

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1481

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 11.10.2017

CASE NUMBER: 2017-0874

INSTITUTION: FRONTEX

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN

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1/ NAME AND ADDRESS OF THE CONTROLLER

Head of Return Support Unit (HoRSU)

FRONTEX

Plac Europejski 6

00-844 WARSAW

POLAND

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

The entities entrusted with the processing of personal data in the **Frontex Application for Return (FAR)** are: Frontex' Return Support Unit (RSU) and entrusted staff from the Member States (MS)².

Frontex

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

¹ OJ L 8, 12.01.2001.

² 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.

RSU is responsible for the implementation of article 27 of the EBCG-regulation³. This article covers support to MSs in the field of Return and among other tasks the organisation of Return Operations (article 28 EBCG Regulation) and assistance in the field of identification and issuance of travel documents.

To this aim, the RSU is composed of two sectors (see organisational chart, annex 1):

1- Pre-return sector: supports MSs regarding cooperation for identification of third country nationals and acquisition of travel documents, including the implementation of identification missions (IMs). Identification missions involve visits from Third Country officials to EU-Member States in order to identify their own nationals and issue emergency travel documents (ETDs) to enable the return of their citizens.

2- Return operations sector: is responsible for the coordination and organisation of return operations by air, land and sea. For return by air, return operations sector assists the Member States in carrying out returns by commercial flights and by chartering aircraft.

3/ NAME OF THE PROCESSING

Frontex Application for Return (FAR)

4/ PURPOSES OF THE PROCESSING

THE ROLE OF THE AGENCY IN THE FIELD OF RETURN

On 15 October 2015, the European Council called for an enlargement of Frontex' mandate on return, to include the right to organise joint return operations on its own initiative and an enhancement of its role regarding the acquisition of travel documents for returnees. That increase of powers was translated into a mandate to step up Frontex assistance to Member States for returning third-country nationals, subject to the Union return policy and in compliance with Directive 2008/115/EC of the European Parliament and of the Council. In particular, the Council established that Frontex should coordinate and organise return operations from one or more Member States and organise and conduct return interventions to reinforce the return systems of Member States requiring increased technical and operational assistance to comply with their obligation to return third-country nationals in accordance with that Directive.

Following the recitals (34) and (35) of the new EBCG Regulation, Frontex should provide the necessary assistance to Member States in organising return operations and return interventions of returnees. It should however not enter into the merits of return decisions issued by Member States.

In addition, Frontex should assist Member States in the acquisition of travel documents for return, in cooperation with the authorities of the relevant third countries. The assistance to Member States in carrying out return procedures should include the provision of practical information on third countries of return relevant for the implementation of this Regulation, such as the provision of contact details or other logistical information necessary for the smooth conduct of return operations. For the

³ 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.

purposes of taking return decisions, the Agency should not be involved in the provision of information to Member States on third countries of return.

Further, Section 4, Article 27, establishes all the obligations Frontex has vis-à-vis returns; that is:

(a) coordinate at a technical and operational level return-related activities of the Member States, including voluntary departures, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;

(b) Provide technical and operational assistance to Member States experiencing particular challenges with regard to their return systems;

(c) Coordinate the use of relevant IT systems and provide support to the Member States on consular cooperation for the identification of third-country nationals and the acquisition of travel documents, without disclosing information relating to the fact that an application for international protection has been made; organise and coordinate return operations and provide support with voluntary departures in cooperation with the Member States;

(d) Organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;

(e) Finance or co-finance the operations, interventions and activities referred to in this Chapter from its budget, in accordance with the financial rules applicable to the Agency.

In addition, Articles 28, 29, 30, 31, 32 and 33 regulate return operations, pools of forced-return monitoring, pools of forced-return escorts, pools of return specialists, European return intervention teams, and return interventions.

For the fulfilment of all the mandated legal tasks established in Frontex legal framework, the Agency processes personal data of returnees within the Frontex Application for return (FAR)

THE PURPOSE OF DATA PROCESSING IN THE CONTEXT OF FRONTEX RETURN ACTIVITIES

In order to explain in a systematic manner the purposes of the processing of personal data, a distinction needs to be made upon the types of operations that are supported within FAR; each operation aims at achieving different purposes for which the processing of personal data is not only unavoidable but mandated by law.

