return Operations Sector, Operations Unit, Frontex	Initial Interviews (and i/v on Frontex flights)
EU	Fabian Lutz	European Commission, European Commission	Initial Interviews
EU	Jan Philipp Albrecht	European Parliament, LIBE committee	Initial Interviews
EU	Leonidas Donskis	European Parliament, AFET's DROI sub-committee	Initial Interviews
EU	Mike Stanley and Andy Holden	Eurasylum	Initial Interviews

Country	Name	Organisation	Research Tool
EU	Stephen Davies	European Migration Network, Immigration and Integration Unit	Initial Interviews
Luxembourg	Marc Fischbach	Ombudsman	Initial interviews
United Kingdom	Rosie Grieves	Justice and Home Affairs	Initial Interviews
United Nations	Michele Cavinato	UNHCR Brussels office	Initial Interviews