

## **EDPS RECOMMENDATION N. 3**

### **RETURNEES TO BE INDIVIDUALLY (AND ACTIVELY) INFORMED ON THE PROCESSING OPERATION THROUGH THE HANDLING OF A DATA PROTECTION NOTICE**

#### **Background**

According to the EDPS Prior Checking Opinion, the data protection notice should be provided to the returnees as quickly as possible once Frontex starts processing their data and some time before the returnees enter into the flight.

As Frontex representatives only come into contact with returnees during return operations, if at all, it is not feasible for the Agency to 'individually' and 'actively' inform returnees. In view of fulfilling this recommendation, it is necessary for Frontex and Member States to agree on a joint procedure, as suggested by the EDPS in his Prior Checking Opinion.

Member States have been asked to comment and provide their feedback on the implementation of this recommendation for the meeting of the Direct Contact Points on Return and the Pre-Return Assistance Network (DCP/PRAN meeting) which took place in Warsaw on 4-5 December.

#### **Outcome of discussions with Member States**

Member States were asked to provide their views on when and how the data protection notice should be delivered to the returnees, in line with the guidance received from the EDPS.

Given the different procedures in each country, Member States noted the difficulty in agreeing on a one-fits-all solution. In general, Member States would prefer to decide on the exact time and manner of delivery of the data protection notice in order to best suit already established national procedures.

Despite this, the suggestion of the EDPS to inform returnees at the moment the return decision is communicated was well received by the Member States and will be taken into consideration. Member States suggested that this notice be included as part of the decision (if feasible) or as a separate document to be delivered at the same time as the return decision.

Member States also discussed the possibility of delivering the notice together with the information on the Complaints Mechanism. Member States however cautioned against providing the notice orally or in the form of leaflets in the waiting room at the airport, as this could cause unrest among the returnees.

Regarding the text of the notice, Member States inquired as to whether this could be adapted to cover the information on processing at both national and Frontex level. If

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agreed by the EDPS, this could be a possible solution for Member States. An alternative would be that Frontex makes the notice available on FAR, in different languages depending on Member States' needs.

**In conclusion,** Member States will inform returnees that their data is being processed in FAR, either by including this information together with the return decision or by delivering the data protection notice to returnees whenever appropriate. From Frontex side, this requirement could be listed as part of the implementation plan and the text of the notice attached to this document which is binding in respect of the organisation and implementation of the operation. This would follow the analogy of the Complaints Mechanism which is already embedded this way in the procedure regarding Frontex-coordinated return operations.

Frontex will support the process by

- Uploading the data protection notice in FAR so that Member States may print it and share it with the returnees when feasible;
- Supporting the translation of the data protection notice as necessary;
- Including this requirement in the Implementation Plan