1. Return operations

The first purpose of data processing in the context of FAR is the organisation or coordination of those return operations within Frontex' mandate. A return operation can be conducted by air, land and sea, and organised for both voluntary departures⁴ and removal⁵.

A return operation by air can involve the chartering of an airplane or making use of a scheduled (commercial) flight. Both types of flights can entail the organisation/coordination of a "joint return

⁴ Voluntary departure means compliance with the obligation to return within the time limit fixed for that purpose in the return decision. (Article 3.8 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, *OJ L 348, 24.12.2008, p. 98–107*).

⁵ Removal means the enforcement of the obligation to return, namely the physical transportation out of the member state. (Article 3.5 of Directive 2008/115/EC)

operation” (flight), which means that it involves the participation of more than one MS, or the organisation of a “national return operation” (flight), which only involves the participation of one MS.

In addition, Frontex can organise/coordinate a collecting return operation⁶ (national as well as joint). This means that a delegation from a third country of return picks up the returnees to be readmitted to their own country.

A return operation by sea follows the same principles, the difference laying in the mean of transportation booked or chartered which, in this case, is a boat.

In the context of the activities described above, FAR will be used to process personal data of returnees, operational and technical personnel provided by the MSs (categories of data subjects described in point 5). This processing is necessary for the following purposes:

- To share among all participating MSs and the Agency the contact details of all the key persons involved in the preparation or the organisation of the operation who may be contacted, would they be operational or technical personnel;
- To transfer the personal data of returnees and accompanying staff to the carrier in order to effectively conclude the return. This processing aims at fulfilling the obligation set in the Article 29 (f) of the International Convention on Civil Aviation to provide the carrier with a list of the names of passengers it carries and the annex 9 specifying the standard set for removal⁷ ;
- To constitute the returnees list to be handed over to the authorities of the Third Country of Return (TCoR), according to the readmission procedure⁸ and to readmission agreements when implemented, either by the organising member state or by the Agency.
- To constitute an address book, at MS level, for the convenience of the MS FAR editors who may keep the contact details of their own MS Technical and Operational personnel in FAR. Only visible for the editors of a specific MS, this address book will allow the MS to manage their own staff regularly involved in Return Operations.

2. Identification missions

RSU needs to process the personal data of third-country officials invited to one or more MSs for the purpose of organising identification missions (article 27(c) EBCG Regulation).

An identification mission means that a delegation of official(s) from a third-country is invited to visit one or more MSs. The duty of these delegated officers will be, within the territory of the inviting MS, to conduct verification checks of the returnees to facilitate the identification process and, based on their authority, may be in a position to issue emergency travel documents for the returnees so they

⁶ Return operations for which the means of transport and forced-return escorts are provided by a third country of return.

⁷ 5.19 Annex 9 of the ICAO: “Contracting States, when making arrangements with an aircraft operator for the removal of a deportee, shall make available the following information as soon as possible, but in any case not later than 24-hours before the scheduled time of the departure of the flight:

a) A copy of the deportation order, if legislation of the Contracting State allows it;
b) A risk assessment by the State and/or any pertinent information that would help the aircraft operator assess the risk to the security of the flight; and,
c) The names and nationalities of any escorts.”

⁸ See also 5.6, *Annex 9 of ICAO* and Section 2.3 B. Deportees, *Doc 30 ECAC (European civil aviation conference)*.

can be returned to the country of return. FAR only processes the contact data of these invited officers; no personal data is processed beyond that.

There are two types of identification missions. They can be joint, which means that the third-country delegation visits multiple member states. The identification mission can also be national, which means that the third-country delegation only visits one MS.

The purpose of the processing of personal data for identification missions is to facilitate the organisation of the identification mission itself, thus the personal data of the third-country officials and the contact points in the MSs needs to be processed via FAR.

