



Ad-Hoc Query on monitoring of forced returns

Requested by PL EMN NCP on 4th March 2015

Responses from Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom (22 in Total)

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1. Background Information

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. Member States have transposed this Article into national legislation system in many different ways establishing their own monitoring system of forced returns.

Polish forced return monitoring system is based on allowing non-governmental organizations (NGOs) to be present on the airports during the forced return and to observe the return procedures of the border guards officers concerning the returnee. Monitor is allowed to observe whole return process organized on the airport including aircraft embarkation procedures. Monitor is obliged to write a formal report about the return. NGOs are not allowed to access service documentation (medical examination, readmission documentation etc.) or to postpone the return.


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Poland would like to analyze monitoring systems developed in other Member States. Therefore we would very much appreciate information regarding following questions:




1. Who in your country is responsible for return flights monitoring (for example: civil society organisations, migration/law enforcement authorities, ombudsperson)?
2. What are the powers of the monitor (for example: access to service documentation on return, possibility to talk with the returnee, cancel the return, other – please specify)?
3. What is the scope of the monitoring system (for example: charter return flights, regular return flights, assisted voluntary returns)?

We would very much appreciate your responses by **1 April 2015**.




2. Responses

		Wider Dissemination?	
	Austria	Yes	<p>1.The return flight monitoring is carried out by a non-governmental organization (Verein Menschenrechte Österreich), as forced return/human rights monitor which is selected by the Federal Ministry of the Interior. Furthermore forced return flights are also subject to control and monitoring by the Austrian Ombudsman Board (AOB).</p> <p>2.According to Art. 10 of the Regulation Implementing the Aliens Police Act a human rights monitor has to be involved in every forced return that is organized (fully or partly) by the Austrian Federal Ministry of the Interior or that is a Joint Return Operation (pursuant Art. 9 Council Regulation EC 2007/2004). The monitor has to participate from the so-called contact meeting on, when the respective person is psychologically prepared for his return. Apart from regular scheduled flights, the monitor continues his observation until the returned person has reached the destination country, so he accompanies the flight. Subsequently he submits a report on the carried out deportation to the Federal Ministry of the Interior, which then further transmits it in anonymized form to the AOB. Commissions of the AOB also conduct unannounced visits and observations of return flights. The findings obtained by the AOB are used for its annual report, where recommendations to the authorities are made.</p> <p>3.The monitoring system covers charter return flights and regular (scheduled) return flights, but the human rights monitor only accompanies charter return flights.</p>




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	Belgium	Yes	In Belgium an Independent Control Mechanism under the authority of the Minister of the Interior and Justice, a General Inspectorate (“Audit and Inspection”) has been appointed by Royal Decree of 19 June 2012 to monitor the forced return process in compliance with article 8(6) of the Return Directive. It makes a risk assessment prior to any forced return operation. The monitoring may cover the entire course of the operation or part of that mission. It may regard a pre-return phase, a pre-departure phase, a flight procedure, a transit phase and the arrival and include the receipt of removed persons in the country of origin. The monitoring can also be performed from leaving a detention centre, or an airport, or any other institution. When determining an irregularity, the General Inspectorate can make recommendations (to the Police, Immigration Office...) and do the follow-up. The GI may intervene at any time of the operation and, if necessary, may stop the removal operation. The members of the GI have full police competences and full authorisation to control the whole of the procedures. Within the GI, 5 permanent members are charged with the control-audits. The team is completed with two members that were appointed from the Federal Police in the context of this project.
	Croatia	Yes	<p>1. In the Republic of Croatia, forced removal monitoring will be conducted by a Zagreb-based Civil Society Organisation <i>Hrvatski pravni centar</i> (Croatian Law Centre) (Signing of the pertinent Agreement currently underway).</p> <p>2. During escort, an observer is not allowed to disrupt the execution of the escort and may contact only with a police officer in charge of escort. The observer may contact with foreigners being forcibly removed, but is not allowed to provide legal counsel. If the observer notices that fundamental human rights of the foreigner being forcibly removed are being endangered, he/she can directly and immediately notify the contact point of the Ministry (of the Interior) thereof.</p> <p>3. In keeping with the Forced Removal Monitoring Agreement, monitoring of forced removal executed by an aircraft refers to monitoring of the course of action at the Detention Centre, including insight into the forced removal documentation, and to monitoring of the course of action during escort to a Republic of Croatia’s road BCP if the forced removal is being executed by an airplane from a neighbouring country’s airport. Monitoring of forced removal executed by land routes refers to monitoring of the course of action in a police administration, a police station and the Detention Centre, including insight into the forced removal documentation, and to monitoring of the course of action during escort to a Republic of Croatia’s road BCP.</p> <p><i>Source: Ministry of the Interior</i></p>
	Czech Republic	Yes	<p>1. According to the Law on Public Defender of Rights it is the ombudsman who is responsible for return flights monitoring.</p> <p>2. The Police of the Czech Republic and the Ministry of the Interior are obliged to advise the Defender sufficiently in advance of any expulsion, surrender, transit of foreigners across the territory of the Czech Republic and render necessary assistance to the authorised employees of the Office of Public Defender of Rights. The Defender receives copies of all decisions on the detention of foreigners, extension or discontinuation of detention and decisions on the placement of a detained foreigner in a section with the strict regime. At the same time, he also receives copies of court judgments concerning actions against detention lodged by foreigners. Employees authorised by the Defender monitor the treatment of foreigners during their detention and in the course of expulsion.</p>



