



**EMN Ad-Hoc Query on Ad-Hoc Query on forced-return monitoring system in compliance with Art.8, Par.6 of the Directive 2008/115/EC**

Requested by Stefka BLAZHEVA on 25th October 2016

**Return**

Responses from Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom (19 in total)

*Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**





Bulgaria is currently making efforts to elaborate an effective forced-return monitoring system in compliance with Art.8, Par.6 of the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. At present this requirement of the Directive is transposed into the Law for the Foreigners in the Republic of Bulgaria where Art.39a, Par.2 says that the implementation of administrative coercive measures (forced return) shall be monitored by the Ombudsman of the Republic of Bulgaria or by authorized officials from its administration as well as by representatives of national or international non-governmental organizations. We would appreciate if the EU Member States could provide us with relevant information on the following:

### **Questions**

1. 1. What are the different stages of the returning procedure - for example, if the monitoring covers the stay of the TCN in the police stations until the final decision of the competent authority?
2. 2. What are the practices for notifying the supervising authorities and organizations in cases of upcoming planned returns?-Is there a strictly referred minimal term for a pre-notification?-What is the way of the notification?-How are the conditions of monitoring officially settled - by a written agreement, contract of cooperation or in any other way?
3. 3. What kind of practices do you apply for notifying in cases of a return procedure that could be implemented immediately or in a couple of hours?
4. 4. Are there monitoring practices in such cases (under Question 3)? If yes – what are the differences in notifying procedures regarding cases of planned and non-planned returns?
5. 5. Is there a practice of different approach or\and different implementation of the monitoring procedures depending on the authority issued the return decision – a competent court, police authority, national security service?
6. 6. Is there a practice of different approach or\and different implementation of the monitoring procedures depending on the arguments of the authority issued the return decision, for example: illegal entry on the territory of a MS; illegal staying; threat to the national security; threat to the civil order, etc.?

### **Responses**

	Country	Wider Dissemination	Response
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	Austria	No	
	Belgium	No	
	Croatia	Yes	<p><b>1.</b> 1. Civil Society Organisation, Croatian Law Centre, is notified by the Ministry of Interior, Border Police Directorate at least 3 hours before the forced return execution on proper form which is part of written agreement. Police officer is obliged to stop with forced removal upon the arrival of the observer, but only if stopping do not enable forced removal. Stages of the monitoring forced return procedure include: • monitoring of the course of action at the police station / police administration; • monitoring of the course of action at the Detention Centre; • monitoring of the course of action during escort to the border crossing or airport; • monitoring of the course of action at the border crossing; • monitoring of the course of action during airplane boarding; • monitoring of the course of action during air flight.</p> <p><b>2.</b> 2. A) See answer to the Q1. B) See answer to the Q1. C) The notification is made via phone, fax, email. D) Conditions of the monitoring are settled by the written agreement between the Ministry of Interior and Croatian Law Centre, on determine period.</p> <p><b>3.</b> 3. As stated under Q1 forced return can be executed in the couple of hours and in that case notification practice is the same as during the longer procedures.</p> <p><b>4.</b> 4. A) Yes B) N/A</p> <p><b>5.</b> 5. No. A return decision is issued by the Ministry of Interior.</p> <p><b>6.</b> 6. No.</p>
	Czech Republic	Yes	<p><b>1.</b> In compliance with Section 178d of the Act No. 326/1999 Coll., on Residence of Foreign Nationals in the Territory of the Czech Republic, as amended, the Police of the Czech Republic shall inform Ombudsman well in advance about all cases of the execution of administrative expulsion, transfer or transit of foreign nationals. Also, the Police are obliged to provide</p>

authorized employees of the Office of the Ombudsman with necessary cooperation. The Police shall submit to Ombudsman the copy of a decision on administrative expulsion, decision on detention, decision on extension of detention, decision on interruption of detention, decision on not-releasement from the detention facility, decision on the placement of the detained person to the part with strict regime and decision on the extension of the stay of a person in the area with strict regime. The Police also shall inform Ombudsman about court decisions on legal actions against these decisions.




**2.** In compliance with Section 147 of the Act No. 326/1999 Coll. on Residence of Foreign Nationals in the Territory of the Czech Republic if no well-founded fears exist that the foreign national will thwart or hinder the leaving from the country, the Police is obliged to inform the detained person about the date, time and the reasons of his/her releasement from the detention facility, that is at latest 24 hours before. If the Police do not know by then the date and time of his/her releasement, the Police shall inform the foreigner in question without undue delay as soon as the Police get to know this information. At the same time, the Police shall inform Ombudsman about the planned realization (see the answer 1), by electronic way via data message at the latest 24 hours before (the time limit is set in Section 147 of the Act No. 326/1999).