5/ DESCRIPTION OF THE CATEGORIES OF DATA SUBJECTS (person about whom the data are processed)

According to the purpose of the processing, the different categories of data subjects are composed as follows:

1. DATA SUBJECTS FOR THE PURPOSES OF RETURN OPERATIONS

Operational personnel:

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

Technical personnel:

b. Crisis Focal Points of each participating MS, brokers' contact, airlines' and/or shipping company's contact, handling agents in relevant airports, liaison officers in the third country of return, involved in the preparation and/or organisation of a return operation but not physically on board the return transport;

Returnee:

c. 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 third country of return within a return operation coordinated by Frontex; the returnee can either depart voluntarily or be removed.

2. DATA SUBJECTS FOR THE PURPOSES OF IDENTIFICATION MISSIONS

a. - **Third Country official:** an officer who is either taking part in the Identification Mission or is the relevant contact person in the Third Countries for the preparation and/or implementation of the mission.

b. -**MS contact person:** at least one contact person per MS hosting the third country delegation is required for the preparation and/or implementation of the identification mission.

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

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

1. DATA SUBJECTS FOR THE PURPOSES OF RETURN OPERATIONS

a. Operational Personnel:

Personal data of operational personnel participating in a Return Operation, **inserted by the authorised staff of each participating country** (Organising MS, Participating MS), are the following:

1. Country to which the data subject is attached;
2. Third Country of Return to which the data subject is travelling;
3. Function/role during the return operation:
 - Escort
 - Escort Leader
 - Interpreter
 - Medical Personnel
 - Monitor
 - Observer
 - MS Representative
 - Frontex representative
4. Name and surname;
5. Gender;
6. Mobile phone number

Optional for operational personnel⁹:

7. Type of travel document
8. Validity of the travel document

b. Technical personnel:

The contact details of involved **technical personnel** in the preparation and/or the implementation of the operation **inserted by authorised staff of the Organising or Participating MS** are the following:

1. Country to which the data subject is attached;
2. Role during the return operation and/or its preparation;
3. Name and Surname;
- 4 Professional email address;
5. Mobile phone;
6. Desk phone.

c. Returnee:

The personal data of each returnee, as **provided by MS authorities returning them**, are as follow:

1. Country to which the data subject is attached;
2. Third Country of Return to which the data subject is travelling;
3. Name and surname;
4. Date of birth;
5. Nationality;
6. Gender;
7. Type of travel document;
8. Validity of the travel document;
9. **An individual security risk assessment¹⁰**, made by responsible MS for each of their returnees, out of a drop-down list [...]

⁹ In some cases, a TCoR might request this data in order to conduct the return. However it does not always happen. Therefore, following the principle of data minimisation the data is not compulsory (see annex 14 – insert contact in FAR).

¹⁰ Providing these data is a legal obligation for the Organising MS, as it has to be provided to the carrier in order to inform the captain on the persons he will have under his responsibility during the journey (5.19 of annex 9 of the International convention on civil aviation) and as it allows the control over the number of

10. 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 has to provide the organising MS with a fit-to-travel form, to be presented to the airline/captain in command, on demand, before boarding¹¹.

11. Type of return:

- enforced
- voluntary (voluntary departure)

2. DATA SUBJECTS FOR THE PURPOSES OF IDENTIFICATION MISSIONS

a. Third Country officials’ data is provided by the Lead MS authorities or by Frontex depending on the communication channel in place with the Third Country. The third-country officials are involved in the preparation and/or implementation of an Identification Mission. The details collected and processed within FAR are the following:

1. Country/institution to which the data subject is attached
2. Role during the identification mission and/or its preparation
3. Name and Surname
4. Professional email address
5. Mobile phone and/or desk phone
6. Passport number
7. Validity of the passport
8. Visa requirement

b. MS contact persons data is provided by the MS authorities hosting the identification mission. It consist in personal data of MS contact persons involved in the preparation and/or implementation of an Identification Mission, provided by each MS (Lead or participating). The data processed under this category is as follows:

