

REGISTER NUMBER: 1422

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 05/01/2017

CASE NUMBER: 2017-0007

INSTITUTION: Frontex

LEGAL BASIS: Article 27-5 of the REGULATION CE no 45/2001 ¹

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

Alessandro Di Tolla

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2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

The RETURN SUPPORT UNIT (RSU): Only dedicated RSU staff members are entrusted with the data processing in Frontex Application for Return (FAR).

Member States' (MS)³ authorities dealing with return matters, which are in working contacts with Frontex RSU: those authorities appoint 'Direct Contact Points in Return Matters'⁴ (DCPRM). They are the data providers, as they upload the personal data of their returnees and staff⁵ relevant for the implementation of Return Operations coordinated under FAR. A strict access management policy to access FAR, via the ECAS (European Commission Authentication Service), will be applied (see Annex 1). The FAR users are granted access to the FAR by the FAR Access Manager, once their National DCPRM has validated their registration.

¹ Oj L 8, 12.01.2001

² Please attach all necessary backup documents

³ The term Member State and the abbreviation "MS" mean Member States of the European Union or a Country associated with the implementation, application and development of the Schengen Acquis.

⁴ The list of DCPRM is being updated at the request of Member States.

⁵ Staff includes head of operation, escort leader, escorts, interpreter, medical staff, monitor, representative, observer of each country, which takes part in a return operation, including collecting return operation (CRO).

3/ NAME OF THE PROCESSING

Processing of personal data for return operations coordinated by Frontex on the Frontex Application for Return (FAR), operating under the Article 11b of the Frontex regulation⁶ and the Article 48(1) of the new EBCG regulation⁷.

4/ PURPOSE(S) OF THE PROCESSING

According to the FRONTEX regulation (article 11.b), FRONTEX may process personal data of persons who are subject to joint return operations referred to in Article 9 of the same regulation, to perform its tasks of organising and coordinating such operations. A return operation is considered as **joint** when fulfilling the last interpretation clarified in the ED (Executive Director) decision on the financing scheme for JROs⁸.

Additionally, the new EBCG Regulation states in its article 48(1) that “In performing its tasks of organising and coordinating the return operations and conducting return interventions, the Agency may process personal data of returnees.” National and joint return operations but also collecting return operations⁹ are covered by the term “return operation”¹⁰, which can be organised for both voluntary departures and enforced returns.

Therefore, personal data are processed for the preparation and realisation of Return Operations coordinated by Frontex. Three different purposes justify the processing of three related sets of **personal data, which are all uploaded by each country participating** in a relevant Return Operation:

- the **contact list** contains the contact details of all the **key persons involved in the preparation or the organisation of the operation and may be contacted for interoperability purposes before and during the Return Operation, would they be staff members or technical personnel.**

-the **passengers list** contains the personal data of all announced passengers on a means of transport during a specific Return Operation **to be transferred to the carrier**, either by the Organising Member State (OMS)¹¹ or by FRONTEX when not transmitted by the OMS¹². This processing aims at **fulfilling the obligation set in the Article 29 of the Convention on International Civil Aviation to provide the carrier with a list of the names of passengers it carries.**

-**the returnees list**, extract from the passengers list, is **to be handed over to the Authorities of the Destination Country (DC)**¹³, **according to the readmission procedure and to readmission agreements**

⁶ Frontex Regulation: Council Regulation (EC) No 2007/2004 of 26 October 2004, OJ L 349/01, 25.11.2004, as last amended

⁷ REGULATION (EU) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

⁸ Article 2 of the ED Decision No 2016/36 on the financing for joint return operations and return related activities of 23/03/2016.