**3.** In case of above-mentioned procedure the information obligation is not applied.

**4.** No such monitoring practices exist.

**5.** Ombudsman is informed about the decisions issued by the Police which are stated in Section 178d of the Act No. 326/1999 Coll. The obligation to inform or approaches or different implementations of monitoring procedures of other authorities are not known.

**6.** Ombudsman is informed about the decisions issued by the Police which are stated by Section 178d of the Act No. 326/1999 Coll., the above-mentioned offences are one of the reasons leading to the issuance of decision on administrative expulsion according to the Act No. 326/1999 Coll., which are subject to the notification obligation – see above.

	Finland	Yes	<p><b>1.</b> In Finland, the Non-Discrimination Ombudsman is monitoring, throughout the process, the enforcement of the removal from the country of foreign nationals subjected to refusal of entry or deportation. The Non-Discrimination Ombudsman is monitoring all stages of return procedure. As monitor in this field, the Non-Discrimination Ombudsman: • analyses and evaluates how legislation and instructions are applied and how operations proceed • regularly visits detention units and police holding cells where persons to be removed from the country are held • participates on trips removing persons from the country</p> <p><b>2.</b> Local police who is organizing the return will inform the Non-Discrimination Ombudsman by email about planned returns. Police is also informing the Ombudsman on detention decisions and release from detention. Ombudsman receives also information from other authorities, NGOs and the returnees themselves.</p> <p><b>3.</b> In practice, no returns are organized immediately or in a couple of hours. Return could be implemented immediately or in a couple of hours only for EU-citizens that are removed from Finland to another MS.</p> <p><b>4.</b> -</p> <p><b>5.</b> -</p> <p><b>6.</b> -</p>
	France	No	
	Germany	Yes	<p><b>1.</b> The issues of this Ad-Hoc are beyond the competence of the BAMF. No answers possible.</p> <p><b>2.</b> See question 1</p> <p><b>3.</b> See question 1</p>


			<p>4. See question 1</p> <p>5. See question 1</p> <p>6. See question 1</p>
	Hungary	Yes	<p>1. It is not applicable for the Hungarian practice.</p> <p>2. We notify the supervising authorities and organizations in cases of upcoming planned returns in written forms. There are no strictly referred minimal term for a pre-notification. The conditions of monitoring settled by law in Hungary.</p> <p>3. There are no such practices in our return procedure.</p> <p>4. It is not applicable for the Hungarian practice.</p> <p>5. No, there are no differences.</p> <p>6. No, there are no differences.</p>
	Latvia	Yes	<p>1. In accordance with the Immigration Law Article 507 the Ombudsman during the observation (monitoring of forced return procedure) of the removal process is entitled to: 1) 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; 2) 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; 3) 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. The observer has the right: 1) to obtain information from the relevant State institution, which is involved in the removal process of foreigners, regarding organisation of the return</p>

process of the foreigner and the measures performed; 2) to invite specialists (for example, lawyers, medical practitioners, interpreters) for provision of the necessary consultations to the foreigner subject to removal; 3) to organise assistance for improving living conditions, pastoral care, as well as the provision of other support.


**2.** Article 48 (3) of the Immigration Law determines the obligation for the authorities issuing the forced return decisions with regard to third country nationals without delay notify the Ombudsman on the decision taken. An official e-mail of the Ombudsman is used for notification of forced return decisions taken. The State Border Guard as the authority responsible for organization and implementation of removals (forced returns) of the third country nationals has concluded an Agreement with the Ombudsman. The agreement signed in 2014 between the State Border Guard and the Ombudsman on cooperation in the field of monitoring of forced return procedure defines the procedure and time limits for exchange of information on the planned forced returns and organizational issues related with participation of Ombudsman in the factual removal. In accordance with the mentioned agreement the State Border Guard at least 1 day before the removal informs the Ombudsman on the date, time and route of the planned removal. In case if the Ombudsman express the willingness to take part in the factual removal (wants to fly till the destination country) the Ombudsman in advance informs on that the State Border Guard.


**3.** Also in these cases the State Border Guard at least 1 day before the removal informs the Ombudsman. The information on the planned removal is sent to the Ombudsmen by e-mail. In accordance with Agreement signed between the State Border Guard and the Ombudsman prescribes the obligation for the authorities to appoint the contact persons for implementation of the Agreement and exchange the contact information thereof.