1. Country/institution to which the data subject is attached
2. Role during the identification mission and/or its preparation
3. Name and Surname
4. Professional email address
5. Mobile phone and/or desk phone

7/ INFORMATION TO BE GIVEN TO THE DATA SUBJECTS (Articles 11 and 12 of the Regulation):

To enable the corresponding MS authority responsible for returns to access the FAR, the FAR-general manager (see description point 18.1b) shall fill in and sign the FAR registration form (see Annex 2) and send it signed to Frontex together with the FAR privacy statement (see Annex 3) which the MS authority hereby acknowledges their responsibilities vis-à-vis data protection (see section 18.1). The privacy statement contains the conditions on the processing of personal data in FAR.

Taking into account that the personal data is not always obtained by the data subject, the provisions of information follow Article 12 of Regulation (EC) 45/2001.

escorts allotted to a returnee compared to the returnee’s security assessment (i.e. a person with no risk having 5 escorts allotted is not in line with our best practices and not cost-effective).

¹¹ “ICAO Annex 9 standard, article 5.19.

There are different categories of data subjects, which can be immersed into two big groups: law enforcement officials and returnees. For those cases of data subjects that belong to law enforcement (and associated activities), some of them might insert their data themselves into the system (provided they have sufficient roles and access level), to develop their role within their function. However, several other members of Law enforcement (and associated activities, as explained in the categories of data subjects under point 6 of the notification, have their data inserted in the system not by themselves but by the supervisors, coordinators or managers (e.g.: due to deployment in an operation, their contact details will be shared in the platform amongst the participants in such operation).

Further, in relation to the data of the returnees, the data is not provided by the data subject itself, but by the competent authority in a Member State.

A. DATA SUBJECTS FOR THE PURPOSES OF RETURN OPERATIONS

- **Operational personnel and technical personnel:**

In addition to the signature of the privacy statement by the FAR general managers above described, each FAR user, when logging for the first time to FAR, after being granted access, will have to agree on the privacy statement, in the form of a pop-up box, with a tick-box. As not all operational and technical personnel have a FAR access, an automatic notification, with the privacy statement as an attachment, will be sent out to all operational and technical personnel, as soon as their email address will be inserted in the FAR, to ensure their awareness of the processing of their data in the FAR.

- **Returnees:**

Under the responsibility of 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 3).

The collection of the returnees, operational and technical personnel's personal data takes place under the national data protection regulation of the Member State inserting their personal data in FAR. Consequently, the "Privacy Statement" recalls the obligation, for Member States, to inform the returnees, the operational and technical personnel on the processing of their personal data and on their related rights.

B. DATA SUBJECTS FOR THE PURPOSES OF IDENTIFICATION MISSIONS

- **Third Country officials**

Prior to the transmission of the personal data of the third country officials by their National authorities, the latter will receive during the preparatory visit/technical mission of Frontex and/or the lead MS in the third country, a hard copy of the privacy statement. In case no preparatory meeting is needed, due to the presence of a liaison officer and/or an EU delegation in the field who will ensure the communication in the third country, the liaison officer or the EU delegation in the third country will provide the third country officials with a hard copy of the privacy statement. In any case, a copy of the privacy statement will be sent directly to the visiting third country officials by mean of personal communication, as soon as their email address will be inserted in FAR, to ensure their acknowledgement of the processing of their data in the FAR before the start of the operation.

- **MS contact persons:**

MS will have to agree on the privacy statement (see Annex 3) when they first log after being granted access the FAR, where the conditions on the processing of personal data in the FAR are stated. MS contact persons for Identification Missions will require an individual access to the FAR, in order to

follow-up the preparatory and implementation phases of the Identification mission. They will consequently be informed about the processing of their personal data and the rights attached when first logging to the FAR and agreeing on the Privacy statement.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Frontex has devised two mechanisms in order to grant the different typologies of data subjects their rights.

1. When a Data subject inserts data into FAR and/or have direct access to FAR: the privacy statement is accessible as explained in point 7 above, and the emails of both the controller of the system and the Data Protection Officer at Frontex is available for exercising the rights as foreseen in Articles 13 to 19 of Regulation (EC) 45/2001.