⁹ return operations for which the means of transport and forced-return escorts are provided by a third country of return

¹⁰ Article 28(9) of the new EBCG regulation

¹¹ Member State which is responsible for the organization of the Return Operation

¹² Article 48(4) of the new EBCG Regulation

¹³ The Destination Country, also called Country of Return (CoR), is the Third Country where the irregular migrants are returned to, during a Return Operation.

when implemented, either by the OMS. The Destination Country can then initiate the relevant verifications before the handover of the returnees.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Considering the Article 11.b of the FRONTEX regulation to be amended by the article 48(1) of the new EBCG Regulation¹⁴, the data subjects are the individuals who are subject to the Return Operations. According to the purpose of the processing, the three different categories of data subjects are composed as follows:

Returnee:

Third country national subject to an individual return decision issued by a Member State and who is removed from the territory of that MS to a destination country within a return operation coordinated by FX; the returnee can either depart voluntarily or be forced to return

Staff member:

Any person, including escorts, monitors, interpreters and medical staff, taking part in and physically present on board a return operation coordinated by Frontex, other than a returnee;

Technical personal:

Crisis Focal Points in the MS, brokers' contact, airlines' contact, handling agents, liaison officers from MS in the DC, involved in the preparation and/or organisation of a return operation but not physically on board the return transport.

The personal data of these data subjects are processed in lists:

The contact list, provided by each participating State (OMS, PMS and CoR), containing the contact details of relevant staff members participating in the RO (Head of operation, Escort leader and interpreter(s), observer(s), medic(s), monitor(s)) and technical personnel (Crisis Focal Point 24/7 of each participating Member State, the Handling Agents in relevant airports, liaison officer(s), airline(s)/broker(s) Points of Contacts) who need to be contacted for the implementation of the RO.

The passengers list which contains the personal data of all announced passengers on a specific Return Operation. The passengers' data subjects are the staff members and the returnees.

The returnees list, which contains only the details of the returnees, uploaded by MS returning them.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA PER DATA SUBJECT:

The processed personal data will be limited to these needed for the purpose of their processing.

The following data are required for the data subject of the three above-mentioned lists:

Technical personnel:

The contact details of involved **technical personnel** in the **preparation or the organisation of the operation** as provided by the stakeholders (**OMS, PMS, DC, Brokers/airlines**) are the following:

¹⁴ REGULATION (EU) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

- a/ Country to which the data subject is attached
- b/ Role during the return operation and/or its preparation
- c/ Name and Surname
- d/ Professional email address
- e/ Mobile phone and/or desk phone

Staff members:

Personal data of staff members participating in a RO, provided by each participating country (OMS, PMS and DC), are the following:

- a/ Country to which the data subject is attached
- b/ Name and surname
- c/ Gender
- d/ email address
- e/ mobile number

Optional for staff members:

- f/ Type of travel document
- g/ Validity of the travel document
- h/ Desk phone number

Returnee:

The personal data of each returnee as provided by MS returning them, are, in addition to the data provided for staff members and technical personnel, the following:

- a/ Date of birth
- b/ Nationality
- c/ **An individual security risk assessment**, made by responsible MS for each of their returnees, out of a drop-down list proposing the below status:

Not security risk

Criminal activity

Dirty protester

Disinhibited behaviour

Disruptive behaviour

Escapee

Food/Fluid refusal

Known suicide attempt

Known violent behaviour

Mental illness

National security

Serious criminal activity

Threat of self-harm

d/ **The Health status:** Each responsible MS has to answer the question “**Is the returnee healthy?**” The only possible answers are **YES** or **NO**. No further medical information is inserted, for such can be only transmitted between medical staff. However, if a returnee from a participating MS is reported ‘not healthy’, this MS is reminded to provide an organising MS with a fit-to-travel form, to be presented to the airline/captain in command, on demand, before boarding¹⁵.

e/ **The type of return:** enforced or voluntary (voluntary departure)

¹⁵ “ICAO Annex 9 standard, article 5.19.

7/ INFORMATION TO BE GIVEN TO THE DATA SUBJECTS:

Eventually, there are following types of data subjects:

- **Staff members:** European/**MS governmental institutions’ representatives in charge of return:** MS will have to agree on the privacy statement (see Annex 7) when they first log after being granted access the FAR, where the conditions on the processing of personal data in the FAR are stated.

- **Returnees:** Under the responsibility of the MS, each MS is in charge of informing their respective returnees on the processing of personal data in the FAR. This provision is included in the “Privacy statement” (see Annex 7).