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			<p>3. In connection with the Return Directive, since 1 January 2011 the Defender has been monitoring the detention of foreigners and the exercise of administrative expulsion, surrender of detained foreigners or their transit across the Czech Republic, and the penalty of expulsion of foreigners who were placed in pre-expulsion custody or are serving imprisonment (hereinafter only the “monitoring of expulsion”). More details regarding particular activities of the office of the Public Defender of Rights in the area of returns monitoring including statistical details could be found via http://www.ochrance.cz/en/monitoring-of-forced-returns/activities/.</p>
	Finland	Yes	<p>1. The Non-Discrimination Ombudsman is responsible for monitoring forced returns.</p> <p>2. The monitor has access to all the facilities where returnees are kept. The monitor has also access to the relevant documentation. She/he is entitled to speak with the returnee/returnee’s family and legal assistant. The monitor can give advice and recommendation concerning the forced deportations. The monitor does not have the right to interfere or cancel the return or impact on the deportation schedules.</p> <p>3. The monitor has the right to monitor all removals from the country. That includes charters, commercial flights and even voluntary returns. The focus is at the moment in forced returns.</p>
	France	Yes	<p>1. According to the French law n°2014-528 of May, 26th 2014, the Controller General of places of deprivation of liberty (Contrôleur Général des Lieux de Privation de Liberté, CGLPL) who is an independent administrative authority, has been designated as “monitor”. “The Controller General of places of deprivation of liberty, as an independent authority, is in charge, without prejudice to the prerogatives that the law assigns to the judicial and jurisdictional authorities, of controlling the conditions in which people deprived of their liberty are supported and transferred, so that their fundamental rights are respected. For the same purposes, he/she monitors the implementation by the administration of the removal measures pronounced against foreign nationals until they are handed over to the authorities of the country of destination.”</p> <p>2. The Controller General of places of deprivation of liberty has the possibility to attend the whole removal process from the place of departure (administrative detention center or place, prison, house arrest) to the transfer of the foreign national out of France by air (scheduled or dedicated flight) or by land or sea. The control does not take voluntary departure of foreign nationals into account. Full access is given to the Controller General of places of deprivation of liberty to follow the proceedings of removal, including within the ports and the airports as well as the means of transport used.</p> <p>3. The monitoring focuses on the means of transfer by air (scheduled or dedicated flight) or by land or sea. There is a particular case for group flights organized under the aegis of FRONTEX, a monitor must be systematically present on board; he/she must not necessarily have the nationality of the organizer country.</p>
	Germany	Yes	<p>In Germany, the effective system to return monitoring is ensured by way of control of service and technical supervision of the immigration authorities, the Federal Police and the police forces of the countries as well as by control by independent courts.</p>