2. In the case of data subjects who do not insert the data themselves, nor have access to FAR themselves, but they are still part of operational or technical personnel: the FAR General Manager has the obligation to inform the data subjects about their rights and ways to exercise their rights, either by granting a national channel for those data subjects to access their data and subsequently modify them, or by informing them about the channels established within Frontex, via provision of mail address of the Data Controller or of the Frontex DPO.

3. As per the procedure to grant the rights of the returnees, Frontex would like to restrict the application of Articles 13 to 17 of Regulation (EC) 45/2001, as it is necessary to safeguard different provisions as established under Article 20. In particular:

- Article 13: to be restricted due to the Article 20.1 (d) on the grounds of national security. The identification data of the returnee is already in hands of the returnee (as they are provided with the return decision specifically applicable to him/her). However, within FAR there is data processed regarding the security risk assessment. Provision of this information to the returnee would put in jeopardy the methods and the information and the sources obtained and used by LE bodies within a MS when constructing the security risk assessment for that individual. (e.g.: if a returnee is declared to be related to a criminal activity, in order for a MS to assess this person under this category means that MS have been acquiring information from, for example, criminal databases, behaviours seen by agents, etc). The disclosure of that information would entail a risk for national or public security. Further, allowing right of access to the returnee would also put in jeopardy the prevention of criminal offences, such as to prevent possible disruptive behaviours that could constitute a criminal offense within the transportation phase itself.

- Article 14: The data collected and processed about a returnee's identity is backed by a Court order and it is established by public authorities (e.g. correction of names, while the identity has been established through the making of the return decision). As per data contained in the security risk assessment provided by LE within MSs, the possibility of correction would entail endangering national or public security, under Article 20.1 (d). There should be no possibility of correction of a security assessment provided by law enforcement as in practice a returnee could ask for rectification of being placed under the category of, for example, "known violent behaviour", while in reality not classifying

this person under this risk would de facto create a risk for the transport itself and the integrity of all passengers in a carrier.

- Mutatis mutandi, the exception of Article 20.1 (d) are applicable for the provisions under Article 16. As per Article 17, within the return decision provided to each returnee, it is contained the information of the return country. As for Article 18, the return decision, coming from the judiciary, is firm and no longer can be challenged.

9/ AUTOMATED/ MANUAL PROCESSING OPERATION

The data processing is totally automatized. Data are inserted by the FAR users having editor role in the FAR and transferred via the FAR to the stakeholders. Extraction of personal data from the FAR are monitored by the system (see annex 4).

The processing, which differs according to the type of return activity, is the following:

A. RETURN OPERATIONS

Return operations by air can make use of scheduled flights or chartered flights. The data processing in both cases is different. Additionally, return operations by sea follow a different data process.

A.a. Scheduled flights

After Frontex approves the request of a MS to organise a return operation via a scheduled flight, authorised staff from the MSs (see *infra* /18) insert the personal data of the returnees in FAR, including when necessary those of the operational personnel accompanying the returnees.

The personal data of the returnees (and operational personnel) necessary to book the flight tickets are transferred from FAR to the designated travel agency electronically. The personal data is limited to the name, surname, type of travel document, adult/minor, gender and need for special assistance when required (see annexes 5a and 5b: Terms of reference and contract).

Frontex will develop a standardised risk assessment form¹² for the carriers, which will contain the information required by article 4 (3)(2) Reg. 2015/1998¹³. This risk assessment form will be uploaded into FAR if the form is accepted by the carrier.

A.b. Chartered flights

When Frontex approves the organisation/coordination of a return operation by chartered flight (diagrams in Annex 6. a, b, c), the organising and participating MSs firstly insert the data of technical personnel, who will deal with the preparatory phase of the return operation.

Frontex Manager¹⁴ will also insert and provide the contact details of the Frontex Operational Team (FOT), who will be in charge of the coordination of this specific operation.