The collection of the returnees and MS staff personal data takes place under the national data protection regulation of the Member State providing with their personal data. Consequently, the “Privacy Statement” recalls the obligation, for Member States, to inform the returnees on the processing of their personal data and on their rights in general, and in the FAR in particular.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(THE RIGHTS OF ACCESS, TO RECTIFY, TO BLOCK, TO ERASE, TO OBJECT)

As regards the right of access set in Regulation (EC) 45/2001, rectification and blocking of the data, Frontex agrees to process returnees’ explicit requests and to take care of the whole process when the request deals with “ACCESS”:

- obtain confirmation as to whether data related to him or her are being/have been processed, and the purposes for which they are being/have been processed - Article 13
- obtain notification of third parties to whom the data have been disclosed - Article 17
- be provided with the identity of the controller - Article 12(1)

For rectification of inaccurate or incomplete personal data - Article 14 - and blocking the processing of their data - Article 15 -, Frontex would ask the MS responsible of the returnee to investigate, as Frontex is not authorised to do so for data are provided by MS’ authorities.

As regards the information to the data subject - Article 11 and 12 -, as a main rule, the information to the returnees on their rights comes from the individual MS involved in the ROⁱ.

9/ AUTOMATED/ MANUAL PROCESSING OPERATION

Automated.

10/ STORAGE DATA OF MEDIA

All files will be stored in a secured FRONTEX ICT environment and any use of data or other physical media while printing/exporting functionality will only be available to authorised users after justification of the action.

- Every access to the FAR will be logged by the system.

- Expired data will be anonymised by the file management system
- Paper files (which do not contain any returnees personal data) from the respective year are stored in the RSU offices and the older ones in the Frontex Archives. The paper files are kept according to the current Frontex archiving policy.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING

All processing will be done in full compliance with the Frontex Regulation as last amended and the Data Protection Regulation (EC) 45/2001. More specifically, the legal basis for processing personal data for Return Operations on the FRONTEX Application for Return (FAR) is the Article 11b of the Frontex regulation and the article 48(1) of the new EBCG Regulation.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Having different purposes, the three different categories of personal data listed in the FAR can be read/written according to the user roles and have different recipients:

- **Contact list:** Only participating countries (**OMS, Participating MS (PMS)¹⁶ and DC¹⁷**) and dedicated RSU staff (Frontex Manager¹⁸ and Frontex Operational Team (FOT))¹⁹ **are granted access to this list**, which compiles the data provided by them. They can extract the contact list for operational grounds (see 4/).
- **Passengers list:** the recipient of this list is **the carrier**, according to the international convention (see 4/.) Fed by each participating country (OMS, PMS and DC) and Frontex Manager, only the dedicated RSU staff and the OMS can view and export the complete list of passengers. The PMS can only view and extract their own national list of passengers which they have uploaded in the FAR.
- **Returnees list:** this list has **to be handed over to the Authorities of the DC either by the OMS**. As for the returnees list, only the dedicated RSU staff and the OMS can view and export the complete list, whereas PMS can only view and extract their own returnees' data.

13/ RETENTION POLICY OF PERSONAL DATA

The personal data will be automatically anonymized as soon as the purpose for which they have been collected is achieved and no later than 10 days after the return operation is completed.

Processing the personal data exclusively in the FAR guarantees their automated deletion after the determined period of 10 days, which therefore highly improves the implementation of data protection.

14/ STATISTICAL PURPOSES

Anonymised data are used for statistics and analysis purposes

¹⁶ Member State which participates in a Return Operation organized by an OMS and coordinated by Frontex

¹⁷ when referred to DC as a participating country, then it is in the case of CRO, not in regular return operations

¹⁸ The Frontex Manager role in FAR is granted to the Frontex Head of Return Support Unit and his delegate

¹⁹ The Frontex Operational Team, appointed per Return Operation by Frontex Head of Return Support Unit, is composed of the Operational Manager, the Operational Assistant and the Administrative Assistant

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Regarding the **returnees list**, in addition to the obligation of each MS (OMS and PMS) to inform the destination country about the planned date and way of the return of third country nationals (scheduled carriage or chartered), the Organising MS has to inform the Destination Country on the name of all returnees that will be returned.