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			Without admission of legal liability, in addition, the Federal Agency for the Prevention of Torture, which operates on the basis of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was admitted to participate on single and multiple removals, as far as Germany is involved here.
	Greece	Yes	<p>1. In Greece, the responsible monitoring System is the Ombudsman Office, which is Independent Administrative Authority.</p> <p>2. The powers of the Ombudsman Office are the followings: a. to observe the implementation of Common Guidelines for Return, the criteria as well as the procurement, which have been issued for this purpose from the Competent Institutions of International Organisations or of the European Union. b. the provision of human rights</p> <p>3. The scope of the Ombudsman Office is to monitor all returns and repatriations of migrants.</p>
	Hungary	Yes	<p>1. The prosecutors (the prosecutor offices are independent judiciary bodies) are responsible for monitoring return flights.</p> <p>2. The prosecutors may at any time and place control the legality of the return operations, the lawful treatment of returnees concerned and the enforcement of provisions enacted to protect the rights of returnees. The prosecutors have access to any file, decisions and documents which are related to the case of the returnee concerned. The prosecutors can be present in every stages of the return procedure (even in the detention centres) and may interview any time the returnees or the staff concerned. The prosecutors are able to instruct the staff of the relevant authorities, which implement the return operations (they are even able to order the interruption of the return operations) to cease non-compliant practices or legal violation by omissions.</p> <p>3. Assisted voluntary return programs and forced return operations (including charter return flights, regular return flights and return operations by land) both may be monitored by the prosecutors; however, only forced return operations have been monitored so far.</p>
	Italy	Yes	<p>1. In Italy, the <i>Consolidated Act on Immigration</i>, Article 13(4), as amended following the transposition of the Return Directive (2008/115/CE), establishes that the <i>Questore</i> (provincial chief of police) should enforce a removal order by having police officers escort the person concerned to the borders. The <i>Central Directorate for Immigration and Border Police</i> in the <i>Department of Public Security</i>, Ministry of the Interior, which deals with migratory phenomena within its mandate of coordinating anti-illegal immigration efforts, <i>is the only national authority that has the power to handle forced returns</i>. The return procedure was regulated by Circular of the Ministry of the Interior, Department of Public Security, 5 May 2010 (Ref: 0002957). This Circular establishes that the return service should be organized by the <i>Questura</i> (provincial police headquarters) of the Province where the person who is the subject of the removal was traced. If the removal decision cannot be enforced immediately and it is provided that the person should be detained in a <i>Centre Identification and Deportation</i> (CIE), relevant responsibilities lie with the <i>Questura</i> of the Province where the CIE is located.</p>






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			<p>2. The <i>Questura</i> has the following responsibilities: to identify the flight and the itinerary to the country of final destination; to assess any risks, for the purpose of determining whether an escort service should be provided; and to check whether the return can take place as planned considering the health conditions of the person concerned.</p> <p>3. Risk assessment is aimed to identify possible criticalities related to the return service and, hence, to decide whether the person concerned should be escorted to the country of destination. If the return takes place by flight, either commercial or charter, the presence is required on board of escort personnel who completed special training courses.</p>
	Latvia	Yes	<p>1. The removal process is observed by the Ombudsman.</p> <p>2. In accordance with the Immigration Law the Ombudsman during the observation (monitoring of forced return procedure) of the removal process is entitled to:</p> <ul style="list-style-type: none"> a. visit the detained foreigners subject to removal at their place of accommodation in order to evaluate the conditions of accommodation and maintenance, also the provision of medical assistance and the satisfaction of other needs; b. question the foreigner in order to determine his or her awareness of the progress of the removal process, his or her rights and the possibility for implementation thereof; c. observe the return of the personal property of the detained person seized at the time of detention, take part in transportation of foreigner from the detention centre to the departure point, handing-over and registration of luggage, as well as participate in the actual implementation of the removal process in order to evaluate the observance of the human rights of the foreigner to be removed. <p>The observer has the right:</p> <ul style="list-style-type: none"> a. to obtain information from the relevant State institution, which is involved in the removal process of foreigners, regarding organisation of the return process of the foreigner and the measures performed; b. to invite specialists (for example, lawyers, medical practitioners, interpreters) for provision of the necessary consultations to the foreigner subject to removal; c. to organise assistance for improving living conditions, pastoral care, as well as the provision of other support. <p>3. The scope of monitoring activities derives from the answers given on the above-mentioned questions. The observer can take part in regular flights, charter flights and joint return flights (under the agreement reached with the organizing state).</p>
	Lithuania	Yes	<p>1. According to the Law on the Legal Status of Aliens, return flights are monitored by the Ministry of Interior together with international and non-governmental organizations.</p> <p>2. At the moment, detailed description of the monitoring procedures is being prepared by the Ministry of the Interior and the Ministry of Social of social security and labour.</p> <p>3. According to the draft document, monitoring system will be applied to the third country nationals with return decision. Monitoring system will not be applied on voluntary returns.</p>