¹² "ICAO Annex 9 standard, article 5.19

¹³ Identity and gender; reason for transportation; name and title of escorts if provided; risk assessment by the competent authority, including reason to escort or not; prior seating arrangement, if required; nature of the available travel documents.

¹⁴ The Frontex Manager role in FAR is granted to the Frontex Head of Return Support Unit and his/her delegates.

Once the operation is validated, the MSs insert the personal data of returnees and operational personnel in FAR. The data is processed as follows:

- For interoperability purposes before and during a Return Operation, the contact details of all the key persons involved in the preparation or the organisation of the operation who may be contacted, operational personnel or technical personnel, are loaded into the FAR and constitute the **contact list** (Annex 7 – contact list).

- The personal data of the returnees are loaded in the FAR to constitute the **returnees list** (Annex 8) to be handed over to the authorities of the Third Country of Return (TCoR) upon arrival, according to the readmission procedure and to readmission agreements when applicable either by the organising MS or by the Agency.

- All the operational personnel, technical personnel and returnees on board a return flight are passengers of a flight. As such, their details, loaded in the FAR, have to be compiled in the **passengers list**. The latter 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) or by FRONTEX when not transmitted by the organising member state¹⁵. This needs to take place prior to the flight departure.

Each participating MS can read/write/export its own passenger list, but only the organising MS and Frontex 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 personnel planned to take part in a specific operation (see the screenshot of a MS's view –when not participating nor organising MS, Annex 9).

In addition to the above, for convenience purposes, MS FAR editors may keep an Address-book containing the contact details of their own MS Technical and Operational personnel in FAR. Only editable by the MS FAR users with editor right, the records of such address book shall be kept up-to-date by the responsible MS and the data subjects whose personal data are so kept shall be informed by the MS.

A.c. Return by sea

After Frontex approves a return operation by sea, the personal data of the returnees and the operational personnel is inserted in FAR by the MSs. The personal data consists of name and surname of the passengers in order to constitute a passengers list. The passengers list is presented to the captain of the boat in case he/she requests it in accordance with Regulation 8 of Chapter XI-2 of SOLAS Convention.

Nevertheless, the participating MS have the obligation to inform the Third Country of return about the planned date and transportation details of the removal.

B. IDENTIFICATION MISSIONS

When Frontex approves the request of a MS to organise an identification mission, the lead-MS inserts the contact details of its contact person in FAR. Participating MSs also insert the contact details of their contact persons. The lead-MS or Frontex insert the contact details of the TC officials in order to arrange their travel and stay (e.g. booking of plane tickets, hotels etc.).

¹⁵ Idem footnote 12.

10/ STORAGE DATA OF MEDIA

[...]

11/ LEGAL BASIS

Please indicate the legal basis for the processing (Treaty reference, Staff Regulation, Administrative decision, contract, etc.). If the legal basis is provided in internal documents, please attach a copy to the notification.

The processing of personal data is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities and other legal instruments adopted on the basis thereof and in compliance with the legitimate exercise of official authority vested in the Community institution.

In line with the tasks mandated by the EBCG Regulation, Frontex may process personal data of operational and technical personnel (article 45 and 46 (b) and (f) EBCG Regulation), as well as persons who are subject to return operations and return interventions in order to perform its tasks of organising and coordinating such operations (article 46 (b) and 48 EBCG Regulation).

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

The recipients of personal data are:

- Member States authorities
- Organising MS
- Frontex Return Support Unit
- Travel Agency
- Third country of return: MSs, Frontex or carriers are under the obligation to provide the Third Country of Return with a list of returnees according to readmission agreements and/or the fulfilment of article 5.6, Annex 9 of ICAO. In any event, the Third Country authorities never have access to FAR.
- Carriers: airline companies or shipping companies receive the passenger list composed of the personal data of returnees and operational personnel accompanying them. The purpose of this transfer is the fulfilment of the obligation set in the Article 29 (f) of the International Convention on Civil Aviation to provide the carrier with a list of the names of passengers it carries and the annex 9 specifying the standard set for removal¹⁶. The carriers never have access to FAR.