**4.** Taking into account that the forced return is a category of planned removals there is no practice on notifying of the non-planned returns. The State Border Guard as the authority responsible for organization and implementation of removals (forced returns) of the third country nationals informs the Ombudsman on all cases of planned forced returns (removals).


			<p><b>5.</b> There is no different practice or different approach or different implementation of the monitoring procedures as the Immigration Law empowers only one authority – the State Border Guard to organize and implement the removal of third country nationals.</p> <p><b>6.</b> There is no different practice or different approach or different implementation of the monitoring procedures depending on the arguments of the authority issued the return decision.</p>
	Lithuania	Yes	<p><b>1.</b> During the monitoring, a factual returning procedure is observed, which includes departure of an alien from the place of detention or any other location he is accommodated, travel to a border checkpoint or to the Vilnius International Airport; also travel to an airport of a foreign country to which an alien is transferred and handing an alien over competent officials of that foreign country. In past projects when the description of the return monitoring procedures was not yet developed, observer usually would go to the competent authority (Foreigners' registration center), meet the official, who carries out the return operation, and ask questions related to the return operation (e.g. travel route, time, date when a person was informed about departure, assessment of the vulnerability of an alien, what kind of measures were taken, food allowance, luggage and etc.).</p> <p><b>2.</b> The authority, which implements the return operation, informs an observer via e-mail about the implementation of the return decision as soon as the travel route and other details on return operation are clear, but not later than 1 workday after completing plane ticket reservation (if an alien is returned via air transport). International Organization or NGO, which has signed the project agreement regarding monitoring of return operations, via written notice informs responsible authorities about the observer who is accredited to monitor the case by indicating name, surname and contact information (telephone number, e-mail address). Before the description of return monitoring procedures was developed, a service provider used to sign a written agreement with Foreigners Registration Center on monitoring of returns. At the moment no agreement is signed.</p> <p><b>3.</b> Usually return procedures take time to organize. If return was organized swiftly, the Foreigners registration center always informed about the situation. In our practice there always has been enough time to visit Foreigners Registration Center and monitor return. There has been</p>





			<p>one return case when the return procedure was organized the same day from the Vilnius Migration Board. The authority informed the Service provider immediately after receiving information about the route and time of return. The monitoring started immediately.</p> <p><b>4.</b> There are no essential differences, except that information about the details of the return case was communicated earlier (according to the agreement no later than three days).</p> <p><b>5.</b> A return decision can be issued only by the Migration Department under the Ministry of the Interior.</p> <p><b>6.</b> Monitoring procedures do not differ. An observer when selecting to observe the implementation of a specific return case, prioritizes cases, containing vulnerable aliens and cases which involve greater protection of interests and rights of an alien.</p>
	Luxembourg	Yes	<p><b>1.</b> The Luxemburgish 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 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><b>2.</b> See answer to question 1. -Is there a strictly referred minimal term for a pre-notification? See answer to question 1. What is the way of the notification? The notification is made via e-mail, phone or fax. How are the conditions of monitoring officially settled - by a written agreement, contract of cooperation or in any other way? 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</p>



			<p>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><b>3.</b> 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: • The scheduled flights with an escort (the minister considers that there are enough witnesses) • The semi-voluntary returns from the Retention Center. • The voluntary returns.</p> <p><b>4.</b> No. if it is done on a scheduled flight. See answer to question 3. If yes – what are the differences in notifying procedures regarding cases of planned and non-planned returns? N/A.</p> <p><b>5.</b> No. The only authority that can issue a return decision is the Ministry in charge of Immigration and Asylum.</p> <p><b>6.</b> No. As we mentioned above the monitoring depends only on the type of mean of transport (charter flight) that is going to be used for the return.</p>
	Malta	Yes	<p><b>1.</b> The Monitoring Board for Detained Persons, (Maltese entity responsible for Forced Return Monitoring), is immediately informed by the Immigration authorities with all persons transferred to the detention centre. It should be noted that when all the necessary arrangements have been made for the return of the irregularly staying migrant, the Monitoring Board for Detained Persons can make contact with the returnee. Such contact may be made in detention or at the police holding place – two to three days prior to the departure to the country of origin. The monitor may then make the necessary arrangements, cover issues such as monitoring of detention/removal centre conditions prior to deportation, preparation of the returnee prior to deportation; transport from the detention/removal centre to the plane/bus; waiting areas. Forced Return Monitoring may also be conducted during the Operational and Transit Phase.</p> <p><b>2.</b> as per attached information</p> <p><b>3.</b> Once all the return arrangements have been conducted the Maltese Immigration Authorities inform in writing to the Chairperson of the Maltese Forced Return monitoring mechanism that</p>