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	Luxembourg	Yes	<p>1. In Luxembourg the forced returned monitoring is foreseen by the amended grand ducal regulation of 26 September 2008 establishing the code of good conduct for the agents enforcing return decisions. Article 6 paragraph 2 establishes that an impartial, neutral and independent observer must be part of the escort. The Luxemburgish Red Cross plays an auxiliary role to the public authorities for the forced return monitoring. A convention dealing with the observer mission of the Luxemburgish Red Cross during the forced return has been established with the Ministry in charge of Immigration.</p> <p>2. The Red Cross is notified by the Return Department of the Directorate of Immigration at least 72 hours in advance before the departure of the forced return by the Return Department of the Directorate of the Immigration. The Red Cross will meet the returnee the day before his/her return. The observer will accompany the escort which is composed of agents of the Grand ducal police. The Minister may decide whether to include or not in the escort a representative of the Ministry in charge of Immigration and a medical or paramedical assistance. In the case of charter flights, the presence of a representative of the Ministry in charge of Immigration and a medical or paramedical assistance is mandatory. The observer cannot assure any of the missions of the other members of the escort. The monitor only observes the conditions of the return and cannot interfere or cancel the return. Article 8 paragraph 2 establishes that the observer can send his/her report on the conditions of the return to the Minister.</p> <p>3. The scope of the monitoring is limited to returns using charter flights. The ride on the bus to the airport can also be part of the monitoring. Are not concerned:</p> <ul style="list-style-type: none"> a. The scheduled flights with an escort (the minister considers that there are enough witnesses) b. The semi-voluntary returns from the Retention Center. c. The Dublin transfers with an escort (often by road).
	Malta	Yes	<p>1. The entity responsible for Forced Return Monitoring in Malta is the Board of Visitors for Detained Persons.</p> <p>2. The Monitoring Board has complete access to the third country national being returned and may visit the returnee at the detention centres, during the police transportation process and at the border crossing points, or as the case may be. Should the monitoring board consider it necessary, they may also join the escorts during the repatriation flight.</p> <p>3. The scope of the system is to monitor persons returned to their country of origin forcibly.</p>
	Netherlands	Yes	<p>1. The Inspectorate of Security and Justice (IS&J) is responsible for monitoring return flights. The IS&J is part of the Ministry of Security and justice, however, it operates independently. The head of the Inspection is responsible for the investigations conducted and the results thereof.</p> <p>2. Inspectors of the IS&J conduct investigations in, among others, the area of asylum and migration. Relevant national authorities can be subjected to an investigation where compliance with legislation, rules and norms are investigated. In order to conduct these investigations, inspectors can enter buildings to collect information, access relevant documentation, and interview and/or observe those involved in the</p>