¹⁶ 5.19 Annex 9 of the ICAO: "Contracting States, when making arrangements with an aircraft operator for the removal of a deportee, shall make available the following information as soon as possible, but in any case not later than 24-hours before the scheduled time of the departure of the flight:

- a) A copy of the deportation order, if legislation of the Contracting State allows it;
- b) A risk assessment by the State and/or any pertinent information that would help the aircraft operator assess the risk to the security of the flight; and,
- c) The names and nationalities of any escorts."

13/ RETENTION POLICY FOR CATEGORIES OF PERSONAL DATA

The personal data of returnees, operational personnel and third country official are anonymised (see section 14/) after expiration of the retention period. The personal data of technical personnel and MS contact persons are completely erased from the system after the aforementioned time.

However, if MS have stored the contacts of their technical personnel and contact persons in their National address book, such data will be kept for as long as the MS may need them and subject to their national obligations regarding personal data processing and retention.

The personal data of the returnees will be automatically anonymized no later than 30 days after the return operation is completed. The personal data of the operational personnel will be deleted 30 days after the return operation. This retention period is regarded as necessary timeframe for the complete deletion of the files containing personal data after all validation and evaluation of the operations are finalised by MS involved in return operations and Frontex. Furthermore, 30 days is the maximum duration allowed for data retention in article 48 of the EBCG Regulation.

Even if under the wording of Article 48 EBCG Regulation indicates that data should be deleted as soon as the purpose for which the data has been achieved, in order to comply in a meaningful way with Article 72 EBCG (which deals with complaints), Frontex will delete the data at the end of the 30 days period since the conclusion of the return operation.

This decision will allow the enforcement of the rights of the returnees should their fundamental rights have been violated and an investigation would be launched by the Fundamental Rights Officer, requiring accessing the details of the returnees (e.g. for identification purposes) or of the operational personnel on board participating in the specific return operation. Personal data, in any case, will be deleted no later than the 30 days indicated by law.

The fact that the entire personal data processing and storage happens exclusively in FAR, and not via parallel channels of communication like e-mail or storage on shared folders on the Frontex file server, guarantees their automated deletion after the determined period of 30 days, which therefore highly improves the implementation of data protection rules on retention.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

(Please, specify the time limits for every category, if applicable)

N/A

14/ HISTORICAL, STATISTICAL PURPOSES

For the data subjects whose full set of data categories are not erased (see point 13), the system will automatically anonymise the data categories which are necessary for statistics and analysis purposes, and deleted the others. In all cases, names and surnames are erased.

The type of anonymization differs per the data subject:

A. DATA SUBJECTS FOR THE PURPOSES OF RETURN OPERATIONS

Operational Personnel:

a/ Country to which the data subject is attached Kept

b/ TCoR to which the data subject is travelling	Kept
c/ Function/role during the return operation	Kept
d/ Name and surname	Deleted
e/ Gender	Deleted
f/ Mobile phone number	Deleted
g/ Type of travel document	Deleted
h/ Validity of the travel document	Deleted

Returnee:

a/ Country to which the data subject is attached	Kept
b/ TCoR to which the data subject is travelling	Kept
c/ Name and surname	Deleted
d/ Date of birth	Turned to age ¹⁷
e/ Nationality	Kept
f/ Gender	Kept
g/ Type of travel document	Kept
h/ Validity of the travel document	Deleted
i/ An individual security risk assessment	Kept
j/ The Health status:	Kept
k/ The type of return	Kept

B. DATA SUBJECTS FOR THE PURPOSES OF IDENTIFICATION MISSIONS

Third Country officials:

a/ Country/institution of the data subject	Kept
b/ Role during the identification mission	Aggregated per role
c/ Name and Surname	Deleted
d/ Professional email address	Deleted
e/ Mobile phone and/or desk phone	Deleted
f/ Passport number	Deleted
g/ Validity of the passport	Deleted
h/ Visa requirement	Deleted

C. DATA SUBJECTS: FAR USERS

Regarding the FAR users, the following data categories are kept in the system for as long as their account exists:

- a/ Account number, issued by the EU Login, European Commission's user authentication service
- b/ Professional E-mail address, which is used for "Name" and "E-Mail" fields.