This **returnees list is sent to** a destination country up to 15 days prior to the return flight or just one day before (depending on individual requirements by each DC). As cancellations of returnees can occur until the last moment prior to the departure, the returnees and passengers list can be updated in the same way. An **up-to-date returnees list** will be provided to the **authorities** of the Destination Country **upon arrival**, before hand-over and disembarkation of the returnees.

16/ SPECIFIC RISK DURING THE PROCESSING OF PERSONAL DATA WHICH JUSTIFIES PRIOR CHECKING

The processing will include personal data regarding the risk assessment and health status of the returnees during return operations. The risk assessment should take into account all pertinent factors, including medical, mental and physical fitness for carriage on a mean of transport, willingness or unwillingness to travel, behavioural patterns, any history of violence, as requested by international conventions (Art. 27.1 Data Protection Regulation)

17/ COMMENTS: (Additional description of the planned processing)

Processing of personal data for Return Operations via the FRONTEX Application for Return (FAR), only starts once a Return Operation is in progress, which means once a MS has proposed to be organiser of a Return Operation and that Frontex has accepted and acknowledged it, through the FAR (further described in the diagrams in Annex 2).

Then, the MS becomes Organising Member State (OMS) and has to provide the details of a contact person who will be responsible during the preparatory phase of this Return Operation.

Frontex Manager²⁰ will also provide with the contact details of the Frontex Operational Team (FOT), who will be in charge of the coordination of this specific operation and will validate the offer.

Interested Participating Member States²¹ (PMS) send their general interest, informing at this stage only on a number of returnees and staff members to take part, and provide with the details of their own contact persons (Crisis Focal Point, Escort Leader and other technical staff that could have to be reached during the implementation of the return operation) in the FAR;

The collected details of the contact persons from Frontex, OMS, PMS, DC dealing with the preparation of the Return Operation constitute the **Contact list**, which will only be readable by staff from these four stakeholders (see template in annex 3) ;

Once Frontex has distributed the offered seats among interested PMS, all MS involved will fill in the personal data of their passengers within the set deadline (concrete interest deadline). These data will be compiled in the **PASSENGERS LIST** and, for the returnees, in addition in the **RETURNEES LIST** (see annexes 4 & 5).

²⁰ The Frontex Manager role in FAR is granted to the Frontex Head of Return Support Unit and his delegate

²¹ Member State which participates in a JRO organised by the Organising Member State

Each PMS can read/write/export its own passenger list, but only OMS and FOT can access the **full passengers list**, as it is necessary for organisational purposes (see 4/). All the other MS can only view the anonymized data, meaning the number of returnees and staff staff planned to take part in a specific operation (see the screenshot of a MS's view –when not PMS nor OMS-).

Before the operation's day, usually two days prior to the departure, OMS or FOT will send the compiled **passengers list** to the carrier, who has to be informed on passengers details prior to a transportation, would it be scheduled or chartered. Carriers are fully responsible of the processing of the passenger names records (PNR) received from their contractors (here, OMS or FRONTEX).

Regarding the **returnees list**, in addition to the obligation of each MS (OMS and PMS) to inform the destination country about the planned date and way of the return of third country nationals (scheduled carriage or chartered), the Organising MS has to inform the Destination Country on the name of all returnees that will be returned.

This **returnees list is sent to** a destination country up to 15 days prior to the return flight or just one day before (depending on individual requirements by each DC). As cancellations of returnees can occur until the last moment prior to the departure, the returnees and passengers list can be updated in the same way. An **up-to-date returnees list** will be provided to the **authorities** of the Destination Country **upon arrival**, before hand-over and disembarkation of the returnees.

PLACE AND DATE:

DATA PROTECTION OFFICER:

INSTITUTION OR BODY:

ⁱ A note will be included in the FAR access form so that MS are aware of their obligation to inform the returnees on their rights.