			<p>such a decision has been taken. Maltese immigration authorities also provide the Monitoring Board all the necessary documentation regarding the forced return. It should also be noted that recently the Board issued Standard Operating Procedures.</p> <p><b>4.</b> as per attached information</p> <p><b>5.</b> Such arrangements are made by phone.</p> <p><b>6.</b> as per attached information</p> <p><b>7.</b> There are no differences.</p> <p><b>8.</b> as per attached information</p> <p><b>9.</b> Not applicable since there is only one entity that issues a return decision.</p> <p><b>10.</b> as per attached information</p> <p><b>11.</b> Not applicable.</p> <p><b>12.</b> as per attached information</p>
	Netherlands	Yes	<p><b>1.</b> The monitoring of forced return operations in the Netherlands covers several processes. The Inspectorate can monitor the returning procedure from the very start of the procedure. Since the end of 2015 the monitoring by the Inspectorate starts at the moment the deportee is taken out of his cell, followed by transport to the airport. The Inspectorate can also focus on the so-called ground process at the departure center of the Royal Military Police (RMP) at the airport. This process begins with the briefing of the staff of the RMP and ends after the departure of the aircraft. In situations where the Inspectorate decides to (also) monitor the flight process, the monitor observes this process until the deportee is handed over to his own authorities. The monitoring will end after the debriefing of staff of the RMP.</p>

			<p><b>2.</b> The Repatriation and Departure Service (R&amp;DS), an agency of the ministry of Security and Justice, informs the Inspectorate of all cases where a deportee is escorted under the guidance of a Dutch officer to his country of origin or another country to which access is guaranteed. The Inspectorate will receive the information about a specific case at the time that the flight is booked, one to two weeks before the actual departure of the deportee. Two days prior to the departure the Inspectorate will receive the most current information. The information is provided via an email. The powers and duties of the Inspectorate are regulated by the General Administrative Act.</p> <p><b>3.</b> The Inspectorate has no experience with this kind of cases.</p> <p><b>4.</b> Such cases are not known to the Inspectorate.</p> <p><b>5.</b> No, there is no distinction.</p> <p><b>6.</b> Also, no distinction is made therein. However, the fact that a deportee is a threat to the national security or civil order, may be an indication to monitor the forced return.</p>
	Portugal	Yes	<p><b>1.</b> The foreign citizen who illegally enters or stays in national territory shall be detained by a police authority and, when possible, handed over to SEF with the respective police report. The citizen shall be presented within forty eight-hours at the most to the judge of the lower criminal court under his/her jurisdiction or to the district court in other areas of the country, in order to validate and possibly enforce coercive measures. If detention in a detention centre, or equated facility, is ordered, SEF shall be notified of the fact in order to further the judicial proceeding aiming at the removal of the foreign citizen from national territory. The detention provided for in the preceding paragraph cannot exceed more than the necessary period to allow the execution of the removal decision, which is of 60 days. If the detention in a detention centre, or equated facility, is not ordered, SEF shall also be notified and the foreign citizen shall be notified to appear in person in the respective Service.</p>

			<p><b>2.</b> The notification to the organization (IGAI) that carries out the monitoring in Portugal is done via e-mail. There is a written agreement between SEF and IGAI, for this purpose.</p> <p><b>3.</b> The written agreement specifies that the notification of the return operation taking place must be conveyed to IGAI as soon as it is known to occur.</p> <p><b>4.</b> The decision to monitor or not (physical presence) at the Installation Centre and/or at the airport is made by the monitoring organization.</p> <p><b>5.</b> In Portugal, SEF is always the authority responsible for implementing return decisions, either administrative or judicial ones.</p> <p><b>6.</b> No, it is implemented in the same manner, regardless of the reason behind the return decision issued.</p>
	Slovak Republic	Yes	<p><b>1.</b> The Slovak Republic has transposed into its legislation a forced-return monitoring system, in line with the requirements of the Art.8, Par.6 of the Directive 2008/115/EC on common standards and procedures in Member States for returning irregularly staying third-country nationals. At the moment, however, it still does not have any practical experience with monitoring forced returns.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p> <p><b>5.</b> N/A</p> <p><b>6.</b> N/A</p>
	Slovenia	Yes	<p><b>1.</b> In Slovenia monitoring of return procedure contains three general phases as following: pre-returning preparation, returning phase (including transit), and extradition of the returnee to the</p>