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			<p>return process. The inspectors of the IS&J do not have intervention powers. Cooperation with an investigation of the IS&J is a legal obligation. Inspectors themselves are legally obligated to demonstrate their identity to those subject to an investigation.</p> <p>3. The scope of the IS&J is broad, meaning the return process can be investigated from the very start of the return process to the moment a person is transferred to the authorities in the country of return (thus the monitoring of escorted flights included). This encompasses the return process 'on the ground', regular return flights, charter flights, forced return and assisted voluntary return.</p>
	Poland	Yes	<p>1. Non-governmental organizations are responsible for forced return monitoring.</p> <p>2. Monitor can access all facilities at the airport where the return procedures take place. He/she can only observe the return and cannot interfere or cancel the return. Monitor can have a conversation with a deportee at the airport and needs to provide written report about his findings.</p> <p>3. Only forced returns are monitored including charter return flights and regular return flights.</p>
	Portugal	Yes	<p>1. In Portugal the entity responsible for return flights monitoring is IGAI (Inspeção-Geral da Administração Interna).</p> <p>2. and 3. Designated by the Ministry of the Internal Affairs these institutional competences are in the framework of a project in partnership with ICMPD which is yet in an initial phase.</p>
	Slovak Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Slovenia	Yes	<p>1. At the moment Monitoring system is not in place in Slovenia. In the first half of the year 2015, a public call/tender will be published.</p> <p>2. Only observation of the return process will be allowed to the Monitor, with the possibility to have a look to the returnee documentation and to have a talk with the returnee, till there will be no influence on the return procedure.</p> <p>3. Forced returns only – by land, air or sea.</p>
	Spain	Yes	<p>1. The Ombudsman (Defensor del Pueblo).</p> <p>2. Access to detention centers, access to the flights, access to all documents, possibility to talk with the returnee, but not suspending removal.</p> <p>3. Any activity of the Administration is liable to be monitored. In practice, mainly charter return flights.</p>

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	Sweden	Yes	<p>1. The Swedish Parliamentary Ombudsmen, JO, and The Office of the Chancellor of Justice, JK, are responsible for return flights monitoring.</p> <p>2. JO and JK have a general right to act as ombudsmen in the supervision of authorities and civil servants. However their ability to perform inspections is somewhat limited and their ability to act ex officio is also restricted.</p> <p>3. Joint Return Operations are monitored through Frontex. No national return operations are monitored.</p>
	United Kingdom	Yes	<p>1. Charter flights and places of immigration detention are inspected by Her Majesty’s Inspectorate of Prisons (HMIP) and monitored by Independent Monitoring Boards (IMB). HMIP have teams dedicated to monitoring prisons (where some immigration detainees may be held), immigration removal centres and chartered returns flights operated by the Home Office. Independent Monitoring Board members are volunteers from the local community and are appointed by the Secretary of State. There are separate boards appointed to monitor prisons, immigration removals centres, short term holding facilities at some airports and chartered returns flights. In addition the Home Office appoint contract monitors whose role is to monitor the performance of the private suppliers who undertake the escorting functions required to safely remove individuals from the UK on chartered return flights.</p> <p>2. When conducting their official duties HMIP inspectors and IMB members have unfettered access to places of immigration detention, prisons and chartered returns flights. HMCIP has a statutory function to inspect immigration removal centres under section 5A(5A) of the Prison Act 1952, as amended by section 152 of the Immigration and Asylum Act 1999. Independent Monitoring Boards in Immigration Removal Centres (IRCs) are appointed by the Secretary of State in accordance with Section 152 of the Immigration and Asylum Act 1999 and operate in accordance with Part VI of the Detention Centre Rules 2001. They are permitted to talk to any detainees / returnees but do so with the permission of the individual and on a risk assessed basis to ensure they monitor individual’s safety and the safety of the operation. Inspection reports by HMIP and annual reports by IMBs are published and accepted recommendations are implemented via robust action plans. HMIP and IMB have no power to cancel a return or to challenge an immigration decision leading to an individual’s return, their remit is to inspect and monitor the treatment of detainees / returnees and the conditions of detention or operation of the return charter flight. The powers of the Home Office contract monitor would be to recommend the suspension or revocation of an escorting officer’s Home Office certification as a fit and proper person for the purposes of undertaking contracted escorting duties on behalf of the Home Office. They may also recommend that performance measures are applied if the escort supplier fails to fulfill elements of contractual service delivery during the course of charter flight operations. These performance measures incur a financial impact on the supplier.</p> <p>3. UK monitors currently monitor prisons, immigration removal centers and chartered returns flights.</p>