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

¹⁷ Frontex has evaluated the possibility to, when deleting the DoB, turning it to age groups. However, it is not possible to do so because MSs request statistical information under many different criteria and not in a unified manner; thus, the age is kept to facilitate the requested statistical information tailored made for the specific needs of the requesting MS.

There will be a series of international data transfers to different recipients due to legal requirements emanating from international transport regulations or substantive law from third countries. These data transfers will fall under the applicability of Article 9 of Regulation (EC) 45/2001.

1- Transfer of the passengers list to a carrier (not subject to the Directive 95/46/EC):

In some cases it might be necessary to transfer the personal data to a carrier that is not subjected to Directive 95/46/EC. The reason might either be that there are no commercial flights/boat travels available with carriers subjected to the aforementioned Directive, or that it would be financially less burdensome for the economic interests of the European Union.

Such transfer would be regulated under Article 9.6 (d) of Regulation 45/2001. According to Article 9.6 (d), a Community institution or body may transfer personal data if the transfer is necessary or legally required on important public interest grounds. The effective return of migrants subject to a return decision is a public interest entrusted upon the Agency by article 4 (h), article 5.3 and article 27 of the EBCG Regulation. In addition, data transfer to carriers are explicitly allowed by article 48.4 of the EBCG Regulation.

Further, as per Article 9.6 (c) of Regulation (EC) 45/2001, the transfer is necessary for the performance of a contract entered into the interest of the data subject between the controller (Frontex Return Support Unit) and the third party (the carrier). As a means to transport persons and, in their own benefit, for ensuring their own personal security and of other passengers being transported, carriers require the provision of the personal data of those being transported. The contract referred to in this article is the contract existing between Frontex, who mandates a travel agency to book a place in a carrier, and the carrier itself.

2- Transfer of returnees' data to the third country of return authorities, not subject to the directive 95/46/EC

The legal ground for the transfer of returnees' personal data to the third country of return authorities by the Organising MS or by Frontex is the Article 9.6(d) of Regulation 45/2001. The Organising MS has to inform the Third Country of Return on the name of all returnees that will be returned. When Frontex acts as organiser, Frontex takes over the tasks assigned to the Organising member state, as set in the Article 4 of the Council Decision 2004/573/EC, on the organisation of joint flights for the removals from territory of two or more Member States, of third-country nationals who are subjects of individual removal orders. Consequently, Frontex may transfer the returnee list to the Third Country of Return.

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

AS FORESEEN IN:

Article 27.2 (a)

Processing of data relating to health and suspected offences, offences, criminal convictions or security measures:

The processing entails the processing of personal data related to health (YES/NO answer as per the health status of the returnee, but without medical details); the security risk linked to criminal convictions, serious criminal activity, national security and known violent behaviour (contained in the security risk assessment of the returnee).

Article 27.2 (b)

The processing operations intended to evaluate personal aspects relating to the data subject:

The processing operation will process data of a security risk assessment.

17/ COMMENTS:

The processing operations described under FAR have not yet started. Thus, this is a true prior notification. However, there are certain parts of the processing, specifically the Return via Scheduled Flights, that are devised to commence operating as a pilot project on 18 October 2017 until 31 March 2018 (with possible extension until the funds of the project have been exhausted), after which it will be evaluated. The Pilot Project will comprise returns to the third countries of Morocco and Algeria and may, upon results of the evaluation, be extended to more/all third countries of return of interest for EU member States. Further information about the limits and scope of the Pilot can be found under Annex 15.

18/ MEASURES TO ENSURE SECURITY OF PROCESSING:

In order to ensure that the system is in line with the provisions of art. 22 of Reg. 45/2001 several security measures have been put in place.

[...]

PLACE AND DATE: WARSAW, 11 OCTOBER 11, 2017

DATA PROTECTION OFFICER: ...

INSTITUTION OR BODY: EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX)

ANNEXES: [...]