			<p>authority responsible for security in the country of destination. Subjects of monitoring are activities, procedures and measures of the Police towards those TCNs, which refused voluntary return during their accommodation in the Alien Centre. The next steps or measures are removing or force return.</p> <p><b>2.</b> • In cases in which use of force remedies are planned, the Alien Centre immediately notify the supervising authorities and responsible organisations for monitoring. This step follows only after TCN is already identified and if he/she refused possibility for voluntary return or to follow the AVRR program. • Slovenia already signed agreement with supervising authorities and responsible organisations for monitoring.</p> <p><b>3.</b> Alien Centre informs the supervising authorities and organizations immediately.</p> <p><b>4.</b> All removals are planned and organised in advance. This is the case especially in case of procedures that imply monitoring in accordance of the Directive and the Alien Act.</p> <p><b>5.</b> No, there is no difference.</p> <p><b>6.</b> No, there is no difference.</p>
	Spain	Yes	<p><b>1.</b> Monitoring normally covers the pre-departure phase (transfer to the airport and stay at the airport before embarkation) and/or the flight itself. Since monitoring is done by the Ombudsman, any other stage can also be covered. In fact, detention centres are regularly visited.</p> <p><b>2.</b> The Ombudsman is regularly informed about removal plans. A special notification is made for each Frontex flight. Conditions of monitoring have not been officially settled yet.</p> <p><b>3.</b> There is no specific procedure. Not every single return operation needs to be notified in advance to the Ombudsman. However, the Ombudsman can demand such information whenever considered necessary.</p>

			<p><b>4.</b> Any forced return operation can be monitored.</p> <p><b>5.</b> No.</p> <p><b>6.</b> No.</p>
	Sweden	Yes	<p><b>1.</b> Sweden does not have a specific monitoring system for any of the stages of the return process. The term “effective monitoring system” is interpreted in such a way that the independent inspections that are carried out by the Parliamentary Ombudsman (JO) and the Chancellor of Justice (JK), internal control within the Police authority and the Migration Agency, and judicial reviews of decisions by the courts altogether involve a monitoring system. Return and detention decisions are reviewed by the courts. Complaints during the whole process are investigated. Supervision is executed also on JO's and JK's own initiatives. When it comes to the Joint Return Operations conducted by Frontex, these are monitored by Frontex. No national return operations are monitored.</p> <p><b>2.</b> See question 1</p> <p><b>3.</b> See question 1</p> <p><b>4.</b> See question 1</p> <p><b>5.</b> See question 1</p> <p><b>6.</b> See question 1</p>
	United Kingdom	Yes	<p><b>1.</b> Individuals subject to return procedures may be those arriving in the United Kingdom and refused entry, or those deemed to be illegal entrants, or others given temporary admission or release and required to report for return or to a reporting centre at set intervals until arrangements are finalised for their removal. Where there are no barriers to removal or once all barriers to removal have been resolved, individuals may be detained and held in an immigration removal centre (IRC) or short term holding facility prior to return. Individuals who have served a</p>

			<p>custodial sentence in a prison for a criminal offence may be also be detained either in a prison or in an IRC once their sentence ends pending an enforced return. Some individuals subject to return may be escorted to the airplane or to their final destination. Escorting is carried out on behalf of the Home Office by an escorting service provider. All escorts are accredited by the Home Office and are trained in restraint techniques specifically designed for escorting detainees. As part of the planning process for any escorted return, a risk assessment is completed which determines the number of escorts required and whether medical assistance is needed. Home Office contract monitors observe escorted returns on scheduled flights and charter operations up to the point of departure. A Home Office Chief Immigration Officer is present on all charter operations until final destination. The treatment of individuals held detention is independently monitored by on site Independent Monitoring Boards (IMBs). These boards are appointed for all IRCs and for a select number of the busiest short term holding facilities (STHFs). IMBs also undertake monitoring of some escorted returns from the United Kingdom to the destination country carried out on Home Office chartered flights. IMBs report annually to the Secretary of State for Immigration. A separate independent inspectorate, Her Majesty's Inspectorate of Prisons (HMIP) also carries out regular unannounced inspections of IRCs, STHFs and returns to destination countries carried out on Home Office chartered flights. The annual reports of IMBs and inspection reports of HMIP are published.</p>
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**2.** There is no requirement for the IMB or HMIP to be notified of individual returns. A schedule of Home Office charter flight removals is shared with HMIP and the IMB.

**3.** The procedures are the same as set out above.

**4.** The procedures are the same as set out above.

**5.** The procedures are the same as set out above.

**6.** The procedures are the same as set out above.